

**THE PENNSYLVANIA UTILITY LAW PROJECT
118 LOCUST STREET
HARRISBURG, PA 17101-1414**

PATRICK M. CICERO, ESQUIRE
PCICEROPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 202
FAX: (717) 233-4088

October 5, 2012

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re:

**Petition of Duquesne Light Company for Approval of its Default
Service Program**

Docket Nos. P-2012-2301664

Dear Secretary Chiavetta:

Enclosed please find the Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) in the captioned proceeding.

Copies have been served according to the attached Certificate of Service.

Respectfully submitted,



Harry S. Geller, Esquire
Patrick M. Cicero, Esquire
Counsel for CAUSE-PA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for Approval of its Default Service Program Docket Nos. P-2012-2301664

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the Main Brief of CAUSE-PA have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Honorable Katrina Dunderdale
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601

Krysia M. Kubiak, Esquire
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

Charles Daniel Shields, Senior Prosecutor
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Jennedy S. Johnson, Esquire
David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Todd S. Stewart, Esquire
William E. Lehman, Esquire
Hawke, McKeon & Sniscak LLP
100 N. 10th Street
PO Box 1778
Harrisburg, PA 17101

Vincent A. Parisi, Esquire
IGS Energy
5020 Bradenton Avenue
Dublin, OH 43017

Gary A. Jeffries, Esquire
Assistant General Counsel
Dominion Retail, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817

Charles E. Thomas, III, Esquire
Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108-9500

Brian J. Knipe, Esquire
Buchanan Ingersoll and Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601

Brian R. Greene, Esquire
The Greene Firm, PLC
707 East Main Street
Suite 1025
Richmond, VA 23219

Victor P. Stabile, Esquire
Dilworth Paxton LLP
112 Market Street, 8th Floor
Harrisburg, PA 17101

Stephen L. Huntoon, Esquire
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, DC 20001

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

Theodore S. Robinson, Esquire
Citizen Power Inc.
2121 Murray Avenue
Pittsburgh, PA 15217

Divesh Gupta, Esquire
Constellation Energy Group, Inc.
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Stephen Bennett, Esquire
Director, State Government Affairs - East
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105

Date: October 5, 2012



Patrick M. Cicero
Counsel for CAUSE-PA

Table of Contents

I. Procedural History	1
II. SUMMARY OF ARGUMENT	5
III. ARGUMENT	6
A. Legal Standards.....	6
1. Burden Of Proof.....	6
2. Legal Standards Applicable To Default Service.....	7
B. DEFAULT SUPPLY PROCUREMENT ISSUES	9
1. Residential Procurement Issues	9
a) Product(s) and Product Terms	9
b) Procurement Dates	9
c) Reserving Supply For Retail Opt-In Customer Participation	9
2. Small C&I Procurement Issues.....	9
a) Product(s) and Product Terms	9
b) Procurement Dates	9
3. Medium C&I Procurement Issues.....	9
a) Product(s) and Product Terms	9
b) Procurement Dates	9
4. Large C&I Procurement Issues.....	9
5. Default Supply Load CAP Issues	9
6. Procurements for Delivery Beyond May 31, 2015	10
7. Miscellaneous Procurement Issues	10
C. Market Enhancement Programs.....	10
1. Retail Opt-in Auction.....	11
a) Auction vs. ROI Program	11
b) Term of Offer.....	11
c) Discount Percentage.....	12
d) \$50 Bonus Payment	13
e) Guaranteed Savings	13
f) Customer Participation Cap	13
g) Supplier Load Cap	13
h) Enrollment Process	13
i) Mailings and Communications.....	13

j) Opt-In Electric Generation Supplier Service Program Request for Proposals and Agreement Between Duquesne Light and EGSs	14
2. Standard Offer Program.....	14
a) Term of Offer.....	14
b) Discount Percentage.....	15
c) Guaranteed Savings	15
d) Program Start Date.....	15
e) Program Suspension.....	16
f) High Bill Callers	16
g) Choice Referral Team.....	17
h) Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSs.....	17
3. Market Enhancement Program Cost Recovery.....	17
4. CAP Customer Participation in Market Enhancement Programs	18
5. Shopping Customer Participation in Market Enhancement Programs	23
6. Small C&I Customer Participation in Market Enhancement Programs	23
7. Customer Status at the End of the Market Enhancement Product	23
8. Miscellaneous Market Enhancement Program Issues.....	24
D. Rate Design.....	25
1. Reconciliation Issues	25
2. Price To Compare Calculation Date	25
3. Non-Bypassable Charge To Recover PJM Charges	25
E. Time-of-Use Program	25
F. Supply master agreement issues	25
G. Data/EGS coordination issues.....	25
H. General miscellaneous issues.....	25
IV. Conclusion	26

Table of Authorities

Cases

<i>Green Mountain Energy Company v. Pa. PUC</i> , 812 A.2d 740, 742 (Pa. Cmwlth. 2002)	7
<i>Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n.</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)	7
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	7

Statutes

66 Pa. C.S. § 1405(c)	26
66 Pa. C.S. § 2802 (10).....	1, 5
66 Pa. C.S. § 2802(3).....	7
66 Pa. C.S. § 2802(5).....	7
66 Pa. C.S. § 2807(e)	2, 18
66 Pa. C.S. § 332(a)	6

Other Authorities

<i>Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets</i> , Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011).....	7
<i>Investigation of Pennsylvania’s Retail Market: Intermediate Work Plan</i> at Docket No. I-2011-2237952.....	Passim
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval or Their Default Service Programs</i> , Docket Nos. P-2011-2273650 <i>et seq.</i> , Reconsideration Opinion and Order dated September 27, 2012	Passim
<i>Petition of PECO Energy Company for Approval of its Default Service Program II</i> , Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer.	5
<i>Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan</i> , Docket No. P-2011-2252042, (Opinion and Order entered May 24, 2012)	8

I. Procedural History

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions, and the positions advanced by its witness Stephen R. Krone through his written testimony and accompanying exhibits. The evidence in the captioned proceeding demonstrates that low-income customers of Duquesne Light Company (“Duquesne”) – particularly those enrolled in Duquesne’s Customer Assistance Program (“CAP”) – are economically vulnerable, merit distinct treatment, and require significant protection from the uncertainties of the retail electric market.

Pursuant to the Electricity Generation Customer Choice and Competition Act (“Choice Act”), an essential statutory obligation of the Public Utility Commission (“Commission”) is to “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment. 66 Pa. C.S. § 2802 (10). This polestar legal principle in the midst of the myriad issues present in this case must neither be lost nor diminished. This declaration of policy in the Choice Act recognizes that direct access by low-income retail customers to the competitive generation market is predicated upon the Commission’s obligation to ensure that the affordability of electric service to economically vulnerable citizens is not diminished. With this background in mind, we turn to the particulars of this proceeding.

On March 2, 2012, the Commission issued its Final Order in *Investigation of Pennsylvania’s Retail Market: Intermediate Work Plan* at Docket No. I-2011-2237952 (“IWP Final Order”). The IWP Final Order sets forth the Commission’s recommendations concerning a series of proposed retail market enhancements. Most relevant to the issues CAUSE-PA has

addressed in this proceeding are the Commission's recommendations concerning the Opt-in Auction/Aggregation program and its recommendations concerning the Customer Referral Program.

On April 27, 2012, Duquesne filed a Petition for Approval of its Default Service Program and Procurement plan pursuant to Section 2807(e) of the Public Utility Code. The petition concerned Duquesne's default service procurement starting June 1, 2013, as well as various retail market enhancements proposed by Duquesne. The petition was published in the Pennsylvania Bulletin on May 19, 2012, with an Answer/Protest date of June 4, 2012. 42 Pa. B 2870.

Specifically, Duquesne has proposed an Opt-in Auction Program in which all residential customers would be eligible to participate with the exception of CAP customers, who would be excluded. Under this program, participating EGSs will offer residential customers a 12-month, fixed-price product which is at least 5% less than the Duquesne Light price-to-compare as of June 1, 2013.¹ The actual discount will be set by an auction among participating EGSs. Customers participating in the auction will also receive a \$50 cash payment from the EGS who acquires the customer in the auction as long as the customer remains a customer of the EGS for three consecutive billing cycles.² During the 12-month term, customers can switch to another EGS or back to default service without payment of a cancellation fee. At the end of the 12-month term, the customer would be permitted to return to default service or contract with a different EGS, but if the customer makes no election, he or she would remain a customer of the EGS to which he or she was assigned for the auction period on a month-to-month contract.³

¹ Duquesne Statement No. 3 at 14.

² Ibid.

³ Duquesne Statement No. 3 at 31-32.

Duquesne proposes to begin the Standard Offer Referral Program on or after June 1, 2014. The program will be targeted at residential customers on default service by offering a 12-month contract with a discount of 7% off the Duquesne price to compare in effect at the time of the offer is made.⁴ There would be no termination fee or penalty and the offer would be made to all customers calling Duquesne Light (1) to initiate or move service, (2) to discuss choice questions, (3) to resolve high bill concerns, or (4) who initiate customer inquiries about the Standard Offer Program.⁵ CAP customers would be excluded from the referral program.

On June 4, 2012, CAUSE-PA filed a Petition to Intervene and an Answer to Duquesne's Petition raising concerns about its proposed retail market enhancements. Various other parties also filed petitions to intervene and/or an answer to Duquesne's Petition prior to the intervention deadline.⁶

On June 8, 2012, a prehearing conference was held by the Honorable Katrina L. Dunderdale, Administrative Law Judge, and a Scheduling Order was issued on June 11, 2012. In the Scheduling Order, ALJ Colwell granted all of the parties' Petitions to Intervene, including that of CAUSE-PA, and set forth a procedural schedule to be followed by the parties.

CAUSE-PA and other intervenors filed written Direct Testimony on July 26, 2012. CAUSE-PA's written direct testimony, CAUSE-PA Statement No. 1, was filed by Stephen R.

⁴ Duquesne Statement No. 3 at 35-38.

⁵ Duquesne Statement No. 3 at 42.

⁶ Relevant documents noticing the intervention or appearance were filed by the following parties: the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizen Power, Constellation NewEnergy, Inc. and Exelon Generation Company, LLC, (collectively Constellation), Retail Energy Supply Association (RESA), Duquesne Industrial Intervenors (DII), FirstEnergy Solutions Corp. (FES), Dominion Retail d/b/a Dominion Energy Solutions & Interstate Gas Supply, Inc. (Dominion/IGS)), NextEra Energy Resources, and Noble Americas Energy Solutions, LLC.

Krone and was accompanied by Appendix A, which consisted of two exhibits pre-marked as Exhibits SRK-1 through SRK-2; and, Appendix B which consists of various interrogatory responses of Duquesne that were relied on by Mr. Krone in preparing his testimony.

On August 24, 2012, Duquesne, along with other parties including the Retail Energy Supply Association (“RESA”) filed rebuttal testimony. Specifically relevant to the issues of concern to CAUSE-PA, Duquesne filed the rebuttal testimony by Michelle Sandoe, in which Ms. Sandoe responded to the Direct Testimony of RESA witness Mr. Christopher Kallaher and CAUSE-PA witness Mr. Krone. CAUSE-PA did not file rebuttal testimony.

On September 7, 2012, CAUSE-PA filed its written Surrebuttal Testimony which was labeled CAUSE-PA Statement No. 1-SR. In his Surrebuttal, Mr. Krone responded to the rebuttal testimony filed by RESA witness Kallaher, as well as Duquesne’s Ms. Sandoe.

A combination telephone and in-person hearing was held on Thursday, September 13, 2012. All parties mutually waived cross-examination of each others’ witnesses and ALJ Dunderdale received into evidence the parties’ prepared written testimony and exhibits by written affidavit. Included in the testimony received into evidence was CAUSE-PA Statement No. 1 with Appendix A (Exhibits SRK-1 through SRK-2), and Appendix B, which included various interrogatory responses provided by Duquesne Light and relied upon by Mr. Krone, and CAUSE-PA Statement No. 1-SR.

After the close of the record in this proceeding, on September 27, 2012, the Commission took two actions at its public meeting which have a bearing on the legal issues at stake here. First, the Commission conducted a binding poll on the issues presented in PECO’s Default Service proceeding at Docket No. P-2012-2283641. While an Opinion and Order incorporating the results of the binding poll has not been issued at the time of the submission of this brief, it

appears to be clear from the results of the poll that the Commission intends to resolve certain aspects of the retail market enhancements similarly for all EDCs. By way of example, a motion was made by Commissioner Pamela Witmer at the public meeting which substantially conforms the details of PECO's opt-in auction process to the opt-in auction process announced by the Commission in the First Energy Default Service Proceeding. *See Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer.

Second, at the September 27, 2012 public meeting, the Commission issued an Opinion and Order which resolved various petitions for reconsideration that were filed by parties to the First Energy Companies' Default Service Proceeding. *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 Nos. P-2011-2273650 *et seq.*, Reconsideration Opinion and Order dated September 27, 2012 (“*First Energy Reconsideration Order*”).

II. SUMMARY OF ARGUMENT

An examination of the evidence in the captioned proceeding demonstrates that Duquesne's low-income customers, particularly those enrolled in its Customer Assistance Program (“CAP”), are economically vulnerable, merit distinct treatment, and require significant protection from the uncertainties of the retail electric market in order to adequately shield them from potential economic harm or the diminishment of “the protections, policies and services that now assist customers who are low-income to afford electric service.” 66 Pa. C.S. § 2802 (10). Accordingly, for the reasons set out more fully below, based on the evidence in this proceeding

CAUSE-PA continues to request that the Commission adopt the following recommended protections:

- The Commission should affirm Duquesne’s decision to exempt its low-income CAP customers from participating in either of the retail market enhancements. That decision is well reasoned because CAP participants would not benefit from these programs and would very likely be adversely affected at the conclusion of the programs;
- Similarly, Duquesne’s CAP customers would not materially benefit from receiving service from an electric generation supplier (“EGS”) independent from the retail market enhancements, and thus Duquesne should not permit its CAP customers to shop until or unless the Commission institutes an omnibus proceeding to deal with all of the complicated issues surrounding CAP customers receiving service from EGSs;
- Duquesne should modify its Standard Offer Referral Program to exclude referrals of customers calling with high bill complaints;
- The costs of the proposed retail enhancements should be paid for by the participating EGSs and not by ratepayers remaining on default service or the individual customer using the proposed retail enhancements.

III. ARGUMENT

A. Legal Standards

1. Burden Of Proof

Duquesne has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking, 66 Pa. C.S. § 332(a), and must establish its case by a preponderance of the evidence, *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Duquesne

must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

2. Legal Standards Applicable To Default Service

The Choice Act requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807 (e)(3.4). The Choice Act does not, however, require a specific default service rate design methodology. *Id.* Furthermore, the Choice Act mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1802 to 69.1817, addressing default service plans. The regulations first became effective in 2007 and recently have been amended to incorporate the Act 129 amendments to the Choice Act. *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*).

In its *Act 129 Final Rulemaking Order* the Commission reached a determination as to what it believes constitutes least cost over time:

Finally, it should be noted that the “least cost over time” standard should not be confused with the notion that default prices will

always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires *that the Commission be concerned about rate stability* as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the “least cost over time” standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

Act 129 Final Rulemaking Order at 11-12 (emphasis added).

Thus, pursuant to the Commission’s recent guidance in the *Act 129 Final Rulemaking Order*, **default service providers must demonstrate that their plans consider price stability and reliability** when developing a procurement plan that meets the “least cost over time” standard. *See Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, (Opinion and Order entered May 24, 2012) at 10-11.

This proceeding, however, concerns more than simply the procurement mix of Duquesne’s default service portfolio, but rather concerns Duquesne’s implementation of the competition enhancements that the Commission ordered to be a part of each EDC’s default service proceeding. In its IWP Final Order, the Commission set forth its recommendations concerning a series of proposed retail market enhancements; most relevant to the issues CAUSE-PA has addressed in this proceeding are the Commission’s recommendations concerning the Opt-in Auction/Aggregation program and its recommendations concerning the Customer Referral Program. Thus, in considering whether Duquesne’s default service plan can be approved, the ALJ must consider not only Duquesne’s compliance with applicable default supply procurement principles, but also with the Commission’s guidance requiring that low-income

customers not be subjected to harm as a result of the structure and implementation of Duquesne's proposed competitive retail enhancements. *See* IWP Final Order at 30-31; 43.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

a) Product(s) and Product Terms

CAUSE-PA takes no position on these issues in this proceeding.

b) Procurement Dates

CAUSE-PA takes no position on these issues in this proceeding.

c) Reserving Supply For Retail Opt-In Customer Participation

CAUSE-PA takes no position on these issues in this proceeding.

2. Small C&I Procurement Issues

a) Product(s) and Product Terms

CAUSE-PA takes no position on these issues in this proceeding.

b) Procurement Dates

CAUSE-PA takes no position on these issues in this proceeding.

3. Medium C&I Procurement Issues

a) Product(s) and Product Terms

CAUSE-PA takes no position on these issues in this proceeding.

b) Procurement Dates

CAUSE-PA takes no position on these issues in this proceeding.

4. Large C&I Procurement Issues

CAUSE-PA takes no position on these issues in this proceeding.

5. Default Supply Load CAP Issues

CAUSE-PA takes no position on these issues in this proceeding.

6. Procurements for Delivery Beyond May 31, 2015

CAUSE-PA takes no position on these issues in this proceeding.

7. Miscellaneous Procurement Issues

CAUSE-PA takes no position on these issues in this proceeding.

C. Market Enhancement Programs

At the outset, CAUSE-PA notes its agreement with the testimony of Duquesne witness Neil Fisher and OCA witness Barbara Alexander that there is presently a significantly high level of retail migration within the Duquesne Light territory.⁷ As of July 2012, 43% of Duquesne Light's customer load was receiving service from an EGS.⁸ This is significant. There are currently a robust number of suppliers within the Duquesne service territory who are making offers, and there are a significant number of customers that are switching to EGSs each and every month. Duquesne CAP customers are not within this group and CAUSE- PA supports Duquesne's plan to exclude its CAP customers from the retail market enhancements. Current Duquesne customer information system limitations, the complexity involved in assuring that Duquesne CAP customers will benefit by the retail market enhancements and the inability to direct LIHEAP benefits to suppliers make CAP customer participation not advisable at this time. Thus, CAP customer participation should continue to be deferred until Duquesne and the Commission take steps to ensure that low-income and other economically vulnerable consumers are adequately protected.

Electricity is essential to the health and welfare of households, a fact that the General Assembly recognized in enacting the Choice Act.⁹ For an economically vulnerable low-income Duquesne customer, any increase in electric cost for any period of time is very likely to

⁷ Duquesne Statement No. 3-R at 9-10; OCA Statement No. 2 at 7.

⁸ Duquesne Statement No. 3-R at 10.

⁹ See 66 Pa. C.S. § 2802(9).

mean unaffordable bills and termination of service. This real life reality has informed the positions of CAUSE-PA and its experts. To that end, the recommendations that CAUSE-PA has made throughout this proceeding have been designed to reduce the likelihood that low-income, payment troubled customers will pay more than they otherwise should for an essential household service.

1. Retail Opt-in Auction

a) Auction vs. ROI Program

See Section III.C.4., *infra*, for CAUSE-PA's position on the eligibility of CAP Customers and other low-income customers in Duquesne's proposed retail market enhancement. In that section, CAUSE-PA discusses its concerns in detail.

b) Term of Offer

Duquesne has proposed to conduct a bid process for a fixed price 12-month contract with a retail service rate from an EGS 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 2013.¹⁰ Participating customers would also receive a \$50 bonus payment from the EGS if the customer remains a customer of the EGS for at least three months.¹¹ The 12-month proposed opt-in contract coincides with Duquesne's proposal to offer default service with annual reconciliations rather than quarterly reconciliations.

CAUSE-PA fully supports a 12-month fixed price contract that is guaranteed to be 5% less than the PTC during the entire term of the agreement. This program design will allow customers, particularly low-income customers who are not enrolled in the CAP program, to obtain meaningful savings over the life of the plan. CAUSE-PA agrees with Duquesne's witness

¹⁰ Duquesne Statement No. 3 at 14.

¹¹ Ibid.

Neil Fisher that this proposal is “far superior” to the proposed alternative of a 4-month contract at 5% less than the PTC and an EGS determined fixed rate contract for 8-months.¹² **Figure 9**, contained in Mr. Fisher’s rejoinder testimony amply demonstrates that Duquesne’s proposal is better for customers than the alternatives proposed by RESA and adopted by the Commission in the First Energy and PECO proceedings. Duquesne’s proposal is simpler to understand, simpler to market, and, when coupled with a 12-month reconciliation of default service, provides guaranteed savings to residential customers who participate. In the end, it should be adopted because it is better for customers and acceptable to EGSs. While RESA made an alternative proposal, no individual EGS has stated that Duquesne’s proposal is unworkable or not preferable. CAUSE-PA agrees with Duquesne that the alternative proposal of a 4-month “opt-in” proposal followed by an 8-month “opt-out” agreement would produce less desirable outcomes for customers than a known fixed price product guaranteed to be less than Duquesne’s PTC. Accordingly, Commission should adopt the opt-in design proposed by Duquesne which is a 12-month opt-in proposal.¹³

c) Discount Percentage

See Section III.C.1.b., above. CAUSE-PA believes that the best program design is the one proposed by Duquesne Light which would have participating customers receive a guaranteed 5% off the known PTC for a full 12-months, no cancellation fee, and a \$50 bonus after three months participation.

¹² Duquesne Statement No. 3-RJ at 3.

¹³ It likely does not matter whether the design proposed by Duquesne is adopted with an “auction” or an “aggregation.” So long as the product is opt-in, guarantees 5% off the PTC for 12-months, pays participating customers \$50 after three months participation, and had no cancellation fees during the term of the of the program.

d) \$50 Bonus Payment

See Section III.C.1.b., above. CAUSE-PA believes that the best program design is the one proposed by Duquesne Light which would have participating customers receive a guaranteed 5% off the known PTC for a full 12-months, no cancellation fee, and a \$50 bonus after three months participation.

e) Guaranteed Savings

See Section III.C.1.b., above. CAUSE-PA believes that the best program design is the one proposed by Duquesne Light which would have participating customers receive a guaranteed 5% off the known PTC for a full 12-months, no cancellation fee, and a \$50 bonus after three months participation.

f) Customer Participation Cap

CAUSE-PA takes no position on these issues in this proceeding.

g) Supplier Load Cap

CAUSE-PA takes no position on these issues in this proceeding.

h) Enrollment Process

CAUSE-PA takes no position on these issues in this proceeding.

i) Mailings and Communications

CAUSE-PA fully supports the recommendations made by OCA witness Barbara Alexander that there be three (3) notices prior to the expiration of the program, and that the first notice – a 90-day notice – come from the EDC rather than the EGS serving the customer.¹⁴ It is important that this first notice regarding the expiration of the program come directly from Duquesne because the customer entered the program as a result of a mailing and/or other

¹⁴ OCA Statement No. 2 at 12-13.

communications from Duquesne. Customers participating in the auction chose to enter the retail market as a result of a “push” from Duquesne and the Commission. They should be given clear notice from the EDC with whom that they are used to dealing, and from whom this “push” emanated, that this special program is coming to an end. Thus, consistent with the recommendations made by the OCA, CAUSE-PA believes that it is essential that participating customers receive the three notices as set forth by OCA witness Alexander.¹⁵ Furthermore, CAUSE-PA fully supports the position taken by the OCA that those customers who do not make an affirmative choice to return to default service or who have not chosen another EGS offering must be placed on a fixed price contract that is cancellable without a cancellation fee.¹⁶

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

CAUSE-PA takes no position on these issues in this proceeding.

2. Standard Offer Program

a) Term of Offer

Duquesne proposes to allow its customers to enroll in its standard offer referral program anytime beginning June 1, 2014, and proposes that participating EGSs offer a 12-month contract term with a fixed rate of 7% less than the PTC known at the time the offer is made.¹⁷ The program will be offered to customers who contact Duquesne for new service, who are moving within the service territory, a high bill complaint, or an inquiry about customer choice.¹⁸ CAUSE-PA support’s Duquesne’s selection of a 12-month term for this product because,

¹⁵ Ibid.

¹⁶ OCA Statement No. 2 at 17.

¹⁷ Duquesne Statement No. 3 at 34-35.

¹⁸ Duquesne Statement No. 3 at 42.

consistent with its 12-month term for the opt-in auction/aggregation program, a fixed rate for a year will provide much more significant stability to participating customers.

b) Discount Percentage

CAUSE-PA supports a 7% discount off of the known price to compare at the time the offer is made.

c) Guaranteed Savings

CAUSE-PA would prefer to have a customer referral program that is designed to offer customers a guaranteed 7% off of the PTC throughout the entire term of the contract; however, it accepts the arguments made by Duquesne that such a proposal would be more administratively cumbersome. Furthermore, in CAUSE-PA's view, a fixed rate for 12 months at 7% less than the price offered by Duquesne Light at the time the offer is made is superior to a shorter time frame with guaranteed savings. Given that Duquesne cannot start this program until June 2014, most of the customers will receive guaranteed savings for a significant period of time.

d) Program Start Date

CAUSE-PA fully supports the delayed implementation of the standard offer program. Duquesne has put forth compelling reasons why the start date should be delayed. First, Duquesne is in the process of making significant changes to its existing customer information system.¹⁹ It is only once this system is up and running that Duquesne believes it will be able to effectively implement a standard offer program. Second, CAUSE-PA agrees with Duquesne and the OCA that that standard offer program has the potential to impact risk premium included in the RFP bids of both wholesale default service suppliers and EGS opt-in suppliers.²⁰ Third, and most significantly, CAUSE-PA supports Duquesne's sequencing approach in order to avoid

¹⁹ Duquesne Statement No. 3 at 36.

²⁰ Ibid.

customer confusion concerning concurrent operation of the opt-in auction program as well as the standard offer program.

e) Program Suspension

CAUSE-PA takes no position on these issues in this proceeding.

f) High Bill Callers

The Commission indicated in its IWP Final Order that customers calling about a high bill should be referred to an EGS “only and explicitly after the customer’s concerns were satisfied.”²¹ CAUSE-PA believes that, in light of this Commission guidance, it would be inappropriate to refer high bill complaint customers to an EGS for service while these high bill inquiries/disputes are on-going. Duquesne should be prohibited from including non-CAP participants who are confirmed low-income customers with “high bill complaints” in the group of customers that may be referred to the proposed Customer Referral Program. A high bill complaint may be an indication that the caller is a low-income individual who requires immediate referral to and enrollment within a Customer Assistance Program, referral to a Hardship Fund and/or LIHEAP or to conservation services available through LIURP, Act 129, or weatherization. In other situations, the high bill complaint of a renter may have occurred as a result of a foreign load. In the view of CAUSE witness Krone, a referral to the Customer Referral Program is not an acceptable response to this type of call.

If the customers calling about high bill complaints are among the group of customers who are referred, then Duquesne Light should inquire about the income status of the household to ensure that the household has been offered all available assistance through the panoply of universal service programs that Duquesne is required to make available. Only after the inquiry is

²¹ IWP Final Order at 32.

made and the referral taken place should the customer be informed about the standard offer program.

g) Choice Referral Team

CAUSE-PA takes no position on these issues in this proceeding.

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

CAUSE-PA takes no position on these issues in this proceeding.

3. Market Enhancement Program Cost Recovery

In its Intermediate Work Plan Final Order, the Commission stated that the EGSs should bear the bulk of the costs of the Opt-in Auction:

As for the costs of the Retail Opt-in Auctions, we agree . . . 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. We advise EDCs, in their program filings, to propose mechanisms to identify and recover the costs from participating suppliers.

IWP Final Order at 84-85.

Additionally, the Commission has consistently found in both the First Energy DSP proceeding and the PECO DSP proceeding that the EGS should bear the costs of the opt-in aggregation program and the standard order referral programs. See *First Energy DSP Order* at 132; See also, *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer (September 27, 2012) at 4. No evidence has been presented in this proceeding demonstrating that the Commission's decision that these costs should be borne by participating EGSs' was mistaken. The retail market for the sale of generation supply service is growing in Pennsylvania. Furthermore, significant costs have already been paid by ratepayers to support customer choice,

it is therefore inappropriate to pass these additional costs along to default service customers in order to provide services and infrastructure for competitive retail operations.

CAUSE-PA leaves it up to the Commission, Duquesne, and the EGSs to determine how the EGSs will pay for the costs of the auction so long as the process is consistent with the Commission's IWP Final Order and the costs are not borne by Duquesne's customers.

4. CAP Customer Participation in Market Enhancement Programs

The captioned proceeding arises out of Duquesne's obligations as default service provider imposed by Act 129 of 2008 to file a plan for the adequate and reliable competitive procurement of electricity that is obtained pursuant to a prudent mix of contracts designed to procure the least cost to customers over time.²²

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of Duquesne's confirmed low-income customers, and the testimony is worth reviewing here in summary format. Households with incomes at or below 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs.²³ Before all of the bills are paid, low-income families routinely run out of money. In any given month, many of them cannot afford and are unable to pay for utility service because competing essential needs like rent, food, and medicine may take precedence.²⁴

Approximately 10% of Duquesne's residential customers have been confirmed by Duquesne as being low-income, that is, these households have incomes that are at or below 150% of the Federal Poverty Level ("FPL").²⁵ In raw numbers, this is more than 53,000

²² See 66 Pa. C.S. § 2807(e) (3.4) - (3.6).

²³ See CAUSE-PA Statement No 1 at 5-9 (discussion of the difficulty of low-income households paying for essential needs).

²⁴ Ibid.

²⁵ Source: 2010 Universal Service Programs and Collection Performance at 9. Available at: http://www.puc.state.pa.us/general/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2010.pdf

households out of its approximately 524,000 residential customers.²⁶ These households subsist on very low-incomes. By way of perspective, currently, 150% of the FPL for a family of two is \$22,695 annually and for a family of four is \$34,575 annually. This is simply not enough income for most families to pay all of their bills each month and *this is the high end of eligibility* for CAP and other universal service programs administered by Duquesne. For those customers further down the income ladder who find themselves trapped in intractable poverty the situation poses a desperate challenge. CAUSE-PA witness Krone aptly characterized the situation in his Direct Testimony:

Households below 150% of the federal poverty guidelines simply lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families routinely run out of money. This leads to devastating consequences such as households choosing what to forgo: food, medicine, rent or other essentials in a struggle to keep their utilities connected or conversely not being able to pay for utility service because of the cost of other competing essential needs. To be poor is to always have to choose in any given month which bill will be “Peter” and which bill will be “Paul.” This is not irresponsibility; it is a matter of survival and a weighing of relative consequences of non-payment.

This is evidenced by the high termination rates for Duquesne’s confirmed low-income customers as compared to all residential customers. According to the most recent publically available information, the termination rate for Duquesne’s confirmed low-income customers is 20.59% compared to 4.18% percent of all residential customers. Thus, Duquesne’s low-income customers are **five times** more likely to have their service terminated than residential customers as a whole. More to the point, this information demonstrates the obvious – namely, that low-income households are more economically vulnerable and face increased risks of termination of service. Therefore, anything that has the very real potential to increase costs for these households is not only poor public policy, but potentially life-threateningly poor public policy.²⁷

This information provides the stark reality – self-evident as it may be – that low-income households are struggling to a significantly greater extent than other households to meet their essential utility costs. This inability to meet essential costs is unique to this group and

²⁶ Ibid.

²⁷ CAUSE-PA Statement No. 1 at 7:9-8:9 (internal citations omitted).

requires specific Commission consideration. The Commission recognized the vulnerability and unique needs to CAP customers in its Intermediate Work Plan Final Order when it stated that CAP customers should not participate in the Customer Referral Program and should only participate in the Opt-in Auction if they could do so and not be subject to harm.²⁸

The evidence in this captioned proceeding amply demonstrates the CAP customers would be subject to harm – as that term has been defined by the Commission to mean a total loss of CAP benefits – through their participation in either of the retail market enhancements. In response to discovery requests sent by CAUSE-PA, Duquesne explained that although CAP customers are technically allowed to shop for an alternate supplier, the supplier would have to separately bill the CAP customer and, to date, no supplier is able to do so.²⁹ Even if a supplier were to offer separate or dual billing, however, CAUSE-PA introduced uncontested testimony that CAP customers would be harmed by such an arrangement. For instance, under Duquesne’s currently stated model, if a supplier were to offer a CAP customer a lower rate than the price to compare, accompanied by dual billing, the CAP customer could shop. This would create a host of complications with CAP customers accessing other services such as LIHEAP.

LIHEAP is a federally-funded block grant program administered on the Federal level by the U.S. Department of Health and Human Services Administration for Children and Families. In Pennsylvania, the block grant allocation is administered by the Department of Public Welfare (“DPW”) pursuant to a State Plan that is submitted each year to HHS. The LIHEAP State Plan specifically excludes the possibility that an EGS can be a LIHEAP vendor. It states, in defining the term “vendor”:

²⁸ IWP Final Order at 31-32; 43.

²⁹ See CAUSE-PA Statement No. 1, Appendix B, Appendix B, Duquesne Response to CAUSE-PA Interrogatories Set I, No. 3.

Vendor – An agent or company that directly distributes home-heating energy or service in exchange for payment. The term *does not include* landlords, housing authorities, hotel managers or proprietors, rental agents, *energy suppliers or generators*, and other parties who are not direct distributors of home-heating energy or service.

Under the restructuring statute, the distribution companies are the suppliers of last resort; they remain regulated, and must comply with the State’s winter termination rules. The interests of the Commonwealth’s low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies.³⁰

Given that an EGS cannot be a direct recipient of LIHEAP grants, a low-income customer who chooses an EGS which utilizes dual billing would not be able to have his or her LIHEAP grant applied to his or her full energy bill. Instead, the LIHEAP grant could only be applied to the Duquesne bill for distribution services. A dual billing customer who has remained current on his Duquesne distribution bill would have no way to utilize a LIHEAP Cash grant to eliminate the risk of default on EGS bills which have remained unpaid. This is unacceptable and would violate the intent of the LIHEAP program which is to assist low-income households in paying for home heating during the winter months.

Furthermore, Duquesne itself has noted that there are many unanswered questions concerning CAP portability. For instance, there are currently no effective means of permitting CAP customers to shop while balancing the needs of those customers to maintain affordability and appropriate consumer protections without first requiring Duquesne to “implement complex procedures and tracking mechanisms” which would be both difficult and expensive.³¹ Based on the record established in this proceeding, CAUSE-PA continues to believe that Duquesne CAP customers continue, at present, to be best served through default service. Low-income electric

³⁰ State Plan at Appendix B, § 601.3, Definition of Vendor (emphasis added).

³¹ See Comments of Duquesne Light Company on Universal Services filed March 7, 2012 at Docket No. I-2011-2237952; Appendix B, Duquesne Response to CAUSE-PA Interrogatories Set I, No. 16.

customers require subsidization because they do not have sufficient resources to meet their essential needs, and Duquesne's CAP program is designed to work effectively with regulated, default supply and coordination with LIHEAP. It is not designed to coordinate with an inordinate number of supplier offers. As a group, low-income customers experience a higher level of non-payment service termination than the broader residential customer population.³² This indicates that price is especially important in maintaining continuous electric service for these customers.

The Commission has recently made it clear that it is "committed to ensuring that all customers, including CAP customers, are eligible to participate in the competitive retail electricity market." See *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer (September 27, 2012). In the PECO Default Service Proceeding, faced with a similar situation in which the EDC's current policy is to prohibit CAP customer shopping, the Commission unanimously voted to adopt the motion by Commissioner Witmer in which PECO was ordered to "develop a plan that, by January 1, 2014, allows its CAP customers to purchase their generation supply from Electric Generation Suppliers." *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer (September 27, 2012). However, in developing this plan, the Commission directed PECO to coordinate only with OCMO. *Id.*

CAUSE-PA respectfully submits that if the Commission is inclined to take a similar approach to that which was taken in PECO, the Commission should direct Duquesne to work not only with OCMO, but also low-income advocates and the OCA both of whom can provide

³² CAUSE-PA Statement No. 1 at 8:1-9.

insight into this process that would be missed without their participation. While OCMO has a breadth of experience concerning the operation of the competitive markets, the integration of CAP benefits with those markets, as well as the ancillary yet essential issues such as the effective integration of LIHEAP benefits for low-income households, would benefit from a discussion with a broader audience. Additionally, the commission must ensure that any changes made by Duquesne in its effort to develop a CAP program that will effectively allow its customers to receive service by an EGS will do so **without a diminution in the benefits to CAP customers.** Finally, consistent with the direction taken in the PECO proceeding, CAUSE-PA urges the Commission not to afford Duquesne some time to work collaboratively with the interested stakeholders in this process and to have until at least January 1, 2014 to accomplish any CAP shopping. This date is consistent with the directive given to PECO and would allow Duquesne to implement such a plan after the April 2013 launch of its new billing system.

5. Shopping Customer Participation in Market Enhancement Programs

CAUSE-PA takes no position on these issues in this proceeding.

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

CAUSE-PA takes no position on these issues in this proceeding.

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

CAUSE-PA fully supports the positions advanced by the OCA in this proceeding concerning customer status at the end of the market enhancement programs. That is, those customers participating in the opt-in auction should be given the right to return to default service or switch to a different EGS without cancellation fee or other penalty. Additionally, these customers should be provided with the three-notices that were recommended by OCA witness

Alexander.³³ CAUSE-PA also supports the OCA's position that at the end of the referral program that customers who do not make an affirmative choice to remain with the EGS should be transferred back to default service.³⁴ Customers who were satisfied with their referral experience will be able to remain with the EGS, but should not have to opt-out to do so.

8. Miscellaneous Market Enhancement Program Issues

In its testimony submitted in this proceeding, CAUSE-PA's witness recommended that prior to participating in either of the retail market enhancements confirmed low-income customers not enrolled in CAP should be informed about and assessed for CAP eligibility.³⁵ In rebuttal, Duquesne suggested the following alternative:

The Company is willing to perform outreach to Duquesne Light's payment troubled confirmed low-income non-CAP customers via a separate mailing and/or outbound telephonic campaign that would promote the benefits of CAP as well as next steps for the customer to enroll in CAP. The outreach would be completed prior to the Opt-in EGS program. If the outreach results in a meaningful increase in CAP enrollment, it would be continued on a periodic basis.³⁶

If Duquesne Light were to take these steps it would satisfy the concerns raised by Mr. Krone in his testimony. Specifically, low-income customers must be better informed about CAP prior to having to determine whether to participate in either of the proposed retail market enhancements. CAUSE-PA believes that an order in this proceeding requiring Duquesne to implement its suggestion made in rebuttal, continue this targeted outreach to its confirmed low-income non-CAP customers for the remainder of its triennial universal service plan, which runs through 2013, and evaluate the effectiveness of this outreach effort upon the filing of its next universal service plan for the 2013-2016 period would be an acceptable resolution of this issue.

³³ OCA Statement No. 2 at 12-13.

³⁴ OCA Statement No. 2 at 17.

³⁵ CAUSE-PA Statement No. 1 at 17-18.

³⁶ Duquesne Light Statement No. 5-R at 10:20-11:3.

D. Rate Design

1. Reconciliation Issues

CAUSE-PA takes no position on these issues in this proceeding.

2. Price To Compare Calculation Date

CAUSE-PA takes no position on these issues in this proceeding.

3. Non-Bypassable Charge To Recover PJM Charges

CAUSE-PA takes no position on these issues in this proceeding.

E. Time-of-Use Program

CAUSE-PA takes no position on these issues in this proceeding.

F. Supply master agreement issues

CAUSE-PA takes no position on these issues in this proceeding.

G. Data/EGS coordination issues

CAUSE-PA takes no position on these issues in this proceeding.

H. General miscellaneous issues

CAUSE-PA does not have any other issues to address that have not been incorporated in its briefing of the issues outlined above.

IV. Conclusion

The record in this proceeding is replete with evidence that low-income households struggle to be able to afford life's necessities. This is particularly true of low-income households who are enrolled in the CAP program. Low-income households simply have no budget elasticity. When faced with the prospect of paying only marginally more for electricity for even a short period of time, the additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for CAP customers who have run out of options for keeping current on their bills. Statutory language prevents the Commission from entering payment agreements for CAP customers. 66 Pa. C.S. § 1405(c). Therefore, the Duquesne CAP program, which is intended to produce an affordable bill for its CAP customers, is an essential means for allowing low-income, payment troubled households continue to receive service. To that end, prior to approval of Duquesne's plan the Commission should adopt the following:

- DLC CAP customers should continue to be excluded from participation in the competitive retail market, including the Retail Opt-in Auction and Customer Referral Programs;
- In the alternative, if CAP customers are to be included in the market enhancement proposals they should not be so included until January 1, 2014, at the earliest, and the Commission should direct Duquesne to work with OCMO, the low-income advocacy community, and the OCA to develop an effective means of permitting CAP customers to receive electric service from an EGS without diminution of their CAP benefits;
- All of the retail market enhancements should be paid for by participating EGSs;

- Calls concerning high bill complaints, bill disputes, and bill inquiries should be resolved prior to any referral of the customer through the referral program; and,
- Confirmed low-income customers should be informed about the CAP Rate program and assessed for eligibility for CAP Rate prior to participating in the Opt-in Auction and Customer Referral Programs.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
*Counsel for the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)*



Harry S. Geller, Esq., PA ID: 22415
Patrick M. Cicero, Esq., PA ID: 89039
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

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