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October 22, 2012

Rosemary Chiavetta, Secretary  
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**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 for filing please find the Reply Brief of Duquesne Light Company for the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,

Michael W. Gang

MWG/jl

Enclosures

cc: Honorable Katrina L. Dunderdale  
Certificate of Service  
Edward Berzonsky

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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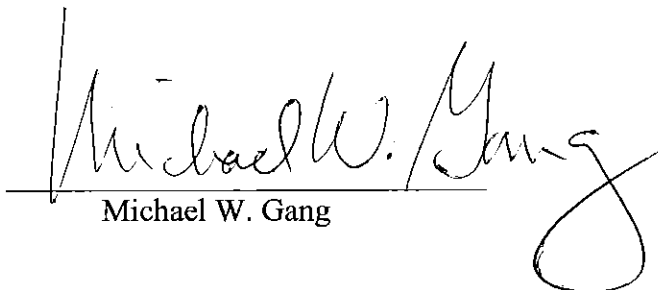
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF  
DUQUESNE LIGHT COMPANY**

**TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:**

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## **I. PROCEDURAL HISTORY**

A detailed procedural history is set forth on pages 1-3 of Duquesne Light Company's ("Duquesne Light" or the "Company") Main Brief. On October 5, 2012, Duquesne Light, the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Citizen Power, Inc. ("Citizen Power"), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Constellation NewEnergy, Inc., Exelon Generation Company, NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing (collectively the "Joint Suppliers"), Dominion Retail, Inc. and Interstate Gas Supply, Inc. (collectively "Dominion/IGS"), Duquesne Industrial Intervenors ("DI"), FirstEnergy Solutions Corp. ("FES"), and the Retail Energy Supply Association ("RESA") filed Main Briefs pursuant to the schedule adopted by Administrative Law Judge Katrina L. Dunderdale (the "ALJ") in the above-captioned proceeding. Duquesne Light hereby submits its Reply Brief in response to the Main Briefs filed by the other parties.

## **II. SUMMARY OF ARGUMENT**

Duquesne Light has proposed a default service plan that carefully balances its obligation to provide default service at least cost over time, giving effect to the benefits of rate stability, with its obligation to advance and enhance the competitive market available to its customers. The Company has a long history of doing so, which has helped to produce one of the most successful competitive markets in the Commonwealth and the nation. The Company's experience and success in this regard justifies careful consideration of its proposed plan to continue and improve competitive markets in its service territory.

In this regard, the Company has proposed procurement plans in this DSP VI Plan for its Residential, Small C&I and Medium C&I default service customers that will provide each group of customers with more market responsive default service rates than under its current DSP V

Plan. This follows a continuous pattern of increasing the market responsiveness of rates by procurement group or customer class in prior default service proceedings as customers in each group have become more familiar with shopping as evidenced by increased levels of shopping. This approach has allowed customers to become comfortable with shopping while retaining reasonable, appropriately stable default service rates, thereby fostering confidence in competitive markets.

As in prior proceedings where, for instance, the Company was the first major electric distribution company to offer a purchase of receivables program to electric generation suppliers, the Company proposes, in this proceeding, Retail Market Enhancement (“RME”) Programs that are designed to familiarize those customers remaining on default service with options in the competitive market. The Company’s Market Enhancement Programs are closely aligned with guidelines issued by the Commission as part of its Retail Market Investigation. The programs are also designed to work closely with the Company’s default service plan so that customers will receive a set of compatible options that continue to foster customers’ confidence in competitive markets through transparent comparisons of rates while providing reasonable stable rates to customers that remain on default service.

The broad scope of the Company’s DSP VI Plan has received support from most parties in this proceeding, including consumer advocates, representatives of the relevant classes and electric generation suppliers serving significant numbers of customers in the Company’s service area. The Company’s proposal is designed to balance the positions of parties which desire greater assurances that smaller customers that remain on default service are provided a more stable priced offering and the position of RESA, which focuses on restructuring default service rates to make them more market responsive as RESA contends that this would encourage more

customers to elect service from electric generation suppliers (“EGSs”). Adopting the Company’s balanced proposal will continue the process of advancing competitive markets and meeting the default service procurement requirements of Act 129.

### **III. ARGUMENT**

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

##### **1. Burden Of Proof**

Duquesne Light’s position regarding the burden of proof is set forth on pages 12-13 of its Main Brief.

##### **2. Legal Standards Applicable To Default Service**

Duquesne Light’s position regarding legal standards applicable to default service are generally set forth on pages 13-15 of its Main Brief. In addition, the Company has also specifically addressed or responded to parties’ legal arguments, as appropriate, in each Section of its Main and Reply Briefs, noting in particular that it is rebutting RESA’s argument that the specific default service requirements mandated under Act 129 can be met through the competitive market in Section III(B) below.

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

As explained in the Company’s Main Brief, the Company’s procurement plans for each procurement group reflect a carefully crafted balance of the two goals of the Competition Act, as amended by Act 129. These goals are to: (1) provide default service at rates that are least cost over time taking into consideration the benefits of price stability; and (2) to develop a competitive market where customers have access to power supplies from EGSs. One very clear example of the Company’s efforts to achieve this balance is reflected in the Residential default service procurement plan. The Company proposes to acquire 50% of its default supplies for Residential customers through two back-to-back, simultaneously procured, one-year contracts

for each of the years in DSP VI (June 1, 2013 to May 31, 2014 and June 1, 2014 to May 31, 2015). This approach will provide protection for these customers against the uncertainty about future market price movements just as the two-year contracts proposed by and approved for other utilities will,<sup>1</sup> but at the same time it provides for more market responsive default service rates than two-year contracts would. The proposal provides benefits and protections for default service customers by purchasing some Residential supplies for the second year of DSP VI at the same time that some supplies are purchased for the first year of DSP VI, thereby providing a hedge against a possible subsequent unexpected sharp increase in power prices. Duquesne Light St. No. 8-R, pp. 30-32. This component of the proposal reflects the requirement of Act 129 that the default service plan provide for procurements that reflect least cost over time reflecting the benefits of price stability. However, these benefits could have been achieved by simply using a two-year contract.

In order to balance the price stability goals of Act 129 with the goal of encouraging and supporting a competitive market, the Company developed the proposal to use back-to-back one-year contracts to make the Residential default service rates more market responsive to annual changes in market conditions. Specifically, by simultaneously procuring back-to-back one-year contracts instead of two-year contracts, the prices for the two years' supply would reflect the currently known price increase for capacity on June 1, 2014 under PJM's RPM capacity auctions and would also reflect the market's expectation of the differences in energy prices across the two years. Duquesne Light St. No. 8-R, pp. 30-32.

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<sup>1</sup> The Commission approved two-year contracts for both the PE Companies and PECO. *Joint Petition of Metropolitan Edison Co. Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, et al, Order entered August 16, 2012 ("FE Order"), p. 26. *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Recommended Decision, p. 5, Commission Order entered October 12, 2012 ("PECO Order"), p. 17 (adopting the RD and PECO's proposal on this issue).

In contrast, RESA, unlike other EGSs as well as non-EGSs in this proceeding, seeks only to make Residential and Small C&I rates even more market responsive than proposed by the Company, giving no weight to the requirement under Act 129 that default service rates should reflect the benefits of price stability. This conclusion is made perfectly clear by RESA's contention that all contracts should be acquired within two months of the start of the contract delivery period, thereby exposing customers to greater rate instability and reducing the ability of the portfolio to hedge against increasing prices.

In order to attempt to counter criticisms of its failure to propose procurement plans that will provide default service rates that reflect least cost over time taking into account the benefits of price stability, RESA states as follows:

The Commission has clarified that default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard. It is irrefutable, and clearly recognized by the Commission, that the best and most certain way to provide customer benefits and electric service at least cost over time is to create a robust and sustainable competitive market.

RESA MB, p. 13, footnotes omitted.

If there is any doubt as to RESA's position, and its rationale for developing its procurement plan, it is made clear in RESA's surrebuttal testimony, where RESA's witness, Ms. Williams, states as follows:

RESA's proposals not only address how consumers who want price stability would be able to receive it, but pave the way for consumers with other desires and objectives with respect to electricity to receive those products and services that better meet their individual needs. The fact that these products and services would be available in the competitive market, rather than provided by the EDC default service provider, is the epitome of the intent of the Competition Act and is in no way inconsistent with the Act 129 legislative preamble to give "due regard" to price stability.

RESA St. 1-SR, p. 5.

Finally, in its Main Brief, RESA summarizes its overall position regarding how it assumes that its proposals will allegedly provide the rate stability benefits contemplated in Act 129 to customers.

To the extent that consumers want “stable” pricing, such products will be available in a robust competitive retail electricity market.

RESA MB, p. 17.

While RESA states that default service rates must “consider” price stability, RESA argues that such price stability can come from the competitive market. This is a fundamental flaw in RESA’s position. As explained below, Act 129, which amended the Competition Act, unequivocally and in plain language requires that default service be provided at least cost over time giving effect to the benefits of price stability. *Electricity Generation Customer Choice and Competition Act*, Dec. 3, 1996, P.L. 802, No. 138 (“Competition Act”) as modified by Act 129 of 2008, P.L. 1592, No. 129 (“Act 129”).

Act 129 does not set forth any standards or requirements for EGS offers to customers. Instead, Act 129 sets forth specific requirements for “default service providers” providing default service. Section 2807(e)(3.1) provides that the “default service provider” is to acquire default supplies through a competitive procurement plan. 66 Pa.C.S. § 2807(e)(3.1). Section 3.2 requires that the electric power procured by the default service providers include a “prudent mix” of contracts. 66 Pa.C.S. § 2807(e)(3.2). Section 3.4 requires that the prudent mix of contracts acquired by the default service providers be designed to ensure “the least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.4). This is further confirmed in Section 2807(e)(3.7) which provides as follows:

. . . the commission shall consider the **default service provider’s** obligation to provide adequate and reliable service to customers and that the **default service provider** has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis . . .

66 Pa.C.S. § 2807(e)(3.7) (emphasis supplied).

The least cost standard under Act 129 clearly applies to default service provided by default service providers.<sup>2</sup> Nowhere does Act 129 indicate that the “least cost” and “price stability” standards can be met by simply relying on EGSs to meet those standards for all customer classes. Act 129 does not regulate EGSs and does not require that EGSs: (1) obtain supply through competitive procurement processes, (2) obtain a prudent mix of contracts to supply customers, or (3) meet a least cost standard. RESA’s argument that the Act 129 least cost over time and price stability standards can be met by simply relying on EGSs to meet those standards for all customer classes are directly contrary to the plain language of Act 129 which regulates “default service providers” not EGSs.

Moreover, it must be emphasized that the default service requirements under Act 129 are much more in-depth and detailed than those originally promulgated under the Competition Act. The Competition Act simply provided for EDCs to acquire default supplies at “prevailing market prices.” See 66 Pa.C.S. § 2807(e)(3) prior to Act 129 changes. Act 129 imposes significant additional requirements on default service providers, including:

- A least cost standard, which specifically includes taking into account any benefits of price stability over time. See 66 Pa.C.S. § 2807(e)(3.4), Historical and Statutory Notes set forth at the end of 66 Pa.C.S. § 2806.1;
- A prudent mix of contracts; and
- Competitive procurement processes.

66 Pa.C.S. § 2807(e)(3.2), (3.4). A material change in the language of an original act indicates a change in legislative intent. *Sekel v. Lagenemma*, 90 A.2d 587, 170 Pa. Super. 621 (1952). The

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<sup>2</sup> The statutory references provided above are not the only provisions of Act 129 directed toward default service providers. See also, Section 2807(e), 2807(e)(3.5), 2807(e)(3.6), 2807(e)(3.9), 2807(e)(6) and 2807(e)(7).

legislative change to Act 129 clearly indicates that the default service provider's default service procurement plan must meet the Act 129 standards. Accordingly, RESA's contention that the requirements of Act 129 can or should be met by the competitive market is flawed and must be rejected along with RESA's proposal that default service procurement plans need not provide rate stability.

**1. Residential Procurement Issues**

**a. Product(s) and Product Terms**

As explained in its Main Brief, Duquesne Light has proposed to procure default service supplies through RFPs, issued at various times, for one-year fixed-price full requirements contracts. While most parties support the Company's approach, RESA proposes to replace one-half of the one-year contracts with 90-day contracts. OCA proposes to substitute 25% of the Company's one-year contracts with a block-and-spot component and to incorporate two-year contracts into the procurement plan. The Company has explained the reasons why these proposals should be rejected in its Main Brief, and will respond only briefly in this Reply Brief to contentions of the parties in their Main Briefs.

**i. RESA's 90-Day Procurements Should Be Rejected**

RESA makes two principal arguments in its Main Brief. The first is RESA's contention that the level of shopping and EGS participation in Duquesne Light's residential market is sufficiently advanced that additional price responsiveness is necessary to encourage additional shopping. The second contention is that its mix of 90-day and one-year contracts is an appropriate transition to the Commission's recently proposed end state default service model using only 90-day contracts for Residential and Small C&I customers.

RESA argues that incorporating 90-day contracts into the Residential procurement plan will create greater shopping. This contention is based on RESA's conclusion that more frequent

default service price changes have produced more shopping in Maryland. This contention has been refuted on the record by Duquesne Light and FES, as explained in main briefs.<sup>3</sup> Duquesne Light MB, pp. 20-21; FES MB, pp. 12-15. Equally important, RESA's proposal does not provide sufficient rate stability for Residential customers as it would interject quarterly contracts reflecting seasonal demands and pricing and quarterly rate changes. As noted above, RESA erroneously ignores the Act 129 requirement that default service rates must provide service at least cost over time taking into consideration the benefits of price stability.

RESA also contends that the Commission's recently proposed end state default service model recommending only 90-day contracts for Residential and Small C&I customers justifies RESA's procurement proposal as a transition to this end state. RESA MB, p. 18.

Duquesne Light notes that the Commission has issued an end state proposal not an end state decision. Such proposal is subject to comment and potential revision as well as to review concerning whether it would meet the procurement requirements and standards of Act 129 or if it

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<sup>3</sup> In addition to the points made by Duquesne Light in its Main Brief, it responds here to another one of RESA's arguments about its Maryland data, which RESA made in its Main Brief. Specifically, RESA argues that "RESA's Exhibit AW-2 [which shows historical Maryland switching levels for various customer classes], developed in response to FES' rebuttal testimony, illustrates the difference in shopping between customers that receive laddered 24-month contracts, semi-annual and 3-month contracts, and hourly priced service." RESA MB, p. 22. In response, Duquesne Light notes that, while RESA tries to use its Exhibit AW-2 to attribute differences in switching levels to the different underlying supply portfolios serving the different Maryland customer classes, this exhibit instead simply illustrates a generally accepted fact that RESA has overlooked, and that has nothing to do with the underlying supply portfolios. That is, larger customers generally have a greater propensity to elect service from EGSs than smaller customers. As a result, RESA's conclusions are invalid. Duquesne Light St. No. 8-RJ, pp. 16-17. Finally, Duquesne Light notes that a more in-depth look at the specific historical situation in Maryland indicates that the increase in historical Maryland switching referenced by RESA had nothing to do with RESA's concept of having more "market-reflective default pricing." Duquesne Light St. No. 8-R, pp. 37-40.

would require legislative changes.<sup>4</sup> RESA is clearly putting the cart before the horse in arguing that the Commission should adopt a transition to an end state that has yet to be vetted by due process.

Further, RESA's argument that its proposed mix of 90-day and one-year contracts is a reasonable transition to end state default service should be rejected even if the Commission were to conclude that end state default service for Residential customers may and will reflect only 90-day contracts. Duquesne Light's Residential default service customers had 3-year fixed rates under DSP IV and now have 29-month fixed rates under DSP V, through May 31, 2013. By RESA's own admission, shopping by Residential customers has increased dramatically from 22.2% at the beginning of DSP V to 43% in July 2012. RESA MB, p. 18; Duquesne Light St. No. 3-R, p. 10. Duquesne Light's proposed DSP VI Plan already involves more market responsive rates and more frequent rate changes for Residential customers than previous default service plans. Therefore, the DSP VI Plan for Residential customers already provides a transition to even more market responsive rates that may be required for future default service periods after the Commission reviews and evaluates comments on the proposed end state proposal. Even if the Commission adopts only 90-day contracts for DSP VII, then customers

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<sup>4</sup> In his Concurring and Dissenting Statement to the Commission's issuance of its end state proposal, Commissioner Cawley expressed doubt about the end state proposals compliance with Act 129:

For this reason, more short term, market-responsive pricing is a better policy than our current statute, which contains conflicting provisions. Arguably, the "least cost over time" standard logically supports shorter term default service pricing, whereas the "prudent mix" portfolio requirement arguably requires a short, medium and long term supply portfolio.

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will be moved from 29-month fixed rates in DSP V to one-year rates in DSP VI followed by quarterly rates in DSP VII.<sup>5</sup>

**ii. OCA's Block and Spot Proposal Should Be Rejected**

In its Main Brief, the OCA argues that Duquesne Light should include a block-and-spot component in its Residential procurement plan. OCA MB, p. 16. The OCA argues that a block-and-spot component is beneficial because it would reduce risk premiums and enhance Duquesne Light's ability to achieve a prudent mix of contracts under Act 129. OCA MB, p. 17.

Duquesne Light explained why it opposed the OCA's block and spot proposal on pages 25-28 of its Main Brief.<sup>6</sup> In addition, many of the parties in this proceeding oppose the OCA's proposal to add a block and spot component to the procurement mix. FES MB, p. 9; RESA MB, p. 23; Dominion/IGS MB, p. 8. Moreover, the Commission has rejected the OCA block and spot proposal in both the FE Companies and PECO default service proceedings. *FE Order*, p. 26; *PECO Order*, p. 17.

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<sup>5</sup> RESA argues that its proposed Residential product mix is consistent with the FE Companies Order entered by the Commission. RESA MB, p. 24. However, to the contrary, Duquesne Light's proposed Residential product mix is more similar to the product mix approved by the Commission in the FE Companies proceeding, as 90% of the FE Companies' Residential product mix consists of one-year and two-year supply contracts instead of generally much shorter-term contracts as proposed by RESA. Duquesne Light Brief, Appendix B.

<sup>6</sup> The OCA made a couple of additional related claims in its Main Brief that Duquesne Light rebutted in testimony. For example, the OCA claims, "The relatively small proportion of load served through the block-and-spot arrangement [under the OCA's proposal] 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 [Duquesne Light witness] Scott Fisher." (OCA MB, p. 19). In response, Duquesne Light notes that, contrary to the OCA's belief that limiting the size of the block-and-spot component would make inclusion of this component attractive, Duquesne Light witness Scott Fisher's analysis shows that a smaller block-and-spot component could still have negative effects but just to a lesser degree. (Duquesne Light St. No. 8-R, p. 17 and Duquesne Light St. No. 8-RJ, p. 7). Furthermore, Duquesne Light notes that the OCA's proposal involves having a fairly significant portion, between 21% and 38% of the Residential default service load be supplied through the block-and-spot component. (Duquesne Light St. No. 8-RJ, p. 7).

The OCA has not provided sufficient justification to include a block-and-spot component in the Residential procurement plan in this proceeding, and no basis to distinguish the Commission's rejection of these products in other cases. The block-and-spot component proposed by OCA would impose additional risks on default service customers and would not make the procurement plan more consistent with Act 129. Duquesne Light St. No. 8-R, pp. 10, 17-18. For the reasons explained herein and in the Company's Main Brief, and for the reasons the Commission rejected the OCA's block-and-spot component in both the FE Companies and PECO default service proceedings, the OCA's proposal to include a block-and-spot component in Duquesne Light's Residential procurement plan should not be accepted.

**iii. Proposals for Two Year Procurements Should Not Be Accepted**

OCA argues that the Company should include two-year full requirements products in its Residential procurement plan. OCA MB, p. 13. OCA argues that two-year contracts will: (1) provide an additional product in the portfolio mix, (2) allow the Company to take advantage of current market prices, and (3) provide a hedge against future price increases. OCA MB, p. 13. Citizen Power supports OCA's request for two-year contracts. Citizen Power MB, p. 5.

The OCA continues to ignore the fact that the Company is proposing to simultaneously acquire back-to-back one-year contracts that have the same hedging benefits as acquiring two-year contracts, while at the same time providing better market responsiveness due to the known increase in capacity costs scheduled for June 1, 2014. See Duquesne Light MB, pp. 28-30. Citizen Power recognizes the capacity price increase and argues that a two-year contract would smooth the increase. Citizen Power MB, p. 5. The only relevant difference between acquiring a two-year contract and simultaneously procuring back-to-back one-year contracts is that the back-to-back one-year contracts will be more market responsive. In its Main Brief, the OCA

minimizes the effect of the known capacity price increase on default service rates, claiming that the change in capacity prices will have less than a 10% effect on the PTC. OCA MB, p. 15. Duquesne Light does not agree that a 10% effect on the PTC is minimal in this context and, even if it were, then this would not justify a rejection of Duquesne Light's proposal to simultaneously procure back-to-back one-year contracts rather than two-year contracts.

In sum, Duquesne Light's innovative proposal properly balances RESA's desire for significantly shorter-term products in order to make the default service rates even more market responsive, and providing customers with the benefits of rate stability contemplated in Act 129.

**b. Procurement Dates**

RESA argues that the Company should procure all default supply products no more than two months in advance of delivery. RESA MB, p. 25. RESA argues that this is necessary to make default service rates more market reflective. RESA MB, p. 25. Like many of its other proposals, this proposal by RESA would entail a reduction in default service rate stability to the detriment of default service customers. RESA's proposal should not be accepted for several reasons.

First, RESA argues that its proposal is consistent with the *FE Order*. RESA MB, p. 25. Duquesne Light disagrees with RESA's analysis. In this proceeding, RESA is proposing that all procurements be conducted no more than 60 days from the delivery period. In the *FE Order*, the Commission directed that no procurement be conducted more than five months from the delivery period. *FE Order*, p. 26.

RESA also argues that one of Duquesne Light's procurements is 14 months in advance of the delivery period. RESA MB, p. 26. RESA further argues that this is inconsistent with the Commission's *FE Order*. Contrary to RESA's assertions, the 14-month lag period is consistent with the *FE Order* because the Commission approved 2-year procurements in the FE case. *FE*

*Order*, pp. 25-26. If Duquesne Light's back-to-back one-year procurement is treated as a two-year contract, the lag between procurement and start of the delivery period is less than 60 days. Duquesne Light St. No. 8-R, pp. 30-32. As explained in Section III (B)(1)(a) above, Duquesne Light proposed one-year back-to-back contracts so that the default service prices were more market responsive than a two-year contract. If the FE case is followed with consideration of the benefits to the competitive market of back-to-back one-year contracts, then it would be appropriate to have two-year contracts in a portfolio as long as the RFP was conducted 5 months in advance of commencement of delivery. However, doing so would lose the competitive market benefits of back-to-back one-year contracts procured simultaneously, for default supplies to be delivered during the same time period as the two-year contract. According to RESA, this would not be appropriate because the second year delivery period for the back-to-back contracts is too far removed from the RFP date. RESA's argument simply does not make sense. Both the two-year procurement contract and the one-year back-to-back contracts would have the same delivery period. RESA's argument also is unreasonable because the one-year back-to-back contracts are more market responsive than a two-year contract because the one-year back-to-back contracts reflect the known increase in capacity prices set for June 1, 2014.

RESA further argues that Duquesne Light's criticism of OCA's proposal for two-year contracts contradicts the Company's proposal for back-to-back one-year contracts. RESA MB, p. 27. RESA misconstrues Duquesne Light's argument. Duquesne Light St. No. 8-RJ, pp. 21-24. Duquesne Light is not proposing to procure back-to-back one-year contracts because it believes that energy prices are favorable. Rather, Duquesne Light is proposing back-to-back one-year contracts as a hedge to provide rate stability to customers, while preserving market responsive prices for each of the one-year periods.

If RESA's proposal to dramatically shorten all lead times to less than 60 days is adopted, it could significantly reduce price stability benefits for customers. Specifically, if the Commission were to shorten the lead times so as not to allow for the simultaneous procurement of back-to-back one-year contracts, then the supply portfolio's ability to hedge against subsequent unexpected movements in power prices would be impaired. In the event that the procurement dates would coincide with a market disruption, the impact on default service rates would likely be more severe because more supply will be acquired at the same point in time. The Commission approved the procurement of two-year contracts in both the FE Companies and PECO default service proceedings, and Duquesne Light's customers should be provided the same hedging and price stability benefits, through the simultaneous procurement of back-to-back one-year contracts.

For the reasons explained herein and in the Company's Main Brief at pages 30-32, RESA's proposal to reduce the lead time, between the date in which a given supply contract is procured and the start of delivery under that contract, to less than 60 days should not be accepted.

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

In its Main Brief, the OCA proposes that the Company hold back 20% of default service supply from the default service RFPs to account for potential Retail Opt-In ("ROI") Program participation. OCA MB, pp. 26-30. The OCA proposes that the Company hold back 20% of supply to reduce the risk premium included in bids by wholesale default service suppliers. OCA MB, p. 27.

Duquesne Light explained the reasons why it opposed the OCA's proposal on pages 32-34 of the Company's Main Brief. In addition, the Company notes that the Commission rejected the OCA's proposal to hold back 20% of default service supply to account for potential ROI

Program participation in both the FE Companies and PECO default service proceedings. *FE Order*, p. 29; *PECO Order*, p. 36. OCA's proposal should not be adopted in this proceeding.

**2. Small C&I Procurement Issues**

**a. Product(s) and Product Terms**

Duquesne Light proposes to acquire default service supply for Small C&I customers through laddered, 12-month full-requirements contracts. Duquesne Light Ex. No. 1, p. 9. Duquesne Light's proposal is supported by the OSBA and by FES. Similar to its proposal for Residential customers, RESA proposes that Duquesne Light replace 50% of its 12-month contracts with 3-month contracts. RESA MB, p. 29.

The Company explained why it opposes RESA's proposal on pages 35-36 of its Main Brief. In addition, the Company further explained why RESA's 3-month procurement proposal is not necessary to accommodate the RMI End State Proposal and why the Act 129 price stability requirements cannot be legally met by simply relying on EGSs to meet those standards for all customer classes in Section III(B) above. For these reasons, RESA's proposal to replace 50% of the Small C&I 12-month contracts with 3-month contracts should not be accepted.

**b. Procurement Dates**

Duquesne Light's position with respect to the procurement dates for default service supply is explained on pages 36-37 of its Main Brief and also in response to Section III(B)(1)(b) above.

**3. Medium C&I Procurement Issues**

**a. Product(s) and Product Terms**

Duquesne Light has proposed to acquire default service supply for Medium C&I customers through 6-month full requirements contracts, all procured within 60 days of delivery. Duquesne Light Ex. 1, p. 12. OSBA proposes that default service supply for Medium C&I

customers be procured through 12-month contracts, and RESA proposes that default service supply for Medium C&I customers be acquired solely through 3-month contracts. OSBA MB, p. 10; RESA MB, p. 31.

Duquesne Light has explained why its procurement proposal for Medium C&I customers is a reasonable compromise between the OSBA and RESA positions. Duquesne Light MB, pp. 37-39. In addition, RESA's proposal that Medium C&I default service be provided solely through 3-month contracts procured no more than 60-days in advance of each delivery period could lead to significant rate instability due to seasonal variations in energy prices. In this regard, the Company notes that the Medium C&I class contains customers with demands ranging from 25 kW to 300 kW, with many customers below 100 kW that are relatively small customers. Duquesne Light Exh. No. 1, p. 11. For the reasons explained herein and in the Company's Main Brief, the Company's proposal to acquire default service supply for Medium C&I customers through 6-month full-requirements contracts should be adopted.

**b. Procurement Dates**

No party opposes the Company's proposal that all procurements for Medium C&I customers be conducted within 60 days of the start of the corresponding contract's delivery period.

**4. Large C&I Procurement**

No party opposes the Company's Large C&I procurement plan.

**5. Default Service Supply Load Cap**

Duquesne Light proposes that no one default service supplier be awarded more than 50% if the supply tranches available for any procurement class in any RFP. Duquesne Light St. No. 2, p. 17. Duquesne Light's position is set forth at pages 39-40 of its Main Brief. The cap provides supplier diversity and limits exposure to a supplier default. Duquesne Light's proposal

to adopt a 50% cap is consistent with the Commission's direction in both the FE Companies and PECO default service proceedings. *FE Order*, p. 33; *PECO Order*, p. 41. The Commission should also adopt a 50% cap in this proceeding.

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

Duquesne Light's position regarding procurements of supply products with delivery periods that extend beyond May 31, 2015 is set forth on pages 41-42 of its Main Brief. Duquesne Light notes that the Commission allowed PECO to acquire default service supply to be delivered beyond May 31, 2015. In particular, the Commission explained its position as follows:

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 Order*, p. 31.

The inclusion of a limited amount of supply with delivery periods that extend beyond May 31, 2015 is also consistent with the Commission's *Intermediate Work Plan Order*. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (March 2, 2012) ("*Intermediate Work Plan Order*") In fact, in its *Intermediate Work Plan Order*, the Commission recognized that there may be legitimate concerns (e.g., regarding rate instability) about having a "hard stop" of supply on the end date of the default service plan period, so the Commission reiterated that EDCs may have supply contracts with delivery periods that extend beyond the end date of the default service plan period. Duquesne Light St. No. 8-R, pp. 55-56.

Consistent with the Commission's decision in the PECO proceeding and the *Intermediate Work Plan Order*, the Commission should adopt Duquesne Light's procurement plan, including

the procurement of contracts that extend beyond May 31, 2015, because the contracts will provide rate stability benefits for customers and can be redesigned if future conditions warrant. In addition, there will be sufficient time prior to the procurements to make adjustments if default service responsibilities change. Duquesne Light St. No. 8-R, p. 57.

**7. Miscellaneous Procurement Issues**

None.

**C. MARKET ENHANCEMENT PROGRAMS**

**1. Retail Opt-In Program**

**a. RFP ROI or Aggregation**

Duquesne Light proposed an RFP ROI Program to choose the EGSs that would provide service under the ROI Program. As explained in the Company's Main Brief, a low cost RFP would be issued that would provide for multiple EGSs to participate.<sup>7</sup> A supplier load cap would be applied to limit any winning EGS from obtaining more than 50% of the customers that elect to participate. Duquesne Light MB, pp. 46-48, 53-54. Duquesne Light believes that the proposed approach resolves potential issues of one EGS dominating the bids, and refutes contentions that EGSs will decline to participate because of alleged high costs of conducting the RFP. The RFP has the benefit of establishing a market determined discount at the minimum of 5% or above, as opposed to a fixed 5% discount administratively determined by the Commission. This would allow customer savings potentially to be higher and encourage more customers to participate in the program. Duquesne Light MB, pp. 58-61. Dominion/IGS and FES support this approach. Dominion/IGS MB, p. 13; FES MB, pp. 26-27. In addition, RESA notes that it is not

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<sup>7</sup> Unlike other EDCs that rely on descending clock auctions, Duquesne Light has been able to implement this type of RFP process for default service load with relatively little cost. See, e.g., Duquesne Light St. No. 4-R, p. 15; Duquesne Light St. No. 2, p. 7.

opposed to the "at least 5%" proposal were the Commission to implement an ROI auction instead of an ROI aggregation.<sup>8</sup> RESA MB, p. 41. Other parties in this case either support or do not oppose the use of an RFP.

In its Main Brief, RESA states that it can accept an opt-in aggregation program in lieu of an auction, if the Commission determines that aggregation is the appropriate policy. RESA MB, p. 9. RESA notes that it appears that the Commission has decided that an opt-in aggregation program should be employed based on policy pronouncements in the FE and PECO proceedings. However, RESA clarifies that it can support an opt-in aggregation program only on certain conditions since the FE and PECO orders do not describe how suppliers would be selected, how customers would be allocated to participating suppliers under an ROI aggregation program, and the mechanics of how the 8-month fixed price would be determined. RESA MB, p. 36. RESA St. No. 2-SR 17-19. Therefore, RESA's support for an aggregation program is conditional assuming the details that it proposes in its testimony are also adopted. RESA MB, p.36.

RESA has offered no basis to reject the use of an RFP that is supported by EGSs and other parties in this proceeding. Duquesne Light MB, p. 47. An RFP process would allow all licensed EGSs in good standing with the Commission to bid and to compete to serve customers in the ROI program. EGSs that do not win the RFP can continue to offer and market retail offers in their normal course of business. Duquesne Light St. No. 3, p.30. The proposed RFP process provides a market-based solution to address the concerns raised by EGSs about how customers (and costs) may be allocated if an aggregation program is adopted. Under an RFP process, both

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<sup>8</sup> RESA stated in testimony that it has consistently supported the opt-in auction proposal that first came out of the RMI process. RESA St. No. 2-SR, p. 19.

customers and costs would be allocated to participating EGSs based on the number of tranches awarded in the RFP process.

In contrast, under an ROI Aggregation Program, it is not yet clear how participation would be identified. For example, would EGSs sign up to provide service to a specific number of customers? If so, would the program be terminated when the sum of the customers that EGSs have agreed to serve equals the number that have elected to participate, thereby potentially leaving some electing customers unserved? What commitments must EGSs make to ensure that the resources will be available to pay \$50 bonus payments and to whom will those commitments be made? Dominion/IGS notes similar concerns in its Main Brief and requests that if there is no RFP for this process participating EGSs should be required to post collateral to cover deposits that are not paid. Dominion/IGS MB, p. 5. If this is done, the Commission must identify the terms and conditions for collateral, the means by which the Commission or Duquesne Light will apply such collateral requirement and how it will be implemented and enforced, a procedure for recovery of administrative costs and rules that would hold the Company harmless if the collateral is not sufficient.

Duquesne Light believes that the RFP process resolves all of these issues. Nevertheless, the Company will do its best to implement successfully the program that is adopted by the Commission. The Company respectfully submits that the above referenced issues should be resolved before an Aggregation ROI Program is implemented. In any event, if the Commission chooses to eliminate the RFP process in favor of an aggregation program, Duquesne Light's proposed 12-month fixed price product should be approved for the reasons described below *infra*, pp. 21-26. DLC St. 3-RJ, pp. 5-6.

**b. Term of Offer**

The Company proposed a 12-month, fixed-price program to allow customers to achieve a guaranteed discount for essentially a one-year period given the Company's proposed one-year residential procurements and annual changes in the PTC. Dominion/IGS, FES, OCA and CAUSE-PA all support this approach. Dominion/IGS MB, p. 13; FES St. No. 1, p. 3; OCA MB, p. 30; CAUSE-PA MB, pp. 11-12. In fact, all consumer interests and all individual EGSs support or do not oppose Duquesne Light's 12-month fixed-price term for the ROI Program. During the course of the proceeding, RESA's witness also stated that "RESA supports DLC's proposal for a 12-month, fixed price, guaranteed savings product for the opt-in auction provided that Duquesne Light's proposal to fix the price to residential customers for the first year is also adopted." RESA St. No. 2-R, pp. 2-3; OCA MB, pp. 41-42. Therefore, the Company believes that it has developed a balanced ROI program whereby the overall price and term structure is supported by most parties, and therefore, it is unnecessary to fundamentally alter the proposed program to match that adopted in the FE and PECO Orders. Duquesne Light St. No. 3-SR, pp. 2-14; Duquesne Light St. No. 3-R, pp. 22-25. Both OCA and Dominion also note that there are good reasons not to apply the *FE Order* in this case. OCA MB, p. 37; Dominion/IGS St. No. 1-R, p. 6. Moreover, as also explained below, there are important reasons to distinguish the circumstances in Duquesne Light's service territory and adopt a different approach than the approach adopted in the FE Companies and PECO default service proceedings.

In its Main Brief, RESA presses its view expressed in its surrebuttal testimony after the *FE Order* was adopted that the ROI Program should be a 4-month initial price at a discount, followed by an 8-month contract with a price that would be disclosed to the customer after the customer has enrolled. RESA proposes to disclose the price through the two required notices to the customers prior to the commencement of the 8-month term. RESA MB, pp. 9 and 39.

Duquesne Light noted in its Main Brief that RESA's 4-month/8-month product is essentially an opt-in/opt-out program. That is, the customer opts in to the 4-month initial price but must alternatively opt out if the customer does not like the subsequently disclosed 8-month price. Duquesne Light MB, p. 49. In its Main Brief, RESA defends its proposal, as follows.

Customers who were dissatisfied with the price or terms in the EGSs communication would be allowed to switch away from the EGS without any penalty. This approach is consistent with the Commission's adoption of Commissioner Witmer's motion addressing the retail market enhancement programs, in which the Commission decided that it would "... require that participating EGSs provide the PUC for review, the terms and conditions of the 8-month ROI fixed-priced offering." RESA interprets this passage to mean that the Commission intends that EGSs actively compete against one another to retain customers after the initial four month price expires, rather than dictating an administratively-determined price for that 8-month period.

RESA MB, pp. 40-41.

Essentially, RESA "reads" Commissioner Witmer's motion to state that EGSs can charge whatever they want and the market will take care of it. The Company disagrees. The language of Commissioner Witmer's motion is clear: there are real issues with providing customers with a rate for the 8-month product after the customer has enrolled. Dominion/IGS and FES note some of these issues in their main briefs. These issues include:

- Assignment of customers by the Company to EGSs that will ultimately have different 8-month prices thereby creating dissatisfaction with the program;
- Confusion for customers as to offering two products with different prices (a 4-month product and an 8-month product), one of which does not have either an identified price or guaranteed discount off the PTC; and
- The lack of price transparency at the time of customer enrollment given the inability of customers to know the price(s) over the entire 12-month period.

For these reasons, both Dominion/IGS and FES propose in their main briefs that if a 4-month/8-month product is adopted, the Commission should require (1) a uniform price among participating EGSs for the 8-month product; and (2) identification of the uniform price before the customer enrolls. Dominion/IGS MB, p. 13; FES MB, pp. 26-27.

Duquesne Light agrees that the requirements proposed by Dominion/IGS and FES should be implemented if a 4-month/8-month price is to be employed. However, the Company notes that identifying the 8-month price at the time of the enrollment is essentially that the same as offering a 12-month price as proposed by the Company. The only difference is that the discount offered by EGSs on the 8-month price could be different than the mandatory 5% discount off the current PTC in the 4-month product. In fact, RESA testified that the 8-month price may even be above the PTC. RESA St. No. 2-SR, pp. 18-19. Duquesne Light believes that potentially different prices and/or percentages off the PTC for the two periods may confuse customers and discourage participation. Nevertheless, if the 4-month/8-month product is adopted, the Dominion/IGS and FES proposal would let the customer know what the 8-month price will be and what the prices are for the entire 12-month period when the customer enrolls and makes an affirmative decision to “opt in”. Duquesne Light believes that such an approach is extremely important to create trust in competitive markets and to get reluctant shoppers to enroll in the ROI Program.

OCA supports the 12-month fixed price of at least 5% off the June 1, 2013 PTC proposed in the Company’s RFP Program because it effectively provides the customer with guaranteed savings under the Company’s one-year residential procurements and annual proposed PTC charges. OCA MB, pp. 38-39. OCA opposes RESA’s 4-month initial price followed by an unidentified 8-month price which would provide no guaranteed savings for the 8-month period,

noting that an EGS should be able to provide a fixed price for a one-year period and that price should be below the one-year PTC under Duquesne Light's Residential Procurement Plan. OCA MB, p. 38. Indeed, as noted in the Company's Main Brief, RESA's witness, Mr. Kallaher, testified that EGSs can provide one-year fixed prices because the product can be hedged. Duquesne Light MB, p. 50; RESA St. 2-R, p. 8.<sup>9</sup>

While the 4-month/8-month product could be improved by adopting the Dominion/IGS and FES proposals, the better approach is to adopt the Company's one-year fixed price/percentage of the PTC for the ROI Program and the Company's one-year Residential procurement and annual PTC. These carefully designed compatible approaches provide a straightforward product with guaranteed savings to customers that have been reluctant to shop. As noted by OCA in its Main Brief, the unique circumstances of high levels of Residential shopping as of September 2012 in the Company's service territory which have reached 41.3% of Residential customers and 44.7% of Residential load, should be considered in deciding whether to follow the decisions in FE and PECO on this question. OCA MB, p. 33. The concerns of the Commission in FE and PECO that led to the 4-month/8-month approach appear to be that EGSs cannot commit to beat a PTC that changes quarterly. In this regard, even RESA's witness stated

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<sup>9</sup> In its Main Brief, RESA mischaracterizes Duquesne Light's proposal as a "12-month term that guarantees a five percent savings off of the PTC" claiming that it is unlikely to produce the best price for the customer because it exposes EGSs to an unreasonable level of risk since EGSs generally are not comfortable offering a mandated guaranteed savings against a price that might change over time in an unforeseeable manner. RESA MB, p. 40, emphasis added. However, the Company has proposed a 12-month, fixed-price product that represents at least a 5% discount off the applicable PTC as of June 1, 2013. Duquesne Light has not proposed that EGSs be forced to change their price if and when the PTC changes and guarantee 5% savings no matter what. Therefore, it does not expose EGSs to an unreasonable level of risk by guaranteeing savings over a long period of time. Duquesne Light's proposal has been carefully designed to allow EGS to offer a fixed price and at the same time allow customers to receive guaranteed savings over a 12-month term due to its annual PTC. The Company believes this is more likely to encourage customer participation in the program and result in customer satisfaction with competitive markets. Duquesne Light MB, p. 52.

that he would support a one-year ROI Program term if the Company's one-year PTC was accepted. RESA St. 2-R, pp. 2-3. Under Duquesne Light's procurement plan, the PTC will not change for the first year of DSP VI and the 12-month ROI Program is the best approach in this Company's service area. As a result, there are important basis to distinguish the circumstances in Duquesne Light's service territory and adopt a different approach than used in FE and PECO.

Finally, the Company notes that OCA has proposed, in conjunction with the RESA proposed 4-month initial period for Standard Offer ("SO") Program, that if customers are to be provided only guaranteed savings for four months, then at the end of such four months the customer should be returned to default service unless the customer affirmatively elects to accept the EGSs follow on product. OCA MB, pp. 66-68. The Company first prefers its 12-month product for the ROI Program and OCA supports this. In second order of preference, the Company supports the 4-month/8-month product as revised by Dominion/IGS and FES. However, if the Commission adopts the RESA ROI Program with no identification of 8-month price and terms prior to enrollment, the Commission should consider OCA's proposal to require an affirmative election of the 8-month product in order to avoid concerns that the customer has been placed into a contract to which the customer has not affirmatively consented.

**c. Discount Percentage**

**and**

**d. \$50 Bonus Payment**

**and**

**e. Guaranteed Savings**

Duquesne Light proposed a fixed-price product with a discounted price that is at least 5% off the applicable PTC and a \$50 bonus payment for customers that remain in the ROI program for three entire billing cycles. This proposal follows the Commission's guidelines in the

*Intermediate Work Plan Order*. *Intermediate Work Plan Order*, p. 70. Dominion/IGS proposed to reduce that discount to 2%, or alternatively, eliminate the \$50 bonus payment. Dominion/IGS MB, pp. 3 and 13. The OCA opposes Dominion/IGS's proposal. OCA MB, p. 40.

The Company notes that the level of the discount is related to whether a bonus payment is to be made. The Commission concluded in the *Intermediate Work Plan Order* that a discount of 5% plus a \$50 bonus payment was necessary to encourage customers to shop and the Commission has confirmed that a 5% discount and a \$50 bonus payment is necessary at least for the initial four months of the ROI Program in FE and PECO. *FE Order*, p. 117; *PECO Order*, p. 90. For reasons noted in the prior section of this Reply Brief, the discount should be provided off the PTC at the time of enrollment and be used to establish a fixed rate for 12 months.<sup>10</sup> This approach will guarantee savings for essentially 12 months if the Company's Residential procurement plan containing annual contracts and annual changes in the PTC is adopted. The Company simply does not believe that a 4-month discount followed by an 8-month price that could be above the PTC will be sufficient to encourage customers to shop in the Company's service territory. Rather, a 12-month, fixed-price product that offers customers guaranteed savings over the 12-month term will provide better protection for participating customers and better promote customer shopping.

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<sup>10</sup> In its Main Brief, OCA appears to indicate that the required discount will be off the PTC at the time bids are conducted. OCA MB, p. 39. This is not correct; the discount will be off the known PTC which will be established for June 1, 2013, based upon default service RFPs conducted prior to that date. Duquesne Light St. No. 3-R, p. 21.

**f. Customer Participation Cap**

The Company proposes a customer participation cap of 50% of non-CAP default service customers.<sup>11</sup> The level of the cap was recommended in the *Intermediate Work Plan Order*. *Intermediate Work Plan Order*, pp. 57-61; Duquesne Light St. No. 3-R, pp. 19-20, only OCA proposes that this cap be lowered. OCA's proposed cap of 20% of default service customers has been rejected in FE and PECO. *FE Order*, p. 112; *PECO Order*, p. 95.

**g. Supplier Load Cap**

Duquesne Light's proposal to apply a 50% supplier load cap follows the guidance in the *Intermediate Work Plan Order*. *Intermediate Work Plan Order*, pp. 63-64. The load cap is designed to ensure supplier diversity in the ROI Program. Duquesne Light St. No. 3, p. 21. All parties agree to or do not oppose the use a 50% supplier load cap, with the exception of FES. FES continues to oppose the supplier load cap proposed by the Company that would prevent any single EGS from obtaining more than 50% of customers that elect to participate in the ROI Program. FES argues that in a bid context, the load cap prevents customers from obtaining the greatest potential discount. FES MB, p. 45. The Commission has concluded that it is appropriate to balance the possibility of a small effect on bid prices created by load cap with the benefits of supplier diversity. *FE Order*, pp. 33, 115. Therefore, a supplier load cap should be approved in this proceeding.

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<sup>11</sup> As explained on pages 72-73 of the Company's Main Brief, Duquesne Light will be required to implement significant IT changes before it can make CAP customer benefits portable and allow CAP customers to shop. Consistent with the *PECO Order*, Duquesne Light will work with Commission Staff and interested parties to develop a plan to make CAP customer benefits portable by January 1, 2014. *PECO Order*, p. 131. However, Duquesne Light notes that the January 1, 2014 date adopted in PECO is after the ROI enrollment period. Moreover, because the Company is currently replacing its Customer Information System, it cannot reasonably implement the IT changes necessary to make CAP customer benefits portable before January 1, 2014.

RESA contends that the use of an Aggregation ROI moots the entire question of a supplier load cap. RESA MB, p. 45. Even assuming there are multiple EGS participants under an Aggregation ROI Program, this is not clear. If EGSs are allowed to declare they will serve only a specific number of customers, it remains possible that one EGS will obtain more than 50% of customers. On the other hand, if customer assignment is divided evenly among participating EGSs, then there is the possibility of only one EGS participating in the program or that many EGSs participate, which could result in too few customers being assigned to any one EGS to make the program worthwhile from an individual EGS's perspective.<sup>12</sup> An RFP process with a tranche structure like that suggested in the Commission's guidelines provides a market-based approach to establish the maximum and minimum number of customers allocated to participating EGSs, and it provides EGSs with greater flexibility to influence the number of customers they serve in the program.<sup>13</sup> In any event, a supplier load cap may still be appropriate.

**h. Enrollment Process**

**and**

**i. Mailings and Communications**

Duquesne Light has explained that it chose to provide one notice to customers by mail of the ROI Program offer after default service bids and the RFP for the ROI Program were complete and the June 1, 2013 PTC and the price (% off) for the ROI Program is known. The Company proposed this for the following reasons: (1) there would be binding commitments by

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<sup>12</sup> In RESA's testimony, it acknowledges that the aggregation approach adopted in the FE case "would greatly reduce the likelihood that it would offer any single EGS the opportunity to achieve material scale in any given utility service territory." RESA St. No. 2-SR, p. 20.

<sup>13</sup> All licensed EGSs in an RFP process can choose bid quantities (i.e., the number of tranches it wants to offer) and the price for each tranche. As a result, the competitive market will be allowed to determine the market clearing price and how customers will be allocated to participating suppliers based on EGS offers. Importantly, in no instance will EGSs be "stuck" serving "too many" or "too few" customers as could be the case in an aggregation program.

EGSs selected in the RFP to serve customers when the notice goes out thereby avoiding the possibility that customers would receive notice of an offer that ultimately might not be available; and (2) one mailing reduces the cost of the program to be paid by EGSs since mailing is the vast majority of costs for the Company's proposed program.

RESA and Dominion/IGS contend that customers should be solicited before EGSs make binding commitments to serve customers, whether there is an RFP or Aggregation approach. RESA MB, pp. 9 and 46; Dominion/IGS MB, p. 14. RESA also notes that under an Aggregation approach, customers will know the price because it is administratively determined. RESA MB, p. 46. However, RESA appears to be seeking an identification of customers' interest before its members decide to participate. Under this approach, EGSs may decline to participate if sufficient customers do not elect to participate. The Company submits that this approach may be in the interest of EGSs, but it is not in the interest of customers and risks harming customers' views of the competitive market by appearing to make an offer and then withdrawing it. OCA and FES support the Company's position. OCA MB, p. 47; FES MB, pp. 30-31.

Further, if mailings or other communications occur prior to EGS commitments to serve, it is possible that marketing costs may be incurred only to find out later that no EGS will participate and be available for direct assignment of costs. The nature of marketing is to spend money to attempt to acquire customers. RESA seeks to require such expenditures, retain the option to elect not to participate and then recover such costs either from default service customers or all distribution customers. For these reasons, any notice to customers should be sent only after EGSs have committed to serve customers in specific percentages of those electing to participate within the customer participation cap.

RESA also contends that there should be multiple mailings to customers and other forms of communication. RESA MB, pp. 47-48. RESA states in its testimony that additional communications and/or mailings from the Commission would be cost-justified. RESA St. No. 2-SR, pp. 7-8. For reasons explained above, each additional mailing effectively doubles the cost of the program, which RESA believes should not be paid by EGSs. Duquesne Light takes no position on whether or not additional Commission mailing(s) would be cost-effective, but recommends that no mailings should be made to customers before EGSs are committed to serve and committed to pay the costs. Any mailing costs should be paid as a marketing cost by EGSs that have committed to serve. Duquesne Light MB, p. 55; Duquesne Light St. No. 3-RJ, p. 31.

Similarly, regardless of whether an RFP or an aggregation approach is adopted, Duquesne Light agrees with OCA and FES that it is important that customers know the key terms and conditions, including the price for the entire 12-month term, prior to enrollment in the ROI program. OCA MB, p. 47; FES MB, pp. 30-31.

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

RESA contends that there should be no required agreement between EGSs and the Company in conjunction with the ROI Program. RESA contends that the proposed agreement filed in this case for comment is one-sided and imposes no obligations on the Company. RESA also argues that the issues are covered by other agreements with the Company or the Supplier tariff with no further explanation. RESA MB, pp. 48-49.

The Company filed the proposed agreement because it covers the novel situation in which it will assist EGSs in marketing to customers. Nothing in existing agreements between EGSs and the Company or supplier tariff governs these arrangements, as evidenced by the failure of RESA to identify any such provisions. Even more importantly, the agreement is designed to

set forth procedures to protect customers. Since the Company has been enlisted to assist in this process, it has a reasonable right to require that binding commitments are made by EGSs to customers and that those commitments are fulfilled.

## **2. Standard Offer Program**

### **a. Term of Offer**

Duquesne Light proposed a one-year term for the Standard Offer product. Duquesne Light MB, pp. 48-51. RESA contends that the product should be a 4-month price at a discount to the PTC even if the PTC changes, followed by RESA's proposed 8-month product, the price of which will be provided to the customer only after enrollment. RESA MB, pp. 50-51.

There are numerous reasons that RESA's 4-month/8-month proposal for the SO Program should be rejected. First, the Commission has rejected the RESA proposal in both FE and PECO. In FE, the Commission states as follows:

Consistent with our recent conclusions within the *IWPF Order*, we concur with the ALJ's recommendation that the Companies Standard Offer Customer Referral Program should be based upon a seven percent discount from the PTC *at the time the offer is made* and should extend for a one-year service term. We are not persuaded by the positions espoused by RESA and the OCA to alter our previous guidance on these parameters. We conclude that customers participating in this referral program should be assured that the standard offer discount will be in place for the duration of the contract term. Therefore, the Exceptions of RESA and the OCA are denied on this issue.

*FE Order*, p. 146.

Similarly, in the PECO proceeding, the Commission states:

We agree with the ALJ's adoption of PECO's proposal. EGSs participating in the Standard Offer Program will be required to offer a fixed price equal to 7% below the PTC in effect at the time of customer enrollment. While the discounted rate is fixed for twelve complete billing cycles, we realize that the PTC may be adjusted upward or downward on a quarterly basis which may impact the customers benefit to enrolling in the Program. However, enrolled customers are free to return to default service, should the PTC fall below the discounted rate, or may switch to a

different alternate provider. Further, we agree with the OCA and FES that RESA's proposal would lead to customer confusion, would not provide any limits or protections on what a customer could be charged, and would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk. We shall deny RESA's Exception on this issue and adopt the ALJ's recommendation.

*PECO Order*, p. 114.

Second, the use of an 8-month price that is not known to the customer at the time of enrollment is unfair to the customer and likely to harm competition. See discussion of 4-month/8-month term for ROI Program, *supra* Section (III)(c)(1)(b).

Third, RESA's contention that a 4-month initial price below the PTC is better than a one-year fixed rate offer is contrary to the circumstances of existing successful competition in the Company's service territory. As Mr. Neil Fisher explained, a one-year fixed price with the Company's proposed one-year fixed PTC will provide savings for the remainder of the Company's one-year PTC period and a fixed rate thereafter. As illustrated by Mr. Fisher, the fixed guaranteed savings may be as long as 12 months if the customer elects the SO Program offer early in the PTC period. Nevertheless, whenever the customer elects to participate, he/she will receive a fixed rate at a discount to the PTC until it changes and if the customer is dissatisfied, the customer may switch at any time with no penalty, particularly after the PTC changes. Mr. Neil Fisher illustrated the lengths of guaranteed savings period and fixed rate period depending on when during the one-year PTC period the customer enrolls. Duquesne Light St. No. 3-R, pp. 33-34 as quoted at pp. 59-50 of Duquesne Light Main Brief. Finally, if the customer is too close to the end of the current PTC period to obtain much in the way of guaranteed savings, the customer can elect to delay participation in the SO Program until after the PTC changes.

Fourth, Dominion/IGS and FES, two of the EGSs with the largest residential customer portfolios in the Company's service area, support the one-year product term with known price at the time of enrollment and offer compelling arguments against a 4-month/8-month product. Dominion/IGS MB, p. 15; Dominion St. 1-R, p. 8; FES MB, p. 34; FES St. No. 1-R, pp. 3, 17-19. Likewise, CAUSE-PA supports a 12-month fixed-price product since a fixed rate for a year will provide much more significant stability to participating customers. CAUSE-PA MB, pp. 14-15.

OCA contends that there should be a guaranteed savings for 4 months under the SO Program and automatic return of customers to default service at the end of 4 months if there is no affirmative election to continue. OCA MB, pp. 51-52. FES opposes the OCA's proposal since it does not believe that the combination of these two proposals (a shortened contract term and returning to default service) would allow sufficient time to gain confidence with an EGS or the competitive market. Rather, FES believes a 12-month Standard Offer contract will offer customers the discounted program price with stability and certainty for a longer period of time and will encourage greater supplier and customer participation. FES MB, p. 33. The Company agrees with FES' analysis, and as noted above, the customer retains the right to switch to an alternative supplier or return to default service without penalty at any time, including after the PTC changes. This is to be distinguished from RESA's 4-month/8-month ROI product where the customer does not know the 8-month price at the time of the enrollment. FES remarks that it could support RESA's proposal only if certain modifications were made: (1) the fixed price over the remaining 8 or 12 months is uniform among all participating EGSs, and remains uniform among EGSs if and whenever it is re-set, and (2) participating customers know the fixed price they will be paying over the remaining 8 or 12 months at the time of enrollment. FES MB, pp.

34-35. Again, Duquesne Light agrees with FES that this would be an improvement, but argues that a 12-month fixed price Standard Offer product like that adopted in the Commission's *FE Order* and *PECO Order*, and proposed by Duquesne Light in this proceeding, would be preferable. Finally, if RESA's proposal is adopted for the SO Program and the customer does not know the price of the 8-month product at the time of enrollment, OCA's proposal that the customer be returned to default service absent an alternative election of any 8-month price should be given consideration. In conclusion, Duquesne Light believes the purpose of these programs should be to facilitate customer shopping and to help ensure that customers have a positive experience once they have shopped. A 12-month, fixed-price product is more likely to attract customer participation and result in higher levels of customer satisfaction. Duquesne Light St. No. 3-RJ, p. 11.

**b. Discount Percentage**

Dominion/IGS contends that the discount percentage for the SO Program should be reduced from 7% to 5%. Dominion/IGS MB, p. 4. RESA contends that the discount percentage should be the same as for the ROI, either 5% or 7%. RESA MB, p. 51. FES, OCA and CAUSE-PA supports a 7% discount. FES MB, p. 35; OCA MB, p. 52; CAUSE-PA MB, p. 15.

The Company has noted that there is a potential for customers that elect the ROI Program at a 5% discount to switch to the SO Program for a 7% discount after the ROI Program bonus has been received. Duquesne Light St. No. 3-R, pp. 54-56; Duquesne Light St. No. 3-RJ, pp. 24-25. This cannot happen under the Company's proposal because the SO Program would not commence until June 1, 2014, after the ROI Program term has ended. This is one of several reasons not to start the SO Program prior to the end of the ROI Program term, as explained *infra*, pp. 37-41. As a result, Dominion/IGS' and RESA's concerns regarding the discount percentage are irrelevant if the SO Program start date is June 1, 2014, as proposed by the Company. In any

event, Duquesne Light proposed a 7% discount consistent with the *Intermediate Work Plan Order*, *FE Order*, and *PECO Order*. *Intermediate Work Plan Order*, p. 31; *FE Order*, p. 146; *PECO Order*, p. 114. This discount should be approved in this proceeding too since a 7% discount would encourage greater customer participation than a 5% discount. Duquesne Light MB, p. 59.<sup>14</sup>

**c. Guaranteed Savings**

In conjunction with its proposal to have a 4-month SO product followed by a 8 or 12-month fixed price product, RESA continues to argue that the SO discount should be a guaranteed savings off of the PTC each of the first four months. RESA MB, p. 51. RESA's proposal has been rejected in the FE Companies and PECO default service proceedings. *FE Order*, p. 146; *PECO Order*, p. 114.

In addition, as explained in the Company's Main Brief at pages 59-61 and *supra*. p. 33, the Company's SO product is a combination of a "guaranteed savings" product and a "fixed price" product.

Moreover, the Commission appears to have supported the 4-month/8-month product for the ROI Program because of concerns that requiring a 12-month discount off the PTC when the PTC is changing on a quarterly basis will cause EGSs not to participate. This was the case in FE and PECO because Residential default service prices were proposed by the Companies to change quarterly. This is not a problem for Duquesne Light's SO Program because of the Company's 12-month fixed PTC. In addition, the Commission has not expressed this concern for the SO

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<sup>14</sup> The Company notes that in the *FE Order*, *PECO Order*, and in the Commission's guidelines, the ROI Program includes a \$50 bonus payment while the Standard Offer does not. Therefore, the level of customer savings will be much higher in the ROI Program than in the Standard Offer Program for a typical residential customer.

Program and has adopted a 12-month SO term in both the FE and PECO default service proceedings. *FE Order*, p. 146; *PECO Order*, p. 114. Duquesne Light has carefully designed its SO and ROI Programs to allow EGSs to offer a fixed price, and at the same time, allow customers to receive guaranteed savings as long as possible in order to promote EGS and customer participation in the programs. This approach balances EGS interests and customer interests in order to further enhance competition in the Company's service territory. Therefore, if the Commission wants to make the products more similar in the SO and ROI Programs, (as RESA suggests in its Main Brief, p.10), the Commission should make both products a 12-month fixed price that is known at the time of enrollment based on a specified discount off of the applicable PTC. Duquesne Light St. No. 3-RJ, p. 7.

**d. Program Start Date**

Only RESA and FES object to the Company's proposed June 1, 2014 start date for the SO Program. RESA MB, pp. 52-56. FES MB, pp. 35-36. Both parties misunderstand or misstate the reasons that the Company has selected this start date.

**i. IT Issues**

RESA argues that the Company has not provided an explanation of the IT issues that would prevent starting the SO Program in July 2013, immediately after the ROI Program Enrollment. RESA also argues, without record citation, that all the Company needs to know to implement the program is whether the customer is currently shopping. RESA MB, p. 53.

RESA's contentions are contrary to the record. Mr. Wolfe explained the detailed IT requirements that must be completed to accommodate the ongoing SO Program enrollments. Mr. Wolfe's testimony is quoted in the Company's Main Brief and will not be repeated here. Duquesne Light MB, p. 63.

Similarly, FES contends that the Company is delaying the SO Program for accelerated switching functionality. This contention is inaccurate. The Company is in the process of implementing a new customer information system and cannot start implementation of SO Program technology until the end of the winter of 2013. Therefore, the Company cannot complete IT changes for SO Program enrollment until the end of the first quarter of 2014, even if accelerated switching is excluded. If accelerated switching functionality is included, both can be completed by June 1, 2014. If not, accelerated switching will be delayed and costs will be increased. It is therefore prudent to delay the start date for the SO Program from the end of the first quarter of 2014 until June 1, 2014, and include accelerated switching. Duquesne Light St. No. 6-RJ, p. 2. In this regard, the Commission has recently reinforced its view that implementing accelerated switching is a priority. End State Proposal, ¶ 7.

**ii. Default Service Risk Premiums**

The Company also noted that a further, but not primary, potential benefit of delaying the SO Program start date until June 1, 2014, would be to mitigate the risks of customer shopping from default service procurement bids for the first year of DSP VI. Duquesne Light MB, p. 64; Duquesne Light St. No. 3-SR, p. 51. By moving the SO Program date to June 1, 2014, only the effect of customer shopping from the ROI Program will be reflected in default service bids. Both FES and RESA opine that default service risk premiums are not an issue, but offer no evidence. In both cases, they will suffer no harm if default service bids are higher than they would be otherwise, and EGSs would likely benefit as competitors if the default service rate (and PTC) is increased. Further Duquesne Light's witness, Mr. Neil Fisher, noted that no other jurisdiction has implemented two such programs during one procurement year and therefore, it is not possible to know the effect of doing so. Duquesne Light St. No. 3-R, p. 51. Contrary to the views of RESA and FES, customer advocates (and a wholesale supplier) have expressed

concerns about the potential impact of these new programs on default service risk premiums and the potential harm for customers. OCA MB, pp. 53-54; OCA St. No. 1, p. 8; CAUSE PA MB, p. 15; Comments of Constellation, RMI, Docket No. I-2011-2237952, January 17, 2012, p. 8 as quoted in Duquesne Light St. No. 3-R, p. 11.

### **iii. Customer Confusion**

The Company also noted that implementing an SO Program immediately after an ROI Program could create customer confusion. RESA professes that there should be no customer confusion because customers are used to multiple offers in the marketplace. RESA MB, p. 54. However, the customers who remain on default service have not shopped or have done so and returned to default service. Accordingly, it is reasonable to conclude that back-to-back offers under the RIO and SO Programs would confuse default service customers, particularly when they would both be coming from the Company.

RESA next reverses direction and effectively admits there could be customer confusion if the offers under the ROI and SO Programs are made close together and are different offers. RESA suggests they be “constructed in a consistent fashion as RESA has recommended,” referring to its previously addressed contention that the discount under the programs should be made the same. *Supra*, p. 35. RESA MB, p. 54. However, RESA does not recommend that the offers be completely the same, as the ROI Program as proposed by RESA has a \$50 bonus and the SO Program does not. RESA simply proposes that the same discount be used in both programs. If RESA wanted to avoid customer confusion, it should have suggested that both programs have a \$50 bonus payment and a 5% or 7% discount. RESA has not done so.

### **iv. Higher Program Costs and Lower Customer Benefits**

The SO Program will have higher program costs for EGSs and lower savings for customers as compared to the ROI Program. The implementation costs of the SO Program are

expected to be significantly higher than those of the ROI Program (more than 5-and-half times greater according to the Company's estimates), and the dollar savings is likely to be much lower since it does not include a \$50 bonus payment. For example, a typical residential customer participating in the Standard Offer could expect to save only \$2.50 per month or about \$10 in total over a 4-month period. Duquesne Light St. No. 3-RJ, p. 25. Therefore, the Company believes that it would be prudent to have a better assessment of the direct program costs and the indirect wholesale default service supplier risk premiums and potential customer benefits before the program is implemented or expanded.

**v. Other Reasons**

Duquesne Light also noted that a start date of June 1, 2014 for the SO Program would: (1) allow more time to identify call center costs; (2) evaluate the market enhancements with a clear distinction between periods when the programs are in effect in different periods; and (3) reflect in each program the June 1, 2014 substantial increase in PJM capacity costs. Duquesne Light St. No. 3-R, pp. 54-56; Duquesne Light St. No. 3-RJ, pp. 24-51. RESA disputes all of these reasons. RESA MB, pp. 54-56.

RESA suggests that no more time is needed to identify costs because procedures are known now. However, there are disputes in this proceeding about the product in the SO Program and customers to whom the products are offered. Estimated costs cannot be refined until such time as the actual program is known.

RESA also argues that a separation of the programs is not necessary as ROI enrollment is over in one month. However, RESA ignores the fact that customers will remain on the ROI Program, or transfer to other service, during a full year after enrollment, including the SO Program if offered during the ROI Program year.

Finally, RESA argues that the significant capacity price change on June 1, 2014 will not deter customers or EGS participation if its 4-month initial price offer for the SO program is accepted. As noted previously, the Commission has approved a 12-month SO product in FE and PECO, and a 12-month product is more likely to generate more guaranteed savings and more customer interest. *Supra*, pp. 32-35. The Company has presented convincing evidence that accelerating the start date of the SO Program could very well discourage EGS participation in the program during the first year of the plan due to the known and significant increase in PJM capacity costs on June 1, 2014. Duquesne Light St. No. 3-R, pp. 54-56; Duquesne Light St. No. 3-RJ, pp. 24-25. No party has provided any evidence to rebut the Company's testimony on this matter. Instead, RESA proposes an alternative short-term Standard Offer product that has not yet been adopted in any proceeding and is opposed by individual EGSs serving customers in Duquesne Light's service area.

**vi. Conclusion As To Start Date**

Duquesne Light's proposed June 1, 2014 SO Program start date is required because of the ongoing implementation of a new CIS System which prohibits completion of further changes to systems prior to the end of the first quarter of 2014. This is the primary reason for not starting the SO Program in July 2013. However, as noted above, there are several ancillary benefits of starting the SO Program in June 2014, one of which is earliest possible implementation of accelerated switching of customers to EGSs. Further, given the high levels of shopping in the Company's service territory, it is not necessary to require the SO Program start prior to June 2014 to "jump start" competition.

**e. Program Suspension**

Duquesne Light proposed to terminate the SO Program if Residential shopping increased to 67% of Residential customers. The Company noted that if it achieved this level of shopping,

50% of the customers remaining on default service at the start of this proceeding would have moved to taking service from an EGS. Further, Duquesne Light would have Residential shopping among the five highest levels in the country. Duquesne Light St. No. 3, pp. 42-43; Duquesne Light S. No. 3-RJ, p. 27.

Only RESA and FES oppose any suspension to the SO Program. However, these parties do not explain why a “jump start” program sponsored by the Company would be necessary if two-thirds of Residential customers are shopping. At that stage, the marketplace is working and customers should be seeking and obtaining offers directly from EGSs. The Company clarifies, however, that if this milestone is reached, customers who contact the Company would still be advised about customer choice, but referred to PaPowerSwitch.com instead of the SO Program.

**f. High Bill Callers**

Duquesne Light followed the Commission’s guidance in including high bill calls as eligible for transfer to the Choice Referral Team under the SO Program. *Intermediate Work Plan Order*, p. 32. Please see Duquesne Light’s Main Brief, p. 66; *FE Order*, p. 139 and *PECO Order*, pp. 118-119.

**g. Choice Referral Team**

The Company proposes to handle calls from customers interested in the SO Program through a dedicated group of customer service representatives (“CSR”) that will be called the “Choice Referral Team.” When a customer calls with regard to new service, moving an account, a question about customer choice or a high bill complaint, the CSR processing the call will inquire, after addressing the initial purpose of the call, as to whether the customer would like to be advised about the standard offer from an EGS. If the customer consents, the customer will be transferred to the Choice Referral Team to be advised about the standard offer. The Company

chose this proposal so the CSRs handling the referral could receive specialized training and so that costs could be accurately tracked. Duquesne Light St. No. 5, pp. 10-11.

OCA expresses concerns that the Choice Referral Team will increase costs and raise consumer protection and satisfaction issues. OCA MB, p. 57. OCA's contentions should be rejected.

With regard to alleged additional costs, the Choice Referral Team will be specially trained and familiar with the SO Program offer and rules and the related call center scripts to be used for the SO Program. Therefore, the amount of time spent with the customer should be less than with a CSR that provides a broader range of service, and the Choice Referral team will create administrative efficiencies for the program. In addition, the Company will be better able to track specific costs of the program by using a specialized team. Duquesne Light St. No. 5, pp. 15-16.

With regard to OCA's concern that there will be a third transfer to the EGS, (OCA MB, p. 58), Ms. Sandoe explained the Choice Referral Team will facilitate enrollment by answering questions and explaining the offer. If a customer expresses interest in enrolling, the CSR will advise the EGS. The EGS will be responsible for enrolling the customer by sending an EDI transaction to the Company and notifications to the customer required to enroll any customer. No transfer of the call to the EGS is anticipated. Duquesne Light St. No. 5-R, p. 15.

Finally, OCA expresses its concern that Choice Referral Team costs be assigned to, and recovered from, EGSs. Duquesne Light will segregate all operating costs of the Choice Referral Team and recover those through the approved cost recovery programs.

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

The basis and necessity for an agreement has been explained in conjunction with the ROI Program, *supra*, pp. 31-32.

**3. Market Enhancement Program Cost Recovery**

Consistent with the Commission's direction in the *Intermediate Work Plan Order* and the FE Companies and the PECO default service proceedings, Duquesne Light has proposed to primarily recover RME program costs from EGSs. *Intermediate Work Plan Order*, p. 32; *FE Order*, p. 136. *PECO Order*, p. 148.<sup>15</sup> In their Main Briefs, all of the EGSs, with the exception of Dominion/IGS, argue that RME costs should not be recovered from EGSs but from customers, including default service customers that do not elect to participate in the RME programs.

Duquesne Light's position regarding RME program cost recovery is set forth on pages 68-72 of its Main Brief. Duquesne Light will not repeat its arguments in detail here other than to reiterate that RME programs are intended to encourage shopping, to the benefit of EGSs, primarily in the form of lower customer acquisition costs. Duquesne Light does not believe that it is reasonable or appropriate to require default service customers that may not choose to participate in the RME programs to subsidize EGS efforts to obtain a broader customer base. The RME programs primarily are intended to benefit EGSs, and EGSs should pay for the costs of the programs.<sup>16</sup> Further, the Company notes that in response to issues raised by EGSs in this proceeding, it has already developed cost recovery mechanisms for both the ROI and Standard Offer Programs that are designed to recover the majority of the direct costs of these programs

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<sup>15</sup> Likewise, all of the consumer representatives support recovery of these RME costs from EGSs. OCA MB, p. 60; CAUSE PA MB, p. 6; OSBA MB, p. 18; DII MB, p.7.

<sup>16</sup> Duquesne Light addresses RESA's proposal to recover the costs of the RME programs through a 5 mils/kWh charge to default service customers in Section III(4) below.

from *participating* EGSs in the form of a charge to winning suppliers in the ROI Program and a customer acquisition fee for the Standard Offer Program. However, the issue still remains what to do in the event that no EGSs and/or customers participate in these programs. Duquesne Light has stated that it is willing to consider other forms of cost recovery from EGSs as long as Duquesne Light fully recovers its costs from EGSs regardless of EGS and/or customer participation and it is fairly simple to administer. Duquesne Light St. No. 3-RJ, pp. 32-33.

#### **4. CAP Customer Participation in Market Enhancement Programs**

Duquesne Light's position regarding CAP customer participation in the RME programs is set forth on pages 72-73 of its Main Brief. As explained therein, Duquesne Light will work with Commission staff and interested parties to develop a plan to make CAP customer benefits portable by January 1, 2014, consistent with the Commission's Order in the PECO default service proceeding. *PECO Order*, pp. 131-132.

#### **5. Shopping Customer Participation in Market Enhancement Programs**

Despite the Commission's clear and consistent direction to the contrary in the *Intermediate Work Plan Order*, *FE Order* and *PECO Order*, RESA continues to argue that shopping customers should not be eligible to participate in the RME Programs. See *Intermediate Work Plan Order*, p. 42; *FE Order*, p. 107; *PECO Order*, p. 87; RESA MB, p. 66. Duquesne Light's proposal to allow shopping customers to participate in the RME programs is consistent with the Commission's clear direction regarding this issue and should be adopted. See Duquesne Light MB, p. 73.

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

Duquesne Light's position regarding Small C&I customer participation in the RME programs is set forth in pages 73-74 of its Main Brief.

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

Duquesne Light's position regarding customer status at the end of the RME program is set forth on page 75 of its Main Brief, as supplemented on page 26 of this Reply Brief if RESA's 4-month/8-month ROI product is adopted.

**8. Miscellaneous Market Enhancement Program Issues**

Duquesne Light has explained its position regarding RESA's proposal to recover RME costs through a 5 mils/kWh adder to the PTC in Section III(C)3 of its Main Brief and Section III(H) of this Reply Brief.

In CAUSE-PA's Main Brief, CAUSE-PA notes that Duquesne Light agreed to perform outreach to low-income non-CAP customers to promote CAP. Duquesne Light St. No. 5-R, pp. 10-11. CAUSE-PA further argues that the Commission should order that the Company will continue this outreach through the remainder of its Universal Service Plan and evaluate the effectiveness of such program upon the filing of its next USP Plan which begins on January 1, 2014. In Rejoinder Testimony, Duquesne Light clarified that it will pilot its targeted outreach in 2013 and evaluate the effectiveness of the outreach in 2013. Given that the Company's next USP Plan also will be filed in 2013, Duquesne Light may not be able to complete the outreach and analysis prior to the plan filing, but will complete the outreach and analysis in 2013.

## **D. RATE DESIGN**

### **1. Reconciliation Issues**

In this proceeding, Duquesne Light proposes to reconcile rates for Residential, Small C&I and Medium C&I customers on an annual basis. Duquesne Light Exh. No. 1, pp. 8, 10 and 13. Duquesne Light has explained that more frequent reconciliations are unnecessary because the Company proposes to procure all default supplies for these default service customers through full-requirement contracts and all prices will be known in advance of the delivery period. Duquesne Light St. No. 4-R, p. 9.

RESA is the only party that opposes Duquesne Light's request. RESA argues that the Commission should adopt quarterly reconciliation to be consistent with RESA's procurement proposal. RESA MB, p. 72. RESA argues that default service rates could become divorced from wholesale costs with annual reconciliation.

Even if RESA's procurement proposal is adopted, which Duquesne Light opposes, RESA's quarterly reconciliation proposal is unnecessary because all supply will still be procured through full-requirements contracts and the price will be known before each application period. *See e.g.*, Duquesne Light St. No. 4-SR, pp. 4-5. RESA's proposal will cause unnecessary administrative filings that have little or no impact on the default supply rate. For these reasons, and the reasons explained in the Company's Main Brief on pages 75-76, RESA's proposal to adopt quarterly reconciliation is unnecessary.

However, if OCA's block-and-spot proposal is adopted where the supply costs are not known ahead of the application period, then more frequent reconciliation periods would be appropriate, consistent with Duquesne Light's Comments filed on September 24, 2012, in the Default Service Reconciliation Interim Guidelines proceeding at Docket No. M-2012-2314313.

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

In its Main Brief, RESA argues that Duquesne Light should be able to calculate a final PTC 45 days in advance of each Application Period. RESA MB, p. 74. Duquesne Light clearly explained why it cannot post a final PTC 45 days in advance of each Application Period, particularly because the Company does not close its books until the 10<sup>th</sup> day of each month and because the Company does not know the final transmission rates that become effective on June 1 of each year until May 15 or approximately 15 days in advance of the June Application Period. Duquesne Light St. No. 4-RJ, p. 3.

RESA simply ignores the Company's testimony and claims Duquesne Light should file a PTC 45 days in advance, even though the Company will not have final data to do this. Duquesne Light again notes that it provides EGSs with an estimated PTC within seven days of default service procurement. For the reasons explained herein, and in the Company's Main Brief at pages 76-78, RESA's proposal to require the Company to post its Final PTC 45 days in advance should be denied.

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

In this proceeding, RESA recommends that Duquesne Light recover numerous transmission related charges, including Network Integration Transmission Service ("NITS"), Regional Transmission Expansion Plan ("RTEP") costs, Expansion Costs, Generation Deactivation and new Economic Load Response ("ELR") costs for both default service and shopping customers through a non-bypassable charge. RESA MB, p. 76. RESA argues that these costs are difficult to predict and that EGSs bear the risk of recovering these costs from their customers. RESA MB, p. 77.

Duquesne Light explained why RESA's proposal for Duquesne Light to recover transmission related costs for shopping customers should not be accepted in the Company's

Main Brief and in the testimony of witness Mr. Pfrommer. Duquesne Light MB, pp. 78-80; Duquesne Light St. No. 4-R, pp. 21-31; Duquesne Light St. No. 4-SR, pp. 2-3; Duquesne Light St. No. 4-RJ, pp. 4-8. As explained by Mr. Pfrommer, PJM Interconnection, LLC (“PJM”) bills load serving entities (“LSE”), including EGSs, for the transmission service associated with the load served by the LSE. Duquesne Light St. No. 4-SR, p. 2. This methodology is reasonable because it creates the proper incentives for all LSEs to respond to PJM rules and reduce their transmission obligations in response to market conditions. Duquesne Light St. No. 4-SR, pp. 2-3. Mr. Pfrommer further explained that both generation and transmission related charges are recovered by the entity providing supply service, and therefore RESA’s proposal was unreasonable. Duquesne Light St. No. 4-RJ, p. 5.

In addition, in both the FE Companies and PECO default service proceedings, the Commission has denied parties attempts to require EDCs to recover transmission related charges for shopping customers. *FE Order*, pp. 81, 83; *PECO Order*, p. 60. For these reasons, RESA’s proposal should be denied in this proceeding as well.<sup>17</sup>

In its Main Brief, RESA argues that requiring EGSs to recover transmission costs for their customers is anti-competitive because transmission charges are difficult to predict. RESA MB, p. 78. To the contrary, RESA has not provided any evidence that transmission-related charges are more difficult to predict than generation charges. Moreover, DII has provided

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<sup>17</sup> Initially, Constellation proposed that the Company recover certain transmission-related charges for both default service and shopping customers through a non-bypassable charge. In its Main Brief, Constellation has indicated that it is not pursuing those changes at this time in light of the Commission’s recent orders in the FE Companies default service proceeding. Joint Suppliers’ MB, p. 9. On the other hand, OSBA continues to argue that it is not opposed to Duquesne Light recovering certain transmission-related charges for both default service customers and shopping customers, as long as the implementation of the charge was delayed to minimize the possibility that customers are double-billed for these charges. OSBA MP at 19-20. For the reasons explained above, the OSBA’s proposal to require Duquesne Light to recover transmission-related costs for shopping customers should be denied.

evidence that RESA's proposal will actually harm competition because it will effectively prevent customers from negotiating contracts for fixed-price transmission costs. DII MB, p. 13.

RESA also argues that it is at a competitive disadvantage because Duquesne Light can pass through its transmission costs to customers. RESA MB, p. 78. RESA is not at a competitive disadvantage. Nothing prevents RESA from offering contracts to customers under which the customer would pay all transmission costs on a pass-through, as opposed to a fixed based. This would put RESA on a level playing field. Moreover, as explained by DII, RESA also has the option to negotiate fixed transmission charges with customers. The current transmission cost recovery methodology allows EGSs and customers greater flexibility in negotiating competitive offers.

#### **E. TIME-OF-USE PROGRAM**

Parties opposition to the Company's TOU proposal is much ado about very little. Duquesne Light currently has not installed smart meters on its system and anticipates that very few customers will have smart meters installed during the POLR VI period. In addition, the Company anticipates that only a small percentage of these customers may select a TOU option. Duquesne Light St. No. 4-R, p. 4.

As its first option, the Company proposes to bid out TOU supply to an EGS. However, given the small size of the TOU load in the POLR VI period, it is possible that an EGS will not provide a bid to supply TOU service that is acceptable to the Commission. In the unlikely event that an EGS does not provide an acceptable bid for TOU service, Duquesne Light proposes to acquire TOU supplies from default service suppliers and pay them the actual revenues received from TOU customers. Duquesne Light St. No. 4-R, p. 5. Duquesne Light proposed this approach to ensure that it could recover its TOU costs, as provided under Act 129. 66 Pa.C.S. § 2807(e)(3.9).

FES is opposed to the Company's contingency plan arguing that it could limit supplier participation and unnecessarily increase default service prices. FES MB, p. 45. FES goes so far as to state that the contingency plan may "compromise" the Company's procurements.

Duquesne Light completely disagrees with FES' analysis. As explained above, it is unlikely the contingency plan will be utilized. Even if it is utilized, the TOU load will be minimal at best, and the only additional risk to default service supplies is the difference between TOU rates and the fixed price rate for default supply. Wholesale suppliers bear much greater risks, including that all customers decide to either shop or return to default service, risks related to changes in usage due to weather, and others, including changes in usage patterns during the day. Duquesne Light St. No. 4-R, p. 6. Moreover, if TOU customers shift load to off-peak periods, this should reduce wholesale supplier costs. The Company's contingency TOU plan will not limit supplier participation or unnecessarily increase default service prices.

FES also supports the proposal set forth by Constellation in its testimony, whereby Constellation argued that Duquesne Light should pay wholesale suppliers the fixed contract price and reconcile any difference through the Company's reconciliation process. FES MB, pp. 46-47.<sup>18</sup> The Company is not theoretically opposed to this proposal if, and only if, the Commission specifically orders that Duquesne Light is authorized to reconcile TOU recoveries against its costs under the fixed price full-requirements contracts and the Commission finds that this methodology does not violate the Public Utility Code, including the prohibition against recovering lost or decreased revenues due to reduced electricity consumption or shifting energy demand under 66 Pa.C.S. § 2807(f)(4). Duquesne Light notes that the Commission has held in

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<sup>18</sup> Constellation did not argue that its TOU proposal should be adopted in its Main Brief in this proceeding.

the past that reconciling TOU rates against a fixed price violated Section 2807(f)(4). *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (March 9, 2010).

RESA argues that Duquesne Light can meet its statutory obligation to provide TOU service by simply certifying that EGSs offer TOU rates in the Company's service territory. RESA MB, pp. 82-84. Duquesne Light disagrees with this argument. Act 129 requires default service providers, not EGSs, to offer TOU rates. 66 Pa.C.S. § 2807(f)(5). Duquesne Light cannot meet its statutory obligation of providing TOU rates by simply certifying that other parties offer TOU rates. RESA's proposal is contrary to Act 129.

As an alternative proposal, RESA agrees that Duquesne Light should bid out its TOU supply to an EGS. RESA MB, p. 84. RESA then provides a list of conditions that should be required under a bid-out proposal. It would be premature to adopt RESA's conditions at this time. Duquesne Light will submit a TOU proposal with the Commission before it bids out TOU supply to EGSs. In that proceeding, it will be appropriate to develop all the rules and conditions of the Company's TOU program. It is premature to adopt specific rules in this proceeding, essentially in a vacuum, apart from considering all aspects of the future TOU program.

#### **F. SUPPLY MASTER AGREEMENT ISSUES**

In its Main Brief, the Joint Suppliers argue that the Company's unsecured credit threshold should be reduced. Joint Suppliers' MB, p. 11. The effect of the Joint Suppliers' proposal would be to require Duquesne Light to provide unsecured credit to non-investment grade companies. See Duquesne Light MB, pp. 83-85. Duquesne Light explained that providing unsecured credit to non-investment grade entities creates risks for default service customers. Duquesne Light St. No. 9-R, pp. 4-8. Therefore, Duquesne Light will limit its response to the primary arguments contained in the Joint Suppliers' Main Brief.

The Joint Suppliers argue that Duquesne Light “must” bring its unsecured credit threshold in line with the current West Penn SMA to obtain least cost supply and encourage greater competition. Joint Suppliers’ MB, p. 13. The Joint Suppliers’ argument cannot be accepted for several reasons. First, Duquesne Light disagrees that it is “prudent” to reduce its unsecured credit threshold to provide unsecured credit to non-investment grade entities. Duquesne Light must limit unsecured credit limits to protect default service customers in the event of supplier default. Duquesne Light St. No. 9-R, p. 6. There must be limits set, and Duquesne Light’s limits are reasonable.

Second, it is undisputed in this proceeding that West Penn is not using its current contract in its next default service proceeding. Duquesne Light St. No. 9-R, p. 8.

Third, the record evidence clearly demonstrates that Duquesne Light’s unsecured credit thresholds are similar to those used or proposed by the default service providers in Pennsylvania. Duquesne Light St. No. 9-R, p. 8. Moreover, neither PECO nor PPL Electric offers unsecured credit to non-investment grade entities. Duquesne Light St. No. 9-R, pp. 5, 7.

As an alternative to its primary proposal, the Joint Suppliers argue that Duquesne Light should adopt the unsecured credit threshold under its prior SMA. Joint Suppliers’ MB, p. 13. Contrary to the Joint Suppliers’ argument, Duquesne Light has provided several reasons why it is appropriate to increase its unsecured credit threshold, including the current economic conditions. Duquesne Light St. No. 9-R, p. 7. In addition, the Company has clearly demonstrated that it is not necessary to provide unsecured credit to non-investment grade entities to have robust wholesale supplier competition. Duquesne Light St. No. 9-R, p. 7.

Duquesne Light refers the ALJ to its Main Brief for all other Supplier Master Agreement issues.

## **G. DATA/EGS COORDINATION ISSUES**

### **i. Letters of Authority**

In this proceeding, Constellation argued that Duquesne Light should not require EGSs to send Duquesne Light signed letters of authority (“LOAs”) prior to providing access to customer data. Joint Suppliers’ MB, pp. 16-17. In support of its position, the Joint Suppliers cite a Secretarial Letter issued by the Commission which provides that EGSs are not required to provide signed LOAs before receiving access to customer data. *Re: Electric Generation Supplier Access to Restricted Customer Accounts*, Docket No. M-2009-2092042, Secretarial Letter issued August 20, 2010 (“Secretarial Letter”).

In response to the Commission’s Secretarial Letter, Duquesne Light will revise its practice and not require EGSs to provide signed LOAs prior to receiving access to customer data. Duquesne Light notes that the Secretarial Letter still requires EGSs to have signed LOAs, and Duquesne Light is authorized to audit EGSs records to ensure that EGSs have signed LOAs. In the Secretarial Letter, the Commission stated as follows:

We reiterated that EGSs are subject to audit by the Commission and the EDC to ensure that the EGS seeking restricted account information did have customer authorization to initiate the request.

Secretarial Letter, p. 2.

In order to protect customer privacy interests, Duquesne Light requests that, if a particular EGS fails an audit, Duquesne Light be permitted to require that EGS to provide signed LOAs before it can have access to restricted customer data.

### **ii. Budget Billing Charges**

The Joint Suppliers argue that Duquesne Light should remit actual dollars charged to EGSs as opposed to budget billing charges, when a customer is on a budget bill. Joint Suppliers’ MB, p. 18. The Commission should not accept the Joint Suppliers’ proposal. When a customer

is on a budget billing plan, it pays its budget bill, not its “actual charges” as defined by the Joint Suppliers. Duquesne Light is paying EGSs the actual amount billed to customers. Duquesne Light should only be required to remit to EGSs what has been billed to customers. It is unreasonable to require Duquesne Light to forward money that has not been actually billed to the customer. This is consistent with the terms of the Company’s POR program under its Supplier Tariff which provides as follows:

If the EGS customer is on a budget or levelized payment plan, Duquesne shall only be obligated to purchase each month the amount of the monthly installment under the budget or levelized payment plan.

Duquesne Light Electric Generation Supplier Coordination Tariff, First Revised Page NO. 30B, Rule 12.1.7.4. Moreover, Rule 12.1.5 provides as follows:

12.1.5 COMPANY REIMBURSEMENTS TO EGS FOR CUSTOMER PAYMENTS. For EGSs electing consolidated billing and serving residential and small and medium C&I customers, defined on Rate Schedules RS, RH, RA, GS/GM and GMH, the Company shall forward payment in accordance with the provisions of Rule No. 12.1.7 below.

A copy of the relevant sections of the Company’s supplier tariff are attached hereto as Appendix A. The Company should not be required to pay EGSs for costs that are not actually billed to the EGS’s customer.

Moreover, Constellation and the Joint Suppliers fail to acknowledge that EGSs have the obligation to provide budget billing and to provide budget billing amounts to EDCs. Constellation NewEnergy recently petitioned the Commission for a temporary waiver of the Commission’s rules regarding budget billing until December 31, 2011. The Commission ultimately issued an Order granting Constellation’s Petition. *Petition of Constellation NewEnergy, Inc. For Temporary Waiver of Commission Rules and 52 Pa. Code Chapter 56 Provisions Relating to EGS Budget Billing*, Docket No. P-2011-2239956, 2011 Pa. PUC LEXIS

1350, Order entered July 28, 2011. Therein, the Commission provided clear direction regarding EGSs budget billing obligations.

In its June 18, 1998 Order, the Commission addressed the budget billing obligations of EGSs that are unwilling or unable to offer budget billing. In its ruling, the Commission found an affirmative obligation regardless of the EGS's unwillingness or inability to offer budget billing. *Chapter 28 Electric Generation Customer Choice and Competition Act; Budget Billing Obligations of Electric Generation Suppliers*, Docket No. M-00960890F0011, Order entered June 18, 1998, at 3; Ordering Paragraph No. 1.

The Commission addressed another similar situation in its March [\*3] 31, 1999, Secretarial Letter in response to four "rate ready" EDCs whose computer systems were technologically unable to perform budget billing calculations for EGS charges through EDC consolidated billing. The Commission's conclusion was that "even when the EGS is not providing billing services, it is not necessarily relieved of the obligation to furnish the monthly budget bill amount to the EDC."

2011 Pa. PUC LEXIS at \*2-3.

In addition, if an EGS cannot offer budget billing, it must inform customers before providing service to them and, in fact, cannot provide service to CAP customers unless it can provide budget billing. 2011 Pa. PUC LEXIS 1350 at \*4, \*7.

EGSs clearly have the obligation to provide budget billing to customers, and Duquesne Light should only have to remit the budget billing amount to EGSs.

### **iii. Scheduling Coordinators**

The Joint Suppliers proposed that Duquesne Light should build into its system the capability to accept multiple EGS scheduling coordinators and DUNS numbers. Joint Suppliers' MB, pp. 18-19. Duquesne Light has agreed to allow EGSs to utilize up to 5 scheduling coordinators at no cost to the EGS, and will only charge EGSs that use more than 5 scheduling coordinators the Company's additional costs pursuant to the rules set forth in the Company's tariff. The Joint Suppliers have indicated that they do not oppose this proposal.

As further clarification, the Company made a separate filing with the Commission on August 17, 2012 to implement this proposal. By Order entered October 11, 2012, the Commission adopted the Company's filing. *Duquesne Light Company Request for Approval of Supplement No. 9 to Tariff Electric Pa. P.U.C. No. 35*, Docket No. R-2012-2320394. Therefore, the Joint Suppliers proposed Ordering Paragraph regarding this issue is unnecessary.

#### **iv. Other Proposals**

In its Main Brief, the Joint Suppliers argue that Duquesne Light should commit to implementing other proposals by 2014 that cannot be implemented at this time. Joint Suppliers' MB, pp. 19-22. These proposals include: (1) implementing EDI 867 capabilities for EGS's request for access to customers historical interval usage ("HIU") data; (2) adopt an EDI control which will provide EGSs notification of net metering accounts, and (3) offer EGSs bill ready billing for at least Medium C&I and Large C&I customers. Joint Suppliers' MB, pp. 19-20. As explained in the Company's Main Brief, it is premature to require Duquesne Light to adopt these proposals at this time.

In this proceeding, Duquesne Light explained that the EDI issues should be addressed through the specialized EDEWG Team that was formed to address such issues. Duquesne Light MB, p. 88. This is not the proper time or forum to address these proposals. In addition, Duquesne Light explained that it will incur substantial additional costs to implement bill ready billing and this functionality cannot be implemented until 2014 at the earliest. Therefore, it is premature for Duquesne Light to commit to offering this functionality in this proceeding because it is too early to evaluate all of the associated costs and potential benefits. Further detail is provided in Duquesne Light's Main Brief at pages 87-89 and in Duquesne Light St. No. 6-R, pp. 8-11.

## H. GENERAL MISCELLANEOUS ISSUES

In its Main Brief, RESA continues to argue that RME Program costs should be recovered through a 5 mils/kWh charge paid by default service customers with any overcollection of this charge refunded to all distribution customers, including shopping customers that did not pay the charge. RESA MB, p. 86. In its Main Brief, the Company has addressed RESA's proposal in Section III(c)(3), Market Enhancement Program Cost Recovery, but will respond to RESA's proposal here to be consistent with where RESA and OSBA addressed this proposal in their Main Briefs.

As an initial matter, the Commission has recently rejected RESA's 5 mils/kWh proposal in both the FE Companies and PECO default service proceedings. *FE Order*, pp. at 62-63; *PECO Order*, p. 76. There is no reason to reach a different result in this proceeding.

In addition, both the OCA and OSBA, the statutory advocates involved in this proceeding, strongly oppose RESA's proposal. OCA MB, p. 68; OSBA MB, p. 20.<sup>19</sup> No other party has expressed support for RESA's proposal.

Moreover, there is good reason no other party supports RESA's proposal – it is completely inconsistent with cost causation/cost benefit principles. RESA's proposal would assign costs to customers that are not electing the RME programs (not the EGSs or customers that benefit from the RME programs) and refund the bulk of any overcollection to customers that did not pay the costs. RESA MB, p. 86. RESA's proposal is completely contrary to standard ratemaking principles because it would assign RME costs to customers that do not select the RME programs and refund over-payments to customers that did not pay for the RME programs.

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<sup>19</sup> On page 22 of its Main Brief, the OSBA contends that Duquesne Light cannot charge customers more than the Company's actual costs for providing default service. The OSBA is correct where default service costs are reconciled pursuant to Act 129. 66 Pa.C.S. § 2807(e)(3.9).

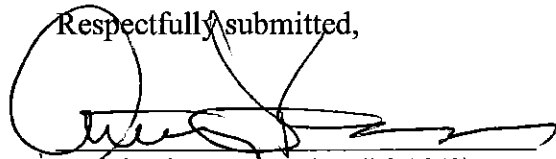
To support its argument, RESA argues that electricity rates are not fully unbundled and shopping customers are paying the costs of default service. RESA MB, p. 87. Duquesne Light disagrees with RESA's analysis. First, RESA has not identified any specific costs in this proceeding that should be unbundled. If RESA believes that Duquesne Light should further unbundle its distribution costs, the solution is not to impose a randomly calculated adder to default service customers' bills but to indicate which specific costs should be further unbundled. RESA has not done this. Instead, RESA proposes to artificially inflate the PTC to raise default service rates and encourage customer shopping. Duquesne Light does not believe that this is appropriate.

For the reasons explained herein and in the Company's Main Brief, RESA's proposal to recover RME program costs through a 5 mils/kWh adder should be denied.

**IV. CONCLUSION**

Duquesne Light has presented a cohesive Default Service Plan and proposed Retail Market Enhancements that fully balance the goals of: (1) providing default service at least cost over time taking into account the benefits of price stability and (2) further enhancing the development of the competitive market. The Company's plan is broadly supported by consumer representatives and major EGSs in the Company's service territory. The Company's plan, as amended, clarified by its evidentiary presentation and its briefs, should be accepted.

Respectfully submitted,



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# **APPENDIX “A”**

**RULES AND REGULATIONS - (Continued)**

**12. PAYMENT AND BILLING**

**12.1 CUSTOMER BILLING BY THE COMPANY** All EGS charges to customers, if billed by the Company, shall be billed in accordance with the EDC Tariff and the following provisions:

**12.1.1 COMPANY BILLING FOR EGS** The Company will bill price plans offered by the EGS which are based on fixed and variable charges similar to those the Company employs for billing distribution service and default Provider-of-Last-Resort service. Nothing in this rule shall require the Company to manually bill customers. Within this context, if the Company's billing system has the capability to bill the price plans offered by the EGS, the EGS may request the Company to do all or some of the billing for the EGS's customers based on the customers' preferences. In addition, the Company will include on its bill EGS late fees and payment arrangements as required by the Pennsylvania Public Utility Commission. However in no case shall the Company require the EGS to provide separate customer lists or perform unique scheduling and reconciliation services for customers billed directly by the Company.

**12.1.2 BILLING FILES** Where the EGS has requested the Company to act as the EGS's billing agent the Company shall electronically transmit files of billing detail daily to the EGS. Such files shall include the Company account number, rate codes, usage information, demand and energy charges, sales tax, and other EGS charges. Billing files transmitted shall have control totals to assure all data was received by the EGS. Control totals include the number of records on the file and significant totals (e.g. total kWh billed, total amount billed, total tax). All billing files will be in a format consistent with standards developed by the EDEWG.

**12.1.3 BUDGET BILLING** The Company will develop dual tracking systems to administer budget billing and apply payments for EGS charges and Company charges.

**12.1.4 EGS TAX RESPONSIBILITY** The Company is not responsible for paying or remitting on behalf of an EGS taxes including, but not limited to, Pennsylvania Gross Receipts Tax, Pennsylvania Public Utility Realty Tax, Pennsylvania Capital Stock Tax and Pennsylvania Corporate Net Income Tax.

**12.1.4.1 SALES TAX EXEMPTION** With respect to customers receiving one bill from the Company, the EGS for whom the Company is billing must provide to the Company the applicable sales tax exemption percentage for each customer. The Company will use the sales tax exemption percentage provided by the EGS for billing the EGS's charges. The EGS is responsible for holding appropriate exemption certificates and is liable for the collection and remittance of sales tax on the EGS's charges. The Company will use a zero exemption percentage if no percentage is provided by an EGS.

**12.1.5 COMPANY REIMBURSEMENT TO EGS FOR CUSTOMER PAYMENTS** For EGSs electing consolidated billing and serving residential and small and medium C&I customers, defined as those on Rate Schedules RS, RH, RA, GS/GM and GMH, the Company shall forward payment in accordance with the provisions of Rule No. 12.1.7 below. For receivables associated with EGS sales to all other customers, the Company shall reimburse the EGS within 14 days of receipt of payment for all energy charges, late fees, sales taxes, and any other taxes and charges collected on behalf of the EGS from the customer consistent with Section 2807 (c) (3) of the Competition Act. (C)

**12.1.6 EGS BILLING DATA** The EGS shall provide all necessary data in its possession for the timely computation of bills. A failure of the EGS to provide necessary data to the Company in a timely fashion may delay generation of a bill for the month to which the data pertain. In such instances, the EGS is responsible for all fines and violations, if any, arising as a consequence of the Company's inability to render a timely bill.

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**RULES AND REGULATIONS - (Continued)**

**12. PAYMENT AND BILLING – (Continued)**

**12.1.7 PURCHASE OF EGS RECEIVABLES (POR) PROGRAM – (Continued)**

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**12.1.7.2.2 PURCHASE PRICE DISCOUNT ADJUSTMENT FOR INDIVIDUAL EGS** Duquesne will monitor individual EGS uncollectible percentage rates (measured as any unpaid amounts 60 days or older divided by that EGS's total annual consolidated billings), to determine whether any individual EGS is engaging in Unusual Business Behavior that results in an increase to the total uncollectible percentage rate for the Duquesne System. If, based on this monitoring, Duquesne finds that an individual EGS's uncollectible percentage rate exceeds 5%, then Duquesne, at its discretion, may increase the discount rate for that individual EGS's accounts to reflect the increased costs associated with the EGS's uncollectible accounts by the difference between the EGS's uncollectible percentage rate and 2%. For purposes of this calculation, Duquesne shall rely on the most recent 12-month period (or shorter if the EGS is new to the POR program) to calculate the EGS's uncollectible percentage rate. Duquesne, in its discretion, may opt to waive the imposition of the additional discount if the increase in the uncollectible rate results primarily from providing service to previously poor paying customers currently on POLR service and the individual EGS is able to provide a reasonable explanation for the significant increase in its uncollectible rate is not the result of a particular price offering, marketing strategy or other actions of the individual EGS. If, however, Duquesne determines that an additional discount is appropriate, the EGS may challenge that determination pursuant to the dispute resolution procedures discussed below. Should the result of those procedures uphold the EGS's position, Duquesne will refund to the EGS the additional discount withheld from their receivables. In the course of the dispute resolution, the EGS may be called upon to provide customer payment history for the small customers it serves, commodity pricing, and other such information deemed appropriate, subject to confidentiality agreement. The discount will be lowered to the level applicable to other EGSs when and if the particular EGS's uncollectible percentage rate decreases to a level of 2% or below over a 12 month period. If the particular EGS stops providing service to a customer under the POR program, the EGS must pay to Duquesne an amount equal to the increase to the discount multiplied by that customer's prior year's billings, to the extent that such amount has not already been paid on the date the EGS stops providing service to that customer.

**12.1.7.3 TIMING OF PAYMENTS** Payments to EGSs will occur electronically; 35 days after consolidated bills are issued, and will continue throughout the billing cycle. If the 35th day falls on a weekend, Duquesne Light holiday or bank holiday, payments will occur on the next business day.

**12.1.7.4 OTHER PAYMENT PROVISIONS** If the EGS customer is on a budget or levelized payment plan, Duquesne shall only be obligated to purchase each month the amount of the monthly installment under the budget or levelized payment plan. Duquesne shall also purchase accounts receivable of EGS's customers based upon an estimated bill. Duquesne shall add to or deduct from any payments due to EGSs amounts that may result from reconciliations, adjustments or recalculations of budget or levelized plans, estimated readings, cancel and rebills, or any applicable billing adjustment.

**12.1.7.5 TRANSFER OF COLLECTION RESPONSIBILITIES AND RIGHTS** Under the POR program, Duquesne is entitled to receive and retain all payments from customers. Duquesne is authorized to conduct collection activities and, if necessary, terminate its delivery service and EGS commodity service to customers whose accounts receivables were purchased and who fail to make payment of amounts due on the consolidated bill, including the amount of the purchased EGS receivables (up to the amount the customer would have been billed for commodity service if the customer had received POLR supply from Duquesne during the non-payment period). Any such termination of service shall be in accordance with the

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