CITIZEN POWER

Public Policy Research Education and Advocacy

October 5, 2012

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

Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2013 through May 31, 2015; Docket P-2012-2301664

Dear Secretary Chiavetta:

Enclosed please find Citizen Power's Main Brief, in the above referenced proceeding.

Copies of this document have been served in accordance with the attached Certificate of Service.

Sincerely,

Theodore Robinson
Counsel for Citizen Power

Enclosures
Cc: Hon. Katrina L. Dunderdale
Certificate of Service

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BEFORE THE
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	: : : :	Docket No. P-2012-2301664

MAIN BRIEF OF CITIZEN POWER, INC.

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October 5, 2012

I. PROCEDURAL HISTORY

Citizen Power, Inc. ("Citizen Power") files this Main Brief in support of its positions in the matter of the Petition of Duquesne Light Company for Approval of its Default Service Program.

Prior to the initiation of the above-captioned proceeding, the Pennsylvania Public Utility Commission ("Commission") issued two orders in the Investigation of Pennsylvania's Retail Electricity Market Proceeding that give significant guidance for the development of default service plans. On December 16, 2011, the Commission issued a Final Order regarding upcoming default service plans ("December 16th Market Order") which addressed many issues such as recommended default service time periods, energy contract durations, time-of-use ("TOU") rates, and reconciliation periods. In addition, on March 2, 2012, the Commission issued a Final Order regarding intermediate work plans ("IWP Order") which made recommendations regarding consumer education, supplier switching timeframes, customer referral programs, retail opt-in auction programs, and coordination between EDCs and EGSs.

On April 27, 2012, the Duquesne Light Company ("Duquesne" or "Company") initiated the above-captioned proceeding by filing with the Commission a Petition for Approval of their Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 ("Petition") pursuant to Section 2807(e) of the Public Utility Code. This Petition concerned proposed default service procurement plans and retail market enhancements. Furthermore, the Petition addressed the requirement to offer real-time price plans to customers and requested waivers necessary to implement the default service plan.

On May 15, 2012, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention. On May 17, 2012, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention. On June 1, 2012, Citizen Power filed a Petition to Intervene. Several other parties also filed petitions to intervene before the June 4, 2012 deadline. On June 8, 2012, a Prehearing Conference was held by the Honorable Katrina L. Dunderdale, Administrative Law Judge. On June 11, 2012, a Prehearing Order was issued memorializing the discussion of the parties at the Prehearing Conference including setting forth a litigation schedule and granting Petitions to Intervene.[1] An Interim Order was filed on June 20, 2012 clarifying the June 11, 2012 Prehearing Order.

Direct testimony was filed by several parties on July 26, 2012. Rebuttal testimony was filed by parties on August 24, 2012. Surrebuttal testimony was filed by parties on September 7, 2012. Duquesne filed rejoinder testimony on September 12, 2012. In addition, between the direct testimony and the rebuttal testimony, an Opinion and Order was issued in 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 ("ME/PE/PP/WP Order"). This Order was referenced in the testimony of several witnesses.

A hearing was held on September 13, 2012 at which written testimony and exhibits were received into evidence. Cross-examination of witnesses was waived by all of the parties.

II. <u>SUMMARY OF ARGUMENT</u>

Citizen Power believes that the Petition meets most of the legal requirements under Pennsylvania law. However, we believe that the 50% customer participation cap for the retail opt-in program creates a situation where default service rates may be increased by risk premiums to a degree that they no longer meet the least cost over time standard. Unlike standard customer

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[1] The following Petitions to Intervene were granted: Dominion Retail, d/b/a Dominion Energy Solutions and Interstate Gas Supply, d/b/a Interstate Energy; Noble Americas Energy Solutions, LLC; Citizen Power, Inc., FirstEnergy Solutions Corp.; Retail Energy Supply Association, Constellation NewEnergy, Inc. and Exelon Generation Corp.; Duquesne Industrial Intervenors; Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania; and NextEra Energy Services Pennsylvania, LLC and NextEra Power Marketing, LLC.

migration patterns, the opt-in auction creates a situation where an unpredictable number of customers may leave default service at the same time early in the delivery period. Therefore, we recommend that the customer participation cap be reduced to 20% of eligible default service customers.

In addition, Citizen Power proposes three modifications to the Petition that, though not required by our analysis, may benefit residential customers; the inclusion of 2 year procurement products in the default mix, the adoption of OCA's recommendation related to customer procurement for the opt-in auction, and the approval of OCA's recommendation to shorten the standard offer program term of offer provided that consumers that do not opt-in to another offer are returned to default service.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden of Proof

Duquesne has the burden of proof to establish that they are entitled to the relief they are seeking. 66 Pa. C.S. § 332(a). Duquesne must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.,* 602 A.2d 863 (Pa. 1992). A preponderance of the evidence standard is simply a requirement that the evidence presented must be more convincing than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

2. Legal Standards Applicable to Default Service

The Competition Act, as amended by Act 129 of 2008, requires that the default service provider shall provide electric generation service, pursuant to a commission-approved competitive procurement plan, to customers that have contracted for electric generation supply from an EGS and that supply is not provided for any reason or, in the alternative, if a customer chooses not to shop for generation supply. 66 Pa. C.S. § 2807(e)(3.1). The procurement of electric energy shall be through a prudent mix of contracts designed to provide adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.2) and 2807(e)(3.4). Additionally, under 66 Pa. C.S. § 2802(10), the General Assembly declared that "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service." Finally, under 66 Pa. C.S. § 2802(3) the General Assembly asserts that customers must have "direct access to a competitive generation market". The combination of these mandates points towards the desirability of an approach that provides attractive default service for customers that are not shopping while promoting a vibrant marketplace for customers who wish to explore their generation options.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

a. Product(s) and Product Terms

Duquesne has proposed to supply their residential default service customers using one-year full requirements contracts procured from competitive requests-for-proposals at different points in time. Duquesne St. 2 at 4 and 7. These full requirement contracts will include "the cost of energy, capacity, congestion and congestion management charges, alternative energy requirements, ancillary services, and PJM grid management charges." Duquesne St. 4 at 6. The residential rates will be calculated by adjusting the weighted average winning bid price to account for line losses, certain costs enumerated in the testimony, and Pennsylvania's gross receipts tax. Duquesne St. 4 at 7. Citizen Power generally supports the use of one-year full requirements contracts as they provide a balanced amount of price stability and price responsiveness.

OCA has proffered that the portfolio should be modified by mixing in some two-year full requirement contracts, acquiring some of the supply using a block and spot approach, and to reduce the number of tranches by 20 percent and set that load aside for the Opt-in EGS Service Program. OCA St. 1 at 15-17. On the other hand, the Retail Energy Supply Association ("RESA") recommends a mix of 50% 12-month and 50% 3-month full requirements products. RESA St. 1 at 18.

Citizen Power agrees with OCA's recommendation to include two-year full requirement contracts into the portfolio mix. The inclusion of a small number of these contracts would help smooth price differences between the first year and second year of the procurement that may result from a known large increase in the PJM capacity prices. On the other hand, RESA's proposal to procure 50% of the load through 3-month contracts has two distinct disadvantages. First, it allows for the possibility of large price swings in response to changing electricity prices. Second, it makes the Price to Compare ("PTC") a moving target, potentially discouraging potential customers used to more stable default service.

b. Procurement Dates

In summarizing the timing of the proposed procurement plan, Duquesne witness Wilson stated:

> …For the June 1, 2013 – May 31, 2014 delivery period, Duquesne Light will procure 50% of its default service supply in November 2012 and 50% of its default service supply in April 2013. For the June 1, 2013 – May 31, 2014 delivery period, Duquesne Light will procure 50% of its default service supply in April 2013, 25% in November 2013, and 25% in April 2014. By procuring 50% of the default service supply for the second plan year at the same time that 50% of the supply for the first year plan year is procured, the Plan incorporates a hedge against energy price movements which otherwise could result in large unanticipated increases in Residential customers' rates starting June 2014…

Duquesne St. 2 at 7-8.

By acquiring default service supply as different times for the same time period, Duquesne is trying to mitigate the risk of procuring all of their default supply at the peak of the market. Duquesne takes a similar approach in procuring its "overhang" procurement in April 2014 for the period June 2015 through May 2016, which will necessarily be combined with future procurements. Citizen Power agrees with this approach since it is consistent with the goal of procuring default service at the least cost over time. Specifically, the procurement of default service at only one point in time carries with it a risk that the resulting rate with be abnormally high because of poor market timing. This is not to say that price at a certain point in time is not the "actual" or "market" price. Instead, it is more an acknowledgement that the likelihood of obtaining a price that is an outlier is greater if you take one sample instead of two. In order to meet the least cost standard, it is reasonable to attempt to reduce the chance of obtaining an outlying price by using more than one procurement date.

c. Reserving Supply For Retail Opt-In Customer Participation

Citizen Power takes no position on this issue.

2. Small C&I Procurement Issues

Citizen Power takes no position on these issues.

3. Medium C&I Procurement Issues

Citizen Power takes no position on these issues.

4. Large C&I Procurement Issues

Citizen Power takes no position on these issues.

5. Default Supply Load CAP Issues

Duquesne's Petition has proposed that each supplier should be capped at 50% of the tranches available for each procurement class in any RFP. Citizen Power agrees with the 50% participation cap. A supplier cap encourages a broader range of suppliers to bid into the default procurement and reduces the impact if a single supplier were to default on their obligation. Duquesne St. 2 at 17. Citizen Power supports such an approach.

6. Procurements for Delivery Beyond May 31, 2015

Duquesne Light has proposed an April 2014 RFP to procure 25% of the default supply from the period from June 2015 through May 2016. According to Duquesne, the purpose of this procurement is to avoid a "hard stop" at the end of the POLR VI plan by smoothing a portion of the residential default rates for an additional year. Duquesne St. 2 at 10. Duquesne avers that this proposal is consistent with the Commission's December 16th Market Order. Duquesne St. 8-R at 56. On the other hand, RESA believes that contracts running beyond May 31, 2015 may hinder the Commission's efforts to establish a new default service structure. RESA St. 1 at 14. Citizen Power recommends that the proposed "overhang" procurement should be approved because the proposed procurement date of April 2014 is distant enough that this procurement can be adjusted (or eliminated) based upon changes in the regulatory or statutory landscape.

7. Miscellaneous Procurement Issues

Citizen Power has not identified any miscellaneous procurement issues it wishes to address at this time.

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

a. Auction v. ROI Program

Duquesne Light has proposed that the Retail Opt-In product price be determined by a sealed bid RFP process where participating EGSs would submit a bid at a fixed price per kWh to provide electric service for 12 billing cycles beginning June 2013. Duquesne St. 3 at 21. RESA supports an approach where an initial discount would be administratively set at 5% for 4 months in lieu of an auction. After an initial period of four billing cycles, the EGS would offer the customer a fixed rate for an additional eight billing cycles. RESA St. 2-SR at 18-19. Although Citizen Power has not formulated a position regarding whether an auction or ROI program would be preferable as a generic matter, we do believe that RESA's specific proposal should be rejected for many of the reasons outlined by Company witness Mr. Fisher in his Rejoinder Testimony. Duquesne St. 3-RJ at 4.

b. Term of Offer

Citizen Power believes that a fixed 12 month rate as proposed by Duquesne is vastly superior to an approach where the rate changes after 4 months to an unknown fixed rate. We agree with many of the concerns of Duquesne regarding an initial 4 month rate including the potential harm to customers if they do not re-evaluate their options after a 4 month period, there may be an incentive for EGSs to increase the rates for months 5 through 12 to take advantage of the "status quo" bias, and that differing rates for opt-in auction participants may engender hostility towards retail electrical markets in general. Duquesne St. 3-RJ at Fig. 9 and 10-11. We also share OCA's concerns that approaches where the rate changes after 4 months may be confusing to customers and will no longer guarantee savings over the entire contract term. OCA St. 2-6 at 6.

c. Discount Percentage

Citizen Power takes no position on this issue.

d. $50 Bonus Payment

Citizen Power supports a $50 dollar bonus payment in order to incent customers to try the Opt-In Program as contingent upon the existence of guaranteed savings relative to the price to compare. However, in scenarios where there are not guaranteed savings, either because of the price to compare will not remain stable for the term of the opt-in program or because of an opt-in program where the rates are not fixed for an entire 12 month period, Citizen Power opposes the use of a bonus payment because it may entice customers to choose a plan that in the long-run is not in their best interest.

e. Guaranteed Savings

Citizen Power fully supports Duquesne's opt-in approach which guarantees savings for all customers participating in the program. One of the purposes of the opt-in program is for residential customers to become comfortable with the idea of shopping for electricity. An opt-in program that potentially results in customers paying more than the PTC could result in customers becoming less comfortable with electric choice.

f. Customer Participation Cap

Duquesne Light has proposed that customer participation in the Retail Opt-In program be limited to 50% of the eligible default service customers, which under their plan excludes CAP customers. Duquesne St. 3 at 26-27. OCA submits that the customer participation cap should be set at 20% of default service customers. OCA St. 1 at 10. Citizen Power agrees with OCA that the customer participation cap should be lower than 50%. Specifically, we believe that the unknowable participation numbers combined with a high cap can create substantial risk for potential default service supply bidders, and that this risk will be reflected in the submitted bids. While it is true that significant numbers of customers have already left default service, the difference is that the opt-in program may (or may not) result in large numbers of customers leaving default service at the same time. The unpredictability of the program is what separates it from the known migration history and that is what creates the potential for increased default service risk premiums being incorporated into bids to a degree to endanger the ability of Duquesne to provide default service which is least cost over time. Additionally, if the PTC is higher than it would be because of the risk premiums, the consumer savings resulting from participating in the opt-in program may be illusory.

g. Supplier Load Cap

Under Duquesne Light's proposal, no bidder would be permitted to win more than 5 tranches, which equates to 50% of the eligible default service customers. Duquesne St. 3 at 21. Citizen Power supports this approach because an additional benefit to the opt-in program beyond increasing shopping levels is an increase in EGS participation in the retail residential markets. From a retail market perspective, the benefit of having one supplier win all of the tranches is less than multiple suppliers participating.

h. Enrollment Process

Citizen Power recommends that the opt-in program adopts OCA's proposed method of enrolling customers. In this approach, the communication soliciting enrollment would not specifically identify the customer's EGS if they choose to enroll. Instead, customers would be informed that they would be randomly assigned to one of the EGSs listed in the communication in a first-come, first-served manner. This proposal has the advantage that none of the participating EGSs cap will be reached before another participating EGSs cap which obviates the need to reassign a customer to another EGS. OCA St. 2 at 11. Duquesne's witness Mr. Fisher, in his Rebuttal Testimony on page 21, also agrees with this change in methodology.

i. Mailings and Communications

Citizen Power takes no position on this issue.

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

Citizen Power takes no position on this issue.

2. Standard Offer Program

a. Term of Offer

Citizen Power addresses the issue of the term of offer in Section II(C)(2)(c) below, "Guaranteed Savings".

b. Discount Package

Citizen Power takes no position on this issue.

c. Guaranteed Savings

Unlike Duquesne's proposal for the opt-in auction, the Standard Offer Program does not guarantee savings. The fixed rate is 7% less than the PTC known at the time of the offer. However, the suggested 12 month term will necessarily run past June 1, 2015 and the PTC is unknown after that point. Duquesne St. 3 at 39-40. OCA has proposed that the risk of the standard offer exceeding the PTC be minimized by reducing the term of the offer. OCA St. 2-R at 14. Citizen Power agrees with OCA that guaranteed savings is preferable from a consumer perspective and supports their recommendation.

However, OCA also asserts that at the end of the standard offer the customer should be returned to default service absent an affirmative declaration to opt-in to another offer. Although we also agree with this position, if the Commission determines that consumers must opt-out after the end of the standard offer, we then support Duquesne's proposed term of 12 months despite the lack of guaranteed savings for two reasons. First, as pointed out by Mr. Fisher in his Rebuttal

Testimony, the known PJM capacity price increases from 2014/2015 to 2015/2016 mitigating some concern that the PTC will go down on June 1, 2015. Secondly, we believe that the potential harm resulting from a shorter term that allows the rates to increase without customer action outweighs concerns regarding the potential for the PTC to drop by enough post POLR VI to fall below the standard offer rate.

d. Program Start Date

Citizen Power agrees that the June 1, 2014 start date as proposed by Duquesne Light is appropriate given the benefit of running this program separately from the opt-in program and, more importantly, because of the significant increase in PJM capacity prices on June 1, 2014 which could price the standard offer at such a discount relative to the PTC that EGSs are discouraged from participating in the standard offer program. Duquesne St. 3-RJ at 24. In fact, Mr. Wolfe testified that the replacement of the Customer Information Center will not be completed until the second quarter of 2013 and after that it would take 9-12 months to complete the IT development necessary to implement the Standard Offer Program. Duquesne St. 6-RJ at 2.

e. Program Suspension

Citizen Power supports Duquesne's proposal that the Standard Offer Program should be suspended once shopping reaches 67% in order to reduce the risk premium associated with bidding on default service.

f. High Bill Callers

Citizen Power takes no position on this issue.

g. Choice Referral Team

Citizen Power takes no position on this issue.

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

3. Market Enhancement Program Cost Recovery

Citizen Power agrees with Duquesne that the costs of market enhancement programs should be borne entirely by the main beneficiaries, the EGSs. This position is opposed by Dominion/IGS, FirstEnergy Solutions, and RESA who believe that default service customers benefit also and should pay a share of the retail market enhancement costs. Butler St. 1 at 6-8, FES St. 1 at 18. In fact, RESA goes so far as to advocate that only default service customers should pay for these programs. RESA St. 2 at 26. If these arguments are taken to their logical extreme, it would make sense for default service customers to pay a portion of the marketing budgets of the EGSs.

Although Citizen Power agrees that the market enhancement programs benefit default service customers to a degree, it pales in comparison to the benefits afforded to the EGSs. The main purpose of the retail enhancement programs is not to increase the number of suppliers in Duquesne's territory but to increase the number of retail customers, i.e. the demand. In a marketplace, increased demand typically benefits the sellers, not the buyers. In addition, as pointed out by OCBA witness Mr. Kalcic in his rebuttal testimony on pages 2 to 3, just as the existence of the electric market benefits default service customers, the existence of default service benefits shopping customers.

4. CAP Customer Participation in Market Enhancement Programs

RESA's witness Mr. Kallaher advocates for the participation of CAP customers in the market enhancement programs accommodated by a redesigned CAP Program. RESA St. 2-R at 15. Citizen Power opposes this suggestion. Specifically, there is no evidence in the record indicating that it is technically possible to make CAP benefits portable in a way that benefits low-income customers. CAUSE-PA St. 1-SR at 6.

5. Shopping Customer Participation in Market Enhancement Programs

Citizen Power takes no position on this issue.

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

Citizen Power takes no position on this issue.

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

Citizen Power agrees with the position of OCA that at the end of a market enhancement product the customer should be returned to default service unless they affirmatively decide to accept a new offer from their EGS.

8. Miscellaneous Market Enhancement Program Issues

Citizen Power has not identified any miscellaneous market enhancement program issues it wishes to address at this time.

D. RATE DESIGN

1. Reconciliation Issues

Citizen Power takes no position on this issue.

2. Price To Compare Calculation Date

Citizen Power takes no position on this issue.

3. Non-Bypassable Charge To Recover PJM Charges

Citizen Power takes no position on this issue.

E. TIME-OF-USE PROGRAM

Citizen Power takes no position on this issue.

F. SUPPLY MASTER AGREEMENT ISSUES

Citizen Power takes no position on these issues.

G. DATA/EGS COORDINATION ISSUES

Citizen Power takes no position on these issues.

H. GENERAL MISCELLANEOUS ISSUES

Citizen Power takes no position on these issues.

IV. CONCLUSION

Citizen Power avers that the current 50% cap for the retail opt-in program is too high and creates a situation where default service costs may be inflated because of artificially high risk premiums. Specifically, we believe that the proposed structure of the opt-in program may impact default service costs in a way that the default service would no longer be least cost over time. It is also our position that the opt-in auction is designed to be fundamentally different than natural customer migration patterns. Therefore, we respectfully request that the current 50% cap be reduced to 20% in order to mitigate potential issues.

Respectfully submitted,

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Date: October 5, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document of Citizen Power, Inc. upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons as listed below:

Dated this 5th day of October, 2012.

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