



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

October 5, 2012

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon E. Webb".

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID #73995

Enclosures

cc: Parties of Record
Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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Date: October 5, 2012



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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I. PROCEDURAL HISTORY

On April 27, 2012, the Duquesne Light Company (“Duquesne” or “Company”) initiated the above-captioned proceeding by filing with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Plan for the period of June 1, 2013, through May 31, 2015 (“Petition” or “POLR VI”) pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §5.41, and the Commissions Retail Market Orders at Docket No. I-2011-2237952.

On May 17, 2012, the OSBA filed a Notice of Intervention, a Public Statement, an Answer to the Petition, and a Notice of Appearance.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on May 14, 2012. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on May 14, 2012.

Interventions were filed by: Dominion Retail, d/b/a Dominion Energy Solutions and Interstate Gas Supply d/b/a IGS Energy (“IGS”); Noble Americas Energy Solutions, LLC (“Noble”); Citizen Power, Inc. (“Citizens”); FirstEnergy Solutions (“FES”); Retail Energy Supply Association (“RESA”); Constellation New Energy, Inc., with Exelon Generation Corp., LLC (“Constellation and ExGen”); Duquesne Industrial Intervenors (“DII”); Coalition for Affordable Utility Services and Energy Efficiency of Pennsylvania (“CAUSE-PA”); NextEra Energy Services Pennsylvania and NextEra Power Marketing (“NextEra”).

A Prehearing Conference took place on June 8, 2012, before Administrative Law Judge (“ALJ”) Katrina L. Dunderdale, where the parties agreed to a procedural schedule and certain discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony and Surrebuttal Testimony of its witness, Brian Kalcic.

Evidentiary hearings were held in Pittsburgh, with many Harrisburg Parties appearing telephonically from the Keystone Building, on September 13, 2012. No cross examination was conducted after the parties reviewed the Rejoinder Testimony filed by the Company. The testimony and exhibits of the parties were entered into the record at the evidentiary hearing.

The OSBA submits this Main Brief pursuant to the procedural schedule set forth in the Prehearing Order issued by ALJ Dunderdale and entered on June 11, 2012.

II. SUMMARY OF ARGUMENT

The OSBA will only address the default service procurement plans for the Small Commercial and Industrial (“Small C&I”) and Medium Commercial and Industrial (“Medium C&I”) procurement groups. The OSBA agrees in principle with Duquesne’s proposal to use load-following, full requirements contracts to acquire default service supply for Small C&I and Medium C&I customers. However, the OSBA requests that a limited modification be made to Duquesne’s proposed procurement plan for Medium C&I default service customers.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. Legal Standards Applicable To Default Service

The enactment of 66 Pa. C.S. Chapter 28, known as the Electricity Generation Customer Choice and Competition Act (the “Competition Act”), fundamentally changed the way rates are to be set for the generation portion of electric service in Pennsylvania.

Prior to the Competition Act, the Commission set electricity rates on a bundled basis (Generation *plus* Transmission *plus* Distribution) in base rate cases pursuant to 66 Pa. C.S. § 1308. The Commission also approved the recovery of certain fuel and purchased power costs through a surcharge pursuant to 66 Pa. C.S. § 1307.

The Competition Act required that generation rates be determined through market forces rather than through traditional rate base/rate of return/Section 1307 regulation. At the end of the transition period, each Electric Distribution Company (“EDC”) (or Commission-approved alternative default service provider) was to acquire electric energy at “prevailing market prices” to serve those customers who do not choose an Electric Generation Supplier (“EGS”) or whose EGS fails to deliver.

The Pennsylvania General Assembly further modified certain provisions of the Public Utility Code through the passage of Act 129 of 2008. In the Preamble to Act 129, the General Assembly noted that price stability was a concern that needed to be addressed. Specifically, the General Assembly provided the following in the Preamble:

The General Assembly recognizes the following public policy findings and declares that the following objective 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 volatility, 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.¹

The General Assembly directed that electricity service must be provided to Pennsylvania's consumers at the least cost without losing sight of price stability. In addition to the obligation to provide least cost electric service at stable prices, Act 129 requires that default service be adequate, reliable, affordable, efficient, and available.² In reviewing Duquesne's filing, the Commission must assess it to ensure these legal obligations are met so as to provide default service customers rates that are reflective of the least cost over time.

¹ See Preamble to Act 129, 2008 Pa. Laws 129.

² See Preamble to Act 129, 2008 Pa. Laws 129.

Act 129 modified the legal standard for default service. The legal standard against which the Petition must be evaluated is set forth in Section 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e) “Obligation to serve”. Act 129, as codified in paragraph (3.1) of Section 2807(e) requires that electric generation be obtained through competitive procurement processes which can include auctions, requests for proposals, and bilateral agreements.³

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

- (i) Spot market purchases
- (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, or more that four and not more than 20 years.⁴

The provisions of Act 129, as codified in paragraph (3.4) of Section 2807(e) require that a 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).⁵

³ 66 Pa. C.S. §2807(e)(3.1)

⁴ 66 Pa. C.S. §2807(e)(3.2)

⁵ 66 Pa. C.S. §2807(e)(3.4)

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

The OSBA did not take a position with respect to Residential Class Issues.

a. Product(s) and Product Terms

The OSBA did not take a position with respect to Residential Class Issues.

b. Procurement Dates

The OSBA did not take a position with respect to Residential Class Issues.

c. Reserving Supply For Retail Opt-In Customer Participation

The OSBA did not take a position with respect to Residential Class Issues.

2. Small C&I Procurement Issues

The OSBA agrees with the Company's proposed procurement strategy for the Small C&I procurement group because it continues to provide reasonable price stability for Small C&I default service customers. The Small C&I procurement group would continue to include all customers with peak demands of less than 25 kW taking service on Duquesne's Rate GS/GM – General Service Small and Medium or Rate GMH – General Service Heating rate schedules.⁶

a. Product(s) and Product Terms

Duquesne proposes to offer Small C&I customers a fixed-price default service option for the 2013-2015 default service period. Default service rates would be reset twice per year and reconciled on an annual basis. All Small C&I default service supply would be provided via one-year fixed price full requirements, load following contracts that would be awarded as the result of an RFP-based procurement.⁷

⁶ OSBA Statement No. 1 at 3

⁷ OSBA Statement No. 1 at 2.

Under the Company's current default service program (POLR V), Duquesne is authorized to use a mix of full requirements load-following contracts ranging from 5 months to 17 months in length to serve Small C&I customers. Procurements generally take place between one and seven months prior to the delivery of energy, and the contracts are not overlapping (or laddered). Default service rates are currently reset once per year.⁸

As compared to POLR V, the Company proposes to adjust Small C&I default service rates more frequently, and procure default service supply closer to the delivery date of the energy. Ultimately, the Company's proposal is to make Small C&I default service rates more market responsive under POLR VI.⁹

Duquesne also recognizes the need to provide Small C&I customers "some level of rate stability moving from one default service plant to another."¹⁰ Laddering the Small C&I procurement contracts will limit the turnover in default service supply to 50% (of the total supply) at each procurement. The OSBA continues to believe that price stability should remain an important consideration in the design of a default service procurement plan, and the OSBA believes that Duquesne's proposed approach should result in reasonable price stability for Small C&I default service customers over the 2013-2015 default service period.

b. Procurement Dates

Default service supply would be acquired via five separate solicitations (each covering 50% of the Small C&I default service load) beginning in Fall 2012 and ending in Fall 2014, with

⁸ OSBA Statement No. 1 at 4.

⁹ OSBA Statement No. 1 at 4.

¹⁰ OSBA Statement No. 1 at 4, *citing* Duquesne Statement No. 2 at 13.

contracts overlapping on a six-month basis.¹¹ Generally, all procurements would take place no more than two months prior to the delivery of the default supply.

3. Medium C&I Procurement Issues

The OSBA generally agrees with the Company's proposed procurement for the Medium C&I procurement group with one exception, discussed below. The Medium C&I procurement group would continue to include all customers with peak demands of greater than or equal to 25 kW but less than 300 kW that take service on Rates GS/GM or GMH.

a. Product(s) and Product Terms

Duquesne proposes to offer Medium C&I customers a fixed-price default service option for the 2013-2015 default service period. Default service rates would be reset twice per year and reconciled on an annual basis. All Medium C&I default service supply would be provided via six-month fixed price full requirements, load following contracts that would be awarded on an RFP-based procurement.¹²

The Company argues that Medium C&I customers exhibit growing sophistication with regard to competitive options, as evidenced by the fact that electric generation suppliers ("EGSs") are now providing 66% of the total Medium C&I load. Duquesne claims that Medium C&I customers do not require as much price stability in their default service rates as they did under POLR V. As such, the Company's proposed modifications are intended to deemphasize price stability in favor of making Medium C&I default service rates more reflective of current market prices.¹³

¹¹ As OSBA witness Mr. Kalcic testified, the Fall 2012 procurement would consist of six-month full requirement contracts to facilitate laddering. *See* OSBA Statement 1 at 3, *fn.* 2.

¹² OSBA Statement No. 1 at 3.

¹³ OSBA Statement No. 1 at 5.

As Mr. Kalcic testified, the continued development of a competitive retail supply market in the Company's service territory does not obviate the need for price stability for Duquesne's Medium C&I default service customers. Certainly, as the retail market for electric supply matures, Medium C&I customers may be expected to have more options to remaining on default service, and therefore more opportunities to purchase energy at a (longer term) fixed rate, if desired. However, as Mr. Kalcic also testified, not all customers chose to shop. Some customers may look to shop but end up staying with default service because they do not receive an attractive offer. Whatever their reasons for not shopping with an alternative supplier, those customers that remain on default service should not be saddled with an unnecessarily volatile rate.

Price stability should remain an important consideration when designing a default service procurement plan.¹⁴ Duquesne's proposal for POLR VI¹⁴ would have 100% of the default service supply for Medium C&I customers turn over every six months beginning in December 2013. Such a complete turnover could lead to unreasonable default service price volatility, depending on the movement in market prices.

As an alternative, the OSBA recommends a compromise in which Duquesne would utilize one-year (non-laddered) contracts to acquire 100% of the Medium C&I default service supply. This approach is similar to procurement plan approved in POLR V, except for the elimination of laddered contracts. Under the OSBA's alternative proposal, all procurements should generally take place no more than two months prior to delivery of the default supply just as under Duquesne's proposal.

¹⁴ OSBA Statement No. 1 at 6

b. Procurement Dates

Duquesne's default service supply would be acquired via five separate solicitations beginning in the Fall of 2012 and ending in the Fall of 2014. Contracts would run back-to-back with no laddering, and all procurements would take place no more than two months prior to the delivery of the default supply.

Under the OSBA's alternative proposal (as set forth in Section 3(a) above), all procurements should generally take place no more than two months prior to delivery of the default supply just as under Duquesne's proposal.

4. Large C&I Procurement Issues

The OSBA did not take a position with respect to Large Commercial and Industrial Class Issues.

5. Default Supply Load CAP Issues

The OSBA did not oppose the Duquesne's proposed load cap.

6. Procurements for Delivery Beyond May 31, 2015

The Company did not propose to procure energy for Medium C&I customers beyond May 31, 2015. The Company's Small C&I procurement methodology does provide for the acquisition of 50% of its supply for Small C&I customers to extend through November 30, 2015, or six months beyond the POLR VI plan period. However, in the event that legal or regulatory developments preclude Duquesne from continuing to serve as the default service provider after May 31, 2015, the Commission can adjust the relevant (November 2014) Small C&I procurement solicitation, as necessary.

7. Miscellaneous Procurement Issues

The OSBA did not testify on any miscellaneous procurement issues.

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

The OSBA agrees with the Company's proposal to restrict the Opt-In EGS Service ("Opt-In") Program to residential customers. Duquesne's proposed Opt-In Program is consistent with the Commission's directives in its Immediate Work Plan Final Order at Docket No. I-2011-2237952 ("IWP Final Order"), which designates only residential customers as eligible to participate. In preparing the Final Order, the Commission carefully weighed the parties' arguments for and against including small business customers in an Opt-In auction and concluded that the Opt-In auction should not include small business customers at this time. The Final Order provides in pertinent part:

The Commission recognizes the lack of shopping in the small C&I segment and, as such, requested comments on the inclusion of these customers in the Retail Opt-in Auctions. Parties were almost equally split between including and excluding small C&I customers. While the Commission agrees that shopping can be improved in this segment, *it maintains its original proposal that small C&I customers should not be eligible to participate.* Because there is no consistency across the EDCs in defining "small commercial," the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics.¹⁵

In determining not to include small business customers in the Opt-In Programs at this time, the Commission noted, generally and not referring to any specific utility, a "lack of shopping in the small C&I segment".¹⁶ However, and the Commission has specifically touted

¹⁵ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 1, 2012) at 42 (emphasis added).

¹⁶ *Id.*

Duquesne's default service programs "as having helped create one of the most competitive shopping environments in the Commonwealth, and the country while, at the same time, providing default service at rates and terms that meet the requirements of the Public Utility Code."¹⁷ RESA witness Mr. Kallaher even acknowledged the high level of competitive activity in Duquesne's service territory.¹⁸

Despite the clear and unambiguous directive from the Commission in the IWP Final Order, RESA has again proposed that the Opt-In Program be extended to small business customers (defined as 25 kW and below).¹⁹ As justification or "good cause" for its recommendation that Duquesne modify its Opt-In proposal to include Small C&I customers in conflict with the Commission's specific directive to the contrary, Mr. Kallaher says that "Duquesne Light's service territory has a high level of competitive activity, but despite this, a material number of customers, and a majority of residential customers, still are not shopping."²⁰ It is not clear what RESA means by "material number of customers," however the number of residential shopping customers is irrelevant to the argument that Small C&I should be included in Duquesne's Opt-In program.

a. Auction vs. ROI Program

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

¹⁷ Petition at 1 *citing* Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2), p. 33, fn 18, Docket No. L-00040169, May 10, 2007 ("[t]he experience of Duquesne shows that retail markets can work. Duquesne's territory has the highest of customer choice in Pennsylvania").

¹⁸ RESA Statement No. 2 at 7.

¹⁹ RESA Statement No. 2 at 4.

²⁰ RESA Statement No. 2 at 7.

b. Term of Offer

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

c. Discount Percentage

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

d. \$50 Bonus Payment

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

e. Guaranteed Savings

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

f. Customer Participation Cap

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

g. Supplier Load Cap

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

h. Enrollment Process

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

i. Mailings and Communications

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

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

The OSBA took no position on this issue as the Company has proposed that the Opt-In Program only apply to residential customers.

2. Standard Offer Program

The OSBA agrees with the Company's proposal to restrict the Standard Offer Customer Referral Program to residential customers.

a. Term of Offer

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

b. Discount Percentage

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

c. Guaranteed Savings

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

d. Program Start Date

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

e. Program Suspension

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

f. High Bill Callers

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

g. Choice Referral Team

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

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

The OSBA took no position on this issue as the Company has proposed that the Standard Offer Customer Referral Program only apply to residential customers.

3. Market Enhancement Program Cost Recovery

The OSBA will address the recovery of program costs for retail market enhancements generally, rather than with respect to each specific program.²¹

The OSBA agrees with Duquesne's proposal to recover the costs associated with its retail market enhancements through a discount on its purchased EGS receivables. The Company's proposal is consistent with the Commission's directive in its Retail Market Order.²²

RESA, in contrast, proposes to recover the costs of Duquesne's Opt-In and Standard Offer Programs from default service customers.²³ In the alternative, RESA argues, and FES

²¹ The OSBA notes that the only retail market enhancement applicable to small business customers in Duquesne's proposed plan is the New/Moving Customer Referral Program, which should incur little or no costs to implement. OSBA Statement No. 1 at 8.

²² See the *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952.

²³ RESA Statement No. 2 at 5 and 23.

agrees, that such costs should be recovered through a non-bypassable charge applicable to all distribution customers eligible for the enhancement programs.²⁴

In support of that position, witnesses for both FES and RESA argue that Duquesne's retail market enhancements benefit default service customers because all customers benefit from the development of a more robust/competitive electricity market. The OSBA agrees that all customers benefit from a competitive electricity market, but all customers also benefit from Duquesne's default service procurement program. As OSBA witness Kalcic explained in his Rebuttal Testimony:

I agree that all customers benefit from a competitive retail electricity market. However, it is also true that Duquesne's default service procurement program benefits *all* customers since it provides shopping customer a viable option to EGS offers.

Furthermore, the costs of running the Opt-In auction are fundamentally no different than the RFP-related costs that Duquesne incurs to acquire electricity supply for default service customers. Therefore, if default service customers are to share in the cost of Duquesne's RME programs (as Messrs. Butler and Banks suggest), then it is equally appropriate that shopping customers contribute toward the cost of Duquesne's default service program. In other words, cost sharing should be a two-way street.

On the other hand, if Duquesne's RFP-related procurement costs are the sole responsibility of default service customers (as is presently the case), then the costs of Duquesne's RME programs should be the sole responsibility of shopping customers (or their EGSs).²⁵

RESA witness Mr. Kallaher goes even a step further, seeking to penalize default service customers who choose not to shop. He suggests that "the costs of the retail market

²⁴ RESA Statement No. 2 at 5 and 23, and FES Statement No. 1 at 18.

²⁵ OSBA Statement No. 2 at 3.

enhancements RESA advocates are caused by the existence of default service, without which customers would all be on competitive supply, eliminating the need for measures to encourage them to move away from the utility.”²⁶ RESA implies that if all Duquesne customers only had the good sense to shop, all of these costs would be avoided. However, it is inequitable to penalize default service customers who choose not to shop by forcing them to subsidize customer choice in the Commonwealth.²⁷ Therefore the OSBA respectfully requests the Commission reject RESA’s and FES’ cost recovery proposals.

(Please refer to Section H below for the OSBA’s response to RESA’s proposal for a \$.005/kWh Adder to the Price-to-Compare.)

4. CAP Customer Participation in Market Enhancement Programs

The OSBA took no position on this issue.

5. Shopping Customer Participation in Market Enhancement Programs

The OSBA took no position on this issue.

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

Please see the discussion in Section 3 above.

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

The OSBA took no position on this issue.

8. Miscellaneous Market Enhancement Program Issues

The OSBA did not take a position on other issues.

²⁶ RESA Statement No. 2 at 24.

²⁷ OSBA Statement No. 2 at 3.

D. RATE DESIGN

1. Reconciliation Issues

The OSBA supports the Company's proposal for the reconciliation of over-collections and under-collections associated with the respective default service rates paid by Small C&I and Medium C&I customers on an annual basis.

2. Price To Compare Calculation Date

The OSBA took no position on the issue of the Calculation Date. Please see Section H (below) for the OSBA's response to RESA's proposal for a \$0.005kWh adder to the Price-to-Compare.

3. Non-Bypassable Charge To Recover PJM Charges

At the present time, Duquesne recovers PJM charges associated with default service load in its Transmission Service Charge ("TSC"). Since the TSC is paid only by default service customers, the TSC is a component of the price-to-compare ("PTC") for all default service procurement groups.²⁸ Constellation and RESA propose to change the method by which Duquesne recovers transmission charges. Under Constellation's proposal, Duquesne would assume responsibility for *all* transmission charges for *all* distribution customers, so that the TSC would become a non-bypassable charge (and removed from the PTC). Under RESA's proposal, Duquesne would assume responsibility for certain *non-market based* transmission charges for both shopping and non-shopping customers, and recover such charges in a non-market based rider ("NMB Rider").

The OSBA does not oppose recovering non-market based transmission costs such as Generation Deactivation charges for all customers in a non-market based ("NMB") rider.

²⁸ Duquesne Light Statement No. 4-R at 21.

However, the NMB Rider could effectively end up “double billing” current shopping customers for non-market based transmission costs (until their existing contracts expire). Therefore, the OSBA recommends that any implementation of the NMB Rider be delayed for a period of time, perhaps one year, in order to minimize the possibility that current shopping customers are double billed.²⁹

The OSBA opposes Constellation’s proposal to remove the TSC from the PTC. Constellation’s proposal would relieve retail suppliers of responsibility for known transmission costs (e.g., NITS service). Relieving retail suppliers of such cost responsibility will not produce any commensurate supply price benefits for consumers (since no risk premiums should be attached to such costs). Furthermore, removing all transmission costs from the PTC would deprive shopping customers of the opportunity to save money on the transmission portion of their bills.³⁰

E. TIME-OF-USE PROGRAM

The OSBA took no position on this issue.

F. SUPPLY MASTER AGREEMENT ISSUES

The OSBA took no position on this issue.

G. DATA/EGS COORDINATION ISSUES

The OSBA took no position on this issue.

H. GENERAL MISCELLANEOUS ISSUES

1. RESA’s Proposal for a \$.005/kWh Adder to the Price-to-Compare

RESA’s proposal to impose a 5-mill per kWh surcharge on Duquesne’s default service customers is unnecessary, unlawful, and inequitable. RESA witness Kallaher recommends that

²⁹ OSBA Statement No. 2 at 11-12.

³⁰ OSBA Statement No. 2 at 5.

such surcharge be used to pay for Duquesne's costs for providing default service that have otherwise not been collected and to pay for retail market enhancements.³¹

Mr. Kallaher argues, without providing any evidence in support, that Duquesne may not be recovering all of the costs that it incurs as the default service provider.³² It is noteworthy that Duquesne has not expressed any concern in this regard. Perhaps this is because Duquesne is well aware that default service providers are permitted to fully recover all reasonable costs incurred through the use of a reconciliation mechanism under Section 2807(e)(3.9) of the Public Utility Code.³³ It is reasonable to assume that Duquesne is recovering all of its default service costs in its default service rates. Therefore, the surcharge is unnecessary for Duquesne to recover its costs.

Furthermore, the OSBA disagrees with Mr. Kallaher's proposal in that it imposes on default service customers, the cost of implementing retail market enhancements. This issue is more fully discussed in Section (C 3) above.

However, even if the surcharge were to be used to cover the cost of retail market enhancements, Mr. Kallaher provides no basis for how he arrived at the proposed level of his recommended surcharge. Five mills appears to be completely arbitrary.³⁴ RESA's proposed surcharge would result in Duquesne collecting revenues of approximately \$41 million over the two-year plan period based on default service sales for just residential and small commercial and

³¹ RESA Statement No. 2 at 27.

³² RESA Statement No. 2 at 27.

³³ 66 Pa. C.S. §2807(e)(3.9).

³⁴ OSBA Statement No. 2 at 8.

medium commercial customers.³⁵ However, the estimated cost for retail market enhancements is only \$2.5 million.³⁶

Mr. Kallaher correctly anticipates that his recommended surcharge would produce revenue in excess of Duquesne's alleged otherwise unrecovered costs and the costs of retail market enhancements.³⁷ Not surprisingly, Mr. Kallaher also has a recommendation as to how that excess revenue should be used. Pursuant to Mr. Kallaher's proposal, Duquesne would be able to retain up to 10 percent of any excess revenue as an incentive (profit) and the remaining would be returned to all distribution customers, *i.e.* both default service and shopping customers.³⁸ Duquesne's profit would be approximately \$4 million over the two years of any costs incurred.³⁹

There are at least three glaring problems with Mr. Kallaher's proposal. First, it would be unlawful for Duquesne to earn a profit on the provision of default service. Default service providers are only entitled to recover all reasonable costs as well as an allowable rate of return on equity.

Second, the surcharge would artificially inflate the PTC because it is unrelated to the true cost of providing default service.⁴⁰ Any "savings" offered by EGSs over the inflated PTC are not actually savings at all. The increase in the PTC caused by the surcharge could result in an increase to the prices offered by EGSs, in which case shopping customers might not realize any

³⁵ OCA Statement 1-R at 12.

³⁶ OCA Statement 1-R at 13.

³⁷ RESA Statement No. 1 at 27.

³⁸ *Id.* at 27-28.

³⁹ OCA Statement No. 1-R at 12.

⁴⁰ OSBA Statement No. 2 at 9.

savings at all. The only benefit would be to EGSs that take in additional profits as a consequence of imposing a surcharge on default service customers.⁴¹

Finally, collecting a surcharge from default service customers and then returning the excess revenue collected from that surcharge to all distribution customers (including shopping customers who did not pay the surcharge) would cause default service customers to subsidize shopping customers. It is patently inequitable and discriminatory to redistribute revenues from default service customers to shopping customers without any link to cost causation.⁴²

RESA's proposed 5-mil adder to the PTC is unnecessary, unlawful, and inequitable. The OSBA respectfully requests that the Commission reject RESA's proposed 5-mill adder.

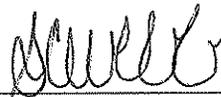
⁴¹ Id.

⁴² See *Lloyd v PA Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006)

IV. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein. The OSBA also respectfully requests that the Commission require Duquesne to file its compliance tariff(s) with redlines, noting the changes from the present tariff(s).

Respectfully submitted,



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