

COMMONWEALTH OF PENNSYLVANIA



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October 5, 2012

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Duquesne Light Company for
Approval of Default Service Plan for the
Period June 1, 2013 through May 31, 2015
Docket No. P-2012-2301664

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in cursive script, reading "Jenedy S. Johnson".

Jenedy S. Johnson
Assistant Consumer Advocate
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Enclosures

cc: Hon. Katrina L. Dunderdale
Edward Berzonsky, Technical Utility Services
Certificate of Service

156325

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Default Service Plan : Docket No. P-2012-2301664
for the Period June 1, 2013 :
through May 31, 2015 :

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: October 5, 2012

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY.....	1
II.	SUMMARY OF ARGUMENT.....	3
III.	ARGUMENT.....	3
A.	LEGAL STANDARDS.....	3
1.	Burden Of Proof.....	3
2.	Legal Standards Applicable To Default Service.....	5
B.	DEFAULT SUPPLY PROCUREMENT ISSUES.....	11
1.	Residential Procurement Issues.....	11
a.	Product(s) and Product Terms.....	11
(i)	Duquesne’s Proposal re: Products and Product Terms.....	11
(ii)	The OCA’s Proposed Modifications to Products and Product Terms.....	12
(a)	Introduction.....	12
(b)	The OCA’s Proposal to Use Two-Year FRCs.....	13
(c)	The OCA’s Proposal to Use a Block and Spot Procurement Component.....	16
(iii)	RESA’s Proposal to Procure 50% of the Residential Default Service Load Through Three-Month FRCs Should be Rejected.....	23
b.	Procurement Dates.....	24
(i)	Duquesne’s Proposal.....	24
(ii)	RESA’s Alternative Proposal Should Be Rejected.....	25
c.	Reserving Supply For Retail Opt-In Customer Participation.....	26
2.	Small C&I Procurement Issues.....	30
a.	Product(s) and Product Terms.....	30
b.	Procurement Dates.....	30

3.	Medium C&I Procurement Issues.....	30
a.	Product(s) and Product Terms	30
b.	Procurement Dates	30
4.	Large C&I Procurement Issues.....	30
5.	Default Supply Load CAP Issues	31
6.	Procurements for Delivery Beyond May 31, 2015	31
7.	Miscellaneous Procurement Issues	33
C.	MARKET ENHANCEMENT PROGRAMS	33
1.	Retail Opt-In Program.....	34
a.	Auction vs. ROI Program	37
b.	Term of Offer	38
c.	Discount Percentage.....	40
d.	\$50 Bonus Payment	40
e.	Guaranteed Savings	41
f.	Customer Participation Cap	42
g.	Supplier Load Cap	46
h.	Enrollment Process	46
i.	Mailings and Communications	47
j.	Opt-In Electric Generation Supplier Service Program Request for Proposals and Agreement Between Duquesne Light and EGSs	49
2.	Standard Offer Program.....	50
a.	Term of Offer.....	51
b.	Discount Percentage.....	52

c.	Guaranteed Savings	52
d.	Program Start Date.....	53
e.	Program Suspension.....	54
f.	High Bill Callers	55
g.	Choice Referral Team.....	57
h.	Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSS	58
3.	Market Enhancement Program Cost Recovery.....	58
4.	CAP Customer Participation in Market Enhancement Programs	62
5.	Shopping Customer Participation in Market Enhancement Programs	62
6.	Small C&I Customer Participation in Market Enhancement Programs	64
7.	Customer Status at the End of the Market Enhancement Programs	64
a.	Customer Status at the End of the Opt-In Program	65
b.	Customer Status at the End of the Referral Program.....	66
8.	Miscellaneous Market Enhancement Program Issues.....	68
a.	RESA's Proposal for a 5 mil per KWH adder to Default Service Rates Must be Rejected.....	68
D.	RATE DESIGN	73
1.	Reconciliation Issues	73
2.	Price To Compare Calculation Date	73
3.	Non-Bypassable Charge To Recover PJM Charges	73
E.	TIME-OF-USE PROGRAM.....	73
F.	SUPPLY MASTER AGREEMENT ISSUES	74
G.	DATA/EGS COORDINATION ISSUES.....	74

H. GENERAL MISCELLANEOUS ISSUES 74

IV. CONCLUSION..... 75

TABLE OF CITATIONS

Cases

<u>Barasch v. Pa.PUC</u> , 532 A.2d 325 (Pa. 1987)	70
<u>Barasch v. Pa.PUC, et al.</u> , 493 A.2d 653 (Pa. 1985).....	70
<u>Burleson v. Pa.PUC</u> , 501 Pa. 433, 436, 461 A.2d 1234 (1983).....	4
<u>Cohen v. Pa.PUC, et al.</u> , 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983)	70
<u>Erie Resistor Corp. v. Unemployment Comp. Bd. of Review</u> , 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961).....	4
<u>Murphy v. Comm. Dept. of Public Welfare, White Haven Center</u> , 85 Pa. Commw. 23, 480 A.2d 382 (1984).....	4
<u>Norfolk & Western Ry. Co. v. Pa.PUC</u> , 489 Pa. 109, 413 A.2d 1037 (1980).....	4
<u>Popowsky v. Pa.PUC</u> , 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).....	70
<u>Se-Ling Hosiery, Inc. v. Margulies</u> , 364 Pa. 45, 70 A.2d 854 (1950).....	4

Administrative Decisions

<u>Investigation of Pennsylvania’s Retail Electricity Market</u> , Docket No. I-2011-2237952 (Order entered April 29, 2011).....	2
<u>Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan</u> , Docket No. I-2011-2237952 (Order entered March 2, 2012).....	passim
<u>Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans</u> , Docket No. I-2011-2237952 (Order entered December 16, 2011).....	passim
<u>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs</u> , Docket No. P-2011-2273650, <i>et al</i> (Order entered August 16, 2012).....	passim
<u>Petition of PPL Electric Utilities Corp. for Approval to Implement a Reconciliation Rider for Default Supply Service</u> , Docket No. P-2011-2256365 (Recommended Decision of Administrative Law Judge Susan Colwell, issued April 4, 2012).....	69
<u>Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan</u> , Docket No. P-00062227 (Order entered May 17, 2007).....	4

Statutes & Regulations

66 Pa.C.S. § 315(a) 4

66 Pa.C.S § 332(a)..... 4

66 Pa.C.S. § 2807(d)..... 56

66 Pa.C.S. § 2807(e) 6

66 Pa.C.S. § 2807(e)(3.1) 6

66 Pa.C.S. § 2807(e)(3.2) 7

66 Pa.C.S. § 2807(e)(3.4) 7

66 Pa.C.S. § 2807(e)(3.7) 8

66 Pa.C.S. § 2807(e)(3.9) 69

Miscellaneous

Preamble to Act 129, 2008 Pa. Laws 129..... 6

I. PROCEDURAL HISTORY

The Office of Consumer Advocate (OCA) submits this Main Brief in the matter of the Petition of Duquesne Light Company for Approval of its Default Service Program (Petition) in accordance with the procedural schedule adopted by Administrative Law Judge Katrina L. Dunderdale by Order dated June 11, 2012. The Petition addresses the default service plan of Duquesne Light Company (Duquesne or Company) for the period of June 1, 2013 through May 31, 2015. The Company's current default service plan expires on May 31, 2013.

Intervenors in this proceeding include: the OCA; the Bureau of Investigation and Enforcement (I&E); Office of Small Business Advocate (OSBA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Exelon Generation Corporation, LLC and Constellation NewEnergy, LLC; FirstEnergy Solutions Corp. (FES); Retail Energy Supply Association (RESA); Duquesne Industrial Intervenors (DII); NextEra Energy Services Pennsylvania, LLC (NextEra); Noble Amerigas Energy Solutions, LLC; and Dominion Retail, Inc. and Interstate Gas Supply, Inc. (Dominion).

At hearings in this matter on September 13, 2012, the OCA submitted into the record direct, rebuttal and surrebuttal testimonies and accompanying attachments of Dr. Steven L. Estomin¹ and Barbara R. Alexander.²

¹ Dr. Estomin is a principal and senior economist with Exeter Associates. Dr. Estomin received his B.A., M.A. and Ph.D. in economics from the University of Maryland. Dr. Estomin has provided expert testimony in more than 40 proceedings. He has also authored over 70 major publications and reports. Dr. Estomin's qualifications are detailed in the Appendix to OCA St. 1.

² Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney and a graduate of the University of Michigan and the University of Maine School of Law. Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at Exhibit BA-1.

Contemporaneous with this proceeding, the Pennsylvania Public Utility Commission (Commission) has been investigating the retail electricity market. In its Order initiating the Retail Market Investigation (RMI), the Commission stated that the statewide investigation would be conducted “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”³ To that end, the Commission has issued two orders providing recommendations and guidance for upcoming default service plans, which include the Company’s pending Petition.⁴

The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose. The provision of default service and the enhancements that have been proposed by the Company and other parties in this proceeding are closely interrelated. The default service products purchased, and the timing of those purchases, must be coordinated with the retail enhancements (*e.g.*, opt-in auction, referral program) approved in this proceeding. As discussed in further detail in this Main Brief, the OCA submits the following recommendations regarding Duquesne’s Default Service Plan.

³ Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952 (Order entered April 29, 2011).

⁴ Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 (Order entered December 16, 2011) (December 16 Final Order); Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Order entered March 2, 2012) (IWP Order).

II. SUMMARY OF ARGUMENT

Taking the legal requirements of default service and the RMI proceedings into consideration, the OCA has proposed modifications to the Company's proposed DSP.⁵ First, the OCA submits that Duquesne must procure a more diverse mix of supplies, including purchases of different products on different dates. Second, modifications to the Company's retail enhancement proposals must be made to ensure their success while maintaining necessary consumer protections. In support of its proposals, the OCA submitted the testimony of Barbara Alexander and Dr. Steven L. Estomin. In that testimony, the OCA's witnesses proposed modifications to Duquesne's plan in order ensure compliance with the statutory and legal requirements of default service while best serving both the Commission's goal of increasing customer interest in the retail market and ensuring that customers benefit as a result of the adoption of these retail market enhancements. The specifics of the OCA's proposals will be addressed in detail in the Sections below.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

The Public Utility Code provides in relevant part:

(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

⁵ The OCA's Briefs and testimony address residential default service except where specifically noted.

66 Pa.C.S. § 332(a). As the petitioner for a Commission Order in this matter, Duquesne has the burden of proof.⁶ In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission.⁷ The Pennsylvania Supreme Court has also provided that the party with the burden of proof has a formidable task before its position can be adopted by the Commission. Even where a party has established a prima facie case, the litigant must establish that:

the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.⁸

In addition to the general burden of proof required of a petitioner as provided in Section 332, the Public Utility Code provides the following as to proceedings specifically involving the rates of a public utility, in relevant part as follows:

§ 315. Burden of proof

- (a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa.C.S. § 315(a).

⁶ See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227 (Order entered May 17, 2007). In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.

⁷ 2 Pa.C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa.PUC, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

⁸ Burleson v. Pa.PUC, 501 Pa. 433, 436, 461 A.2d 1234, 1236 (1983).

The OCA would also note that as the proponent of a proposal for a new rate (the 5 mil/KWh adder discussed in Section III.B.3., below), RESA has the burden of proof with respect to the justness and reasonableness of the its rate proposal.

2. Legal Standards Applicable To Default Service

Default service is the basic service that Pennsylvania's electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service. Duquesne is the Default Service Provider in its service territory and, as such, must offer default service that meets specific legal requirements. Act 129 of 2008 provides the framework that service must meet and sets forth specific parameters for the procurement of electric default service in Pennsylvania. The General Assembly established the policy goals of Act 129 of 2008 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated:

Preamble

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service *at the least cost, taking into account any benefits of price stability over time* and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and *to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth *and ensures affordable and available electric service to all residents.*

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.⁹

As the highlighted portions above demonstrate, the General Assembly determined that essential electricity service must be provided to consumers at the least cost while considering price stability. In addition to the obligation to provide least cost and stable service, the Act specifically requires that default service be adequate, reliable, affordable, efficient, and available.¹⁰ The General Assembly established a series of policy objectives that each EDC must work to achieve through its default service plan. In reviewing the Company's plan here, the Commission must assure that these legal obligations are met in order to provide customers with service designed to achieve the least cost to default service customers over time.

The legal framework for default service is set forth in detail in Section 2807(e), Obligation to Serve.¹¹ Under Section 2807(e), Duquesne is required to provide electric generation supply service to all of their default service customers through a Commission-approved competitive procurement plan.¹² Under the Act, generation is to be obtained through competitive procurement processes, such as auctions, requests for proposals, and bilateral agreements.¹³ As part of a procurement plan, Act 129 requires a mix of power as follows:

The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

- (i) Spot market purchases.

⁹ See Preamble to Act 129, 2008 Pa. Laws 129 (emphasis added).

¹⁰ Id.

¹¹ 66 Pa.C.S. § 2807(e).

¹² 66 Pa.C.S. § 2807(e)(3.1).

¹³ Id.

- (ii) Short-term contracts.
- (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.¹⁴

The Act requires that default supply must include a prudent mix of the various types of contracts.

Further, the mix of contracts must be designed to achieve certain goals, as follows:

The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.
- (iii) Compliance with the requirements of paragraph (3.1).¹⁵

The Act further requires that the Commission evaluate whether the default supplier's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

- (i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.
- (ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

¹⁴ 66 Pa.C.S. § 2807(e)(3.2).

¹⁵ 66 Pa.C.S. § 2807(e)(3.4).

(iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.¹⁶

The General Assembly requires each EDC to take affirmative steps to ensure that the goals of the Act are met.

As detailed above, the default service legislative framework requires the default service provider to develop a procurement plan that meets several goals. The default service provider must obtain a prudent mix of supplies designed to provide service at the least cost to customers over time. Default service must be reliable, adequate, and designed to reduce price instability. The OCA submits that the above legal framework provides the foundation upon which Duquesne's default service procurement plan must be reviewed.

As part of its investigation into Pennsylvania's retail electricity market, the Commission issued guidelines impacting the current filing. In general, the Commission recommends limiting or eliminating contracts extending past the end date of the upcoming default service plan. In addition, the Commission recommended that each EDC limit long-term contracts.¹⁷

In presenting these guidelines, however, the Commission explicitly recognized that such recommendations were not intended to impede a DSP from meeting its statutory obligations to provide default service at least cost to customers over time. The Commission addressed the legal implications of its recommendations, as follows:

Notably, these guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the "least cost to customers over time." The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain

¹⁶ 66 Pa.C.S. § 2807(e)(3.7).

¹⁷ December 16 Final Order at 19.

flexibility in developing plans that meet Act 129 requirements. For this reason, the Commission declines to accept RESA's and Direct Energy's recommendations that the Commission direct EDCs to develop portfolios that include a more specific mix of contracts.

OCA remarks that it is impossible to know whether long-term contracts will be necessary for EDCs to meet Act 129 requirements, and thus the Commission should not recommend limiting their use. The Commission reiterates that these recommendations are not intended to constrain an EDC from meeting its statutory obligations.

Further, the Commission will refrain from making recommendations with respect to specific contractual terms and conditions for energy that will be procured for the next phase of default service plans, as suggested by Direct Energy. Providing guidance on specific, contractual provisions is outside the scope of the purpose of these recommendations.¹⁸

The OCA submits that the Commission's guidelines must be considered in light of the requirements of Act 129 to develop a reasonable and appropriate default service plan.

As was mentioned above, two of the recent Orders to come out of the RMI docket have played a large role in shaping the Company's default service program and proposed retail market enhancements.¹⁹ Directly relevant to Duquesne's DSP here, these Orders provided recommendations for default supply procurements, and the possible use of retail opt-in auctions and customer referral programs. In its December 16 Order regarding default service plans, the Commission provided discretion in implementing its recommendations as follows:

The Commission clarifies that its intent is to issue recommendations and flexible guidelines with respect to the format and structure of EDCs' upcoming default service plans. The Commission encourages EDCs to view the recommendations as the starting point in developing the next phase of default service plans.²⁰

¹⁸ December 16 Final Order at 19-20.

¹⁹ The two Orders that addressed these issues are the December 16 Final Order and the IWP Order.

²⁰ December 16 Final Order at 6.

The Commission also indicated that “the recommendations are intended to provide EDCs with the flexibility to craft default service plan filings in a manner in which they see appropriate.”²¹

On March 2, 2012, the Commission issued its Intermediate Work Plan Order (IWP Order) regarding retail market enhancements. The IWP Order provided guidance on the implementation of opt-in auction and customer referral programs. The IWP Order also provided the EDCs with discretion in implementing these programs, noting as follows:

To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC’s default service proceeding and supported substantially by interested parties in the default service proceeding.²²

Consistent with the Commission’s Orders, Duquesne has proposed Opt-In Auction and Customer Referral Programs in this proceeding. Both the Company, as well as the OCA and other parties, however, have proposed important variations from some of the Commission’s recommendations as contained in the IWP Order. It is also important to note that the Commission recently issued an Order in the FirstEnergy Companies’ default service plans. See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al* (Order entered August 16, 2012) (FirstEnergy DSP Order). Duquesne’s default service procurement plan provides a different design than that of the FirstEnergy Companies and, for residential customers, begins from a fundamentally different point than Duquesne’s sixth default service plan. To the extent necessary, the OCA will discuss the implications of the unique position of Duquesne and its customers. The OCA discusses the retail market enhancements below in Section III.C. of this Main Brief.

²¹ December 16 Final Order at 4.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

a. *Product(s) and Product Terms*

(i) *Duquesne's Proposal re: Products and Product Terms*

Under Duquesne's DSP VI, power supply for residential customers is to be provided through competitively procured load-following, full-requirements contracts (FRCs). Each contract is to have a duration of 12 months and to be procured through a request-for-proposal (RFP) process. Each of the FRCs would be for power supply deliveries for the period from June 1 through May 31, which coincides with PJM's planning year.

Duquesne plans to divide its purchases for residential default service into 24 "tranches," with each tranche representing approximately 55 MW of peak demand. OCA witness Estomin describes a tranche as follows:

A tranche is a slice of load such that each tranche represents the same residential class load shape over the course of the year. A tranche, therefore, represents a fixed percentage of the total residential Default Service load. With 24 tranches, each tranche equates to approximately 4.2 percent of the total residential Default Service load. It is important to note that a tranche does not represent a fixed MW, or MWh, obligation on the part of the wholesale supplier, but rather an obligation to serve the fixed percent of total actual residential Default Service load in each hour.

OCA St. 1 at 13.

Residential power supply procurement for the first year of DSP VI (June 1, 2013 through May 31, 2014) would be conducted in two steps. The first step would be an RFP issued in November 2012 for 50 percent of the residential default service requirement; the second would be an RFP issued in April 2013 for the remaining 50 percent. For the second year of DSP VI (June 1, 2014 through May 31, 2015), 50 percent of supply would be procured in April 2013,

25 percent in November 2013, and the remaining 25 percent in April 2014. As will be discussed in Section III. B. 6, Duquesne proposed an additional solicitation to be conducted in April 2014 for 25 percent of the residential power supply requirement beginning in June 2015. This additional procurement is intended to provide a bridge into Duquesne's next DSP period as a means of affording a degree of rate stability for residential customers when the DSP VI period ends on May 31, 2015. As further discussed below, while the OCA is in general agreement with the framework of Duquesne's procurement plan, OCA witness Estomin recommended the addition of block and spot purchases as well as the lengthening of the term (to two years) of a small portion of the FRCs in order to provide a greater diversity of products in the default supply mix. Dr. Estomin also indicated that if his recommendation regarding block and spot purchases were rejected, he would nevertheless maintain his recommendation regarding two-year FRCs and his support for the bridge contract into the next DSP period. OCA St. 1-S at 19.

(ii) *The OCA's Proposed Modifications to Products and Product Terms*

(a) *Introduction*

The OCA recommended modifications to Duquesne's residential procurement plan for DSP VI to ensure that it includes a prudent mix of products designed to ensure reliable, stable service at the least cost over time pursuant to Act 129. See gen'ly OCA St. 1, 1-R and 1-S. The OCA submits that greater diversity is needed among Duquesne's residential default supply products if a prudent mix of resources, as mandated by Act 129, is to be achieved.

In order to realize such a mix, OCA witness Estomin proposed two modifications to the products and product terms proposed by Duquesne for residential default supply. Dr. Estomin's first modification was that approximately 17 percent of the residential default service load (4 of 24 tranches) should be procured through two-year FRCs rather than the one-year FRCs

proposed by the Company. Dr. Estomin's second modification was that approximately 21 percent (5 of 24 tranches) of the residential default service load in each year of DSP VI should be served through a block and spot supply arrangement. This would be in lieu of Duquesne's proposed 100 percent reliance on FRCs. Attached to Dr. Estomin's Direct Testimony was Schedule SLE-1 in which he summarized in very clear fashion what the Duquesne residential default service procurement schedule would look like if his modifications regarding products and length of products were adopted. As noted earlier, Dr. Estomin also testified that should his block and spot recommendation not be adopted, he would nevertheless continue to urge that his recommendation for two-year FRCs be adopted and that Duquesne's proposal to purchase a portion of supply that would extend into the next DSP period be maintained. OCA St. 1 at 19.

The OCA submits that the adoption of both of Dr. Estomin's modifications will allow the Company's procurement plan for residential customers to more closely adhere to the statutory requirement that default supply represent a prudent mix of contracts designed to ensure adequate and reliable service at least cost to customers over time.

(b) The OCA's Proposal to Use Two-Year FRCs

The basis for the OCA's recommendation that a portion of the FRCs purchased for residential load have a two-year rather than a one-year term is that the two-year FRCs: (1) would provide an additional product that would enhance compliance with Act 129 by building product diversity; (2) would allow Duquesne to take advantage of favorable current forward market prices; and (3) could provide some degree of hedging against unanticipated future price increases. OCA witness Estomin explained this rationale as follows:

To better address the Act 129 requirements, I recommend that four of the 24 tranches be of two-year duration rather than the uniform one-year duration for all of the tranches as proposed by Duquesne. This recommendation serves two purposes. It provides the portfolio with an additional product element and hence

is in more conformity with the Act 129 guidance. Additionally, current forward market prices in PJM are generally favorable for consumers relative to historical experience and a set of longer term FRCs may provide residential customers with some degree of benefit in hedging potential unanticipated future price increases in PJM.

OCA St. 1 at 15.

The OCA recommendation is opposed by Duquesne and RESA. Duquesne witness Mr. Scott Fisher (S. Fisher) responded to Dr. Estomin's point about taking advantage of current favorable forward market prices. Witness S. Fisher says that Dr. Estomin's rationale for including two-year FRCs in the supply portfolio "equates to market speculation, in an effort to 'second guess,' 'time,' or 'beat the market.'" Duquesne St. 8-R at 30.

Dr. Estomin responded to these assertions by stating:

Contrary to Mr. Scott Fisher's representation, my proposal is in no way second-guessing the market. I do not know whether a combination of two-year contracts will ultimately be more favorable to Default Service customers than a suite made up entirely of one-year FRCs. Mr. Scott Fisher, however, does not know whether a suite of one-year contracts would be preferable to a combination of one-year and two-year FRCs. I am not suggesting that the solicitation schedule be modified based on my assessment of future market movements, which would justify Mr. Scott Fisher's position. Rather, I have suggested that the market be relied upon, with the recognition that product diversification provides a measure of risk mitigation and that based on historical prices, the risk of potential price increases from current futures levels is greater than the risk of potential price declines.

In short, the recommendation to purchase a mix of one-year and two-year FRCs to satisfy the residential Default Service supply requirement is no more speculative than the Company's recommendation to purchase only one-year FRCs.

OCA St. 1-S at 20.

Mr. S. Fisher also noted that simultaneously purchasing two separate one-year products, as Duquesne has proposed, will allow default service rates to track market prices more closely from year-to-year than if a two-year product were procured at a fixed price. As evidence of this, Mr. S. Fisher refers to the \$10 difference in PJM capacity prices for the two years of the

DSP VI period. He states that if Dr. Estomin's two-year FRCs were used, the different capacity costs for each year of DSP VI would be blended, resulting in a default service rate in each year that is less reflective of that year's actual market price. Duquesne St. 8-R at 31.

In response to this issue of market-reflective rates, Dr. Estomin pointed out that the difference in the yearly capacity costs is relatively small and its overall impact on the default service rate is not clear. Dr. Estomin stated:

I agree that the difference in the capacity prices will likely be averaged over the two years. The overall impact, however, owing to this one factor is small and, when other market factors are considered, the overall impact on the relationship of the PTC to retail market prices is not clear. Mr. Scott Fisher notes that the difference in capacity prices is about \$10 per MWh between the first year and the second year. This equates to a \$5-per-MWh difference in each of the two years, though in opposite directions, which is less than 10 percent of the total PTC. This difference would be mixed with other cost components (e.g., energy, ancillary services, RECs) and the ultimate relationship between the Default Service prices that would be paid and the competitive alternative can only be assessed as speculative.

OCA St. 1-S at 20-21. The OCA submits that the arguments relied upon by Duquesne to oppose Dr. Estomin's recommendation to include a percentage of two-year FRCs in the Company's residential default supply portfolio are not convincing and must therefore be rejected.

RESA witness Aundrea Williams also expressed concern that two-year FRCs would lead to default service prices that are less market-reflective than the use of one-year FRCs proposed by Duquesne. Because of this, Ms. Williams sees Dr. Estomin's proposal as presenting a barrier to retail competition. RESA St. 2-R at 2- 3. In reply, Dr. Estomin points out that it is the movement of wholesale prices, not the inclusion of two-year contracts, that can affect the prospects for retail competition:

The potential for adverse consequences to retail competition suggested by Ms. Williams can occur where wholesale market prices increase over the term of the two-year FRC contract period. The potential consequences to retail competition can also be favorable when wholesale market prices are declining, as we have

seen over the course of Duquesne's current Default Service plan which expires in May 2013. Whether the two-year contracts that I recommended in my Direct Testimony would serve as a barrier to retail competition, or would serve to bolster retail competition, depends on the movement of wholesale market prices.

OCA St. 1-S at 3.

The OCA would further note that in the recently concluded default service proceeding involving the First Energy operating companies, the Commission adopted a *RESA recommendation* to supply the residential default service load using a combination of one and two-year contracts.²³

As with the arguments made by Duquesne, the concerns expressed by RESA are not persuasive and they too should be rejected and the OCA's recommendation to have 4 of 24 tranches of the residential default service load procured through two-year FRCs should be adopted.

(c) *The OCA's Proposal to Use a Block and Spot Procurement Component*

The OCA's second modification to Duquesne's proposed procurement plan for residential default service is to add a block and spot component to complement Duquesne's sole reliance on FRCs. Specifically, OCA witness Estomin proposed that Duquesne acquire one-year block energy products, that is, 12-month on-peak and off-peak strips (or alternatively, 12-month on-peak and 12-month all-hours strips), with the Company targeting the purchase of 80 percent

²³ In its Order, the Commission stated:

Consequently, we believe that the mixture of twelve and twenty-four-month contracts proposed by RESA for residential customers and utilization of six-month and twelve-month contracts for small commercial and industrial contracts proposed by the OSBA emphasize the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSs.

FirstEnergy DSP Order at 24-25.

of on-peak and off-peak MWhs for its block supply tranches. Because the energy blocks purchased would not necessarily match the residential hourly load, Duquesne would need to purchase the balancing energy from the spot market in hours when load exceeds the 80 percent block and sell energy into the spot market in hours when the block exceeds load. Dr. Estomin cited two advantages to adding a block and spot element to Duquesne's procurement portfolio:

This arrangement...would provide a greater mix of supply elements in the portfolio and therefore be in closer conformance to the Act 129 guidelines.

OCA St. 1 at 9.²⁴

An advantage of this product is that the block energy suppliers do not incur any volumetric risk. The product being purchased is for a fixed amount of energy each hour covered by the contract (that is, on-peak, off-peak, or all hours) regardless of changes in load due to weather, migration out of Default Service, or migration into Default Service. As a consequence, no volume-related risk premium is added to the bids. Further, these are standard products trading in liquid markets, so price reasonableness is easily determined based on published market data.

OCA St. 1 at 16.

Duquesne opposed the OCA's block and spot recommendation. Company witness Mr. S. Fisher took exception to Dr. Estomin's assertion that inclusion of a block and spot element is more consistent with Act 129 because it adds a spot market component and represents an alternative product type in Duquesne's portfolio. Duquesne St. 8-R at 10-12. In witness S. Fisher's estimation, this matter was settled by the Commission in its Final Rulemaking Order when it said that it rejected the position of those who maintain that the phrase "prudent mix" be

²⁴ Elsewhere in his Direct Testimony, Dr. Estomin states:

From the perspective of any particular residential customer, however, there is only one product type being used to supply the residential Default Service load, which is the one-year FRC product. There are no long-term or spot market products explicitly included in Duquesne's proposed Default Service supply portfolio for residential customers.

OCA St. 1 at 14.

defined to always require a specific mix or percentage of types of contract components or even a minimum of two types of products. Final Rulemaking Order at 60. In response, the OCA notes that the Commission, in the same Order, indeed on the same page, stated what was quoted earlier:

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

Final Rulemaking Order at 60 (emphasis added). The OCA submits that inclusion of a block and spot component in Duquesne’s procurement mix is entirely consistent with Act 129 and adds elements that would enhance Duquesne’s ability to achieve the prudent mix of products required by Act 129.

Mr. S. Fisher also took exception to Dr. Estomin’s point that the block energy suppliers do not incur any volumetric risk and therefore do not have to add any volume-related risk premium to their bids. Mr. S. Fisher argued that while block energy suppliers might not include a volume-related risk premium in their bid, a block and spot approach would nevertheless result in other costs and risks being transferred onto Duquesne’s customers, most notably price risk. Duquesne St. 8-R at 12-14.

Dr. Estomin noted that Mr. S. Fisher’s argument might have merit if the block and spot component of the portfolio were very large or if the block and spot products were multi-year products, but neither is the case with the OCA proposal. Dr. Estomin stated:

I would agree with Mr. Scott Fisher if the proportion of the residential Default Service load that was to be supplied through block-and-spot products represented all (or a large proportion) of the Default Service supply and/or if the block-and-spot products were multi-year. Neither circumstance exists in the context of the recommendation contained in my Direct Testimony. All block-and-spot products are of one-year duration and represent, in aggregate, approximately 25 percent of

the residential Default Service load. The relatively small proportion of load served through the block-and-spot arrangement and the fact that the block-and-spot products all have a one-year term effectively limits the exposure of residential Default Service customers to the kinds of adverse financial consequences identified by Mr. Scott Fisher.

OCA St. 1-S at 16.

Another of Mr. S. Fisher's criticisms of the block and spot component was that such an approach has the potential to accumulate large deferred cost recovery balances. Duquesne St. 8-R at 14-15. Mr. S. Fisher asserted that when block and spot purchases are used, default service rates are set based on the anticipated cost of default service supply and that inevitably that cost will differ from the true cost. He stated that the gap between revenue and costs can result in a large deferred cost recovery balance.

Dr. Estomin responded by acknowledging the potential for either a positive or negative deferral balance, but followed that by noting that he would not expect the absolute value of any such balance to be large due to the small proportion of default service supply that would be purchased on the spot market. OCA St. 1-S at 18.

Mr. S. Fisher also included Exhibit SGF-3R with his Rebuttal Testimony. The Exhibit purported to offer examples of where the use of a block and spot or similar approach resulted in unexpected increases in default service costs. The two examples cited in the Exhibit involved Pennsylvania's Wellsboro Electric Company and Public Service of New Hampshire (PSNH). In Surrebuttal Testimony, Dr. Estomin distinguished these two cases from that of Duquesne. Regarding Wellsboro, Dr. Estomin testified:

Wellsboro's customers were exposed to significant price increases related to transmission congestion resulting from the unavailability of a particular transmission path for a several month period. The incurrence of the Wellsboro congestion costs was the result of several factors, including the specific configuration of the transmission system affecting Wellsboro, Wellsboro's decision to purchase block power at the PJM West Hub, and Wellsboro's decision

not to purchase transmission congestion hedging products to protect itself from the high congestion cost exposure. Duquesne can, for example, purchase block products at the Duquesne zone, which would provide full insulation from congestion costs. Additionally, there is no reason to expect that Duquesne would be exposed to the kind of congestion impacts that affected Wellsboro in 2008 due to Duquesne's reliance on alternative transmission paths.

OCA St. 1-S at 12-13. As to PSNH, Dr. Estomin noted:

In the case of PSNH, the Company provides Default Service from its own generation at cost-based rates. As a practical matter, this is tantamount to a long-term portfolio arrangement since the PSNH costs are in large part related to PSNH costs of production. In short, neither the Wellsboro situation nor the PSNH situation is meaningful for interpreting the block-and-spot arrangement proposed for a portion of Duquesne's residential Default Service supply.

OCA St. 1-S at 17.

The OCA submits that the various criticisms leveled by Mr. S. Fisher against inclusion of a block and spot component in Duquesne's procurement mix are not persuasive and do little to undercut the merit of incorporating a block and spot element into Duquesne's mix. Therefore, Dr. Estomin's recommendation should be adopted.

RESA, Dominion/IGS, Constellation and FES also oppose including a block and spot component in Duquesne's procurement mix for residential customers. The most extensive criticism of the block and spot approach was offered by Constellation witness, Mr. Stephen Bennett. Constellation St. 1R at 6-21. Mr. Bennett contended that competitive wholesale suppliers, such as his company, are better able to manage risk than EDCs such as Duquesne; that block and spot products shift risk to default service customers rather place the risk on FR contract suppliers; and that the default service portfolio should be a "plain vanilla" product with stable prices and minimum price risk and volatility, a product best supplied through 100 percent reliance on FR contracts.

In response to Mr. Bennett's assertion that FR contracts relieve EDCs and their customers from risk management exposure, Dr. Estomin explained that his proposal does not anticipate that Duquesne will engage in risk management activities related to the block and spot purchases. He states as follows:

Duquesne's responsibilities extend to procuring the energy blocks in accordance with a pre-established schedule and purchasing (or selling) spot market energy to follow the load for the block-and-spot tranches. Duquesne would also be responsible for market purchases of ancillary services, capacity and renewable energy credits necessary to meet PJM and Pennsylvania requirements. There is no management function for Duquesne (for example, assessing the benefit of procuring hedging products to fix spot prices or conducting market analysis to assess the "optimal" timing and size of the block purchases) associated with the block-and-spot products any more than there is for Duquesne in the context of the FRC products used to serve 75 percent of the residential Default Service load.

OCA St. 1-S at 11-12.

With regard to Mr. Bennett's point that use of block and spot shifts risks to default service customers, Dr. Estomin responded by noting that the portion of the supply portfolio that would be served by block and spot under his proposal is relatively small. He notes that he would be inclined to agree with Mr. Bennett if the proportion of the load served by block and spot were upwards of 50 to 100 percent. OCA St. 1-S at 14.

Dr. Estomin also responded to Mr. Bennett's argument that competitive wholesale suppliers are better suited to manage the risks of providing default service supply through FR products than are EDCs such as Duquesne. He testified:

I agree that Constellation, and other companies routinely engaged in wholesale market transactions for the provision of Default Service supply, or competitive retail supply, are better positioned to manage the full suite of risks that accompany the provision of Default Service supply under FRC contracts. As I noted previously, however, Duquesne would not be charged with risk management decisions with respect to the block-and-spot product. Block purchases of specified sizes would be made on a pre-established schedule and spot power would be purchased to accommodate the variations in load relative to the fixed blocks over the course of the day. Consequently, the issue of whether

Constellation, or similar companies, are better positioned to manage risk is irrelevant to the block-and-spot component of residential Default Service supply.

OCA St. 1-S at 14.

The objections raised by RESA and Dominion/IGS to the use of a block and spot procurement component are largely similar to those raised by Duquesne and Constellation. FES witness Tony C. Banks raises two additional concerns: (1) that FR contracts provide customers with price certainty for the term of the contract and such price certainty would be diminished with the addition of a block and spot component; and (2) that the elimination of 25 percent of the FR tranches on which FR suppliers can bid combined with the 50 percent load cap for any one supplier could reduce supplier interest in bidding on Duquesne's solicitation. According to Mr. Banks the reduced interest in bidding could do much more to affect Duquesne's ability to secure least-cost supply than the concerns Dr. Estomin expressed regarding volumetric risk associated with the Company's proposed Opt-In EGS program. FES St. 1-R at 5-6.

In response to the two points raised by Mr. Banks, Dr. Estomin testified as follows:

[T]he relatively modest reliance on the block-and-spot products would do very little to erode price certainty. Second, the supposed reduction in supplier interest due to 25 percent of the tranches being set aside for block-and-spot procurement is purely speculative. I assess that there is much greater impact associated with the adverse implications of load uncertainty owing to the proposed Opt-in EGS Service program than with a slightly diminished number of FRC tranches available for bid.

OCA St. 1-S at 15.

The OCA submits that the arguments raised by Constellation, RESA, Dominion/IGS and FES have done nothing to undercut the soundness of the recommendation put forth by OCA witness Estomin regarding inclusion of a block and spot component in the procurement mix for residential customers. They should therefore be rejected.

The OCA would further note that although the Commission declined to adopt the OCA's recommendation to use block and spot purchasing in the case involving the First Energy operating companies, the Commission specifically stated that it did not intend to establish a precedent in that proceeding regarding the utilization of block procurements for default service.²⁵ The OCA continues to support the use of block and spot purchasing as an element of a diverse and least cost default service procurement plan. Nevertheless, if the Commission again declines to adopt the OCA's recommendation, the OCA submits that the Commission should adopt the OCA's proposal for using a mix of one and two-year FRCs.

(iii) RESA's Proposal to Procure 50% of the Residential Default Service Load Through Three-Month FRCs Should be Rejected

RESA proposed that rather than utilize one-year FRCs to procure the residential default service supply, as Duquesne had proposed, the Company should purchase 50% of the supply using one-year FRCs and the other 50% using FRCs with a three-month duration. RESA St. 1 at 3. The rationale for this proposal was that it "will enhance the market responsiveness of the underlying supply mix which better supports sustainable retail competition and ultimately benefits consumers." RESA St. 1 at 18.

OCA witness Estomin opposed the RESA proposal noting that it would introduce significant potential price volatility into the residential default service portfolio, which he noted was neither desirable nor necessary to bring about residential migration to competitive generation service. In particular, Dr. Estomin noted that Duquesne's current default service plan provided for fixed prices for a period of 29 months. Yet that has not deterred nearly 40% of the residential customers from shopping. Dr. Estomin's specific testimony on this point is as follows:

Witness Williams' recommendation for reliance on one-year and three-month FRCs introduces a significant amount of potential price volatility into the residential Default Service portfolio which is neither desirable for residential customers nor necessary to achieve residential migration to competitive generation service. Under Duquesne's prior Default Service plan, for example, the Company provided fixed prices for residential Default Service for a period of 29 months, and current residential shopping in the Duquesne service area constitutes over 40 percent of the residential load and almost 40 percent of residential customers.

OCA St. 1-R at 3.

The importance of price stability to the residential class was reiterated by Duquesne witness S. Fisher in his Surrebuttal Testimony where he stated:

Furthermore, the reasoning that RESA presented in its rebuttal testimony regarding how its proposals would allegedly provide appropriate price stability benefits to small customers (i.e., by relying on small customers to accept EGS offers that incorporate stable pricing) ignores the fact that small customers generally rely on default service price stability the most, and some small customers who need price stability may not have the knowledge, sophistication, resources, or time to find and elect an EGS offering that provides the price stability that they seek with pricing that they are convinced is competitive. The Residential and Small C&I customer classes benefit greatly from having stable default service rates, and this cannot be ignored, especially given that the General Assembly has recognized that consideration of "least cost" should "[take] into account any benefits of price stability."

Duquesne St. 8-SR at 5 (footnote omitted).

The OCA submits that retail competition can be successfully sustained without injecting the potential for price volatility and instability the RESA proposal would bring. The proposal should be rejected.

b. Procurement Dates

(i) Duquesne's Proposal

For the first year of DSP VI, June 1, 2013 – May 31, 2014, Duquesne proposes to purchase 50% of the residential default service supply in November 2012 and the remaining 50%

in April of 2013. For the second year of DSP VI, June 1, 2014 – May 31, 2015, Duquesne proposes to purchase 50% of the supply in April 2013, 25% in November of 2013 and the remaining 25% in April of 2014. Thus the lead time between procurement and the beginning of the applicable DSP VI year ranges from two months to fourteen months.

OCA witness Estomin commented favorably on Duquesne's proposal. He stated:

The laddering of contracts proposed by Duquesne is desirable given that it helps manage the supply price risk faced by residential Default Service customers, that is, it does not expose the residential Default Service customers to the price implications associated with market conditions on the day that the power supply solicitation response is due. While the temporal diversity inherent in the Duquesne portfolio does not ensure that residential Default Service customers will pay lower prices than if all of the supply were secured on a single day, the approach does provide for a reasonable approach to risk management.

OCA St. 1 at 17. The OCA supports Duquesne's procurement schedule. As Dr. Estomin notes, Duquesne's proposed laddering of contracts serves as a prudent and effective tool to manage supply price risk.

(ii) *RESA's Alternative Proposal Should Be Rejected*

RESA recommended lead times of no more than two months for each procurement. RESA St. 1 at 16. RESA stated that procurements made too far in advance of the delivery date would result in pricing that does not reflect the market price at the time of delivery.

OCA witness Estomin testified that RESA's proposal was not reasonable and exposed residential customers to greater risk. Dr. Estomin stated:

The compressed procurement schedule recommended by witness Williams will not allow for diversity in the timing of the procurements, thus exposing residential Default Service customers to more "market timing" risk than is necessary. The schedule proposed by the Company, which OCA generally supports, will help to mitigate the "market timing" risk problem of having procurements that are too close together in time.

OCA St. 1-R at 4. Dr. Estomin addressed the subject of market-reflective pricing again in his Surrebuttal Testimony where he stated:

[RESA's concern is that] [d]uring the period between when the contracts are signed and deliveries commence, wholesale market prices could change and the residential Default Service product prices would then be less reflective of then-current wholesale market prices compared to Default Service product prices that would result if the contracts were entered into on a date closer to the start of deliveries. While this representation, in general terms, is correct, there are several considerations that, when recognized, reduce or eliminate the concern with the timing issue. First, the residential Default Service supply portfolio should be procured in a manner that reasonably mitigates the exposure of Default Service customers to the risks inherent in buying all of the Default Service supply at the same time or within a short period of time. The only way to accomplish this is to contract for some of the Default Service supply months in advance of the initial delivery date and contract for some of the supply on a date closer to the start of deliveries. *This approach is consistent with what Duquesne's residential Default Service supply plan reflects and an aspect of the Company's plan that I recommend be retained. The approach included in the Company's plan reasonably balances Default Service supply risk mitigation and portfolio costs reflective of then-current wholesale market prices.*

OCA St. 1-S at 6 (emphasis added).

Duquesne witness S. Fisher also testified extensively in opposition to RESA's proposal for two-month lead times. His position is best summarized in his Surrebuttal Testimony where he stated:

RESA's recommendations to simply require all procurements to be held within a set period of time (e.g., 60 days) of the start of delivery of the respective supply products would eliminate carefully designed price stability benefits for small customers that otherwise would be provided under Duquesne Light's proposed Plan.

Duquesne St. 8-SR at 11.

For the very sound and practical reasons expressed by Dr. Estomin and Duquesne witness S. Fisher, the OCA submits that RESA's proposal to have procurement lead times of no more than two months should be rejected and the Company's procurement schedule retained.

c. Reserving Supply For Retail Opt-In Customer Participation

The OCA submits that the Company's DSP must be designed to achieve least cost to customers over time. To achieve that goal, the procurements must be conducted in a stable

environment without adding excessive risks to wholesale default suppliers that would then impact default service rates. In order to protect the default service procurement process in light of the proposed Retail Opt-In Auction, OCA witness Estomin developed a mechanism by which the open ended risks to default suppliers that could be triggered under the retail opt-in program (discussed in Section III.C.1. below) are substantially mitigated.

The opt-in program is unlike any program in any other electric choice state. As OCA witness Estomin testified, in such a novel proceeding, caution is warranted to avoid the introduction of significant volumetric risks to the wholesale suppliers that could limit the number of bidders or result in illusory savings for customers. Dr. Estomin explained:

That concern is the introduction of significant volumetric risk to the wholesale suppliers of residential Default Service power supply. Volumetric risk results from the implementation of this program, as proposed, because the amount of load to be served under this program is unknown to Default Service bidders when the bids are prepared. The FRC [Full Requirements Contract] suppliers are already exposed to the volumetric risk associated with customer migration (both into and out of Default Service) and weather-related risk. The risk perceptions of the bidding suppliers are priced into the Default Service supply bids. The potential for a sharp and very abrupt increase in customer migration that could occur immediately following the submission of their bids due to the Opt-In EGS Service Program could significantly increase the Default Service supply costs for residential Default Service customers. Additionally, the exposure to this risk could result in fewer bidders participating in the competitive procurement.

This problem even raises the possibility that the rate discount achieved by the Opt-in EGS Service Program for participating customers could be illusory. That is, if the program itself causes an increase in the price of Default Service, then it is possible that the discount provided by the program is not a true savings for participants, but instead, merely a discount relative to an artificially increased Default Service price. In this scenario, it is possible that all residential customers could lose – program participants, other EGS customers, and Default Service customers.

OCA St. 1 at 19-20.

OCA witness Estomin recommended a procedure by which the wholesale bidders would not be exposed to the volumetric risk created by the opt-in auction. Under Dr. Estomin's

proposed “hold back” of supply reserved for the opt-in auction, full requirements bidders would be assured that the MW size of the tranches they were bidding on were fixed at the expected 55 MW size. Dr. Estomin summarized his hold back procedure, explaining:

I recommend addressing this problem by removing the program load from the FRC default service load bidding. I provide a numerical example to make clear how this recommended approach would work.

Assume that an EDC, such as Duquesne, has a residential Default Service load of 24 55-MW tranches. My recommended approach would allocate five of those tranches to a block and spot approach, leaving 19 remaining tranches. Of these 19 tranches, 14 would be served through FRCs and five would be allocated to the Opt-in EGS Service Program (approximately 20 percent of total load). If the program is fully subscribed, then all the FRC suppliers will continue to service their 55-MW tranches as originally envisioned, that is, free from any volumetric risk related to program implementation. The FRC suppliers would still be exposed to the volumetric risk that exists absent the program plus an additional risk component, assumed to be small, related to migration from the program back to Default Service during the course of the first year of the Default Service plan period.

In the case of an under-subscribed program, those tranches allocated to the program would revert to Default Service. However, the FRC suppliers selected to supply Default Service are insulated from adverse impacts. If FRC Supplier A won 3 tranches through the RFP bidding process, it is responsible for 3/14, or 21.4 percent, of the actual Default Service load during the contract term (exclusive of the load served by block and spot). Now assume that there is no program participation. In this case, the five unsubscribed tranches would become default load and would be offered to FRC bidders interested in taking those five tranches. FRC Supplier A still serves 3 tranches, but is now 3 tranches of 19, or 15.8 percent. While FRC Supplier A's percentage responsibility for Default Service load declines from 21.4 percent to 15.8 percent, the supplier's MW load responsibility does not change. Prior to the undersubscription of the program, the Default Service load is 14 tranches of 55 MW each, or 770 MW. Supplier A's 21.4 percent responsibility is 165 MW (i.e., $21.4\% \times 770 = 165$). With program undersubscription, the Default Service load increases to 1045 MW, with FRC Supplier A being responsible for 15.8 percent, which again is 165 MW ($15.8\% \times 1045 = 165$).

OCA St. 1 at 20-22. Importantly, Dr. Estomin's proposal would ensure that the outcome of the Opt-in EGS Service Program subscription process will have no effect on the amount of MW (or

MWH) of Default Service load served by the winning wholesale FRC suppliers. OCA St. 1 at 21-22.

Dr. Estomin recommended that a participation level of 20% be used and that approximately 20% of non-shopping load be “held back” from the default service procurement for use in the opt-in auction. He explained the benefits of this approach, as follows:

The reason for this recommended range relates to two competing issues. One issue relates to the promotion of competitive service, which suggests that a significant percentage of residential Default Service load should be allocated to the program. The second issue relates to the firmness of the PTC, which is the benchmark for the price qualification of the bids for the Opt-in EGS Service Program. The PTC covering the first year of the two-year Default Service Plan will be established by the FRC bids, the block and spot purchases, and, to the degree that the Opt-in EGS Service Program is undersubscribed, the cost of supply for the additional load that needs to be covered under Default Service.

...
That said, the larger the percentage of the load set aside for the Opt-in program, the greater the potential undersubscription and hence the greater the potential for a larger deviation between the proxy PTC and the ultimate PTC in effect during the first 12 months of the Default Service Plan. To balance the competing objectives of having the preliminary (or proxy) PTC close to the actual PTC and meaningful promotion of retail competition, the 20 percent figure appears to be appropriate.

OCA St. 1 at 22-23.

In the event the opt-in program does not reach a 20% participation level, those unfilled tranches held back for the program would be offered back to winning wholesale bidders in the default service auctions. OCA St. 1 at 23. Dr. Estomin explained the contingency mechanism, as follows:

I recommend that if the undersubscription is less than one tranche, then this residential Default Service load should be filled through the PJM spot market for the remainder of the first year of the Default Service Plan. For the second year, it should be included in the FRC solicitations.

If the undersubscription is more than one tranche, then the undersubscribed load should be filled by offering it to eligible wholesale Default Service bidders as a one-year FRC. If the offer is not accepted by any of the wholesale Default

Service bidders, then Duquesne should fill the tranche (or tranches) with block and spot supplies.

OCA St. 1 at 23.

The OCA submits that Dr. Estomin's proposal adequately addresses the potential negative impact an open-ended opt-in program could have on default service procurement. While the OCA recognizes that the Commission did not adopt a similar recommendation in the FirstEnergy DSP Order, the OCA submits that this protection is both well-designed and necessary to avoid improperly increasing the price of default service. Dr. Estomin's "hold back" proposal will allow for a successful opt-in auction while helping to ensure that default service procurements do not contain unreasonable risk adders and limited bidder interest to the detriment of default service customers. As such, the OCA supports the inclusion of Dr. Estomin's proposal in the Company's default service procurement plan.

2. Small C&I Procurement Issues

a. *Product(s) and Product Terms*

The OCA takes no position on this issue.

b. *Procurement Dates*

The OCA takes no position on this issue.

3. Medium C&I Procurement Issues

a. *Product(s) and Product Terms*

The OCA takes no position on this issue.

b. *Procurement Dates*

The OCA takes no position on this issue.

4. Large C&I Procurement Issues

The OCA takes no position on this issue.

5. Default Supply Load CAP Issues

The OCA takes no position on this issue.

6. Procurements for Delivery Beyond May 31, 2015

As part of its procurement plan for residential default service supply for DSP VI, Duquesne proposed to purchase a limited amount of one-year full requirements supply for delivery after the DSP VI period ends on May 31, 2015. Specifically, Duquesne proposed that in April 2014, it would purchase 25% of the supply necessary to serve residential default service customers for the delivery year beginning June 1, 2015. The Company explained that this proposal would “avoid subjecting Residential customers to a ‘hard stop’ with regard to their supply products which can result in rate volatility associated with replacing a large portion of default service supply in a short period of time at the end of [DSP] VI.” Duquesne St. 2 at 10. OCA witness Dr. Estomin expressed support for the Company’s proposal in his Direct Testimony where he stated:

[Duquesne’s proposal] would allow for a smoother transition to the subsequent [Default Service] plan period than would be the case absent such a procurement approach.

OCA St. 1 at 9. Dr. Estomin further elaborated on the soundness of Duquesne’s plan:

A second desirable feature of the Duquesne proposal is that approximately 25 percent of supply for the first year following the termination of the two-year planning period will be procured in April 2014. That arrangement provides a degree of rate stability between the Default Service rates that would be in effect in the second year of the Plan period and the first year of the subsequent plan period, in effect mitigating the “hard stop” problem that occurs in fixed term procurement plan approaches.

OCA St. 1 at 17-18. The OCA supports Duquesne’s proposal as a reasonable and measured way of overcoming the hard stop problem.

Concerned that the existence of any supply contracts that extend beyond May 31, 2015 will hinder the Commission’s efforts to establish and implement a new default service

model in June 2015, RESA recommended against Duquesne's proposal to have contracts that run into the next DSP period. RESA St. 1 at 14. RESA also made the statement in its Direct Testimony that the Commission's December 16, 2011 Order, "provides direction that ...no wholesale contracts should extend beyond the 2-year term...". RESA St. 1 at 14-15.

Duquesne witness S. Fisher responded to the latter point about the Commission's Order as follows:

RESA's claim is simply incorrect. The Commission has not provided direction that "no wholesale contracts should extend beyond the 2-year term [of the Default Service Plan]." In fact, the Commission has expressed a concern about the rate stability problems that can occur if none of the supply contracts extend beyond the term of an EDC's default service plan and, due to this concern, it has recognized that EDCs may have supply contracts that extend beyond the terms of their default service plans. Specifically, in its December 16 Retail Markets Order, the Commission stated:

[S]everal parties, including Exelon, Duquesne and OCA, raised the concern that if no short-term contracts extend beyond the end date of the default service plan, this will result in a "hard stop" that will require default service providers to purchase significant supply at the end of the plan under a singular market condition. These commenters recommend that the Commission permit EDCs to use a laddering approach, and suggest that laddering supply purchases at different times and having overlapping delivery periods may promote rate stability. The Commission believes that these concerns may be legitimate and we recognize that some EDCs may have delivery periods that extend beyond the end date of the next plan under a laddered approach, hence the use of our language recommending that EDCs "... limit or eliminate..." overhanging short-term contracts.

Duquesne St. 8-R at 55-56 (footnote omitted). Thus, there is no Commission prohibition on overhanging contracts.

OCA witness Estomin responded to RESA's concerns about the effect of overhanging contracts on the Commission's ability to implement a new default service structure. He observed that there is no reason why the small portion of the overall residential default service portfolio that would be served after May 31, 2015 from a pre-existing supply contract

should interfere with any Commission determination regarding default service in 2015 and beyond. On this point, Dr. Estomin stated:

Even in the event that the Commission decides that the EDCs would not be the Default Service providers after June 1, 2015, the supply contract(s) that extend beyond May 31, 2015 can simply be transferred to the new Default Service supply entity and those contracts would be folded into the post-June 1, 2015 portfolio. There is no reason why such contracts would represent, in any sense, an insurmountable obstacle. The benefit of such a contract (or contracts) is that an added measure of residential Default Service supply price stability is afforded to residential Default Service customers between the end of the proposed two-year Default Service period and the subsequent Default Service period, thus mitigating the “hard stop” problem.

OCA St. 1-S at 7. As Dr. Estomin observed, the concern that RESA raises with regard to overhanging contracts can readily be addressed by making certain the contracts are assignable to a new default service provider if a new approach is adopted. Therefore, there is no reason that Duquesne’s residential customers should be denied the rate stabilizing effects that the overhanging contracts would provide. RESA’s recommendation should be rejected.

7. Miscellaneous Procurement Issues

The OCA has no miscellaneous procurement issues.

C. MARKET ENHANCEMENT PROGRAMS

As was discussed above, Duquesne is uniquely situated among the other large EDCs because it has been out from under rate caps for many years and already has robust customer shopping in its service territory. As of September 2012, 41.3% of DLC’s residential customers were served by an EGS, equal to 44.7% of the residential customer load.²⁶ This is a high level of retail migration compared to other electric utilities in Pennsylvania and in any state that has adopted retail electricity competition. OCA St. 2 at 7. These existing large levels of customer migration to an EGS should be taken into account when considering programs that are

²⁶ See www.PaPowerSwitch.com (September 19, 2012 update).

designed to “jump-start” the competitive market since these retail migration trends document that DLC has a mature retail market. Additionally, Duquesne is unique in that flat rates were established as part of its last DSP, so its customers do not face the quarterly price changes experienced in other EDC’s service territories. To that end, the Company has proposed (and the OCA supports) an annual PTC with annual, instead of quarterly, reconciliations.

The OCA would note that the Commission’s December 16 Final Order provided recommendations for the possible use of the Opt-In Auctions and Customer Referral programs. On March 2, 2012, the Commission issued its IWP Order. The IWP Order provided the following:

This intermediate work plan provides guidance regarding the following topics: (1) the expansion of consumer education; (2) the acceleration of the switching timeframe when a customer shops for an alternative supplier; (3) the initiation of a customer referral program; (4) the initiation of a retail opt-in auction program; (5) the inclusion of the default service PTC on customer bills; and (6) the increase in coordination between EDCs and EGSs.

IWP Order at 6. Specifically, the IWP Order provided guidance on the implementation of the Opt-In Auction Program and Customer Referral Programs.²⁷ The OCA would also note that in the FirstEnergy DSP Order (discussed in Section III.C.1.a., below), the Commission deviated from its recommendations in the IWP Order with respect to the structure of the retail market enhancement programs. The OCA will address these issues where relevant.

1. Retail Opt-In Program

In response to the December 16 Final Order and the IWP Order, Duquesne proposed a Retail Opt-In Program in which it would conduct a bid process for a fixed price 12-

²⁷ The IWP Order also provided the following provision: “To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC’s default service proceeding, and supported substantially by interested parties in the default service proceeding.” IWP Order at 6-7.

month contract with a retail service rate from EGSs that is initially priced at least 5% off the PTC that will be in effect as of June 1, 2013 and known at the time of the Opt-In Auction in May 2013.²⁸ Customers who participate in this program will also receive a \$50 bonus from the EGS who acquires the customer in this auction (with the requirement that the customer remain with the EGS for at least three billing periods). OCA St. 2 at 8-10. The proposed 12-month Opt-In Auction term coincides with Duquesne's proposal to offer default service with price changes annually on June 1. As a result, the Opt-in Auction customer will be guaranteed at least a 5% savings on their PTC for the entire auction contract term. Id.

Under Duquesne's Proposal, participating EGSs will bid in an auction to set the price and all EGSs will be required to serve assigned customers at the winning price, which will represent the highest percentage off the PTC. OCA St. 2 at 8-11. Duquesne will market the Opt-in Auction program to non-shopping customers, and it will exclude Customer Assistance Program (CAP) customers and those customers who have previously opted out of providing their usage information to EGSs. Up to 50% of non-shopping residential customers (excluding CAP customers) will be eligible to enroll in the Opt-In Auction. Id. Duquesne initially proposed to implement this program rule by randomly assigning customers to a specific EGS and including this information in the letter that the Company will send to customers with the terms and conditions to solicit their enrollment. Each EGS would then be allowed to enroll up to 50% of those customers assigned to the EGS during the 30-day enrollment period. If an EGS met its enrollment cap, additional customer enrollments for that EGS would not be accepted. However, if the customer contacted Duquesne, the customer could select another EGS participating in the

²⁸ Duquesne proposed to conduct its default service procurements in late 2012 and early 2013, prior to the Opt-In auction bid by EGSs. Since Duquesne's current DSP plan contains no reconciliation component, the default service rate for June 1, 2013 will be known at the conclusion of these auctions.

program that has not yet met its participation cap. Id. In its Rebuttal testimony, the Company adopted the position of the OCA that all enrolling customers would respond to Duquesne directly and would then be randomly assigned to one of the listed “winning” EGSs on a first-come, first-served basis up to the stated enrollment cap. Duquesne St. 3-R at 84-85.

During the term of the EGS contract, participating customers can select a different EGS or return to default service without penalty, but once the customer leaves the Opt-In program, the customer cannot return to the program. OCA St. 2 at 8-11. At the end of the 12-month period the customer will remain with the EGS unless the customer affirmatively switches to another EGS or contacts Duquesne to return to default service. The EGS will inform the customer of price options and the right to return to default service or select another EGS. Under the Company’s proposal, if the customer does not respond to the EGS offers, the customer will be served on a month-to-month rate contract and can leave at any time without early termination fee or penalty. The EGS prices after the 12-month period will not be subject to any EDC or Commission approval.

Also under Duquesne’s proposal, the participating EGSs will pay the incremental costs associated with the Opt-In Auction costs by increasing the Residential Purchase of Receivables (POR) discount rate. Petition at 22.

In response to the Company’s Opt-In Auction proposal, the OCA submitted the testimony of Barbara Alexander and Dr. Steven L. Estomin. In that testimony, the OCA’s witnesses proposed modifications to Duquesne’s plan in order to best serve the Commission’s goal of increasing customer interest in the retail market for generation supply while ensuring that customers benefit as a result of the adoption of these retail market enhancements. The specifics of the OCA’s proposals will be addressed in detail in the subsections below.

a. Auction vs. ROI Program

It is the OCA's understanding that this Section is meant to address the different forms of Opt-In programs (*i.e.*, auction or aggregation) and that this Section is specifically responsive to the FirstEnergy DSP Order. That order was issued on August 16, 2012 during the pendency of this proceeding. In his Surrebuttal Testimony, RESA witness Kallaher presented, for the first time, a number of proposals and comments responding to the Commission's Final Order in the FirstEnergy Companies' Default Service Plan filings and recommending an aggregation program along the lines of the one adopted by the Commission for the FirstEnergy Companies. In relevant part, Mr. Kallaher recommended an aggregation program with a four month discount of 5% and an 8-month fixed-price product rather than an auction program. The Company was able to respond to Mr. Kallaher's testimony in its rejoinder, but the other parties, including the OCA, were not afforded the opportunity to present rejoinder. Company witness Neil Fisher provided a detailed response highlighting key concerns regarding RESA's proposal.

The OCA submits that, as has been discussed, Duquesne's service territory is unique, as was its filed Plan which proposed rates adjusted and reconciled once a year. Accordingly, the OCA submits that the findings in the FirstEnergy DSP should not be treated as precedential and should not fully inform the Commission's ultimate decision in Duquesne's Default Service Plan. The OCA submits that Company witness Neil S. Fisher's Rejoinder testimony, Duquesne Light St. 3-RJ, responds to both Mr. Kallaher's surrebuttal and the general impact of the FirstEnergy Companies' Order and that Mr. fisher's testimony supports the design of the program proposed by Duquesne.

As to the issue of the use of the use of an auction program or an aggregation program, the OCA takes no position at this time with respect to the specific mechanism selected. The OCA submits, however, that the important consumer protections detailed in the testimony of

OCA witnesses Alexander and Estomin should be adopted regardless of the type of Opt-In program that is selected.

b. Term of Offer

Duquesne proposed a Retail Opt-In Program in which it would conduct a bid process for a fixed price 12-month contract with a retail service rate from EGSs that is initially priced at least 5% off the PTC that will be in effect as of June 1, 2013 and known at the time of the Opt-In Auction in May 2013. OCA St. 2 at 8-11. The proposed 12-month Opt-In Auction term coincides with Duquesne's proposal to offer default service with price changes annually on June 1. As a result, the Opt-in Auction customer will be guaranteed at least a 5% savings on their PTC for the entire auction contract term. Id.

The OCA generally prefers the 12-month contract term proposed by Company and its proposal to require that EGSs offer a fixed price or fixed discount off the PTC that will be effect during this term. OCA St. 2 at 11, OCA St. 2-R at 7-9. Ms. Alexander explained the benefits of a 12 month term. She stated:

When coupled with DLC's proposal for annual changes to the PTC, substantial savings should be able to be guaranteed by the EGS bidders for the 12-month term. Regardless of the term, it is important that customers be assured that the savings (expressed as a percentage off the PTC) publicized at the onset of the Opt-In Auction continue during the entire contract term.

OCA St. 2 at 11. This is especially important given the design of Duquesne's default service program. FES and Dominion/IGS also appear to support Duquesne's proposal on this issue. OCA St. 2-R at 7-8; see generally FES St. 1-R at 16, Dominion St. 1 at 4-6. In this case, since Duquesne's June 1, 2013 default service rate will be known at the time customers are solicited for the program, and will remain the same for 12 months, savings for the entire term of the program will be assured. Accordingly, the OCA urges the Commission to accept the Company's position on this issue.

As was discussed above, in its Surrebuttal testimony, RESA proposed a modification to the Opt-In program that would work as follows: Participating EGSs would offer customers a price that it initially set at 5% off the PTC at the time of enrollment. RESA St. 2-SR at 18. This discounted price would remain in effect for four billing cycles, and for the remaining eight months, the EGSs would offer the customer a fixed rate that would be subject to change if the EGS provides the customer with the statutorily required two notices before the price change. Id. at 18-19. Customers could switch away from the EGS to which they were assigned without any penalty or early termination fee. Id. at 19.

The OCA submits that, for the reasons detailed in the Rejoinder Testimony of Neil Fisher, RESA's proposal should be rejected. Specifically, the structure proposed by RESA will not provide a positive experience for Duquesne's customers. First, the 5% discount would be off of the Company's current PTC as that will be the price "at the time of enrollment." This price is likely to be much higher than the June 1, 2013 price as Duquesne's current price was fixed for than two years ago. As a result, customers could actually pay more on June 1, 2013 if they joined the aggregation program – a result that could be disastrous for the competitive market. Second, unlike in the FirstEnergy DSP cases, after which RESA models its proposals, Duquesne's default service rate will be known well in advance of any customer enrolling in the program. Finally, the RESA proposal – if it produces any savings at all – only guarantees such savings for four months. Given that Duquesne proposes annual PTC that will change only once per year, EGSs will face no risk of PTC changes during the program term and should, therefore, be able to guarantee savings for the entire 12 months.

For the foregoing reasons, the OCA supports the 12 month term of the Opt-In plan as being consistent with Duquesne's unique service territory as well as with the goal of guaranteeing savings over the entire term of the plan.

c. Discount Percentage

As was mentioned above, in the Company's program, a customer who enrolls in the Opt-In program will be guaranteed at least 5% savings on their PTC for the entire auction contract term. OCA St. 1 at 8. The 5% savings is consistent with the Commission's recommendation in its IWP Order. In his Direct testimony, Dominion witness Butler states that the PTC discount should be reduced from 5% to 2% because market prices for electricity have dropped. Dominion St. 1 at 5. The OCA does not support Mr. Butler's proposal. As OCA witness Alexander explains:

This is the first statement of this kind in these Default Service proceedings and the reduction in discount in particular would cause a significant change in the customer benefits associated with this Opt-In Auction program as it has been discussed for over a year. I do not recommend that such a dramatic change in the price for this contract be implemented as Mr. Butler proposes.

OCA St. 2-R at 9; see also OCA St. 1-R at 13-14. Mr. Butler's proposed reduction in the discount program should be rejected.

d. \$50 Bonus Payment

In addition to the discount off the PTC, under the Company's proposal customers who participate in this program will also receive a \$50 bonus from the EGS who acquires the customer in this auction (with the requirement that the customer remain with the EGS for at least three billing periods). OCA St. 2 at 8-10. As with the discount percentage reduction, Dominion witness Butler recommended the elimination of the \$50 rebate. Dominion St. 1 at 5. Similarly, FES witness Banks argues that if EGSs must bear the cost of the Opt-In program, the \$50 bonus payment should be eliminated. FES St. 1 at 3. For the same reasons it does not support a

reduction in the discount percentage, the OCA does not support the elimination of the \$50 bonus payment. See OCA St. 2-R at 8-9.

The Commission considered the comments of various stakeholders on this issue and specifically found that the \$50 bonus would be needed to differentiate the program from other supplier offers. It stated:

The Commission agrees with Direct Energy that, without some sort of unique feature, like a bonus, the customer offer will look to similar to routine supplier offers – offers that these target customers have already ignored. As such, the Commission believes a bonus payment of \$50.00 is a reasonable incentive and should be large enough to attract attention.

IWP Order at 70. Accordingly, the OCA supports the inclusion of a \$50 bonus payment as part of any Opt-In program.

e. Guaranteed Savings

As was discussed previously, the OCA views the structure of the Duquesne Opt-In plan to guarantee savings over the full term of the program. OCA St. 2 at 11. The 12-month contract term, coupled with Duquesne's proposal for annual changes to the PTC should allow for these guaranteed savings. Id.; Duquesne St. 3-R at 23-24. The OCA supports guaranteed customer savings during the product term because encouraging customers to enter this optional program as a means of "jump starting" the retail competitive market and then creating the potential for customers to pay a higher price for generation supply as a result of their enrollment is not a reasonable path to securing customer interest in or satisfaction with the competitive market. Without the guarantee of savings, the Opt-In program could work contrary to its intent and cause participants to become dissatisfied with their shopping experience. Indeed, with respect to the Company's proposal, RESA also supports the guaranteed savings approach and states: "RESA supports Duquesne Light's proposal for a 12-month, fixed price, guaranteed

savings product for the opt-in auction provide that Duquesne Light's proposal to fix the price to residential customers for the first year is also adopted."²⁹ RESA St. 2-R at 2-3.

Accordingly, the OCA respectfully requests the Commission adopt Duquesne's recommendations as to the product offer and term for the Opt-In Auction Program.

f. Customer Participation Cap

Under the Company's Plan as initially filed, up to 50% of non-shopping residential customers (excluding CAP customers) would be eligible to enroll in the Opt-In Program. Duquesne St. 3 at 27-28. The Company would implement this cap by randomly assigning customers to specific EGSs with each EGS being allowed to enroll up to 50% of those customers assigned to the EGS during the 30 day enrollment period. *Id.* If the EGS met its enrollment cap, additional customer enrollments for that EGS would not be accepted. *Id.* If the customer was then to contact the Company, he or she would be able to select another supplier who had not yet met its participation cap. OCA St. 1 at 9. All non-CAP customers, whether shopping or not, would be eligible to enroll, but the marketing materials would only be sent to those customers who had not already selected an alternative generation supplier. OCA St. 1-R at 10-11.

In her Direct testimony, OCA witness Alexander expressed concern about the Company's method of assigning enrolling customers to participating EGSs. Ms. Alexander recommended an alternative method of assigning customers, as follows:

I recommend that DLC solicit customer enrollment after the auction price is established and inform customers that they will be enrolled with participating EGSs in a random manner on a first-come, first-served basis up to the level of the participation cap.

²⁹ The OCA would note that RESA proposal from its Surrebuttal (discussed in Section III.C.1.b., above is inconsistent with this position and should be rejected.

OCA St. 2 at 6, 11. As Ms. Alexander explained, the method proposed by the OCA should avoid the complications and additional customer interactions that Duquesne proposes when one EGS reaches its customer participation cap and others are not yet fully subscribed. Id. In its Rebuttal testimony, the Company adopted the OCA's proposed method of allocating enrolled customers among the participating suppliers. Duquesne St. 3-R at 21, 84-85.

According to the IWP Order, the cap on enrollment for the Opt-In Auction Program is recommended to be 50% of an EDC's default service customer base (non-shopping customers), but there should be no limit on the number of customers an EDC solicits for the Program. IWP Order at 59-60. Specifically, the Commission stated:

While the Commission understands those parties' comments suggesting that the cap be lower than 50% in order to provide more meaningful certainty to the EGSs, the Commission does not want to impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-in Auctions. However, the Commission believes that a lack of a cap would provide no estimate of customer participation to both wholesale and retail suppliers. We believe the 50% cap provides both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate in the Retail Opt-in Auctions.

Id. at 59.

Duquesne's Opt-In Program proposal includes a 50% customer participation cap. See Duquesne St. 3 at 27-28. To be clear, the OCA agrees with the Commission's concerns that the lack of any cap would result in an unreasonable level of uncertainty for wholesale suppliers. The OCA also agrees with the proposed method of determining the number of residential customers who can actually enroll in the program. The OCA submits, however, that a 20% cap on participation will provide the best opportunity for a successful program, while at the same time properly mitigating potential harm to default service customers.

OCA witness Estomin expressed his concern about Duquesne's proposed 50% customer participation cap:

The Opt-in EGS Service Program proposed by Duquesne could exacerbate the volumetric risk faced by the wholesale suppliers, since as much as 50 percent of the Default Service load could abruptly (i.e., within one month) migrate to EGS suppliers and away from assumed Default Service supply. The magnitude of the abrupt migration would not be known by the wholesale suppliers at the time that the bids in response to the Company's RFPs were submitted. Rather, the wholesale suppliers would price their bids based on their own subjective evaluation of their volumetric risk exposure.

OCA St. 1 at 13-14. Dr. Estomin's demonstration of how the Company's proposed Opt-In Auction Program can increase the volatility of residential default service load is provided and discussed above in Section III.B.1.c. Dr. Estomin concluded that a 20% customer participation cap is essential to reducing the volumetric risk that the Opt-In Program poses to default service suppliers. See OCA St. 1 at 13-14, 1-24. OCA witness Alexander also discussed the OCA's concerns. She stated:

This program should limit enrollment to 20% of residential default service customers. My position is a not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-in Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be an excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself. Indeed, such a result would stimulate even more EGS offers to these customers. The purpose of this program should be to leverage the EDC involvement in promoting this program to encourage those customers who have not yet entered the retail market for generation supply service with a specific offer that is designed to assure a positive experience. It would be more prudent to start with reasonable expectations to jump-start the retail market.

OCA St. No. 2 at 10-11. Ms. Alexander also points out that Duquesne already has a robust level of retail migration at this time and to implement a Retail Auction that would capture 50% of the remaining default service customers is not necessary to "jump start" this market. Id. at 11.

In his Direct testimony, FES witness Banks suggests that the customer participation cap should be eliminated in its entirety. FES St. 1 at 14. In Rebuttal, the Company reiterated its position that the 50% participation cap should apply. Duquesne St. 3-R at 19-20. The positions of these parties have not changed the OCA's recommendation that the participation cap be lowered to 20%. As Dr. Estomin states:

The concern that I expressed in my Direct Testimony was that a 50 percent cap on the Opt-in EGS Service program, coupled with wholesale supply bids being made prior to the customer commitment of the Opt-in program, would result in higher residential Default Service prices which would, in turn, result in higher prices for the market enhancement programs and potentially for shopping customers. My view is that a 20 percent customer cap for the Opt-in EGS Service program would facilitate a substantial move toward development of the competitive retail market while at the same time limiting the adverse price impacts on Default Service that would accompany reliance on a 50 percent cap.

OCA St. 1-R at 22-23.

As explained above, the OCA has proposed a 20% cap in order to provide a reasonable platform for success of the opt-in program, while at the same time ensuring that default service customers are not harmed. OCA witness Estomin has proposed a 20% "hold back" from the general default service procurements to mitigate any risk to the wholesale default service suppliers. The OCA again recognizes that the Commission did not adopt this recommendation in the FirstEnergy DSP Order. As noted above, however, this will be Duquesne's sixth DSP plan and Duquesne has had, for many years, the highest levels of shopping in the Commonwealth. Therefore, this program should not be viewed as a means to "jumpstart" the Company's already robust retail market. In the OCA's view, adoption of the OCA's hold back proposal would, given these unique circumstances, provide a level of certainty for EGSs and wholesale suppliers alike. And, as Ms. Alexander testified, the proposed OCA 20% cap would still allow EGSs to make offers to customers directly, based on the level of

interest generated by the Opt-In Program. Similarly, the OCA respectfully requests that the Commission implement its method of assigning enrolling customers to participating EGSs that was adopted by the Duquesne in the Company's Rebuttal testimony to better and more fairly manage the participation cap.

g. Supplier Load Cap

According to the IWP Order, in order to protect the diversity of the market and with an eye on obtaining a reasonable retail auction price, EGSs participating in the Opt-In Auction Program may not serve more than 50% of the customer class default service accounts for each EDC territory. IWP Order at 63. Duquesne's proposed Opt-In Auction Program implements a 50% EGS participation cap in accordance with the IWP Order. See Duquesne St. 2-R at 27-30. OCA supports Duquesne's proposal. The OCA submits that the Company's proposal to impose a 50% EGS participation cap in its Opt-In Auction Program is reasonable and in accordance with the IWP Order and should be adopted.

h. Enrollment Process

The OCA recommends that the key terms and conditions, including price, be disclosed to the customer prior to enrollment in the program. Duquesne witness Neil S. Fisher also agreed that customers should be provided key terms and conditions up-front and testified that "enrollment before the product price is known will create customer confusion and could lead to a 'worst-case' scenario where customers have enrolled but an insufficient number of EGSs then subscribe to the RFP." Duquesne St. 3-R at 31. The IWP Order similarly stated that "it is important that the Commission identify the key elements of the product to be offered to customers." IWP Order at 69.

In contrast to the IWP Order as well as Ms. Alexander's and Mr. Fisher's position that the key terms and conditions should be identified up-front, RESA witness Kallaher

recommended that customers should be enrolled prior to receiving the price and material terms and conditions. RESA St. 2 at 3. The OCA submits that it is imperative that consumers be presented with the key terms and conditions, including the price, prior to opting into the auction.

OCA witness Alexander testified:

Mr. Kallaher's proposal that customers should be asked to enroll prior to receiving the price, the material terms and conditions, or even before the customer is told the identity of the EGS that will become the customer's generation supplier is unreasonable. This process would transform the Opt-In Auction into an Opt-Out Auction by requiring customers to take affirmative action to de-enroll after receiving the actual price and terms should they not agree with the results of the auction or for any other reason. Nor is this proposal remotely similar to actual practices in the retail competitive market where customers agree to accept a specific EGS offer based on knowledge of the price and other terms of service. Furthermore, if residential customers are interested in participating in this program and the price does indeed reflect a savings compared to the PTC during the term of the contract, there is no reason for EGSs to be concerned that the level of customer enrollment would not be robust.

OCA St. No. 2-R at 9-10 (footnote omitted). Indeed, the provision of key terms and conditions to customers before they enroll was supported by FES witness Banks when he said:

A customer must know the price of the product they are asked to purchase...If either party should be expected to proceed with less than perfect information, it is the EGS, not the residential customer. In the sequence recommended by the Commission and proposed by Duquesne Light, a customer will know the term, price and supplier- all information the customer would know if making a traditional choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best.

FES St. 1-R at 13-15.

Accordingly, the OCA submits that, as the Company proposed, Duquesne should provide to the customer in advance of enrollment all key terms and conditions, including price and any potential changes to the price being offered.

i. Mailings and Communications

Duquesne's proposed notice provisions that would occur at the end of the EGS Opt-In Program are insufficient given the type of program proposed. Under the Company's

proposal, customers would receive only two notices from the EGS. Duquesne St. 3-R at 33-35. The OCA recommends that three notices should be provided to customers prior to the end of the program -- one from the EDC stating that the program is coming to an end and two from the EGSs as required by the Commission's regulations. In her Direct Testimony, Ms. Alexander testified as follows regarding the notices:

Participating customers must receive three notices: (1) a 90-day notice from the EDC that will alert the customer to the end of the contract term and their options (select another EGS, select an offer from the serving EGS, return to Default Service), and explaining that they will hear directly from their EGS about rate options in the coming months; (2) a notice from the EGS 90 days prior to end of the contract about the customers' options that shall disclose the EGS offers to the customers, the option to return to Default Service, and a disclosure of what will occur if the customer does nothing; (3) a similar notice from the EGS 52-60 days prior to the end of the contract.

OCA St. 2 at 12.

Duquesne, who is sponsoring this program, should be required to advise customers that the program is coming to an end. The OCA submits that the two notices from the EGS are not sufficient because such notices are not specifically directed to the end of this special program and do not come from the sponsor of the program. The OCA submits that this notice from Duquesne is an important additional step to educate customers. OCA witness Alexander testified:

I recommend this notice as an important aspect of consumer education so that enrolled customers, most of whom have not previously participated in the retail market, understand their options. In my opinion, most customers will assume that when the auction term ends they will be returned to default service given their lack of familiarity with the "rules" of the retail market and the unique nature of this Opt-In Auction program. Moreover, they have entered this program based on DLC's notices and endorsement. Therefore, it will be important that customers be educated in multiple ways and by both DLC and the EGS prior to the end of the auction term about their options and how to exercise those options.

OCA St. 2 at 13.

OCA witness Alexander recommended that the Duquesne notice include a number of additional elements to ensure that customers are effectively educated. She stated:

I think it advisable that DLC, similar to its presentation of this program to customers at the time of enrollment, should inform participating customers generally as follows that:

- i. The Retail Opt-in Auction contract is about to come to an end;
- ii. The customer has several options, alerting the customer to forthcoming notices from the EGS about the offers for continuing with the EGS at the end of the auction term;
- iii. The customer has the right to select another EGS and referring the customer to the PaPowerSwitch and OCA websites for information on marketer offers and prices;
- iv. The customer has the right to return to default service and how to compare offers to the PTC in effect at the end of the auction term; and
- v. If the customer takes no action, they will remain with their current EGS under a month-to-month contract that, at least under DLC's proposed terms and conditions, could result in a variable rate EGS contract that changes every month.

OCA St. 2 at 13.

The OCA continues to recommend an additional notice from Duquesne because it is an important aspect of consumer education. Many of the consumers who will participate in the program will not have previously participated in the retail markets, and the notice will ensure that these consumers are fully informed of their options. For the reasons discussed above, the OCA submits that three notices should be provided to customers prior to the end of the program, one from the EDC and two from the EGS. The OCA has submitted substantial evidence on this issue and provided good cause as to why the OCA's recommendation should be adopted.

- j. *Opt-In Electric Generation Supplier Service Program Request for Proposals and Agreement Between Duquesne Light and EGSs*

The OCA takes no position on this issue.

2. Standard Offer Program

In its filing, Duquesne proposes a Standard Offer Referral Program that will allow residential customers to enroll at any time beginning June 1, 2014. Duquesne St. 5 at 7-11. This start-up date is a reflection of the Company's implementation of a new Customer Information System and new functionalities that will be available at that time.³⁰ Duquesne proposes that the participating EGSs offer a 12-month contract term with a fixed rate that will be 7% less than the PTC known at the time of the offer. Id. at 9. The program will be offered to customers who contact DLC for a new or mover request, a high bill complaint, or an inquiry about customer choice. Duquesne St. 5 at 7-11. CAP customers will be excluded from the program for the same reasons identified in the Opt-In Auction program. Id.

After the initial inquiry is resolved, Duquesne proposes that applicable calls be transferred to a "choice referral team" with specialized customer service representatives handling these calls. Duquesne St. 5 at 7-11. The program will continue unless or until residential shopping rates exceed two-thirds of the residential customer load. This suspension of the program is proposed to reduce the risk premiums associated with wholesale suppliers who bid on the default service load. Id. Similar to the Opt-in Auction, the Company proposes that the incremental costs for this program be recovered through an increase in the residential POR discount. Under Duquesne's proposal, the customer can leave the EGS at any time without penalty and either select another EGS or return to Default Service, but if a customer fails to affirmatively exercise any of these options, the customer would remain with the EGS under a month-to-month contract that could allow the EGS to impose variable rates after this fixed price contract term is completed.

³⁰

Petition at 23.

In response to the Company's proposed referral program, the OCA submitted the testimony of Barbara Alexander and Dr. Steven L. Estomin. In that testimony, the OCA's witnesses proposed modifications to Duquesne's plan in order to best serve the Commission's goal of increasing customer interest in the retail market for generation supply while ensuring that customers benefit as a result of the adoption of these retail market enhancements. The specifics of the OCA's proposals will be addressed in detail in the subsections below.

a. Term of Offer

Duquesne proposed that participating EGSs offer a 12-month contract term with a fixed rate that will be 7% less than the PTC known at the time of the offer. Duquesne St. 5 at 9. The OCA notes that under the Company's proposal, this price term could result in the potential for customers to pay a higher price than Duquesne's default service price during the program, even though the Company proposes annual reconciliation of the PTC. OCA St. 2 at 16. Indeed, as designed by the Company, the 7% discount could be in effect for as short a period as one day if the customer enrolled in the program on the day before the annual price change.

The OCA submits that Duquesne's proposal for a 12-month contract term and a 7% discount off the PTC only at the time of enrollment should not be adopted. While OCA witness Alexander recommended that the Referral Program be structured as an introductory offer, for a minimum of four months, Ms. Alexander stressed the need for guaranteed savings. See OCA St. 2 at 16. OCA witness Alexander testified:

Whatever the contract length, the program should guarantee the discount off the PTC during the entire term. Under DLC's proposal, customers can participate in the Referral Program at any time during the 12-month PTC cycle. As a result, a customer could enroll the latter part of the annual PTC term and pay a higher price for the Referral program contract if the PTC is lowered in the following June, thus eliminating all or some of the 7% discount for the remaining term. The EGSs participating in the Referral Program should be required to agree to ensure that the customer's contract will provide a 7% discount off the PTC during the entire term of the Referral contract.

OCA St. 2 at 16. The OCA discusses its proposal with respect to what happens to the customer at the end of the product term in Section III.C.7.b., below.

The OCA submits that for the reasons stated above, the guaranteed 7% guaranteed discount off the PTC should be applied during the entire time of the referral contract. This would provide savings to customers and allow customers who are otherwise reluctant to shop a risk-free opportunity to do so.

b. Discount Percentage

As was discussed above, under the Company's program, a customer who enrolls in the referral program will be given, for a period of time, a 7% discount off of the PTC. Dominion witness Butler suggests that the Company, and the Commission, adjust the level of the discount from 7% to 5% off of the PTC. Dominion St. 1 at 7. As with his proposal to reduce the PTC discount in the Opt-In Program, Mr. Butler states that the PTC discount should be reduced because market prices for electricity have dropped. *Id.* The OCA does not support Mr. Butler's proposal and does not recommend that such a dramatic change in the price for this contract be implemented as Mr. Butler proposes. OCA St. 1-R at 13-14; OCA St. 2-R at 6.

Mr. Butler's proposed reduction in the discount for the referral program should be rejected.

c. Guaranteed Savings

Consistent with its position in the Opt-In program, the OCA supports guaranteed customer savings during the product term of the referral program because encouraging customers to participate in this optional program as a means of "jump starting" the retail competitive market and then creating the potential for customers to pay a higher price for generation supply as a result of their enrollment is not a reasonable path to securing customer interest in or

satisfaction with the competitive market. OCA witness Alexander discussed the importance of assuring customer savings during the entire contract. She stated:

DLC has clearly described why its proposed Opt-In Auction contract should mirror its PTC rate plan to guarantee customer savings, but then ignores this same concern for the Customer Referral program. Furthermore, the Commission's Intermediate Work Plan Order clearly allowed some discretion with respect to the term of the Referral Contract (from 4 months to 12 months) so my proposal comports with that Order.

OCA St. 2-S at 7-8.

Without the guarantee of savings, the referral program could work contrary to its intent and cause participants to become dissatisfied with their shopping experience. Accordingly, the OCA respectfully requests the Commission adopt its recommendations as to the product offer and term for the Referral Program.

d. Program Start Date

In its filing, Duquesne proposes a Standard Offer Referral Program that will allow residential customers to enroll at any time beginning June 1, 2014. Duquesne St. 5 at 7-11. This start-up date is a reflection of the Company's implementation of a new Customer Information System and new functionalities that will be available at that time.³¹ RESA witness Kallaher and FES witness Banks oppose the delay in the implementation of the program with Mr. Kallaher proposing to implement the referral program by June 1, 2013 (the onset of the new default service program). RESA St. 2 at 5; FES St. 1 at 14.

The OCA supports the Company's proposed start dates for a number of reasons. First, as Company witness Neil Fisher explained, the upgrades that the Company is making to its customer information system are prerequisites to the practical implementation of the referral program and will not be ready at the start of the next default service period. Duquesne St. 3-R at

³¹ Petition at 23.

50. Second, the OCA is concerned about the impact of the near-simultaneous implementation of both market enhancement programs. As Ms. Alexander explained:

Furthermore, Mr. Kallaher's dismissal of the impact of both programs on the default service portfolio as "remote" is without support given DLC's already high level of customer migration. DLC already has a 40% shopping level for residential customers. If the Opt-In Auction is approved with a 50% participation cap (a program design feature I oppose), it is possible that 60% or more of DLC's residential customers would be served by an EGS in mid-2013. At that point, any program to stimulate the retail market cannot be defended on the grounds that customers are not shopping or don't know how to shop.

OCA St. 2-R at 13.

The OCA recommends that the Standard Offer Program not be implemented at the same time as the Opt-in Program. Such severely overlapping programs will create significant customer confusion and the potential for adverse comparisons to the prices and terms of service associated with these various options, thus threatening the overall intent to stimulate customer interest in retail choice. Therefore, the Commission should adopt Duquesne's proposal to delay the implementation of the Standard Offer Referral Program until after the Opt-In Program to avoid customer confusion.

e. Program Suspension

The Company proposes that the referral program will continue unless or until residential shopping rates exceed two-thirds of the residential customer load. Duquesne St. 5 at 7-11. The suspension is proposed in order to reduce the risk premiums associated with wholesale suppliers who bid on default service load.³² The OCA is mindful of this concern. The OCA would note that the potential increase in costs to default service customers is another reason that the Referral Program should be targeted only to new and moving customers or those who specifically ask for shopping information (thus, eliminating the solicitation of customers

who call the Company for a high bill inquiry or complaint or other reason). OCA St. 1-R at 15. By restricting the type of calls during which the referral program can be introduced, there is a reduced need for limiting or terminating the Referral Program based on a migration level. Id.

f. High Bill Callers

As was discussed above, the Company proposes that the Standard Offer Program be offered to all non-CAP residential customers who contact the Company for a new or mover request, a high bill complaint, or an inquiry about customer choice. Duquesne St. 5 at 8. RESA witness Kallaher supports the Company's proposal that customers with high bill inquiries should participate in the referral program. RESA St. 2-R at 19-20

The OCA recommends that the Standard Offer Program be offered only during calls in which the customer is seeking to establish service, transfer service to a new location, or is specifically seeking to discuss customer choice and/or the referral program. OCA St. 2-S at 9-10. Calls relating to utility obligations to respond to high bills, billing and usage questions, payment difficulties or payment plan options, collection, service quality and outages, and appointments for utility service in the field, should not be included in the obligation to present the Referral program. Id. at 8-10. OCA witness Alexander testified:

The Referral Program should not be automatically marketed to customers who call DLC with regard to high bill complaints. These calls reflect a wide variety of potential concerns about the nature of the electric bill, some of which can be resolved with meter investigations, but others of which typically result in the need for discussion of payment arrangements and customer assistance programs, including referrals to utility and community bill payment assistance programs. It is not appropriate for calls in this category to be routinely treated as merely a proposal to potentially lower the bill by selecting an EGS. While I certainly agree with DLC's proposal to handle the substance of such calls prior to introducing the Referral Program, I am concerned about the potential adverse impact on the quality of what should be a more extensive discussion of regulated services that this proposal implies

³² The OCA testimony on impact of these retail market initiatives on the cost of default service is discussed in Section III.B.1.c., above.

OCA St. 2 at 16.

The OCA submits that the focus of calls other than New/Moving requests and calls requesting information on Customer Choice should be on resolving the customer's specific concerns without delay. Customers are calling with a specific utility problem that should be addressed without causing the customer to spend additional time on the phone about unrelated topics. Indeed, burdening such calls with further unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa.C.S. § 2807(d).³³

As Ms. Alexander explained:

The primary reasons set forth by Ms. Sandoe on behalf of DLC for including high bill complaints in the Referral Program and the process she outlines to resolve the customer's initial reason for calling the Company prior to offering the Referral program are not persuasive. First, it is not clear to me how DLC will determine that the high bill complaint has been "addressed" or "resolved" based on Ms. Sandoe's description of the process that DLC follows for these calls. At no point in the various options described by Ms. Sandoe for addressing a high bill complaint does she identify how DLC will determine whether the customer is satisfied with DLC's response so that introducing the new topic of the Referral Program is appropriate. These customer contacts may need several approaches and contacts to resolve, including a meter test, an investigation of the potential for billing error based on historical events, an investigation whether the bill is relying on the "wrong" meter in a multi-unit dwelling, consideration of efficiency programs, and discussion of and potential referral and application for low income and universal service programs. These calls should not result in the presentation of a Referral program that may or may not result in "savings" to the customer by entering the program. This concern is heightened by the design of the Referral Program which would allow the EGS to retain the customer at the end of the Referral program contract with a variable month to month contract. I have no opposition to DLC's promotion of the existence of the Referral Program on its website, including a reference to it in written communications to customers or establishing an option on its interactive voice response menu for all callers. However, this program, particularly in its early implementation, should be limited

³³ For example, many customers who are calling about a high bill may be complaining about a problem with the meter or in need of a payment arrangement, and possibly in need of a referral to the Customer Assistance Program. These customers may also inquire about other forms of assistance such as budget billing. The OCA submits that these customers are in a potentially vulnerable position due to their concerns about their high bill and should not be directed towards a competitive offer at that time.

to customers who are calling DLC to get new service or move to a new location or who are seeking shopping information since the selection of an EGS at that time is relevant and timely.

OCA St. 2-S at 8-9 (fn omitted).

For the foregoing reasons, the OCA recommends that the customer calls regarding the Standard Offer Program be limited to new or moving customers and those customers who specifically request information about Choice.

g. Choice Referral Team

The Company has proposed the formation of a “choice referral team” that will handle customer enrollment in the referral program. Duquesne St. 5 at 8. Although the exact role of the team has not yet been fully defined, the Company envisions that customers would have the initial reason for the call handled by a regular Customer Service Representative (CSR), and then the CSR would transfer the customer to the team if he or she indicates an interest in a “standard offer lower than [the customer’s] current price to compare.” *Id.*

The OCA is concerned that the specialized “choice referral team” may result in increased costs that will unnecessarily burden the program. *See* OCA St. 2 at 18. If the use of a choice referral team is approved, the OCA submits that all costs, including the incremental costs of the Choice Referral Team, should be allocated to the EGSs that participate in this program because it is the EGSs who avoid marketing costs and gain customers as a result. Regulated customers should not subsidize EGSs’ marketing and customer acquisition costs. OCA St. 2 at 18.³⁴

The OCA is also concerned about consumer protection and satisfaction issues. The precise role of the choice referral team has not been defined and it is possible that this

³⁴ Cost recovery for the market enhancement programs is discussed in Section III.C.3, below.

specialized team could actually enroll the customer with a specific EGS.³⁵ See Duquesne St. at 8. This would give rise to significant consumer protection concerns because of the role that Duquesne would assume in presenting the terms and conditions of the program and obtaining consent to enroll a customer with a specific EGS. OCA St. 2 at 18. Rather, the OCA submits that this interaction and verification should be the responsibility of the EGS. Additionally, the process of transferring the caller from the CSR to the choice team member to, potentially, the EGS may result in customer dissatisfaction about the process. See Duquesne St. 5-R at 14-15; OCA St. 2-S at 8.

The OCA submits that this multi-step process may be neither efficient nor necessary.

h. Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSs

The OCA takes no position on this issue.

3. Market Enhancement Program Cost Recovery

Duquesne witness Pfrommer describes the Company's proposal to collect the costs of the Retail Market enhancement programs in his Direct testimony. Duquesne St. 4 at 21-26. Specifically, the Company proposes to recover the direct costs of its retail market initiatives primarily from EGSs. Duquesne proposes slightly different recovery procedures for the Opt-In and Referral Programs. For the Opt-In program, Duquesne Light proposes that the costs be recovered directly from the winning Opt-In Suppliers, in proportion to the number of customers allocated to each EGS. Id. In the event that the RFP process does not produce any winning EGSs, the costs of the program would be recovered by Duquesne

³⁵ While Company witness Sandoe stated that she does not anticipate that the choice referral team will enroll customers, she admits that the exact roles and functions of the team have not been defined. Duquesne St. 5-R at 8.

Light through a purchase of receivables (POR) discount applicable to residential customers until such costs are fully recovered. Id.

For the Standard Offer Program, the Company proposed to recover the initial and ongoing costs through the POR discount on EGSs serving residential customers. Furthermore, as clarified in Duquesne Light's discovery response to FES 1-12, it is the Company's plan to recover capital costs associated with the implementation of the Standard Offer Program in a future distribution rate proceeding. Id. Also, the Company will request approval to defer recovery of the costs associated with the New/Moving Program, and recover any costs it incurs in 2012 and 2013 for this program in its next distribution rate case proceeding.

While the EGSs disagree on who should pay for the costs of these retail market initiatives, all generally support the notion that customers should pay all or some portion of the costs. On the one hand, RESA witness Kallaher recommends that the costs of these programs be recovered through a \$5/MWH (or 5 mils per KWH) adder charged to default service customers. RESA St. 2 at 26-27.³⁶ FES witness Banks proposed that the cost of both programs be recovered from all customers in the classes that are eligible to participate. FES St. 1 at 18. On the other side, Dominion witness Butler supports a sharing of costs between EGSs and customers. Dominion St. 1 at 6-8.

Duquesne's proposal for recovery of the costs of these programs is consistent with the IWP Order, wherein the Commission stated that it would be appropriate for EDCs to recover opt-in auction implementation costs from participating EGSs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction. IWP Order at 78. The Commission stated:

³⁶ RESA's 5 mil/KWH adder will be discussed in Section III.C.8., below.

As for the costs of the Retail Opt-in Auctions, we agree with UGIES and OCA that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs.

IWP Order at 84-85: As with the Opt-In Auction Program cost recovery proposal, Duquesne's proposed recovery of the costs of the referral program from participating EGSs is also consistent with the IWP Order. According to the Commission:

As to program costs, we agree with the assertions of OCA and UGIES that the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs. We also find that PECO's proposal to recover program costs through the discount on the POR appears to be acceptable.

IWP Order at 32.

The OCA supports recovery of the costs of both of these programs from the EGSs. OCA St. 2 at 7, 14, 18; OCA St. 2-R at 17-18. As OCA witness Alexander explained, the costs that Duquesne and the other EDCs will incur to implement the Opt-In Auction and Referral Programs are not necessary to implement retail choice. She stated:

The Competition Act does not mandate these programs. The costs associated with these programs are significantly different from the costs that Pennsylvania electric customers have already paid to support the EDC's implementation of billing changes, customer education programs, and electronic data exchange protocols so that customers can switch to an EGS and receive bills that include EGS charges. Rather, the Opt-in Auction and Customer Referral Programs are "enhancements" that are intended to expand the current level of retail competition that already exists. Therefore, it would not be reasonable to view the costs associated with these "enhancements" as similar to those incurred and paid for by all customers to implement the basic requirements for a retail competitive market.

OCA St. 2-R at 17-18. Furthermore, it would be particularly unfair and unreasonable for default service customers to pay for these costs in the manner suggested by RESA. She explained:

These costs are incurred by Duquesne to implement programs that will result in a transfer of default service customers to the EGSs who win the Opt-In Auction or

offer Referral Programs that customers select. DLC's role in these programs is a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market. Therefore, it is only reasonable for the EGSs that directly benefit from these programs by gaining market share to pay for the incremental costs, which are likely to be far less than the incremental costs that each EGS would have to bear to acquire these customers on an individual basis.

Id. (footnote omitted). OCA witness Estomin also points out the specific problem with assigning the costs to default service customers. He states:

Further, it is the Opt-in Service Customers that are obtaining the benefit of the program in the form of a rebate and lower costs for a 12-month period. To the extent that the costs of the program are shared between the Opt-in customers and the EGSs, who would be able to secure additional customers at lower marketing expense, and have the ability to raise prices at the conclusion of the 12-month period, that sharing would be appropriate on equity grounds. The potential benefits of the program, both to the EGSs and to the customers that participate, are the underlying reasons for the offering of the programs. Hence, cost causality suggests that the Commission's IWP Order has appropriately assigned the program costs.

OCA St 1-R at 8-9. Company witness Neil Fisher echoed the OCA's testimony on this issue when he stated:

First, part of me wonders why we are discussing customer referral and retail auction programs in the first place if EGSs do not want to pay for these programs. EGSs have pushed for these programs for many years, even before the RMI. EDCs and customer representatives have generally expressed concerns about the implementation of these programs. ...While I recognize that not all EGSs agree on the design and development of these retail market initiatives, EGSs have been the primary sponsor of these proposals over the years – not customer representatives and not EDCs – and EGSs are largely responsible for their development.

Duquesne St. 3-R at 73-75. Mr. Fisher went on to point out that making EGSs pay for the bulk of the direct costs of these programs serves as a valuable "check and balance" on the design and structure of these programs. He explained:

It is always easier to eat at a nice restaurant when someone else is paying the bill. Making EGSs bear the bulk of the direct costs of these programs will require EGSs to think seriously about what is and what is not cost effective from a

marketing and program administration standpoint. Otherwise, if EGSs do not pay for the programs directly, this would provide EGSs with an incentive to ask for more “bells and whistles” to promote and expand these programs, even when it is not cost effective.

Id.

The EGSs in this proceeding have provided no compelling evidence to justify a cost recovery method different from that recommended in the IWP Order. Accordingly, the OCA submits that Duquesne’s proposal to recover the costs of these initiatives should be adopted.

4. CAP Customer Participation in Market Enhancement Programs

Duquesne witness Neil S. Fisher and CAUSE-PA witness Stephen R. Krone each testified that Customer Assistance Program (CAP) customers should not be included in either of the proposed Retail Market Enhancement programs. Duquesne St. 3-R at 36-37, CAUSE-PA St. 1. Several of the EGSs recommended the inclusion of the CAP customers in the Retail Market Enhancement programs. In the IWP Order, the Commission referred the question of whether CAP customers can participate in the retail market enhancements to the RMI Universal Service working group. IWP Order at 18. While the OCA did not present specific testimony on this issue in this proceeding, the OCA supports the proposal of Duquesne and CAUSE-PA and recommends that this question be considered as part of the Commission’s RMI Universal Service subgroup. See OCA St. 2-R at 6.

5. Shopping Customer Participation in Market Enhancement Programs

As was discussed above, Duquesne will not specifically market its Opt-In or Referral programs to those customers who have already selected an alternative generation supplier, but will allow these customer to participate in the Market Enhancement Programs if they so request. See Duquesne St. 3-R at 13-14. This approach is consistent with the IWP

Order. The Commission captured the importance of allowing all customers -- shopping and non-shopping -- to participate. The Commission stated:

The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

IWP Order at 42.

RESA witness Kallaher proposed that shopping customers should be ineligible to participate in the EGS Opt-In Competitive Offer Program. RESA St. 2 at 11, 21. While the OCA agrees that Duquesne should not directly solicit shopping customers for participation, this does not mean that shopping customers who inquire about the offer should not be allowed to participate. OCA witness Alexander testified:

I cannot agree with his proposal to impose a duty on DLC to implement a program rule to this effect or to incur costs to implement such an approach. It is an unfortunate, but inevitable, result that customers already served by an EGS will hear about this publicized enrollment opportunity and some may seek to enroll. I agree that DLC's enrollment materials should not be targeted to such customers and that DLC's public statements and customer materials should advise customers already served by an EGS to carefully consider their contract terms and price prior to seeking to enroll in this program. Again, the fact that 40% of DLC's residential customers are already shopping suggests that these customers are likely to hear about this program and some may seek to enroll. DLC should not be put in the position of monitoring this development or trying to educate individual customers on the implications of enrollment since DLC has no knowledge of the customer's EGS terms and conditions.

OCA St. No. 2-R at 11. Further, the OCA submits that if the OCA's recommendation to limit the EGS Opt-In Competitive Offer Program participation to 20% of non-shopping customers is adopted, RESA's concerns regarding participation by shopping customers would be substantially

lessened. The enrollment limit allows the program to be presented as a limited, one-time opportunity to non-shopping customers. OCA St. 2-R at 11.

While the OCA agrees with witness Kallaher's testimony that the main purpose of the program is to give customers who have not otherwise shopped, additional opportunities to test the market, and not to shift customers who are currently shopping, the OCA does not agree that closing the program to shopping customers is the answer. Duquesne's approach to direct the marketing efforts towards non-shopping customers addresses this issue and carries forward the focus for the program identified in the IWP Order. The IWP Order stated:

However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will also maintain its original position that all marketing, notifications and consumer education efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such, although a shopping customer may become aware of the Retail Opt-In Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

IWP Order at 42.

For the reasons stated above, the OCA submits that all non-CAP residential customers, both default service and shopping customers, should be eligible to participate in the Opt-In Auction Program. The marketing materials for the program, however, should be specifically directed towards non-shopping customers as the Company has proposed.

6. Small C&I Customer Participation in Market Enhancement Programs

The OCA takes no position on this issue.

7. Customer Status at the End of the Market Enhancement Programs

The OCA has proposed different treatment of the customers at the end of the two market enhancement programs. The reason for this is that customers who enroll in the Opt-In program are being solicited by mail and have to take the action of calling, enrolling online, or

sending in a return card in order to enroll in the program. This is not the case for the referral program. In the referral program, customers are enrolled when they call the Company about a completely separate matter- the start of service or transfer of service (or, if the EGSs' proposals are accepted, when calling about high bill issues). The program is explained orally after a customer has been on the phone with the Company discussing an entirely separate issue. The customer may not understand what will happen at the end of the initial discount, and such information might not be presented in sufficient detail. Therefore, the OCA submits that in the instance of the referral program, the customer should be allowed to take their "affirmative" action at the end of the introductory period and be returned to default service if such action is not taken.

a. Customer Status at the End of the Opt-In Program

At the end of the Opt-In program term, Duquesne proposes that the customer remain with the EGS. Duquesne St. 3-R at 33-35. Duquesne avers that there are sufficient customer protections in the notices from the supplier, and that the customer should, therefore, stay with the EGS. *Id.* The OCA does not object to customers remaining with the EGS after sufficient notice for the EGS Opt-In Program. The OCA submits, though, that customers should be fully informed of this feature before they opt in to the program.³⁷

The OCA further recommends though that if no response to an EGS offer is provided by the customer, the customer should be placed on a fixed price month-to-month contract with no penalties or termination fees. Customers who opt in to this program will likely receive some type of offer from the EGS before the program ends. The OCA submits that one of the products should be a fixed price offer and that the fixed price offer should be the offer the

³⁷ This is also why the OCA recommends a third notice, in addition to the two from the EGS, from the EDC to the customer. This additional notice is discussed in Section III.C.1.i., above.

customer is placed on if the customer does not make an affirmative selection. OCA witness

Alexander explained:

The EGS contract should require the EGS to disclose to the customer that if the customer fails to respond to any of the options listed in their notice (i.e., the right to return to Default Service or select an EGS option), the customer would be put on a fixed price month-to-month contract without penalty or termination fees. A customer who enters this program with a fixed price contract should not be transferred to a variable priced month-to-month contract without affirmative consent.

OCA St. 2 at 13.

The OCA submits that RESA witness Kallaher's perspective that the "competitive suppliers should have maximum flexibility regarding the product offered to customers at the end of the opt-in auction program or any other retail market enhancement program considered by the Commission" is incomplete. RESA St. 2-R at 10. The EGSs already have maximum flexibility in what they can offer to customers, but if the customer does not respond, the customer should not be placed on a variable priced rate or other rate that is wholly inconsistent with the program in which they participated. The Opt-In Auction Program is designed to create a positive experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS. Customers who do not respond to a notice should stay with their current EGS on a fixed price, month-to-month contract if the customer does not affirmatively select another product.

b. Customer Status at the End of the Referral Program

Duquesne and RESA witness Kallaher propose that a customer who accepts the introductory standard offer as part of the referral program would continue service with the EGS unless the customer makes an affirmative choice to go to another EGS or to return to default

service. Duquesne St. 3-R at 42; RESA St. 2-R at 20.³⁸ The OCA submits that such a process is not appropriate for this type of program. Customers who agree to participate in such an “introductory” offer of a fixed discount as part of a customer call to a Call Center for an entirely different purpose should be returned to default service unless the customer makes an affirmative choice to remain with the EGS or to select another EGS. OCA St. 2 at 16-17.

Ms. Alexander discussed the purpose of the Referral Program in her Direct Testimony:

The purpose of the Referral Program is to expose the customer to the shopping experience with a guaranteed price reduction for the contract term, preferably a relatively short period of time. Customers who call the EDC for a specific purpose unrelated to customer choice and who are marketed to “experiment” with an EGS should not be retained by the EGS at the end of the contract term without affirmative customer agreement. Customers who are satisfied with the Referral experience will select an offer that best meets their needs, whether from their own EGS or another EGS. There is little purpose to be served to allowing the EGS to retain the customer without some indication that the customer who agreed to the experiment has demonstrated a familiarity with the concept of “choice” and made an affirmative choice.

OCA St. 2 at 17. As OCA witness Alexander further explained, “the customer’s silence should result in the transfer of the customer back to Default Service.” OCA St. 2 at 17. This is particularly important given the structure of the Referral Program.

Ms. Alexander’s recommendation is also consistent with the Central Hudson Gas & Electric Company’s referral program called Energy Switch.³⁹ Ms. Alexander testified that the Central Hudson Referral program is structured as follows:

Under that program the customer is guaranteed a specific discount for two months period, but must then affirmatively agree to the EGS (called an ESCO’s) terms of service to continue being served at the EGS price.

³⁸ The OCA would note that Company witness Neil Fisher expressed reservations about the treatment of customers at the end of the Referral Program. See Duquesne St. 3-R at 42.

³⁹ The OCA notes that the Central Hudson Gas & Electric model is not the same as the “New York” model discussed in RESA witness Kallaher’s testimony.

OCA St. 2 at 17.⁴⁰ Under the Central Hudson Gas & Electric Model, as stated by Ms. Alexander, “if the customer does not take affirmative action to adopt a specific option during this short period of time, the customer should be transferred back to Default Service.” OCA St. 2-R at 10. The OCA submits that the Central Hudson Gas & Electric model is designed to provide an opportunity for a customer to shop with a guaranteed price reduction, for a short period of time, and at no risk. The OCA submits that the adoption of Ms. Alexander’s recommendations would provide a reasonable path for the implementation of a Standard Offer Referral Program that would benefit ratepayers.

For the reasons stated above, the OCA proposes that Duquesne’s Standard Offer Referral Program be revised so that the customer will return to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise.

8. Miscellaneous Market Enhancement Program Issues

a. *RESA’s Proposal for a 5 mil per KWH adder to Default Service Rates Must be Rejected*

RESA witness Kallaher proposed that the costs of the Retail Market Enhancement Programs be recovered through a \$5/MWH (or 5 mils per KWH) adder charged to default service customers. RESA St. 2 at 26-27. The OCA is strongly opposed to RESA’s proposal. OCA witness Estomin calculated that, if this proposal were to be implemented, the Company would collect an additional \$27 million from residential default service customers over the two-year period, resulting in an approximately \$41 per year adder to the average residential customer

⁴⁰ As noted by Ms. Alexander, her recommendation in this regard reflects the Central Hudson Gas & Electric referral program, called “Energy Switch.” Under that program, the customer is guaranteed a specific discount for two month’s service, but then must affirmatively agree to the EGS (called an ESCO in New York)’s terms of service to continue to be served at the EGS price. See www.centralhudson.com/energy_choice/energy_switch.html; OCA St. 2 at fn. 10.

bill. OCA St. 1-R at 12. In those two years, Duquesne would also receive approximately \$4 million in excess of any costs incurred. Id.

The OCA submits that the adder is in conflict with the Public Utility Code in several respects, particularly since the Company will receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge. The proposed adder would also impact shopping customers in the Companies' service territories and an artificially inflated default service rate will result in increased EGS' charges for consumers who accept a percent-off-the-default price offering. As the proponents of this new rate, RESA has the burden of proving that the adder will result in just and reasonable rates for Duquesne's customers. RESA has failed to carry its burden of proof on this issue, has failed to provide substantial evidence in support of the adder, and has failed to show that the inclusion of the adder in its Duquesne's DSP would result in just and reasonable rates. Therefore, the OCA submits that RESA's proposal for a 5 mil per KWH adder to default service rates must be rejected.

The Public Utility Code provides, in relevant part:

The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.⁴¹

A plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred."⁴² This plain meaning of cost recovery as to a public utility is

⁴¹ 66 Pa.C.S. § 2807(e)(3.9).

⁴² ALJ Susan D. Colwell succinctly captured the cost recovery structure of default service in a recent decision, stating "A default service provider is entitled to full recovery of its costs because it is not permitted to make a profit on the cost of the commodity." Petition of PPL Electric Utilities Corp. for Approval to Implement a Reconciliation Rider for Default Supply Service, Docket No. P-2011-2256365 (Recommended Decision of Administrative Law Judge Susan Colwell, issued April 4, 2012 at 35).

embedded in a number of significant decisions from the Pennsylvania Courts. Directly on point here, the Supreme Court of Pennsylvania provided that:

Although the Commission is vested with broad discretion in determining what expenses incurred by a utility may be charged to the ratepayers, the Commission has no authority to permit, in the rate-making process, the inclusion of *hypothetical expenses not actually incurred*. When it does so, as it did in this case, it is an error of law subject to reversal on appeal.⁴³

On this same issue of illusory costs, the Commonwealth Court of Pennsylvania has held that:

However, a utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customers under the guise of recovering operating expenses.⁴⁴

The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory “costs”, such as RESA’s proposed adder, are precluded from consideration in the rates that utility customers pay. The fact that RESA’s proposal includes a potential profit handed over to Duquesne that might be tied to whether or not EGSs are successful in obtaining new customers is inappropriate and cannot be justified. DLC is providing a statutorily required Default Service for which it recovers all of its costs on a reconcilable, dollar for dollar basis. Ms. Alexander explained:

There is no basis for suggesting, as Mr. Kallaher does, that DLC’s remaining default service customers should be somehow punished because of a perception of a supposed “dominance” of default service. This runs counter to not only common sense, but, in my view, to Pennsylvania’s default service regulatory policies and requirements.

⁴³ Barasch v. Pa.PUC, et al., 493 A.2d 653, 655 (Pa. 1985) (emphasis added).

⁴⁴ Cohen v. Pa.PUC, et al., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983) (internal citations omitted); See also, Barasch v. Pa.PUC, 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa.PUC, 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

OCA St. 2-R at 20; see also OCA St. 1-R at 10-13. It is important to note that even Duquesne opposes RESA's 5 mil/KWH adder. See Duquesne St. 3-R at 82-83. Duquesne witness Neil Fisher notes that RESA witness Kallaher, "provides no support for his assertion that Duquesne Light is at risk of failing to recover all costs associated with providing default service." Id. at 82. He then explains that the RESA's recommendation would result in significant over-collection (about 10 times the estimated costs of the retail market initiatives) and that disbursement of the over-collection to all distribution customers would result in cross-subsidization. Id. He explained, "Although his PTC adder will apply only to default service customers under RESA's proposal, any remaining balance after payment of retail program costs and 'uncollected' default service costs would be to a much larger, different group of customers – distribution customers, including those shopping with an EGS. Id. at 83. Thus, RESA's proposal would result in cross-subsidization of shopping customers by default service customers. OSBA witness Kalcic similarly opposes RESA's proposed adder and agrees with Duquesne witness Fisher's testimony that the RESA proposal will result in unlawful cross-subsidization. See OSBA St. 2 at 7-8.

OCA witness Estomin went on to describe his concern that, to the extent the adder would be used to recover the costs of the Retail Market Initiatives, the proposal would impose costs on Duquesne's default service customers that are far in excess of the reasonable costs of implementing these programs. He stated that a reason for rejecting the adder is:

[T]hat the Default Service price would no longer be consistent with the least-cost standard. It would increase Default Service costs by the magnitude of the adder and increase the Price to Compare ("PTC"), thus allowing the EGSs to offer a percentage discount from the PTC to achieve the minimum savings level at a higher absolute price. This could increase the costs to all customers, including not only the Default Service customers but also the customers participating in the Opt-in EGS Service program and the Customer Referral program.

This same argument applies to EGSs selling to Duquesne customers through the normal sales channels outside of the market enhancement programs. A higher

PTC will likely cause higher prices in the retail market, since the target price, that is, the PTC, would be higher and a more favorable price than the PTC can be achieved with a higher competitive retail offer. Based on these factors, the effect of Mr. Kallaher's proposal is to increase the power supply costs for Default Service customers, shopping customers not participating in the market enhancement programs, and the customers participating in those enhancement programs.

A fourth issue is that the added incentive to shop by artificially increasing the PTC appears to be unnecessary given the already high shopping percentages that exist in the Duquesne service area.

Finally, Mr. Kallaher's proposal stipulates that any excess amounts associated with the 5-mil charge (after the 10 percent bonus paid to Duquesne, the cost coverage of the market enhancement programs, and any uncollected costs associated with the Default Service plan) will be allocated among all distribution customers. This means that Default Service customers will pay all of the charge, but receive only a portion back from any residual funds. This constitutes a wealth transfer from Default Service customers to shopping customers that is unsupported by any concept of cost causality and is on its face inequitable.

OCA St. 1-R at 11-12. OCA witness Alexander also explained how particularly harmful and unjustified the proposal is. She stated:

There is no direct benefit to remaining default service customers associated with the implementation of these discretionary programs and there is no rational means of justifying a cost that is collected from default service customers and then returned in part to all distribution service customers. Just because default service customers are not being served by an alternative generation supplier as of a date certain is not an indication that they have not shopped and considered their options in the competitive market, or that they have not in fact switched to an EGS in the past and then switched back to default service. Under the RESA proposal default service customers would pay 100% of the costs of this surcharge, but will only receive a fraction of the revenues that is paid back to distribution customers. That aspect of this proposal is particularly unfair because the default service customers are the very customers who, by definition, are not participating in these enhancement programs.

OCA St. 2-R at 19-20; see also OCA St. 1-R at 10-13.

RESA failed to carry its evidentiary burden as to its proposed 5 mil/KWH adder.

There is no support for the adder in the Public Utility Code or the controlling case law in Pennsylvania. As such, the OCA submits that the proposal must be rejected.

D. RATE DESIGN

1. Reconciliation Issues

The Company has proposed a 12-month reconciliation period for its default service plan coupled with annual changes to the PTC. Duquesne St. 4-R at 8-13. OSBA witness Kalcic, Dominion witness Butler, and Constellation witness Bennett either support or do not oppose the Company's proposal. See OSBA St. 1 at 9, Dominion St. 1 at 4, Constellation St. 1 at 20-21. RESA witness Williams, however, proposes quarterly adjustments to the PTC and quarterly reconciliation of over/under collections. RESA St. 1 at 17, 20. The OCA supports the Company's proposal for annual reconciliation and changes to the PTC. As was discussed above, Duquesne is unique from other large EDCs in the Commonwealth. The Company's current PTC has been set for the duration of their existing 29-month default service plan. Therefore, Duquesne's customers are not accustomed to the quarterly shifts in the PTC that are experienced by the customers of other large EDCs. Further, the Company has been out from under rate caps for a much longer time than other EDCs. Importantly, the relative stability in the PTC has helped customer shopping in Duquesne's service territory as it has experienced high levels of shopping for many years. It is for these reasons that the OCA supports the Company's proposals with respect to annual reconciliation and changes in the PTC and encourages the Commission to adopt the Company's position on these issues.

2. Price To Compare Calculation Date

The OCA takes no position on this issue.

3. Non-Bypassable Charge To Recover PJM Charges

The OCA takes no position on this issue.

E. TIME-OF-USE PROGRAM

The OCA takes no position on this issue.

F. SUPPLY MASTER AGREEMENT ISSUES

The OCA takes no position on this issue.

G. DATA/EGS COORDINATION ISSUES

The OCA takes no position on this issue.

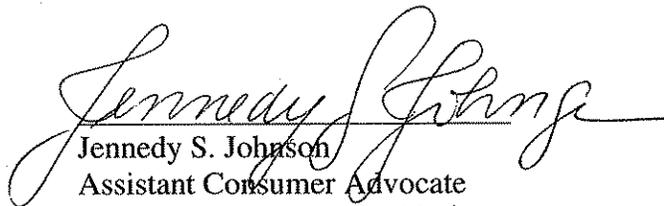
H. GENERAL MISCELLANEOUS ISSUES

The OCA has no general miscellaneous issues.

IV. CONCLUSION

The OCA submits that, as proposed, Duquesne's Default Service Plan does not provide residential customers with a least cost, reliable and stable "prudent mix" of supplies as required under Pennsylvania law. The OCA submits that the proposed modifications detailed in this Main Brief will ensure that the legal requirements for the provision of default service are met, while increasing the opportunities customers have to receive additional benefits in the retail market. As such, the OCA submits that its proposed modifications should be adopted.

Respectfully Submitted,



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Dated: October 5, 2012

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CERTIFICATE OF SERVICE

Petition of Duquesne Light Company :
for Approval of Default Service Plan : Docket No. P-2012-2301664
for the Period June 1, 2013 through :
May 31, 2015 :

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

Dated this 5th day of October 2012.

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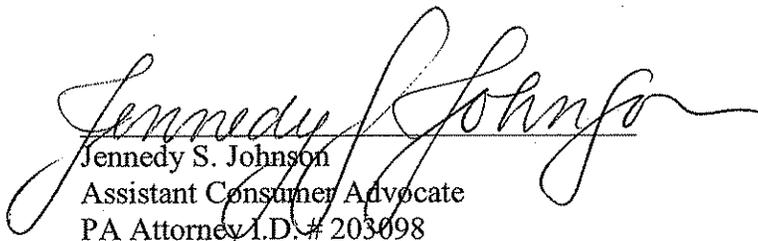
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