

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF
DOMINION RETAIL, INC. AND INTERSTATE GAS
SUPPLY, INC.**

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DATED: October 22, 2012

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I. PROCEDURAL HISTORY

On or about April 27, 2012, Duquesne Light Company (“Duquesne” or the “Company”) filed a Petition with the Pennsylvania Public Utility Commission (“Commission”) seeking approval of its default service plan for the period June 1, 2013 through May 31, 2015. The Petition seeks approval of Duquesne’s POLR VI default service plan (“DSP”), which it intends to replace the current twenty-nine (29) month full requirements service, POLR V plan. The POLR VI plan proposes a series of one (1) year procurements and includes two (2) significant competitive enhancements.

On May 9, 2012, Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) (collectively “EGS Parties”) filed a Joint Petition to Intervene in the above-captioned proceeding. Several other parties also intervened. On May 15, 2012, a Prehearing Order was issued requiring the filing of Prehearing Memoranda on or before June 4, 2012 and setting the date for the prehearing conference as June 8, 2012 before Presiding Administrative Law Judge Katrina L. Dunderdale. At the prehearing conference, a schedule was established that provided for the submission of Direct, Rebuttal and Surrebuttal Testimony and two (2) days of hearings to be held in Pittsburgh. The successive rounds of testimony were submitted as planned, but due to last minute arrangements that resulted in all parties agreeing to waive cross examination on all other parties, the hearing was conducted on a single day and completed in approximately one (1) hour.

The procedural schedule also requires the submission of Main Briefs on October 5, 2012, and Reply Briefs on October 22, 2012. This Reply Brief is offered in compliance with the Scheduling Order.

II. SUMMARY OF REPLY ARGUMENT

The EGS Parties urge approval of Duquesne's POLR VI DSP plan, as modified by the positions that they have taken here and in their Main Brief. The Office of Consumer Advocate ("OCA") has interposed a number of proposals that seem geared more toward preserving the *status quo* (procurement is a prime example) for its own sake, rather than to make the sort of bold and innovative change that the course the Commission has only recently begun to chart would appear to require. Likewise, Duquesne has proposed to diverge from that course, in some material ways, such as its insistence on an auction for the retail opt-in, as opposed to an assignment. As discussed below, some of these views are rational and supportable, and others are not. Accordingly, the EGS Parties believe that close scrutiny must be given to Duquesne's proposals to ensure that they will result in the most optimal result for the market.

III. REPLY ARGUMENT

A. LEGAL STANDARDS

1. **Burden Of Proof**
2. **Legal Standards Applicable To Default Service**

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

Duquesne proposed to procure a series of one (1) year contracts for the period June 1, 2013 through May 31, 2014 and a second procurement for June 1, 2014 through May 31, 2015. Half of the contracts for the 2013 supply will be let in November of 2012 and half in April of 2013 and likewise for the 2015 period. This would create time diversity for the purchase of the

contracts, but would create a fairly stabilized annual pricing mechanism for Duquesne for the period.¹

The OCA, which opposes Duquesne's procurement proposal, seeks to modify Duquesne's proposal, and to instead require the Company to acquire approximately seventeen percent (17%) of the Default Service load using two (2) year, full requirements contracts (as opposed to one (1) year), and approximately twenty-one percent (21%) of the load through block and spot market purchases.²

The OCA's proposal is not appropriate for a transition period in which customers will be provided potentially two (2) options to move to a one (1) year fixed price offer through the Market Enhancement programs. The success of those market enhancement programs hinges on customer acceptance of the market as being legitimate and mature. If customers are not able to accurately compare a default service price to the market based prices offered by suppliers, on an apples to apples basis, e.g. one (1) year price to one (1) year price, customers will do nothing, since it is well documented that there is a substantial *status quo* bias.

Duquesne's proposal garnered the support of the EGS Parties' witness, Mr. Butler, who argues that one (1) year full requirements contracts are the appropriate for this transitional DSP for that very reason - they are customer friendly. Moreover, the Commission's most recent Order on a default service plan agrees that the one (1) year procurements proposed by Duquesne are acceptable.³

In short, there is no good reason to disapprove the Company's residential procurement plan. Accordingly, it should be approved.

¹ Duquesne Light Statement "DL St." No. 2 (James E. Wilson), pp. 6 – 10.

² OCA Main Brief, pp. 12-23.

³ *Petition of PECO Energy Company for Approval of Its Default Service Program II*, Docket No. P-2012-2283641 (Opinion and Order entered October 12, 2012, slip op. at pp. 17-20) ("PECO Order").

- a) Product(s) and Product Terms
 - b) Procurement Dates
 - c) Reserving Supply For Retail Opt-In Customer Participation
- 2. Small C&I Procurement Issues
 - a) Product(s) and Product Terms
 - b) Procurement Dates
 - 3. Medium C&I Procurement Issues
 - a) Product(s) and Product Terms
 - b) Procurement Dates
 - 4. Large C&I Procurement Issues
 - 5. Default Supply Load CAP Issues
 - 6. Procurements for Delivery Beyond May 31, 2015
 - 7. Miscellaneous Procurement Issues

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

As discussed in their Main Brief, the EGS Parties originally supported Duquesne’s filing in which it proposed to conduct an auction process to assign customers to EGSs on the basis of the discount bid by those EGSs. The discount was the price level, below the Price to Compare (“PTC”), at which an EGS would serve the customers. With the exception of the cost recovery component of Duquesne’s proposal, the EGS Parties agreed with the concept.

Then the Commission issued its Order in FirstEnergy⁴ during the pendency of this case, and then later a second DSP Order in PECO’s DSP II case.⁵ Those Orders make it clear that the Commission intended that the previous auction programs were no longer acceptable and going

⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2011-2273650, et seq., (Opinion and Order entered August 16, 2012) (“*FE Order*”), amended by, *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2011-2273650, et seq., (Amended Opinion and Order entered October 13, 2012) (“*Amended FE Order*”).

⁵ *PECO Order*.

forward, it would expect that the retail assignment programs, such as it had required of both FirstEnergy and PECO were to be the norm.⁶

Due to the Commission's apparent mid-course change in direction, embodied in the *FE Order*, the EGS Parties presented rebuttal testimony that proposed certain modifications to the FirstEnergy requirements. These modifications were presented as necessary to ensure transparency and customer protection, if the Commission were to adopt the *FE Order* as the standard. It now appears clear that the Commission has adopted the *FE Order* as the standard and accordingly, the EGS Parties submit that their modifications - as discussed more completely by Mr. Butler in his Rebuttal testimony⁷ - should adopted here.

In their reconsideration of their *FirstEnergy Order*, the Commission cited with approval Dominion's recommendations and referred them to the ongoing collaborative process for resolution.⁸ These modifications, ensuring price transparency by participating EGSs by requiring them to provide the price for the eight (8) month component of the twelve (12) month fixed-price offer at the time the terms and conditions for the four (4) month price are provided. The second requirement is that EGSs post security equal to the total of the fifty-dollar (\$50.00) bonuses that they would pay, once customers are assigned, to ensure that customers receive the bonus to which they are entitled. With these modifications, Duquesne's plan can safely be altered to reflect the recent Commission standard for this program.

a) Auction vs. ROI Program

The EGS Parties believe that the assignment program required in both the *FE Order* and the *PECO Order* is more efficient, lower in cost and will be more effective at encouraging customers to shop for electricity supply because they will know the terms of the offer when they

⁶ *Amended FE Order*, at pp. 14-16; *PECO Order*, at pp. 77-90.

⁷ Thomas J. Butler, "TJB" St. No. 1-R, pp. 3-4.

⁸ *Amended FE Order*, pp. 16-19.

are initially solicited to participate. Accordingly, the EGS Parties reject Duquesne's⁹ proposal to continue with the auction program. The benefits of being able to provide this price certainty, the broader participation and lower costs, make up for what would likely have been a marginally larger discount set by the auction. While the EGS Parties do not reject the Duquesne proposal, they simply posit that the aggregation proposed by the Commission is better.

b) Term of Offer

The EGS Parties support a one (1) year product, whether provided as a unified price (their preference) or a bifurcated price as required in the *FE Order* and *PECO Order*.¹⁰

c) Discount Percentage

Contrary to Duquesne's proposed minimum five percent (5%) discount,¹¹ the EGS Parties suggest that the minimum discount percentage be lowered to two percent (2%) or the fifty-dollar (\$50.00) rebate be eliminated.¹² The rationale is that electricity prices are extremely low right now, and it is much more difficult for retailers to create headroom. It would be most unfortunate if the retail auction were to fail to garner supplier participation because the criteria to start the auction were set too high. Accordingly, the EGS Parties support lowering the discount or eliminating the fifty-dollar (\$50.00) bonus payment.

d) Fifty-Dollar (\$50.00) Bonus Payment

As discussed immediately above, the EGS Parties support elimination of the bonus if the discount rate is not lowered.¹³ Duquesne also is concerned that with the two-part product that a fifty-dollar (\$50.00) rebate/bonus may be too much to ask of the market.¹⁴ Accordingly, the

⁹ Duquesne MB, pp. 46-48.

¹⁰ TJB St. No. 1, pp. 4:17-5:16; TJB St. No. 1-R, pp. 2:5-5:8.

¹¹ Duquesne MB, p. 51.

¹² TJB St. No. 1, pp. 5:20-6:8.

¹³ TJB St. No. 1, pp. 5:20-6:8.

¹⁴ Duquesne MB, p. 51-52.

EGS Parties renew their suggestion that the bonus be reduced or eliminated if the minimum discount is not reduced as recommended above.

e) Guaranteed Savings

The best offer for customers is an offer that provides customers with a fixed price for the duration of the product, not an offer with a variable price that would otherwise expose EGSs and customers to significant risk.¹⁵ The OCA's recommendation for a guaranteed savings offer in this case in particular, makes little sense. Duquesne has proposed one (1) year procurements as the basis of its default service, and based upon the timing and the overlap of the ROA with full requirements contracts, the price may change one time, for the last month of the program. To add the additional risk and notice requirements for a single month, when the price would otherwise be fixed and with no restrictions on shopping, makes no sense and the notion of a guaranteed savings product should be disregarded. Duquesne also supports the notion of a twelve (12) month contract, which further mitigates the risk to suppliers and customers.¹⁶ The EGS Parties support this result and believe that a fixed price for that period would be the optimum result.

f) Customer Participation Cap

The EGS Parties support the fifty-percent (50%) customer participation cap proposed by Duquesne. The OCA has proposed a twenty-percent (20%) customer participation cap with a default procurement holdback.¹⁷ In keeping with recent Commission precedent and recognizing that the goal of the program is to migrate significant numbers of customers, setting the cap so low will cause program failure before it starts. The OCA has provided no rationale for its approach other than to protect wholesale sellers from what may be illusory risk. The OCA

¹⁵ TJB St. No. 1-R, p.8.

¹⁶ Duquesne MB, p. 52.

¹⁷ OCA MB, pp. 43-46.

posits, without proof, that those sellers will increase the default service bids if a fifty percent (50%) customer participation cap is allowed. The lack of evidence of what that increment may be, if it will exist at all, makes it impossible to analyze the OCA proposal in a meaningful way in comparison to the higher participation cap, which will provide a known benefit to the customers who are allowed to switch. Accordingly, the EGS Parties urge rejection of the OCA's failed minimalist customer participation cap.

g) Supplier Load Cap

Contrary to the assertions of First Energy Solutions ("FES"), there should be a supplier participation cap at fifty percent (50%) of customers to ensure diversity of suppliers.¹⁸ The Commission has now twice endorsed this cap concept and there appears to be no good argument, FES' attempts to argue to the contrary, notwithstanding.

h) Enrollment Process

i) Mailings and Communications

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

2. Standard Offer Program

Duquesne's proposed standard offer program is a fixed price for twelve (12) billing cycles, with no early termination fees or restrictions on customer switching. The discount would be set at seven percent (7%) off of the PTC at the time of the offer and will allow customers to select a specific EGS or to be assigned through a "fair and impartial" process. EGSs will be able to enter into and exit the program on an ongoing basis with appropriate notice to Duquesne. The referral program would begin on June 1, 2014 and continue thereafter and would be available to

¹⁸ FES MB, pp. 28-30.

non-shopping non-cap residential customers that call Duquesne with a new or moving service request, a high bill complaint, or an inquiry about customer choice.¹⁹

a) Term of Offer

The OCA rejects the Companies twelve (12) month fixed-price offer in favor of a four (4) month guaranteed savings product.²⁰ There is no basis to conclude that customers would prefer a “guaranteed” savings for four (4) months over a fixed price for twelve (12) months. EGSs regularly make twelve (12) month fixed-price offers and customers have no difficulty accepting them.²¹ Accordingly, the EGS Parties urge rejection of the OCA proposal and acceptance of Duquesne’s proposed twelve (12) month term.

b) Discount Percentage

The EGS Parties have argued that the discount percentage for the standard offer referral program must be lowered to five percent (5%). Market prices have been steadily declining, even since the RMI Order was issued which will make it difficult for suppliers to participate in such a program at seven percent (7%).²² The OCA and Company believe that seven percent (7%) is the correct percentage.²³ For the reasons stated in its Main Brief and here in regards to the discount in the retail op-in program, the EGS Parties respectfully disagree and continue to support the reduced discount.

c) Guaranteed Savings

The EGS Parties and Duquesne reject the OCA’s proposed guaranteed savings product and instead support the concept of a fixed price for the entire period of the standard offer referral

¹⁹ EGS Parties’ MB, pp. 14-15.

²⁰ OCA MB, pp. 51-52.

²¹ TJB St. No. 1, p. 6.

²² TJB St. No. 1, p. 7.

²³ OCA MB, p. 52; Duquesne MB, pp. 58-59.

program.²⁴ The Commission has endorsed this concept as well.²⁵ There simply is no good reason to shorten the savings period to provide “guaranteed savings” for four months while under Duquesne’s proposal, customers will see savings under a fixed seven percent (7%) discount for eleven (11) months, with upside or downside risk for only a single month. In this light the OCA position seems counter-productive, and must be rejected.

- d) Program Start Date
- e) Program Suspension
- f) High Bill Callers
- g) Choice Referral Team
- h) Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSs

3. Market Enhancement Program Cost Recovery

Duquesne’s cost recovery proposal²⁶ is not entirely acceptable to the EGS Parties. It has proposed to recover the costs of the retail opt-in from winning suppliers on a *pro-rata* basis. While this approach appears to be reasonable if the Commission imposes an *FE Order* style assignment program, the cost could be rather significant if the auction process is retained. If the auction is retained, then customers must share in the costs since they benefit from these programs.²⁷

With regard to the standard offer referral program, Duquesne initially proposed to recover the costs from all suppliers in the POR discount, whether or not the supplier participates in the program. While such a recovery mechanism is simple to administer, a supplier who serves a larger percentage of the customers, who may or may not participate in the referral program, could end up paying a large and unfair share of the costs, with no measurable benefit. The EGS Parties urged the rejection of this program.

²⁴ EGS Parties’ MB, pp. 15-16, Duquesne MB, pp. 59-61.

²⁵ *Amended FE Order*, at pp. 21-22; *PECO Order*, at pp. 109-114.

²⁶ Duquesne MB, pp. 68-71.

²⁷ EGS Parties’ MB, pp. 16-17.

The EGS Parties instead propose that the referral program be paid for by participating suppliers on a “per customer acquired basis” (e.g. \$10/customer acquired) only. This way the cost responsibility is directly applied to the cost causers. While there may be certain programming necessary for the program to be started, those upfront costs should be collected by Duquesne through a non-bypassable rider since one has to assume this program benefits choice in general and should be borne by all customers, because every customer may be able to take advantage of the program in the future.²⁸ It is not appropriate to put suppliers at risk for future recovery of any remaining costs through a POR discount, as proposed by Duquesne witness Fisher, particularly those suppliers that have customers today and may choose not to participate in the referral program.

Duquesne’s amended cost recovery proposal must be modified to be reasonable, and should eliminate any possibility that suppliers who do not participate in the standard offer program could be liable for its costs.²⁹

4. CAP Customer Participation in Market Enhancement Programs
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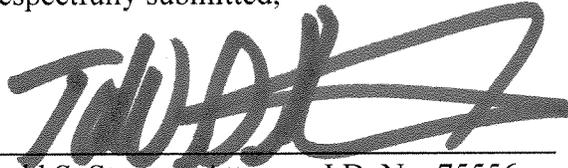
²⁸ TJB St. No. 1, pp. 7:15-8:9.

²⁹ EGS Parties’ MB, pp. 16-17.

IV. CONCLUSION

Duquesne's proposal is largely acceptable to the EGS Parties and they urge its approval as modified by their arguments here and in their Main Brief, as well in in the testimony of their witness. This round of default service programs is simply too important to allow for the speculative and status quo preserving arguments of the OCA and the belt and suspenders arguments raised by Duquesne. The Commission's Orders make it clear that a bold future is expected and the EGS Parties support that view.

Respectfully submitted,



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October 22, 2012

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Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original copy of the Reply Brief of Dominion Retail, Inc. and Interstate Gas Supply, Inc. This filing has been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact undersigned counsel.

Very truly yours,

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Interstate Gas Supply, Inc.*

TSS/jld/150743.1

Enclosures

cc: ALJ Katrina L. Dunderdale

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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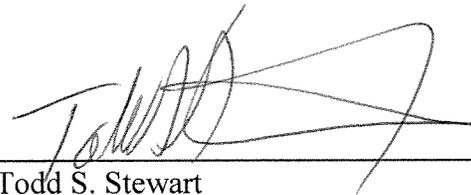
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