

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Duquesne Light Company for
approval of a Default Service Program
and Procurement Plan for the Period
June 1, 2013 through May 31, 2015**

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Docket No. P-2012-2301664

**MAIN BRIEF OF
THE JOINT SUPPLIERS**

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3. *Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009).
4. *Secretarial Letter in Re: Electric Generation Supplier Access to Restricted Customer Accounts*, Commission Docket No. M-2009-2082042 (issued August 20, 2010).
5. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered August 16, 2012).
6. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered September 27, 2012).

**MAIN BRIEF OF
THE JOINT SUPPLIERS**

Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (“Constellation”), along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (“NextEra”) (collectively, the “Joint Suppliers”) hereby submit their Main Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the Default Service Program and Procurement Plan filed by Duquesne Light Company (“Duquesne Light”) on April 27, 2012¹ (with supporting testimony from Duquesne Light circulated on that same date²) in Docket No. P-2012-2301664, *Petition of Duquesne Light Utilities Company for approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* (the filing herein referred to as the “Default Service Plan” or “DSP”).

I. PROCEDURAL HISTORY

Duquesne Light on April 27, 2012 filed its DSP. Supporting testimony from Duquesne Light was filed on the same date. On June 8, 2012, a Prehearing Conference was held, with Administrative Law Judge Katrina Dunderdale (“ALJ”) presiding. At the Prehearing Conference, the ALJ adopted the procedural schedule (“Procedural Schedule”) agreed to by the parties.

Pursuant to the Procedural Schedule, direct testimony was submitted by intervening parties on July 26, 2012. Subsequently, rebuttal testimony was submitted by parties on August

¹ *Petition of Duquesne Light Utilities Company for approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Commission Docket No. P-2012-2301664 (Apr. 27, 2012).

² *Direct Testimony of Duquesne Light Utilities Corporation*, Commission Docket No. P-2012-2301664 (Apr. 27, 2012) (“Duquesne Light Direct Testimony”).

24, 2012, and surrebuttal testimony was filed on September 7, 2012. Constellation submitted and circulated to parties direct, rebuttal and surrebuttal testimony for the Commission's consideration, in order to provide an analysis of the DSP.³ NextEra did not submit testimony in this proceeding. Hearings were scheduled for September 13-14, 2012.

The issues that were reserved for litigation and decisions by the ALJ and the Commission were included in a *Common Brief Outline* ("Brief Outline") sent to the ALJ on September 21, 2012. The Joint Suppliers address in this Main Brief only limited issues identified in the Brief Outline, and have identified those issues with the headings and descriptors laid out in the Brief Outline.

II. SUMMARY OF ARGUMENT

The Joint Suppliers submit that, in order to meet the goals of *Act 129 of 2008* ("Act 129"),⁴ all electric distribution companies' ("EDCs") Default Service plans must be designed in such a way as to encourage the broadest participation by wholesale suppliers. Duquesne Light's DSP will be consistent with the Electric Choice Act and the requirements of Act 129, if revised to incorporate certain limited improvements including, but not limited to, certain enhancements

³ See *Direct Testimony of Stephen E. Bennett on Behalf of Intervenors Constellation NewEnergy, Inc. and Exelon Generation Company*, Commission Docket No. P-2012-2301664 (July 26, 2012) ("Constellation St. 1"); *Rebuttal Testimony of Stephen E. Bennett on Behalf of Intervenors Constellation NewEnergy, Inc. and Exelon Generation Company*, Commission Docket No. P-2012-2301664 (Aug. 24, 2012) ("Constellation St. 1R"); and *Surrebuttal Testimony of Stephen E. Bennett on Behalf of Intervenors Constellation NewEnergy, Inc. and Exelon Generation Company*, Commission Docket No. P-2012-2301664 (Sept. 7, 2012) ("Constellation St. 1SR") (collectively, the "Constellation Testimony").

⁴ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity__urges_legislature_to_pass_rate_mitigation_bill.html).

to aid in the development of customer choice and competition in Duquesne Light's territory, and several important improvements to Duquesne Light's proposed forms of Supply Master Agreement ("SMA"). With these limited changes, Duquesne Light's proposed design will be more likely to encourage the broadest participation by suppliers, is likely to more effectively meet the goals of Act 129, and will be in the public interest.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden of Proof

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Further, 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."⁵

2. Legal Standards Applicable to Default Service

The requirements for EDCs' structures for Default Service procurements can be found in Act 129's revisions to Section 2807, *Duties of Electric Distribution Companies*, of Title 66 of the Pennsylvania Consolidated Statutes (66 Pa.C.S. § 2807). Overall, Act 129 requires that, for a utility's Default Service procurement structure:

⁵ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).

- (1) “The electric power acquired shall be procured through competitive procurement processes and shall include” auctions, requests for proposals and/or bilateral agreements;⁶ (“Requirement (1)”)
- (2) “The electric power procured . . . shall include a prudent mix of” spot market purchases, short-term contracts and long-term purchase contracts “of more than four and not more than 20 years”;⁷ (“Requirement (2)”) and
- (3) The “prudent mix” of supply contracts “shall be designed to ensure” (a) “adequate and reliable service,” (b) “the least cost to customers over time,” and (c) “compliance with the requirements of Paragraph (3.1)”⁸ (“Requirement (3)”). Note that Paragraph (3.1) is the section of Act 129 which describes the “prudent mix” included in the second requirement above.

With respect to Requirement (3)(b), Act 129 provides a template for addressing whether a Default Service Plan is likely to result in “the least cost to customers over time,” stating specifically that:

At the time the Commission evaluates the plan and prior to approval, in determining if the [DSP] obtains generation supply at the least cost, the Commission shall . . . make specific findings which shall include the following:

- (i) the [DSP] includes prudent steps necessary to negotiate favorable generation supply contracts.
- (ii) the [DSP] includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis. [and]

⁶ Act 129 at 66 Pa.C.S. § 2807(e)(3.1).

⁷ Act 129 at 66 Pa.C.S. § 2807(e)(3.2).

⁸ Act 129 at 66 Pa.C.S. § 2807(e)(3.4).

(iii) neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates federal law.⁹

Finally, on June 30, 2009, the Commission entered an order regarding PPL Electric Utilities Corporation's ("PPL Electric") proposed procurement structure for Default Service supply ("June 2009 Order").¹⁰ In its June 2009 Order, the Commission affirmed that (a) "provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,"¹¹ (b) "a DSP must include prudent steps necessary to obtain 'least cost generation supply contracts,'"¹² and (c) provisions of a DSP "must be structured so as to encourage greater competition."¹³

D. RATE DESIGN

3. Non-Bypassable Charge to Recover PJM Charges

Constellation had proposed in this proceeding that Duquesne Light revise its Transmission Service Charge ("TSC") Rider to include certain new charges, and that Duquesne Light assume responsibility for all TSC Rider charges for all distribution customers on a non-bypassable basis (i.e., from shopping and non-shopping customers alike). While the Joint Suppliers continue to support such changes for the reasons presented throughout the Constellation Testimony, based on the Commission's recent August 16, 2012 *Opinion and Order*

⁹ Act 129 at 66 Pa.C.S. § 2807(e)(3.7) (*emph. added*).

¹⁰ See *Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009) ("June 2009 Order").

¹¹ June 2009 Order at p.29.

¹² June 2009 Order at p.30.

¹³ June 2009 Order at p.30.

and September 27, 2012 *Opinion and Order* in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (“FirstEnergy DSP Orders”) – regarding the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs* – the Joint Suppliers will not pursue any such changes to the TSC Rider at this time.

F. SUPPLY MASTER AGREEMENT ISSUES

Subject to the additional SMA improvements proposed by Constellation in this proceeding, Duquesne Light’s procurements under the DSP will be consistent with the requirements under Act 129. Constellation presented evidence in this proceeding outlining important reasons for certain limited improvements to Duquesne Light’s proposed form of SMA. The Joint Suppliers herein argue for three particular items proposed by Constellation, “in order to encourage the most robust participation in the DSP’s [requests for proposals (“RFPs”)].”¹⁴ Specifically, the Joint Suppliers ask that the Commission order Duquesne Light to revise the SMA to: (1) include other EDCs’ more appropriate unsecured credit thresholds or, at a minimum, the thresholds used in the SMA approved for use by Duquesne Light in its previous Default Service Plan (the “Prior SMA”); and (2) as agreed to by Duquesne Light, and as included in the Prior SMA, reinsert the terms, “, if any” after “with respect to Seller’s Guarantor” in SMA Section 12.1(j). In addition, the Commission should note Duquesne Light’s clarification regarding the allocation of “PJM Customer Payment Defaults” between the EDC and the DS Supplier, as noted in the SMA’s Sample PJM Invoice. The Joint Suppliers’ suggested improvements to the wholesale supply documents will ensure that Duquesne Light’s DSP meets

¹⁴ Constellation St. 1 at p.33 (lines 10-15).

the requirements of Act 129, allowing the DSP to solicit and obtain contracts for the least cost generation supply on a long-term, short-term and spot market basis.

Requirement 3 of Act 129, as identified above, requires that the “prudent mix” of supply contracts in a Default Service Plan “shall be designed to ensure” (a) “adequate and reliable service,” (b) “the least cost to customers over time,” and (c) “compliance with the requirements of Paragraph (3.1)”¹⁵ Moreover, with respect to Requirement 3(b), Act 129 lays out that “*in determining if the [DSP] obtains generation supply at the least cost,*” the Commission must make three specific findings, including that the Default Service Plan includes “prudent steps” necessary to: (i) “negotiate favorable generation supply contracts,” and (ii) “obtain least cost generation supply contracts on a long-term, short-term and spot market basis.”¹⁶

In order to evaluate whether the procurement methods in the DSP will result in least cost generation supply on a long-term, short-term and spot market basis, the competitive structure provides appropriate answers. In each case Duquesne Light has designed the competitive bid procurement structure such that winning bidders are able to be determined on the basis of “least cost” alone, eliminating the need to make determinations regarding bids based on other less objective criteria.

When properly structured to allow for a broad potential pool of bidders, competitive procurements will allow Duquesne Light to obtain competitively-priced, favorable generation contracts. The record is clear that the greater the competition in Duquesne Light’s procurements, the more likely it is that such procurements will result in the “least cost” to Duquesne Light’s

¹⁵ Act 129 at 66 Pa.C.S. § 2807(e)(3.4).

¹⁶ Act 129 at 66 Pa.C.S. § 2807(e)(3.7) (*emph. added*).

consumers.¹⁷ In this way, in making its Act 129-mandated specific findings under Requirement 3(b), the Commission must also make a finding that the DSP will encourage greater competition.

The Commission, in fact, confirmed this requirement in its June 2009 Order regarding PPL Electric's Default Service Plan. As noted above, the Commission stated specifically that: "provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,"¹⁸ "a DSP must include prudent steps necessary to obtain 'least cost generation supply contracts,'" and provisions of a DSP "must be structured so as to encourage greater competition."¹⁹

Failure to adopt the Joint Suppliers' proposed improvements to the SMA will cause harm to consumers by impairing the DSP's ability to obtain generation supply at the least cost. Therefore, adopting Joint Suppliers' proposed improvements to the DSP will be in the public interest.

(1) The SMA's Unsecured Credit Thresholds Should Be More in Line with Those Utilized by Other EDCs or, at a Minimum, with Those Previously Used by Duquesne Light in its Prior SMA

Constellation witness Bennett argued in this proceeding that Duquesne Light's proposed SMA should be revised to include those Unsecured Credit Thresholds contained in the form of SMA used by the West Penn Power Company ("West Penn") in its current Default Service procurements or, in the alternative, that Duquesne Light continue to at the very least use those Unsecured Credit Thresholds that Duquesne Light included in its Prior SMA.

¹⁷ See, e.g., Constellation St. 1 at pp.34 (line 3) – 35 (line 5) (explaining how wholesale suppliers make their decisions to participate in procurements and that the "most robust participation" in Duquesne Light's procurements will lead to the "least cost generation supply contracts").

¹⁸ June 2009 Order at p.29.

¹⁹ June 2009 Order at p.30.

In response, Duquesne Light argues that “[its] proposed unsecured credit dollar limits are the same as PECO’s except that Duquesne Light’s dollar limit for the lowest investment grade rated entities is \$5 million more than PECO’s,” “[Duquesne Light] limits the amount of unsecured credit provided to suppliers in order to provide protections to customers in the event of [DS Supplier] default” and “non-investment grade entities have a higher risk of defaulting on their obligations,” and “neither PECO nor [PPL Electric] has provided unsecured credit to non-investment grade entities in their default service supply contracts”²⁰

With respect to these arguments, the Joint Suppliers first point out that, while Duquesne Light’s thresholds may line up against those currently used by PECO, they are not, in fact in line with those approved by the Commission and currently used by PPL Electric (contrary to Duquesne Light’s statements) and West Penn, as well as those most recently approved by the Commission for use by all of FirstEnergy Corp.’s Pennsylvania EDCs (“FirstEnergy-PA”) for 2013 and beyond.²¹ Duquesne Light’s highest threshold of \$60,000,000 is in fact *lower than* PPL Electric’s by a factor of \$15-million, *lower than* West Penn’s by a factor of \$65-million, and *lower than* those that FirstEnergy-PA will be using in 2013 and beyond by a factor of \$15-million. Moreover, both West Penn’s and Duquesne Light’s Prior SMA currently provide some level of unsecured credit at the BB-/BB-/Ba3 level (S&P/Fitch/Moody’s), which Duquesne Light’s proposed SMA fails to do. In this way, Duquesne Light has failed to show how its proposed Unsecured Credit Thresholds are in line with other EDCs in Pennsylvania. In addition, Duquesne Light fails to identify why it believes that its Prior SMA, as well as the SMA currently

²⁰ Duquesne Light St. 9-R at pp.5 (line 8) – 8 (line 2).

²¹ *Opinion and Order*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (issued Aug. 16, 2012) (“FirstEnergy-PA Aug. 16 Order”) (approving, with modifications, FirstEnergy-PA’s DSP petition, including the SMA presented in FirstEnergy-PA’s petition).

used by West Penn – both previously approved by the Commission – do not adequately moderate the risks that are faced upon a DS Supplier default; Duquesne Light has not cited to any evidence that consumers were not adequately protected under its prior DSP.

In this way, in order to be consistent with the Commission’s June 2009 Order, because the thresholds in the West Penn SMA will be more attractive to potential bidders, Duquesne Light *must* bring its SMAs’ Unsecured Credit Thresholds more in line with those included in the West Penn SMA, to be deemed to have “include[d] prudent steps necessary to obtain ‘least cost generation supply contracts,’ and . . . be structured so as to encourage greater competition,”²² as required by the Commission. At the very least, Duquesne Light should be required to use those thresholds it included in its Prior SMA, because it has not provided good cause to move away from those terms. Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light is ORDERED to adopt the Unsecured Credit Thresholds used in the West Penn SMA, as reflected in Constellation St. 1 at p.36 (lines 12-24).

In the alternative, if it is deemed more appropriate to maintain those thresholds used in Duquesne Light’s Prior SMA, Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light is ORDERED to adopt the Unsecured Credit Thresholds used in Duquesne Light’s Prior SMA, as reflected in Constellation St. 1 at p.36 (lines 12-24).

(2) As Agreed to by Duquesne Light, and as Included in the Prior SMA, the Terms, “, if any” Should Be Reinserted After “with respect to Seller’s Guarantor” in SMA Section 12.1(j)

As offered in Constellation’s testimony in this proceeding, the Joint Suppliers propose that, in SMA Section 12.1(j), it would be reasonable to reinsert the terms, “, if any” after “with respect to Seller’s Guarantor”. Duquesne Light agreed to such a change, stating that “Duquesne

²² June 2009 Order at p.30.

Light has no objection to adding back the phrase ‘if any.’”²³ Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light is ORDERED to revise SMA Section 12.1(j) to reinsert the terms, “, if any” after “with respect to Seller’s Guarantor”, as agreed to by Duquesne Light.

(3) The Commission Should Note Duquesne Light’s Clarification Regarding Allocation of “PJM Customer Payment Defaults” Between the EDC and DS Suppliers, as Noted in the SMA’s Sample PJM Invoice

As offered in Constellation’s testimony in this proceeding, the Joint Suppliers support a clarification by Duquesne Light regarding the allocation of “PJM Customer Payment Defaults” between the EDC and the DS Supplier, as noted in the SMA’s Sample PJM Invoice.²⁴ Duquesne Light provided such a clarification, explaining that:

[S]ince Customer Payment Default charges allocated by PJM to the DS Supplier subaccount will be based on transmission charges, it is logical that these charges be the responsibility of the Buyer and will continue to be recovered through the TSC In addition, DS Suppliers have their own account with PJM in which they incur other charges as an LSE Therefore, both the Buyer and Seller are responsible for a share of the Customer Payment Default charges as stated in Exhibit D of the SMA.²⁵

The Joint Suppliers are generally satisfied with Duquesne Light’s response on this item and ask that the Commission take note of Duquesne Light’s clarification.

G. DATA/EGS COORDINATION ISSUES

The Joint Suppliers support that it is important for Duquesne Light to address questions/concerns regarding EGS coordination, and EGS data and customer access, because

²³ Duquesne Light St. 9-R at p.11 (lines 10-11).

²⁴ Constellation St. 1 at p.40 (lines 14-20).

²⁵ Duquesne Light St. 4-R at p.34 (line 7) – 35 (line 5).

“[b]y addressing these types of concerns, customers who wish to shop will have a more seamless and less burdensome path to enrolling with an EGS, “EGSs will have greater certainty regarding the EDC’s processes, as well as the data and information that will be made available,” and “EGSs will be better able to provide services to prospective customers, meet the needs of existing customers, and manage their businesses.”²⁶

Specifically, the Joint Suppliers ask that the Commission order Duquesne Light to: (1) as required by the Commission on August 20, 2010, discontinue the practice of requiring EGSs to send to the EDC copies of signed Letters of Authority (“LOAs”) prior to providing access to necessary customer data; (2) remit to EGSs *actual* dollars charged to a customer, rather than only budget billing charges that a customer elects to pay to the EDC; (3) as agreed to by Duquesne Light, order the EDC to build into its new system the capability to accept and manage up to five EGS Scheduling Coordinators and DUNS numbers per EGS, without charging the EGS additional administrative fees for such functionality; and (4) given that the DSP being considered in this proceeding has a term that runs through 2015, order Duquesne Light to commit to certain proposals that Duquesne Light states cannot be implemented prior to 2014. In addition, the Joint Suppliers ask that the Commission note Duquesne Light’s clarifications/explanations regarding several additional EGS coordination and data access issues raised by Constellation in its testimony. Addressing these concerns will assist in allowing an EGS to provide a prospective customer with a competitive offer for electric service, check the enrollment status of a new customer, and perform other functions designed to better serve potential and existing customers.²⁷

²⁶ Constellation St. 1 at p.13 (lines 8-13).

²⁷ Constellation St. 1 at p.13 (lines 13-16).

Failure to address such issues, however, will cause unnecessary delays and overly burdensome administrative costs and processes that can affect an EGS's ability to contract with customers, render invoices, and provide other services to consumers.²⁸ As Constellation witness Bennett states, "Ultimately, given the fact that pricing may change during the intervening time in which it takes to proffer an offer due to administrative burdens and/or delays in data access, a customer may be economically harmed."²⁹ Therefore, addressing the Joint Suppliers' concerns regarding EGS data/access improvements will be in the public interest.

(1) As Required by the Commission on August 20, 2010, Duquesne Light Must Discontinue the Practice of Requiring EGSs to Send to the EDC Copies of Signed LOAs Prior to Providing Access to Necessary Customer Data

The Joint Suppliers support Constellation's proposal that Duquesne Light should discontinue the practice of requiring EGSs to send to the EDC copies of signed LOAs prior to providing access to necessary customer data.³⁰ In response, Duquesne Light states that "signed [LOAs] are only required for the customers that have elected to have their customer information restricted from suppliers,"³¹ and that the EDC accepts "faxed or emailed copies of the LOA."³²

Duquesne Light, however, fails to take into account the Commission's *explicit* instructions with respect to "restricted customer accounts" – i.e., those customers "that have elected to have their customer information restricted from suppliers." Specifically, the

²⁸ Constellation St. 1 at p.13 (lines 20-22).

²⁹ Constellation St. 1 at p.13 (lines 22-24).

³⁰ See Constellation St. 1 at p.14 (lines 5-20).

³¹ Duquesne Light St. 6-R at p.7 (lines 13-21).

³² Duquesne Light St. 6-R at p.7 (lines 18-19).

Commission states in its August 20, 2010 *Secretarial Letter* in Docket No. M-2009-2082042 (“Aug. 2010 PUC Letter”) that, with respect to such restricted customer accounts:

an EGS *will not be required to provide prior documentation to EDCs* of a customer’s authorization to provide historical usage data to the EGS in connection with either electronic or manual transactions. The authorization process used by EGSs should convey to consumers that EDCs will release the information only to the EGS to whom the authorization was given; and that the EGS will not release the information to others, unless the EGS is a licensed broker who is obtaining this information for purposes of sharing it with other licensed EGSs and makes that intent clear in communications with the consumers. It is incumbent upon the EGS to retain records of the requisite authorization for a minimum of two years to produce for a Commission or EDC audit.³³

Based on the Commission’s decision and explicit direction in the Aug. 2010 PUC Letter, then, Duquesne Light cannot continue to require EGSs to provide to the EDC a copy of the LOAs the EGSs maintain for restricted customer accounts. Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light, as required by the Commission in the Aug. 2010 PUC Letter, is ORDERED to discontinue the practice of requiring EGSs to send to the EDC copies of signed LOAs prior to providing access to necessary customer data.

(2) Duquesne Light Should Remit to EGSs Actual Dollars Charged to a Customer, Rather than Only Budget Billing Charges that a Customer Elects to Pay to the EDC

The Joint Suppliers support that Duquesne Light should remit to EGSs *actual* dollars charged to a customer, rather than only budget billing charges that a customer elects to pay to the EDC. Constellation witness Bennett argued in this proceeding that:

The issue for EGSs is not only that Duquesne Light fails to identify when a customer has elected budget billing, but that in its EDI 820 payment file

³³ *Secretarial Letter in Re: Electric Generation Supplier Access to Restricted Customer Accounts*, Commission Docket No. M-2009-2082042 (issued August 20, 2010) (“Aug. 2010 PUC Letter”) at p.2 (*emph. added*).

sent to an EGS, the EDC includes only the dollars from the customer's budget billing amount if a customer elects to pay such amount. This is despite the fact that Duquesne Light nevertheless sends to the EGS prior to that time the *actual* rather than *budget billing* charges for such customer in the EDI 810 Rate Ready invoice for the EGS.³⁴

In response, Duquesne Light states that “[it] plans to replace its existing CIS with CC&B system during the second quarter of 2013,” that under the new CIS system “customers will affirmatively elect to join the budget billing program [and] will only have the option to pay the budget bill every month,” and that “[a]lthough this is not the solution that Mr. Bennett seeks, this change in policy should alleviate the problems that the suppliers are facing with this issue.”³⁵

With respect to these arguments, however, while the Joint Suppliers appreciate the additional clarity that the new system will provide, the Joint Suppliers note that Duquesne Light has not committed to remit to EGSs the actual dollars *charged* to the customer by the EGSs, and may only be committing to remit to EGSs the budget billing dollars that Duquesne Light has charged to the customer. Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light is ORDERED to remit to EGSs *actual* dollars EGSs charge to a customer, rather than only budget billing charges that a customer pays to Duquesne Light.

(3) As Agreed to by Duquesne Light, the EDC Should Build into its System Capability to Manage up to Five EGS Scheduling Coordinators and DUNS Numbers Per EGS, Without Additional Administrative Fees

As offered in Constellation's testimony in this proceeding, the Joint Suppliers propose that Duquesne Light should build into its new system the capability to accept and manage multiple EGS Scheduling Coordinators and DUNS numbers, without charging the EGS

³⁴ See Constellation St. 1 at p.17 (lines 7-19).

³⁵ Duquesne Light St. 6-R at p.10 (lines 8-13).

additional administrative fees for such functionality. Duquesne Light agreed to such a change, with certain limitations, stating that it “proposes to limit this functionality up to five scheduling coordinators,” and that, “[s]hould an EGS desire more than five scheduling coordinators, [Duquesne Light] would charge the EGS in accordance with the charges defined in the Technical Support and Assistance Charge provision of the EGS Coordination Tariff.”³⁶ The Joint Suppliers generally are not opposed to Duquesne Light’s modification of Constellation’s proposal. Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light is ORDERED to build into its new system the capability to accept and manage up to five EGS Scheduling Coordinators and DUNS numbers per EGS, without charging the EGS additional administrative fees for such functionality.

(4) Duquesne Light Should Commit to Certain Proposals that it States Cannot be Implemented Prior to 2014

As offered in Constellation’s testimony in this proceeding, the Joint Suppliers propose that, Duquesne Light should:

- Implement EDI 867 capabilities for EGS requests and access to customers’ HIU data;³⁷
- Adopt PA EDI Change Control #085/#090, which will provide to EGSs EDI notification that a net meter is present or has been added to a particular customer account;³⁸ and
- Offer to EGSs the option for Bill Ready billing, at least for Medium and Large Commercial and Industrial (“C&I”) customers.³⁹

³⁶ Duquesne Light St. 4-R at p.20 (lines 13-19).

³⁷ See Constellation St. 1 at pp.14 (line 21) – 15 (line 11).

³⁸ See Constellation St. 1 at pp.15 (line 17) – 16 (line 7).

³⁹ See Constellation St. 1 at p.18 (lines 1-14).

In response to each of these proposals, Duquesne Light declined to commit to the changes on the basis that they “cannot be implemented until 2014” because of the roll out of its new CC&B system.⁴⁰

The Joint Suppliers submit that this argument does not speak to the merits and important benefits that these proposals will provide to customers, EGSs and the competitive marketplace, as laid out in Constellation’s testimony on these issues. Moreover, as Mr. Bennett explains, “given that the DSP being considered in this proceeding has a term that runs through 2015, there is no reason that Duquesne Light cannot commit to the other proposals that it states cannot be implemented prior to 2014.”⁴¹ Thus, the Joint Suppliers propose the following Ordering Paragraphs:

Duquesne Light is ORDERED to implement, by 2015, EDI 867 capabilities for EGS requests and access to customers’ HIU data.

Duquesne Light is ORDERED to adopt, by 2015, PA EDI Change Control #085/#090, which will provide to EGSs EDI notification that a net meter is present or has been added to a particular customer account.

Duquesne Light is ORDERED to offer to EGSs, by 2015, the option for Bill Ready billing, at least for Medium and Large C&I customers.

***(5) The Commission Should Note Duquesne Light’s
Clarifications/Explanations Regarding Several Additional EGS
Coordination and Data Issues Raised by Constellation***

As offered in Constellation’s testimony in this proceeding, the Joint Suppliers support that Duquesne Light should:

⁴⁰ See Duquesne Light St. 6-R at p.8 (lines 9-18) (regarding EDI 867 capabilities for EGS requests and access to customers’ HIU data), p.9 (lines 1-7) (regarding PA EDI Change Control #085/#090, which will provide to EGSs EDI notification that a net meter is present or has been added to a particular customer account), and p.11 (lines 1-8) (regarding offering to EGSs the option for Bill Ready billing).

⁴¹ See Constellation St. 1-SR at p.15 (lines 17-19).

- Refrain from collecting PJM residual charges via EDI 820 transactions and instead send EGSs separate paper bills to recover these amounts;⁴² and
- Provide customer sync lists to all requesting EGSs at no charge.⁴³

Duquesne Light provided explanations/clarifications addressing each of these items, explaining that:

- Duquesne Light’s “new CIS eliminates the collection of PJM residual invoice amounts through EDI 820 transactions”;⁴⁴ and
- “Duquesne Light does not currently charge for customer sync lists.”⁴⁵

The Joint Suppliers are generally satisfied with Duquesne Light’s responses on these items and ask that the Commission take note of Duquesne Light’s clarifications/explanations.

IV. CONCLUSION

Constellation’s proposed improvements to Duquesne Light’s DSP design are supported by substantial evidence in the record before the Commission. The Duquesne Light DSP, with Constellation’s limited changes, will encourage more competitive procurements for Duquesne Light’s DSP, more appropriate competitive options from EGSs and, in turn, will better assure that Duquesne Light’s customers are able to receive benefits from the least costs for generation supply contracts, whether remaining on Default Service supply from Duquesne Light or taking competitive service from an EGS.

⁴² See Constellation St. 1 at pp.16 (line 10) – 17 (line 4).

⁴³ See Constellation St. 1 at pp.19 (line 23) – 20 (line 5).

⁴⁴ Duquesne Light St. 6-R at p.9 (lines 17-19).

⁴⁵ Duquesne Light St. 6-R at p.11 (line 13).

Respectfully Submitted,

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