

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

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Docket No. P-2012-2301664

**REPLY BRIEF OF
THE JOINT SUPPLIERS**

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1. *Act 129 of 2008*, 2008 Penn. Act 129 (enacted Oct. 15, 2008).
2. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).
3. *Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009).
4. *Secretarial Letter in Re: Electric Generation Supplier Access to Restricted Customer Accounts*, Commission Docket No. M-2009-2082042 (issued August 20, 2010).
5. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered August 16, 2012).
6. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered September 27, 2012).

REPLY BRIEF OF
THE JOINT SUPPLIERS

Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (“Constellation”), along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (“NextEra”) (collectively, the “Joint Suppliers”) hereby submit their Reply Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the Default Service Program and Procurement Plan filed by Duquesne Light Company (“Duquesne Light”) on April 27, 2012¹ (with supporting testimony from Duquesne Light circulated on that same date²) in Docket No. P-2012-2301664, *Petition of Duquesne Light Utilities Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* (the filing herein referred to as the “Default Service Plan” or “DSP”).

I. PROCEDURAL HISTORY

Pursuant to the Procedural Schedule, Main Briefs were filed by parties on October 5, 2012. The Joint Suppliers submitted and circulated to parties their Main Brief in accordance with the Schedule. The issues that were reserved for litigation and decisions were included in a *Common Brief Outline* (“Brief Outline”). The Joint Suppliers address in this Reply Brief only limited issues identified in the Brief Outline, and have identified those issues with the headings and descriptors laid out in the Brief Outline.

¹ *Petition of Duquesne Light Utilities Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Commission Docket No. P-2012-2301664 (Apr. 27, 2012).

² *Direct Testimony of Duquesne Light Utilities Corporation*, Commission Docket No. P-2012-2301664 (Apr. 27, 2012) (“Duquesne Light Direct Testimony”).

II. SUMMARY OF ARGUMENT

As the Joint Suppliers submit in more detail in their Main Brief filed on October 5, 2012, in order to meet the goals of *Act 129 of 2008* (“Act 129”),³ all electric distribution companies’ (“EDCs”) Default Service plans must be designed in such a way as to encourage the broadest participation by wholesale suppliers. Duquesne Light’s DSP will be consistent with the Electric Choice Act and the requirements of Act 129, if revised to incorporate certain limited improvements including, but not limited to, certain enhancements to aid in the development of customer choice and competition in Duquesne Light’s territory, and several important improvements to Duquesne Light’s proposed form of Supply Master Agreement (“SMA”). With these limited changes, Duquesne Light’s proposed design will be more likely to encourage the broadest participation by suppliers, is likely to more effectively meet the goals of Act 129, and will be in the public interest.

III. ARGUMENT

D. RATE DESIGN

3. Non-Bypassable Charge to Recover PJM Charges

Duquesne Light in its Main Brief argues against any proposal to have Duquesne Light assume “non-market based charges” (“NMB Charges”) in its Transmission Service Charge (“TSC”) Rider for all distribution customers, stating that:

³ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity__urges_legislature_to_pass_rate_mitigation_bill.html).

All of the charges in question, PJM RTEP, expansion costs, generation deactivation . . . are generation or transmission charges. Therefore, it is appropriate for Duquesne Light to recover these costs only from default service customers, and for EGSs to recover these costs from shopping customers.⁴

To be sure, in testimony, in support of this statement from its Main Brief, Duquesne Light witness Pfrommer has clarified that, for instance, “generation deactivation charges will not be the responsibility of the winning DS Supplier(s),” and that, “[h]owever, EGSs will be responsible for their load share of generation deactivation charges.”⁵

The Joint Suppliers stated in their Main Brief that they are no longer pursuing the proposal for Duquesne Light to assume NMB Charges for all distribution customers, based on the Commission’s recent August 16, 2012 *Opinion and Order* and September 27, 2012 *Opinion and Order* regarding FirstEnergy Corp.’s EDCs’ Default Service procurements.⁶

The Joint Suppliers therefore accept the Commission’s approval of the TSC Rider, and the SMA provisions pertaining to the NMB Charges collected through the TSC Rider, as proposed by Duquesne Light in its DSP, and clarified by Duquesne Light’s testimony in this proceeding. Thus, the Joint Suppliers propose the following Ordering Paragraph:

Duquesne Light’s proposed TSC Rider is APPROVED, as clarified in Duquesne Light St. No. 4-R at p.26 (lines 15-17).

⁴ Duquesne Light Main Brief at p.79.

⁵ Duquesne Light St. 4-R at p.26 (lines 11-17).

⁶ See *Opinion and Order*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered Aug. 16, 2012); see also *Opinion and Order*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered Sept. 27, 2012).

F. SUPPLY MASTER AGREEMENT ISSUES

The Joint Suppliers argued in their Main Brief that, subject to three particular additional SMA improvements, Duquesne Light's procurements under the DSP will be consistent with the requirements under Act 129. The Joint Suppliers argued that, "in order to encourage the most robust participation in the DSP's [requests for proposals ("RFPs")],"⁷ the Commission should: (1) order Duquesne Light to revise the SMA to include other EDCs' more appropriate unsecured credit thresholds or, at a minimum, the thresholds used in the SMA approved for use by Duquesne Light in its previous Default Service Plan (the "Prior SMA"); (2) as agreed to by Duquesne Light, and as included in the Prior SMA, order Duquesne Light to revise the SMA to reinsert the terms, ", if any" after "with respect to Seller's Guarantor" in SMA Section 12.1(j); and (3) note Duquesne Light's clarification regarding the allocation of "PJM Customer Payment Defaults" between the EDC and the DS Supplier, as noted in the SMA's Sample PJM Invoice. Duquesne Light in its Main Brief opposed the first of these three proposals, and did not address the second and third, because it agreed to make such changes in its testimony, as explained in more detail by the Joint Suppliers in their Main Brief.

The Joint Suppliers maintain that also adopting the first of these three suggested improvements to the wholesale supply documents will ensure that Duquesne Light's DSP meets the requirements of Act 129, allowing the DSP to solicit and obtain contracts for the least cost generation supply on a long-term, short-term and spot market basis. Note that Duquesne Light in its Main Brief addresses a number of other SMA changes proposed by Constellation in its testimony, but the Joint Suppliers elected not to pursue such other SMA changes and instead focused in their Main Brief on three of the important SMA improvements originally proposed by

⁷ Constellation St. 1 at p.33 (lines 10-15).

Constellation. The Joint Suppliers herein respond to Duquesne Light's arguments against their first SMA proposal regarding Unsecured Credit Thresholds.

(1) The SMA's Unsecured Credit Thresholds Should Be More in Line with Those Utilized by Other EDCs or, at a Minimum, with Those Previously Used by Duquesne Light in its Prior SMA

The Joint Suppliers submitted in their Main Brief that Duquesne Light's proposed SMA should be revised to include those Unsecured Credit Thresholds contained in the form of SMA used by the West Penn Power Company ("West Penn") in its current Default Service procurements or, in the alternative, that Duquesne Light continue to at the very least use those Unsecured Credit Thresholds that Duquesne Light included in its Prior SMA.

However, in its Main Brief Duquesne Light argues that "[its] proposed unsecured credit dollar limits are the same as PECO's, except that Duquesne Light's dollar limit for the lowest investment grade rated entities is \$5 million more than PECO's," that "[i]t is very important to limit the amount of unsecured credit provided to default service suppliers in order to protect customers in the event of supplier default," and that "both PECO and PPL have very similar unsecured credit standards, with neither company granting unsecured credit to companies with credit ratings below BBB-/Baa3/BBB-."⁸

With respect to Duquesne Light's arguments, which are the same as those presented in its testimony, the Joint Suppliers pointed out in their Main Brief that, while Duquesne Light's thresholds may line up against those currently used by PECO, they are not, in fact in line with those approved by the Commission and currently used by PPL Electric (contrary to Duquesne Light's statements) and West Penn, as well as those most recently approved by the Commission

⁸ Duquesne Light Main Brief at p.84.

for use by all of FirstEnergy Corp.’s Pennsylvania EDCs (“FirstEnergy-PA”) for 2013 and beyond.⁹ The Joint Suppliers specifically pointed out (a) that Duquesne Light’s highest threshold of \$60,000,000 is in fact *lower than* PPL Electric’s by a factor of \$15-million, *lower than* West Penn’s by a factor of \$65-million, and *lower than* those that FirstEnergy-PA will be using in 2013 and beyond by a factor of \$15-million, and (b) that both West Penn’s and Duquesne Light’s Prior SMA currently provide some level of unsecured credit at the BB-/BB-/Ba3 level (S&P/Fitch/Moody’s), which Duquesne Light’s proposed SMA fails to do. In this way, Duquesne Light failed to show how its proposed Unsecured Credit Thresholds are in line with other EDCs in Pennsylvania. In addition, Duquesne Light fails to identify why it believes that its Prior SMA, as well as the SMA currently used by West Penn – both previously approved by the Commission – do not adequately moderate the risks that are faced upon a DS Supplier default; Duquesne Light has not cited to any evidence that consumers were not adequately protected under its own prior DSP.

The Joint Suppliers in their Main Brief cite that on June 30, 2009, the Commission entered an order regarding PPL Electric’s then proposed procurement structure for Default Service supply (“June 2009 Order”),¹⁰ in which the Commission affirmed that (a) “provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,”¹¹ (b) “a DSP must include prudent steps necessary to obtain ‘least cost

⁹ *Opinion and Order*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (issued Aug. 16, 2012) (“FirstEnergy-PA Aug. 16 Order”) (approving, with modifications, FirstEnergy-PA’s DSP petition, including the SMA presented in FirstEnergy-PA’s petition).

¹⁰ *See Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009) (“June 2009 Order”).

¹¹ June 2009 Order at p.29.

generation supply contracts,”¹² and (c) provisions of a DSP “must be structured so as to encourage greater competition.”¹³

Therefore, as explained in greater detail in the Joint Suppliers’ Main Brief, in order to be consistent with the Commission’s June 2009 Order, because the thresholds in the West Penn SMA will be more attractive to potential bidders, Duquesne Light *must* bring its SMAs’ Unsecured Credit Thresholds more in line with those included in the West Penn SMA, to be deemed to have “include[d] prudent steps necessary to obtain ‘least cost generation supply contracts,’ and . . . be structured so as to encourage greater competition,”¹⁴ as required by the Commission. At the very least, Duquesne Light should be required to use those thresholds it included in its Prior SMA, because it has not provided good cause to move away from those terms. Thus, the Joint Suppliers continue to support the following Ordering Paragraph:

Duquesne Light is ORDERED to adopt the Unsecured Credit Thresholds used in the West Penn SMA, as reflected in Constellation St. 1 at p.36 (lines 12-24).

In the alternative, if it is deemed more appropriate to maintain those thresholds used in Duquesne Light’s Prior SMA, Joint Suppliers continue to support the following Ordering Paragraph:

Duquesne Light is ORDERED to adopt the Unsecured Credit Thresholds used in Duquesne Light’s Prior SMA, as reflected in Constellation St. 1 at p.36 (lines 12-24).

G. DATA/EGS COORDINATION ISSUES

The Joint Suppliers argued in their Main Brief that, it is important for Duquesne Light to address questions/concerns regarding EGS coordination, and EGS data and customer access,

¹² June 2009 Order at p.30.

¹³ June 2009 Order at p.30.

¹⁴ June 2009 Order at p.30.

because “[b]y addressing these types of concerns, customers who wish to shop will have a more seamless and less burdensome path to enrolling with an EGS, “EGSs will have greater certainty regarding the EDC’s processes, as well as the data and information that will be made available,” and “EGSs will be better able to provide services to prospective customers, meet the needs of existing customers, and manage their businesses.”¹⁵ The Joint Suppliers specifically asked that the Commission: (1) as required by the Commission on August 20, 2010, order Duquesne Light to discontinue the practice of requiring EGSs to send to the EDC copies of signed Letters of Authority (“LOAs”) prior to providing access to necessary customer data; (2) order Duquesne Light to remit to EGSs *actual* dollars charged to a customer, rather than only budget billing charges that a customer elects to pay to the EDC; (3) as agreed to by Duquesne Light, order the EDC to build into its new system the capability to accept and manage up to five EGS Scheduling Coordinators and DUNS numbers per EGS, without charging the EGS additional administrative fees for such functionality; (4) given that the DSP being considered in this proceeding has a term that runs through 2015, order Duquesne Light to commit to certain proposals that Duquesne Light states cannot be implemented prior to 2014; and (5) note Duquesne Light’s clarifications/explanations regarding several additional EGS coordination and data access issues raised by Constellation in its testimony.

Duquesne Light in its Main Brief did not address proposal (1), opposed proposals (2) and (4), and reiterated its support from its testimony regarding proposals (3) and (5). The Joint Suppliers herein respond only to Duquesne Light’s arguments regarding proposals (1), (2) and (4), given the lack of controversy regarding proposals (3) and (5). The Joint Suppliers maintain that also adopting proposals (1), (2) and (4) will assist in allowing an EGS to provide a

¹⁵ Constellation St. 1 at p.13 (lines 8-13).

prospective customer with a competitive offer for electric service, check the enrollment status of a new customer, and perform other functions designed to better serve potential and existing customers,¹⁶ that failure to address such issues will cause unnecessary delays and overly burdensome administrative costs and processes that can affect an EGS's ability to contract with customers, render invoices, and provide other services to consumers,¹⁷ and that, therefore, addressing the Joint Suppliers' remaining concerns regarding EGS data/access improvements will be in the public interest.

(1) As Required by the Commission on August 20, 2010, Duquesne Light Must Discontinue the Practice of Requiring EGSs to Send to the EDC Copies of Signed LOAs Prior to Providing Access to Necessary Customer Data

The Joint Suppliers in their Main Brief proposed that Duquesne Light discontinue the practice of requiring EGSs to send to the EDC copies of signed LOAs prior to providing access to necessary customer data,¹⁸ based on the Commission's *explicit* instructions in its August 20, 2010 *Secretarial Letter* in Docket No. M-2009-2082042 ("Aug. 2010 PUC Letter") stating that, with respect to those customers that have elected to have their customer information restricted from suppliers (i.e., restricted customer accounts):

an EGS ***will not be required to provide prior documentation to EDCs*** of a customer's authorization to provide historical usage data to the EGS in connection with either electronic or manual transactions. The authorization process used by EGSs should convey to consumers that EDCs will release the information only to the EGS to whom the authorization was given; and that the EGS will not release the information to others, unless the EGS is a licensed broker who is obtaining this

¹⁶ Constellation St. 1 at p.13 (lines 13-16).

¹⁷ Constellation St. 1 at p.13 (lines 20-22).

¹⁸ See Constellation St. 1 at p.14 (lines 5-20).

information for purposes of sharing it with other licensed EGSs and makes that intent clear in communications with the consumers. It is incumbent upon the EGS to retain records of the requisite authorization for a minimum of two years to produce for a Commission or EDC audit.¹⁹

Duquesne Light did not offer in its Main Brief an argument in response to this proposal raised in Constellation's testimony, based on the Commission's decision and explicit direction in the Aug. 2010 PUC Letter, Duquesne Light cannot continue to require EGSs to provide to the EDC a copy of the LOAs the EGSs maintain for restricted customer accounts. Thus, the Joint Suppliers continue to support the following Ordering Paragraph:

Duquesne Light, as required by the Commission in the Aug. 2010 PUC Letter, is ORDERED to discontinue the practice of requiring EGSs to send to the EDC copies of signed LOAs prior to providing access to necessary customer data.

(2) Duquesne Light Should Remit to EGSs Actual Dollars Charged to a Customer, Rather than Only Budget Billing Charges that a Customer Elects to Pay to the EDC

The Joint Suppliers in their Main Brief proposed that Duquesne Light should remit to EGSs *actual* dollars charged to a customer, rather than only budget billing charges that a customer elects to pay to the EDC. In its Main Brief, however, Duquesne Light states that “[it] plans to replace its existing CIS and CC&B system during the second quarter of 2013,” that under the new CIS system “customers will affirmatively elect to join the budget billing program [and] will only have the option to pay the budget bill every month,” and that “this change in policy should alleviate the problems that the suppliers are facing with this issue.”²⁰

¹⁹ *Secretarial Letter in Re: Electric Generation Supplier Access to Restricted Customer Accounts*, Commission Docket No. M-2009-2082042 (issued August 20, 2010) (“Aug. 2010 PUC Letter”) at p.2 (*emph. added*).

²⁰ Duquesne Light Main Brief at pp.88-89.

With respect to these arguments, as explained in their Main Brief, while the Joint Suppliers appreciate the additional clarity that the new system will provide, the Joint Suppliers again note that Duquesne Light has not committed to remit to EGSs the actual dollars *charged* to the customer by the EGSs, and may only be committing to remit to EGSs the budget billing dollars that Duquesne Light has charged to the customer. Thus, the Joint Suppliers continue to support the following Ordering Paragraph:

Duquesne Light is ORDERED to remit to EGSs *actual* dollars EGSs charge to a customer, rather than only budget billing charges that a customer pays to Duquesne Light.

(4) Duquesne Light Should Commit to Certain Proposals that it States Cannot be Implemented Prior to 2014

In their Main Brief, the Joint Suppliers proposed that, Duquesne Light should:

- Implement EDI 867 capabilities for EGS requests and access to customers' HIU data;²¹
- Adopt PA EDI Change Control #085/#090, which will provide to EGSs EDI notification that a net meter is present or has been added to a particular customer account;²² and
- Offer to EGSs the option for Bill Ready billing, at least for Medium and Large Commercial and Industrial ("C&I") customers.²³

In its Main Brief, Duquesne Light continued to decline to commit to the changes on the basis that they "are better addressed through the specialized EDEWG team than in this proceeding," and that they "cannot be implemented until 2014" because of the roll out of its new CC&B system.²⁴

²¹ See Constellation St. 1 at pp.14 (line 21) – 15 (line 11).

²² See Constellation St. 1 at pp.15 (line 17) – 16 (line 7).

²³ See Constellation St. 1 at p.18 (lines 1-14).

²⁴ See Duquesne Light Main Brief at pp.88-89.

As explained in detail in their Main Brief, the Joint Suppliers submit that Duquesne Light's arguments do not speak to the merits and important benefits that these proposals will provide to customers, EGSs and the competitive marketplace and that, given that the DSP being considered in this proceeding has a term that runs through 2015, there is no reason that Duquesne Light cannot commit to the proposals that it states cannot be implemented prior to 2014. At the very least, with respect to these items (identified by Duquesne Light as "Issues 2 and 3" and "Issue Number 6" in its Main Brief), Duquesne Light can commit to addressing these issues in the EDEWG and implementing them to best of their availability, as appropriate. Thus, the Joint Suppliers continue to support the following Ordering Paragraphs:

Duquesne Light is ORDERED to implement, by 2015, EDI 867 capabilities for EGS requests and access to customers' HIU data.

Duquesne Light is ORDERED to adopt, by 2015, PA EDI Change Control #085/#090, which will provide to EGSs EDI notification that a net meter is present or has been added to a particular customer account.

Duquesne Light is ORDERED to offer to EGSs, by 2015, the option for Bill Ready billing, at least for Medium and Large C&I customers.

IV. CONCLUSION

As explained and supported through great detail in the Joint Supplier's Main Brief, their proposed improvements to Duquesne Light's DSP design are supported by substantial evidence in the record before the Commission. The Duquesne Light DSP, with Constellation's limited changes, will encourage more competitive procurements for Duquesne Light's DSP, more appropriate competitive options from EGSs and, in turn, will better assure that Duquesne Light's customers are able to receive benefits from the least costs for generation supply contracts,

whether remaining on Default Service supply from Duquesne Light or taking competitive service from an EGS.

Respectfully Submitted,

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