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VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
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Harrisburg, PA 17105-3265

Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2013 Through May 31, 2015; Docket No. P-2012-2301664; **MAIN BRIEF OF DOMINION RETAIL, INC. AND INTERSTATE GAS SUPPLY, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original copy of the Main Brief of Dominion Retail, Inc. and Interstate Gas Supply, Inc. This filing has been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact undersigned counsel.

Very truly yours,

Todd S. Stewart
*Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.*

TSS/alh
Enclosures
cc: ALJ Katrina L. Dunderdale

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Date: October 5, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
DOMINION RETAIL, INC. AND INTERSTATE GAS
SUPPLY, INC.**

DATED: October 5, 2012

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I. PROCEDURAL HISTORY

On or about April 27, 2012, Duquesne Light Company (“Duquesne”) filed a Petition with the Pennsylvania Public Utility Commission (“Commission”) seeking approval of its default service plan for the period June 1, 2013 through May 31, 2015. The Petition seeks approval of Duquesne’s POLR VI default service plan, which it intends to replace the current twenty-nine (29) month full requirements service, POLR V plan. The POLR VI plan proposes a series of one (1) year procurements and includes two significant competitive enhancements.

On May 9, 2012, Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) (collectively “EGS Parties”) filed a Joint Petition to Intervene in the above-captioned proceeding. Several other parties also intervened. On May 15, 2012, a Prehearing Order was issued requiring the filing of Prehearing Memoranda on or before June 4, 2012 and setting the date for the prehearing conference as June 8, 2012 before Presiding Administrative Law Judge Katrina L. Dunderdale. At the prehearing conference a schedule was established that provided for the submission of Direct, Rebuttal and Surrebuttal Testimony and two days of hearings to be held in Pittsburgh. The successive rounds of testimony were submitted as planned, but due to last minute arrangements that resulted in all parties agreeing to waive cross examination on all other parties, the hearing was conducted on a single day and completed in approximately 1 hour.

The procedural schedule also requires the submission of Main Briefs on October 5, 2012. This brief is offered in compliance with that requirement.

II. SUMMARY OF ARGUMENT

The EGS Parties largely support Duquesne's proposal in this case. There are a few exceptions noted and discussed herein, but the EGS Parties otherwise recommend approval of the filing.

Duquesne has proposed to procure one-year contracts for the period June 1, 2013 through May 31, 2014 and a second procurement for June 1, 2014 through May 31, 2015, half of the contracts without supply in November of 2012 and half in April of 2013 for the 2014 supply and likewise for the 2015 period. This would create time diversity for the purchase of the contracts, but would create a fairly stabilized annual pricing mechanism for Duquesne for the period. (Duquesne Light Statement "DL St." No. 2 (James E. Wilson), pp. 6 – 10).

As part of this proposal Duquesne also proposed to reconcile its default service costs on an annual basis, while under its current (POLR V) plan it has not reconciled those costs at all. As a critical component of this plan, Duquesne does not intend to purchase any block or spot power for providing supply to its residential customers. According to the EGS Parties' witness, Mr. Thomas J. Butler, Duquesne Light is providing adequate diversity in its purchases for a relatively short default service period and strongly supports the plan to buy one-year full requirements contracts staged over time because it provides the least amount of risk for rate pairs in the current market regime. However, because long-term prices continue to trade at premiums compared to short-term prices, Duquesne's plan a logical and prudent attempt to meet the least cost requirements. (Thomas J. Butler Statement "TJB St." No. 1, p. 3:5-21). Mr. Butler also concurs with Mr. Wilson's testimony that purchases of block power present additional risks of recovery. While Mr. Butler, testifying on behalf of DES and IGS, did have some concerns with

regard to Duquesne's proposed one-year reconciliation proposal, because of the one-year product procurement schedule, he was willing to accept that result in this case. (TJB St. No.1, p. 4:3-12).

A separate, but related part of Duquesne's plan is its proposal to engage several competitive enhancements, as described by Mr. Neal S. Fisher in Duquesne Light Statement No. 3. In particular, Mr. Fisher proposes two major competitive enhancements, a Retail Opt-in EGS Auction ("ROA") and a Standard Offer Referral Program ("SOR"). The ROA product would be promoted at a fixed price, expressed in cent per kilowatt hour, that would remain fixed for twelve (12) billing cycles, with no early termination fee or switching restrictions. Duquesne planned to bid out this program in tranches with no supplier being able to win more than half of the ten (10) proposed tranches. The basis of the bid would have been the discount off the PTC, with the lowest clearing bids winning tranches at the clearing level. Duquesne proposed that the discount would have to be at least a five percent (5%) off of the effective Price to Compare ("PTC") at the time the program was offered, but the ultimate discount would be set by the RFP process. Customers remaining on the program for at least three (3) billing cycles would receive a fifty dollar (\$50.00) bonus rebate. (TJB St. No. 1, p. 4:21-5:16).

DES and IGS are concerned that in the current market situation, one characterized by extremely low (in historical terms) market prices, a five percent (5%) or greater discount may be too "rich". As a consequence, Mr. Butler proposed that the minimum discount be lowered to two percent (2%). Alternatively, he proposed eliminating the fifty dollar (\$50.00) rebate. Customers must be required to pay a reasonable portion of the costs of the program through a non-bypassable rider, according to Mr. Butler, and it is neither equitable or correct to suggest that only suppliers benefit from more robust competition and that customers should be asked to pay some portion of the costs. (TJB St. No. 1, pp. 5:20-6:8).

With regard to the SOR, Mr. Butler again believes that the terms of the offer are generally acceptable. His only significant concern is the proposed cost recovery through the Purchase of Receivable (“POR”) discount. The level of the discount proposed by Duquesne for the program is a seven percent (7%) discount, but Mr. Butler testified, for the same reasons noted above, that for the referral program, a five percent (5%) discount would be adequate. (TJB St. No. 1, p. 7:6-12).

The EGS Parties take serious issue with Duquesne’s proposal to recover the costs of the SOR program through the POR discount, and instead recommend that the program costs be recovered through a per switch fee charged to suppliers, if the Commission eventually concludes that suppliers are to bear the cost of the program. (TJB St. No. 1-SR, p. 4:1-7). In Surrebuttal testimony, Mr. Fisher conceded that at least some portion of the costs of the SOR could be recovered through a per switch fee, but that Duquesne would continue to have a POR recovery plan as a back-up. While this plan is a step in the right direction, it still places existing EGSs, who have no intention of participating in the SOR, in jeopardy for costs recovery for costs they did not cause. (TJB St. No. 1-SR, p. 4:18-5:13).

On August 16, 2012, after the submission of direct testimony in this case, however, the landscape changed with regard to the Commission’s intentions for competitive enhancements and other facets of default service programs for the upcoming 2013-2015 procurement period. On that day the Commission issued an Order that resolved the Exceptions to the Recommended Decision in the FirstEnergy Companies’ default service plan filing.¹ In the *FE Order* the

¹ *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.*, (Opinion and Order entered August 16, 2012)(“*FE Order*”).

Commission diverged, in some cases significantly, from the path it had laid out only six months earlier in its *IWP Order*.²

Importantly, for purposes of this matter, the *FE Order* eliminates the Retail Opt-in Auction (“ROA”) and, instead converts it to a retail opt-in program that is more akin to an aggregation or assignment program. The *FE Order* made other important changes as well. As a consequence of those changes, the EGS Parties submitted modifications that they would offer to the plan required by the *FE Order*, that would make that plan acceptable to DES and IGS. (TJB St. 1-R, p. 3:13-5:8).

Most notable among these necessary modifications is the need to screen suppliers participating in the newly conceived ROA, by requiring that suppliers who participate in the program post security for the aggregate amount of the fifty dollar (\$50.00) bonuses that they will be required to pay, based on the number of customers assigned (e.g., security = number of customers assigned x \$50). Suppliers would post this security as a pre-condition to being able to participate in the program, in the form of a cash deposit or performance bond. Also, suppliers participating in the program would be required to post their price for the eight (8) month period on the Commission’s PA Power Switch website and simultaneously provide the price to customers, which would be the same time they provide customers with the initial terms and conditions of the program. This will ensure maximum transparency and ensure customers the ability to freely switch after four (4) months if a particular supplier intended to offer a price for that period that was substantially above market. (TJB St. No. 1-R, p. 3:13-4:14). Mr. Butler’s rebuttal testimony makes it clear that customers should be responsible for at least a fair portion of the cost of the retail enhancements. (TJB St. No 1-R, p. 4:17-5:8).

² *Retail Markets Investigation, Intermediate Work Plan*; Docket No. I-2011-2237952 (Order entered March 2, 2012)(“*IWP Order*”).

The EGS Parties support these positions, and others below.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

As the proponent of a rule or order, Duquesne bears the burden of proving that its proposed default service plan is in the public's best interest, 66 Pa. C.S. § 332(a), and that all of its proposals satisfy the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2807(e), *et seq.*, the Commission's Default Service Regulations. 52 Pa. Code § 54.181, *et seq.*, as well as the Commission's recent guidance in its Retail Markets Investigation proceedings. *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012)(*"IWP Order"*). More importantly, however, it now appears that the standard for review of such plans has shifted in the course of this proceeding and now includes the *FE Order* and the yet to be formalized results of the binding poll conducted on September 27, 2012 in the PECO³ default service plan.

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

Due to the complexity of this matter and the diversity of issues, it is not possible to make a blanket statement as to whether Duquesne satisfied its burden of proof. In some areas, as

³ *Petition of PECO Energy Company for Approval of Its Default Service Program II*, Docket No. P-2012-2283641 (Binding Poll Conducted September 27, 2012)(*"PECO"*).

identified herein, Duquesne has provided sufficient evidence, and in others it has failed to carry its burden of proof.

2. Legal Standards Applicable To Default Service

The legal standards that apply to default service begin with the fundamental tenants of the Pennsylvania Public Utility Code that any rate charged by a public utility be just and reasonable and that service be provided in manner that is reasonable and not unduly discriminatory. 66 Pa. C.S. § 1301, 66 Pa. C.S. § 1501 and 66 Pa. C.S. § 1304, respectively. There are requirements specific to default service found at 66 Pa. C.S. §§ 2807(e), *et seq.*, as well as the Commission's Default Service Regulations at 52 Pa. Code § 54.181, *et seq.* Finally, parties may rely, at least in some respects, upon the Commission's guidance in its Retail Markets Investigation proceedings, and its *IWP Order* in particular. Based upon recent decisions regarding two separate default service plans, however, it now appears that the standard for review of such plans has shifted and now necessarily includes the *FE Order* and the yet to be formalized results of the binding poll conducted on September 27, 2012, in the *PECO* default service plan.

Taken together these requirements demand default service at prices that are just and reasonable, while still meeting the objective of creating a robust competitive market for retail electricity sales.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

Under its POLR V program Duquesne procured full requirement service for a twenty-nine (29) month period. Under its POLR VI plan, Duquesne will issue wholesale requests for proposals ("RFPs") for one-year full requirements contracts for residential, small and medium commercial and industrial (C&I) customers. The fixed price bids will be for full requirements default service, including ancillary services. For residential customers, Duquesne proposes to do

these procurements for delivery periods June 1, 2013 through May 31, 2014 and then a subsequent procurement for the period June 1, 2014 through May 31, 2015 and will adjust the residential rates each year accordingly. Duquesne proposes to buy fifty percent (50%) of the 2013 – 2014 supply in November of 2012 and fifty-percent (50%) in April of 2013, likewise for the 2014-2015 delivery period. It appears that Duquesne will procure fifty percent (50%) of its default service supply in April 2013, twenty-five percent (25%) in November of 2013 and twenty-five percent (25%) in April 2014. Duquesne proposes to perform these solicitations at the same time it issues the solicitations for default service supply for its small and medium C&I classes. (TJB St. No. 1, p. 2:11-3:2).

The EGS Parties believe that Duquesne is providing adequate diversity in its purchases for a relatively short default service period, and thus strongly support the plan to buy one-year full requirements contracts, staged over time, because it provides the least amount of risk for ratepayers in the current market regime. Because long term prices continue to trade at premiums compared to short term prices, Duquesne's plan is logical and prudent and meets the least cost requirements. The EGS Parties agree with Mr. Wilson (DL St. No 2) that purchases of block power present additional risks of recovery and submit that mixing in block power presents additional risks for full requirements providers who are left serving the peak loads. Mr. Butler thus concluded that there are no additional benefits to be had by including block power purchases, as compared to full requirements power – given the additional risks added to the equation for full requirements providers. Mr. Butler, also recognizes that it appears that it has been very difficult for utilities that have mixed block purchases with full requirements purchases to accurately predict their default service prices, possibly leading to large over or under collections, which can cause large swings in the Price to Compare (“PTC”) and a great degree of unnecessary confusion in the retail market when dealing with everyday electricity customers.

(TJB St. No. 1, p. 3:5-21). Thus, the EGS Parties submit that laddering one-year purchases, as Duquesne has proposed, provides adequate diversity, a reasonably predictable Price to Compare and thus is an acceptable plan for the coming period. (TJB St. No. 1, p 3:5-21).

The Commission's recent guidance⁴ supports this result, as does the result of the polling in the *PECO* case. In those matters, the Commission rejected proposals to modify the FirstEnergy Companies', and PECO's procurement plans, plans that similarly excluded block or spot purchases. Those results confirm that the Commission intends that default service plans, at least for the 2013 to 2015 period, should not include block or spot power, due to the volatility that such wholesale products can bring to default service rates. Accordingly, the EGS Parties recommend approval of Duquesne's procurement proposal in its entirety.

- a) Product(s) and Product Terms
- b) Procurement Dates
- c) Reserving Supply For Retail Opt-In Customer Participation
- 2. Small C&I Procurement Issues
 - a) Product(s) and Product Terms
 - b) Procurement Dates
- 3. Medium C&I Procurement Issues
 - a) Product(s) and Product Terms
 - b) Procurement Dates
- 4. Large C&I Procurement Issues
- 5. Default Supply Load CAP Issues
- 6. Procurements for Delivery Beyond May 31, 2015
- 7. Miscellaneous Procurement Issues

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

Duquesne proposed a ROA program with the product established as a fixed price, at a minimum five percent (5%) discount off of the PTC that would be effective for twelve (12) billing cycles with no early termination fees or switching restrictions. Duquesne proposed to bid the prospective customers out to EGSs in ten (10) tranches, with any one EGS eligible to win up

⁴ *FE Order*, slip op., pp. 24-27.

to five (5) of those ten (10) tranches in an RFP process. The basis of the bid would be the discount at which the service would be provided, and must include a fifty dollar (\$50) bonus for customers that stay with the supplier for at least three (3) entire billing cycles. Customers would be enrolled in late May or early June of 2013 and would be notified of the offer through a letter sent by Duquesne. While the program would target non-shopping, non-CAP residential customers, Duquesne states that it would not turn away other customers who might inquire about the program, but would limit customer participation to fifty percent (50%) of eligible default service customers. After the end of the twelve (12) month period, customers who do not accept a new offer from their supplier or do not take affirmative action to change suppliers, or return to default service, would remain with the assigned EGS on a month-to-month contract with no switching restrictions. Importantly, Duquesne has proposed to recover the costs of this program directly from the EGSs who win customers, on a pro-rata basis. (TJB St. No. 1, p. 4:21-5:8).

With the exception of a recommendation to reduce the discount or eliminate the bonus due to historically low market prices, the EGS Parties endorse Duquesne's proposal. (TJB St. No. 1, p. 5:20-6:8). With the new vision expressed in the Commission's more recent pronouncements on the issues, however, it appears that the plan is likely to be modified by the Commission to bring it into line with those new standards. Those requirements, discussed below, are acceptable to the EGS Parties, so long as the Commission imposes the financial security and transparency measures proposed by Mr. Butler in his Rebuttal Testimony. (TJB St. No. 1-R, pp. 3-4).

These modifications include eliminating the auction process (FirstEnergy had proposed a DCA) and replacing it with an assignment method by which all eligible suppliers wishing to serve customers will be allocated a *pro rata* percentage of the customers that choose to participate in the program. The Commission also shifted its original stance that the solicitation

of customers be held after the auction process. Because there will be no auction process, customers will be solicited to participate in the ROA prior to their assignment to suppliers. The Commission also modified the product that will be offered in the ROA program, opting to require a twelve (12) month product, which includes an initial four (4) month price that will be a guaranteed five percent (5%) off the Price to Compare (“PTC”) at the time of enrollment, followed by an eight (8) month fixed price product which would require prior Commission review of the terms and conditions. Customers who participate for the first four (4) full months will receive a fifty dollar (\$50) rebate from the supplier. The Commission sustained FirstEnergy’s proposed fifty percent (50%) customers participation cap, thus rejecting the OCA’s proposed twenty percent (20%) customer participation cap – maintaining its own position from the *IWP Order* that fifty percent (50%) is the correct number.

These changes are troubling to Mr. Butler because it appears that there will now be no screening of suppliers who will be eligible to participate in that program. His concern is based on the fact that suppliers who participate in the ROA will carry the Commission’s (and Duquesne’s) “seal of approval.” As such, customers will believe that those suppliers have been vetted by the Commission and are all reputable and financially able to meet their obligations. In order to ensure that the customers’ expectations are met, considering these will mostly be first time shopping customers, the EGS Parties believe that it is necessary to have some sort of screening process to ensure that the suppliers participating in the ROA provide a positive first time experience. Mr. Butler proposed two (2) requirements that will accomplish this goal if the Commission were to impose an *FE Order* style program for Duquesne. (TJB St. No. 1-R, pp. 2:5-5:8).

First, he proposes that participating suppliers provide financial assurance that they are capable of providing the fifty-dollar (\$50) cash bonus to customers, either in the form of a

performance bond or a cash deposit that will adequately ensure that when the time comes to pay the fifty-dollar (\$50) bonus to customers that the suppliers are able to do so.

Due to the two part nature of the offer, with the first part having a defined discount and the second part with no required discount, it is necessary to provide transparency to customers so that they understand the pricing they will receive, particularly for the eight (8) month fixed price part of the program, since that price may not be the same price charged for the initial four (4) month period. Customers should be provided with the opportunity to ensure that the offer suits their needs. The EGS Parties thus propose that suppliers provide customers with the pricing for that eight (8) month period when they provide the terms and conditions for the initial four (4) month term, as well as post that price at a specially delineated section of the Commission's PAPowerSwitch.com website so that customers will be able to compare the price of their eight-month component to other offers in the marketplace and make sure the offer is in fact the one best suited for them. (TJB St. No. 1-SR, p. 4:4-14).

If the *FE Order* model is applied here as it has been elsewhere, these changes are the bare minimum that is required to ensure program success.

a) Auction vs. ROI Program

As discussed above, the EGS Parties believe that the Commission now intends to impose the *FE Order* style program in all EDC service territories. If that is the case, and with the modifications discussed above, the EGS Parties support that result. (TJB St. No. 1-R, p.3:13-23). Otherwise, except with regard to cost recovery and the level of the discount, EGS Parties support the Duquesne proposal.

b) Term of Offer

The EGS Parties support a one year product, whether provided as a unified price (their preference) or a bifurcated price as required elsewhere. (TJB St. No. 1, pp. 4:17-5:16; TJB St. No. 1-R, pp. 2:5-5:8).

c) Discount Percentage

As discussed by Mr. Butler (TJB St. No. 1, pp. 5:20-6:8), the EGS Parties suggest that the minimum discount percentage be lowered to two percent (2%) or the fifty-dollar (\$50) rebate be eliminated. Given that electricity prices are extremely low right now, it has become much more difficult for retailers to create headroom or differential below the PTC. It would be tragic if the retail auction were to fail to garner supplier participation because the criteria to start the auction were set too high. Accordingly, the EGS Parties support lowering the discount or eliminating the fifty-dollar (\$50) bonus payment.

d) Fifty-Dollar (\$50) Bonus Payment

As discussed immediately above, the EGS Parties support elimination of the bonus if the discount rate is not lowered. (TJB St. No. 1, pp. 5:20-6:8).

e) Guaranteed Savings

The EGS Parties support an offer that provides a fixed price for the duration of the product, not an offer with a variable price that would otherwise expose suppliers to significant risk. (TJB St. No. 1-R, p.8). The recommendation for a guaranteed savings offer in this case in particular, makes little sense. Duquesne has proposed one-year procurements as the basis of its default service, and based upon the timing and the overlap of the ROA with full requirements contracts, the price may change one time, for the last month of the program. To add the additional risk and notice requirements for a single month, when the price would otherwise be

fixed and with no restrictions on shopping, makes no sense and the notion of a guaranteed savings product should be disregarded.

f) Customer Participation Cap

The EGS Parties support the fifty percent (50%) customer participation cap proposed by Duquesne.

g) Supplier Load Cap

The EGS Parties support the fifty percent (50%) supplier load cap proposed by Duquesne. (TJB St. No. 1-R, pp. 6:15-7:2).

h) Enrollment Process

The EGS Parties support the enrolment process approved by the Commission in the *FE Order*, namely, that customers be solicited prior to either assignment to suppliers, or the conduct of an auction. (TJB St. No. 1-SR, p. 3:4-20). The Commission recognizes that there will be substantial benefits to customers, in the form of lower prices, if EGSs know how many customers will be in each tranche.⁵

- i) Mailings and Communications
- j) Opt-In Electric Generation Supplier Service Program Request for Proposals and Agreement Between Duquesne Light and EGSs

2. Standard Offer Program

According to Duquesne's proposal, the standard offer program would be offered at a fixed price expressed in cents per kilowatt hour for twelve (12) billing cycles, again with no early termination fees or restrictions on customer switching. The discount would be set at seven percent (7%) off of the PTC at the time of the offer and will allow customers to select a specific EGS or to be assigned through a "fair and impartial" process. EGSs would be able to enter into

⁵ *FE Order*, slip op., pp. 108-109.

and exit the program on an ongoing basis with appropriate notice to Duquesne. The referral program would begin on June 1, 2014 and continue thereafter and would be available to non-shopping non-cap residential customers that call Duquesne with a new or moving service request, a high bill complaint, or an inquiry about customer choice. Similar to the ROA, this program would be focused on customers who were not shopping, but Duquesne would not turn away other customers who may inquire. Duquesne has proposed to suspend referrals under this program if sixty-seven percent (67%) or more residential customers are already shopping. Duquesne has proposed to recover the costs of this program through the POR discount paid by EGS serving residential customers. (TJB St. No. 1, pp. 6-7).

a) Term of Offer

The EGS Parties support the one-year referral product proposed by Duquesne. (TJB St. No. 1, p. 7:6-12).

b) Discount Percentage

The EGS Parties suggest that the discount percentage be lowered to five percent (5%). Mr. Butler is concerned that the level of the proposed discount is too large. While he recognizes that the Commission has recommended a seven percent (7%) discount for referral programs, he also is aware that market prices have been steadily declining, even since the RMI Order was issued. Therefore, for the same reasons behind his recommendation for the discount level for the opt-in program, low current market prices, he suggests a reduction of the discount for the referral program to five percent (5%). (TJB St. No. 1, p. 7:6-12).

c) Guaranteed Savings

The EGS Parties reject the OCA's proposed guaranteed savings product and instead support the concept of a fixed price for the entire period of the SOR program. The Commission

has endorsed this concept as well in both the *FE Order* and in the *PECO* case. (TJB St. No. 1-R, p. 8).

- d) Program Start Date
- e) Program Suspension
- f) High Bill Callers
- g) Choice Referral Team
- h) Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSs

3. Market Enhancement Program Cost Recovery

Duquesne has proposed to recover the costs of the ROA from winning suppliers on a *pro-rata* basis. While this approach appears to be reasonable if the Commission imposes an *FE Order* style assignment program, the cost could grow if the auction process is retained. If the auction wins the day, then customers must share in the costs since they benefit from these programs. (TJB St. No. 1, p. 6:4-8).

With regard to the SOR, Duquesne initially proposed to recover the costs from all suppliers in the POR discount, whether or not the supplier participates in the SOR. While such a recovery mechanism is simple to administer, a supplier who serves a larger percentage of the customers, who may or may not participate in the referral program, could end up paying a large and unfair share of the costs, with no measurable benefit. Accordingly, Mr. Butler recommended that believe that a more fair and equitable solution be developed.

The SOR be paid for by participating suppliers on a “per customer acquired basis” (e.g. \$10/customer acquired) only. This way the cost responsibility is directly applied to the cost causers. While there may be certain programming necessary for the program to be started, those upfront costs should be collected by Duquesne Light through a non-bypassable rider since one has to assume this program benefits choice in general and should be borne by all customers, because every customer may be able to take advantage of the program in the future. (TJB St.

No. 1, pp. 7:15-8:9). It is not appropriate to put suppliers at risk for future recovery of any remaining costs through a POR discount, as proposed by Duquesne witness Fisher, particularly those suppliers that have customers today and may choose not to participate in the referral program. (TJB St. No. 1-SR, pp. 4:23-5:13).

4. CAP Customer Participation in Market Enhancement Programs
 5. Shopping Customer Participation in Market Enhancement Programs
 6. Small C&I Customer Participation in Market Enhancement Programs
 7. Customer Status at the End of the Market Enhancement Product
 8. Miscellaneous Market Enhancement Program Issues
- D. RATE DESIGN
1. Reconciliation Issues
 2. Price To Compare Calculation Date
 3. Non-Bypassable Charge To Recover PJM Charges
- E. TIME-OF-USE PROGRAM
- F. SUPPLY MASTER AGREEMENT ISSUES
- G. DATA /EGS COORDINATION ISSUES
- H. GENERAL MISCELLANEOUS ISSUES

IV. CONCLUSION

It should be relatively clear that with the exception of cost recovery and a few other issues, the EGS Parties are largely in agreement with the default service plan proposed by Duquesne in this matter. The complication of the *FE Order* modifies that position somewhat, mostly by requiring additional safeguards to make the *FE Order* more palatable here. Accordingly, the EGS Parties respectfully request approval of Duquesne Light Company's POLR VI in a manner consistent with the EGS Parties' proposals in this Brief and testimony.

Respectfully submitted,



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