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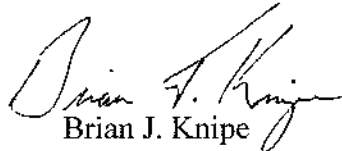
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Reply Brief of FirstEnergy Solutions Corp.* Copies of these documents have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Katrina L. Dunderdale (via email and regular mail, w/encls.)
Certificate of Service

**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
FIRSTENERGY SOLUTIONS CORP.**

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DATED: October 22, 2012

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I. PROCEDURAL HISTORY

FirstEnergy Solutions Corp. (“FES”) filed its Main Brief in this proceeding on October 5, 2012. In its Main Brief, FES set forth the procedural history of this proceeding up to the date of filing. This Reply Brief is filed pursuant to the Prehearing Order issued June 11, 2012 and the common briefing outline approved by Administrative Law Judge Katrina L. Dunderdale. This Reply Brief will respond to arguments propounded by other parties to this proceeding in their Main Briefs.

II. SUMMARY OF ARGUMENT

In its Main Brief, FES explained why the Petition of Duquesne Light Company (“Duquesne Light”) for approval of its default service program (“DSP”) should be approved with the following modifications recommended by FES:

- Rejection of Duquesne Light’s proposed reduction of the wholesale supplier load cap for its Small Commercial and Industrial (“C&I”) and Medium C&I default supply to 50%, and the establishment of a 50% load cap for its Residential default supply;
- Revisions to Duquesne Light’s proposed Supplier Master Agreement (“SMA”), including an adjustment to Duquesne Light’s proposed cross-default threshold (which Duquesne Light adopted in its Rebuttal Testimony¹ in a form acceptable to FES), and an adjustment to Duquesne Light’s proposed unsecured credit limits proposed by Constellation NewEnergy, Inc. and Exelon Generation Corp., LLC;
- Rejection of the proposed limit on the number of customers an electric generation supplier (“EGS”) can serve in Duquesne Light’s Opt-in EGS Service Program (“Opt-In Program”);
- Retention of a bidding competition for the Opt-In Program, as the Commission subsequently directed in the PECO DSP proceeding, in an Opinion and Order entered subsequent to the parties’ filing of Main Briefs in this proceeding;²

¹ Duquesne Light St. No. 9-R at 2-4.

² *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered October 12, 2012) (“PECO Order”).

- Rejection of Duquesne Light's proposal to defer the Standard Offer Customer Referral Program ("Referral Program") until 2014;
- Rejection of Duquesne Light's proposal to suspend the Referral Program if shopping reaches a particular percentage of eligible customers; and
- Recovery of the costs of the Opt-In Program and the Referral Program from all customers in classes eligible to participate in each program.

The evidence of record demonstrates that these modifications will ensure that Duquesne Light's wholesale default service procurements will meet the required Act 129 standards, and that the retail market enhancement programs will result in a price for customers that is certain, stable and economical relative to other options.

In designing their Opt-In Program and Referral Program, electric distribution companies ("EDCs") are supposed to exercise some judgment in identifying deviations from the guidelines that make sense for their customers. This is important because the DSP would establish the terms and conditions of default service from June 1, 2013 to May 31, 2015. During this period, the Pennsylvania Public Utility Commission ("Commission") intends to transition Pennsylvania to an optimal end-state of electricity default service. Also, the Commission wants to move Residential customers from default service to the competitive market through Commission-sponsored, customer-friendly retail market enhancement programs, specifically the Opt-In Program and the Referral Program. FES's proposed modifications to these programs will provide increased savings and a more stable product for participating customers, and enable these customers, who are new to purchasing electricity from alternative retail suppliers, to better compare the Opt-In Program rate with the PTC.

FES's proposed modifications are also designed to increase EGS participation in the retail market enhancement programs. For this reason, FES strongly opposes Duquesne Light's proposals to recover the costs through a discount on EGS receivables purchased through

Duquesne Light's purchase of receivables ("POR") program. Even if it is ultimately determined that EGSs should bear some costs of the retail market enhancement programs, under no circumstances should costs be recovered through a POR discount. For these and other reasons detailed below and in FES's Main Brief, Duquesne Light's DSP should be approved only with the modifications recommended by FES.

FES will not respond in this Reply Brief to every argument set forth in the Main Briefs of the other parties, nor address every issue in the common brief outline. FES's Main Brief has adequately addressed most of the positions and arguments of the other parties, and has set forth the evidence and arguments that recommend the Commission approve Duquesne Light's proposed DSP with the modifications proposed by FES, and reject modifications proposed by other parties. The omission of a response to any arguments raised in another party's Main Brief should not be construed as FES's acceptance of those arguments.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

FES addressed this issue in its Main Brief at 4-5.

2. Legal Standards Applicable To Default Service

FES addressed this issue in its Main Brief at 5-8.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

a. Product(s) and Product Terms

The OCA argues for the adoption of its proposal that Duquesne Light obtain 25% of its Residential default service load through a block and spot supply arrangement. OCA M.B. at 12-13, 16-23. The OCA made this same proposal in the ME/PN/PP/WP DSP³ and the PECO DSP, and it was not adopted in either proceeding. ME/PN/PP/WP Order at 16, PECO Order at 17. OCA notes in its Main Brief that the Commission in the ME/PN/PP/WP Order did not give its rejection of the block and spot procurement issue precedential value. However, in the PECO Order, which was issued subsequent to the filing of Main Briefs in this proceeding, the Commission determined that:

The OCA's analysis did not take into consideration several important factors that significantly reduce the validity of its proposal. For example, the OCA conceded that, under certain market conditions, the block and spot purchases might have cost more than the full requirements portion of PECO's default supply. We believe that PECO's FPCR procurement approach is preferable to the procurement approach utilized by PECO in its DSP I and the OCA's proposal here, because it better shields customers from price variations by placing all risk onto the seller of the FPCR product.

PECO Order at 17. FES submits that a similar analysis of the record in this proceeding requires the same result. As Duquesne Light correctly points out, and as FES argued in its testimony, the inclusion of a block and spot component imposes pricing risks on default service customers that is not present with FPCR contract-based procurements. Duquesne Light M.B. at 25-28; FES M.B. at 10. In addition to price uncertainty, the elimination of 25% of FPCR tranches, in

³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-

combination with Duquesne Light's proposed 50% supplier load cap, could result in reduced supplier interest in Duquesne Light's wholesale solicitations. FES St. No. 1-R at 5-6. The OCA's proposal should be rejected.

In RESA's Main Brief, it proposes that half of Duquesne Light's Residential default service procurements be comprised of 3-month contracts. FES's Main Brief explained the problems with RESA's proposal. FES M.B. at 10-16. In RESA's Main Brief it continues to tout Maryland shopping rates as supporting its arguments that default service pricing should be based on these very short term contracts. RESA M.B. at 21-22; RESA Ex. AW-1 and AW-2. FES will not reiterate its lengthy rebuttal of RESA's incorrect interpretation of the data shown on its exhibits. FES will note, however, that the data on RESA's exhibits do not pertain to Residential customers, but rather non-residential customers with between 25 kW and 600 kW of demand. RESA St. No. 1 at 10. Maryland residential customer default supply is primarily secured through two-year contracts. Duquesne Light St. No. 8-RJ at 20. Therefore, there are reasons in addition to those stated in FES's Main Brief that RESA's exhibits do not support shorter term default service contracts for Residential customers, nor establish that shorter term contracts encourage robust retail competition for those customers.

As for Pennsylvania Residential customers, contrary to RESA's assertion, the Commission has not "indicated its view of default service beginning in 2015" that Residential default supply should consist of 100% 3-month contracts. RESA M.B. at 23. At best, that assertion is premature. The Commission's default service end-state process is in the very preliminary stage at present, with a Secretarial Letter issued September 27, 2012 in the

2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) ("ME/PN/PP/WP Order").

Commission's Retail Markets Investigation⁴ proceeding to which was attached a preliminary proposal (the "RMI End State Proposal") which was discussed in a conference call on October 17, 2012 among interested parties and the Commission's Office of Competitive Markets Oversight ("OCMO"). According to the Secretarial Letter, OCMO will prepare a Tentative Order for the Commission's consideration at its November 8, 2012 public meeting, after which the Tentative Order will be issued for public comment. The design of default service beginning June 1, 2015 is not nearly as settled as RESA asserts. Even assuming, *arguendo*, that the end-state were settled, it is instructive that one of the items prominent in the RMI End State Proposal is a section for statewide Consumer Education prior to the June 1, 2015 transition, which the Commission has recognized throughout the RMI as a critically important component of the success of retail shopping in Pennsylvania. Adoption of RESA's extreme proposal for Residential default service procurements in the current Duquesne Light DSP will undermine the Commission's recognized need for customer education before such time, if ever, that small default service customers begin experiencing frequent, potentially significant changes in the PTC. RESA's proposal should be rejected.

b. Procurement Dates

This section intentionally left blank.

c. Reserving Supply For Retail Opt-In Customer Participation

FES's Main Brief addressed the OCA's proposal to hold back 20% of Duquesne Light's Residential default service load for potential Opt-In Program participation. FES M.B. at 16. The

⁴ *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952.

OCA made similar proposals in the ME/PN/PP/WP DSP and the PECO DSP proceedings and the Commission rejected the proposal in both of those cases. ME/PN/PP/WP Order at 27-29; PECO Order at 33-36. The OCA's proposal should be rejected in the instant case as well.

2. Small C&I Procurement Issues

a. Product(s) and Product Terms

Duquesne Light proposes to acquire default supply for Small C&I customers (customers with monthly demand less than 25 kW) through 12-month laddered FPFR contracts. Duquesne Light M.B. at 34. RESA proposes the same schedule for Small C&I default service procurements as for Residential customers, one-half 12-month and one-half 3-month contracts. RESA M.B. at 28-30. RESA's proposal for default supply procurements for these Small C&I customers raise the same concerns as exist for Residential customers. For the reasons explained in Section III.B.1.a., above, RESA's proposal should be rejected.

b. Procurement Dates

This section intentionally left blank.

3. Medium C&I Procurement Issues

a. Product(s) and Product Terms

FES addressed Duquesne Light's proposal for Medium C&I default supply procurements in its Main Brief. FES M.B. at 18-19. In its Main Brief FES supported the OSBA's proposed Medium C&I customer procurement proposal, in that it maintains a measure of price stability for the smaller customers in this rate class similar to the procurement schedule in Duquesne Light's

POLR V, but will not discourage any customers in the class from shopping as evidenced by the significant increase in shopping experienced for this rate class during the POLR V period. RESA argues in favor of quarterly procurements in which 100% of default service load for Duquesne Light's Medium C&I customers is bid out every 3 months. RESA claims this single type of procurement methodology would constitute a "clean transition to hourly priced default service envisioned as in the RMI End State Proposal." RESA M.B. at 31. Again, for the reasons stated above in Section III.B.1.a, RESA's proposal should be rejected. Further, it must be noted that an appeal of the Commission's determination in the Pike County DSP that a single product can satisfy the "prudent mix" requirement of Act 129 is currently pending in Commonwealth Court.⁵ Even accepting, *arguendo*, that the RMI End State Proposal should be given the weight RESA affords it, the court's action in that appeal may make its argument moot. Finally, even RESA notes that this customer class is already shopping in large numbers. RESA M.B at 32. Therefore, this customer class does not require any encouragement by way of 100% 3-month default supply procurements to participate in the competitive retail market, since the majority of these customers are already active in that market.

The Duquesne Light and RESA default service procurement proposals for this rate class should be rejected, and the OSBA's proposal should be adopted.

b. Procurement Dates

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⁵ Irwin A. Popowsky v. Pennsylvania Public Utility Commission, Docket No. 1179 C.D. 2012 (Pa.Cmwth. Petition for Review filed June 22, 2012).

4. Large C&I Procurement Issues

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5. Default Supply Load Cap Issues

FES in its Main Brief expressed its strong opposition to Duquesne Light's proposals to reduce its wholesale load cap for Small C&I and Medium C&I customers from the 75% cap in POLR V to 50%, and to establish a 50% wholesale load cap for its Residential customer procurements. FES M.B. at 19-23. FES recognizes that the ME/PN/PP/WP Order and the PECO Order set wholesale supplier load caps at 50% in those cases. However, FES urges the Commission to find that Duquesne Light has not met the burden of proving the need for the establishment of these new load caps for Duquesne Light wholesale procurements in this proceeding. Even Duquesne Light's witness Neil Fisher argued that it is inappropriate to apply the Commission's determinations in other cases to Duquesne Light's situation, stating that he "do[es] not believe it is appropriate to simply apply all of the Commission's decisions in the FE Order to this case. Simply put, there is a different set of facts and circumstances. Duquesne Light has a different procurement plan, different PTC rate design...." Duquesne Light St. No. 3-SR at 3. Mr. Fisher was speaking of Duquesne Light's Opt-In Program design in this testimony, but FES submits his concerns are equally applicable to the prospect of unquestioning adherence to a policy of 50% supplier load caps in all of the EDCs' vastly different territories throughout Pennsylvania. Different circumstances in EDC service territories should be considered in individual EDC default service proceedings when determining the appropriate level (if any) of supplier load caps, including the experience with caps in effect during prior DSP time periods, past supplier participation in wholesale procurements and whether the level of the effective load caps had any negative or positive effect on customer pricing.

In fact, Duquesne Light in its Main Brief acknowledges that some of its POLR V RFPs would have resulted in higher prices had a 50% load cap been used at that time rather than the 75% load cap that was in effect. Duquesne Light M.B. at 40. Duquesne Light carefully chooses its words in explaining the magnitude of the price increases that would have resulted from a 50% load caps:

[I]n nine of the Company's ten DSP V RFPs in which a 75% load cap applies, there either would have been no change in the average clearing price or there would have been a change of less than 1% if the Company had applied a 50% load cap as opposed to a 75% load cap to the amounts that were bid. In addition, the other RFP's average clearing price would have been less than 2% higher.

Duquesne Light M.B. at 40. This curious wording supports an inference that in as many as 8 of 10 RFPs, a 50% load cap would have resulted in an increase of nearly 1% in the clearing price, and in a ninth RFP, a 50% load cap would have resulted in an increase of nearly 2%. A single percent change in the price of generation is significant, as the Commission and parties will recall from extensive discussions in the RMI and default service proceedings over the appropriate level of discounts for retail market enhancement programs that are intended to deliver customers value and savings. Thus, Duquesne Light's acknowledgement contradicts the argument that reducing default supply load caps will result in the lowest price supply prices over the long run, an argument that prevailed in the ME/PN/PP/WP Order. ME/PN/PP/WP Order, slip op. at 33.

Moreover, this evidence suggests that the reduced load cap Duquesne Light proposes will adversely impact the level of savings resulting from the retail market enhancement programs. For instance, if the PTC is 1% higher as a result of a reduced default supply load cap, a 5% Opt-In Program discount off the PTC may amount to only a 4% discount off what the PTC would have been had the default supply load cap been set at 75%.

Duquesne Light also maintains that a reduction in its load caps is necessitated by the potential for supplier default. Duquesne Light M.B. at 40. However, as FES explained in its Main Brief, Duquesne Light has never experienced a supplier default in connection with its default service plans. FES M.B. at 22-23.

Therefore, Duquesne Light's proposed reduction of its default supply load caps would unnecessarily penalize its default service customers and participants in the retail market enhancement programs through higher prices, as proved by Duquesne Light's own admissions. The supplier load cap reduction is unnecessary and potentially harmful and therefore should be rejected.

6. Procurements for Delivery Beyond May 31, 2015

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7. Miscellaneous Procurement Issues

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C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

FES addressed Duquesne Light's proposed Opt-In Program in its Main Brief at pp. 26-28. In the PECO Order the Commission modified PECO's proposed Opt-In Program. First, the Commission increased the Opt-In Program term from 6 to 12 months, with a fixed price for four months equal to a discount of "at least" 5% off the PTC at the time of enrollment, and an EGS-provided fixed-price product for the remaining eight months. PECO Order at 90. Also, in contrast with the ME/PN/PP/WP Order Opt-In Program "aggregation" design, the Commission

in the PECO Order retained the bidding competition for the initial 4-month term of the program. PECO Order at 90-91. FES supports most of the program design outlined in the PECO Order, but suggests certain modifications as set forth in its Main Brief and below.

a. Auction vs. ROI Program

In its Main Brief, FES stated that the ME/PN/PP/WP Order and the PECO Binding Poll indicated that the bidding competition seemed to be eliminated. While that remains true for the ME/PN/PP/WP Order, the PECO Order, which was issued after Main Briefs were filed herein, states otherwise and adopts the bidding competition PECO proposed in its filing as well as a fixed price “at least 5% below” the PTC at the time of enrollment. PECO Order at 90-91. Despite footnote 18 of the PECO Order which says the intent is to mirror the ME/PN/PP/WP Order, the purposefulness of the Commission keeping a bidding competition is emphasized by a discussion on Page 91 of the PECO Order concerning the role of the independent monitor, as well as an entire separate section of the PECO Order which affirms the ALJ’s decision to use a sealed-bid RFP instead of a descending clock auction process.⁶ *Id.* at 101-103. FES strongly recommends the auction design adopted in the PECO Order over the aggregation program design adopted in the ME/PN/PP/WP Order. The retention of competitive EGS bidding is consistent with FES’s belief that the most important consideration in designing customer programs should be to give customers the lowest available pricing. FES St. No. 1 at 12-13. Competitive bidding also resolves questions regarding how customers are assigned to EGSs, and preserves significant

⁶ In its Replies to Exceptions in the PECO DSP proceeding, FES urged the Commission to retain a bidding competition, explaining that its benefits to customers and the customer assignment process would outweigh increased costs for EGSs.

aspects of many months of work by stakeholders in the RMI proceedings, which culminated in the adoption of a bidding process in the Commission's IWP Order.⁷

As FES's Main Brief indicates, FES strongly believes that all EDCs' Opt-In Programs should include some form of bidding competition. FES M.B. at 26. The Opt-In Program bidding competition proposed by Duquesne Light in this proceeding should be approved as well. Duquesne Light M.B. at 46-48.

b. Term of Offer

FES addressed this issue in its Main Brief at pp. 26-27. FES supports the 12-month term for the Opt-In Program. If the Commission determines that the Opt-In Program product should consist of a 4-month introductory period followed by an 8-month fixed price product, rather than the 12-month fixed price product proposed by Duquesne Light, FES submits that the 8-month fixed price product must be established and communicated to customers before they have to decide whether to participate in the program. FES M.B. at 27.

c. Discount Percentage

Duquesne Light proposes that the Opt-In Program discount percentage (whether applicable to a 4-month initial term or the entire 12-month term of the program) should be established at or above 5% off the PTC through a bidding competition.⁸ As noted in Section

⁷ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("IWP Order").

⁸ Duquesne Light proposes that the discount be from the PTC "at the time of the offer." Duquesne Light M.B. at 43. The ME/PN/PP/WP Order and the PECO Order both state the discount is off the PTC "at the time of enrollment." ME/PN/PP/WP Order at 117; PECO Order at 90. It is unclear to FES whether the discrepancy in terminology between Duquesne Light's proposal and the two cited Orders would result in different pricing, but FES simply points out the discrepancy and takes no position on which terminology should be adopted.

III.C.I.a. above, FES strongly favors the inclusion of a bidding competition in Duquesne Light's Opt-In Program. Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and Interstate Gas Supply ("IGS") (collectively, "DES/IGS") propose that the minimum discount percentage be reduced from 5% to 2%, or that the \$50 bonus payment be eliminated. DES/IGS argues that current low electricity prices have resulted in difficulties for suppliers creating "headroom" or a price differential below the PTC, and that the combination of the higher minimum discount percentage and the bonus payment will cause suppliers not to participate in the Opt-In Program. DES/IGS M.B. at 13. FES takes no position on the appropriate discount percentage, but stresses that the Opt-In Program bidding competition should be aimed at achieving a discount of "at least" that amount.

d. \$50 Bonus Payment

This section intentionally left blank.

e. Guaranteed Savings

This section intentionally left blank.

f. Customer Participation Cap

The OCA proposes that the customer participation cap be limited to 20% of Duquesne Light's Residential customers. OCA M.B. at 42-46. The OCA has taken this same position in the RMI, the ME/PN/PP/WP DSP and the PECO DSP, and the Commission has rejected it in each proceeding. Along with the OCA's "holdback" proposal for wholesale default service

procurements which the OCA propounds in connection with this issue,⁹ its proposal to reduce the customer participation cap in the Opt-In Program should be rejected as well.

g. Supplier Load Cap

FES addressed this issue in its Main Brief at pp. 28-30.

h. Enrollment Process

FES addressed this issue in its Main Brief at pp. 30-32. Since the PECO Order adopted the auction process for setting the initial price for the Opt-In Program, this remains an issue for determination in this proceeding, notwithstanding the ME/PN/PP/WP Order's "aggregation" program. In its Main Brief, RESA argues that customers should be enrolled in the Opt-In Program before the auction occurs. RESA M.B. at 46-47. RESA made this same argument in the RMI and the PECO DSP, and the Commission has rejected the argument in each of those proceeding. FES recommends the proposal be rejected in this proceeding as well.

i. Mailings and Communications

This section intentionally left blank.

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

This section intentionally left blank.

⁹ See Section III.B.1.c, *supra*.

2. Standard Offer Program

a. Term of Offer

FES addressed this issue in its Main Brief at pp. 33-35. FES notes that the PECO Order rejects RESA's proposal that the discounted price should be in effect for a shorter time than the program term, and agrees with the OCA and FES arguments in opposition to the proposal. PECO Order at 114. In this proceeding, RESA has made the same proposal. RESA M.B. at 50-51. It should be rejected here as well.

b. Discount Percentage

This section intentionally left blank.

c. Guaranteed Savings

FES addressed this issue in its Main Brief at p. 35.

d. Program Start Date

FES addressed this issue in its Main Brief at p. 36.

e. Program Suspension

FES addressed this issue in its Main Brief at pp. 36-37.

f. High Bill Callers

FES supports the position of Duquesne Light that customers with high bill inquiries should be referred to the Referral Program after their high bill issue has been resolved. RESA also supports this position, and notes that the Commission has determined to include these calls

in the Referral Program in both the ME/PN/PP/WP Order and the PECO Order. Duquesne Light M. B. at 66; RESA M.B. at 58; ME/PN/PP/WP Order at 137-140; PECO Order at 118-119.

g. Choice Referral Team

This section intentionally left blank.

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

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3. Market Enhancement Program Cost Recovery

FES addressed this issue in its Main Brief at pp. 37-43. FES notes that the Commission in the ME/PN/PP/WP Order and the PECO Order left this issue to the parties to resolve through collaborative negotiations. ME/PN/PP/WP Order at 136-137; PECO Order at 148-149. In the PECO Order, the Commission noted its “significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participation.” PECO Order at 148. It then directed EGSs and interested parties to resubmit a plan or proposal within sixty days of the entry date of the PECO Order for Commission approval, addressing how participating EGSs or customers will pay for the costs of market enhancements approved in the proceeding. *Id.*

4. CAP Customer Participation in Market Enhancement Programs

FES notes that both the ME/PN/PP/WP Order and the PECO Order have directed the inclusion of those companies’ CAP customers in the market enhancement programs. ME/PN/PP/WP Order at 143; PECO Order at 131-132. Duquesne Light urges that CAP

customers not be allowed to participate in its market enhancement programs because 1) Duquesne Light's CAP customer benefits are not portable; 2) Duquesne Light's billing system limitations prevent the issuance of integrated CAP bills with supplier charges; 3) the Commission should conduct a generic process to address issues regarding CAP customers shopping, portability of CAP benefits and participation in the market enhancement programs. Duquesne Light M.B. at 72.

In the PECO DSP, PECO also proposed to disallow CAP customer participation in its market enhancement programs, for program design and operational reasons very similar to the arguments Duquesne Light raises herein. The Commission in the PECO Order acknowledged "that PECO currently does not allow its CAP customers to shop, and that there are a number of issues that must be addressed in order to change this policy." PECO Order at 131. Regardless, the Commission made clear its intention of "ensuring that all customers, including CAP customers, are eligible to participate in the competitive retail electricity market." *Id.* To that end, the Commission directed PECO, working with the Commission's Office of Competitive Market Oversight, "to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014." *Id.* at 131-132. Since Duquesne Light's issues with CAP customer participation in its market enhancement programs seem to mirror those of PECO, FES submits that Duquesne Light should be similarly ordered to address these issues through Commission action in this proceeding.

5. Shopping Customer Participation in Market Enhancement Programs

This section intentionally left blank.

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

FES notes that the ME/PN/PP/WP Order directed the inclusion of Small C&I customers in those companies' Opt-In Programs and Referral Programs, and the PECO Order directed the inclusion of that company's Small C&I customers in the Opt-In Program (the issue of Small C&I customer participation in PECO's Referral Program was not addressed in the PECO Order).¹⁰ ME/PN/PP/WP Order at 104; PECO Order at 86-87. FES supports the participation of all customers in the competitive retail markets and urges that the ME/PN/PP/WP Order result be adopted in this proceeding.

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

FES supports Duquesne Light's proposal that customers that elect to participate in the market enhancement programs remain with the EGS at the programs' expiration unless the customer elects to select another EGS or return to default service. Duquesne Light M.B. at 75. This result is consistent with the Commission's determinations in the ME/PN/PP/WP Order and the PECO Order as well. ME/PN/PP/WP Order at 127-129; PECO Order at 98-100, 114-116.

The OCA agrees that customers participating in the Opt-In Program should remain with the EGS at the end of the program term.¹¹ However, the OCA recommends that any customer participating in the Referral Program who does not affirmatively elect EGS service should be returned to default service at the end of that program. OCA M.B. at 66-68. FES opposes this

¹⁰ Footnote 15 of the PECO Order states, in the middle of discussing customer eligibility for the Opt-In Program, "RESA's Exception No. 8 also argues that small commercial customers should be included in the Customer Referral Program. That aspect of RESA's Exception will be addressed elsewhere in this Opinion and Order." PECO Order, slip op. at 83. However, it appears this specific issue is not expressly addressed elsewhere in the PECO Order.

¹¹ However, the OCA submits that Opt-In Program customers should receive a third notice near the end of the program term from the EDC in order for customers to be "fully informed of this feature." OCA M.B. at 65. FES opposes this third notice requirement, as the two EGS notices customers will receive before the program ends will adequately inform customers of their options.

recommendation, and as stated above it has not been adopted in either of the Commission's prior DSP Orders.

In addition, the OCA's position is inconsistent with the Commission's recent Order in *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012). In that proceeding, the Commission considered whether a customer participating in a default service TOU pilot program in which an EGS is providing the service, at the end of the program, should be returned to the EDC's standard default service, or should remain with the EGS on a TOU product. The Commission concluded that returning the customer to default service is tantamount to slamming, since the customer had selected an EGS by participating in the program. FES believes that the Referral Program presents even more compelling circumstances for keeping the customer with the EGS than PECO's default service TOU pilot program, since the very purpose of the Referral Program is to match a customer with an EGS. Therefore, the OCA's recommendation should be denied.

8. Miscellaneous Market Enhancement Program Issues

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D. RATE DESIGN

1. Reconciliation Issues

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2. Price To Compare Calculation Date

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3. Non-Bypassable Charge To Recover PJM Charges

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E. TIME-OF-USE PROGRAM

FES addressed this issue in its Main Brief at pp. 44-47.

F. SUPPLY MASTER AGREEMENT ISSUES

FES addressed certain issues concerning Duquesne Light's proposed SMA in its Main Brief at p. 47. In their Main Brief, Constellation NewEnergy, Inc., Exelon Generation Corp., LLC, NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (collectively, the "Joint Suppliers") proposed an additional revision to the Duquesne Light SMA which FES supports. In their Main Brief, the Joint Suppliers contend that the form SMA's Unsecured Credit Limits applicable to sellers of wholesale default supply should be revised to either reflect the limits contained in the SMA used by West Penn Power Company in its current default service procurements, or at the least retain the limits Duquesne Light used in its POLR V plan. FES agrees with the Joint Suppliers' contention and argument on this point. Joint Suppliers M.B. at 9-13.

G. DATA/EGS COORDINATION ISSUES

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H. GENERAL MISCELLANEOUS ISSUES

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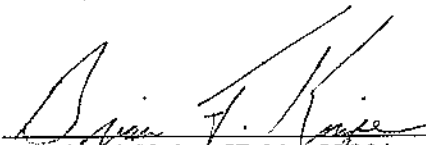
IV. CONCLUSION

For the foregoing reasons, as well as those set forth in FirstEnergy Solutions Corp.'s Main Brief, the Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

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Dated: October 22, 2012

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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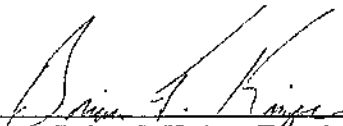
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