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October 5, 2012

BY FED EX AND EMAIL

Rosemary Ciavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P. O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Judge Dunderdale:

Enclosed for filing in the above referenced matter please find the Retail Energy Supply Association's Main Brief. Copies have been provided pursuant the attached Certificate of Service.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Greene', is written over the word 'Sincerely,'.

Brian R. Greene

BRG/wcd
Enclosures

c: Honorable Katrina L. Dunderdale
Service List (see Certificate of Service)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company
for approval of Default Service Plan for * P-2012-2301664
the Period June 1, 2013 through May *
31, 2015 *

CERTIFICATE OF SERVICE

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

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Brian R. Greene

Dated: October 5, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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I. PROCEDURAL HISTORY

A. SUMMARY AND STATEMENT OF POSITION

The outcome of this case will impact a significant number of customers in the Commonwealth as well as Electric Generation Suppliers (“EGSs”) who transact business in, or who may transact business in, Pennsylvania. Duquesne Light Company’s (“Duquesne” or “Company”) service territory has a high level of competitive retail activity but, despite this, a material number of customers, and a majority of residential customers and small business customers, still are not shopping. The persistence of significant numbers of customers remaining on default service shows that heightened efforts are required by the Commission “to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”¹

This proceeding, along with the pending *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2302074, are the first that will be reviewed by the Commission after its decisions in both the FirstEnergy² (“FE”) and PECO Energy Company³

¹ *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 Order entered April 29, 2011 at 2, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 Order entered March 8, 2011 at 46.

² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et. seq. , Opinion and Order entered August 16, 2012 (“*FirstEnergy Default Service Order*”), reconsideration granted in part, Opinion and Order entered September 27, 2012 (“*FE DSP II Reconsideration Order*”).

³ *Petition of PECO Energy Company for Approval Of Its Default Service Program*, Docket No. P-2012-2283641, Statement of Commission Witmer on Issue 11, Motion of Commissioner Witmer on Issues 14, 26 and 27, Motion of Commissioner Witmer on Issue 22, and Binding Poll entered and conducted on September 27, 2012 (“*PECO Binding Poll*”).

("PECO") Default Service Plan ("DSP" or "DS Plan") cases as well as the Commission's recent release of a Secretarial Letter and *RMI End State Proposal* issued in the Retail Markets Investigation ("RMI") proceeding that provided insight into the Commission's view of the end state for default service.⁴ Thus, this case takes on special significance because it becomes the vehicle to both launch the array of retail market enhancements ("RMEs") and transition to the newly articulated end state vision, intended to bring more robust and sustainable competitive markets to the electric customers of the Commonwealth, including in the Duquesne service territory.

The Retail Energy Supply Association ("RESA"),⁵ a trade association of EGSs, submits that the record in this proceeding does not support adoption of Duquesne's proposed default service procurement plan (for the period of June 1, 2013 through May 31, 2015) and its proposed RME programs as consistent with the Electricity Generation Customer Choice and Competition Act ("Competition Act")⁶ or the Commission's articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the competitive market.

⁴ Office of Competitive Market Oversight ("OCMO") plans to submit a Tentative Order for the November 8, 2012 Public Meeting, setting forth a proposal for the end state of default service and addressing various related issues such as those identified in the RMI Secretarial Letter of September 27, 2012. RESA does not necessarily agree that the steps announced by the Commission in the *RMI End State Proposal* on September 27 should be the ultimate "end-state" for retail competition, but RESA accepts them as the Commission's view of the structure of default service and the retail markets starting in June, 2015.

⁵ RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁶ 66 Pa. C.S. § 2801, *et. seq.*

As explained below, RESA recommends modifications to Duquesne's default service plan, including Duquesne's residential, small commercial and industrial ("small C&I"), and medium commercial and industrial ("medium C&I") default service procurement plans and also Duquesne's proposed RME programs. RESA's recommendations are consistent with the goals of the Commission to further promote the development of robust, sustainable retail electric competition in Duquesne's service territory, and would provide the Duquesne market with a reasonable transition to the new end state for 2015 as declared by the Commission. Further, RESA's modifications will make Duquesne's plan consistent with the Commission's clear directives on improving the competitive retail market to ensure customers are empowered to extol all the benefits associated with this evolved market design. Adopting all of RESA's proposed modifications will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and, (c) best transitions the Duquesne market to the 2015 end-state articulated by the Commission, designed to move towards the development of a properly functioning and workable competitive retail electric market in Duquesne's service territory.

B. BACKGROUND INFORMATION AND PROCEDURAL HISTORY

On April 27, 2012, Duquesne filed a Petition for Approval of a Default Service Program for the period beginning June 1, 2013 through May 31, 2015 ("Petition"). Duquesne is an electric distribution company ("EDC") and is currently the default service provider ("DSP") in its respective service area.

The Petition was assigned to Administrative Law Judge Katrina L. Dunderdale. On June 8, 2012, Judge Dunderdale convened a prehearing conference, during which, *inter alia*, RESA's timely Petition for Intervention was granted.

The active parties conducted discovery prior the start of the evidentiary hearing, which began and concluded on Thursday, September 13, 2012. In addition to Duquesne, the following parties submitted testimony on their behalf or otherwise participated in this proceeding: RESA; Citizen Power, Inc. (“Citizen Power”); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively “Constellation”); Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”), and Interstate Gas Supply (“IGS”) (collectively, “Dominion/IGS”); Duquesne Industrial Intervenors (“DII”); FirstEnergy Solutions Corp. (“FES”); the Commission’s Bureau of Investigation and Enforcement (“I&E”); NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (“NextEra”); Noble Americas Energy Solutions, LLC (“Noble”); the Office of Consumer Advocate (“OCA”); and the Office of Small Business Advocate (“OSBA”). The Competition Act mandates that the Commission issue a decision on Duquesne’s Petition by February 1, 2013.⁷

II. SUMMARY OF ARGUMENT

Adopting all of RESA’s positions and proposed modifications will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and, (c) best transitions the Duquesne market to the 2015 end-state recently articulated by the Commission, designed to move towards the development of a properly functioning and workable competitive retail electric market in Duquesne’s service territory.

RESA recommends the following changes to Duquesne’s proposed default service procurement plan:

⁷ Pa. C.S. § 2807(e)(3.6).

Residential Procurement Portfolio

- Replace Duquesne's proposed portfolio of 100% 12-month contracts with 50% 12-month contracts and 50% 3-month contracts to ensure more market reflective default service pricing;
- Modify Duquesne's proposed annual PTC price changes to include a PTC that changes quarterly;
- Shorten the time between procurement of default service supply contracts and delivery to no more than 60 days; and
- Eliminate Duquesne's proposed procurement of contracts that extend beyond May 31, 2015.

Small C&I Procurement Portfolio

- Replace Duquesne's proposed portfolio of 12-month contracts with 50% 12-month contracts and 50% 3-month contracts;
- Modify Duquesne's proposed semi-annual PTC price changes to include a PTC that changes quarterly; and
- Eliminate Duquesne's proposed procurement of contracts that extend beyond May 31, 2015.

Medium C&I Procurement Portfolio

- Replace 100% of the proposed 6-month term contracts with 100% 3-month contracts; and
- Modify Duquesne's proposed semi-annual PTC price changes to include a PTC that changes quarterly.

Reconciliation

- Require Duquesne to implement quarterly reconciliation of default service rates to match the implementation of quarterly contracts.

Transmission Service and Other Related Charges

- Create a non-bypassable charge for a variety of transmission service and other related charges to ensure optimum price transparency and accuracy.

RESA's main positions and recommendations on the RMEs, which should be implemented in this proceeding, are as follows:

Retail Opt-in Auction / Aggregation Program⁸

- RESA can accept an opt-in aggregation program in lieu of an auction, if the Commission determines that aggregation is the appropriate policy. An aggregation program would work in harmony with the standard offer referral program, with consistency in term and product discount.
- The term should be four months with guaranteed savings, followed by a fixed period. The discount percentage, if a four month initial period is adopted, should be set at 7% off the PTC at the beginning of the term for both the aggregation and standard offer program. To ensure that EGSs find the program(s) attractive, the Commission should consider a lower discount if the initial term is for a longer period, as some parties have advocated.
- Implement the retail opt-in auction/aggregation by June 1, 2013.
- Apply to all non-shopping residential, small C&I, and CAP customers.
- The aggregation/auction program should have a \$50 bonus for residential customers. The bonus for small C&I customers will need to be determined by the stakeholders at a later date and could be greater than \$50 because of the differences in load.
- Include additional mailings and other communications, along with enhanced means of enrollment, to ensure maximum customer awareness and enrollment in the program.
- If an auction is ordered, it should be conducted after the enrollment so that the total number of customers participating will be known.
- If an auction, have a supplier load cap so that no EGS (or set of affiliated EGSs) can serve more than 50% of the load.
- The parties should be directed to work together to develop the binding terms and conditions that will govern their relationship consistent with the finally determined elements.

⁸ Unless otherwise noted herein, RESA's recommendations directed towards the opt-in auction would apply equally to an opt-in aggregation program.

Standard Offer Referral Program

- Coordinate the standard offer program and the aggregation program so that the products work in harmony.
- Implement the standard offer referral program by June 1, 2013.
- Shopping customers should be excluded from participating in the program.
- Small C&I customers should be included in the program.
- Program should apply to all new, move and customer inquiry and high bill calls.
- The parties should be directed to work together to develop the binding terms that will govern their relationship consistent with the finally determined elements.

Cost Recovery For Retail Market Enhancements

- Costs of the retail market enhancements should be paid for by all default service customers.
- Alternatively, the costs of retail market enhancements should be paid through a non-bypassable charge applied to all customers.
- RESA has recommended a separate charge of 5 mils/kWh with the proceeds to be used as follows: (i) Payment of any verifiable costs related to providing default service that have otherwise not been collected by the EDC; (ii) Payment of costs related to implementing and maintaining competitive market enhancements, such as the retail opt-in auction, customer referral programs; and, (iii) Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.

Time-of-Use

- Adopt a TOU plan that more fully relies on market forces.
- Duquesne should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory; alternatively (if no competitive offers exist), Duquesne should bid out the provision of the service so that it will be provided at the retail level by one or more winning EGS bidders.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.⁹ It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”¹⁰ A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.¹¹ Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.¹² More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹³

Duquesne has the ultimate burden of proof in this proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

2. Legal Standards Applicable To Default Service

a. The Competition Act

The Competition Act addresses the requirements that Duquesne, as the EDC providing default service, must meet.¹⁴ The Competition Act does not require a specific rate design

⁹ 66 Pa. C.S. § 332(a).

¹⁰ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹¹ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

¹² *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

¹³ *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

¹⁴ See 66 Pa. C.S. § 2807(e).

methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a “prudent mix”¹⁵ of resources that 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 which includes auctions, requests for proposals and/or bilateral agreements.¹⁶

The Competition Act also mandates that customers have direct access to a competitive retail generation market.¹⁷ This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.”¹⁸ Thus, a fundamental policy underlying the Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.¹⁹

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations²⁰ and a policy statement²¹ addressing default service plans. The regulations first became effective in 2007 and recent amendments to the regulations to incorporate statutory changes to the Competition Act as a result of the implementation of Act House Bill 2200, Act 129 of 2008 (“Act 129”) which became effective in November 2008, are pending.²²

¹⁵ 66 Pa. C.S. § 2807(e)(3.2).

¹⁶ 66 Pa. C.S. §§ 2807(e)(3.1).

¹⁷ 66 Pa. C.S. § 2802(3).

¹⁸ 66 Pa. C.S. § 2802(5). *See Green Mountain Energy Co. et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

¹⁹ 66 Pa. C.S. § 2802(5).

²⁰ 52 Pa. Code §§ 54.181 to 54.189.

²¹ 52 Pa. Code §§ 69.1802 to 69.1817.

²² *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011; *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 Rulemaking”). The Act 129 Rulemaking was approved by the Independent Regulatory Review Commission on May 17, 2012.

In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability²³ as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service.²⁴ The Commission has clarified that default service providers must consider price stability and reliability when developing a procurement plan that meets the “least cost over time” standard.²⁵ It is irrefutable, and clearly recognized by the Commission, that the best and most certain way to provide customer benefits and electric service at least cost over time is to create a robust and sustainable competitive market.²⁶

b. The Intermediate Work Plan and the Recent RMI End State Proposal

On April 29, 2011, the Commission initiated an investigation²⁷ into Pennsylvania’s retail electricity market.²⁸ With the input of stakeholders, the Commission entered a Tentative Order (on December 16, 2011) that issued for public comment the intermediate work plan, which identified issues, tasks and goals to be resolved and implemented prior to the expiration of the EDCs’ next round of default service plans, in an effort to improve the retail electricity market.²⁹ The Commission entered its *Intermediate Work Plan Final Order* on March 2, 2012.

²³ The General Assembly established the policy goals of Act 129 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. *See* Preamble to Act 129, 2008 Pa. Laws 129.

²⁴ *See Act 129 Final Rulemaking* at 40; 66 Pa. C.S. §2807(e)(3.7).

²⁵ *Id.*

²⁶ The Commission is charged with taking measures to develop a competitive retail market so that the market can function to drive the price of electricity down as low as possible for the benefit of consumers. *See* 66 Pa. C.S. § 2802(3), (5); *Green Mountain Energy Company v. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

²⁷ For ease of reference, the actual Investigation will be referred to as either the “RMI Investigation” or “RMI.”

²⁸ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011.

²⁹ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered December 16, 2011 (“*Intermediate Work Plan Tentative Order*”).

In its *Intermediate Work Plan Final Order*, the Commission correctly concluded that, “there is definite room for improvement to achieve the robust competitive market envisioned by the General Assembly.”³⁰ The Commission stated that measures should be used to “kick-start” retail competition.³¹ These measures include a plan for an opt-in auction and customer referral programs,³² as well as a “new/mover” referral program.³³ The *Intermediate Work Plan Final Order* also set forth the Commission’s view of the structure and timing of the auction and standard offer programs.³⁴

On September 27, 2012, the Commission, by Secretarial Letter, released its *RMI End State Proposal* to initiate the final phase of discussion before issuing a proposal for the end state of default service in Pennsylvania.³⁵ The *RMI End State Proposal* outlines default service for the period starting June 1, 2015 and, among other things, contemplates that “[d]efault [s]ervice for residential and small commercial and industrial customers (such as below 100 kW of demand) will reflect 90-day full requirements load following price resulting from quarterly auction.”³⁶ For medium and large commercial and industrial customers, hourly default service pricing would be extended down to 100 kW, except that, in cases where metering does not currently support hourly pricing for such customers, default service would instead be based on quarterly auction.³⁷ The *RMI End State Proposal* also includes provisions relating to low income customers, supplier consolidated billing, customer education and other issues. The “main theme” of the *RMI End*

³⁰ *Id.* at 3 (quoting with approval *Investigation of Pennsylvania’s Retail Electricity Market*, Opinion and Order entered July 28 Order at 7).

³¹ *Id.* at 32.

³² *Id.* at 13-14, 33-34.

³³ *Id.* at 14-20.

³⁴ *Id.* at 30-78.

³⁵ *RMI Investigation*, Docket No. I-2011-2237952, Secretarial Letter and “*RMI End State Proposal*” (Sept. 27, 2012).

³⁶ *Id.*

³⁷ *Id.*

State Proposal “is to remove barriers to competition so that default service prices more closely mirror actual market prices instead of being distorted by long-term contracts and our electric distribution companies’ inability to accurately project default service costs, which leads to large under and over-collections.”³⁸

c. The First Energy DSP Order and the PECO DSP Binding Poll

The Commission has decided two default service procurement cases since Duquesne filed its proposed DSP plan: the FE DSP plan³⁹ and the PECO DSP plan.⁴⁰ These cases provide guidance relating to the procurement plans proposed in this case and also the RME programs. With that in mind, RESA presents its views on the details of the procurement portfolio and RME programs as informed by the results of the *FE* and *PECO* decisions, although not all of RESA’s recommendations are consistent with the Commission’s rulings in those cases. RESA has provided explanations and good cause for the Commission to deviate from those decisions with respect to certain issues as described below.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

Duquesne’s proposed Default Service Plan includes a procurement structure that requires modifications to ensure that it achieves the goals of the Competition Act and complies with the Commission’s regulations and orders regarding default service. For residential and lighting customers, Duquesne proposes to obtain its supply through 12-month full requirements supply contracts obtained through competitive requests for proposals (“RFPs”).⁴¹ Each procurement would procure either 50% or 25% of Duquesne’s default service supply.⁴² Duquesne also

³⁸ *RMI Investigation*, Docket No. I-2011-2237952, Statement of Chairman Robert F. Powelson at 1 (Sept. 27, 2012).

³⁹ *See FirstEnergy Default Service Order and FE DSP II Reconsideration Order*.

⁴⁰ *See PECO Binding Poll*.

⁴¹ Duquesne St. No. 2 at 6-8 and Exh. JEW-4.

⁴² Duquesne St. No. 2 at 7-8.

proposes that at least two of its 12-month residential procurement contracts be bid out *14 months* in advance of the delivery date, and that “only” 25% of its supply be procured for delivery beginning June 1, 2015 through May 31, 2016.⁴³

For small C&I customers, Duquesne proposes to procure 12-month full requirements laddered contracts, with 50% of the default service supply being bid out at a time. One exception to the 12-month procurements would occur at the onset of the new default service plan period, as Duquesne proposes to utilize 6-month contracts representing 50% of the default service supply for the June 2013 through November 2013 period (procured in November 2012) to begin the cycle of 12-month overlapping contracts.⁴⁴ As with the residential procurement plan, Duquesne’s small C&I proposal extends beyond the May 31, 2015 end point for its DSP, as Duquesne proposes to procure 50% of its supply for small C&I customers to extend through November 30, 2015, six months past the plan period.⁴⁵

As explained in more detail below, RESA recommends that Duquesne’s proposed procurements in its DSP for residential and small C&I customers be modified in at least the following respects, all of which will assist in the development of a robust and sustainable competitive market:

- (1) Fifty percent of the proposed default service supply contracts for residential and small C&I default service customers should be shortened to 3-month contracts to allow the default service rate to better reflect wholesale market prices;
- (2) The amount of time between the RFP and the delivery date of the residential and small C&I procurement contracts should not exceed two months; and
- (3) No default service supply contracts should be approved that would extend beyond the end of the DS Plan period of May 31, 2015.

⁴³ Duquesne St. No. 2 at 10 and Exh. JEW-4.

⁴⁴ Duquesne St. No. 2 at 11 and Exh. JEW-5.

⁴⁵ Duquesne St. No. 2 at 12-13.

- (4) Duquesne's proposed annual PTC price changes for residential customers, and semi-annual PTC price changes for small C&I customer, should be modified to quarterly PTC adjustments to be consistent with the inclusion of quarterly contracts in the default service portfolio.
- (5) Reconciliations should be calculated on a quarterly basis, consistent with the inclusion of quarterly contracts in the default service portfolio and the quarterly PTC.

Also as explained below, Duquesne's proposed procurement plan for medium C&I customers requires modifications. Duquesne proposes to procure 100% of the default service supply for its medium C&I class via 6-month full requirements contracts, the exception being a 12-month contract that Duquesne procured in November 2012 that will extend six months into the upcoming default service plan period.⁴⁶ The record in this case supports RESA's position that medium C&I customers be served through quarterly procurements, in which 100% of the load is bid out every three months.

RESA's recommendations are designed to enhance the market responsiveness of the underlying supply mix which better supports sustainable retail competition and ultimately benefits consumers.⁴⁷ A robust, sustainable retail model is the only mechanism that will ensure all customers are afforded the opportunity to make individual determinations about which electricity product and pricing attributes are most important to them and make purchasing decisions based on those personal determinations. To the extent that consumers want "stable" pricing, such products will be available in a robust competitive retail electricity market.

RESA's recommendations are also consistent with the Commission's just announced RMI competitive market reforms. The Commission is proposing to require quarterly procurements for residential and small commercial customers (under 100kw) beginning in June,

⁴⁶ Duquesne St. No. 2 at 14.

⁴⁷ RESA St. No. 1 at 18.

2015.⁴⁸ RESA's proposal represents a perfect transition to such a procurement mix because it provides a balanced mix of 12-month contracts and 3-month contracts, the former of which could be phased out at the end of the DS Plan in June 2015 and replaced with quarterly contracts to realize the desired end state.

1. Residential Procurement Issues

Currently, as a result of a settlement in Duquesne's last DSP proceeding, Duquesne provides residential default service pursuant to a fixed rate for a 29-month period, which expires May 31, 2013.⁴⁹ Duquesne does not currently competitively issue RFP's for default service wholesale supply. No party in this case disputes that the elimination of Duquesne's 29-month contracts for residential customers and adoption of competitive annual RFPs will better reflect the market price of energy at the time of delivery. Duquesne's proposed residential plan, as RESA submitted in testimony, is a move in the right direction towards achieving a default service plan that fulfills all the statutory requirements, but it does not go far enough and includes significant flaws that warrant modification.⁵⁰

Residential customer shopping in Duquesne's service territory has made significant progress since the current DSP became effective in January 2011. At the end of January 2011, 22.2% of Duquesne's residential customers had switched to a competitive retail supplier.⁵¹ As of May 2012, 37.9% of residential customers had switched to a competitive retail supplier.⁵² Moreover, the number of licensed EGSs actively serving residential load in the Duquesne service

⁴⁸ *RMI Investigation*, Docket No. I-2011-2237952, Secretarial Letter and "*RMI End State Proposal*" (Sept. 27, 2012).

⁴⁹ Duquesne St. No. 2 at 6.

⁵⁰ RESA St. No. 1 at 12.

⁵¹ RESA St. No 1 at 12-13.

⁵² RESA St. No. 1 at 13.

territory has increased from 11 in January 2011 to 34 as of May 2012.⁵³ As Duquesne indicates, this high residential shopping level suggests that residential customers do not require as much price stability in their default service rates as they may have in the past.⁵⁴

These statistics indicate that Duquesne customers are willing to become informed and take action to choose a supplier that is more suitable to meet their needs.⁵⁵ For the 62.1% of customers who remain on default service, however, implementing a more market-reflective default service rate (supplemented with the retail market enhancement initiatives as discussed below) will maximize the transition to a more robust and sustainable competitive retail electricity market, and ensure that the current retail market does not fall victim to “boom/bust” cycles in which the default service rate diverges from the actual current price of energy.⁵⁶ Moreover, and as noted, now that the Commission has announced its long term market reforms in its RMI investigation, it should adopt a plan that facilitates a reasonable transition to the quarterly procured three-month contracts that it has announced it intends to utilize starting in 2015. RESA’s procurement proposal does just that.

⁵³ RESA St. No. 1 at 13.

⁵⁴ Duquesne St. No. 2 at 8.

⁵⁵ RESA St. No. 1 at 13.

⁵⁶ *See, e.g.*, RESA St. No. 1-SR at 6:

... more frequent procurements of default service supply using contracts of a shorter duration and concomitant price changes would occur with RESA’s recommendations, and this will create a robust *sustainable* market where customers have *continued access* to competitive offers from many suppliers who will deliver innovative products and services to meet their individual needs. This is far different from a market in which EGSs are afforded intermittent opportunities to compete because of an actual or possible disconnect between default service rates and the underlying wholesale market prices. A market which allows for “boom-bust” cycles is not a sustainable, robust market and, in time, may deprive customers of the competitive market to which they are entitled by law. Market prices have diverged considerably from Duquesne’s current default service rate, which has created a “boom” cycle. There is no guarantee that the current environment could not reverse itself, leaving customers with few or no competitive options in the future.

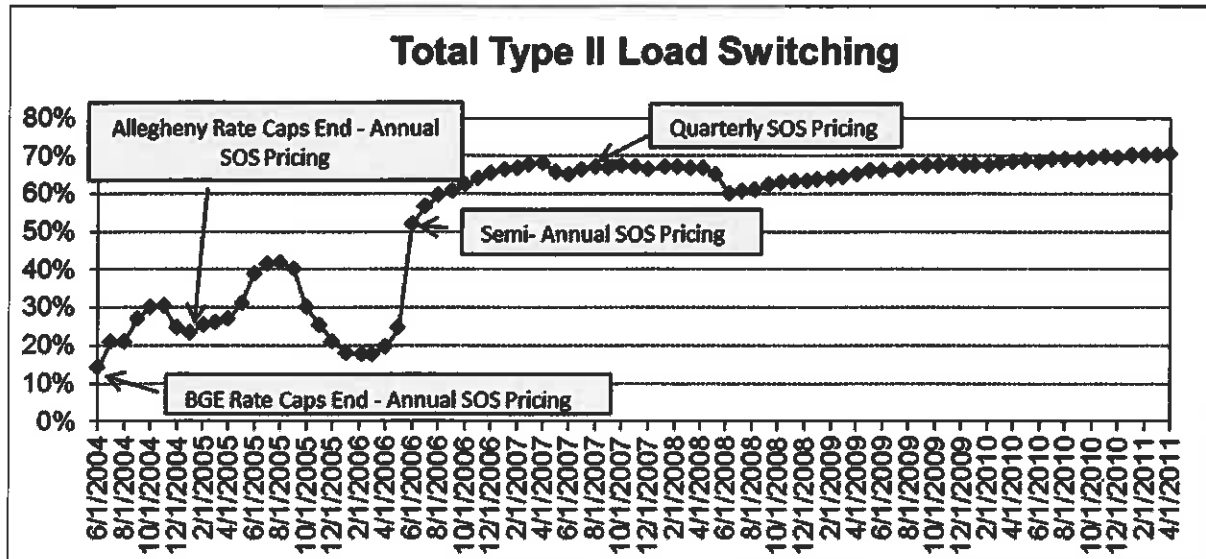
a. Product(s) and Product Terms

In order to move closer to market-reflective prices for energy, and to facilitate a reasonable transition to the Commission's announced 2015 default service procurement mix, RESA proposes a portfolio mix of 50% 12-month and 50% quarterly fixed priced full requirements products.⁵⁷ Under RESA's proposal, the terms of both the 12-month and quarterly products would end on May 31, 2015. The recommended mix of 12-month and 3-month contracts is included in this record as Exhibit AW-1.

The inclusion of quarterly procurements in the residential default service portfolio will result in default service rates that more accurately reflect the underlying wholesale cost of electricity and, in turn, enable customers to reap the benefits of a more competitive retail market. Evidence of this fact includes the fact that the Maryland utilities have conducted quarterly procurements for their mid-size commercial customers since 2006, and as the following chart indicates, since implementing quarterly procurements, customer shopping has improved and remained at a consistently high level, indicating that default service rates that are more reflective eliminate the "boom-bust" cycles in shopping:⁵⁸

⁵⁷ RESA St. No. 1 at 14 and RESA Exhibit AW-1.

⁵⁸ RESA St. No. 1 at 10; RESA St. No. 1-SR at 7-8.



This chart illustrates the value that market-reflective default pricing has on retail competition. As shown above, since the time that Maryland instituted market reflective (first semi-annual and then quarterly adjusted) pricing for Type II non-residential customers (25 kW to 600 kW), shopping levels have remained not only relatively stable but also at a significant level.⁵⁹ More frequent procurements underscore the direct correlation between the underlying wholesale cost of electricity, the resulting default service rates, and customer shopping.⁶⁰ Simply put, more frequent procurements allow for default service rates that are more market reflective, which eliminates the “boom/bust” cycles in shopping because EGSs can compete and market for customers on a continuous and sustainable basis.⁶¹

Duquesne, OCA, and FES object to RESA’s proposal to include quarterly procurements, misconstruing both the purpose and substance of the Type II chart and arguing primarily that the proposal would cause rate uncertainty. RESA responded to those concerns in its surrebuttal testimony.⁶² FES, in fact, presented its own derivation of the Type II chart which, as RESA

⁵⁹ RESA St. No. 1 at 9.
⁶⁰ RESA St. No. 1-SR at 7.
⁶¹ See, e.g., RESA St. No. 1-SR at 7-8.
⁶² See RESA St. No. 1-SR at 7-11.

explained, only served to prove even more effectively RESA's point that more market reflective default service pricing results in more robust sustainable competition.⁶³ RESA's Exhibit AW-2, developed in response to FES' rebuttal testimony, illustrates the difference in shopping between customers that receive laddered 24-month contracts, semi-annual and 3-month contracts, and hourly priced default service. With more market reflective default service comes higher and continuous shopping as competition becomes more sustainable and robust.

RESA's proposal properly balances the policy concerns raised by the parties in this case relating to the objectives of default service – least cost over time, rate stability, and the creation of a sustainable competitive market. The Commission has recognized the problems of relying exclusively on the default service provider “as the provider of first resort” to achieve all policy objectives.⁶⁴ RESA's proposals not only address how consumers who want greater price stability would be able to receive it, but pave the way for consumers with other desires and objectives with respect to electricity to receive those products and services that better meet their individual needs.⁶⁵ The fact that these products and services would be available in the competitive market, rather than provided by the EDC default service provider, is the epitome of the intent of the Competition Act and is in no way inconsistent with the Act 129 legislative preamble to give “due regard” to price stability.⁶⁶

Moreover, the desire for “price certainty” differs from customer to customer – there is no “one-size-fits-all” level of price certainty and predictability that meets all customers' needs. Customers have different preferences when it comes to price certainty and they can choose the

⁶³ RESA St. No. 1-SR at 8; RESA Exh. AW-2.

⁶⁴ *Investigation of Pennsylvania Retail Electricity Market*, Docket No. I-2011-2237952, Opinion and Order July 28, 2011 at 6 (stating that the “most succinct characterization” of the *en banc* hearings was that “The chief culprit is that default service is the provider of first resort, not the provider of last resort.”).

⁶⁵ RESA St. No. 1-SR at 5.

product that provides the level of price certainty and predictability that meets their individual needs from EGSs that offer a wide array of pricing and product options that are available in a robust sustainable competitive market.⁶⁷

Perhaps more importantly, the Commission has now indicated its view of default service beginning in 2015 is to transition to 100% 3-month contracts for residential customers. RESA's proposed blend of 12-month and 3-month contracts would mean that the quarterly default service rate changes would be cushioned since only 50% of the load would be bid out quarterly. RESA's proposal fits nicely within the confines of the Commission's recent *RMI End State Proposal* and provides a reasonable transition to the 2015 end state that the Commission is currently contemplating.

For its part, the OCA is recommending a number of modifications to Duquesne's proposed procurement plan for residential customers. OCA desires to incorporate block and spot purchases and also 24-month contracts into Duquesne's portfolio, along with 12-month contracts. RESA opposes OCA's requested modifications. The inclusion of block contracts is inconsistent with establishing default service rates in a manner that promotes the development of a robust sustainable competitive retail market because the underlying design of such a default service procurement plan will not result in prices that more consistently reflect the underlying wholesale market price changes.⁶⁸ RESA also agrees with the testimony submitted by Dominion/IGS relating to the additional risks attributable to purchases of block power.⁶⁹

Furthermore, the inclusion of 24-month contracts would result in default service rates that are less market reflective than Duquesne's current proposal and thus serve as a barrier to retail

⁶⁶ RESA St. No. 1-SR at 5.

⁶⁷ RESA St. 1-R at 9.

⁶⁸ RESA St. No. 1-R at 3.

⁶⁹ See Thomas J. Butler St. No. 1 at 3:10-19.

competition.⁷⁰ RESA's proposal is consistent not only with the *RMI End State Order*, but also with the Commission's *FirstEnergy Default Service Order* in which the Commission, in rejecting the proposed default service plan, ruled it was "not convinced that the Companies' proposal would best meet the least cost over time criteria and [it] presents a considerable risk that default service rates would not remain economical relative to other electric supply options . . . [as] two-year procurement contracts create a potential risk that the default service rates may become inconsistent with competitive rates over an extended period of time."⁷¹ The Commission rejected OCA's proposal in the *FE* case which was similar to OCA's proposal in this case.

RESA agrees with Duquesne's criticism of OCA's proposal to include 24-month contracts. Duquesne opposed 24-month contracts in its testimony, stating that OCA's proposal "equates to market speculation, in an effort to 'second guess,' 'time,' or 'beat the market.'"⁷² Duquesne continued that,

While Dr. Estomin may have an expectation regarding future market price levels that differs from the expectations of a multitude of experienced market participants who are willing to stake their own money on their beliefs in the form of supply bids, there is no reason to believe that Dr. Estomin's expectations are more reliable. Consequently, I believe it would be imprudent to rely on Dr. Estomin's market speculation when making multi-million-dollar supply decision on behalf of Duquesne Light's customers.⁷³

Market reflective default service prices are necessary to facilitate the development of a robust sustainable competitive retail market that will provide the myriad of product and service offerings - including those that offer various levels of price certainty and predictability - from which customers can choose. RESA requests that the Commission accept its modifications to

⁷⁰ See, e.g., RESA St. No. 1-R at 2-3.

⁷¹ *FirstEnergy Default Service Order* at 25-26.

⁷² Duquesne St. No. 8-R at 30.

⁷³ Duquesne St. No. 8-R at 30.

Duquesne’s residential procurement proposal by using a blend of 12-month and 3-month procurements that, as the record indicates, better reflect market prices and will result in continuous and robust competition for customers, produce least cost procurement over time, and address rate stability concerns.

b. Procurement Dates

In addition to recommending quarterly procurements, RESA has proposed a procurement plan that provides for lead times of no more than two (2) months for each procurement.⁷⁴ This is in contrast to Duquesne’s proposal, in which some procurements are close in time to delivery and others have lag times of up to 14 months.⁷⁵ RESA’s proposed two-month lead times would allow Duquesne 7 to 10 business days to calculate the new Price to Compare, and provide EGSs 45 days to adjust to the new PTC.⁷⁶ In any event, procurement lead times proposed by Duquesne should be shortened so that no procurement is conducted more than 60 days prior to delivery of any product.⁷⁷ Again, RESA’s proposal is designed to make default service rates more market-reflective to encourage retail competition and foster the availability of an array of electric power options for customers. The longer the lag between procurement and delivery, the more likely the default service rate will not be market reflective.⁷⁸ RESA’s proposal is consistent with the *FirstEnergy Default Service Order*, in which the Commission reaffirmed the benefits of shorter procurement lead times, stating that, “[w]e concur with RESA that shortening the

⁷⁴ RESA St. No. 1 at 16, RESA Exhibit AW-1.

⁷⁵ Duquesne St. No. 8-R at 47-48.

⁷⁶ RESA St. No. 1 at 16.

⁷⁷ RESA St. No. 1 at 16. See Section III.D.2 with respect to RESA’s proposal relating to the calculation of the PTC.

⁷⁸ RESA St. No. 1-SR at 13.

procurement lag time will increase the probability that default service rates are more reflective of current market rates.”⁷⁹

As part of its proposal, Duquesne proposes simultaneous procurements – one to procure supply two months in advance of the delivery date for 2013-2014, and one to procure supply *14 months* in advance of the delivery date for 2014-2015.⁸⁰ Duquesne states that these simultaneous procurements act as a hedge against uncertain future market prices just as if it were a single product for two years because, in both cases, the supply is “locked up for the entire two-year period at the same time.”⁸¹ Duquesne also states that its proposal will result in default service rates that “will track unexpected supply costs from year to year more closely than they would if a two-year product were procured at a single price,” and that “the default service rates in each year [will] better reflect contemporaneous market prices....”⁸²

Duquesne’s argument in favor of long lead times prior to the date of delivery inconsistent with the Commission’s decision in the *FirstEnergy Default Service Order* as explained above. Moreover, Duquesne’s argument is not supported by the record in this case and is contradicted by Duquesne’s own testimony. First, the substantive record in this case does not support Duquesne’s statements that default service rates procured 14 months before delivery will even come close to reflecting “contemporaneous market prices” at the time of delivery. On the contrary, the record reflects that the longer the lag time, the more likely the rate will not reflect the market.⁸³

⁷⁹ *FirstEnergy Default Service Order* at 26.

⁸⁰ Duquesne St. No. 8-R at 47-48. Duquesne is also proposing a second procurement with a 14-month lag time. In April 2014, Duquesne proposes to procure supply for the period June 2015 to May 2016. *See* Petition at p. 4.

⁸¹ Duquesne St. No. 8-R at 48.

⁸² Duquesne St. No. 8-R at 48, 49

⁸³ *See, e.g.*, RESA St. No. 1 at 9-10.

Second, Duquesne’s criticism of OCA’s proposal for 24-month contracts contradicts its own arguments in favor of 14 month lead times. As explained above, OCA has proposed a residential procurement structure that includes two-year contracts. Duquesne opposes that proposal vigorously in Duquesne St. No. 8-R at 28 *et seq.* One reason that OCA proposed two-year contracts was that OCA desired to take advantage of current market conditions. Duquesne opposes OCA’s proposal in part because, as explained above, it “equates to market speculation, in an effort to ‘second guess,’ ‘time,’ or ‘beat the market.’”⁸⁴ Despite this attack on OCA, Duquesne states that its proposed timing for procurements will provide a hedge against uncertain future market prices. However, just as the two-year contracts proposed by OCA are imprudent, it is equally imprudent to bid out a 12-month contract *14 months* before the date of delivery, for the very same reasons that Duquesne criticizes OCA.

c. Reserving Supply For Retail Opt-In Customer Participation

OCA expresses a concern about the potential volumetric risk placed on wholesale bidders for default service supply as a result of potential participation in the opt-in auction program.⁸⁵ As one way to address this concern, OCA recommends reducing the auction customer participation cap from 50% to 20% and to set aside a portion of the targeted full requirements contracts to fill the auction tranches.⁸⁶ RESA will address the customer participation cap issue below in Section III.C.f. RESA opposes OCA’s proposal to “hold back” (i.e., delay or forego procurement of) some tranches of the residential default service supply until after the Opt-In program’s customer enrollment period concludes. As Duquesne points out, adoption of OCA’s proposal presents has the potential to (1) contribute to rate shock and create a large deferred cost recovery balance, and (2) impose additional costs due to the potential need to separately procure

⁸⁴ Duquesne St. No. 8-R at 30

⁸⁵ OCA St. No. 1 at 19-20.

additional supply.⁸⁷ As Duquesne concludes, OCA's proposal would actually shift risk to customers and not reduce risk, and it could impact additional costs on customers, when doing so is simply not needed.⁸⁸

OCA made a similar proposal in the *FE* proceeding which the Commission rejected.⁸⁹ The Commission determined that the proposal presented significant additional risk for customers. Also, the Commission rejected the inclusion of block procurements in the default service portfolio, which eliminated the risk that the Companies would be saddled with unneeded suppliers in the event the opt-in participation is greater than expected and the Companies' default service requirements were less than expected.⁹⁰ There is no reason for the Commission to reach a different conclusion in this case.

2. Small C&I Procurement Issues

a. Products and Product Terms

For small C&I customers, Duquesne proposes to procure 12-month full requirements laddered contracts, with 50% of the default service supply being bid out at a time.⁹¹ The exception to the 12-month procurements would occur at the onset of the new default service plan period, as Duquesne proposes to utilize 6-month contracts representing 50% of the default service supply for the June 2013 through November 2013 period (procured in November 2012) to begin the cycle of 12-month overlapping contracts. The retail PTC would be re-reset twice per year, in contrast to the current once per year.

⁸⁶ OCA St. No. 1 at 20-28.
⁸⁷ Duquesne St. No. 8-R at 23-24.
⁸⁸ Duquesne St. No. 8-R at 27.
⁸⁹ *FirstEnergy Default Service Order* at 29
⁹⁰ *FirstEnergy Default Service Order* at 29.
⁹¹ Duquesne St. No. 2 at 11 and Exh. JEW-5.

In response to Duquesne’s proposal, RESA recommends that Duquesne be directed to modify its proposed portfolio to be the same as its portfolio for residential customers: 50% 12-month contracts, 50% quarterly contracts, with the PTC being adjusted quarterly.⁹² This recommendation makes sense in light of the fact that as of May 2012, a large number of Duquesne’s small C&I customers have shown that they are aware of their opportunities in the retail market and have taken advantage of those opportunities. Specifically, 30.4% of Duquesne’s small C&I customers, representing 39% of the load, has switched to alternative suppliers.⁹³ As of May 2012, 46 EGSs are actively serving load in Duquesne’s service territory.⁹⁴

Like RESA’s recommendations for residential procurements, RESA’s small C&I recommendations makes sense because of the Commission’s recent *RMI End State Proposal* that describes an end state for default service that includes quarterly default service contracts for small commercial customers. RESA’s proposed plan for small commercial customers provides and reasonable transition – 50% quarterly contracts – to that end state.

OSBA witness Mr. Kalcic supported Duquesne’s proposed procurement for small C&I customers. In his testimony, Mr. Kalcic points to the 12-month laddered contracts as providing “reasonable price stability” and states that “[I]adding the Small C&I procurement contracts will limit the turnover in default service supply to 50% (of the total supply) at each procurement.”⁹⁵ RESA opposes Duquesne’s proposal for small C&I but notes that OSBA’s testimony is partially consistent with RESA’s testimony. Just as OSBA supports Duquesne’s proposal because that proposal limits turnover to 50% of supply thereby providing “reasonable rate stability,” so, too,

⁹² RESA St. No. 1 at 14, 22; Exh. AW-1.

⁹³ RESA St. No. 1 at 13.

⁹⁴ RESA St. No. 1 at 13.

⁹⁵ OSBA St. No. 1 at 5:7-10.

does RESA's proposal which would bid out 50% of the supply annually and 50% of the supply quarterly (with concomitant quarterly adjustments to the PTC).

RESA's recommendations are designed to enhance the market responsiveness of the underlying supply mix which better supports sustainable retail competition and ultimately benefits consumers. A robust, sustainable retail model is the sole mechanism that will ensure all customers are afforded the opportunity to individually determine which electricity product and pricing attributes are most important to him/her and make purchasing decisions based on those personal determinations. RESA's small C&I proposal offers sufficient rate stability. To the extent consumers want pricing that offers more "stability" than the default service price, they will be able to choose the products that provide the level of stability that best meet their individual needs in a more robust sustainable competitive retail electricity market.⁹⁶

b. Procurement Dates

Under Duquesne's proposal, the new DS Plan period would commence with a 6-month contract for small C&I customers with delivery beginning June 2013. That contract would be bid out in November 2012, which obviously is not going to happen given that this proceeding is not scheduled to conclude until January 2013.⁹⁷ Be that as it may, RESA requests that the Commission direct Duquesne to utilize lag times of no more than 60 days between the RFP date and the date of delivery of each contract.

⁹⁶ RESA St. No. 1 at 18; RESA St. No. 1-R at 6.

⁹⁷ *Prehearing Conference Order* at ¶ 8 (entered in this case on May 16, 2012).

3. Medium C&I Procurement Issues

a. Product(s) and Product Terms

Duquesne proposes to procure 100% of the default service supply for its medium C&I class via 6-month full requirements contracts.⁹⁸ RESA would modify Duquesne's proposal such that medium C&I customers would be served through quarterly procurements, in which 100% of the load is bid out every three months. As of May 2012, 57.6% of Duquesne's medium C&I customers, representing 67.5% of the medium C&I load, purchased their electricity supply from one of 46 EGSs.⁹⁹ These customers have proven to be sophisticated and not shy about taking advantage of market opportunities, and the time is right to transition these customers to quarterly procurements.¹⁰⁰

The above Type II chart is noteworthy because it shows that quarterly procurements for similarly-sized customers in Maryland (25 kW to 600 kW) has contributed to sustainable competition and avoided any boom-bust cycle. As is shown on the chart, 67% of the Type II load was already shopping when Maryland went to quarterly procurements. Not only is 67.5% of Duquesne's medium C&I load – 25 kW to 300 kW – already shopping, but 60% of Duquesne's smaller medium C&I load between 25 kW and 100 kW had shopped for electricity as of May 2012.¹⁰¹

Not only is the move to quarterly procurements a reasonable next-step for medium C&I customers, but it would also provide a clean transition to hourly priced default service as envisioned in the *RMI End State Proposal*. Currently, the default service rates for medium C&I

⁹⁸ Duquesne St. No. 2 at 14. The exception to the 6-month procurements is a 12-month contract that Duquesne procured in November 2012 that will extend six months into the upcoming default service plan period. Id.

⁹⁹ RESA St. No. 1 at 19.

¹⁰⁰ RESA St. No. 1 at 19.

¹⁰¹ RESA St. No. 1 at 19.

change twice per year. Under RESA's proposal the default service rate would change four times per year. The *RMI End State Proposal* provides that, in 2015, hourly priced default service for medium and large commercial and industrial customers would be extended down to 100 kW for interval metered customers. Thus, the addition of two default service rate changes per year would provide a reasonable transition to hourly service for the 100 kW to 300 kW C&I customers.

OSBA's proposal for medium C&I load is a step backwards for the development of robust sustainable competitive retail markets and will result in default service rates that are *less* market reflective than those proposed by Duquesne (6-month contracts/PTC adjustments) and by RESA (quarterly contracts/PTC adjustments).¹⁰² OSBA recommends that Duquesne should utilize one-year (non-laddered) contracts to acquire 100% of the default service medium C&I load.¹⁰³ The only apparent difference between OSBA's proposal for medium C&I customers and the current DS plan is that, under the current DS plan, the 12-month contracts are laddered whereas with OSBA's proposal they would not be laddered.¹⁰⁴ In fact, under OSBA's proposal, the default service contract durations and PTC adjustments for medium C&I customers would be the same as the contracts and PTC adjustments that Duquesne has proposed for residential customers.¹⁰⁵ With more than two-thirds of Duquesne's medium C&I customers shopping, it is the perfect time to transition these customers to a more robust sustainable competitive market capable of delivering the myriad products and services these customers deserve.

¹⁰² RESA St. No. 1-R at 6-7.

¹⁰³ OSBA St. No. 1 at 6.

¹⁰⁴ OSBA St. No. 1 at 6.

¹⁰⁵ RESA St. 1-SR at 11-12.

b. Procurement Dates

The competitive solicitations will occur in April and November of each year, with the April solicitations procuring 100% of the default service supply for the upcoming June to November period, and the November solicitation procuring 100% of the default service supply for the upcoming December to May period.¹⁰⁶ RESA does not object to the timing of these procurements, which are two months in advance of delivery and within the 60-day window that RESA has proposed for all procurements. As explained above, however, RESA recommends quarterly procurements, which could also be accomplished with procurement dates that are within 60 days of delivery.

4. Large C&I Procurement Issues

Duquesne currently serves its large C&I customers (equal to or greater than 300 kW) via day-ahead hourly spot pricing purchased directly from PJM Interconnection, with true-ups made using purchase and sales in the PJM real-time spot markets.¹⁰⁷ According to Duquesne, EGSs supply the load for 97% of the large C&I load, and the large C&I customers do not require a greater level of rate stability.¹⁰⁸ RESA agrees with Duquesne's proposal for large C&I customers and with Duquesne's statement in its Petition initiating this proceeding that "[h]ourly price default service is appropriate for this mature market segment at this time."¹⁰⁹

5. Default Supply Load Cap Issues

RESA supports Duquesne's proposal that no one wholesale supplier should be awarded more than 50% of the tranches available for any procurement class in any RFP.¹¹⁰ Wholesale supplier load caps are a competitive safeguard because they limit the EDC's exposure to contract

¹⁰⁶ Duquesne St. No. 2 at 13-14 and Exh JEW-6.

¹⁰⁷ Duquesne St. No. 2 at 16.

¹⁰⁸ Duquesne St. No. 2 at 17.

¹⁰⁹ *Petition* at ¶ 34.

failure of any particular wholesale supplier.¹¹¹ On this note, the Commission, in the *FirstEnergy Default Service Order* and in the *PECO Binding Poll*, ruled that a 50% supplier load cap is appropriate.¹¹²

6. Procurements for Delivery Beyond May 31, 2015

Duquesne's residential and small C&I procurement proposals include contracts that would extend beyond the end of the default service plan period of May 31, 2015. For residential, Duquesne proposes to procure a one-year full requirements supply for delivery beginning June 1, 2015 through May 31, 2016.¹¹³ For small C&I customers, Duquesne proposes to procure 50% of its supply for small C&I customers to extend through November 30, 2015, six months past the plan period. Duquesne contends that the extensions beyond the plan period are necessary for rate stability reasons.¹¹⁴ OCA and OSBA support Duquesne's proposal to allow contracts to extend beyond the plan period.

RESA opposes the extension of any procurement contracts beyond May 31, 2015. If the Commission determines that the then-effective default service plans on June 1, 2015 should continue for some period beyond that date, then all non-block default supply could be procured on a quarterly fixed price full requirements basis going forward.¹¹⁵ In a few years, the Commission's Retail Markets Investigation should be further along in the process (or completed), and may lead to an outcome where there will be significant changes in the nature or procurement process for default service. Given the on-going review of the current market

¹¹⁰ RESA St. No. 1-R at 8.

¹¹¹ RESA St. No. 1-R at 8.

¹¹² *FirstEnergy Default Service Proceeding* at 33; *PECO Binding Poll* at 5.

¹¹³ Duquesne St. No. 2 at 10 and Exh. JEW-4. Duquesne asserts that it has limited the quantity of the contracts with delivery after May 31, 2015, to provide for "only" 25% of the necessary supply to residential default service customers. *Id.*

¹¹⁴ Duquesne St. No. 2 at 12-13.

¹¹⁵ RESA St. No. 1-R at 4.

structure and the potential for significant changes effective June 2015, the prudent course is to adopt a default service plan that ends with the current planning year end date. RESA does not support the use of any default service contracts, regardless of the term, that extend beyond the expiration date of the default service plan term. RESA's position to eliminate the tails at the end of the residential and small C&I proposals is consistent with the Commission's decision in its *RMI Default Service Order*, in which the Commission recommended that the EDCs:

... file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period; and . . . that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolios, and consider using already existing long-term contracts from previous or presently effective default service plans.¹¹⁶

In the recent *FirstEnergy Default Service Order*, the Commission maintained this position by rejecting a similar proposal by the OCA and others in that case.¹¹⁷ In doing so, the Commission recognized that "utilize[ing] shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring that procurements extend beyond May 2015." In essence, Duquesne's proposal to procure contracts that extend beyond the two year date is directly counter to the clear objective outlined by the Commission in its *RMI Default Service Order* and reaffirmed in the *FirstEnergy Default Service Order*. Duquesne's proposal would also complicate and extend the transition to quarterly contracts as envisioned in the recent *RMI End State Proposal*.

7. Miscellaneous Procurement Issues

At this time, RESA does not desire to comment on any other procurement related issues.

¹¹⁶ *RMI Default Service Order* at 19.

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

a. Auction vs. ROI Program

Duquesne proposes to implement a retail opt-in (“ROI”) auction program in which participating EGSs will offer residential customers a 12-month fixed priced product at a price that is established via competitive bid (at least 5% off the June 1, 2012 default service PTC).¹¹⁸ After three billing cycles, customers participating in the auction will receive a \$50 cash payment from his/her EGS.¹¹⁹

After the filing of the Application and intervenors’ direct testimony in this case, the Commission on August 2, 2012 issued the *FirstEnergy Default Service Order*. In that Order, the Commission directed the Companies to implement an ROI aggregation program in lieu of an ROI auction. Specifically, the Commission directed the Companies to implement an “ROI Aggregation Program consisting of a one-year product comprised of five percent off the PTC at the time of enrollment for four months, a fixed price for the remaining eight months and the inclusion of a fifty dollar bonus.”¹²⁰ The Commission stated its belief that this revised program would attract EGS support and participation and noted that there is no need for an auction under the revised opt-in program because the new opt-in product would be a standardized one consisting of the pre-determined five percent introductory discount for four months followed by a fixed price for eight months. The policy pronouncements in favor of an ROI aggregation

¹¹⁷ *FirstEnergy Default Service Order* at 27-28.

¹¹⁸ Duquesne St. No. 3 at 14.

¹¹⁹ Duquesne St. No. 3 at 14.

¹²⁰ *FirstEnergy Default Service Order* at 131.

program set forth in the *FE* decision have now been confirmed in the *PECO Binding Poll*.¹²¹ It appears clear that the Commission has decided that opt-in aggregation should be among the set of elements for the RMEs that it will follow, absent good cause shown to the contrary. To that end, RESA's surrebuttal testimony in this case included a direct assessment of the aggregation program as approved in the recent *FE*, and provided details necessary to implement such a program. Assuming the details were as RESA suggests in its testimony, then "RESA supports [an opt-in aggregation] program and would like to see it adopted on a uniform basis in the service territories of all the EDCs with default service plans pending before the Commission."¹²²

The ROI aggregation approach, as adopted in the *FE* case and with the details provided by RESA, offers customers and EGSs at least four benefits. First, the aggregation approach is more likely to attract robust EGS participation thus alleviating any concerns that a lack of EGS response might prevent the program from achieving its intended goal.¹²³ This is primarily because, with the elimination of the auction approach to select participating EGSs, all licensed EGSs in good standing with the Commission would be allowed to participate under RESA's proposal.¹²⁴

Second, the aggregation approach may offer a more consensus way forward on certain issues of cost recovery for this program.¹²⁵ RESA continues to believe that the costs of the market enhancement programs should be borne either by default service customers or customers

¹²¹ See Motion of Commissioner Witmer (Issues 14, 26, 27) entered on September 27, 2012 (which changed PECO's opt-in competitive offer program to align it with the retail opt-in aggregation program set forth in the *FirstEnergy Default Service Order*).

¹²² RESA St. No. 2-SR at 19.

¹²³ RESA St. No. 2-SR at 19.

¹²⁴ RESA St. No. 2-SR at 18. Customers would be allocated equally to participating EGSs. If 50,000 customers enroll and 10 EGSs participate, each EGS would be allocated 5,000 customers. *Id.*

¹²⁵ RESA St. No. 2-SR at 19.

generally.¹²⁶ In the event, however, that the Commission adopts a cost recovery mechanism that collects some or all of the costs from EGSs, RESA favors a “cost per customer acquired” approach. If the ROI aggregation program ordered in the *FE* case were adopted here, RESA believes the “cost per customer acquired” approach to cost recovery could be applied to the aggregation program, provided the costs of the aggregation program are known in advance so that EGSs can estimate the likely per customer cost attributable to Duquesne’s administrative costs in operating the program.¹²⁷

Third, once underway, a properly-designed ROI aggregation program could incent competition and encourage EGSs to invest in and offer innovative products and service to customers.¹²⁸ While the aggregation approach adopted in the *FE* case would greatly reduce the likelihood that it would offer any single EGS the opportunity to achieve material scale in any given utility service territory, the program would provide a platform through which to introduce customers to a more diverse array of products and services than would be available through a program that awarded customers to a smaller group of EGSs.¹²⁹ Under the approach adopted in the *FE* case, participating EGSs would be competing with other EGSs (whether those other EGSs are participating in the ROI program or not) to keep the customers they were allocated during the eight month period that would begin in month five.¹³⁰ Product differentiation and innovation could offer EGSs a competitive advantage in such a dynamic marketplace and, while most customers are interested in price, many customers value green energy products, innovative technology solutions, customer loyalty programs and other forms of value that an EGS might offer. Under the aggregation program, customers get a clear price-driven value proposition with

¹²⁶ RESA St. No. 2-SR at 19.

¹²⁷ RESA St. No. 2-SR at 19-20.

¹²⁸ RESA St. No. 2-SR at 20-21.

¹²⁹ RESA St. No. 2-SR at 20-21.

the \$50 bonus and the initial discount, but after the first four months, EGSs would have an opportunity to compete on many different dimensions to attract and retain customers.

Finally, the ROI aggregation program as described above offers the opportunity to achieve a higher degree of consistency and uniformity between the ROI program and the standard offer referral program across the various EDC service territories.¹³¹ The Commission's decision to convert the ROI auction into an ROI aggregation program essentially makes the ROI program a form of customer referral program. Indeed, the Commission noted that it modeled the ROI program after RESA's recommendations regarding the standard offer referral program.¹³² Under this approach, both programs can now work in a similar manner to introduce customers to the competitive market, namely by referring them on a uniform basis to one of a group of participating suppliers.¹³³ RESA recommends that the Commission capitalize on the similarities between the programs by harmonizing them to an even greater extent and applying them in all EDC service territories.¹³⁴ The modifications necessary to the standard offer referral program to make it consistent with the ROI aggregation program are explained below and include modifying the standard offer referral product so that it matches the price and term of the ROI aggregation program.

b. Term of Offer

Consistent with the *FirstEnergy Default Service Order*, RESA recommends a one-year product, with a discount off of the PTC for the first four months followed by a fixed price for eight months beginning in month five. The initial four-month price is in line with RESA's procurement proposal for residential customers, which includes a PTC that changes every

¹³⁰ RESA St. No. 2-SR at 20-21.
¹³¹ RESA St. No. 2-SR at 21.
¹³² *FirstEnergy Default Service Order* at 118, fn 28.
¹³³ RESA St. No. 2-SR at 21.

quarter. This is important because an offer with a 12-month term that guarantees a five percent savings off of the PTC (as Duquesne has proposed in this case¹³⁵), even if the PTC changes during the contract term, is unlikely to produce the best price for the customer because it exposes EGSs to an unreasonable level of risk.¹³⁶ EGSs are generally comfortable providing a fixed 12-month price, as such offers can be hedged at the time they are made.¹³⁷ EGSs generally are not comfortable offering a mandated guaranteed savings against a price that might change over time in an unforeseeable manner.¹³⁸

With respect to the final eight months of the one-year duration, each EGS would offer its customer a fixed rate that it would communicate to the customer consistent with the Commission's regulations requiring two notices before a price change.¹³⁹ Customers who were dissatisfied with the price or terms in the EGS's communication would be allowed to switch away from the EGS without any penalty.¹⁴⁰ This approach is consistent with the Commission's adoption of Commissioner Witmer's motion addressing the retail market enhancement programs, in which the Commission decided that it would "... require that participating EGSs provide the PUC for review, the terms and conditions of the 8-month ROI fixed-priced offering."¹⁴¹ RESA interprets this passage to mean that the Commission intends that EGSs actively compete against

¹³⁴ RESA St. No. 2-SR at 21-22.

¹³⁵ Duquesne St. No. 3 at 14.

¹³⁶ RESA St. No. 2-R at 8.

¹³⁷ RESA St. No. 2-R at 8.

¹³⁸ RESA St. No. 2-R at 8-9.

¹³⁹ RESA St. No. 2-SR at 19.

¹⁴⁰ RESA St. No. 2-SR at 19. RESA does not support OCA's proposal that savings versus the default service price should be guaranteed throughout a 12-month term regardless of the pricing regime that is adopted for default service. OCA's proposal places undue risk on the EGS. RESA St. No. 2-R at 2-3.

¹⁴¹ RESA St. No. 2-SR at 18.

one another to retain customers after the initial four month price expires, rather than dictating an administratively-determined price for that 8-month period.¹⁴²

c. Discount Percentage

If there is to be an auction, Duquesne proposes that the discount be “at least” five percent and that the exact amount be the result of a bidding process among EGSs.¹⁴³ RESA is not opposed to Duquesne’s “at least 5%” proposal were the Commission to implement an ROI auction instead of an ROI aggregation, but RESA would apply the discount over the initial four months and not the entire 12-month period. Under an aggregation program, as the Commission noted, “there is no need for a [competitive process] to be run in order to solicit EGS participation” and the ROI product discount is a “set amount.”¹⁴⁴

As explained above, there are benefits from the ROI program and standard offer program working in tandem.¹⁴⁵ The percentage discount should be the same for both programs, assuming the Commission adopts the ROI aggregation approach for the Duquesne territory.¹⁴⁶ RESA in this case had recommended an initial term of at least 5% for the ROI auction and 7% for the standard offer program, both for four month terms followed by a fixed period, prior to the *FirstEnergy Default Service Order*. With the shift to the ROI aggregation program, RESA does not oppose 7% for each program during the initial 4-month term (even if the PTC changes during the four month period) but would not extend 7% for a longer period of time. The same programs with a 5% discount may still be enticing to customers and would likely attract more EGS participation, and would therefore attain the goals of construct these programs so that they offer the same price and term to customers, but for the bonus payment, and are attractive to EGSs and

¹⁴² RESA St. No. 2-SR at 18.

¹⁴³ Duquesne St. No. 3 at 14.

¹⁴⁴ *FirstEnergy Default Service Order* at 131.

¹⁴⁵ RESA St. No. 2-SR at 21-22.

customers. The larger the discount and the longer the term, the less likely that EGSs will want to participate. Thus, adopting a 12-month fixed price or guaranteed discount of 7% would be less attractive to EGSs than the same term at a lower percentage.

d. \$50 Bonus Payment

For the ROI program, RESA proposes a \$50 bonus to be paid by the EGS to its customer at the conclusion of the initial four-month period.¹⁴⁷ This is consistent with the Commission’s decision in the *FirstEnergy Default Service Order*.¹⁴⁸

Duquesne suggests incorrectly that there is a potential for customer confusion that the \$50 bonus could be tied to acceptance of the customer’s 8-month fixed price offer for months five through 12.¹⁴⁹ The Companies in the *FE* proceeding made a similar argument, which the Commission rejected, that bonuses are “gimmicks” that come with a “catch” or would amount to a “bait and switch” by the EGS¹⁵⁰ With proper notice to the customer as recommended by RESA,¹⁵¹ a customer should be able to distinguish between the bonus and the need to decide whether to remain with the EGS for an additional eight months.

e. Guaranteed Savings

As explained above, RESA proposes that the Commission adopt an ROI aggregation program, consistent with the *FirstEnergy Default Service Order*, that includes guaranteed savings. RESA does not oppose 7% off the PTC for the initial four months of the program, and the same savings should apply to the standard offer program; alternatively, the savings could be

¹⁴⁶ RESA St. No. 2-SR at 22.

¹⁴⁷ RESA St. No. 2-SR at

¹⁴⁸ *FirstEnergy Default Service Order* at 108-109, 117-118, 121.

¹⁴⁹ Duquesne St. No. 3-RJ at 4.

¹⁵⁰ *FirstEnergy Default Service Order* at 118-121.

¹⁵¹ RESA St. No. 2-SR at 19.

5% for both (and the \$50 bonus for the aggregation participants remains).¹⁵² Also as explained above, any proposal that requires EGSs participating in the program to offer longer-term guaranteed savings off the PTC, even when the PTC changes, is unlikely to produce the best price for the customer and will deter EGSs from participating because it exposes EGSs to an unreasonable level of risk.¹⁵³

f. Customer Participation Cap

RESA agrees with the Commission's determinations in the *Intermediate Work Plan Final Order*, the *FirstEnergy Default Service Order*, and the *PECO Binding Poll* that customer participation be capped at 50%.¹⁵⁴ In the *FirstEnergy Default Service Order*, the Commission stated that the 50% cap provided "both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate...."¹⁵⁵ The Commission also stated that it did not want to unduly place a constraint on the program and adopt a smaller cap, such as the 20% cap proposed by OCA in that case, that could hamper the program's success.¹⁵⁶

For its part, Duquesne proposes a 50% customer participation cap.¹⁵⁷ OCA, however, advocates in this case for a 20% participation cap, which is the same proposed cap that the Commission rejected in the *FirstEnergy Default Service Order*¹⁵⁸ and which is not supported by the record in this case.

¹⁵² RESA St. No. 2-SR at 22.

¹⁵³ RESA St. No. 2-SR at 8-9.

¹⁵⁴ *FirstEnergy Default Service Order* at 112; *PECO Binding Poll* at 20; *Intermediate Work Plan Final Order* at 59.

¹⁵⁵ *FirstEnergy Default Service Order* at 112; see also *Intermediate Work Plan Final Order* at 59.

¹⁵⁶ *FirstEnergy Default Service Order* at 112. The Commission's approval of the 50% cap in the *FE* case is also consistent with the Commission's findings in the *Intermediate Work Plan Final Order*.

¹⁵⁷ Duquesne St. No. 3 at 25; Duquesne St. No. 3-R at 18-21.

¹⁵⁸ *FirstEnergy Default Service Order* at 110, 112 ("We are not persuaded by the arguments of the OCA that we should deviate from the position set forth in the [*Intermediate Work Plan Final Order*].").

The record in this case shows that there is no reason to lower the customer participation cap as OCA has requested. OCA submitted no evidence that an opt-in auction open to just half the default service load would result in wholesale suppliers including a risk premium in their wholesale bids beyond that which they already include.¹⁵⁹ Moreover, the law does not mandate that the Commission take steps to keep default rates as low as possible; rather, the law mandates a process by which default supply is procured such that the result is electricity prices that are the least cost to customers over time. So long as the Commission is structuring the procurement process so that, in its judgment, the process is likely to produce the least cost electricity prices over time, then its statutory mandate is fulfilled.¹⁶⁰ Indeed, the Commission has recognized that the best way for the Commission to fulfill this mandate in the long term is to take steps to create a vigorously competitive market.¹⁶¹ Over time, consumers will benefit far more from the development of fully competitive markets than from any short-term impact that might be achieved by suppressing customer migration away from default service. To achieve fully competitive markets it is necessary – as the Commission plainly has concluded – to take steps to try to encourage those remaining non-shopping customers to utilize the competitive market. It would be antithetical to the Commission’s goal of developing a robustly competitive retail markets, as well as its mandate to structure default service in a way that produces the lowest price electricity rates over time, to impose excessive limitations on the number of customers who can participate in the very programs intended to promote migration away from default service.

Finally, OCA’s argument that enrollment numbers below the 50% cap would be viewed as a public failure, and that the remedy for such a risk is to reduce the cap by 60 percent, is

¹⁵⁹ RESA St. No. 2-R at 5.

¹⁶⁰ *FirstEnergy Default Service Order* at 24-26.

¹⁶¹ *Investigation of Pennsylvania’s Retail Electricity Market*, No. I-2011-2237952 Opinion and Order entered July 28, 2011.

speculative and wholly unpersuasive.¹⁶² It is not clear who OCA believes would have these negative perceptions of the program in the event the participation cap is not reached, as customers who participate are likely to be satisfied because they will save money, and they, as well as non-participants, will benefit from the competitive market.¹⁶³

g. Supplier Load Cap

Duquesne proposes a 50% supplier load cap for the ROI program,¹⁶⁴ and RESA agrees with this cap. That said, the supplier load cap issue is mooted were the Commission to adopt the ROI aggregation approach and assign customers to participating EGSs in the manner recommended by RESA (customers would be assigned equally to participating EGSs). In any event, in the *FirstEnergy Default Service Order*, the Commission ruled that a 50% supplier load cap “strikes the appropriate balance between diversity of EGS participation and competitive supply pricing.”¹⁶⁵ In the *PECO Binding Poll*, the Commission also adopted a 50% supplier load cap.¹⁶⁶

The record reflects that the supplier load cap is important to help to ensure that the Commission’s competitive enhancements do not result in merely transferring customers from an entity with the majority of market share (the EDC in its role as default provider) to a new marketer with dominant market share. FES, which “opposes any artificial limits on supplier participation in retail market enhancement programs,”¹⁶⁷ has not provided any justification or good cause shown for its proposed deviation from the Commission’s decisions on this issue.

¹⁶² RESA St. No. 2-R at 8.
¹⁶³ RESA St. No. 2-R at 5-6.
¹⁶⁴ Duquesne St. No. 3 at 4, 21.
¹⁶⁵ *FirstEnergy Default Service Order* at 115.
¹⁶⁶ *PECO Binding Poll* at 21.
¹⁶⁷ FES St. No. 1 at 14.

FES has not shown any operational constraints and has not supported its position with substantial evidence.¹⁶⁸

h. Enrollment Process

Duquesne proposes that it hold the ROI auction before the customers enroll in the program.¹⁶⁹ In the *FirstEnergy Default Service Order*, the Commission determined that that the issue of the timing of the auction vis-à-vis customer enrollment “is now moot” because the auction was eliminated in favor of an aggregation program.¹⁷⁰

RESA proposes to enroll customers into the program before the auction is conducted,¹⁷¹ which understandably would deviate from the *Intermediate Work Plan Final Order* but for good reason. Duquesne’s proposal to place the price-setting auction before customer enrollment would force EGSs to consider whether they are willing to incur material transaction costs and commit to actual pricing in the auction without having any idea how many customers are even available for acquisition through the auction.¹⁷² Leaving the key variable in that calculation – the number of customers available for acquisition – unknown until after both the price has been set and EGSs have incurred costs to participate in the auction will have a negative impact on those EGS perceptions.¹⁷³

In ordering that enrollment occur after the auction in the *Intermediate Work Plan Final Order*, it appears that the Commission was concerned that customers would not have sufficient information about the product that they will receive if they opted in. Respectfully, RESA does

¹⁶⁸ RESA St. No 2-R at 12-13.

¹⁶⁹ Duquesne St. No. 3-R at 30-32.

¹⁷⁰ *FirstEnergy Default Service Order* at 108-109; as explained below, however, the timing of the enrollment vis-à-vis the auction/aggregation could impact EGSs’ desire to participate in the program, which could affect cost recovery.

¹⁷¹ RESA St. No. 2 at 7-8.

¹⁷² RESA St. No. 2 at 7.

¹⁷³ RESA St. No. 2 at 8.

not share that concern.¹⁷⁴ Customers would know that, if they opted in, they would get a product that: 1) was at least 5% less than the then-current default service price; 2) included a \$50 bonus after the initial four months; and 3) could be canceled at any time without penalty.¹⁷⁵ With that knowledge and perhaps the disclosure of more terms relating to the product as the Commission may dictate, customers would be able to make a judgment about their interest in the program. RESA maintains that the positive features of the program that RESA is proposing – namely aggressive promotion of this program as a true aggregation effort by the Commission and the EDC rather than as a co-branded marketing effort by the EGSs and the EDC – would attract a material number of customers based on the bonus and minimum price reduction, even if the final price is not known.¹⁷⁶

i. Mailings and Communications

In the *FirstEnergy Default Service Order*, the Commission directed the Companies and EGSs to update their proposals for customer notification, opt-in enrollment and customer assignment to coordinate with the revised ROI aggregation program.¹⁷⁷ RESA would support a similar result in this case.

If there is to be an auction then regardless of the order of customer enrollment versus the ROI program, there should be additional mailings and other communications, along with enhanced means of enrollment, to ensure maximum customer awareness and enrollment. Duquesne proposes to send a single mailing about the ROI program *after* the price has been established. If the order proposed by Duquesne is maintained and the auction occurs before customer enrollment, then RESA proposes that at least one mailing to eligible customers be sent

¹⁷⁴ RESA St. No. 2 at 8.

¹⁷⁵ RESA St. No. 2 at 8.

¹⁷⁶ RESA St. No. 2 at 8.

¹⁷⁷ *FirstEnergy Default Service Order* at 109.

in advance of the RFP. That mailing would come from the Commission and describe the program and alert eligible customers to the co-branded mailing they would be receiving shortly that will be the actual opportunity to enroll.¹⁷⁸ Duquesne should also be required to utilize other means to promote the program aggressively.¹⁷⁹ As stated above, RESA is concerned about the impact that conducting the auction before enrollment will have on the success of the program and therefore favors enrollment before the auction is conducted.

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

RESA does not support requiring EGS bidders to execute Duquesne's proposed Opt-In Service Program Agreement.¹⁸⁰ In the *FirstEnergy Default Service Order* and the *PECO Binding Poll*, the Commission agreed with RESA on this issue.¹⁸¹

The proposed Agreement is unnecessary and unreasonable. It is unnecessary because, as the Commission determined in the *FE* case, the relationship between an EDC and an EGS is already governed by existing agreements. The Agreement is unreasonable because it is one-sided.¹⁸² The proposed Agreement, though in the form of a contract, contains no obligations whatsoever on the part of Duquesne while requiring broad indemnifications and warranties on the part of EGSs.¹⁸³ The RFP appears to describe certain obligations on the part of Duquesne, and the RFP is incorporated by reference in the Agreement (Agreement at Section 16), but closer examination of the RFP shows that Duquesne may not consider anything described in the RFP as enforceable against it by an EGS bidder (winning or otherwise), as the RFP is described quite

¹⁷⁸ RESA St. No. 1 at 4, 9.

¹⁷⁹ RESA St. No. 1 at 9-10.

¹⁸⁰ Duquesne St. No. 3 at Exh. NSF-2.

¹⁸¹ *FirstEnergy Default Service Order* at 124; *PECO Binding Poll* at 22.

¹⁸² RESA St. No. 2 at 14.

¹⁸³ RESA St. No. 2 at 14.

clearly as “not an offer” (RFP at Section 7.11). If the RFP is not an offer, its status upon incorporation into the Agreement is ambiguous at best, and of no effect at worst.¹⁸⁴ RESA recommends that once the Commission has ruled on the parameters that will apply to the program, Commission Staff should facilitate a collaborative process for determining what legal requirements, if any, are necessary to implement the program and what form those requirements should take.¹⁸⁵

2. Standard Offer Program

Duquesne has proposed to implement a “standard offer” customer referral program effective June 1, 2014.¹⁸⁶ As proposed by Duquesne, participating EGSs will provide participating customers a 7% reduction relative to the PTC in effect at the time the offer is made for a term of 12 billing cycles with no termination penalty or fee. Duquesne has proposed that this program will target residential customers on default service, but shopping customers will be eligible to participate if they specifically request to participate.

RESA generally supports Duquesne’s proposed standard offer referral program with a few modifications. RESA recommends: (a) requiring Duquesne to implement the standard offer program sooner than it proposes, as discussed in Section III.C.2.d, below; (b) requiring a different method of cost recovery, as discussed in Sections III.C.3 and III.H.1, below; (c) modifying the eligibility of the program to include all non-shopping residential and small business default service customers, and CAP customers, as explained in Sections III.C.4, III.C.5, and III.C.6; and (d) requiring that the length of the discount should be for four billing cycles, not 12 as proposed by Duquesne and supported by some of the parties in this case. Additionally, RESA submits that once the program details for the standard offer program are decided, the

¹⁸⁴ RESA St. No. 2 at 14.

¹⁸⁵ RESA St. No. 1 at 15.

parties should be directed to work together to develop a set of fair and balanced binding terms that will govern their relationship consistent with the finally determined elements.¹⁸⁷

a. Term of Offer

The standard offer referral program should be a true introductory program, with a guaranteed discount provided for a four-month period. RESA has suggested a 7% discount off the existing PTC for all four months, regardless of whether the PTC changes during that time, followed by a fixed price for either eight or 12 months.¹⁸⁸ The price for the fixed term would be disclosed to the customer by the serving EGS in the EGS's required mailing to the customer following enrollment.¹⁸⁹ This approach is similar to that used in the New York referral programs as explained in RESA's surrebuttal testimony.¹⁹⁰ RESA's recommendation balances consumer value with a program in which EGSs will be willing to participate.¹⁹¹ It is also a reasonable approach, especially considering that customers are not "locked in." A shorter period of true "guaranteed savings" following by a fixed price term would be more acceptable to both EGSs and customers than a 12-month product with a potentially shifting relationship to the then-current PTC.¹⁹²

Additionally, the Commission should recognize the need to coordinate the offer to be made via an ROI aggregation program and the offer to be extended as part of the standard offer

¹⁸⁶ Duquesne St. No. 3 at 33-47.

¹⁸⁷ RESA St. No. 2 at 15-22.

¹⁸⁸ RESA St. No. 2-SR at 9.

¹⁸⁹ RESA St. No. 2-SR at 9. The price for the fixed price period need not be lower than the PTC at that time, but RESA believes that competitive pressures from other EGSs and default service would be sufficient to ensure that EGSs keep their post-discounted prices competitive. There would be no early termination fees should a customer decide to switch away from his/her EGS during the term of the program. *Id.*

¹⁹⁰ RESA St. No. 2-SR at 9-10.

¹⁹¹ RESA St. No. 2-SR at 30.

¹⁹² RESA St. No. 2-R at 20.

program. RESA believes that the two offers should be as consistent as possible.¹⁹³ Specifically, if the ROI aggregation offer is to be a 5% discount from the then-current PTC with a \$50 bonus after four months, then the Commission should consider making the standard offer program a 5% discount for four months (but without a bonus).

b. Discount Percentage

Under RESA’s proposal, the ROI aggregation program and the standard offer referral program should each have the same discount percentage.¹⁹⁴ As stated above, the important point is to keep the discount and the term the same for both programs, and to establish a discount percentage that will balance the need to introduce customers to the competitive market at a discounted price offering and which will entice the greatest number of EGSs to participate.

RESA opposes Duquesne’s proposed 12-month referral product for seven percent off the PTC because the PTC will change at times and impact the “guaranteed savings.” As Duquesne recognizes, the “guaranteed savings” from its proposed 12-month proposal may not materialize if the term extends beyond the next change to the PTC.¹⁹⁵ RESA’s proposed 4-month product with a 7% discount would offer true guaranteed savings because the EGS would be required to guarantee that the price of the referral product would be 7% less than the PTC during all four months, even if the PTC changes before the end of the four months.¹⁹⁶

c. Guaranteed Savings

RESA recommends guaranteed savings for four months in a percentage consistent with the discount offered for the ROI program. These issues are explained above.

¹⁹³ RESA St. No. 2-SR at 21-23.

¹⁹⁴ RESA St. No. 2-SR at 22.

¹⁹⁵ RESA St. No. 2 at 20.

d. Program Start Date

Duquesne proposes to implement the standard offer program on June 1, 2014. RESA recommends implementation by June 1, 2013.

Duquesne provided five reasons for the lengthy delay before implementation of the standard offer program: (1) the installation by Duquesne of a new customer information system (“CIS”); (2) the potential impact on risk premiums for wholesale default service suppliers and retail opt-in auction bidders; (3) the possibility of customer confusion; (4) the delay would allow Duquesne to obtain more information about the call center costs and customer service impacts of implementing the program; and (5) the delay would allow the Commission “to more easily measure the relative benefits and costs of the two retail market initiatives.”¹⁹⁷ Duquesne later contended that EGSs may not be able to offer a discounted fixed rate off the PTC given the increase in PJM capacity prices that become effective June 1, 2014.¹⁹⁸

New CIS System. Duquesne presents testimony relating to its new CIS system that will be completed as of the second quarter of 2013, and states that the new CIS system does not include IT development and testing necessary to implement the standard offer program.¹⁹⁹ Duquesne then states that it will take 9-12 months after the CIS system is installed to complete the IT development necessary for the standard offer program to go live with accelerated switching enhancements. Duquesne does state that it could push the implementation up approximately three months if it did not include accelerated switch functionality in the scope of the standard offer program IT changes.²⁰⁰

¹⁹⁶ RESA St. No. 2 at 20.

¹⁹⁷ Duquesne St. No. 3 at 36-37.

¹⁹⁸ Duquesne St. No. 3-R at 54-56; Duquesne St. No. 3-RJ at 24.

¹⁹⁹ Duquesne St. No. 6-RJ at 2.

²⁰⁰ Duquesne St. No. 6-RJ at 2.

Lost in all this is the fact that, to implement the program, Duquesne's customer service representatives need one piece of information, which Duquesne presumably would have on hand: whether or not the customer is a default service customer. In RESA's view, the focus should be on starting the program as soon as possible and adding enhancements when they are available.

Potential Impact on Risk Premiums for Wholesale Default Service Suppliers and Retail Opt-In Auction Bidders. There is no convincing evidence in the record that likely migration as a result of either the opt-in program (which strongly resembles other direct mail campaigns which are fairly common in the market) or the standard offer referral program (which strongly resembles similar programs in New York) will be either material enough or sufficiently difficult to model that it will have a material impact on wholesale bidding behavior. As RESA testified, wholesale suppliers would undoubtedly prefer not to have to predict likely migration from any source, but the migration and volume risk associated with factors such as weather and the underlying wholesale market prices for power would tend to overshadow the somewhat more predictable (and, in the case of the opt-in program, one-time) migration as a result of these programs.²⁰¹ Finally, RESA's testimony showed that the possibility of those who participate in the opt-in program learning about and participating in the standard offer referral program is not a sufficiently material threat to the integrity of the opt-in program to warrant delaying the standard offer referral program, other things being equal.

The Possibility of Customer Confusion. In the *FirstEnergy Default Service Order*, the Commission determined that the Companies' standard offer referral program should not be

²⁰¹ RESA St. No. 2 at 16-17; RESA St. No. 2-SR at 11. Duquesne states that RESA's assertion that the program will not have a material impact on default service bid prices is "unsubstantiated and should be disregarded." Duquesne's simple and conclusory statement, backed up by no facts whatsoever, carries little weight. Also, FES sees no validity to Duquesne's concern about any potential impact on wholesale supplier risk premiums if Duquesne were to implement its standard offer referral program sooner. FES St. No. 1 at 16.

delayed beyond the implementation date of the ROI program.²⁰² The Commission stated that even if some overlap occurred between the two programs, “comparing prices and terms of service in the two programs is no different from comparing any two limited time offers available in the competitive retail market.”²⁰³ RESA does not agree with Duquesne²⁰⁴ that rolling out the two programs simultaneously would result in customer confusion, as these are two different programs, both of which should be accompanied by substantial consumer education efforts via different channels, as RESA explained in its testimony.²⁰⁵

Even assuming that the possibility for customer confusion exists, it would be mitigated were the standard offer and ROI programs to be constructed in a consistent fashion as RESA has recommended. In this regard, the two programs would operate together in a coordinated manner, offering customers a consistent value proposition to introduce them to the competitive market. The opt-in aggregation would work to boost the market at the outset of the default service term by offering the bonus to encourage early customer participation, while the standard offer program would remain in place to introduce “late adopters” to the market and to offer a means for new and moving customers to avoid being forced to take default service. This approach should address any concerns about customer confusion between the two programs (which would be portrayed much more as different components of the same program, with the same introductory discount and term).²⁰⁶

More Time to Obtain Information About the Call Center Costs and Customer Service

Impacts of Implementing the Program. Duquesne’s argument that delaying the implementation of the referral program would allow it to obtain more information about the call center costs and

²⁰² *FirstEnergy Default Service Order* at 150.

²⁰³ *FirstEnergy Default Service Order* at 150.

²⁰⁴ Duquesne St. No. 3-R at 58, fn 105.

²⁰⁵ RESA St. No. 2 at 17.

customer service impacts of implementing the program is unconvincing. Given numerous opportunities in testimony to do so, Duquesne does not describe how the delay would result in any further information being made available or useful to the design of the standard offer program.²⁰⁷

More Time for the Commission To Measure the Relative Benefits and Costs of the Two Retail Market Initiatives. Duquesne’s argument that delaying the referral program would allow the Commission “to more easily measure the relative benefits and costs of the two retail market initiatives” is without basis. On the cost side, the costs of the two programs are separate, and Duquesne has not explained what kinds of costs might be confused between the two programs. On the benefit side, the number of customers who enroll in the opt-in program will be clear, as will the number of customers who enroll in the referral program.²⁰⁸

Moreover, if done according to Duquesne’s proposal, the opt-in program would be over and done with by July 1, 2013. Even if one could make the case for some confusion between the two programs (either on the part of customers or on the part of the Commission reviewing the impacts of the two programs), the Duquesne proposal includes an additional 11 months of delay before implementing the referral program.

Increase in PJM Capacity Prices Effective June 1, 2014. Duquesne states that PJM capacity prices will increase substantially June 1, 2014, “thereby making it more difficult for an EGS to offer a fixed discounted rate that extends into the 2014/2015 PJM planning year.”²⁰⁹

Duquesne contends that it designed its standard offer program in a manner that would not

²⁰⁶ RESA St. No. 2-SR at 23.

²⁰⁷ RESA St. No. 2 at 18. As RESA testified, these programs have been in place in New York for many years and information about call center scripts and cost impacts are readily available from the New York Public Service Commission and the New York utilities. *Id.*

²⁰⁸ RESA St. No. 2 at 18.

²⁰⁹ Duquesne St. No. 3-R at 55.

discourage EGSs from participating, and that the proposed June 2014 start date avoids the problem associated with the change in PTC.²¹⁰ RESA disagrees with the premise of this statement, as it boils down to the “guaranteed savings” that Duquesne acknowledges is a concern under its 12-month proposal if the PTC changes during the term.²¹¹ The better way to handle this is to adopt RESA’s proposal, which includes a 4-month guaranteed savings.

In essence, implementing the standard offer program in June 2013 is neither an impossible nor insurmountable task.

e. Program Suspension

Duquesne recommends that should residential shopping in the service territory reach two-thirds or greater, new customer referrals through the standard offer program would be suspended. Duquesne justifies this on two grounds: (1) the potential impact of continued migration as a result of the program on wholesale supply bids for default service, and (2) the reduced need to “jump start” competition through the program once that level of migration is met.

RESA disagrees with Duquesne’s proposal for several reasons. First, if migration were to reach two-thirds during the term of this default service plan, it would be as a result of a number of factors, including the retail initiatives put in place by the Commission. Having achieved that level of migration, it would be extremely risky to begin dismantling the very apparatus that helped to achieve it. It is possible that by the end of the term of this DSP the conditions might exist that would support a change in the Commission’s approach to these retail initiatives, but the way to address that possibility is through a thorough examination of those conditions in anticipation of the end of this DSP, not through an automatic trigger tied only to the migration level.

²¹⁰ Duquesne St. No. 3-R at 56.

²¹¹ See, e.g., Duquesne St. No. 3-R at 57.

Second, there is nothing magical about the two-thirds level, regardless of where that level of migration might place Duquesne in relation to other utilities in Pennsylvania or elsewhere. With approximately 525,000 residential distribution customers,²¹² even if the two-thirds shopping level for residential customers is accomplished, there would still be approximately 173,000 residential customers on utility default service, meaning that there would be ample customers that could benefit from continuation of the referral program beyond the two-thirds level.

Third, RESA and Duquesne simply disagree that the migration resulting from the standard offer program will result in increased wholesale default service supply bids. Not only is there no evidence to suggest that wholesale bidders will increase their bids, but there is no evidence to suggest that the anticipated migration resulting from a successful standard offer program will materially impact the wholesale bids. In that regard, RESA and Duquesne simply disagree on the extent to which the Commission is obligated to limit the risk exposure of wholesale suppliers by limiting migration, either as a result of the market enhancement programs or otherwise.²¹³

Fourth, Duquesne argues that one should not be concerned about the 67% ceiling since it is unlikely to be met. This argument misses what RESA sees as the fundamental point of the RMI and the RMEs that have come out of it, namely that the limits to migration observed in Pennsylvania and other states are directly related to a market design in which, in the aftermath of restructuring, all customers were left on utility service as the default and continue to be placed automatically on bundled utility service when they establish new service for any reason with the

²¹² See Exhibit CK-1.
²¹³ RESA St. No. 2-SR at 11.

utility.²¹⁴ In RESA's view, a successful referral program should be lauded and allowed to continue, not shut down.

Finally, the critical function of this referral program, in relation to new and moving customers, is a sufficient reason to leave the program in place at least until the end of the DSP term. In fact, unless the more permanent program for new and moving customers discussed is in place by June 1, 2015, the referral program should remain in place beyond that date, at least as applied to new and moving customers.

For all these reasons, Duquesne has not proven that the program should be suspended at any point in time, including if and when a 67% shopping rate is achieved.

f. High Bill Callers

RESA opposes OCA's and CAUSE-PA's attempts to prohibit Duquesne from providing information about the customer standard offer referral program to customers calling about high bill complaints.²¹⁵ The Commission specifically addressed this issue and ruled that the standard offer customer referral should apply to general inquiry calls as well as high bill complaints, but "only and explicitly after the customer's [high bill] concerns are satisfied."²¹⁶ This position was recently affirmed in the *FE* and *PECO* cases; in the *FirstEnergy Default Service Order*, the Commission agreed with RESA that "customers calling with high bill complaints are likely those customers that can most directly benefit from becoming informed about competitive offers such as the Customer Referral Program."²¹⁷

²¹⁴ RESA St. No. 2-SR at 12-13.

²¹⁵ OCA St. No. 2 at 16; CAUSE-PA St. No. 1 at 17.

²¹⁶ *Intermediate Work Plan Final Order* at 32.

²¹⁷ *FirstEnergy Default Service Order* at 139. While there will have to be further discussion about what it might mean for the customer's high bill complaint to be "satisfied," this addresses CAUSE-PA's concerns regarding high-bill complaint customers. If the customer's high-bill complaint is satisfied, the low-income customer should be eligible to participate in the referral program provided the customer meets any other eligibility requirement. RESA St. No. 2-R at 19-20. *See also PECO Binding Poll* at 24.

g. Choice Referral Team

RESA has no comments at this time relating to Duquesne's proposed Choice Referral Team, but reserves the right to reply in its reply brief to arguments advanced by Duquesne and intervenors in their main briefs.

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

In Section III.C.1.j, above, RESA recommended that the Agreement between Duquesne and EGSs relating to the ROI auction is unnecessary and unreasonable. For the same reasons expressed above, RESA recommends that the proposed standard offer Agreement be rejected, consistent with the Commission's decision in the *PECO Binding Poll*,²¹⁸ and that a Staff collaborative for the negotiation of the governing documents be instituted.

3. Market Enhancement Program Cost Recovery

a. Duquesne's Proposals

Duquesne proposes to recover the costs of these programs from EGSs. With respect to the opt-in EGS service program, Duquesne proposes that these costs, "including the cost of the independent evaluator, the development and mailing of the offer letters, and other aspects of the program will be recovered from the participating EGSs."²¹⁹ In the event that the RFP process does not result in any winning EGSs, the costs of the program will be recovered through the POR administrative discount for EGSs serving residential customers.²²⁰ With respect to the standard offer program, "the initial and ongoing costs of the Standard Offer Program will be recovered by Duquesne Light through the POR administrative discount on EGSs serving residential

²¹⁸ *PECO Binding Poll* at 26.

²¹⁹ Duquesne St. No. 3 at 32; Duquesne St. No. 4 at 21-22.

²²⁰ Duquesne St. No. 3 at 32.

customers.’²²¹ In his regard, Duquesne proposes to split the residential and small C&I discount rate into two categories effective June 2, 2013, and to increase the residential discount rate by one percentage point (from 0.52% to 1.52%) for the 2-year period the DS Plan.²²² Both OCA and CAUSE-PA support Duquesne’s approach to cost recovery, although they have no preference for the manner in which costs would be recovered from EGSs.²²³

Duquesne’s cost recovery proposal should be rejected. First, the auction/aggregation and other market enhancements are designed to promote greater participation in the market by customers who are remaining on default service and have been reluctant to explore competitive alternatives.²²⁴ Therefore, the issue of cost recovery is not a matter of whether the EGSs benefit and should therefore pay.²²⁵ Rather, the question is whether default service customers or EGSs’ customers caused the costs of these programs, and whether default service customers (through their default service rates) or EGS customers (through their EGS contract prices) should therefore bear their costs.²²⁶ Viewed in this proper light, recovery of these costs from default service customers is the optimal way to pay for these programs because the retail opt-in auction/aggregation is targeting default service customers to incent them to participate in the competitive market.²²⁷ EGSs did not cause these costs to incur; rather, it is the persistence of the dominant position of default service in a system that has caused the need for these programs.²²⁸ To the extent there are on-going costs of the programs, those customers who continue to remain

²²¹ Duquesne St. No. 3 at 45
²²² Duquesne St. No. 4 at 24-25.
²²³ OCA St. No. 2 at 14, 18; CAUSE-PA St. No. 1 at 19-20.
²²⁴ RESA St. No. 2 at 23.
²²⁵ RESA St. No. 2 at 23-24.
²²⁶ RESA St. No. 2 at 24; RESA St. No. 2-SR at 15.
²²⁷ RESA St. No. 2 at 24.
²²⁸ RESA St. No. 2 at 24; RESA St. No. 2-SR at 15.

on default service and continue to remain the target audience for the programs may be reasonably assessed the program costs.²²⁹

Second, maximizing total customer value will require a robust EGS response as well as a robust customer response.²³⁰ Assuming Duquesne's proposal to enroll customers prior to the auction/aggregation is accepted, then Duquesne's cost recovery proposal will impose costs solely on the EGSs before the EGSs know the number of customers at stake.²³¹ This could discourage EGSs from participating in the opt-in auction/aggregation.²³² The cost recovery mechanism will be a barrier to participation by some EGSs.

Finally, recovering the costs of RMEs through the POR discount is particularly inappropriate. From a traditional ratemaking perspective, this approach is unfair and inelegant. The POR discount currently includes costs related only to the POR program – the uncollectible expense and administrative costs for which EGSs who use utility consolidated billing should be responsible.²³³ The amount an EGS pays through the discount is directly proportional to the amount of the service one consumes; the greater one's receivables, the greater one's total bill paid to the EDC for the service provided by the program.²³⁴ The same is not true for costs associated with either the opt-in program or the standard offer referral program. There may well be many EGSs who will not participate in either of these programs, yet they will be forced to pay for them through the POR discount.²³⁵ Even if one participates in the referral program, the benefit from that program should be roughly equal among participants but the costs would be

²²⁹ RESA St. No. 2 at 24.

²³⁰ RESA St. No. 2 at 23.

²³¹ RESA St. No. 2 at 7-8.

²³² RESA St. No. 2 at 7-8.

²³³ RESA St. No. 2 at 25; Duquesne St. No. 4 at 24-25.

²³⁴ RESA St. No. 2 at 25.

²³⁵ RESA St. No. 2 at 25.

borne in proportion to one's total market share among EGSs using utility consolidated billing.²³⁶ This would inevitably amount to a subsidization of smaller EGSs by larger ones.²³⁷ It would also set a dangerous precedent for using the POR discount as a catch-all mechanism for collecting costs in a manner that is not transparent to the market.²³⁸ In RESA's view it is far better for the Commission to continue to make the positive case for why these programs are beneficial to the public generally, as it has done very well to date, and to use a cost recovery mechanism that reflects this benefit rather than taking the more expedient route of imposing all of the costs unfairly and inequitably among EGSs.

The Commission has deemed the resolution of cost-recovery issues to be "particularly important, as they are the cornerstone to the success of these programs."²³⁹ In the *PECO* case, the Commission did not accept the ALJ's adoption of PECO's proposed 0.3% POR discount to fund the programs. The Commission found "significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participation."²⁴⁰ As a result, the Commission directed PECO, EGSs, and interested parties to resubmit within 60 days a plan "addressing how participating EGSs *or customers* will pay for the [RMEs] approved in this DSP proceeding."²⁴¹ Thus, not only did the Commission fairly reject a similar proposal to incorporate RME-related costs into the POR discount rate, but in the event that the Commission is not inclined to adopt RESA's cost recovery proposals, RESA would be willing to participate in a collaborative process similar to that established in the *PECO* case.

²³⁶ RESA St. No. 2 at 25.

²³⁷ RESA St. No. 2 at 25.

²³⁸ RESA St. No. 2 at 25.

²³⁹ *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer at 4 (Sept. 27, 2012) ("*PECO Cost Allocation Motion*").

²⁴⁰ *PECO Cost Allocation Motion* at 4.

²⁴¹ *PECO Cost Allocation Motion* at 4 (emphasis added).

b. RESA’s Recommendations

Rather than adopt Duquesne’s cost recovery proposals, RESA believes that the costs of RMEs should be paid only by default service customers, or through a non-bypassable charge applied to all customers.²⁴²

It is just and reasonable for the costs of RME to be paid only by default service customers (via a Default Service Cost Recovery Charge). One of the principal purposes of the auction/aggregation is to provide a way to encourage “sticky” default service customers to take their first venture into the competitive market.²⁴³ In fact, in terms of traditional cost allocation, the costs of the RMEs RESA advocates are caused by the existence of default service, without which customers would all be on competitive supply, eliminating the need for measures to encourage them to move away from the utility.²⁴⁴ Thus, it is appropriate that the cost be collected from default service customers. To do this, RESA has proposed a 5 mils/kWh charge, which is discussed in Section III.H.1, below.

Alternatively, it is just and reasonable for the costs of these market enhancements to be borne by all customers through non-bypassable charges.²⁴⁵ These market enhancements are intended to move Pennsylvania closer to what the Commission may consider to be an optimal structure.²⁴⁶ This process can be viewed as a natural continuation of the transition to restructured markets that began in the late ‘90s – where all costs of initially opening retail markets were recovered from all electric customers (since there were no EGSs on which to impose the costs).²⁴⁷

²⁴² RESA St. No. 2 at 26-28.
²⁴³ RESA St. No. 2 at 26.
²⁴⁴ RESA St. No. 2 at 26.
²⁴⁵ RESA St. No. 2 at 26-27.
²⁴⁶ RESA St. No. 2 at 26.
²⁴⁷ RESA St. No. 2 at 26.

In the *Intermediate Work Plan Final Order*, the Commission indicated that it thought it was “only fair” for the EGSs to pick up the associated costs, since they were the “prime beneficiaries” of the program. While EGSs will certainly benefit to some degree if they are successful in gaining a critical mass of customers to make the process worthwhile, the primary – if not sole – justification for these enhancements should be the benefits they will bring – or at least make available – to all customers.²⁴⁸ Therefore, it is appropriate that the costs be borne by all customers, as were the costs of the original restructuring in the ‘90s.²⁴⁹

4. CAP Customer Participation in Market Enhancement Programs

RESA recommends that CAP customers be included in the RME programs. There is no reason to exclude these customers from the full range of retail programs, including the standard offer program, and there are good reasons to include them. Customers who qualify for CAP are no different from other customers in their need to manage their electricity consumption, and the competitive market gives them options they would not otherwise have if they remain captive to utility default service.²⁵⁰ To the extent the logistics of the CAP program may limit a customer’s ability to participate in the competitive market, the solution is to change the CAP program rather than to discriminate against CAP customers. RESA strongly supports the transition of the CAP program to one in which benefits are provided on a portable basis, without regard to the commodity service a customer may subscribe to, so that CAP customers have the same opportunities as other customers to find the electricity service that is right for them.²⁵¹ Access to the opt-in program and the standard offer referral program should be among those options available to CAP customers.

²⁴⁸ RESA St. No. 2 at 27-28.

²⁴⁹ RESA St. No. 2 at 27.

²⁵⁰ RESA St. No. 2 at 24-25.

²⁵¹ RESA St. No. 2 at 13.

CAUSE-PA opposes allowing CAP customer to participate in the RME programs, or the competitive retail electricity market generally.²⁵² CAUSE-PA's opposition is based primarily on the assumptions that the CAP program would continue in its current form, and that keeping CAP customers from shopping is a benefit to those customers.²⁵³ RESA suggests that it would be appropriate for the Commission to monitor the experiences of low-income customers in a redesigned and improved CAP system, and that stakeholders would benefit by redoubling efforts to provide customer education to low income customers so that they fully understand their options and how those options interface with the CAP program.²⁵⁴

RESA's recommendations with respect to CAP customers are consistent with the Commission's recent decisions in the *FE* and *PECO* cases, and also with the recent Motion of Commissioner Pamela A. Witmer in the *PECO* case.²⁵⁵ In the *FE* case, the Commission concluded that CAP customers would be permitted to participate in the RME programs.²⁵⁶ Duquesne attempts to distinguish the *FE* decision on the grounds that the CAP benefits are portable for the FE Companies, but not so for Duquesne's CAP customers.²⁵⁷ That may be true, but it nonetheless denies Duquesne's CAP customers to ability to participate in the competitive market.

In any event, there is no way around the Commission's decision in the *PECO* case and the Commission's decision directing PECO to develop a plan that allows its CAP customers to use CAP credits to purchase their generation supply from EGSs by January 1, 2014. PECO, like

²⁵² CAUSE-PA St. No. 1 at 14-17.

²⁵³ RESA St. No. 2-R at 15-16.

²⁵⁴ RESA St. No. 2-R at 16.

²⁵⁵ *Petition of PECO Energy Company for Approval of its Default Service Program II,*

Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer (Sept. 27, 2012)(“*PECO CAP Motion*”).

²⁵⁶ *FirstEnergy Default Service Order* at 143.

²⁵⁷ Duquesne St. No. 5-SR at 2.

Duquesne, currently does not allow its CAP customers to shop, and proposed to exclude them from the RME programs.²⁵⁸ PECO, also like Duquesne, proposed that the Commission wait to decide this issue until the Universal Service subgroup completes its work under the Retail Market Investigation, which includes providing the Commission with a recommendation on the issue of low-income customer participation in the competitive market.²⁵⁹ The Commission rejected PECO’s proposal and ruled that a re-designed CAP program would allow CAP customers to participate in PECO’s RME programs and “ensure that all customers have the ability to avail themselves of the full benefits of retail electric competition....”²⁶⁰ At the same time, the Commission acknowledged that, “there are a number of issues that must be addressed in order to effectuate this change.”²⁶¹ The Commission’s directive to PECO is consistent with RESA’s recommendation in this case that Duquesne re-design its CAP program to allow its CAP customers to participate in the electricity market, including Duquesne’s RME programs.

5. Shopping Customer Participation in Market Enhancement Programs

As RESA has advocated during and since the RMI, it is not appropriate to allow existing shopping customers to participate in the ROI auction/aggregation.²⁶² The primary intent of the ROI auction/aggregation and other retail market enhancements is to introduce default service customers to competitive alternatives.²⁶³ Accordingly, only default service customers should be eligible for the retail opt-in auction/aggregation.²⁶⁴ Many EGSs that are already serving mass market customers have invested significant financial resources in attracting these customers.²⁶⁵

²⁵⁸ PECO CAP Motion at 1.
²⁵⁹ PECO CAP Motion at 1.
²⁶⁰ PECO CAP Motion at 1.
²⁶¹ PECO CAP Motion at 1.
²⁶² RESA St. No. 2 at 11.
²⁶³ RESA St. No. 2 at 11.
²⁶⁴ RESA St. No. 2 at 11.
²⁶⁵ RESA St. No. 2 at 11.

These EGSs should not face the risk of losing that investment as a result of a retail opt-in auction/aggregation program whose stated intent is to encourage default service customers to shop.²⁶⁶ It is not enough to simply limit education and marketing about the program to default service customers.²⁶⁷ The EDCs in developing messaging about the program, call center scripts and other materials and protocols, should inform customers that they are not eligible for the opt-in auction/aggregation if they are already being served by an EGS.²⁶⁸ This limitation is also important from a customer perspective.²⁶⁹ Some EGSs impose early termination fees on customers who cancel their contract early.²⁷⁰ Limiting eligibility to non-shopping customers will eliminate the risk that existing shopping customers will be subject to such penalties from their existing supplier should they choose to enroll in the opt-in auction/aggregation.²⁷¹

Duquesne need not undertake complex systems changes to implement this recommendation.²⁷² Duquesne should already have the ability to identify shopping versus non-shopping customers.²⁷³ Duquesne Customer Service Representatives already have the real time ability to know whether or not a calling customer is a customer of an EGS.²⁷⁴ So, when a shopping customer contacts Duquesne to inquire about the opt-in auction/aggregation or to elect to participate in it, Duquesne's customer service representative would inform the customer that eligibility is limited to default service customers only. This should not cause material problems for Duquesne. It would be sufficient to limit the distribution of any solicitation materials to non-shopping customers and include information in messaging and customer education materials

²⁶⁶ RESA St. No. 2 at 11.
²⁶⁷ RESA St. No. 2 at 11.
²⁶⁸ RESA St. No. 2 at 11.
²⁶⁹ RESA St. No. 2 at 12.
²⁷⁰ RESA St. No. 2 at 12.
²⁷¹ RESA St. No. 2 at 12.
²⁷² RESA St. No. 2 at 12.
²⁷³ RESA St. No. 2 at 12.

about the program stating that the opt-in program is only available to customers who currently receive default service from Duquesne.²⁷⁵ Moreover, it would be reasonable to make clear that, if the RESA recommendation is adopted, Duquesne would not be subject to liability or sanction if a shopping customer did find a way to sign up for the ROI or standard referral program.

The exclusion of shopping customers would depart from the Commission's guidelines and recent pronouncements in the *FE* and *PECO* cases. But, good cause exists to justify a departure. As is evident from the shopping statistics included in Exhibit CK-1, including the number of shopping customers and the number of EGSs in the service territory, customers in Duquesne's service territory have been exposed to many, many offers and yet numerous default service customers have not taken advantage of these offers to save significant money or obtain other benefits.²⁷⁶ This presents a unique risk that a large number of shopping customers could leave their existing contracts to participate in the retail market enhancements. In fact, OCA Witness Alexander has suggested that the shopping customers in Duquesne's territory are likely to hear about this program and some may seek to enroll.²⁷⁷

Moving customers from one EGS to another through these programs simply does not further the objectives of the programs or the Competition Act. Participation by shopping customers also forecloses participation by non-shopping customers. Excluding shopping customers would ensure the "space" is available for default service customers in the program. To further the objectives of the program and of the Competition Act, it is reasonable to exclude shopping customers from participating in the RME programs in the manner set forth above.

²⁷⁴ RESA St. No. 2 at 12.

²⁷⁵ RESA St. No. 2 at 12.

²⁷⁶ See, e.g., Concurring and Dissenting Statement of Commissioner Cawley at 2, *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Sept. 27, 2012).

²⁷⁷ OCA St. No. 2-R at 11.

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

Duquesne would limit the ROI auction/aggregation program to residential customers.

RESA has recommended that small C&I customers be eligible to participate in the ROI program. In RESA's view, there is no reason not to extend the auction/aggregation and referral program to small C&I customers.²⁷⁸ That conclusion was reached in the *FE* and *PECO* default service cases,²⁷⁹ and should also be reached here.

In the *FirstEnergy Default Service Order*, the Commission found that small commercial customers should be included in the market enhancement programs due to "the relatively low levels of current shopping in the Companies' service territories."²⁸⁰ The record in that case indicated that "over half of the small commercial customers in the Companies' service territories are not participating in the competitive market and the reasons for these customers not shopping are similar to those for residential customers."²⁸¹ Despite the somewhat higher level of residential shopping in the Duquesne service territory, the small C&I experience does not appear to be materially different from the situation in the FirstEnergy service territories. Only about 30% of small C&I customers (accounting for about 38% of the load) had switched to an EGS as of May 2012, meaning that small C&I customers were switching at a rate materially less than the switching rates of residential customers in the Duquesne service territory.²⁸² This trend is sufficient to justify application of the result reached in the *FirstEnergy Default Service Order* and the *PECO Binding Poll* to the Duquesne default service plan.

²⁷⁸ RESA St. No. 2 at 12-14.

²⁷⁹ *FirstEnergy Default Service Order* at 103-104; *PECO Binding Poll* at 17.

²⁸⁰ *FirstEnergy Default Service Order* at 103-104.

²⁸¹ *FirstEnergy Default Service Order* at 104.

²⁸² RESA St. No. 2 at 13-14 and Exhibit CK-1; RESA St. No. 2-SR at 3.

Duquesne also argues that including small C&I customers in the market enhancement programs is unnecessary because the procurement plan proposed for that sector would (if adopted by the Commission) have price changes every six months “based on laddered contracts with overlapping delivery periods,” which presumably would tend to increase migration compared to the levels achieved under Duquesne Light’s DSP V plan.²⁸³ Duquesne’s small C&I proposal, however, offers no obvious advantage over the procurement plan approved by the Commission in the *FE* case, which would rely on 6-month and 12-month contracts, as recommended by OSBA, and yet the Commission still opted to include small commercial customers in the market enhancement programs.

Duquesne also points out that inclusion of small C&I customers in the market enhancement programs would require some revisions versus those for residential customers. RESA agrees with Duquesne on this point and has recommended that the details of the program as applied to small business customers could be determined in a stakeholder process.²⁸⁴ These details, however, are not so numerous that they cannot be easily addressed.²⁸⁵

For similar reasons, RESA also recommends that the Standard Offer Referral Program be made available to small business customers, as it has been in the New York programs.²⁸⁶

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

OCA proposes that customers should be returned to default service at the expiration of the standard offer term unless the customer makes an affirmative choice to remain with the EGS serving them through the program.²⁸⁷ This proposal should be rejected. The standard offer program is only offered to customers on a voluntary (opt-in) basis. The selection of standard

²⁸³ Duquesne Statement No. 3-R at 16.

²⁸⁴ RESA St. No. 2 at 14.

²⁸⁵ RESA St. No. 2-SR at 4.

²⁸⁶ RESA St. No. 2 at 13.

offer is an affirmative choice. Because they are opting in to a program where service is being provided by an EGS, those customers should not be automatically returned to default service without an affirmative action by the customer. Automatically returning customers to default service at the end of the standard offer program would be “forcing” them back to default service, which would be contrary to the standard in 66 Pa. C.S. § 2807(d)(1).

The Commission correctly and definitively rejected the concept of “automatically” transferring an EGS’s customers back to default service at the end of a Commission-approved retail market enhancement program, as such a result would completely undermine the program. This concept was rejected in *Pike County*,²⁸⁸ wherein the Commission found that if the aggregation customers were automatically returned to the default service without affirmative action by the customer, such an action would fail to give effect to their initial choice and would be contrary to 66 Pa. C.S. § 2807(d)(1). Later, in the *Intermediate Work Plan Final Order*, the Commission specifically rejected forcing customers back to default service who choose to participate in the retail opt-in auction/aggregation and take no further action.²⁸⁹ There is no reason to create a different standard for customers voluntarily choosing to participate in the standard offer customer referral program.²⁹⁰

Finally, RESA’s recommendation is consistent with the *FirstEnergy Default Service Order*, in which the Commission determined that, with respect to customer options at end of the ROI program term, the customer must affirmatively choose to receive service from a different

²⁸⁷ OCA St. No. 2 at 17.

²⁸⁸ *Petition for Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered July 26, 2010.

²⁸⁹ *Intermediate Work Plan Final Order* at 73-75; RESA St. No. 2-R at 20.

²⁹⁰ *See 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 (Customers in PECO’s TOU program should remain with Reliant

EGS or elect default service; absent such an affirmative selection, the customer will remain with the EGS that previously provided service under the ROI aggregation program.²⁹¹ RESA sees no reason to deviate from the Commission's decisions in *Pike County*, the *Intermediate Work Plan Final Order*, or the *FirstEnergy Default Service Order*.

8. Miscellaneous Market Enhancement Program Issues

At this time, RESA does not desire to comment on any other RME related issues.

D. RATE DESIGN

1. Reconciliation Issues

Duquesne proposes to reconcile costs for all procurement groups on an annual basis.²⁹² In RESA's view, and consistent with RESA's procurement proposals, reconciliation should be conducted quarterly to account for the significant amount of default service contracts that will be procured on a quarterly basis for the residential, small C&I, and medium C&I customer classes, and the associated quarterly default service rate changes for each class.²⁹³ RESA's concern is that with quarterly procurements and price changes, with annual reconciliations, could cause the actual default service rates to become divorced from actual underlying wholesale costs.²⁹⁴ In other words, default service rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop and customers can benefit.²⁹⁵ This could cause a decrease in the number of EGSs in the market, thus minimizing a customer's ability to

unless they affirmatively choose to receive service from an alternative EGS or to return to PECO's default service offering).

²⁹¹ *FirstEnergy Default Service Order* at 127-129.

²⁹² Duquesne St. No. 4 at 27; Exh. WVP-4.

²⁹³ RESA St. No. 1 at 20.

²⁹⁴ RESA St. No. 1 at 20.

²⁹⁵ In the *FirstEnergy Default Service Order* at 98, the Commission, in denying OCA's proposal with respect to reconciliations in that case, acknowledged that longer reconciliation periods can, among other things, distort customer shopping decisions because the actual default service cost will not be passed on to customers in a timely manner."

choose from a broad range of products and services.²⁹⁶ In short, administrative mechanisms like reconciliations, regardless of frequency, have the potential to impair the development of a thriving retail market.²⁹⁷

There appears to be some agreement between Duquesne and RESA on the reconciliation issue. Specifically, Duquesne and RESA seem to agree that the reconciliation period should be compatible with the mix and timing of the default service supply products procured.²⁹⁸

Duquesne states that it would be concerned about large over/under collections if the accrual period were to extend beyond the period for which supply costs are known, as would RESA.²⁹⁹

Duquesne provides this example:

if the Commission ordered six-month RFP periods (in which the upcoming supply cost is known for a six-month period after each RFP), then it would make sense to reset rates no less frequently than every six months, to avoid the potential for large over or under collections that would otherwise result from having rates set for periods in which supply costs are unknown.³⁰⁰

Consistent with this example, Duquesne in surrebuttal testimony states that since its proposed default service rates for small C&I and medium C&I customer would change every six months, Duquesne would not oppose reconciling costs for those customers every six months.³⁰¹

Similarly, RESA's proposed procurement structure includes 50% quarterly procurement and quarterly price changes for residential and small C&I customers, and 100% quarterly procurements and price changes for medium C&I customers. Under this proposal, quarterly, not annual, reconciliations are appropriate because "[a]n annual reconciliation will create a distorted pricing structure that will stymie continued competitive market development because

²⁹⁶ RESA St. No. 1 at 20.

²⁹⁷ RESA St. No. 2-R at 8.

²⁹⁸ Duquesne St. No. 4-R at 11; RESA St. No. 1 at 20.

²⁹⁹ Duquesne St. No. 4-R at 11; RESA St. No. 1 at 20; RESA St. No. 1-R at 8.

³⁰⁰ Duquesne St. No. 4-R at 11.

competitive suppliers will be forced to compete against prices that do not accurately reflect market prices and costs.”³⁰²

2. Price To Compare Calculation Date

Duquesne’s proposed tariff states: “The [Default Service Supply rate] shall be filed with the Commission on or about the fifteenth day of the month prior to the start of the next Application Period.”³⁰³ RESA recommends that the PTC and its various components be calculated as soon as possible in order to provide customers with accurate information needed to make informed shopping decisions.³⁰⁴ Under RESA’s proposed procurement structure, the default service RFPs would take place approximately 60 days in advance of the applicable effective periods. This should permit Duquesne to calculate the new PTC and file it with the Commission 45 days in advance.³⁰⁵

Duquesne proposes to change the residential PTC annually and the small C&I PTC semi-annually.³⁰⁶ Under RESA’s proposed procurement structure for both the residential and small C&I customer classes, however, 50% the load will be procured on a quarterly basis and, as such, the PTC must adjust quarterly to reflect the new pricing established for each procurement period.

Publishing the PTC only 15 days before the start of the effective period means that both customers and EGSs have very little time to react to the new PTC price signal.³⁰⁷ Although RESA would much prefer a default service model that placed less emphasis on the EDC’s

³⁰¹ Duquesne St. No. 4-SR at 4-5.

³⁰² RESA St. No. 1 at 20.

³⁰³ Duquesne St. No. 4, Exh. WVP-4 at Original Tariff Page No. 88D. Under the proposed tariff, the “Application Periods” are the respective default service contract durations for each default service class, all of which, according to the tariff, end on May 31, 2015. Duquesne St. No. 2, Exh. WVP-4 at 88-88D. In reality, however, the proposed “Application Periods” for residential and small C&I customers extend beyond May 31, 2015, as explained herein.

³⁰⁴ RESA St. No. 1 at 17.

³⁰⁵ RESA St. No. 1 at 17.

³⁰⁶ Duquesne St. No. 2 at 8-9.

³⁰⁷ RESA St. No. 1-SR at 17.

default service product and its associated price, the fact is that under the current paradigm, the PTC is widely used as a benchmark for price comparisons by customers.³⁰⁸ Publishing the PTC with more advance notice will better allow EGSs to educate customers about upcoming changes in the PTC and will allow customers to make better informed shopping decisions.³⁰⁹

Duquesne opposes RESA's recommendation that it file the final PTC 45 days in advance of the effective date. Duquesne states that (1) it posts an *estimated* PTC within 7 days of the RFP, and (2) it posts the *final* PTC 15 days before the effective date.³¹⁰ Duquesne states that the estimated PTC is within +/- 0.03 cents/kWh of the final PTC, which it argues is "very close" to the final PTC.³¹¹ Duquesne also contends that it cannot post its final PTC sooner than 15 days because (1) it closes its books on the tenth day of the month, and it needs another 5 days to finalize and file the final PTC, and (2) Duquesne submits its FERC formula filing on May 15 to establish a new formula revenue requirement and NITS effective June 1.³¹² Also on May 15, Duquesne files for new retail transmission rates at the Commission effective June 1. Duquesne contends it cannot submit new transmission rates sooner than May 15, and transmission is a component of the PTC.³¹³

But for perhaps the May/June issue to establish the PTC effective June 1, Duquesne has not shown that it cannot, or should not, file a final PTC 45 days in advance of the effective date. As RESA pointed out, Duquesne has not indicated that any barriers exist to modifying the existing PTC filing schedule.³¹⁴ Furthermore, whether the estimated PTC is "very close" to the final PTC is neither here nor there considering that it remains only an estimated PTC that can

³⁰⁸ RESA St. No. 1-SR at 17.

³⁰⁹ RESA St. No. 1-SR at 17.

³¹⁰ Duquesne St. No. 4-RJ at 2.

³¹¹ Duquesne St. No. 4-RJ at 2.

³¹² Duquesne St. No. 4-RJ at 2.

³¹³ Duquesne St. No. 4-RJ at 2.

change. Given the importance of the PTC to EGSs and customers, it is necessary to file an accurate PTC as far in advance of the effective period as possible.

3. Non-Bypassable Charge To Recover PJM Charges

Duquesne proposes to continue collecting various PJM charges – Transmission Service Charges (“TSC”) – associated with default service load through its retail transmission tariff.³¹⁵ According to Duquesne, “[o]ther PJM costs the Company incurs that are not part of default service will continue to be recovered through the TSC.”³¹⁶ RESA recommends that Duquesne recover the following transmission related charges from all customers via a competitively-neutral, non-bypassable charge:

- Network Integration Transmission Services (“NITS”);
- Regional Transmission Expansion Plan costs (“RTEP”);
- Expansion costs;
- Generation Deactivation charges; and
- All charges that result from PJM's implementation of its revised Economic Load Response program in compliance with FERC Order No. 745 (“New ELR Charges”).³¹⁷

NITS, RTEP, and Expansion costs (collectively, “Transmission Service Charges”) are essentially embedded, cost-of-service rates that are imposed based on an EDC's total native load, regardless of the source of the generation used to service that load.³¹⁸ For the reasons explained further below, Duquesne's recovery of these costs exclusively for default service customers

³¹⁴ RESA St. No. 1-SR at 16-17.

³¹⁵ Duquesne St. No. 4 at 9. Duquesne also proposes to discontinue “recovery of ancillary services and PJM grid management charges through the TSC and include recovery of these charges through the default service rates obtained through the RFP process.” *Id.*

³¹⁶ Duquesne St. No. 4 at 9.

³¹⁷ RESA St. No. 1 at 21-27; RESA St. No. 1-SR at 17-21. PJM only recently finalized for billing purposes the names assigned to these New ELR Charges: ID# 1242 – Day – Ahead Load Response Charge Allocation; and ID# 1243 – Real-Time Load Response Charge Allocation. RESA St. No. 1 at 26.

³¹⁸ RESA St. No. 1 at 22. These transmission costs are currently not paid by wholesale default service suppliers (“DS Suppliers”) in Duquesne's service territory. *Id.*

creates a competitive advantage for default service over EGS-provided generation service and distorts the ability of consumers to compare the default service rate with prices offered by EGSs.

Generation Deactivation Charges are assessed by PJM on certain entities to provide funding to generation owners who elect to operate units beyond their deactivation date pending completion of transmission upgrades.³¹⁹ New ELR charges are assessed by PJM to comply with a FERC order requiring it to implement a cost allocation methodology that allocates costs to those that benefit from demand reduction.³²⁰ Because Duquesne requires wholesale default service suppliers to factor these unpredictable and difficult-to-quantify costs into their bids to provide default service supply, the end result is that the ultimate default service rate paid by customers is driven higher to account for this risk.³²¹

While Duquesne assumes responsibility for these costs for default service customers and recovers them through its TSC, EGSs are left to bear the risks of these unpredictable costs for their customers.³²² Furthermore, these charges are assessed based on the *total* EDC load.³²³ Implementing RESA's proposal to require Duquesne to assume these costs and recover them through a competitively-neutral, non-bypassable charge will assure a level playing field for all suppliers and provide appropriate price signals for customers.³²⁴

To remedy the negative effects of these situations, RESA recommends that Duquesne assume responsibility for all of these charges for all customers (as opposed to merely for default service customers) and recover the costs through a competitively-neutral, non-bypassable charge to assure a level playing field for all suppliers and provide appropriate price signals for

³¹⁹ RESA St. No. 1 at 22-23.

³²⁰ RESA St. No. 1 at 25-26.

³²¹ Constellation St. No. 1 at 26-27.

³²² Duquesne St. No. 4-R at 21; RESA St. No. 1 at 22.

³²³ RESA St. No. 1 at 22.

³²⁴ RESA St. No. 1 at 22.

customers. This could be accomplished through the creation of a non-market based charges rider (“NMB Rider”).³²⁵ RESA recognizes that a transitional period may be appropriate to ensure that customers are not subject to a “double payment.”³²⁶ Potential one-time transitional issues that may arise should not be used to reject RESA’s proposal, especially since such situations (to the extent they even exist) could be easily addressed on a case-by-case basis.

a. Transmission Related Charges

Transmission Charges are not market-based charges and they are based on the total EDC load.³²⁷ This is important because it means that these costs cannot be reasonably predicted or hedged. The TSCs are not market-based rates but are instead cost-of-service rates that are imposed on an EDC’s total native load and benefit all load.³²⁸ Duquesne assumes responsibility for all of these charges for default service customers only. The charges are passed onto default service customers through the PTC. Duquesne does not assume responsibility for these charges for shopping customers.³²⁹ Therefore, EGSs are required to try to calculate the amount of these charges and factor them into the prices they offer customers. The result of this process creates an unfair competitive advantage for Duquesne’s default service over EGS-provided competitive service and leads to distorted pricing signals to customers.³³⁰

First, the inability to predict the specific amount of the charges does not negatively impact Duquesne since Duquesne, as the default service provider, is entitled to full cost

³²⁵ RESA St. No. 1 at 27.

³²⁶ Duquesne alleges that implanting RESA’s non-bypassable charge could cause shopping customers to pay twice for transmission service. Duquesne St. No. 4-R at 23. A transitional period would address this concern.

³²⁷ RESA St. No. 1 at 22.

³²⁸ RESA St. No. 1 at 22; RESA St. No. 1-SR at 18-19.

³²⁹ Other EDCs, such as the FirstEnergy Ohio utilities, recover TSCs through a competitively neutral, non-bypassable charge. RESA St. No. 1 at 22. At the same time, however, the Commission in the *FirstEnergy Default Service Order* reached a different result. *FirstEnergy Default Service Order* at 77, 81.

³³⁰ RESA St. No. 1 at 22.

recovery.³³¹ EGSs do not have this same advantage. Therefore, if Duquesne inaccurately predicts the amount of any of these charges, it can easily recover any remaining unpaid costs from default service customers through its reconciliation mechanism. On the other hand, EGSs that inaccurately predict these costs do not have the same ability to recover the shortfall from their customers. This gives Duquesne a competitive advantage in providing default service.

Second, the pricing signal sent to customers is distorted because default service customers are paying the full costs of the charges while shopping customers may or not pay the full cost depending on an EGS's accuracy in predicting the charges. This creates difficulty for customers to accurately compare the prices of EGSs against the default service rate complicating the ability of consumers to shop with accurate information because they do not have transparency in transmission costs.

Adopting RESA's proposal to require Duquesne to assume responsibility for all of these charges and to recover the costs from all distribution customers is a reasonable way to level the playing field for all suppliers and provide appropriate price signals for customers. This is because all customers will be paying the "pass through" costs of transmission regardless of whether they are default customers or customers of an EGS.

b. Generation Deactivation and New ELR Charges

Like the Transmission Charges, Generation Deactivation charges and the New ELR Charges are non-market based charges assessed by PJM for various reasons.³³² They are also difficult to predict.³³³ The Generation Deactivation Charges are assessed to pay generation owners to continue to operate units beyond their proposed deactivation date pending competition

³³¹ 66 Pa. C.S. § 2807(e)(3.9).

³³² RESA St. No. 1 at 24; RESA St. No. 1-SR at 18.

³³³ RESA St. No. 1 at 23-24.

of necessary transmission upgrades to ensure system reliability.³³⁴ The New ELR Charges will be assessed on a region-wide basis (rather than on a locational basis) to compensate loads in any area where the price paid to an ELR resource is at or above the threshold price.³³⁵

Duquesne currently proposes to continue to require wholesale default service suppliers to factor in the costs of these charges into their bids to provide default service supply. Thus, similar to the way Duquesne handles Transmission Charges, default service customers pay for the costs of these charges through the PTC.³³⁶ The difference between the two approaches is that the wholesale default service suppliers are required to try to calculate the costs of the charges and build this risk into their default service bid pricing and absorb the costs of inaccurate calculation. When Duquesne assumes responsibility for charges for default service customers, as it does for Transmission Charges, Duquesne simply passes on the actual cost to default service customers.

RESA's proposal would solve this problem for the benefit of consumers. By requiring Duquesne (rather than the wholesale default service suppliers or the EGSs) to assume responsibility for these charges and pass them through to all customers via a competitively neutral, nonbypassable charge, the actual cost of these charges will be directly passed on to all customers. Since neither wholesale default service suppliers nor EGSs have any reasonable control or ability to predict these charges, all customers should benefit over the longer term by shifting the cost responsibility back to the EDC which will reduce the risk premiums associated with these charges that consumers would be required to pay.

³³⁴ RESA St. No. 1 at 22-23.

³³⁵ RESA St. No. 1 at 25.

³³⁶ RESA's proposed NMB Rider would necessitate removing these charges from the PTC, as acknowledged by Duquesne. Duquesne St. No. 4-R at 23. However, this process could be implemented in a manner that would not cause the confusion that Duquesne suggests that it will.

c. Duquesne's Opposition to RESA's Proposed Nonbypassable Charge

Duquesne provides no adequate reason for opposing RESA's proposed nonbypassable charge. First, as explained above, altering the manner in which the PTC is calculated is secondary to allowing EGSs to compete on a level playing field with default service, which ensures that EGSs can continue to offer innovative products to customers. Second, and also explained above, a transition period would address any concerns about a customer "paying twice" for transmission service.

Third, RESA's proposal is absolutely consistent with the design of the Competition Act. The focus of the Competition Act is the creation of a competitive retail market for electric generation supply.³³⁷ Rates were unbundled to provide transparency for the three components of electricity service, that is: distribution rates, which remain regulated by the state; transmission rates, which remain regulated by the FERC; and generation rates, which as a result of the Act are subject to competitive market principles. RESA's proposal focuses only on non-market based services that are not set by competitive forces.³³⁸

Fourth, Duquesne does not explain why it carves shopping customers out of its decision to assume responsibility for TSCs, Generation Deactivation and New ELR charges.³³⁹ Rather, Duquesne simply states that the charges are "associated with default service," which as RESA explains above is not the entire story since these charges are also associated with reliability and can impact competition, which benefits all customers.

³³⁷ RESA St. No. 1-SR at 18.

³³⁸ RESA St. No. 1-SR at 18.

³³⁹ *See, e.g.*, Duquesne St. No. 4-R at 26.

Finally, Duquesne acknowledges that the charges included in RESA's proposal are in fact non-market based charges but for the New ELR charge.³⁴⁰ It continues to be RESA's belief that New ELR charges are not market based. The payments made to economic load resources are in fact market based.³⁴¹ However, the manner in which PJM is required by FERC to recover those payments from all load pursuant to FERC Order 745 is not market-based.³⁴²

PJM *administratively* determines the manner in which it recovers the market-based ELR payments that spreads the costs on a region-wide basis.³⁴³ Accordingly, because the PJM charges specifically related to FERC Order 745 are non-market based, they should be recovered from all load on a competitively neutral basis for the same reason RTEP, Expansion and Generation Deactivation costs should.

RESA requests that the Commission adopt its proposal and require Duquesne to implement an NMB Rider as explained above.

E. TIME OF USE-PROGRAM

Duquesne anticipates making a filing by November 2012 to introduce a third Time of Use ("TOU") pilot program by June 2013. Duquesne further anticipates offering a more robust program by June 2014 and will make filing to implement that program after it has reviewed the pilot program data. In RESA's view, rather than having an EDC-based TOU program, the EDC should be required to certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory. As explained below, this method would satisfy the requirements of Act 129 that a TOU product be available to customers in a utility service territory. This approach would obviate the need to address TOU load through wholesale default

³⁴⁰ RESA St. No. 1-SR at 17; Duquesne St. No. 4-RJ at 30 (citing the *FirstEnergy Default Service Order* at 84-86).

³⁴¹ RESA St. No. 1-SR at 21.

³⁴² RESA St. No. 1-SR at 21.

service procurements. Alternatively, if that proposal is not accepted by the Commission, then RESA supports bidding out the TOU program consistent with the Commission's determination in the December 16, 2011 *RMI Final Order* issued in the RMI Investigation.³⁴⁴

The Commission should require Duquesne to rely on the competitive market to comply with its TOU rate obligation, as articulated by the Commission in the *RMI Final Order*,³⁴⁵ wherein the Commission concluded as follows:

the Commission will maintain its recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. The Commission does wish to clarify that this recommendation is not, in and of itself, a rejection of the other proposals raised, such as instituting peak time rebate offers or creating a separate wholesale auction for TOU rates. Such ideas may indeed have merit, and we will allow the EDCs to evaluate these proposals for possible inclusion in their next default service filings.³⁴⁶

As stated above, RESA's primary recommendation is that Duquesne be required to certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territories. To comply with the Act 129 requirement that the "default service provider shall submit to the Commission one or more proposed time-of-use rates and real-time price plans,"³⁴⁷ the Commission could require Duquesne to the following every year: (1) survey EGSs and determine whether they are or intend to offer a time-differentiated rate and whether the EGS intends to offer the product for at least 12-months; and (2) if Duquesne found one or more EGSs offering such rates, it would post that information on a clearinghouse website (and refer customers to the information upon inquiry) and certify this information to the Commission. After the end of the year, Duquesne would submit a report on the number of EGSs actually

³⁴³ RESA St. No. 1-SR at 21.

³⁴⁴ *Investigation of Pennsylvania's Retail Electricity Market Recommendations Regarding Upcoming Default Service Plans* docket I-2011-2237952, Final Order entered Dec.16, 2011 at 47-48.

³⁴⁵ *RMI Final Order* at 47-48.

³⁴⁶ *RMI Final Order* at 47-48.

providing the service. Act 129 also provides that the default service supplier should prepare a report [presumably to the Commission] detailing “the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.”³⁴⁸ Rather than have Duquesne compile these data and provide these opinions (which could require Duquesne to review competitively sensitive information), this data could be compiled and analyzed by either the Commission’s Bureau of Conservation, Economics and Energy Planning (“CEEP”) or by a consultant hired by Duquesne.

Alternatively, if the Commission declines to adopt RESA’s “certification” proposal, RESA recommends that it adopt an “EGS bid-out” approach. This approach would require Duquesne to conduct a process whereby interested EGSs would submit proposals to provide a retail TOU rate to Duquesne customers. Duquesne would select the proposal that provided the best value and innovation to customers. Customers choosing to switch to this TOU rate would become customers of the EGS winning the bid; the service would be billed as being provided by the EGS (if the Commission thought it appropriate, it could also indicate that it was being provided in conjunction with Duquesne under Act 129). The service would also be subject to the standard end of contract terms, meaning that, if a customer did not make an affirmative election at the end of the contract term, the serving EGS would continue to serve that customer under a new TOU offer. This approach, which has recently been proposed by PECO and accepted by the Commission,³⁴⁹ has the advantage of utilizing the competitive market to secure the TOU rate required by Act 129. Thus, the TOU bid-out approach is a “win-win-win,” in that it: (1) satisfies

³⁴⁷ 66 Pa. C.S. § 2807(f)(5).

³⁴⁸ *Id.*

³⁴⁹ *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.

Duquesne's Act 129 obligation; (2) will likely result in a more innovative and attractive rate that will provide value to customers; and (3) further enhances the competitive market.

Duquesne opposes RESA's initial TOU option – certification by Duquesne as explained above – as inconsistent with Act 129.³⁵⁰ However, nothing in Act 129 would prohibit RESA's recommended approach to TOU service. As it stands, Act 129 imposes the obligation to ensure the TOU rates are available.³⁵¹ As such, it can be fulfilled by the default service provide bidding out the service (as was proposed by PECO in its default service proceeding)³⁵² or by certifying that such services are being provided by EGSs (as is proposed by RESA in this proceeding). The intent behind this section of Act 129 was to ensure that such options were available to customers with smart meters to ensure that this substantial upgrade in infrastructure would be used and useful. Both the spirit and letter of the law are met where Duquesne's plan demonstrates that such rate options are available while relying on EGSs to provide TOU rate options. Since these rates would only be available through the efforts of Duquesne, they are being "provided" by Duquesne, in any reasonable interpretation of that term.

F. SUPPLY MASTER AGREEMENT ISSUES

RESA did not take a position on this issue.

G. DATA/EGS COORDINATION ISSUES

RESA did not take a position on this issue.

³⁵⁰ Duquesne St. No. 4-SR at 3.

³⁵¹ 66 Pa. C.S. § 2807(f). RESA would support a revision of the provision to eliminate any default service provider involvement, but that is not the present status of the law.

³⁵² RMI *Final Order* at 47-48; *PECO Binding Poll* at 28.

H. GENERAL MISCELLANEOUS ISSUES

1. Proposed 5 mils/kWh Charged Added to Default Service Rates

Due to their variability or the uncertainty in estimating the currently unrecovered costs of providing default service or implementing RMEs, RESA recommends the use of a separate charge that would apply only to default service.³⁵³ RESA recommends an initial amount of 5 mils/kWh with the proceeds to be used as follows:

- Payment of any verifiable costs related to providing default service that have otherwise not been collected by the EDC;
- Payment of costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction/aggregation, referral programs; and,
- Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.³⁵⁴

The Commission recently rejected FE's proposal to recover the costs of their RME programs from all customers in favor of shifting the costs to EGSs. At that time, the Commission also directed the FE EDCs to "eliminate" their proposed retail opt-in auction/aggregation and replace it with an opt-in aggregation program which will necessarily impact the costs of the program.³⁵⁵ Further, the Commission directed the FE EDCs and EGSs to come to agreement on how to minimize these costs and allocate them in a cost-effective manner.³⁵⁶ In addition, Commissioner Witmer acknowledged that proposals such as the one RESA is advocating have "merit."³⁵⁷ While Commissioner Witmer stated that this type of

³⁵³ RESA St. No. 2 at 27-29.

³⁵⁴ RESA St. No. 2 at 27.

³⁵⁵ *FirstEnergy Default Service Order* at 131.

³⁵⁶ *FirstEnergy Default Service Order* at 136.

³⁵⁷ *FE Default Service Proceeding*, Docket Nos. P-2011-2273650; P-2011-2273668; P-2011-2273669; P-2011-2273670, Statement of Commissioner Pamela A. Witmer adopted August 2, 2012.

proposal deserves more vetting in a statewide proceeding, RESA submits that record in this case supports adoption of the mechanism here.³⁵⁸

The implicit assumption of those who wish to impose 100% of the costs of these programs on EGSs is that only EGSs benefit from the competitive enhancements.³⁵⁹ This is plainly wrong.³⁶⁰ These programs benefit the customers themselves, who experience the savings and have the opportunity to participate in the competitive market.³⁶¹ It is thus incongruous to impose the costs only on EGSs.

All customers, through their distribution rates, are paying the now bundled costs of default service that are only being used by default service customers.³⁶² In Pennsylvania, there has been no full unbundling of generation, transmission and distribution charges as required by the Competition Act.³⁶³ This means that there are costs of providing non-shopping customers default generation service that are embedded in the distribution rates paid by all customers (whether or not they are receiving default service).³⁶⁴ Because generation, transmission and distribution costs continue to be bundled, all customers – to some extent – are paying the costs of default service even those who are not receiving default service (i.e. shopping customers).³⁶⁵ If RESA’s proposal is not adopted and there is no full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates.³⁶⁶

³⁵⁸ RESA St. No. 2-SR at 17.

³⁵⁹ RESA St. No. 2-SR at 17.

³⁶⁰ RESA St. No. 2-SR at 17.

³⁶¹ RESA St. No. 2-SR at 17.

³⁶² RESA St. No. 2 at 24-25.

³⁶³ 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa. Cmwlth. 2006).

³⁶⁴ RESA St. No. 2 at 24-25.

³⁶⁵ RESA St. No. 2 at 25.

³⁶⁶ RESA St. No. 2 at 25.

Requiring default service customers – on whose behalf the costs are being incurred – to pay the costs with the remainder credited to all distribution customers is fair and equitable.³⁶⁷ The goal is to move default service customers into the competitive market.³⁶⁸ Therefore, the default service customer who pays the charge today is likely to be a shopping customer tomorrow.³⁶⁹ By limiting the payment of the charge to default service customers while crediting remaining funds to all customers assures the that the “newly shopping” customer will not be deprived of his or her credit for paying some portion of the costs of default service through his or her distribution rates because he or she chose to shop.³⁷⁰ Any crediting back to default customers only would create a shopping disincentive, and would clearly be inappropriate.³⁷¹

RESA has stated that it would be appropriate for Duquesne to retain a relatively small percentage (no more than 10%) of any amounts remaining service costs and the costs of implementing the RMEs are paid.³⁷² This has the potential to create negative incentives.³⁷³ But, it can create positive incentives.³⁷⁴ By tying EDC retention of any amounts to the achievement of certain benchmarks for migration away from default service, it is possible to create positive incentives for enhanced efforts by the EDC to implement market enhancements in a robust manner.³⁷⁵ It is also possible that such a retention could be justified on the grounds that some

³⁶⁷ RESA St. No. 2 at 28-29.

³⁶⁸ RESA St. No. 2 at 28.

³⁶⁹ RESA St. No. 2 at 28.

³⁷⁰ RESA St. No. 2 at 28-29.

³⁷¹ RESA St. No. 2 at 29.

³⁷² RESA St. No. 2 at 27-28.

³⁷³ Retention of anything other than a modest amount of recovery that is tied explicitly to the achievement of migration benchmarks runs the risk of creating an incentive (however subconsciously it might operate) on the part of EDC personnel to frustrate the goals of the Commission in building a robustly competitive retail market in the Duquesne service territory that will stand the test of time. RESA St. No. 2 at 28.

³⁷⁴ RESA St. No. 2 at 28.

³⁷⁵ RESA St. No. 2 at 28.

indirect costs incurred by the EDC could not be identified without an unreasonable level of transaction costs.³⁷⁶

Duquesne indicates that the proposed 5 mils/kWh charge should not be adopted because (1) there is no evidence that Duquesne will not recover all costs associated with default service, (2) the charge does not align with Duquesne's administrative costs to provide the RME programs and will result in an over-recovery, and (3) returning the over-recovery to all distribution customers would be inequitable and result in cross-subsidization.³⁷⁷ OCA expresses similar concerns.³⁷⁸

These concerns are misplaced for at least three reasons. First, the goal of the Competition Act is not to keep a certain number of customers on default service. The "end state" envisioned by the Competition Act is a market where competitive suppliers – and not the monopoly EDCs – are providing generation service to a significant number of consumers in all customer classes.

Second, Duquesne and OCA incorrectly surmise that the proposed 5 mils/kWh charge will be magnified by reconciliation. It stands to reason that, as the number of customers on default service decreases, the verifiable costs related to providing default service that have otherwise not been collected by the EDC should also decrease. The costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction/aggregation, referral programs, should also decrease. In turn, this means that the remaining balance will be larger and that more money will be returned to the distribution customers, including those on default service.

³⁷⁶ RESA St. No. 2 at 28.

³⁷⁷ Duquesne St. No. 3-R at 82-83.

³⁷⁸ OCA St. No. 2-R at 18-19.

Third, one purpose of the charge is to counter the subsidization by shopping customers of non-shopping customers that exists today in Pennsylvania's bundled electricity market. As explained above, generation, transmission and distribution costs continue to be bundled; therefore, all customers, including shopping customers, are paying the costs of default service.³⁷⁹ Thus, default service customers do not pay 100% of the costs associated with Duquesne's provision of default service. The proposed 5 mils/kWh charge operates as a proxy for those costs to eliminate the current subsidization of default service rates. If RESA's proposal is not adopted and there is no full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates.³⁸⁰

For these reasons, RESA recommends that the Commission adopt its proposed 5 mils/kWh charge, applicable to all default service rates.

IV. CONCLUSION

RESA respectfully requests that the ALJ issue a Recommended Decision consistent with RESA's positions and recommendations in this proceeding.

³⁷⁹ RESA St. No. 2 at 25.

³⁸⁰ RESA St. No. 2 at 25.

Respectfully submitted,



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