



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF SMALL BUSINESS ADVOCATE

October 22, 2012

**E-FILED**

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

Sharon E. Webb

Assistant Small Business Advocate

Attorney ID #2301664

Enclosures

cc: Parties of Record  
Brian Kalcic

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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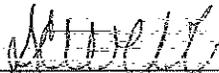
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Dated: October 22, 2012**

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**I. PROCEDURAL HISTORY**

On April 27, 2012, the Duquesne Light Company (“Duquesne” or “Company”) initiated the above-captioned proceeding by filing with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Plan for the period of June 1, 2013, through May 31, 2015 (“Petition” or “POLR VI”) pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §5.41, and the Commission’s Retail Market Orders at Docket No. I-2011-223795Z.

On May 17, 2012, the OSBA filed a Notice of Intervention, a Public Statement, an Answer to the Petition, and a Notice of Appearance.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on May 14, 2012. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on May 14, 2012.

Interventions were filed by: Dominion Retail, d/b/a Dominion Energy Solutions and Interstate Gas Supply d/b/a IGS Energy (“IGS”); Noble Americas Energy Solutions, LLC (“Noble”); Citizen Power, Inc. (“Citizens”); FirstEnergy Solutions (“FES”); Retail Energy Supply Association (“RESA”); Constellation New Energy, Inc., with Exelon Generation Corp., LLC (“Constellation and ExGen”); Duquesne Industrial Intervenors (“DII”); Coalition for Affordable Utility Services and Energy Efficiency of Pennsylvania (“CAUSE-PA”); NextEra Energy Services Pennsylvania and NextEra Power Marketing (“NextEra”).

A Prehearing Conference took place on June 8, 2012, before Administrative Law Judge (“ALJ”) Katrina L. Dunderdale, where the parties agreed to a procedural schedule and certain discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony and Surrebuttal Testimony of its witness, Brian Kalcic.

Evidentiary hearings were held in Pittsburgh, with many Harrisburg Parties appearing telephonically from the Keystone Building, on September 13, 2012. No cross examination was conducted after the parties reviewed the Rejoinder Testimony filed by the Company. The testimony and exhibits of the parties were entered into the record at the evidentiary hearing.

The OSBA and other parties submitted Main Briefs pursuant to the procedural schedule set forth in the Prehearing Order issued by ALJ Dunderdale and entered on June 11, 2012.

**II. SUMMARY OF ARGUMENT**

In its Main Brief, the OSBA addressed most of the arguments made by the various parties on issues in which the OSBA has an interest. Those arguments will not be repeated here. This Reply Brief includes responses to other, specific arguments raised in the Main Briefs of RESA, FES, and Dominion/IGS in which the OSBA has an interest.

### III. REPLY ARGUMENT

The OSBA will only address the default service procurement plans for the Small Commercial and Industrial (“Small C&I”) and Medium Commercial and Industrial (“Medium C&I”) procurement groups. The OSBA agrees in principle with Duquesne’s proposal to use load-following, full requirements contracts to acquire default service supply for Small C&I and Medium C&I customers. However, the OSBA requests that a limited modification be made to Duquesne’s proposed procurement plan for Medium C&I default service customers.

#### B. **DEFAULT SUPPLY PROCUREMENT ISSUES**

##### 2. **Small C&I Procurement Issues-OSBA’s Response to RESA**

In its Main Brief, RESA recommends that Duquesne be directed to modify its proposed portfolio for Small C&I to consist of “50% 12-month contracts, 50% quarterly contracts, with the PTC being adjusted quarterly.”<sup>1</sup> RESA rationalizes its recommended modifications to the Company’s procurement for Small C&I, in part, based on the Commission’s BMI End State Proposal set forth in the Commission’s September 27, 2012 Secretarial Letter.<sup>2</sup>

The OSBA’s objection to RESA’s proposal is twofold. First, as OSBA witness Mr. Kalcic testified, RESA’s proposal “would deemphasize and/or minimize price stability in favor of making default service rates more reflective of current market prices.”<sup>3</sup> As set forth in more fully in the OSBA’s Main Brief, Act 129 of 2008 replaced the “current market price” standard with the requirement that an EDC’s procurement plan is to ensure adequate and reliable service through a “prudent mix of contracts designed to ensure the least cost to [default service]

<sup>1</sup> RESA Main Brief at 29.

<sup>2</sup> *Id.*

<sup>3</sup> OSBA Statement No. 2 at 10.

customers over time.”<sup>4</sup> RESA’s narrow focus on current market prices when procuring default supply is misplaced.

Second, as justification for its drastic modifications to Duquesne’s proposed procurement strategy for Small C&I customers, RESA cites to the RMI End State Proposal in the Commission’s September 27, 2012 Secretarial Letter. However, the End State Proposal with which RESA seeks to conform, is a tentative proposal which may be further modified after vetting by interested parties, and is not supposed to become effective in whatever final form until “after the expiration of the current default service plans that are currently pending review/approval by the Commission” in 2015.<sup>5</sup>

RESA’s proposed procurement mix must be rejected. As set forth in the OSBA’s Main Brief, the OSBA agrees with the Company’s proposed procurement strategy for the Small C&I procurement group because it continues to provide reasonable price stability for Small C&I default service customers. The Small C&I procurement group would continue to include all customers with peak demands of less than 25 kW taking service on Duquesne’s RMI GS/GMH General Service Small and Medium or Rate GMH – General Service Heating rate schedules and should be approved.<sup>6</sup>

**a. Procurement Dates**

RESA has requested the Commission direct Duquesne to have all procurements for default supply for Small C&I customers occur no more than 60 days prior to the delivery of

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<sup>4</sup> 66 Pa. C.S. §2807(e)(3.4). See OSBA Main Brief at 4 for a general discussion of the change in legal standards applicable to default service. See also OSBA Statement No. 2 at 10.

<sup>5</sup> September 27, 2012 Secretarial Letter, Docket No. 1-2011-0207952.

<sup>6</sup> OSBA Main Brief at 7.

supply.<sup>7</sup> As set forth in the OSBA's Main Brief, default service supply would be acquired via five separate solicitations (each covering 50% of the Small C&I default service load) beginning in Fall 2012 and ending in Fall 2014, with contracts overlapping on a six-month basis.<sup>8</sup>

Duquesne has acknowledged that it will not be able to make the November 2012 procurement date for June 2013 supply based upon the timing of this proceeding.<sup>9</sup> As the OSBA noted in its Main Brief, generally, all procurements would take place no more than two months prior to the delivery of the default supply.<sup>10</sup> RESA's proposal that all procurements for default service supply for Small C&I customers occur approximately no more than 60 days prior to delivery of the supply should be rejected as moot.

### 3. Medium C&I Procurement Issues-OSBA's Response to RESA

In its Main Brief, RESA recommends procuring 100% of the default supply for Medium C&I customers through three-month (quarterly) supply contracts because it would be more "market reflective."<sup>11</sup> As it did with Small C&I, RESA rationalizes its recommended modifications to the Company's procurement for Medium C&I, in part, based on the Commission's RMI End State Proposal set forth in the Commission's September 27, 2012 Secretarial Letter.<sup>12</sup>

The OSBA's objection to RESA's proposal for Medium C&I procurements is twofold and largely mirrors the arguments set forth above relative to Small C&I. First, as OSBA witness

<sup>7</sup> RESA Main Brief at 30.

<sup>8</sup> OSBA Main Brief at 9.

<sup>9</sup> Duquesne Main Brief at 37.

<sup>10</sup> OSBA Main Brief at 9.

<sup>11</sup> RESA Main Brief at 21.

<sup>12</sup> *Id.*

Mr. Kalcic testified, RESA's proposal "would deemphasize and/or minimize price stability in favor of making default service rates more reflective of current market prices."<sup>13</sup> Act 129 of 2008 replaced the "current market price" standard with the requirement that an EDC's procurement plan is to ensure adequate and reliable service through a "prudent mix of contracts...designed to ensure...the least cost to [default service] customers over time."<sup>14</sup> RESA's narrow focus on current market prices when procuring default supply is again misplaced.

Second, as justification for its drastic modifications to Duquesne's proposed procurement strategy for Medium C&I customers, RESA cites to the RMI End State Proposal in the Commission's September 27, 2012 Secretarial Letter. However, the End State Proposal with which RESA seeks to conform, is a tentative proposal which may be modified after vetting by interested parties, and is not supposed to become effective in whatever final form until "after the expiration of the current default service plans that are currently pending review/approval by the Commission."<sup>15</sup>

As set forth in the OSBA's Main Brief, the continued development of a competitive retail supply market in the Company's service territory does not obviate the need for price stability for Duquesne's Medium C&I default service customers. Certainly, as the retail market for electric supply matures, Medium C&I customers may be expected to have more options to remaining on default service, and therefore more opportunities to purchase energy at a (longer term) fixed rate, if desired. However, not all customers chose to shop. Some customers may look to shop but end

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<sup>13</sup> OSBA Statement No. 2 at 10.

<sup>14</sup> 66 Pa. C.S. §2807(e)(3.4). See OSBA Main Brief at 4 for a general discussion of the change in legal standards applicable to default service. See also OSBA Statement No. 2 at 10.

<sup>15</sup> September 27, 2012 Secretarial Letter, Docket No. I-2011-2237952.

up staying with default service because they do not receive an attractive offer. Whatever their reasons for not shopping with an alternative supplier, those customers that remain on default service should not be saddled with an unnecessarily volatile rate.

Price stability should remain an important consideration when designing a default service procurement plan.<sup>16</sup> RESA's proposal for POLR VI would have 100% of the default service supply for Medium C&I customers turn over every three months beginning in December 2013. Such a complete turnover could lead to unreasonable default service price volatility, depending on the movement in market prices.

The OSBA respectfully requests that Duquesne's Medium C&I Procurement Plan be modified consistent with the OSBA's recommendations in which Duquesne would utilize one-year (non-laddered) contracts to acquire 100% of the Medium C&I default service supply. This approach is similar to procurement plan approved in POLR V, except for the elimination of laddered contracts. Under the OSBA's alternative proposal, all procurements should generally take place no more than two months prior to delivery of the default supply just as under Duquesne's proposal.

## **6. Procurements for Delivery Beyond May 31, 2015**

In its Main Brief RESA objects to Duquesne's procurement proposal for Small C&I which extends 6 months beyond end of the proposed default service plan.<sup>17</sup> The Company did not propose to procure energy for Medium C&I customers beyond May 31, 2015. The Company's Small C&I procurement methodology provides for the acquisition of 50% of its

<sup>16</sup> OSBA Main Brief at 10.

<sup>17</sup> RESA Main Brief at 34.

supply for Small C&I customers to extend through November 30, 2015, or six months beyond the POLR VI plan period. However, as set forth in the OSBA's Main Brief, in the event that legal or regulatory developments preclude Duquesne from continuing to serve as the default service provider after May 31, 2015, the Commission can adjust the relevant (November 2014) Small C&I procurement solicitation, as necessary.<sup>18</sup>

## C. MARKET ENHANCEMENT PROGRAMS

### 1. Retail Opt-In Program

On March 2, 2012, the Commission entered an Order at Docket No. I-2011-2237952, wherein the Commission concluded that Small C&I customers would not be included in retail opt-in auctions. See *Investigation of Pennsylvania's Retail Electricity Markets: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012) ("IWP Final Order"), at 42.

In *Joint Petition of Metropolitan Edison Company, et al. for Approval of Their Default Service Program*, at Docket No. P-2011-2273650, et al. (Order entered August 16, 2012) ("FirstEnergy Order"), the Commission reversed its March decision and decided that Small C&I customers should be eligible to participate in retail opt-in auctions. See *FirstEnergy Order*, at 103-104.

Both RESA and FES recommend that Duquesne's Small C&I customers be included in the retail opt-in programs.<sup>19</sup> As explained in the OSBA's Main Brief, in preparing the IWP Final Order, the Commission cited to low levels of shopping in the Small C&I segment (generally),

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<sup>18</sup> OSBA Main Brief at 11.

<sup>19</sup> RESA Main Brief at 69 and FES Main Brief at 24.

but ultimately found that small C&I customers should not be able to participate in the Opt-In programs.<sup>20</sup>

As justification for including Duquesne's Small C&I customers in Opt-In programs, RESA cites to the Commission's language in the *FirstEnergy* Order, referencing "relatively low levels of current shopping" in the EDC's service territory, and the binding poll held in the PECO default service proceeding.<sup>21</sup>

However, as set forth in the OSBA's Main Brief, the Commission's acknowledgement of shopping levels for Duquesne's service territory demonstrates that there is no need to have Small C&I customers participate in retail opt-in auctions.<sup>22</sup>

As to the *FirstEnergy* Order, it is not controlling in this proceeding. If the Commission wanted to impose the exact same programs with the exact same parameters on all EDCs it could have. Rather, the Commission issued a set of directives for default service providers ("DSPs") to follow in the IWP Final Order,<sup>23</sup> but left some discretion to DSPs to tailor their respective retail market enhancement programs to their individual situations.

Moreover, the *First Energy* DSP Order was a complete departure from the Intermediate Work Plan Order on the issue of small business customer participation in ROI Auctions.<sup>24</sup> The

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<sup>20</sup> OSBA Main Brief at 12.

<sup>21</sup> RESA Main Brief at 69, citing *FirstEnergy Default Service Order* at 103-104, and *Petition of PECO Energy Company for Approval of Its Default Service Program* at Docket No. P-2012-2283641, Binding Poll at 17.

<sup>22</sup> OSBA Main Brief at 13.

<sup>23</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. P-2011-2287952 (Order Entered March 2, 2012).

<sup>24</sup> On August 31, 2012, the OSBA filed a *Petition for Reconsideration of the First Energy DSP Order*.

Intermediate Work Plan Order addressed the issue of ROI Auctions (like the one proposed in Duquesne's default service plan), in which EGSs bid to provide competitive retail service to a group of customers within a specific EDC's service territory.

In the section of the Intermediate Work Plan Order which discussed the issue of customer eligibility for ROI Auctions, the Commission stated that (in its prior December 16, 2011, Tentative Order):

The Commission also recommended that small C&I customers not be included in the Retail Opt-in Auctions due to a lack of a standard small commercial definition across the state. Although the Commission's Customer Information Regulations provide a definition of "small business customer,"<sup>25</sup> this standard rarely, if ever, aligned with EDC commercial rate classifications. Additionally, most, if not all, small C&I customers are also residential consumers at their homes and would have the opportunity to participate in the Retail Opt-in Auctions as residential consumers. The Commission believed this would provide such customers a shopping experience that may encourage them to also shop for the generation supply for their business. In making such a recommendation, we requested that those parties who believed that small C&I customers should be eligible provide a proposed statewide definition for "small commercial customer" and provide an explanation as to how an EDC would identify such customers.<sup>26</sup>

In its resolution of the eligibility issue, the Commission stated:

The Commission recognizes the lack of shopping in the small C&I segment and, as such, requested comments on the inclusion of these customers in the Retail Opt-in Auctions. Parties were almost equally split between including and excluding small C&I customers. While the Commission agrees that shopping can be improved in this segment, it maintains its original proposal that small C&I customers should not be eligible to participate. Because there is no consistency across the EDCs in defining 'small commercial,' the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across

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<sup>25</sup> *Small business customer* – The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business classification and whose maximum registered peak load was less than 25kW within the last 12 months. See 52 Pa. Code § 54.2 (relating to definitions).

<sup>26</sup> Intermediate Work Plan Final Order at 37-38.

EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics.<sup>27</sup>

However, after the conclusion of the First Energy default service proceeding, the Commission turned 180 degrees on this issue. The Commission's reasoning was not based upon the variable definition of the small commercial class, as was the stated rationale set forth above, but on the basis that over half of the customers with loads under 25kW were not shopping. This new basis for its decision was something that had already been noted and considered, but dismissed by the Commission in the Intermediate Work Plan Final Order.<sup>28</sup>

In the First Energy DSP Order, the Commission stated:

Based upon our review and analysis of the evidence of record, we are persuaded by the arguments of RESA that the Companies Market Enhancement Programs should include small commercial customers as defined by RESA [loads up to 25kW]. While we recognize that this decision deviates from our conclusions in the *IWPP Order*, we find that RESA's position with regard to the relatively low levels of current shopping in the Companies service territories is compelling. In particular, the record indicates that over half of the small commercial customers in the Companies' service territories are not participating in the competitive market and the reasons for these customers not shopping are similar to those for residential customers.<sup>29</sup>

The OSBA submits that the Commission made an error of law in changing its rationale for including or excluding small C&I customers from the ROI Auction, and that the Commission has overlooked its previously-stated rationale for excluding small C&I customers. Including, in part, its conclusion that it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load, without giving any explanation, reasoning or analysis to support its change in position. The prior rationale is not even mentioned in the *First Energy DSP*

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<sup>27</sup> Intermediate Work Plan Order at 42.

<sup>28</sup> *Id.*

<sup>29</sup> First Energy DSP Order at 103-104.

Order. Therefore, the *First Energy* DSP Order should not be considered when determining whether small business customers should be eligible to participate in Duquesne's ROI Auction.

The September 27, 2012 PECO DSP *Binding Poll* at Docket No. P-2012-2283641, is also not controlling in this case. However, as with the *FirstEnergy* proceeding, if the Commission wanted to impose the exact same programs with the exact same parameters on all EDCs it could have. Rather, the Commission issued a set of directives for default service providers ("DSPs") to follow in the IWP Final Order,<sup>30</sup> but left some discretion to DSPs to tailor their respective retail market enhancement programs to their individual situations.

## 2. Standard Offer Program

The OSBA agrees with the Company's proposal to restrict the Standard Offer Customer Referral Program to residential customers.

## 3. Market Enhancement Program Cost Recovery

RESA, Dominion/IGS, and FES all oppose Duquesne's proposal to recover the costs associated with its retail market enhancements from EGSs through a discount on its purchased IGS receivables. The OSBA agrees with Duquesne that the costs of these programs should be recovered from the EGSs who will benefit from the programs, consistent with the Commission's directive in the Intermediate Work Plan Final Order. In the Final Order, the Commission correctly concluded, "In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction."<sup>31</sup>

<sup>30</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order Entered March 2, 2012).

<sup>31</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 1, 2012) at 78.

a. **RESA's Proposal for a \$0.005 kWh Adder to the Price to Compare**

RESA's has proposed that a new charge be added to the PTC in the amount of \$0.005/kWh. According to RESA, the additional charge would pay default service costs not otherwise collected by Duquesne as well as costs related to retail market enhancements. Duquesne would retain 10% of the remainder of the proceeds from the additional charge with the balance being returned to all distribution customers, despite being collected only from default service customers. The OSBA outlines in pp. 20-23 of its Main Brief why this proposed adder is unnecessary, contrary to law, and inequitable.

By way of further argument against RESA's proposed adder, the OSBA notes that it is in direct contravention of many of the themes contained in RESA's Main Brief, specifically, RESA's views regarding the impropriety of cross-subsidization and distortion of the PTC.

In its Main Brief, RESA argues that the adder is appropriate based on unsubstantiated claims that shopping customers are paying for default service costs in distribution rates, i.e., that Duquesne's rates are not fully unbundled, and thereby subsidize default service customers.<sup>32</sup> However, RESA then takes the exact opposite position that cross-subsidization of shopping customers by default service customers (through the adder) is appropriate. Although RESA argues that all customers will benefit from the retail market initiatives, RESA contends that only default service customers should pay for them, thus resulting in default service customers subsidizing shopping customers. RESA cannot have it both ways. As OSBA witness Mr. Kalcic explained, cost sharing should be a two-way street.<sup>33</sup>

<sup>32</sup> RESA Main Brief at 87. The OSBA disagrees with this after-the-fact justification for the adder and notes that if RESA had a genuine concern about default service costs being recovered in distribution rates, it should have raised the issue in Duquesne's most recent base rates case.

<sup>33</sup> OSBA Statement No. 2 at 3.

In RESA's view, default service ratepayers should pay for all of the costs of providing default service, and then pay for the costs of EGS marketing efforts and RMI initiatives (through the adder). This approach is not consistent with cost causation and it is not equitable.

Similarly, RESA argues against annual reconciliation because the result "will be to divorce the default service rates from underlying wholesale costs... thus distorting [customers'] perception of the market price of energy."<sup>34</sup> But, RESA's proposed adder will do just that by artificially inflating the PTC due to the fact that the surcharge is not based on the true cost of providing default service.

RESA's proposed adder is inconsistent with its own arguments against cross-subsidization and distortion of the PTC. It should be rejected.

**b. Non-Bypassable Charge Applicable To All Distribution Customers**

RESA's alternative cost recovery proposal and that subscribed to by Dominion/IGS and FES is to recover the costs of retail market enhancements through a non-bypassable charge applicable to all distribution customers (eligible to participate in a particular retail market enhancement). This argument is that because all distribution customers benefit from retail market enhancements, all customers should bear the costs of them.<sup>35</sup>

This argument ignores the fact that Duquesne's default service procurement program also benefits all customers by providing a viable option to EGS offers. However, it is unimaginable that suppliers would agree to share the RFP-related costs that Duquesne incurs to acquire electricity supply for default service customers. Therefore, since Duquesne's RFP-related procurement costs are the sole

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<sup>34</sup> RESA Main Brief at 72.

<sup>35</sup> RESA Main Brief at 60 and Dominion/IGS Main Brief at 16.

responsibility of default service customers, it is only fair that the costs of retail market enhancements should be the sole responsibility of EGSs or their shopping customers.<sup>36</sup>

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

Please see the discussion in Section C above.

### **D. RATE DESIGN**

#### **1. Reconciliation Issues**

Consistent with its procurement proposals, RESA recommends that Duquesne reconcile its default service rates quarterly.<sup>37</sup> However RESA's quarterly reconciliation proposal is premised upon the Commission approving RESA's procurement plans. Absent such approval, there would be no cause for quarterly reconciliation of rates. Additionally, RESA has failed to provide any evidence that annual reconciliation would be inappropriate under Duquesne's Small C&I and Medium C&I procurement plans. The OSBA supports the Company's proposal for the reconciliation of over-collections and under-collections associated with the respective default service rates paid by Small C&I and Medium C&I customers on an annual basis.<sup>38</sup>

#### **2. Price To Compare Calculation Date**

The OSBA took no position on the issue of the Calculation Date. Please see Section 3(a) (above) for the OSBA's response to RESA's proposal for a \$0.005kWh adder to the Price-to-Compare.

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<sup>36</sup> OSBA Main Brief at 18.

<sup>37</sup> RESA Main Brief at 72.

<sup>38</sup> OSBA Statement No. 2 at 11.

### 3. ~~Non-Bypassable Charge To Recover PJM Charges~~

At the present time, Duquesne recovers PJM charges associated with default service load in its Transmission Service Charge ("TSC"). Since the TSC is paid only by default service customers, the TSC is a component of the price-to-compare ("PTC") for all default service procurement groups.<sup>39</sup> Constellation and RESA propose to change the method by which Duquesne recovers transmission charges. Under Constellation's proposal, Duquesne would assume responsibility for *all* transmission charges for *all* distribution customers, so that the TSC would become a non-bypassable charge (and removed from the PTC). Under RESA's proposal, Duquesne would assume responsibility for certain *non-market based* transmission charges for both shopping and non-shopping customers, and recover such charges in a non-market based rider ("NMB Rider").

The OSBA does not oppose recovering non-market based transmission costs such as Generation Deactivation charges for all customers in a non-market based ("NMB") rider. However, the NMB Rider could effectively end up "double-billing" current shopping customers for non-market based transmission costs (until their existing contracts expire). Therefore, the OSBA recommends that any implementation of the NMB Rider be delayed for a period of time, perhaps one year, in order to minimize the possibility that current shopping customers are double billed.<sup>40</sup>

The OSBA opposes Constellation's proposal to remove the TSC from the PTC. Constellation's proposal would relieve retail suppliers of responsibility for *non-market based* costs (e.g., NITS service). Relieving retail suppliers of such cost responsibility will not produce

<sup>39</sup> Duquesne Light Statement No. 4-R at 21.

<sup>40</sup> OSBA Statement No. 2 at 11-13.

any commensurate supply price benefits for consumers (since no risk premiums should be attached to such costs). Furthermore, removing all transmission costs from the PTC would deprive shopping customers of the opportunity to save money on the transmission portion of their bills.<sup>41</sup>

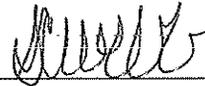
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<sup>41</sup> OSBA Main Brief at 20.

**IV. CONCLUSION**

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein. The OSBA also respectfully requests that the Commission require Duquesne to file its compliance tariff(s) with redlines, noting the changes from the present tariff(s).

Respectfully submitted,



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