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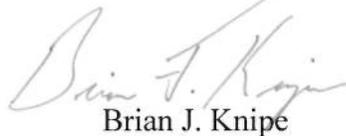
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Main Brief of FirstEnergy Solutions Corp.* Copies of these documents have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Katrina L. Dunderdale (via email and regular mail, w/encls.)
Certificate of Service

**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
FIRSTENERGY SOLUTIONS CORP.**

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DATED: October 5, 2012

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I. PROCEDURAL HISTORY

On April 27, 2012, Duquesne Light Company ("Duquesne Light") filed a Petition for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 ("Petition"). Notice of the Petition was published in the *Pennsylvania Bulletin* on May 19, 2012, 42 Pa.B. 2870, setting a deadline of June 4, 2012 for protests and interventions.

Notices or Petitions to Intervene and, in some cases, Answers, were filed by the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Duquesne Industrial Intervenors, Citizen Power, Inc., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Constellation NewEnergy, Inc. and Exelon Generation Corp., LLC (collectively, "Constellation"), Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and Interstate Gas Supply ("IGS;" collectively, "DES/IGS"), FirstEnergy Solutions Corp. ("FES"), NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC, Noble Americas Energy Solutions, LLC, and the Retail Energy Supply Association ("RESA").

On June 8, 2012, the parties participated in a prehearing conference before Administrative Law Judge Katrina L. Dunderdale ("ALJ"). At the prehearing conference, the ALJ granted all requests for intervention, adopted the official service list and litigation schedule for these proceedings, and adopted modifications of the Commission's regulations regarding discovery.

The parties took discovery and served written direct, rebuttal and surrebuttal testimony. An evidentiary hearing was held on September 13, 2012, during which certain Duquesne Light witnesses presented written rejoinder testimony.

Pursuant to the Prehearing Order issued June 11, 2012 and the common briefing outline approved by the ALJ, FES hereby submits this Main Brief.

II. SUMMARY OF ARGUMENT

Duquesne Light has proposed a default service program ("DSP") to establish the terms and conditions of default service from June 1, 2013 to May 31, 2015, a period during which the Pennsylvania Public Utility Commission ("Commission") intends to transition Pennsylvania to an optimal end-state of electricity default service. In addition to proposing the terms and conditions under which it will procure and provide default service, Duquesne Light has proposed retail market enhancement programs, entitled the Opt-In EGS Service Program ("Opt-In Program") and the Standard Offer Customer Referral Program ("Referral Program"). FES is a licensed electric generation supplier ("EGS") in Pennsylvania, as well as a wholesale supplier of power to default service providers, and supports the Commission's efforts to further promote retail electric competition. As FES explains below, the evidence of record demonstrates that Duquesne Light's proposed wholesale procurement plan, the Opt-In Program and the Referral Program should be approved only with certain modifications recommended by FES. These modifications will ensure that the DSP provides the least cost to customers over time, and that the retail market enhancement programs result in a price for customers that is transparent, stable and economical relative to other options.

With regard to Duquesne Light's wholesale procurements, FES opposes Duquesne Light's proposal to reduce its wholesale load cap for Small and Medium commercial and industrial ("C&I") customers from the 75% cap of Duquesne Light's previous default service program to 50%, and to establish a 50% load cap for its Residential customer procurements. These load caps are not required by the Commission's default service directives and would prevent

Duquesne Light from obtaining supply for default service at the least cost over time. The reasons Duquesne Light has posited to support this reduction in the amount of load the lowest price suppliers can obtain in its wholesale procurements are unpersuasive and should be rejected.

The Opt-In Program and Referral Program were proposed following the Commission's issuance of its Intermediate Work Plan Order, which directed EDCs to include such programs in their next default service plan filings, see Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("IWP Order"), and the final order in the ME/PN/PP/WP DSP case¹ and the PECO Binding Poll² further refined the Commission's intent for these programs. FES recommends some modifications to the design of each program as proposed by Duquesne Light. FES's recommendations reflect its belief that in designing such programs to stimulate retail electric competition, the most important consideration is to give customers the lowest available pricing. This will ensure that the outcome of the programs benefit participating customers and leave them with a positive view of their experience with the Commission-sponsored programs and with retail electric competition in general. Therefore, FES recommends that no limits on the number of customers an EGS may serve are appropriate. FES also strongly urges that a bidding competition be retained for the Opt-In Program, as well as a product priced "at least 5% below" the price-to-compare ("PTC"). In addition, the Referral Program should begin on or around June 1, 2013 and not be deferred until 2014, and the Referral Program should not be suspended when a particular customer shopping percentage is reached as Duquesne Light proposes. Further, while FES believes that costs of the programs should be recovered from customers, it recognizes

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, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) ("ME/PN/PP/WP Order").

² Petition of PECO Energy Company For Approval of Its Default Service Program, Docket No. P-2012-2283641

that the Commission's preference is for EGSs to bear most of these costs. Any cost recovery methodology should establish that an EGS's cost per customer be a known, capped amount, in order for there to be significant EGS participation. Any under-collection of program costs should be collected from eligible customers.

FES will also address Duquesne Light's proposal for obtaining Time of Use ("TOU") supply through its wholesale procurements, as well as concerns with Duquesne Light's Supplier Master Agreement ("SMA").

For the reasons detailed below, Duquesne Light's DSP should be approved only with the modifications recommended by FES.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

Duquesne Light 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). Duquesne Light 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 Light must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). In this case, Duquesne Light requests that the Commission approve the Petition establishing its proposed POLR VI program, as well as retail market enhancement programs. Additionally, the Commission's decision must be supported by substantial evidence in the record.

("PECO Binding Poll").

More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980).

2. Legal Standards Applicable To Default Service

The Competition Act³ mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the Commonwealth's recognition that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa. C.S. § 2802(5).

The General Assembly amended the Competition Act through Act 129 of 2008. The Competition Act, as amended by Act 129, requires that default service providers acquire electric energy through a "prudent mix" of contracts, including spot market purchases, short-term contracts and long-term contracts of between five and 20 years. 66 Pa. C.S. § 2807(e)(3.2). The prudent mix of resources must be 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 General Assembly declared the policy goals of Act 129 in a Preamble, which states that price stability is a key concern that needed to be addressed:

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

- (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, *taking into account*

³ The Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 ("Act 129"), codified at 66 Pa. C.S. §§ 2801, et seq. ("Competition Act").

any benefits of price stability over time and the impact on the environment.

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

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

Recently, the Commission amended its default service regulations, 52 Pa. Code §§ 54.181-189, and policy statement, 52 Pa. Code §§ 69.1801-1817, to reflect Act 129's amendments to the Competition 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"); Proposed Policy Statement Regarding Default Service and Retail Electric Markets, Docket No. M-2009-2140580 (Final Policy Statement entered September 23, 2011). In amending Section 54.186 of its regulations, which concerns default service procurement plans, the Commission recognized the General Assembly's intent to move away from the Competition Act's former "prevailing market price" standard and to instead require each EDC to procure a "prudent mix" of contracts:

Act 129 sets forth different standards from our current regulations that a DSP's procurement plan must adhere to. We propose deleting the old standard and replacing it with the "prudent mix" standard as outlined in Act 129. For example, instead of a plan being "designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs," as specified in Section 54.186, Act 129 now requires the plan "include a prudent mix" of: (a) spot market purchases; (b) short-term contracts; and (c) long-term (5-20 year) contracts. 66 Pa. C.S. § 2807(e)(3.2)(i), (ii), and (iii).

Act 129 Final Rulemaking Order, slip op. at 20.

Further, in amending Section 54.181, the "Purpose" section of its default service regulations, the Commission cautioned that the "least cost over time" standard should not elevate the absolute lowest cost at any particular point in time over the goals of rate stability and relative economy:

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, slip op. at 11-12.

In the Act 129 Final Rulemaking Order, the Commission also examined its statutory interpretation of Act 129 requirements and reached tentative conclusions. Act 129 Final Rulemaking Order, slip op. at 31-32. The Commission recognized the General Assembly's intent to require each EDC to procure a prudent mix of contracts that achieves price stability to meet the "least cost over time" standard:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Act 129 Final Rulemaking Order, slip op. at 39-40. Echoing its earlier analysis of the need to amend Section 54.181's statement of the "Purpose" of the default service regulations, the Commission again cautioned that the "least cost over time" standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame, or maximization of market timing benefits, "but rather a cost for power that is both relatively stable and also economical relative to other options." Act 129 Final Rulemaking Order, slip op. at 40-41.

In addition, the Commission concluded that a general reliance on short term pricing which is reasonably likely to result in a "market reflective and "market-responsive" service rate is inconsistent with Act 129's "least cost" standard and price stability objectives:

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. *We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy market. Price stability benefits are very important to some customer groups, so an interpretation of "least cost" that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives.* This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the "prudent mix" of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

Act 129 Final Rulemaking Order, slip op. at 41 (emphasis added). Accordingly, default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

a. Product(s) and Product Terms

For Residential customers, Duquesne Light proposes to procure default supply through consecutive one-year fixed-price full requirements ("FPFR") contracts tied to the PJM planning year. That is, Duquesne Light will procure one-year products with delivery periods corresponding to June 1, 2013 to May 31, 2014, and June 1, 2014 to May 31, 2015, and adjust the rates each year accordingly. Duquesne Light St. No. 2 at 7. In addition, in April 2014 Duquesne Light will procure one-year full requirements contracts covering 25% of Residential supply, for delivery after POLR VI ends on May 31, 2015. Duquesne Light St. No. 2 at 10.

In general, FES supports Duquesne Light's use of FPFR supply contracts, which are well-known to bidders and beneficial for customers. In an FPFR procurement, bidders compete on the basis of the lowest price to satisfy all aspects of the default service customers' load requirements. The winning suppliers offer service at a fixed-price per MWh that becomes the basis for the retail price for customers, who benefit from competition at the wholesale level. An FPFR procurement enables default service suppliers to insulate the default service customer from various risks relating to price uncertainty, volumetric uncertainty, customer shopping, and other sources. As a result, FPFR procurements provide consumers with price certainty for the duration of the contract. It also gives customers a benchmark price with which customers can more easily evaluate competitive retail offers. FES St. No. 1-R at 5-6.

FES opposes the OCA's package of recommendations which would dramatically reduce the amount of Residential default supply that Duquesne Light procures through fixed price full requirements ("FPFR") contracts. In addition, FES opposes RESA's recommendation that

Duquesne Light's procurement of default supply for Residential customers be largely dependent on 3-month contracts.

The OCA proposes that Duquesne Light reduce the use of FPFR contracts from 100% of Residential customer default supply to 75%, and obtain 25% of Duquesne Light's Residential default service load through "a block and spot supply arrangement." OCA St. No. 1 at 9, 15-17. Also, to eliminate perceived volumetric risk created by Duquesne Light's Opt-In EGS Service Program, the OCA recommends that another 20% of the default supply portfolio "be reserved for potential Opt-in EGS Service participation" (the "holdback" proposal). OCA St. No. 1 at 10, 17.

Given the level of Residential shopping in Duquesne Light's service territory, which FES hopes will increase as a result of properly designed retail market enhancement programs, the OCA's proposals would substantially reduce the FPFR supply on which default suppliers could bid. The problem would be exacerbated by Duquesne Light's proposal to implement a 50% load cap on Duquesne Light's default service procurements for each customer class. FES St. No. 1 at 8-10. When considered in connection with Duquesne Light's proposed load caps, the OCA's package of recommendations could substantially diminish wholesale supplier interest in Duquesne Light's Residential default service solicitations, and do much more to compromise Duquesne Light's ability to procure power at the least cost over time than do the OCA's concerns with the perceived volumetric risks created by Duquesne Light's proposed Opt-In EGS Service Program.⁴ *Id.* at 6.

RESA proposes a plan with half of the load being supplied through 12-month contracts and the remainder supplied through 3-month contracts for Residential customers, with quarterly PTC adjustments. RESA's proposal is based on the premise that "implementing a more market

⁴ The OCA has not consulted or prepared any studies attempting to quantify this risk, nor consulted any competitive wholesale suppliers in reaching this conclusion. FES Ex. TCB-3 (OCA Responses to DLC-1-4(a), FES-I-3, FES-I-4, FES-I-5 and FES-I-6).

reflective default service rate (supplemented with the retail market enhancement initiatives as discussed in Mr. Kallagher's testimony) will maximize the transition to a more robust competitive retail electricity market." RESA St. No. 1 at 13.

FES disagrees with the mixes of contract lengths proposed by RESA for Duquesne Light's Residential customers. RESA's recommendation would make Duquesne Light's Residential default service largely dependent on 3-month contracts. As explained above, FPFR contracts are important to providing customers with relative price stability, to facilitating customers' evaluation of any retail offers from suppliers, and to enabling retail suppliers to develop a wider variety of short- and longer-term products to improve upon a defined default service product. RESA's heavy emphasis on 3-month contracts and achieving "market-responsive" rates would result in potentially significant quarterly changes in Duquesne Light's Residential default service rates. FES St. No. 1-R at 8. Under Act 129, the default service provider shall offer residential customers a generation supply service rate that shall change no more frequently than on a quarterly basis. 66 Pa. C.S. § 2807(e)(7). Since RESA is not proposing multiple default service rates for Residential customers, RESA is recommending the maximum frequency for changes in Pennsylvania Residential default service rates. As of May 2012, however, there were still approximately 63% of Residential customers on default service in Duquesne Light's service territory. See FES Ex. TCB-4 (Duquesne Light Responses to RESA-I-1). RESA has not explained why it is appropriate to maximize the frequency of default service rate changes in Duquesne Light's service territory with many customers remaining on default service and in need of further education on the benefits of competitive retail markets, as well as a stable default service price with which to evaluate competitive offers. FES St. No. 1-R at 8.

In fact, the Commission's Retail Markets Investigation ("RMI") End State Proposal, issued September 27, 2012 via a Secretarial Letter at Docket No. I-2011-2237952, indicates that the end state default service product for Residential and Small C&I customers below 100 kW will be 3-month contracts, that the "[t]ransition is planned to occur on June 1, 2015," and that this end state will be preceded by a statewide consumer education campaign. RESA's proposal would implement the Commission's proposed end state immediately, without the benefit of prior consumer education.

RESA supports its assertion that market responsive default service rates promote retail competition by providing a chart of "Total Type II Load Switching" which uses shopping statistics for Maryland Type II non-residential customers (25kW to 600 kW). RESA contends that this chart "clearly illustrates [that] quarterly procurements result in default service rates that more accurately reflect the underlying wholesale cost of electricity. . . ." RESA further concludes, based on this chart, that shopping levels increased dramatically when Maryland instituted more frequent procurements for these customers, and therefore that these more frequent procurements must have caused the increased shopping levels. RESA also believes this new pricing structure has resulted in shopping that is relatively stable and at a significant level. RESA St. No. 1 at 10, 15.

FES disagrees with RESA's analysis and conclusions. First, the chart of Maryland Type II Switching does not clearly illustrate any relationship between default service rates and the underlying wholesale cost of electricity. Second, it is not reasonable to conclude that more frequent procurements caused increased shopping among Maryland Type II non-residential customers, when one considers statistics regarding the level of shopping among Maryland Type I (non-residential, < 25 kW) customers. There was not a significant change in Type II shopping in June 2007, when procurements changed from 6-months to 3-months. FES Ex. TCB-5. Further,

FES's Rebuttal Testimony contains a chart comparing RESA's "Total Type II Load Switching" curve with a curve depicting Total Type I Load Switching. *Id.* As evidenced by this chart, the curves follow a similar pattern, and both depict the same spike in shopping in mid-2006 that RESA credits to the institution of semi-annual procurements and both depict similarly stable levels of shopping. However, unlike the Type II Load, there was no change in the frequency of procurements for Maryland Type I customers. This suggests that the spikes and subsequent stability in shopping levels among both Type I and Type II non-residential customers were caused by something else. FES St. No. 1-R at 9.

The similarity between Type I and Type II shopping loads as shown on FES Ex. TCB-5 also belies RESA's assertion that a "boom-bust" cycle occurs without so-called "market reflective" pricing (RESA St. No. 1-SR at 9-10). As shown on FES Ex. TCB-5, Type I and Type II customer groups experienced similar spikes in shopping even though the groups had different contract lengths during the perceived "boom" cycle in 2006, and the curve comparison clearly shows similarities in shopping between the two groups. RESA attempts to divert attention from the significance of the data shown on FES Ex. TCB-5 merely by pointing out that greater numbers of large C&I customers⁵ shop compared to smaller customers (without addressing the striking similarity of shopping curves described above). RESA contends that the higher level of shopping among Type III customers is a result of their more market reflective default service pricing. RESA St. No. 1-SR at 8; RESA Ex. AW-2. FES notes that Ex. AW-2 depicts the same mid-2006 spike in shopping among Type III customers as shown for Type I and Type II customers; however, the Notes to Ex. AW-2 state that Type III default service procurements changed from 1-year contracts to hourly pricing in May 2005 — one year before the spike in

⁵ FES Ex. TCB-6 at p. 7 defines Type 3 (presumably the same as RESA's Type "III") customers as "Large Sized Commercial and Industrial Customers."

shopping. Moreover, Ex. AW-2 shows that, even prior to May 2005, the level of shopping among Type III customers was much greater than that of Type II customers, even though default service rates for both customer classes were based on 1-year contracts at that time. Again, Ex. AW-2 suggests that something other than the default service procurement method caused Type III shopping to exceed Type I and Type II shopping from June 2004 onward.

There is no dispute that large customers shop in greater numbers than small customers. Larger customers are unquestionably more sophisticated about their energy shopping opportunities, and because of their load size have greater savings potential and have been actively solicited by EGSs for far longer than small customers. This is exactly the situation the Commission has been working to remedy through the RMI. Attributing the greater shopping numbers among large customers solely to allegedly market reflective default service pricing, as RESA does, simply ignores the history of electricity shopping in Pennsylvania (and, apparently, in Maryland). RESA's Ex. AW-2 does not support RESA's argument that "market reflective" default service pricing alone results in "robust sustainable competition." RESA St. No. 1-SR at 8. In fact, the similar shopping patterns shown in Ex. AW-2 for Types I, II and III customers despite their very dissimilar default service procurements completely belies that argument.

FES believes there are other reasons that Type I and Type II customers experienced a significant increase in shopping at the time Maryland instituted more frequent procurements. There are many factors that impact customer behavior and an increase in shopping cannot be attributed to any one factor with certainty. In a March 2006 report prepared by the Maryland Public Service Commission's Staff concerning the recently completed 2005-06 SOS bid processes for all four major EDCs in Maryland,⁶ Staff calculated the bill impacts of the new SOS

⁶ FES Ex. TCB-6; the report is also posted to the Maryland Commission's Website at http://webapp.psc.state.md.us/Intranet/Casenum/NewIndex3_VOpenFile.cfm?ServerFilePath=C:\Casenum\8900-8999\8908\462.pdf.

prices. According to Staff's calculations, the new SOS prices would result in total bill increases ranging from 35-52% for Type I customers and 14-53% for Type II customers (Type III bill impacts could not be analyzed due to variances in usage characteristics and these customers' "hourly spot-market based utility service option"). FES Ex. TCB-6 at 7. The Staff report also observes that the bid prices reflected general economic conditions including high and rising prices for fuel (increases magnified by recent natural disasters), and increased congestion in parts of Maryland. FES Ex. TCB-6 at 3. Since the SOS price patterns for both Type I and Type II customers are similar despite the use of different procurements, it is reasonable to conclude that high clearing prices were the primary driver of customers' shopping behavior in 2006 and not the frequency of price changes. *Id.*

Contrary to RESA's assertions, FES believes that current shopping levels in Duquesne Light's territory indicate that default service price stability contributed to customers becoming more comfortable with EGS generation service. In response to discovery, Duquesne Light noted the continuous and steady increase in shopping levels among all customer classes in its territory. In fact, over the term of Duquesne Light's previous default service program ("POLR V"), the number of Residential accounts that have switched to a competitive supplier has increased from 22% to 37%. This increase in shopping has occurred during a period of relatively stable default service pricing⁷ for Residential customers. *See* FES Ex. TCB-4. In addition to an increase in customers shopping, Duquesne Light also noted that it has achieved high levels of EGS participation and customer shopping without exposing small customers to "significant rate increases and short-term market price volatility." FES Ex. TCB-7 (Duquesne Light Response to FES-I-8 and FES-I-9). This information shows that customers and EGSs are clearly comfortable

⁷ Under Duquesne Light's POLR V settlement, Residential rates were set at a 29-month fixed rate, and Small and Medium C&I rates were set annually.

with participation in the retail market and there is no reason to remove the default service price stability that is promoting this behavior. FES St. No. 1-R at 11.

b. Procurement Dates

FES reserves the right to reply to other parties' arguments on this issue.

c. Reserving Supply For Retail Opt-In Customer Participation

As stated above in Section III.B.1.a., the OCA recommends that 20% of the default supply portfolio "be reserved for potential Opt-in EGS Service participation" (the "holdback" proposal). OCA St. No. 1 at 10, 17. FES opposes this holdback proposal, and believes that this proposal in combination with all the OCA's recommendations, would diminish wholesale supplier interest in Duquesne Light's Residential default service solicitations, and would do much more to compromise Duquesne Light's ability to procure power at the least cost over time than do the OCA's concerns with the perceived volumetric risks created by Duquesne Light's proposed Opt-In Program.⁸ FES St. No. 1 at 6, 8-10.

2. Small C&I Procurement Issues

a. Product(s) and Product Terms

For the Small C&I customer class, consisting of non-Residential customers with peak demands less than 25 kW, Duquesne Light proposes to procure default supply through one-year full requirements load following contracts. The contracts will be laddered, with 50% of the supply products having delivery periods from June through May, and 50% of the supply products

⁸ The OCA has not consulted or prepared any studies attempting to quantify this risk, nor consulted any competitive wholesale suppliers in reaching this conclusion. FES Ex. TCB-3 (OCA Responses to DLC-1-4(a), FES-I-3, FES-I-4, FES-I-5 and FES-I-6).

having delivery periods from December through November. As a result, rates will be reset twice per year. Duquesne Light St. No. 2 at 11.

RESA recommends that Duquesne Light procure half its default supply through 12-month contracts and half through 3-month contracts, with quarterly PTC adjustments. RESA St. No. 1 at 4, 14 and Ex. AW-1. As with Residential customers, RESA's proposal is designed to make Small C&I default service rates more "market reflective" to "maximize" the transition to a more robust competitive retail electricity market. RESA St. No. 1 at 13.

RESA's recommended portfolio for Small C&I customers should be rejected for the same reasons as its recommended portfolio for Residential customers. As explained above, default service largely dependent on 3-month contracts could result in significant quarterly changes in rates, and will not provide the rate stability smaller customers require for the transition to end-state default service. That end state of default service, according to the RMI End State Proposal set forth in the Commission's September 27, 2012 Secretarial Letter, is to procure supply to serve Small C&I customers through 3-month contracts starting June 1, 2015, only after there has been consumer education. RESA's proposal to being the 3-month contracts on June 1, 2013, without the vital consumer education, is premature. While RESA's proposed quarterly changes in default service rates is the maximum frequency allowed for Small C&I customers under Act 129, 66 Pa. C.S. § 2807(e)(7), 70% of Small C&I customers were still on default service as of May 2012. See FES Ex. TCB-4 (Duquesne Light Response to RESA-I-2). RESA's proposal would impose the RMI End-State Proposal for Small C&I customers as set forth in the Commission's September 27, 2012 Secretarial Letter, without the benefits of the transition period consumer education. The evidence demonstrates that price stability is no bar to shopping, as Small C&I customer switching increased from 21% to 30% over the course of Duquesne Light's POLR V

program. FES Ex. TCB-4 (Duquesne Light Response to RESA-I-2). Accordingly, RESA's recommended default supply contract portfolio should be rejected.

b. Procurement Dates

FES reserves the right to reply to other parties' arguments on this issue.

3. Medium C&I Procurement Issues

a. Product(s) and Product Terms

For customers in the Medium C&I class, which includes customers with peak demands greater than or equal to 25 kW but less than 300 kW, Duquesne Light proposes to procure default supply through 6-month full requirements load following contracts. Duquesne would conduct competitive solicitations in April and November of each year, and as a result, Medium C&I default service rates would change every six months. Duquesne Light St. No. 2 at 13-14.

FES supports the OSBA's proposal that Medium C&I customer default supply be obtained via one-year, non-laddered, FPCR contracts. OSBA St. No. 1 at 6. While a substantial portion of Medium C&I customers are shopping, a significant minority still take default service (66% vs. 34%, respectively). *Id.* at 5. The OSBA's procurement strategy would be similar to that utilized by Duquesne Light in POLR V, but would eliminate laddering of contracts, and would result in greater price stability for those Medium C&I customers who still choose to take default service than Duquesne Light's proposal, while still being more market-reflective for these customers than Duquesne Light's POLR V procurement strategy. *Id.* at 6.

RESA recommends a Medium C&I default supply contract portfolio consisting entirely of 3-month contracts. RESA St. No. 1 at 4, 19 and Ex. AW-1. RESA's proposal would not allow a reasonable transition to end state default service for the smallest customers in Duquesne

Light's Medium C&I class and should be rejected. While the Medium C&I class includes customers with peak demands less than 300 kW, it also includes customers with peak demands as low as 25 kW. Again, these smaller customers, as well as the retail marketers who compete to serve them, will benefit from a measure of stability that RESA's proposal does not afford. Indeed, RESA's proposed 3-month contracts would implement the RMI End State Proposal for customers between 25 kW and 99 kW, as set forth in the Commission's September 27, 2012 Secretarial Letter, without any transition period or vital customer education. The evidence demonstrates that the price stability of Duquesne Light's POLR V plan has presented no bar to shopping, as Medium C&I customer switching increased from 45% to 57% over the course of Duquesne Light's POLR V program. FES Ex. TCB-4 (Duquesne Light Response to RESA-I-3). Therefore, RESA's recommended portfolio for Medium C&I customers should be denied.

b. Procurement Dates

FES reserves the right to reply to other parties' arguments on this issue.

4. Large C&I Procurement Issues

FES reserves the right to reply to other parties' arguments on this issue.

5. Default Supply Load Cap Issues

FES disagrees with Duquesne Light's proposal to reduce its wholesale load cap for Small and Medium C&I customers from the 75% cap of POLR V to 50%, and to establish a 50% load cap for its Residential customer procurements. FES submits that there is no empirical evidentiary basis to justify the proposed 50% cap. Further, this significant change in Duquesne Light's procurement strategy is not required by the Commission's default service directives and

would prevent Duquesne Light from obtaining supply for default service at the least cost to customers over time. FES St. No. 1 at 8-10.

FES is opposed to supplier load caps of any kind, whether it is wholesale supply or the Opt-In Program (which is addressed in Section III.C.1.g, below). Load caps prevent the default service provider from achieving the lowest price in supply procurements. Commission precedent recognizes that load caps are "part of the analysis in meeting the 'least cost over time' standard," *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P 2009-2093053, P 2009-2093054 (Opinion and Order entered November 6, 2009) ("*ME/PN/PP/WP 2009 Order*"), slip op. at 18, and that they present a tension between supplier diversity and the lowest price to customers:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

ME/PN/PP/WP 2009 Order, slip op. at 16. Lowering the load cap to 50% would ensure higher cost suppliers will serve more of the load, resulting in higher prices for customers rather than the least cost to customers over time. FES St. No. 1 at 9.

Duquesne Light proposes that no one supplier be allowed to obtain more than 50% of the tranches available for any procurement class (Residential, Small C&I or Medium C&I) in any RFP. In POLR V, the supplier load cap was set at an aggregate of 75% over both the Small C&I and Medium C&I customer classes, which were the only customer classes for which load was procured through a competitive RFP process. Duquesne Light asserted that the cap "is designed to encourage participation in the solicitations, and to reduce the impact if any single supplier were to default on its obligation." Duquesne Light St. No. 2 at 17, l. 14-16. Also, as shown in

FES Ex. TCB-1, in response to an interrogatory served by the OCA, Duquesne Light stated that the proposal "was intended to balance competing interests and to make the supplier load cap...consistent with the Commission's recommended supplier load cap for EGSs bidding in the Retail Opt-In Auctions." FES Ex. TCB-1 (OCA (Duquesne Light) Set I No. 7).

Duquesne Light acknowledges that "the Commission has not identified a specific percentage load cap that it prefers for default service supply solicitations," but then points to the RMI IWP Order and the recent ME/PN/PP/WP Order as supporting its position in favor of the 50% load caps. Duquesne Light goes on to say that a reasonable load cap may encourage more suppliers to participate, and can reduce the adverse effects due to default by any given supplier. Duquesne Light St. No. 8-R at 59-60.

First, FES disagrees with Duquesne Light's suggestion that the Commission's IWP Order justifies a 50% wholesale supplier cap. The IWP Order applies to the retail market enhancement programs Duquesne Light has proposed, not wholesale procurements. While the retail programs contemplated in the IWP Order are concerned with matching default service customers with licensed EGSs, Duquesne Light's default supply procurements are concerned with assembling a wholesale supply portfolio. Rather, the Commission made its most recent pronouncements on default service in a separate order,⁹ which nowhere discusses the need for any load caps in default service supply procurements.

Second, in regard to the ME/PN/PP/WP Order, that Order based a 50% load cap on the perceived situation specific to those four utilities' service territories. It would not be correct to apply the same basis for the load cap decision in that Order to this proceeding.

⁹ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) ("Upcoming Default Service Plan Order").

Third, there is no basis for Duquesne Light's concerns with supplier diversity. FES is unaware of any lack of supplier participation in Duquesne Light's past solicitations, or that supplier default has been an issue in Duquesne Light's default service supply. In the event of supplier default, the terms and conditions under which suppliers may participate in Duquesne Light's wholesale procurements contain substantial credit protections for Duquesne Light in the unlikely event of a default. FES St. No. 1-R at 9.

Finally, in regard to Duquesne Light's alleged concern about supplier default, it provided quotes from the 2004 transcript of its DSP III proceeding, where a former Duquesne Light officer describes a near-incident in which Duquesne Light's wholesale default service supplier in DSP II "was within a day or two of defaulting on its supply obligations." Duquesne Light St. No. 3-R at 28. Even assuming the witness accurately described the situation, it is important to consider the immediately following lines of this exchange between the former Duquesne Light officer and the cross-examiner, which are in bold type below:

Q. Let's talk a little bit about the EGS's. In your testimony and I believe here today you've alluded to the specter of supplier defaults. I'd like to ask you directly, has my client, has Reliant or Orion Midwest, ever defaulted on its supply arrangement with Duquesne?

A. I would say that your client was so close to bankruptcy that they called me up and told me they had a bankruptcy package ready to be filed and that it could be filed in a day or two.

Q. Well, that's not really responsive to my question, Mr. O'Brien. Did they default?

A. They didn't eventually default, no.

Q. No, they didn't default.

A. Right.

Q. Are you aware, have they ever defaulted to any other load serving entity?

A. Not that I'm aware of.¹⁰

There is a significant difference between an alleged near-default and an actual default, and there was no actual default. Duquesne Light also acknowledged that no competitive supplier providing default service supply to Duquesne Light has defaulted in its contractual obligations since the situation referred to in the above testimony. The near-default occurred in 2004, not during the POLR V period. If an aggregate load cap of 75% did not cause concern about supplier default during POLR V, FES sees no reason why it suddenly causes concern now. Duquesne Light's alleged concern does not justify its proposal to reduce supplier load caps in the wholesale procurements. FES St. No. 1-SR at 8.

The OSBA also argues that potential supplier default is a valid reason for Duquesne Light's proposed wholesale supplier load caps, though the OSBA does not reveal the basis for its assertion or provide any examples of supplier default that justify Duquesne Light setting reduced load caps. Further, the OSBA acknowledges that the load cap can result in the lowest price supplier having its market share constrained, resulting in a higher overall supply price. OSBA St. No. 2-R at 4. The OSBA's concern is best addressed through existing credit support requirements in order for wholesale suppliers to participate in Duquesne Light's solicitations and serve default service load. Artificially reducing the amount of load the lowest price supplier can serve is not an appropriate way to address this potential issue. FES St. No. 1-R at 9.

6. Procurements for Delivery Beyond May 31, 2015

FES reserves the right to reply to other parties' arguments on this issue.

¹⁰ Cross Examination of Morgan O'Brien, Duquesne Light DSP III, Docket No. P-00032071, Hearing Transcript, March 29, 2004 at 121.

7. Miscellaneous Procurement Issues

FES reserves the right to reply to other parties' arguments on this issue.

C. MARKET ENHANCEMENT PROGRAMS

Since entering its IWP Order on March 2, 2012, the Commission has provided additional guidance on its preferred design for retail market enhancement programs. In the ME/PN/PP/WP Order, the Commission provided new guidelines on Opt-In Programs and Referral Programs proposed in default service proceedings. In addressing the Opt-In Program and the recovery of costs of retail market enhancement programs, the Commission adopted a Motion of Commissioner Pamela A. Witmer ("ME/PN/PP/WP Motion") which offered new guidelines for the retail market enhancement programs proposed in default service proceedings:

[B]ecause this is the first ROI [and Standard Offer Customer Referral Program] proposal the Commission has reviewed in the course of a default service proceeding, and in the interest of the programs' success, . . . it is important for the Commission to give clear direction on our preferred market enhancement program design, with specific emphasis on the ROI [Retail Opt-In] Program.¹¹

The Commission created a new design for Opt-In Programs, which differs from the guidelines set forth in the IWP Order. Among other things, the ME/PN/PP/WP Motion:

- Eliminates any bidding competition prior to customer enrollment in the Opt-In Program;
- Changes the Opt-In Program product, from a price at least 5% below the PTC at the time of enrollment, for the full term of the Opt-In Program, to a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% discount off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months;
- Makes Small C&I customers and CAP customers eligible to participate in the Opt-In Program, as well as the Referral Program.

¹¹ Motion of Commissioner Pamela A. Witmer (Public Meeting of August 2, 2012), at 2.

At its Public Meeting of September 27, 2012, the Commission conducted the PECO Binding Poll.¹² There, the Commission again addressed the Opt-In Program and the recovery of costs of retail market enhancement programs by adopting a Motion of Commissioner Witmer ("PECO Motion"). The PECO Motion explained that "this Motion will propose minor adjustments to the Company's EGS Opt-In Competitive Offer Program, in order to align it with the [ME/PN/PP/WP Order]." With regard to the composition of the Opt-In Program product, the PECO Motion explained that "[t]his proposal mirrors the Commission's decision in the FE DSP Final Order...." PECO Motion at 3 n.7. With respect to PECO's proposed Referral Program, the Commission also adopted a product similar to that adopted in the ME/PN/PP/WP Order. PECO Binding Poll, Issue #18.

While these actions suggest that the Commission intends for its new preferred market enhancement program design to apply to all EDCs' retail market enhancement programs, below FES will address the new preferred market enhancement program design, and then the designs advocated by the parties in the event the new preferred market enhancement program design does not apply.

Where issues have not already been decided by the ME/PN/PP/WP Order or the PECO Binding Poll, FES believes that programs to further promote retail electric competition should be developed in consideration of the overarching principle of being responsive to customers' preferences, and that, at this point in time, customers' motivation to shop is driven by a desire to receive the lowest possible price. Thus, the most important consideration in designing customer programs should be to give customers the lowest available pricing. FES believes that its

¹² The parties are awaiting issuance of the PECO DSP Final Order. To the extent the PECO DSP Final Order provides different or additional guidance, FES reserves the right to address this guidance in its Reply Brief.

recommendations will achieve that goal, as well as encourage EGS participation in the retail enhancement programs.

1. Retail Opt-In Program

a. Auction vs. ROI Program

The ME/PN/PP/WP Order and the PECO Binding Poll eliminated the bidding competition in those EDCs' Opt-In Programs. Instead of the IWP Order's price "at least 5% below" the PTC at the time of enrollment, the ME/PN/PP/WP Order and PECO Binding Poll established a price which is "set" 5% below the PTC at the time of enrollment. FES strongly believes that the Opt-In Program should include some form of bidding competition. Without a bidding competition, the price to participating customers will not provide the maximum savings, the program does not deliver any benefits of retail competition, and to date, there is no clear methodology for allocating customers among participating suppliers. Consistent with this position, FES also believes that the product should continue to be priced "at least" 5% below the PTC, as determined by a competitive bidding process, since there needs to be a clear and sustained benefit to the customer for participation in the program. FES St. No. 1-R at 16-17.

b. Term of Offer

The Opt-In Program product described in the ME/PN/PP/WP Order and the PECO Binding Poll is a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months. FES recommends two further improvements to this product. First, the EGS provided fixed-price product during the last 8 months of the initial Opt-In contract should be a uniform price among participating EGSs. Without that uniform price, some customers may receive better

pricing than others during the last 8 months of the Opt-In Program, based solely on their random assignment to an EGS. Customers that believe they have fared worse than their neighbors may blame Duquesne Light, the Commission, or the competitive retail market for their misfortune. Second, the EGS provided fixed-price product should be established and made known to customers before they decide whether to participate in the Opt-In Program, not during the introductory 4-month period. FES St. No. 1-R at 16. By communicating the price at the time of enrollment, any concerns over "bait-and-switch" offers will be avoided.

c. Discount Percentage

FES reserves the right to reply to other parties' arguments on this issue.

d. \$50 Bonus Payment

FES reserves the right to reply to other parties' arguments on this issue.

e. Guaranteed Savings

FES reserves the right to reply to other parties' arguments on this issue.

f. Customer Participation Cap

Duquesne Light asserted that FES opposed the customer participation cap, and cited to FES's Direct Testimony at pages 14-15 as supporting the elimination of the customer participation cap in the Opt-In Program. Duquesne Light St. No. 3-R at 18-19. However, this statement is based upon an error that FES corrected through Errata and a corrected page 14 to its Direct Testimony. While there had been a heading on the original page 14 relating to customer participation caps, there was no discussion of customer participation caps, and the Errata deleted

the incorrect heading. FES submitted no testimony on this component of Duquesne Light's proposed Opt-In Program and takes no position on the issue in this Main Brief. However, FES reserves the right to reply to other parties' arguments on this issue.

g. Supplier Load Cap

Duquesne Light's proposal divides eligible customers into 10 tranches, with each tranche equal to 10% of eligible customers. Participating EGSs would be limited to bidding to supply between one (10%) and five (50%) tranches. EGSs can submit different prices for each tranche, but in no event can one supplier win more than 50% of eligible customers. Duquesne Light St. No. 3 at 4, 21-22. As expressed above in Section II.B.5., FES is strongly opposed to any supplier caps. FES opposes any artificial limits on supplier participation in retail market enhancement programs. FES St. No. 1 at 5-6, 14-15; FES St. No. 1-SR at 9-10.

If the ME/PN/PP/WP Order and the PECO Binding Poll apply to this proceeding, there is no clear methodology for allocating customers among participating suppliers. This issue may be moot as the Commission has directed in those proceedings that it be addressed in the subsequent collaboratives among the EDCs and interested parties. If the bidding competition is retained, the Commission expressed its belief in the IWP Order that a 50% cap is the appropriate level to strike a balance between ensuring a diverse array of EGSs are able to participate and enjoy the potential benefits of retail opt-in auctions and providing the lowest possible pricing to consumers. IWP Order at 63. However, there are numerous offers currently available to Residential customers in Duquesne Light's service territory. As of June 2012, there were 9 EGSs making fixed-price offers of 12 months or longer and at least 5% below the PTC in Duquesne Light's service territory, according to PAPowerSwitch. *See* FES Ex. TCB-2. The fact that many

suppliers already compete in Duquesne Light indicates that the Opt-In EGS Service Program will attract vigorous EGS competition without the need to impose any supplier load caps.

Supplier diversity is certainly an important factor in building a competitive retail market, but load caps are not the best way to achieve the balance the Commission seeks. An important factor in building a robust retail market is getting customers the best pricing available in the marketplace. This is best accomplished by allowing the markets to work without artificially limiting competition among participants. Artificial supplier load caps interfere with the natural operation of competitive market forces, which Pennsylvania, through the Competition Act, has recognized to be more effective than regulation in controlling the cost of electric generation service. FES St. No. 1 at 15.

Duquesne Light acknowledges that the elimination of supplier load caps could result in lower prices for customers. Duquesne Light St. No. 3-R at 27. The likelihood of some customers paying higher prices with the implementation of any supplier participation cap is apparent, since the lowest price supplier may be precluded from serving all the customers it would like to serve due to the operation of the cap. However, Duquesne Light points to "the Commission's desire to encourage more than one supplier to participate in the programs and concerns about supplier default and the importance of supplier diversity" as justifications for the imposition of a supplier participation cap. Duquesne Light St. No. 3-R at 27. First, it is extremely unlikely that one supplier can dominate the Duquesne Light retail market, including the Opt-In Program. Duquesne Light as the default service provider currently has the majority of Residential market share, at 61%. Furthermore, according to Duquesne Light, there are over 20 EGSs in the Duquesne Light service territory serving the remaining 39% of Residential customers that have chosen an alternative supplier. Duquesne Light St. No. 1 at 16; Duquesne Light St. No. 2 at 5. The proposed customer participation cap limits the entire Opt-In Program to

one-half of the customers on default service, or roughly 30% of Duquesne Light's Residential customers. As a result, even if one supplier were to win all Residential customers participating in the Duquesne Light Opt-In Program, at maximum customer participation levels, they would enroll at most only 30% of Duquesne Light's Residential customers. It is highly unlikely that one supplier would win all Residential customers participating in the Opt-In Program, since there are 23 EGSs making offers to Residential customers on PaPowerSwitch and at least 9 EGSs offering a product similar to that proposed in the Opt-In Program. FES St. No. 1 at 15; FES Ex. TCB-2.

h. Enrollment Process

RESA recommends that Duquesne Light defer the Opt-In Program's price-setting bidding competition until after the customer enrollment period, so that EGSs will know the total number of participating customers when they participate in the bidding. RESA claims that a deviation from the Commission's IWP Order guidelines is justified by the fact that a majority of residential customers are not shopping. RESA further explains that it does not share the Commission's concern that if customers were asked to opt in before the EGS bidding, customers would not have sufficient information about the product they will receive. According to RESA, if enrollment is first, customers would know 1) the price is at least 5% less than the then-current default service price, 2) the product includes a \$50 bonus, and 3) the product could be cancelled at any time without penalty. RESA St. No. 2 at 7-8.

If the ME/PN/PP/WP Order and the PECO Binding Poll apply to this proceeding, this question may be moot because the ME/PN/PP/WP Order and the PECO Binding Poll eliminated the Opt-In Program bidding competition. If the ME/PN/PP/WP Order and the PECO Binding Poll do not apply to this proceeding, the Commission's IWP Order guidelines advise that EGS

bidding precede enrollment and RESA has not presented good cause to deviate from that approach. RESA did not consult, review or prepare any studies or analyses to determine what it calls "the negative effect" the Commission's preferred sequence of bidding and enrollment will have on the ultimate value that is brought to customers through the Opt-In Program, or that putting the price-setting auction before the customer enrollment period will tend to decrease the number of EGSs that will participate in the auction.¹³ FES Ex. TCB-8 (RESA Response to FES-I-8(a), (b)).

While RESA asserts that insufficient shopping levels for Duquesne Light customers justify a deviation from the Commission's IWP Order guidelines, Duquesne Light's shopping levels are among the highest in the Commonwealth, and the Commission was aware of shopping levels when it adopted the IWP Order. In the IWP Order, the Commission acknowledged that parties differed in their proposals as to the timing of the EGS auction relative to customer enrollment. However, the Commission emphasized the importance of avoiding a negative perception of competitive retail markets:

One of the underlying goals of the Retail Opt-In Programs is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission. The Commission is also concerned about a worst-case scenario in which the EGS auction does not fully subscribe all available tranches. Such a scenario could foster a negative perception toward the competitive retail markets if customers who expected auction service were not able to receive service or had to receive a different price and/or product.

IWP Order at 55. The Commission determined that holding the EGS auction before customer enrollment is the appropriate way to address these concerns. *Id.*

¹³ RESA's witness is not aware of whether any RESA members support its recommendation. FES Ex. TCB-8 (RESA Response to FES I-8(c)).

Also, while RESA speculates that under its proposal, customers would have sufficient information to be attracted to the program, FES respectfully disagrees. A customer must know the price of the product they are asked to purchase. The portion of the IWP Order cited above shows the Commission agrees. If either party should be expected to proceed with less than perfect information, it is the EGS, not the residential customer. In the sequence recommended by the Commission and proposed by Duquesne Light, a customer will know the term, price and supplier — all information the customer would know if making a traditional choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best. Finally, it is unclear how reversing the sequence would resolve RESA's concerns with EGSs knowing the number of participating customers, since a customer who has opted in could subsequently leave the program before the price-setting auction, e.g., for a better EGS offer. While RESA's proposal might provide benefits to suppliers, it would do so at the expense of customers. Therefore, FES recommends the Commission reject this proposal. FES St. No. 1-R at 14-16.

i. Mailings and Communications

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

2. Standard Offer Program

a. Term of Offer

The OCA advocates a shorter Standard Offer than the 12-month contract proposed by Duquesne Light. The OCA likens its recommendation to an "introductory offer" that would guarantee the customer a 7% discount off the PTC for the entire term of the contract. The OCA attempts to characterize the proposed 12-month Referral Program contract as a means to move customers into a long-term arrangement with an EGS without an affirmative choice. OCA St. No. 2 at 16-17. If the ME/PN/PP/WP Order and the PECO Binding Poll controls this proceeding, this question has been settled. Under the ME/PN/PP/WP Order and PECO Binding Poll, the Referral Program product is a 7% discount from the PTC at the time the offer is made and should be fixed for 12 months. FES St. No. 1-R at 18; ME/PN/PP/WP Order at 144-146; PECO Binding Poll Issue #18.

FES disagrees with the OCA's recommended shortened contract term. FES believes a 12-month Referral Program contract will offer customers the discounted program price with stability and certainty for a longer period of time. It is important to note that the OCA also advocates that participating customers that do not respond to their EGS's notices regarding the end of the Standard Offer be returned to default service when the Standard Offer ends. OCA St. No. 2 at 17. The objective should be to create a positive experience with shopping to incent the customer to stay with an EGS, not to go back to default service. FES does not believe that the combination of these two proposals (a shortened contract term and returning to default service) is designed to allow sufficient time for the customer to gain confidence in their supplier and the retail market. For a program in which the EGSs may be making a significant financial investment, these proposals will likely deter supplier participation. Further, the OCA's suggestion that a 12-month contract would make the program a means of moving customers into

a long-term arrangement with an EGS without an affirmative choice ignores the design of the Referral Program. Customers will have made a voluntary choice to participate in the Referral Program and should be treated no differently than any other shopping customer. FES St. No. 1-R at 17-18.

In addition, RESA recommends that the Referral Program term be a 12-month or 16-month combination product, consisting of a 4-month percent-off product followed immediately by a fixed-price product. The first, 4-month product would be priced 7% below the PTC during all four months, even if the PTC changed. Following this 4-month guaranteed savings period, participating EGSs would be required to offer a 12-month or 8-month fixed-price product that would take effect after the 4-month guaranteed savings period. RESA St. No. 2 at 20. As explained in connection with the OCA's recommendation, if the ME/PN/PP/WP Order and the PECO Binding Poll control this proceeding, this question has been settled. If the ME/PN/PP/WP Order and the PECO Binding Poll do not control, FES is concerned that RESA's proposed Standard Offer would combine two different products — a 4-month percent-off product and an 8- or 12-month fixed-price product — in a single contract term. RESA confirmed through discovery that each EGS would offer a different fixed-price product under its proposal. FES Ex. TCB-9 (RESA response to FES-I-10(c)). This combination of percent-off and fixed-price products is a complicated product for customers who likely have no experience with competitive retail electric offers. In addition, under RESA's proposal customers apparently could be randomly assigned to a supplier whose price after the introductory 4-month period will be higher than another supplier's. This could well result in customer confusion and disappointment with the Referral Program, the customer's supplier and the EDC which assigned the customer to the higher-priced supplier. To prevent customer confusion and dissatisfaction, FES could support RESA's longer-term proposal only if (1) the fixed price over the remaining 8 or 12 months is

uniform among all participating EGSs, and remains uniform among EGSs if and whenever it is re-set, and (2) participating customers know the fixed price they will be paying over the remaining 8 or 12 months at the time of enrollment. FES St. No. 1-R at 19-21.

b. Discount Percentage

FES reserves the right to reply to other parties' arguments on this issue.

c. Guaranteed Savings

While FES supports guaranteed savings, they are not necessary for the success of the Referral Program or justify the harms to the Referral Program that the OCA's proposed shortened contract would cause to the program. *See* Section III.B.2.a., above. A price that is at least a 7% discount off Duquesne Light's PTC at the time of enrollment will be a good price for participating customers. Although the PTC may change during the 12-month Referral Program, a 12-month contract term does not preclude participating customers from enjoying savings. Customers will receive guaranteed savings at the outset of the Referral Program contract term. When the PTC is reset for another 12 months, any of three things may happen. If the PTC increases, participating customers will enjoy even greater savings. If the PTC decreases but stays above the level of the Referral Program product, participating customers will still enjoy savings, although at a level lower than the original 7%. If the PTC decreases below the level of the Referral Program product, participating customers will no longer enjoy continued savings as compared to the PTC. However, in this third scenario, not only might customers still see savings over the term of the contract, but the customer may switch to another EGS offer or return to default service without penalty. FES St. No. 1-R at 19.

d. Program Start Date

Duquesne Light proposes to delay implementation of its Standard Offer Customer Referral Program until June 1, 2014. Duquesne Light St. No. 3 at 35-36. Duquesne Light offers two reasons for the delay. First, Duquesne Light's new customer information system will not accommodate accelerated switching of new or moving customers onto EGS service until 2014. Second, Duquesne Light expresses concerns that the program will "impact the risk premiums included in the RFP bids of both wholesale default service suppliers and EGS Opt-In Suppliers." Duquesne Light St. No. 3 at 36.

First, the ME/PN/PP/WP DSP Order and PECO Binding Poll directed that the Referral Program begin on June 1, 2013. FES does not understand why the lack of accelerated switching capability should delay the implementation of the Referral Program. Customers are currently being switched to EGS service without Duquesne Light's having such capability and the current system should be able to accommodate switches through the referral program. Further, FES is a wholesale supplier in Duquesne Light's territory. As such, FES sees no validity to Duquesne Light's concern about any potential impact on wholesale supplier risk premiums if Duquesne Light were to implement its Referral Program in June, 2013, concurrent with the start of its POLR VI plan. FES St. No. 1 at 15-16.

e. Program Suspension

Duquesne Light proposes to suspend new referrals to the program for the remainder of the POLR VI period if Residential shopping in Duquesne Light's service territory reaches 67% of residential customer accounts. Duquesne Light St. No. 3 at 42; Duquesne Light Ex. NSF-3 (Standard Offer Supplier Agreement, Paragraph 6). Duquesne Light does not explain why it proposes to suspend the Referral Program when this level of shopping is reached. FES disagrees

with suspending the program under any circumstances. Suppliers who participate in this program should not have its benefits stopped when an arbitrary shopping level is achieved, particularly if, as Duquesne Light proposes, they will be responsible for all the costs of the program. Nor should customers be denied the benefits of this program just because an arbitrary shopping level is achieved. FES St. No. 1 at 16-17.

f. High Bill Callers

FES reserves the right to reply to other parties' arguments on this issue.

g. Choice Referral Team

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

3. Market Enhancement Program Cost Recovery

Duquesne Light proposes to recover costs of the Opt-In Program from the winning EGSs, in proportion to the number of customers awarded to each EGS.¹⁴ However, in the event the RFP does not result in any winning EGSs, Duquesne Light intends to recover its program costs through a discount on purchased EGS receivables through an increase to the POR administrative discount for the residential customer class. Duquesne Light St. No. 3 at 4, 32, 34, 45; Duquesne Light St. No. 4 at 21-22.

¹⁴ Duquesne Light estimates the cost to implement the Opt-In Program at \$355,000. Duquesne Light St. No. 4 at 21. However, Duquesne Light notes this is only a cost estimate and subject to the determination of the final program scope and design. Duquesne Light St. No. 4 at 22, fn. 7. The estimate excludes costs associated with

In its Direct Testimony, Duquesne Light stated its intention to recover its initial and on-going costs of the Referral Program¹⁵ through a discount on EGSs' purchased receivables in Duquesne Light's POR program. Duquesne Light St. No. 4 at 22-24; Duquesne Light Ex. WVP-3. In Rebuttal Testimony, Duquesne Light indicated that it would consider an alternative cost allocation methodology for its Referral Program including a per-customer acquisition fee charged to participating EGSs; however, Duquesne Light did not set forth any proposal for the design or amount of the fee. Duquesne Light St. No. 3-R at 89; Duquesne Light St. No. 4-R at 16. Further, Duquesne Light still proposes to collect any under-recovery of Referral Program costs through a POR discount. FES appreciates Duquesne Light's reconsideration of the cost recovery issue as it pertains to the Referral Program, but disagrees with any proposal that includes collection through an increase to the POR discount. FES St. No. 1 at 17-21; FES St. No. 1-SR at 11. Therefore, FES opposes Duquesne Light's cost recovery proposals.

As an initial matter, FES believes the costs of both programs should be recovered from all customers in the class of customers that are eligible to participate. All these customers stand to experience significant savings from a robust, competitive retail electricity market that includes an increase in the number of EGSs from which they can choose. The Opt-In Program and Referral Program promote such a market, and the benefits to customers will continue well beyond the expiration of this program. Therefore, recovery of costs for these programs should be through a charge applicable to all customers. Also, the ME/PN/PP/WP Order expanded eligibility to participate in the programs to additional customers, including Small C&I customers. In which case, the costs would be spread over an even larger customer pool, which would result

changes to Technology capital, IVR, HR and facilities charges.

¹⁵ Duquesne Light estimates initial costs at \$2,056,000, and notes that this estimate excludes costs associated with "changes to Technology, IVR, mailings, HR and facilities charges." Duquesne Light St. No. 4 at 22, Ex. WVP-3. Duquesne Light also emphasizes that the cost estimates for both the Referral Program and the Opt-In Program are "preliminary cost estimates that are subject to change based on final plan design and implementation." Duquesne

in an even lower cost per customer. Recovering costs of the programs from all customers in any class eligible to participate in the program eliminates the need for a contingency plan in the event there are no winning EGSs in the Opt-In Program. FES St. No. 1 at 18-19; FES St. No. 1-R at 22.

However, in the ME/PN/PP/WP Order, the Commission decided that EGSs should pay for the market enhancement programs, and has directed the EDCs and interested parties to resubmit a plan or proposals for Commission review regarding how EGSs will pay for the redesigned Opt-In Program and the Referral Program. ME/PN/PP/WP Order at 136-137. The Commission reached a similar determination in the PECO Binding Poll, except that the PECO Motion directs the EDC, EGSs and interested parties "to resubmit a plan or proposals within 60 days for Commission review and approval addressing how participating EGSs *or customers* will pay for the Market Enhancements approved in this DSP proceeding." PECO Motion at 4 (emphasis added).

If costs are to be recovered from EGSs, it is critical that an EGS's cost per customer be a known, capped amount. Otherwise it is unreasonable to expect significant EGS participation. FES recommends that the costs of the Opt-In Program be allocated based on the number of customers actually enrolled by each EGS. Also, there should be a cap on the amount charged to EGSs for each customer enrolled, and any under-collection of program costs as a result of the supplier cost cap or lack of participation should be recovered from all customers in the classes of customers eligible to participate in the program. All costs should be made known to all qualified bidders prior to the bid proposal due date. This method of cost recovery would provide for a sharing of costs between EGSs and the customers who benefit from the programs, and would

Light St. No. 4 at 24.

give EGSs the certainty they need to determine whether to participate in the program. FES St. No. 1-R at 22-23.

With respect to the Referral Program, if costs are to be recovered from EGSs, then they should be collected from EGSs through a per customer fee from each participating supplier based on actual enrollments. To give suppliers the requisite certainty to maximize their participation in the Referral Program, a cap should be imposed on the costs. Again, there should also be some type of sharing mechanism, whereby at the end of the default service plan period, any under-collection should be recovered from all customers in any class eligible to participate in the Referral Program. *Id.* at 23.

As stated above, FES strongly disagrees with Duquesne Light's proposal to recover costs of an unsuccessful Opt-In Program through implementing a discount on purchased EGS receivables in its POR program. If the Opt-In Program fails, there will have been no increase in shopping in the Duquesne Light service territory. The appeal of the Opt-In Program to EGSs is diminished when cost recovery from EGSs is considered together with Duquesne Light's proposed requirement that EGSs include a \$50 bonus payment in their offers. Duquesne Light St. No. 3 at 4, 14. According to the IWP Order, certain EGSs (not including FES) expressed support for an incentive signing "bonus" of \$50-\$150, representing customer acquisition cost the EGSs avoided by participating in an opt-in program. IWP Order at 64. No cost-benefit analysis of participation in the program is possible without making significant assumptions regarding the outcome of the program, including but not limited to the number of participating customers¹⁶ and the number of customers won by a given EGS (which Duquesne Light proposes to cap at 50%). Nonetheless, since these other EGSs believed the opt-in programs would save them enough costs

¹⁶ For purposes of the Opt-In Program, Duquesne Light estimates the number of eligible Residential customers as approximately 149,462. Duquesne Light St. No. 3 at 26, fig. 4.

to justify a signing bonus, it is reasonable to conclude that any potential additional costs to EGSs contained in an opt-in program will cause them to revisit their interest in participating in the program. Combining bonus payments with the recovery of program costs from EGSs will discourage participation and could make the program ineffective in increasing shopping in the Duquesne Light territory. FES St. No. 1 at 19-22.

Further, the implementation of a POR discount may discourage new EGSs from entering the territory or encourage EGSs that currently participate to drop out of the POR program. That is, Duquesne Light's proposed use of a POR discount in connection with its retail programs may have an effect that is the opposite of what Duquesne Light intended when designing them. Further, recovery of costs through an EDC's POR program violates the principle that cost recovery should follow cost causation. Duquesne Light's cost recovery proposal would unfairly allocate the costs of the programs among EGSs based on market share, including market share obtained through the EGS's investment in the territory unconnected with the retail programs, and without regard to whether an EGS participating in POR actually wishes to participate in the programs. *Id.* at 19-20.

There is no relationship between the retail programs and the discount on purchased receivables. A discount on purchased receivables should be used only for reasons that have a logical connection to the purposes of the POR program, not as a mechanism for recovering costs of programs completely unrelated to POR. Such unrelated cost imposition will encourage EGSs to discontinue their participation in POR programs. Indeed, Rule 12.1.7.1 of Duquesne Light's Electric Generation Supplier Coordination Tariff explains that participation in its POR program is voluntary and not all EGSs must participate:

12.1.7.1 ELIGIBILITY REQUIREMENTS EGSs that choose Duquesne's consolidated billing option for all or a portion of their eligible customer accounts will be required to sell their

accounts receivable to Duquesne for those customers for whom Duquesne issues a consolidated bill. (EGSs may continue to issue their own bills [dual billing] for commodity service, for all or a portion of their customers, but will not be eligible to participate in the POR program for those customers that receive dual billing.) EGSs may choose to participate in the POR program with consolidated billing at any time during the term of the POR program as long as the EGS does not remove customer accounts from consolidated billing and the POR program for 12 consecutive billing cycles...¹⁷

See Duquesne Light Company's Supplement No. 8 to Electric-Pa.P.U.C. No. 3S (Effective January 1, 2011). Under Rule 12.1.7.1, an EGS which does its own billing does not participate in Duquesne Light's POR program. Such an EGS would not pay any share of retail program costs, even if it participates in the programs. Since POR programs were implemented for the purpose of attracting increased EGS activity in EDC service territories where they might otherwise not participate, it would be ill-advised to make POR programs unattractive to EGSs. Unfair and disproportionately allocated cost recovery will be harmful to the success of retail competition in an EDC's service territory if it discourages EGSs from participating in the territory. *Id.*

FES notes that DES/IGS, RESA and Constellation all recommend that customers be required to bear some portion of the costs of both the Opt-In Program (noting that costs will be minimal if the ME/PN/PP/WP Order-type program applies) and the Referral Program. DES/IGS states that if suppliers are required to pay any portion of costs of the Referral Program, that the costs be borne entirely by participating suppliers on a "per-customer acquired basis." DES/IGS St. No. 1 at 8; DES/IGS St. No. 1-R at 4-5. RESA proposes that costs should be recovered either from default service customers or from all distribution customers. RESA St. No. 2 at 26-28; RESA St. No. 2-R at 17. Constellation agrees that Duquesne Light's proposed recovery

¹⁷ FES notes that this portion of Section 12.1.7.1 does not contain any proposed changes in Duquesne Light's

mechanism is inequitable, and that whatever solution is adopted it should be based on sound policy that promotes an equitable result along with a competitive marketplace. Constellation St. No. 1R at 5-6. FES agrees with Constellation's conclusion.

4. CAP Customer Participation in Market Enhancement Programs

FES reserves the right to reply to other parties' arguments on this issue.

5. Shopping Customer Participation in Market Enhancement Programs

FES reserves the right to reply to other parties' arguments on this issue.

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

Duquesne Light proposes that the Opt-In Program should not be open to small C&I customers. Duquesne Light St. No. 3 at 12. Duquesne Light did not specifically address the issue of Small C&I customer participation in the Referral Program, but notes that the program "will target/market residential default service customers." Duquesne Light St. No. 3 at 33. FES believes that retail market enhancement programs should be open to customers in all rate classes. While Duquesne Light's proposal is consistent with the IWP Order, the Commission's holding in the ME/PN/PP/WP Order (pp. 103-104) clearly shows its intention that Small C&I customers should be included in the market enhancement programs.¹⁸

POLR VI filing. See Duquesne Light St. No. 4, Ex. WVP-4.

¹⁸ It appears that the Commission intends to include Small C&I customers in PECO's market enhancement programs as well, though the PECO Binding Poll included only the issue of Small C&I customer participation in PECO's Opt-In Program; there was no separate polling issue concerning their participation in PECO's Referral Program. PECO Binding Poll, Issue #12.

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

FES reserves the right to reply to other parties' arguments on this issue.

8. Miscellaneous Market Enhancement Program Issues

FES reserves the right to reply to other parties' arguments on this issue.

D. RATE DESIGN

1. Reconciliation Issues

FES reserves the right to reply to other parties' arguments on this issue.

2. Price To Compare Calculation Date

FES reserves the right to reply to other parties' arguments on this issue.

3. Non-Bypassable Charge To Recover PJM Charges

FES reserves the right to reply to other parties' arguments on this issue.

E. TIME-OF-USE PROGRAM

Section 2807(f)(5) of the Competition Act requires a default service provider to establish and provide TOU rates to customers with smart meters. 66 Pa. C.S. § 2807(f)(5). In light of challenges the TOU requirement has presented to EDCs, the Commission recommended that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirements. The Commission did not reject other proposals, such as initiating peak time rebate offers or creating a separate wholesale auction for TOU rates, and allowed EDCs to evaluate these proposals for possible inclusion in their next default service filings. Upcoming Default Service Plan Order, slip op. at 47.

Duquesne Light proposes to potentially include TOU default service load in its wholesale fixed-price full requirements products. In discovery, Duquesne Light clarified that it is proposing first that EGSs bid to supply its TOU default service program, and that its proposal to require fixed price suppliers to serve TOU load is a "fallback" in the event no EGSs bid to supply Duquesne Light's TOU program. FES Ex. TCB-1 (FES (Duquesne Light) Set II-4). This clarification is helpful, but does not fully resolve FES's concern with Duquesne Light's proposal.

FES remains troubled by Section 4.3 of Duquesne Light's Supplier Master Agreement ("SMA"). Section 4.3 of the SMA is very vague, stating that "[Duquesne Light] *may* request TOU supply from Seller." (Emphasis added). Under this provision wholesale suppliers would still be required to agree to provide TOU load as a portion of full requirements load. TOU load and full requirements load are completely different products, with different risk profiles. As a result, including the TOU product with a fixed price default service product could limit supplier participation and/or unnecessarily increase default service prices. While it is understandable for Duquesne Light to try to plan for multiple scenarios and contingencies, its contingency plan as currently reflected in the SMA may compromise its procurements for its standard default service.

SMA Section 4.3 should be deleted. Alternatively, at the very least, this section should be revised to address the possibility of obtaining TOU from wholesale suppliers through an Addendum to the SMA, rather than combining the TOU load with suppliers' full requirements load:

Time of Use. In accordance with PUC statutes, regulations and Orders, Buyer may provide Time of Use rates to its customers when Smart Meters are installed. At that time, Buyer may request **through a separate Addendum to this Agreement that Seller agree to provide TOU supply.** ~~[Delete: from Seller pursuant to the terms and conditions included in this Agreement. Buyer will charge TOU customers the rates that are approved by the PUC for TOU service, and Seller will be paid the revenues that Buyer receives for TOU service for that portion of supply used by TOU~~

customers, netted to reflect any other adjustments set forth herein. Seller assumes the risk that these TOU revenues may be higher or lower than the fixed price provided for under Exhibit A. Buyer reserves the sole right to bid TOU supply out separately from this Agreement, and if that occurs, that amount of TOU supply will not be included in this Agreement.]

FES recognizes that Duquesne Light's TOU program is still in the early "pilot" stages of development, but while the current usage is small it may become more robust during the POLR VI time period. FES believes that Duquesne Light's TOU load should be served by an EGS either through a bid separate from its full requirements products, or as RESA suggests through an EGS solicitation on a less formal basis, after which Duquesne Light would post the information to a clearing house website, and certify the information to the Commission. RESA St. No. 2-R at 21. The Commission just approved this type of approach with respect to PECO Energy Company, which successfully bid its TOU service to an EGS. Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012).

Constellation suggests an alternative methodology by which Duquesne Light could obtain TOU load from its default service suppliers, in order to obviate the risks of both customer shopping for EGS service and that customers will choose the TOU offering from Duquesne Light. Constellation's proposal is that Duquesne Light allocate a pro-rata percentage share of TOU load to each tranche (including those awarded in the DSP RFP's) and not revise the price paid to default service suppliers under their contracts. Duquesne Light would establish the TOU price through a "retail pricing matrix," and differences between the payments to wholesale suppliers and amounts paid by TOU customers could be dealt with through the reconciliation process. Constellation St. No. 1 at 41-42. While FES's preference is for TOU load to be

separately bid to EGSs, FES believes Constellation's proposal to be a reasonable resolution of the TOU load problem. If this proposal is adopted, Duquesne Light's proposed SMA should be revised accordingly.

F. SUPPLY MASTER AGREEMENT ISSUES

Please refer to Section II.D., above, for a discussion of FES's proposed revision to Section 4.3 of the SMA as it pertains to full requirements suppliers providing TOU service.

FES also had concerns with Section 12.1(h) of Duquesne Light's initially proposed SMA, which contained a cross default provision under which an event of default would occur with a supplier's default on unrelated debt in the aggregate amount of \$50,000,000. Industry standard contracts either base a cross default threshold on a percentage of the supplier's "tangible net worth" (TNW), or do not contain a cross default provision at all. FES St. No. 1 at 6-7. FES strongly urged that the provision be deleted altogether, or at the very least the threshold be revised from \$50,000,000 to 5% of TNW, which is in line with the industry standard for these provisions and still provides Duquesne Light the ability to measure counterparty creditworthiness. In response, Duquesne Light proposed that the Section 12.1(h) cross default threshold be set at the lower of \$100,000,000 or 5% TNW. Duquesne Light St. No. 9-R at 2-4. While FES continues to believe that the fixed \$100,000,000 threshold is unnecessary, it can accept Duquesne Light's proposed revision to Section 12.1(h) of the SMA.

G. DATA/EGS COORDINATION ISSUES

FES reserves the right to reply to other parties' arguments on this issue.

H. GENERAL MISCELLANEOUS ISSUES

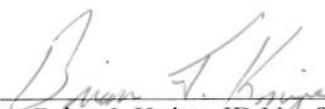
FES reserves the right to reply to other parties' arguments on this issue.

IV. CONCLUSION

For the foregoing reasons, the Petition of Duquesne Light Company for Approval of Its Default Service Program should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

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Dated: October 5, 2012

Attorneys for FirstEnergy Solutions Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 § 1.54 (relating to service by a party).

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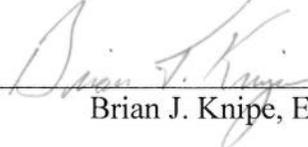
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