

COMMONWEALTH OF PENNSYLVANIA



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October 22, 2012

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jennedy S. Johnson".

Jennedy S. Johnson  
Assistant Consumer Advocate  
PA Attorney I.D. # 203098

Enclosures

cc: Hon. Katrina L. Dunderdale  
Edward Berzonsky, Technical Utility Services  
Certificate of Service

156325

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY BRIEF  
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: October 22, 2012

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## **I. PROCEDURAL HISTORY**

The Office of Consumer Advocate (OCA) submits this Reply Brief in the matter of the Petition of Duquesne Light Company for Approval of its Default Service Program (Petition) in accordance with the procedural schedule adopted by Administrative Law Judge Katrina L. Dunderdale by Order dated June 11, 2012. On October 5, 2012, the OCA filed its Main Brief in this proceeding. Main Briefs were also filed by Duquesne Light Company (Duquesne or the Company); Office of Small Business Advocate (OSBA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Citizen Power; FirstEnergy Solutions Corp. (FES); Retail Energy Supply Association (RESA); Duquesne Industrial Interveners (DII); NextEra Energy, Constellation NewEnergy and Exelon Generation Co. (collectively, the Joint Suppliers); and Dominion Retail, Inc. and Interstate Gas Supply, Inc. (Dominion). The OCA submits that nothing argued in the Main Briefs of the parties changes the positions detailed in the OCA's Main Brief.

## **II. SUMMARY OF REPLY ARGUMENT**

In its Main Brief, the OCA supported the use of a prudent mix of energy products designed to achieve residential default service rates at the least cost over time as required by Act 129 of 2008. See OCA M.B. at 11-30. In order to realize such a mix, OCA witness Estomin proposed two modifications to the products and product terms proposed by Duquesne for residential default supply. Dr. Estomin's first modification was that approximately 17 percent of the residential default service load (4 of 24 tranches) should be procured through two-year FRCs rather than the one-year FRCs proposed by the Company. Dr. Estomin's second modification was that approximately 21 percent (5 of 24 tranches) of the residential default service load in each year of DSP VI should be served through a block and spot supply arrangement. Dr. Estomin also testified that should his block and spot recommendation not be adopted, he would

nevertheless continue to urge that his recommendation for two-year FRCs be adopted and that Duquesne's proposal to purchase a portion of supply that would extend into the next DSP period be maintained. OCA St. 1 at 19. The parties who opposed the OCA's proposal to use block and spot procurements argue that it would result in risks to customers and rate volatility. OCA witness Estomin demonstrated that this would not be the case. As a result, the OCA submits that including a diverse mix of products in the residential supply mix as recommended by the OCA is the prudent and reasonable approach that should be adopted in this proceeding.

The OCA further argued in its Main Brief that RESA's proposed 5 mils per kWh adder to the Price to Compare must be soundly rejected. See OCA M.B. at 68-73; OSBA M.B. at 20-23; Duquesne M.B. at 70; DII M.B. at 9-11. The adder represents an unnecessary profit adder for Duquesne – despite the fact that the Company agrees that it will recover all of its reasonable costs of default service on a dollar for dollar basis pursuant to a Commission-approved reconcilable rate mechanism. RESA has advanced a wide range of goals, rationales, and principles to support implementation of this 0.5¢ per kWh adder. The OCA submits, however, that all of these arguments must fail. The adder does not reflect actual costs, nor is there any reasonable relationship between the adder and any valid efforts to enhance retail competition. The adder is simply an unjustified addition to the Price to Compare that will increase the price of electricity to both switching and non-switching customers. The adder must be totally rejected as contrary to law and sound public policy.

In its Main Brief, the OCA also addressed in detail the issues related to the retail market enhancement proposals included in Duquesne's DSP filing. See OCA M.B. at 33-68. The OCA submits that the modifications to these programs contained in its Main Brief will help ensure their success, while at the same time ensuring that important consumer protections are in

place. Additionally, the OCA's modifications help ensure that a successful default service procurement can go forward. The parties opposed to the OCA's modifications at times point to the Commission's recent Intermediate Work Plan Order or the FirstEnergy Default Service Order.<sup>1</sup> The Commission, however, has clearly recognized the need to develop its decision in this proceeding on record evidence related to Duquesne. The OCA submits that its positions should be adopted as they are fully reflective of substantial evidence adduced in this proceeding and take into account the uniqueness of the Company's situation as well as the needs of the Company's customers.

For the reasons set forth in the OCA's Main Brief, and those detailed below in this Reply Brief, the OCA submits that the Company should be directed to amend its DSP VI Plan as recommended by the OCA. The OCA further submits that its Main Brief provides a comprehensive statement of its positions, and the OCA will not repeat all of those arguments here. To the extent an argument is not addressed in this Reply Brief, the OCA relies on those positions already advanced in the OCA Main Brief. In this Reply Brief, the OCA will respond to specific arguments advanced by other parties, referring to relevant sections of its Main Brief as appropriate.

### **III. REPLY ARGUMENT**

#### **A. LEGAL STANDARDS**

##### **I. Burden Of Proof**

As discussed in its Main Brief, the OCA submits that, generally, the burden of proof in this proceeding rests with the Company. OCA M.B. at 3-5. The OCA would note,

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<sup>1</sup> Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Order entered March 2, 2012) (IWP Order); 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 al* (Order entered August 16, 2012) (FirstEnergy DSP Order).

however, that as the proponent of a proposal for a new rate (the 5 mil/kWh adder), RESA has the burden of proof with respect to the justness and reasonableness of the its rate proposal. Id.

2. Legal Standards Applicable To Default Service

An extensive discussion of the legal standards applicable to default service can be found in the OCA's Main Brief on pages 5-10.

**B. DEFAULT SUPPLY PROCUREMENT ISSUES**

1. Residential Procurement Issues

a. *Product(s) and Product Terms*

(i) *Duquesne's Proposal re: Products and Product Terms*

See OCA M.B. at 11.

(ii) *The OCA's Proposed Modifications to Products and Product Terms*

(a) *Introduction*

See OCA M.B. at 12.

(b) *The OCA's Proposal to Use Two-Year FRCs*

In this proceeding, the OCA has proposed that approximately 17 percent of the residential default service load (4 of 24 tranches) be procured through two-year Full Requirements Contracts (FRCs) rather than the one-year FRCs proposed by the Company. The rationale for this proposal was given by OCA witness Dr. Estomin as follows:

To better address the Act 129 requirements, I recommend that four of the 24 tranches be of two-year duration rather than the uniform one-year duration for all of the tranches as proposed by Duquesne. This recommendation serves two purposes. It provides the portfolio with an additional product element and hence is in more conformity with the Act 129 guidance. Additionally, current forward market prices in PJM are generally favorable for consumers relative to historical experience and a set of longer term FRCs may provide residential customers with some degree of benefit in hedging potential unanticipated future price increases in PJM.

OCA St. 1 at 15.

Both Duquesne and RESA oppose the OCA's proposal. In its Main Brief, Duquesne offers several arguments against the use of two-year FRCs for DSP VI. First, Duquesne argues that adding two-year FRCs to the residential supply portfolio will not make it more compliant with Act 129. Duquesne M.B. at 28. The Company cites the Commission's Order in Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Order entered October 4, 2011) (Final Rulemaking Order) as holding that Act 129 standards can be met by using a single type of product and that adding another type of product does not in and of itself make the portfolio more prudent. In response, the OCA would refer to the applicable language in the Final Rulemaking Order:

We reaffirm our commitment that a "prudent mix" include a combination of spot purchases, short, intermediate and long-term contracts recognizing the limitation of 25% on long-term contracts under Section 2807(e)(3.2)(iii).

We do reject the positions of those parties that "prudent mix" be defined to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products.

Final Rulemaking Order at 60. The OCA would emphasize that its recommendation for using two-year FRCs is not based on "requir[ing] a specific mix or percentage of types of contract components" or any insistence that DSP VI have "a minimum of two types of products." Rather, while two-year FRCs would add to the "prudent mix" the Commission states it remains committed to, they would also provide potential benefits for customers by taking advantage of favorable current forward market prices and a hedging opportunity against future wholesale price increases.

The second argument raised by Duquesne is that its proposal for simultaneously acquiring two back-to-back one-year FRCs will produce more market responsive rates than using

a two-year contract as proposed by the OCA. Duquesne M.B. at 29. In support of this view, the Company cites the testimony of its witness Mr. S. Fisher in which he asserts that if two-year contracts were used, the \$10 difference in capacity prices between year 1 and year 2 of the DSP VI period, would be blended in such a way that the resulting default service rate would be less reflective of each year's actual market price. Id.

OCA witness Dr. Estomin responded to Mr. S. Fisher's testimony by pointing out that the difference in capacity costs between years 1 and 2 is relatively small and its overall impact on the default service rate is not clear. Dr. Estomin stated:

I agree that the difference in the capacity prices will likely be averaged over the two years. The overall impact, however, owing to this one factor is small and, when other market factors are considered, the overall impact on the relationship of the PTC to retail market prices is not clear. Mr. Scott Fisher notes that the difference in capacity prices is about \$10 per MWh between the first year and the second year. This equates to a \$5-per-MWh difference in each of the two years, though in opposite directions, which is less than 10 percent of the total PTC. This difference would be mixed with other cost components (e.g., energy, ancillary services, RECs) and the ultimate relationship between the Default Service prices that would be paid and the competitive alternative can only be assessed as speculative.

OCA St. 1-S at 20-21. The OCA submits that Duquesne's arguments against the OCA's proposal for incorporating a relatively small percentage of two-year contracts into the DSP VI portfolio are not persuasive and should be rejected.

For its part, RESA also argued that using 24-month contracts would result in less market-reflective default service prices and cited the Commission's decision in the FirstEnergy DSP proceeding as support for not including two-year contracts in DSP VI as the OCA has proposed. RESA M.B. at 23-24. In response, the OCA would point out that while in that case the Commission did in fact reject the FirstEnergy Companies' proposal to rely *exclusively* on

two-year FRCs for residential default service supply, it adopted RESA's proposal which was to utilize a mixture of 12 and 24-month contracts. The Commission stated in relevant part:

In consideration of the record developed in this proceeding, we find that the procurement plan recommended by RESA for residential customers... is preferable for the forthcoming procurement period. ... [W]e believe that the mixture of twelve and twenty-four-month contracts proposed by RESA for residential customers... emphasize the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSs.

FirstEnergy DSP Order at 25-26. Given that RESA specifically proposed a combination of one and two-year contracts for the FirstEnergy Companies, the OCA submits that by arguing against OCA's proposal to add a two-year contract component to Duquesne's DSP VI Plan, RESA is essentially arguing against itself.

In the absence of any compelling argument against the OCA's proposal to incorporate a small portion of two-year contracts into Duquesne's procurement mix for residential customers, the OCA submits its recommendation should be adopted.

(c) *The OCA's Proposal to Use a Block and Spot Procurement Component*

In this case, the OCA recommended that Duquesne supply approximately 21 percent (5 of 24 tranches) of the residential default service load through block and spot purchases. OCA M.B. at 13, 16-23. The OCA recognizes that the Commission has not adopted the use of block and spot products for the residential default service plans of the FirstEnergy Companies and PECO Energy Company in its recent Orders. FirstEnergy DSP Order at 26; Petition of PECO Energy Company for Approval of its Default Service Program II, Docket No. P-2012-3383641 (Order entered October 12, 2012) (PECO DSP Order) at 17. The OCA would note, however, that the Commission specifically stated in the FirstEnergy DSP Order that it did not intend that Order to serve as precedent with regard to the use of block procurements for

default service. FirstEnergy DSP Order at 26. The OCA, therefore, will address various arguments raised against the use of block and spot procurement in this Reply Brief as those arguments are misplaced.

Duquesne opposed the OCA's recommendation for block and spot procurement on a number of grounds. Among them were that Act 129's "prudent mix" requirement does not mandate that there be more than one type of supply product for a given customer class and that Duquesne's sole reliance on FRCs is prudent. Duquesne M.B. at 25. In support of its argument, Duquesne cited the language in the Final Rulemaking Order in which the Commission states that it rejects the notion that "prudent mix" must be defined "to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products." Final Rulemaking Order at 60.

In response, while the OCA's recommendation to add a percentage of block and spot purchases was intended to enhance the overall mix of products included in Duquesne's residential default service portfolio<sup>2</sup>, it was not based on any perceived need to achieve a mandatory percentage of types of contracts or numbers of products. Rather the recommendation was offered as the OCA's proposal for achieving the statutorily prescribed "prudent mix of contracts ...designed to ensure...the least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.4). OCA witness Estomin proposed the block and spot products because he saw in

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<sup>2</sup> As noted above, in the Final Rulemaking Order, the Commission also stated:

We agree with the majority of parties that the "prudent mix" of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations to achieve "least cost to customers over time," ensure price stability, and maintain adequate and reliable service... We reaffirm our commitment that a "prudent mix" include a combination of spot purchases, short, intermediate and long-term contracts recognizing the limitation of 25% on long-term contracts under Section 2807(e)(3.2)(iii).

Final Rulemaking Order at 60.

them certain cost advantages for Duquesne's customers, not the least among them, avoidance of the volume-related risk premiums uniformly included in FRCs. OCA St. 1 at 15-16.

Duquesne also cited the Final Rulemaking Order to say that the Commission there expressed a preference for using FRCs in default service plans as opposed to a managed portfolio that would include block and spot purchases. Duquesne M.B. at 25. In response, the OCA would note that while the Commission expressed a preference, it by no means precluded the use of block and spot products. Immediately following the language about FRCs in the Final Rulemaking Order, the Commission stated:

[Default Service Providers] are, of course, free to modify their procurement methodologies as necessary to incorporate aspects of the [Managed Portfolio] approach where appropriate given the level of confidence the DSP has in its own ability to perform the portfolio management function, the DSP's customer characteristics and usage patterns and the service territory.

Final Rulemaking Order at 56. Thus while the Commission may have expressed a preference for FRCs, there is certainly no prohibition on using block and spot where it is appropriate to the circumstances of the particular default service provider.

Duquesne also argued that while the OCA is correct that block and spot contracts avoid the volume-related risk premiums associated with FRCs, they nevertheless transfer various other costs and risks away from the wholesale energy supplier and onto customers, citing the testimony of its witness Mr. S. Fisher. Duquesne M.B. at 26. OCA witness Dr. Estomin responded to these concerns in his Surrebuttal Testimony. He noted that he would agree with Mr. S. Fisher if the proportion of residential default service supplied through block and spot products represented all or a significant portion of the supply or if the block and spot purchases were multi-year products. However, Dr. Estomin explained:

Neither circumstance exists in the context of the recommendation contained in my Direct Testimony. All block-and-spot products are of one-year duration and

represent, in aggregate, approximately 25 percent of the residential Default Service load. The relatively small proportion of load served through the block-and-spot arrangement and the fact that the block-and-spot products all have a one-year term effectively limits the exposure of residential Default Service customers to the kinds of adverse financial consequences identified by Mr. Scott Fisher.

OCA St. 1-S at 16. The relatively small percentage and short duration of the block and spot products Dr. Estomin recommended would thus have a mitigating effect on the kinds of consequences Mr. S. Fisher associated with the block and spot products.

In its Main Brief, FES argued against the OCA's block and spot proposal because it would reduce the number of FRCs wholesale suppliers could bid on and when combined with Duquesne's proposed 50% load cap per supplier, could reduce supplier interest in responding to Duquesne's solicitations. FES M.B. at 10. FES stated that the diminished supplier interest would do more to compromise the Company's ability to secure least-cost supply than the concerns the OCA expressed regarding volumetric risk created by Duquesne's proposed Opt-In EGS service. Id.

This point was addressed by Dr. Estomin in his Surrebuttal Testimony where he stated:

[T]he supposed reduction in supplier interest due to 25 percent of the tranches being set aside for block-and-spot procurement is purely speculative. I assess that there is much greater impact associated with the adverse implications of load uncertainty owing to the proposed Opt-in EGS Service program than with a slightly diminished number of FRC tranches available for bid.

OCA St. 1-S at 15. As Dr. Estomin notes, concerns about reduced supplier interest in Duquesne's solicitations is entirely speculative and should therefore be given little weight.

In its Main Brief, RESA objected to the use of block and spot contracts on the ground that the use of such contracts is inconsistent with the development of a sustainable competitive retail market because the resulting prices will not consistently reflect the underlying

wholesale market price changes. RESA M.B. at 23. Referring to his proposal for two-year FRCs and the fact that the block and spot contracts he proposed would have a one-year duration, OCA witness Dr. Estomin responded to this RESA argument in his Surrebuttal Testimony. He stated:

[RESA] argued that reliance on two-year FRCs for a portion of the residential Default Service supply was inappropriate because a two-year FRC would not reflect wholesale market price changes. This same argument is being forwarded by [RESA] for a one-year block-and-spot purchase. As a consequence, the block-and-spot product is just as reflective of the wholesale market as the one-year FRC product. [RESA's] concern regarding potential adverse competitive market implications appears misplaced.

OCA St. 1-S at 5. As Dr. Estomin points out, there is nothing less market-reflective about the one-year block and spot contracts than with the one-year FRCs that Duquesne has proposed. RESA's argument should not stand as a reason to reject block and spot contracts.

The OCA submits that the inclusion of a block and spot component for residential procurement in Duquesne's DSP VI would be an enhancement of the mix of products used to serve that portion of Duquesne's load and would aid the Company in achieving a prudent supply mix that serves customers at the least cost over time. Recognizing that the Commission has not adopted recommendations for block and spot in other default service cases in this procurement cycle, OCA witness Estomin provided an alternative recommendation to replace the block and spot procurements with additional one- and two-year FRC contracts.

*(iii) RESA's Proposal to Procure 50% of the Residential Default Service Load Through Three-Month FRCs Should be Rejected*

The OCA opposes RESA's proposal to procure one-half of the residential default service supply through the use of three-month FRCs. OCA M.B. at 23-24. In its Main Brief, RESA asserted that the inclusion of quarterly procurements in Duquesne's residential default

service portfolio will produce default service rates that more closely reflect underlying wholesale electricity costs which, in turn, will enable customers to reap the benefit of a more competitive retail market. RESA M.B. at 20. RESA further asserts that in this more competitive marketplace customers who desire greater price stability will be able to receive it, and the fact that a product that provides such price stability comes from a competitive supplier rather than the EDC as default service provider is in full accord with the intent of the Competition Act and is not inconsistent with Act 129 Preamble's. Id. at 22.

The OCA's disagreement with RESA's perspective centers on the fact that in order to promote a competitive marketplace in which stable-priced products might be offered by competitive suppliers, its proposal to introduce quarterly procurements into Duquesne's DSP VI, will bring about considerable price *instability* for the customers who remain on default service.

The Act 129 Preamble states:

It is in the public interest to...implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability...

Preamble to Act 129, 2008 Pa. Laws 129 cl. 2. Simply put, the Preamble calls for default service that reduces price instability, not default service that adds to it.

Another of RESA's arguments in favor of its proposal for quarterly procurements is that it is in accord with the Commission's recently issued RMI End State Proposal in which the Commission envisioned that default service for residential customers will be supplied through 90-day FRCs. RESA M.B. at 23. RESA asserts that its proposal to utilize three-month contracts for 50% of the DSP VI residential load provides a reasonable transition to the end state the Commission is contemplating for 2015 and beyond. Id.

In its Main Brief, Duquesne offers a persuasive response to this argument. Duquesne refers to the RMI End State Proposal and states that it is considering the impacts of the proposal and that it will participate in the Commission's process (as will the OCA) for providing input. Duquesne M.B. at 21. Duquesne then goes on to state:

...Duquesne Light notes that the End State Proposal is to become effective on June 1, 2015. Duquesne Light does not believe that it is appropriate to introduce 3-month products and rate changes for Residential customers in its service territory at this time. Duquesne Light's Residential customers have historically had long-term fixed rates; under DSP IV, the fixed rate term was 36 months; under DSP V, the fixed rate term was 29 months. Under DSP VI, the Company is proposing to move from a 29-month fixed rate to a 12-month fixed rate. Duquesne Light believes that going from a 29-month fixed rate to rates that change every 3 months is too big of a movement in frequency of rate changes for its Residential customers. The Company prefers a more gradual movement to 12-month price changes...[T]here has been a great deal of success with respect to the retail market in the Company's service territory based on a fixed default service rate for an extended term. There is no basis to conclude that introduction of quarterly price changes and three-month supply products will be an improvement in Duquesne Light's service territory at this time.

Duquesne M.B. at 21-22.

The OCA agrees with Duquesne that a change from a 29-month fixed rate to a 3-month changing rate is not in the public interest. The OCA also agrees that Duquesne has had significant success in achieving a vibrant retail market in its territory while having default service rates that were fixed for an extended term. The OCA submits that moving to quarterly three-month procurement products is simply neither desirable nor necessary in Duquesne's case. OCA witness Dr. Estomin spoke directly to this:

[RESA's] recommendation for reliance on one-year and three-month FRCs introduces a significant amount of potential price volatility into the residential Default Service portfolio which is neither desirable for residential customers nor necessary to achieve residential migration to competitive generation service. Under Duquesne's prior Default Service plan, for example, the Company provided fixed prices for residential Default Service for a period of 29 months, and current residential shopping in the Duquesne service area constitutes over 40 percent of the residential load and almost 40 percent of residential customers.

OCA St. 1-R at 3. The OCA submits that introducing unnecessary instability into the default service price neither satisfies Act 129 nor is it needed to achieve a strong competitive marketplace in the Duquesne service territory. RESA's proposal for quarterly procurements for residential default service should be rejected.

*b. Procurement Dates*

*(i) Duquesne's Proposal*

See OCA M.B. at 24.

*(ii) RESA's Alternative Proposal Should Be Rejected*

The OCA supports the residential procurement schedule proposed by the Company in this case and opposes the schedule put forth by RESA that would require that all procurements be made no more than two months prior to the date delivery is to commence. In its Main Brief, and consistent with its overarching theme in this proceeding, RESA supports its proposal by asserting that having short procurement lead times will result in default service rates that are more reflective of then current market prices, and that, in turn, will encourage retail competition. RESA M.B. at 25.

OCA's witness Dr. Estomin argued against RESA's short lead time proposal on several grounds. First, he noted that such a compressed procurement schedule would not allow for diversity in the timing of the procurements thereby exposing residential default service customers to greater "market timing" risk, that is, the risk that procurements would be conducted in a narrow window of time in which market prices were unusually high. OCA St. 1-R at 4. Second, Dr. Estomin specifically addressed the market-reflective pricing issue. He noted that while it is true that market prices can change between the time a contract is entered into and delivery begins, there are counterbalancing considerations that should be taken into account. Dr. Estomin stated:

[T]he residential Default Service supply portfolio should be procured in a manner that reasonably mitigates the exposure of Default Service customers to the risks inherent in buying all of the Default Service supply at the same time or within a short period of time. The only way to accomplish this is to contract for some of the Default Service supply months in advance of the initial delivery date and contract for some of the supply on a date closer to the start of deliveries. This approach is consistent with what Duquesne's residential Default Service supply plan reflects and an aspect of the Company's plan that I recommend be retained. *The approach included in the Company's plan reasonably balances Default Service supply risk mitigation and portfolio costs reflective of then-current wholesale market prices.*

OCA St. 1-S at 6 (emphasis added). The OCA submits that RESA's short procurement lead time proposal carries with it a degree of risk to which it is neither prudent nor necessary to expose residential customers. Such risk is substantially mitigated by Duquesne's proposed procurement schedule and the Company's schedule should be adopted.

*c. Reserving Supply For Retail Opt-In Customer Participation*

See OCA M.B. at 26-30.

2. Small C&I Procurement Issues

*a. Product(s) and Product Terms*

The OCA takes no position on this issue.

*b. Procurement Dates*

The OCA takes no position on this issue.

3. Medium C&I Procurement Issues

*a. Product(s) and Product Terms*

The OCA takes no position on this issue.

*b. Procurement Dates*

The OCA takes no position on this issue.

4. Large C&I Procurement Issues

The OCA takes no position on this issue.

5. Default Supply Load Cap Issues

The OCA takes no position on this issue.

6. Procurements for Delivery Beyond May 31, 2015

In its Main Brief, the OCA supported Duquesne's proposal to procure a limited amount of one-year full requirements supply for residential customers to be delivered after the DSP VI period ends on May 31, 2015. OCA M.B. at 31-33. Specifically, Duquesne proposed that in April 2014, it would purchase 25% of the supply necessary to serve residential default service customers for the delivery year beginning June 1, 2015. The Company's rationale for proposing this limited bridge to the next default service period was to avoid a "hard stop" on May 31, 2015 (at the end of DSP VI) that would leave residential customers vulnerable to the rate volatility associated with replacing a large portion of the default service supply in short order. Duquesne St. 2 at 10.

In its Main Brief, RESA opposes the extension of any procurement contracts beyond May 31, 2015. RESA M.B. at 34-35. RESA cites four reasons for its position. First, in RESA's view, the Commission's ongoing Retail Markets Investigation (RMI) may lead to significant changes in nature or procurement process for default service by June 2015, and therefore, the prudent approach would be to adopt a plan under which all contracts would end at the conclusion of the DSP VI period. Second, RESA states that its position is consistent with the Commission's Order in the Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 (Order entered December 16, 2011) (December 16 Final Order) where the Commission *recommended* that EDCs limit or eliminate the short-term energy contracts that extend past the end date of the default service plan time period. Third, RESA notes the Commission's recent FirstEnergy DSP Order in which it rejected arguments to allow contracts to extend beyond the

end of the default service period. Fourth, RESA asserts that Duquesne's proposal would complicate and extend the transition to quarterly contracts envisioned in the Commission's recently released RMI End State Proposal.

In response to RESA's first argument regarding potential changes resulting from the RMI Investigation, OCA's witness Dr. Estomin pointed out that an overhanging contract for a limited portion of supply should not interfere with any Commission determination on the nature of default service after June 2015. Dr. Estomin stated:

Even in the event that the Commission decides that the EDCs would not be the Default Service providers after June 1, 2015, the supply contract(s) that extend beyond May 31, 2015 can simply be transferred to the new Default Service supply entity and those contracts would be folded into the post-June 1, 2015 portfolio. There is no reason why such contracts would represent, in any sense, an insurmountable obstacle. The benefit of such a contract (or contracts) is that an added measure of residential Default Service supply price stability is afforded to residential Default Service customers between the end of the proposed two-year Default Service period and the subsequent Default Service period, thus mitigating the "hard stop" problem.

OCA St. 1-S at 7. Thus, the concern that RESA raises regarding the potential for a new default service model to be implemented in 2015 can be readily addressed by making certain any overhanging contracts are assignable to a new default service provider if a new model is adopted.

In response to RESA's second argument that its opposition to overhanging contracts is consistent with the Commission's position expressed in the December 16 Final Order, the OCA submits that RESA misreads that Order. The express language of the Order makes clear that the Commission does not *prohibit* overhanging contracts. Rather, the Commission states:

In consideration of the fact that the majority of commenters support the Commission's recommendation pertaining to energy contract durations, the Commission continues to *recommend* the following: (1) that 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;...

December 16 Final Order at 19 (emphasis added). The Commission recommends, but does not mandate, that EDCs limit *or* eliminate energy contracts that extend past the end date of the default service plan time period. The OCA submits that Duquesne's proposal is consistent with the Commission's position in that it has proposed that a limited portion (25%) of the 2015-2016 residential default service supply needs be met by a contract that extends beyond the DSP VI period.

Further, any question as to whether the Commission prohibited overhanging contracts was put to rest later in the December 16 Final Order when the Commission stated:

[S]everal parties, including Exelon, Duquesne and OCA, raised the concern that if no short-term contracts extend beyond the end date of the default service plan, this will result in a "hard stop" that will require default service providers to purchase significant supply at the end of the plan under a singular market condition. These commenters recommend that the Commission permit EDCs to use a laddering approach, and suggest that laddering supply purchases at different times and having overlapping delivery periods may promote rate stability. *The Commission believes that these concerns may be legitimate and we recognize that some EDCs may have delivery periods that extend beyond the end date of the next plan under a laddered approach, hence the use of our language recommending that EDCs "... limit or eliminate. . ." overhanging short-term contracts.*

December 16 Final Order at 20-21 (emphasis added). The OCA submits that Duquesne, in adherence with the Commission's Order, has appropriately limited its use of overhanging contracts. Moreover, this limited use will benefit customers by promoting a level of price stability as Duquesne transitions from DSP VI to the next default service period.

In response to RESA's third argument that the Commission, in the FirstEnergy DSP Order, rejected a proposal for overhanging contracts, the OCA submits that the FirstEnergy case is distinguishable from the instant case. Indeed, in a more recent case involving PECO Energy Company, the Commission approved the limited use of contracts that extended beyond the end of the default service period. In its Order in the PECO case, the Commission stated:

We shall adopt PECO's procurement plan as recommended by the ALJ. We believe that PECO's use of laddered contracts of various durations creates a viable contingency plan that can be redesigned if changes in PECO's default service responsibility do arise. Further, with several of the procurements scheduled for 2014, we believe there is adequate time to address the continued use of contract terms longer than twelve or twenty-four months for default service.

PECO DSP Order at 31. The OCA notes that under Duquesne's proposal, the only procurement to extend beyond the close of DSP VI is scheduled to occur in April of 2014. It is therefore akin to the procurements approved in the PECO case (and unlike the FirstEnergy case), procurements as to which the Commission determined there was adequate time to address any issue concerning overhanging contracts if necessary.

As noted, the FirstEnergy case which RESA cites in its Main Brief is distinguishable because in that case the Companies proposed the exclusive use of 24-month FRCs beginning and ending on the same date. Here, Duquesne has proposed a laddering of its contracts including the limited overhanging contract. As mentioned above, procurement for the overhanging contract is distant enough that should changes to the default service model occur, there is time to make adjustments to the DSP VI plan.

In response to RESA's fourth point that overhanging contracts would complicate and extend the transition to quarterly contracts envisioned in the Commission's RMI End State Proposal, the OCA submits that the arguments it has made above amply demonstrate that limited overhanging contracts as proposed by Duquesne will neither complicate nor unduly extend the transition to a new default service model. Accordingly, Duquesne's proposal for a one-year contract for 25% of the residential default service load beyond May 31, 2015 should be approved.

7. Miscellaneous Procurement Issues

The OCA has no miscellaneous procurement issues.

### C. MARKET ENHANCEMENT PROGRAMS

As was discussed in the OCA's Main Brief, Duquesne is uniquely situated among the other large EDCs because it has been out from under rate caps for many years and already has robust customer shopping in its service territory. OCA M.B. at 10, 33-37, 44-47, 73. The existing large levels of customer migration to an EGS should be taken into account when considering programs that are designed to "jump-start" the competitive market since these retail migration trends demonstrate that DLC has a mature retail market. Additionally, Duquesne is unique in that flat rates for 29 months were established as part of its last DSP, so its customers do not face the quarterly price changes experienced in other EDC's service territories. To that end, the Company has proposed (and the OCA supports) an annual PTC with annual, instead of quarterly, reconciliations. The retail market enhancement programs should be designed to align with Duquesne's unique circumstances.

#### 1. Retail Opt-In Program

In its filing, Duquesne proposed a Retail Opt-In Program in which it would conduct a bid process for a fixed price 12-month contract with a retail service rate from EGSs that is priced at least 5% off the PTC that will be in effect as of June 1, 2013 and known at the time of the Opt-In Auction in May 2013.<sup>3</sup> Customers who participate in this program will also receive a \$50 bonus from the EGS who acquires the customer in this auction (with the requirement that the customer remain with the EGS for at least three billing periods). OCA St. 2 at 8-10. The proposed 12-month Opt-In Auction term coincides with Duquesne's proposal to offer default service with price changes annually on June 1. As a result, the Opt-in Auction

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<sup>3</sup> Duquesne proposed to conduct its default service procurements in late 2012 and early 2013, prior to the Opt-In auction bid by EGSs. Since Duquesne's current DSP plan contains no reconciliation component, the default service rate for June 1, 2013 will be known at the conclusion of these auctions.

customer will be guaranteed at least a 5% savings on their PTC for the entire auction contract term. Id.

Under Duquesne's Proposal, participating EGSs will bid in an auction to set the price and all EGSs will be required to serve assigned customers at the winning price, which will represent the highest percentage off the PTC. OCA St. 2 at 8-11. Duquesne will market the Opt-in Auction program to non-shopping customers, and it will exclude Customer Assistance Program (CAP) customers and those customers who have previously opted out of providing their usage information to EGSs. Up to 50% of non-shopping residential customers (excluding CAP customers) will be eligible to enroll in the Opt-In Auction. Id. In its Rebuttal testimony, the Company adopted the position of the OCA that all enrolling customers would respond to Duquesne directly and would then be randomly assigned to one of the listed "winning" EGSs on a first-come, first-served basis up to the stated enrollment cap. Duquesne St. 3-R at 84-85.

Also under Duquesne's proposal, the participating EGSs will pay the incremental costs associated with the Opt-In Auction costs by increasing the Residential Purchase of Receivables (POR) discount rate. Petition at 22.

*a. Auction vs. ROI Program*

This Section is meant to address the different forms of Opt-In programs (*i.e.*, auction or aggregation) and is specifically responsive to the August 16, 2012 FirstEnergy DSP Order. In his Surrebuttal Testimony, RESA witness Kallaher presented, for the first time, a number of proposals and comments responding to the Commission's Final Order in the FirstEnergy Companies' Default Service Plan filings and recommending an aggregation program along the lines of the one adopted by the Commission for the FirstEnergy Companies. In relevant part, Mr. Kallaher recommended an aggregation program with a four month discount of 5% and an 8-month fixed-price product rather than an auction program. RESA argued for the

proposals of Mr. Kallaher in its Main Brief. See RESA M.B. at 36-39.

As to the issue of the use of an auction program or an aggregation program, the OCA takes no position at this time with respect to the specific mechanism selected. The OCA submits, however, that as has been discussed, the differences in Duquesne's service territory and its procurement plan must be accommodated in the program design. The OCA will discuss some of these design issues in the Sections that follow. Accordingly, the OCA submits that the findings in the FirstEnergy DSP should not be treated as precedential and should not fully inform the Commission's ultimate decision in Duquesne's Default Service Plan.

*b. Term of Offer*

Duquesne proposed a Retail Opt-In Program in which it would conduct a bid process for a fixed price 12-month contract with a retail service rate from EGSs that is initially priced at least 5% off the PTC that will be in effect as of June 1, 2013 and known at the time of the Opt-In Auction in May 2013. OCA St. 2 at 8-11. The proposed 12-month Opt-In Auction term coincides with Duquesne's proposal to offer default service with price changes annually on June 1. As a result, the Opt-in Auction customer will be guaranteed at least a 5% savings on their PTC for the entire auction contract term. Id.

In its Main Brief, RESA argued that the program should be modified so that participating EGSs would offer customers a price that it initially set at 5% off the PTC at the time of enrollment. RESA M.B. at 39-40. This discounted price would remain in effect for four billing cycles, and for the remaining eight months, the EGSs would offer the customer a fixed rate that would be subject to change if the EGS provides the customer with the statutorily required two notices before the price change. Id. Customers could switch away from the EGS to which they were assigned without any penalty or early termination fee.

The OCA submits that the 12-month contract term proposed by Company and its proposal to require that EGSs offer a fixed price or fixed discount off the PTC that will be effect during this term is a more reasonable approach for Duquesne. OCA M.B. at 38-40. This is especially important given the design of Duquesne's default service program. In this case, since Duquesne's June 1, 2013 default service rate will be known at the time customers are solicited for the program, and will remain the same for 12 months, savings for the entire term of the program can be assured. The OCA submits that, for the reasons detailed in the Rejoinder Testimony of Neil Fisher and the Main Brief of the Company and the OCA, RESA's proposal should be rejected.

Specifically, the structure proposed by RESA will not provide a positive experience for Duquesne's customers. First, the 5% discount proposed by RESA would be off of the Company's current PTC as that will be the price "at the time of enrollment." This price is likely to be much higher than the June 1, 2013 price as Duquesne's current price was fixed more than two years ago. As a result, retail opt-in customers could actually pay more on June 1, 2013 if they join the aggregation program – a result that could be disastrous for the competitive market. Second, unlike in the FirstEnergy DSP cases, after which RESA models its proposals, Duquesne's default service rate will be known well in advance of any customer enrolling in the program. Finally, the RESA proposal – if it produces any savings at all – only guarantees such savings for four months. Given that Duquesne proposes an annual PTC that will change only once per year, EGSs will face no risk of PTC changes during the program term and should, therefore, be able to guarantee savings for the entire 12 months.

For the foregoing reasons, the OCA supports the 12 month term of the Opt-In plan as being consistent with Duquesne's unique service territory as well as with the goal of guaranteeing savings over the entire term of the plan.

*c. Discount Percentage*

As was mentioned above, in the Company's program, a customer who enrolls in the Opt-In program will be guaranteed at least 5% savings on their PTC for the entire auction contract term. OCA M.B. at 40. The 5% savings is consistent with the Commission's recommendation in its IWP Order. In its Main Brief, Dominion states that the PTC discount should be reduced from 5% to 2% because market prices for electricity have dropped. Dominion M.B. at 13. The OCA does not support this proposal. See OCA M.B. at 40. Such a low discount percentage is unlikely to attract customers and assure program success. Accordingly, Dominion's proposed reduction in the discount program should be rejected.

*d. \$50 Bonus Payment*

In addition to the discount off the PTC, under the Company's proposal customers who participate in this program will also receive a \$50 bonus from the EGS who acquires the customer in this auction (with the requirement that the customer remain with the EGS for at least three billing periods). OCA M.B. at 40. As with the discount percentage reduction, Dominion recommended the elimination of the \$50 rebate. Dominion M.B. at 13. Similarly, FES argued that if EGSs must bear the cost of the Opt-In program, the \$50 bonus payment should be eliminated. FES M.B. at 27. For the same reasons it does not support a reduction in the discount percentage, the OCA does not support the elimination of the \$50 bonus payment. See OCA M.B. at 40.

The Commission considered the comments of various stakeholders on this issue and specifically found that the \$50 bonus would be needed to differentiate the program from

other supplier offers. IWP Order at 70. Accordingly, the OCA supports the inclusion of a \$50 bonus payment as part of any Opt-In program.

*e. Guaranteed Savings*

As was discussed previously, the OCA views the structure of the Duquesne Opt-In plan to guarantee savings over the full term of the program as a reasonable approach designed to ensure a successful program. OCA M.B. at 41-42. The 12-month contract term, coupled with Duquesne's proposal for annual changes to the PTC should allow for these guaranteed savings. Id.; Duquesne M.B. at 52. The OCA supports guaranteed customer savings during the product term because encouraging customers to enter this optional program as a means of "jump starting" the retail competitive market and then creating the potential for customers to pay a higher price for generation supply as a result of their enrollment is not a reasonable path to securing customer interest in or satisfaction with the competitive market. Without the guarantee of savings, the Opt-In program could work contrary to its intent and cause participants to become dissatisfied with their shopping experience. See also, Citizen Power M.B. at 9, CAUSE-PA M.B. at 13.

Accordingly, the OCA respectfully requests that the Commission adopt Duquesne's recommendations as to the product offer and term for the Opt-In Auction Program.

*f. Customer Participation Cap*

Under the Company's Plan as initially filed, up to 50% of non-shopping residential customers (excluding CAP customers) would be eligible to enroll in the Opt-In Program. Duquesne St. 3 at 27-28. In its Rebuttal testimony, the Company adopted the OCA's proposed method of allocating enrolled customers among the participating suppliers in a random manner on a first-come, first-served basis up to the level of the participation cap. OCA St. 2 at 6, 11; Duquesne St. 3-R at 21, 84-85. All non-CAP customers, whether shopping or not, would be eligible to enroll, but the marketing materials would only be sent to those customers who had not

already selected an alternative generation supplier. OCA M.B. at 42-45. In their Main Briefs, Dominion and RESA supported the Company's 50% participation cap. Dominion M.B. at 11, RESA M.B. at 44-45.

While the OCA would note that it agrees with the Commission's concerns that the lack of any cap would result in an unreasonable level of uncertainty for wholesale suppliers, the OCA maintains its position that a 20% cap on participation will provide the best opportunity for a successful program, while at the same time properly mitigating potential harm to default service customers. Limiting participation to 20% of customers is essential to reducing the volumetric risk that the Opt-In Program poses to default service suppliers. See OCA St. 1 at 13-14, 1-24; OCA M.B. at 42-45. It is also important to note that this is Duquesne's sixth DSP plan and Duquesne has had, for many years, the highest levels of shopping in the Commonwealth. Therefore, this program does not require a high participation cap as a means to "jumpstart" the Company's already robust retail market.

*g. Supplier Load Cap*

Duquesne's proposed Opt-In Auction Program implements a 50% EGS participation cap in accordance with the IWP Order. Duquesne M.B. at 53. OCA supports Duquesne's proposal. The OCA submits that the Company's proposal to impose a 50% EGS participation cap in its Opt-In Auction Program (if an auction format is used) is reasonable and in accordance with the IWP Order and should be adopted.

*h. Enrollment Process*

The OCA recommends that the key terms and conditions, including price, be disclosed to the customer prior to enrollment in the program. Duquesne witness Neil S. Fisher also agreed that customers should be provided key terms and conditions up-front and testified that "enrollment before the product price is known will create customer confusion and could lead

to a ‘worst-case’ scenario where customers have enrolled but an insufficient number of EGSs then subscribe to the RFP.” Duquesne St. 3-R at 31. The IWP Order similarly stated that “it is important that the Commission identify the key elements of the product to be offered to customers.” IWP Order at 69.

In contrast to the IWP Order as well as Ms. Alexander’s and Mr. Fisher’s position that the key terms and conditions should be identified up-front, RESA argued in its Main Brief that customers should be enrolled prior to receiving the price and material terms and conditions. RESA M.B. at 46. The OCA submits that it is imperative that consumers be presented with the key terms and conditions, including the price, prior to opting into the auction. Indeed, the provision of key terms and conditions to customers before they enroll was supported by FES, Dominion and Citizen Power. FES M.B. at 30-32, Dominion M.B. at 14, Citizen Power M.B. at 10.

Accordingly, the OCA submits that, as the Company proposed, Duquesne should provide to the customer in advance of enrollment all key terms and conditions, including price and any potential changes to the price being offered.

*i. Mailings and Communications*

As the OCA discussed in its Main Brief, Duquesne’s proposed notice provisions that would occur at the end of the EGS Opt-In Program are insufficient given the type of program proposed. Under the Company’s proposal, customers would receive only two notices from the EGS. Duquesne St. 3-R at 33-35. The OCA recommends that three notices should be provided to customers prior to the end of the program -- one from the EDC stating that the program is coming to an end and two from the EGSs as required by the Commission’s regulations. OCA St. 2 at 12, OCA M.B. at 47-49.

The OCA continues to recommend an additional notice from Duquesne because it is an important aspect of consumer education. See also CAUSE-PA M.B. at 13. Many of the consumers who will participate in the program will not have previously participated in the retail markets, and the notice will ensure that these consumers are fully informed of their options.

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

The OCA takes no position on this issue.

2. Standard Offer Program

In its filing, Duquesne proposes a Standard Offer Referral Program that will allow residential customers to enroll at any time beginning June 1, 2014. Duquesne St. 5 at 7-11. Duquesne proposes that the participating EGSs offer a 12-month contract term with a fixed rate that will be 7% less than the PTC known at the time of the offer. Id. at 9. The program will be offered to customers who contact DLC for a new or mover request, a high bill complaint, or an inquiry about customer choice. Duquesne St. 5 at 7-11. After the initial inquiry is resolved, Duquesne proposes that applicable calls be transferred to a “choice referral team” with specialized customer service representatives handling these calls. Duquesne St. 5 at 7-11. The program will continue unless or until residential shopping rates exceed two-thirds of the residential customer load. CAP customers will be excluded from the program for the same reasons identified in the Opt-In Auction program. Id. Similar to the Opt-in Auction, the Company proposes that the incremental costs for this program be recovered through an increase in the residential POR discount.

*a. Term of Offer*

Duquesne proposed that participating EGSs offer a 12-month contract term with a fixed rate that will be 7% less than the PTC known at the time of the offer. Duquesne St. 5 at 9.

The OCA notes that under the Company's proposal, this price term could result in the potential for customers to pay a higher price than Duquesne's default service price during the program, even though the Company proposes annual reconciliation of the PTC. OCA M.B. at 38-40. OCA St. 2 at 16. Indeed, as designed by the Company, the 7% discount could be in effect for as short a period as one day if the customer enrolled in the program on the day before the annual price change.

The OCA maintains that Duquesne's proposal for a 12-month contract term and a 7% discount off the PTC only at the time of enrollment should not be adopted. This is because the OCA submits that the program should guarantee the discount off of the PTC during the entire term. As OCA witness Alexander explained:

Under DLC's proposal, customers can participate in the Referral Program at any time during the 12-month PTC cycle. As a result, a customer could enroll the latter part of the annual PTC term and pay a higher price for the Referral program contract if the PTC is lowered in the following June, thus eliminating all or some of the 7% discount for the remaining term. The EGSs participating in the Referral Program should be required to agree to ensure that the customer's contract will provide a 7% discount off the PTC during the entire term of the Referral contract.

OCA St. 2 at 16. The OCA submits that for the reasons stated above, the guaranteed 7% guaranteed discount off the PTC should be applied during the entire time of the referral contract. This would provide savings to customers and allow customers who are otherwise reluctant to shop a risk-free opportunity to do so.

*b. Discount Percentage*

As was discussed above, under the Company's program, a customer who enrolls in the referral program will be given, for a period of time, a 7% discount off of the PTC. In its Main Brief, Dominion argues that the level of the discount should be adjusted from 7% to 5% off of the PTC because market prices for electricity have dropped. Dominion M.B. at 15. The OCA

does not support Dominion's proposal and does not recommend that such change in the price for this contract be implemented. OCA M.B. at 52. The OCA submits that Dominion's proposed reduction in the discount for the referral program should be rejected.

*c. Guaranteed Savings*

Consistent with its position in the Opt-In program, the OCA supports guaranteed customer savings during the product term of the referral program. The OCA maintains that encouraging customers to participate in this optional program as a means of "jump starting" the retail competitive market and then creating the potential for customers to pay a higher price for generation supply as a result of their enrollment is not a reasonable path to securing customer interest in or satisfaction with the competitive market. OCA M.B. at 52. OCA witness Alexander discussed the importance of assuring customer savings during the entire contract. She stated:

DLC has clearly described why its proposed Opt-In Auction contract should mirror its PTC rate plan to guarantee customer savings, but then ignores this same concern for the Customer Referral program. Furthermore, the Commission's Intermediate Work Plan Order clearly allowed some discretion with respect to the term of the Referral Contract (from 4 months to 12 months) so my proposal comports with that Order.

OCA St. 2-S at 7-8. This position was supported by the Company, Citizen Power and CAUSE-PA. Citizen Power M.B. at 11, CAUSE-PA M.B. at 15; see also Duquesne M.B. at 59-61.

Without the guarantee of savings, the referral program could work contrary to its intent and cause participants to become dissatisfied with their shopping experience. Accordingly, the OCA respectfully requests that the Commission adopt its recommendations as to the product offer and term for the Referral Program.

*d. Program Start Date*

In its filing, Duquesne proposes a Standard Offer Referral Program that will allow residential customers to enroll at any time beginning June 1, 2014. Duquesne St. 5 at 7-11. This start-up date is a reflection of the Company's implementation of a new Customer Information System and new functionalities that will be available at that time.<sup>4</sup> In their Main Briefs, RESA and FES oppose any delay in the implementation of the program with RESA proposing to implement the referral program by June 1, 2013 (the onset of the new default service program). RESA M.B. at 52-55, FES M.B. at 36.

As was discussed in its Main Brief, the OCA supports the Company's proposed start date. See OCA M.B. at 53. Specifically, the OCA remains concerned about the impact of the near-simultaneous implementation of both market enhancement programs. As Ms. Alexander explained:

Furthermore, Mr. Kallaher's dismissal of the impact of both programs on the default service portfolio as "remote" is without support given DLC's already high level of customer migration. DLC already has a 40% shopping level for residential customers. If the Opt-In Auction is approved with a 50% participation cap (a program design feature I oppose), it is possible that 60% or more of DLC's residential customers would be served by an EGS in mid-2013. At that point, any program to stimulate the retail market cannot be defended on the grounds that customers are not shopping or don't know how to shop.

OCA St. 2-R at 13. The OCA recommends that the Standard Offer Program not be implemented at the same time as the Opt-in Program. Such severely overlapping programs will create significant customer confusion and the potential for adverse comparisons to the prices and terms of service associated with these various options, thus threatening the overall intent to stimulate customer interest in retail choice.

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<sup>4</sup> Petition at 23.

Therefore, the OCA submits that Commission should adopt Duquesne's proposal to delay the implementation of the Standard Offer Referral Program until after the Opt-In Program to avoid customer confusion.

*e. Program Suspension*

The Company proposes that the referral program continue unless or until residential shopping rates exceed two-thirds of the residential customer load. Duquesne M.B. at 65. The suspension is proposed in order to reduce the risk premiums associated with wholesale suppliers who bid on default service load.<sup>5</sup> The OCA is mindful of this concern and would reiterate that the potential increase in costs to default service customers is another reason that the Referral Program should be targeted only to new and moving customers or those who specifically ask for shopping information (thus, eliminating the solicitation of customers who call the Company for a high bill inquiry or complaint or other reason). OCA M.B. at 54.

*f. High Bill Callers*

The Company proposes that the Standard Offer Program be offered to all non-CAP residential customers who contact the Company for a new or mover request, a high bill complaint, or an inquiry about customer choice. Duquesne M.B. at 66. RESA agrees that the Referral program should be discussed on all high bill calls. RESA M.B. at 58.

As was discussed in Main Brief, the OCA recommends that the Standard Offer Program be offered only during calls in which the customer is seeking to establish service, transfer service to a new location, or is specifically seeking to discuss customer choice and/or the referral program. OCA M.B. at 55-56. The OCA submits that calls relating to utility obligations to respond to high bills, billing and usage questions, payment difficulties or payment plan

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<sup>5</sup> The OCA testimony on impact of these retail market initiatives on the cost of default service is discussed in Section III.B.1.c., above.

options, collection, service quality and outages, and appointments for utility service in the field, should not be included in the obligation to present the Referral program. OCA witness Alexander testified:

The Referral Program should not be automatically marketed to customers who call DLC with regard to high bill complaints. These calls reflect a wide variety of potential concerns about the nature of the electric bill, some of which can be resolved with meter investigations, but others of which typically result in the need for discussion of payment arrangements and customer assistance programs, including referrals to utility and community bill payment assistance programs. It is not appropriate for calls in this category to be routinely treated as merely a proposal to potentially lower the bill by selecting an EGS. While I certainly agree with DLC's proposal to handle the substance of such calls prior to introducing the Referral Program, I am concerned about the potential adverse impact on the quality of what should be a more extensive discussion of regulated services that this proposal implies

OCA St. 2 at 16.

The OCA submits that the focus of calls other than New/Moving requests and calls requesting information on Customer Choice should be on resolving the customer's specific concerns without delay. Customers are calling with a specific utility problem that should be addressed without causing the customer to spend additional time on the phone about unrelated topics. Indeed, burdening such calls with further unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa.C.S. § 2807(d)<sup>6</sup>; see also OCA St. 2-S at 8-9.

For the foregoing reasons as well as those in its Main Brief, the OCA recommends that the customer calls regarding the Standard Offer Program be limited to new or moving customers and those customers who specifically request information about Choice.

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<sup>6</sup> For example, many customers who are calling about a high bill may be complaining about a problem with the meter or in need of a payment arrangement, and possibly in need of a referral to the Customer Assistance Program. These customers may also inquire about other forms of assistance such as budget billing. The OCA submits that these customers are in a potentially vulnerable position due to their concerns about their high bill and should not be directed towards a competitive offer at that time.

*g. Choice Referral Team*

The Company has proposed the formation of a “choice referral team” that will handle customer enrollment in the referral program. Duquesne M.B. at 66; Duquesne St. 5 at 8. Although the exact role of the team has not yet been fully defined, the Company envisions that customers would have the initial reason for the call handled by a regular Customer Service Representative (CSR), and then the CSR would transfer the customer to the team if he or she indicates an interest in a “standard offer lower than [the customer’s] current price to compare.” Id.

For the reasons discussed in its Main Brief, the OCA is concerned that the specialized “choice referral team” may result in increased costs that will unnecessarily burden the program. See OCA M.B. at 57. If the use of a choice referral team is approved, the OCA maintains that all costs, including the incremental costs of the Choice Referral Team, should be allocated to the EGSs that participate in this program because it is the EGSs who avoid marketing costs and gain customers as a result. Regulated customers should not subsidize EGSs’ marketing and customer acquisition costs. OCA St. 2 at 18.<sup>7</sup>

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

The OCA takes no position on this issue.

3. Market Enhancement Program Cost Recovery

Duquesne proposes slightly different cost recovery procedures for the Opt-In and Referral Programs. For the Opt-In program, Duquesne Light proposes that the costs be recovered directly from the winning Opt-In suppliers, in proportion to the number of customers allocated to each EGS. Duquesne St. 4 at 21-26. In the event that the RFP process does not

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<sup>7</sup> Cost recovery for the market enhancement programs is discussed in Section III.C.3, below.

produce any winning EGSs, the costs of the program would be recovered by Duquesne Light through a purchase of receivables (POR) discount applicable to residential customers until such costs are fully recovered. Id.

For the Standard Offer Program, the Company proposed to recover the initial and ongoing costs through the POR discount on EGSs serving residential customers. It is the Company's plan to recover capital costs associated with the implementation of the Standard Offer Program in a future distribution rate proceeding. Id.

In their Main Briefs, the EGSs disagree on who should pay for the costs of these retail market initiatives, but all generally support the notion that customers should pay all or some portion of the costs. See RESA M.B. at 59-63, Dominion M.B. at 16-17, FES M.B. at 37-42. RESA proposes that the costs of these programs be recovered through a \$5/MWh (or 5 mils per kWh) adder charged to default service customers. RESA M.B. at 63-64; RESA St. 2 at 26-27.<sup>8</sup> FES proposes that the cost of both programs be recovered from all customers in the classes that are eligible to participate. FES M.B. at 37-42. On the other side, Dominion proposes a sharing of costs between EGSs and customers. Dominion M.B. at 16-17.

Recovering the costs of these programs from EGSs is consistent with the IWP Order, wherein the Commission stated that it would be appropriate for EDCs to recover opt-in auction implementation costs from participating EGSs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction. IWP Order at 78. The Commission stated:

As for the costs of the Retail Opt-in Auctions, we agree with UGIES and OCA that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer

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<sup>8</sup> RESA's 5 mil/kWh adder will be discussed in Section III.C.8., below.

acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs.

IWP Order at 84-85. As with the Opt-In Auction Program cost recovery proposal, recovery of the costs of the referral program from participating EGSs is also consistent with the IWP Order.

According to the Commission:

As to program costs, we agree with the assertions of OCA and UGIES that the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs. We also find that PECO's proposal to recover program costs through the discount on the POR appears to be acceptable.

IWP Order at 32; see also, FirstEnergy DSP Order at 132-137, PECO DSP Order at 142-50.

The OCA supports recovery of the costs of both of these programs from the EGSs as the costs the EDCs will incur to implement the Opt-In Auction and Referral Programs are not necessary to implement retail choice. See OCA St. 2-R at 17-18. Furthermore, it would be particularly unfair and unreasonable for default service customers to pay for these costs in the manner suggested by RESA – a 5 mil/kWh adder to default service rates. As OCA witness Alexander explained:

These costs are incurred by Duquesne to implement programs that will result in a transfer of default service customers to the EGSs who win the Opt-In Auction or offer Referral Programs that customers select. DLC's role in these programs is a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market. Therefore, it is only reasonable for the EGSs that directly benefit from these programs by gaining market share to pay for the incremental costs, which are likely to be far less than the incremental costs that each EGS would have to bear to acquire these customers on an individual basis.

Id. (footnote omitted), see also OCA St 1-R at 8-9. Company witness Neil Fisher echoed the OCA's testimony on this issue when he stated:

First, part of me wonders why we are discussing customer referral and retail auction programs in the first place if EGSs do not want to pay for these programs. EGSs have pushed for these programs for many years, even before the RMI.

EDCs and customer representatives have generally expressed concerns about the implementation of these programs. ...While I recognize that not all EGSs agree on the design and development of these retail market initiatives, EGSs have been the primary sponsor of these proposals over the years – not customer representatives and not EDCs – and EGSs are largely responsible for their development.

Duquesne St. 3-R at 73-75. Mr. Fisher went on to point out that making EGSs pay for the bulk of the direct costs of these programs serves as a valuable “check and balance” on the design and structure of these programs. Id. These positions were echoed by OSBA, CAUSE-PA and Citizen Power. OSBA M.B. at 16-18, CAUSE-PA M.B. at 17-18, Citizen Power M.B. at 13.

The EGSs in this proceeding have provided no compelling evidence to justify a cost recovery method different from that recommended in the IWP Order, the FirstEnergy DSP Order and the PECO DSP Order. Accordingly, the OCA submits that Duquesne’s proposal to recover the costs of these initiatives from EGSs should be adopted.

4. CAP Customer Participation in Market Enhancement Programs

Duquesne witness Neil S. Fisher and CAUSE-PA witness Stephen R. Krone each testified that Customer Assistance Program (CAP) customers should not be included in either of the proposed Retail Market Enhancement programs. Duquesne St. 3-R at 36-37, CAUSE-PA St. 1. In its Main Brief, RESA recommended the inclusion of the CAP customers in the Retail Market Enhancement programs. See RESA M.B. at 64-66. In the IWP Order, the Commission referred the question of whether CAP customers can participate in the retail market enhancements to the RMI Universal Service working group. IWP Order at 18. While the OCA did not present specific testimony on this issue in this proceeding, the OCA supports the proposal of Duquesne and CAUSE-PA and recommends that this question be considered as part of the Commission’s RMI Universal Service subgroup. See OCA M.B. at 62; OCA St. 2-R at 6.

5. Shopping Customer Participation in Market Enhancement Programs

As was discussed above, Duquesne will not specifically market its Opt-In or Referral programs to those customers who have already selected an alternative generation supplier, but will allow these customers to participate in the Market Enhancement Programs if they so request. See Duquesne St. 3-R at 13-14. This approach is consistent with the IWP Order. See IWP Order at 42.

In its Main Brief, RESA proposed that shopping customers should be ineligible to participate in the EGS Opt-In Competitive Offer Program. RESA M.B. at 66-68. While the OCA agrees that Duquesne should not directly solicit shopping customers for participation, this does not mean that shopping customers who inquire about the offer should not be allowed to participate. See OCA St. No. 2-R at 11; OCA M.B. at 62-64. While the OCA agrees with RESA that the main purpose of the program is to give customers who have not otherwise shopped additional opportunities to test the market, and not to shift customers who are currently shopping, the OCA does not agree that closing the program to shopping customers is the answer. Duquesne's approach to direct the marketing efforts towards non-shopping customers addresses this issue and carries forward the focus for the program identified in the IWP Order. See IWP Order at 42.

For the reasons stated above, the OCA submits that all non-CAP residential customers, both default service and shopping customers, should be eligible to participate in the Opt-In Auction Program. The marketing materials for the program, however, should be specifically directed towards non-shopping customers as the Company has proposed.

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

The OCA takes no position on this issue.

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

a. *Customer Status at the End of the Opt-In Program*

At the end of the Opt-In program term, Duquesne proposes that the customer remain with the EGS. Duquesne St. 3-R at 33-35. Duquesne avers that there are sufficient customer protections in the notices from the supplier, and that the customer should, therefore, stay with the EGS. Id. The OCA does not object to customers remaining with the EGS after sufficient notice for the EGS Opt-In Program. The OCA submits, though, that customers should be fully informed of this feature before they opt in to the program.<sup>9</sup> As discussed in its Main Brief, the OCA further recommends though that if no response to an EGS offer is provided by the customer, the customer should be placed on a fixed price month-to-month contract with no penalties or termination fees. OCA St. 2 at 13.

In its Main Brief, RESA argues that competitive suppliers should have maximum flexibility regarding the product offered to customers at the end of the opt-in auction program or any other retail market enhancement program considered by the Commission. RESA M.B. at 70-72. The EGSs already have maximum flexibility in what they can offer to customers, but if the customer does not respond, the customer should not be placed on a variable priced rate or other rate that is wholly inconsistent with the program in which they participated. The Opt-In Auction Program is designed to create a positive experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS. Customers who do not respond to a notice should stay with their current EGS on a fixed price, month-to-month contract if the customer does not affirmatively select another product.

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<sup>9</sup> This is also why the OCA recommends a third notice, in addition to the two from the EGS, from the EDC to the customer. This additional notice is discussed in Section III.C.1.i., above.

*b. Customer Status at the End of the Referral Program*

In their Main Briefs, Duquesne and RESA propose that a customer who accepts the introductory standard offer as part of the referral program would continue service with the EGS unless the customer makes an affirmative choice to go to another EGS or to return to default service. Duquesne M.B. at 75, RESA M.B. at 70-72.<sup>10</sup> The OCA maintains that such a process is not appropriate for this type of program. In the referral program, customers are enrolled when they call the Company about a completely separate matter- the start of service or transfer of service (or, if the EGSs' proposals are accepted, when calling about high bill issues). The program is explained orally after a customer has been on the phone with the Company discussing an entirely separate issue. The customer may not understand what will happen at the end of the initial discount, and such information might not be presented in sufficient detail. Therefore, the OCA submits that in the instance of the referral program, the customer should be allowed to take their "affirmative" action at the end of the introductory period and be returned to default service if such action is not taken. See OCA M.B. at 64-68; OCA St. 2 at 16-17.

For the reasons stated above, the OCA proposes that Duquesne's Standard Offer Referral Program be revised so that the customer will return to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise.

8. Miscellaneous Market Enhancement Program Issues

*a. RESA's Proposal for a 5 mil per kWh adder to Default Service Rates Must Be Rejected*

In its Brief, RESA proposed that the costs of the Retail Market Enhancement Programs be recovered through a \$5/MWh (or 5 mils per kWh) adder charged to default service

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<sup>10</sup> The OCA would note that Company witness Neil Fisher expressed reservations about the treatment of customers at the end of the Referral Program. See Duquesne St. 3-R at 42.

customers. RESA M.B. at 89-90; RESA St. 2 at 26-27. As it discussed in its Main Brief, the OCA is strongly opposed to RESA's proposal that, if it were to be implemented, would result in the Company collecting an additional \$27 million from residential default service customers over the two-year period. OCA M.B. at 68-72; OCA St. 1-R at 12. This translates to an approximately \$41 per year adder to the average residential customer bill. OCA St. 1-R at 12. In those two years, Duquesne would also receive approximately \$4 million in excess of any costs incurred. Id.

A number of parties, including the Company, oppose RESA's proposal. See OSBA M.B. at 20-23; Duquesne M.B. at 70, DII M.B. at 9-11. These parties agree that the adder is in conflict with the Public Utility Code in several respects, particularly since the Company will receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge. See OSBA M.B. at 20-23. The proposed adder would also impact shopping customers in the Companies' service territories, and an artificially inflated default service rate will result in increased EGS' charges for consumers who accept a percent-off-the-default price offering.

There are numerous reasons why RESA's adder must be rejected. First, a plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred." 66 Pa.C.S. § 2807(e)(3.9); see also Barasch v. Pa.PUC, et al., 493 A.2d 653, 655 (Pa. 1985), Cohen v. Pa.PUC, et al., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983), Barasch v. Pa.PUC, 532 A.2d 325, 336 (Pa. 1987), Popowsky v. Pa.PUC, 695 A.2d 448, 455 (Pa. Commw. Ct. 1997). The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover

costs from its ratepayers that it has actually incurred. Hypothetical and illusory “costs,” such as RESA’s proposed adder, are precluded from consideration in the rates that utility customers pay.

Additionally, the fact that RESA’s proposal includes a potential profit handed over to Duquesne that might be tied to whether or not EGSs are successful in obtaining new customers is inappropriate and cannot be justified. DLC is providing statutorily required Default Service and will recover all of its costs on a reconcilable, dollar for dollar basis. Duquesne St. 3-R at 82-83.

Indeed, Duquesne witness Neil Fisher noted that RESA’s recommendation would result in significant over-collection (about 10 times the estimated costs of the retail market initiatives) and that disbursement of the over-collection to all distribution customers would result in cross-subsidization. Id. at 84. Especially troubling is that although the PTC adder will apply only to default service customers under RESA’s proposal, any remaining balance after payment of retail program costs and ‘uncollected’ default service costs would be refunded to a much larger, different group of customers – distribution customers, including those shopping with an EGS. Thus, RESA’s proposal would result in cross-subsidization of shopping customers by default service customers. See Duquesne M.B. at 70, OSBA M.B. at 20-23.

For these reasons, and those detailed in its Main Brief, the OCA submits that RESA failed to carry its evidentiary burden as to its proposed 5 mil/kWh adder. There is no support for the adder in the Public Utility Code or the controlling case law in Pennsylvania. As such, the OCA submits that the proposal must be rejected.

D. RATE DESIGN

1. Reconciliation Issues

The Company has proposed a 12-month reconciliation period for its default service plan coupled with annual changes to the PTC. Duquesne St. 4-R at 8-13. In its Main

Brief, RESA proposes quarterly adjustments to the PTC and quarterly reconciliation of over/under collections. RESA M.B. at 72-74. RESA states that quarterly reconciliation is needed to reflect current market costs and develop the retail market. Id. at 72.

The OCA supports the Company's proposal for annual reconciliation and changes to the PTC. As was discussed above, Duquesne is among large EDCs in the Commonwealth. The Company's current PTC has been set for the duration of its existing 29-month default service plan. Therefore, Duquesne's customers are not accustomed to the quarterly shifts in the PTC that are experienced by the customers of other large EDCs. Further, the Company has been out from under rate caps for a much longer time than other EDCs. Importantly, the relative stability in the PTC has helped customer shopping in Duquesne's service territory as it has experienced high levels of shopping for many years. OSBA, Dominion and Constellation either support or do not oppose the Company's proposal. See OSBA M.B. at 19, Dominion St. 1 at 4, Constellation St. 1 at 20-21.

It is for these reasons that the OCA supports the Company's proposals with respect to annual reconciliation and changes in the PTC and encourages the Commission to adopt the Company's position on these issues.

2. Price To Compare Calculation Date

The OCA takes no position on this issue.

3. Non-Bypassable Charge To Recover PJM Charges

The OCA takes no position on this issue.

E. TIME-OF-USE PROGRAM

The OCA takes no position on this issue.

F. SUPPLY MASTER AGREEMENT ISSUES

The OCA takes no position on this issue.

G. DATA/EGS COORDINATION ISSUES

The OCA takes no position on this issue.

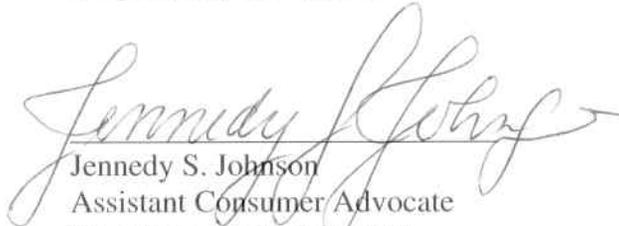
H. GENERAL MISCELLANEOUS ISSUES

The OCA has no general miscellaneous issues.

IV. CONCLUSION

The OCA submits that the proposed modifications detailed in its Main Brief are necessary to ensure that the legal requirements for the provision of default service are met, while increasing the opportunities customers have to receive additional benefits in the retail market. As such, the OCA submits that its proposed modifications should be adopted.

Respectfully Submitted,



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Dated: October 22, 2012

161701

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Brief, 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 listed below:

Dated this 22nd day of October 2012.

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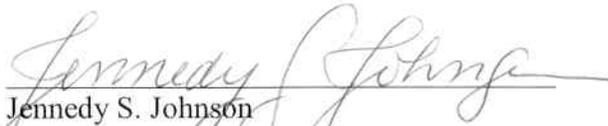
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