

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

FAX (717) 783-7152
consumer@paoca.org

December 5, 2012

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 Default Service Plan for the
Period June 1, 2013 through May 31, 2015
Docket No. P-2012-2301664

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jennedy S. Johnson".

Jennedy S. Johnson
Assistant Consumer Advocate
PA Attorney I.D. # 203098

Enclosures

cc: Hon. Katrina L. Dunderdale
Edward Berzonsky, Technical Utility Services
Certificate of Service

156325

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Jennedy S. Johnson
Assistant Consumer Advocate
PA Attorney I.D. # 203098
E-Mail: JJohnson@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

December 5, 2012

I. INTRODUCTION

On November 15, 2012, the Pennsylvania Public Utility Commission (Commission) issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale in the Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan (DSP) for the Period June 1, 2013 through May 31, 2015. The Office of Consumer Advocate (OCA) files these Exceptions to the Recommended Decision to ensure that customers continue to receive default service consistent with Pennsylvania law while opening up new opportunities for customers to receive additional benefits in the retail market.

The Commission has been investigating the retail electricity market (RMI) as this proceeding has unfolded. The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose.

The provision of default service and the enhancements that have been proposed by the Company and other parties in this proceeding are closely interrelated. The OCA commends ALJ Dunderdale on her detailed examination of the many interrelated and complicated issues in this case. In her Recommended Decision, ALJ Dunderdale recommended the adoption of Duquesne's proposed procurement plan for residential customers. OCA witness Estomin proposed certain modifications to improve upon the procurement plan and better meet the goals of Act 129. See gen'ly OCA St. 1; OCA St. 1-R; OCA St. 1-S. The ALJ did not accept the OCA's proposed modifications to Duquesne's plan in order to diversify the product mix through the inclusion of block and spot products and to adjust the timing of certain

procurements. While the OCA continues to support the use of block and spot products for residential default service and believes that the added diversity will better achieve the least cost supply for residential customers over time, the OCA will not except to the ALJ's recommendation in this case given the particular circumstances presented here and asks that the Commission also indicate that it is not establishing precedent in this case regarding the use of block and spot supply in the future.

Similarly, ALJ Dunderdale did not accept the OCA's proposal to include some two-year full requirements contracts (FRCs) in its supply mix. R.D. at 28-29. The OCA recommended that Duquesne not rely solely on one-year FRCs for its residential default service, but rather that it procure a small portion (approximately 17%) of its requirement through two-year contracts. The OCA made its recommendation on the ground that incorporating some two-year FRCs into the procurement mix would: (1) provide an additional product that would enhance compliance with Act 129 of 2008 by increasing product diversity; (2) allow Duquesne to take advantage of favorable current forward market prices; and (3) provide a degree of hedging against unanticipated future price increases. As noted above, in the R.D., the ALJ rejected the recommendation of the OCA for the addition of two-year contracts and ruled in favor of Duquesne's plan to utilize one-year FRCs exclusively. The OCA excepts to this recommendation.

The ALJ also did not accept the OCA's proposal to hold back some of the FRC tranches until after the enrollment period for the Opt-In Auction Program is completed. R.D. at 34-38. The OCA would note, however, that the hold back proposal was only one of two mechanisms proposed by the OCA to mitigate the price impacts of the Opt-In Auction Program on the FRC default service supply contracts. The OCA also proposed a second mechanism – that

the customer participation cap for the Opt-In Program be set at 20% of eligible residential customers. See OCA M.B. at 42-46. In the absence of the OCA's proposed hold back of supply, a 20% customer participation cap is an essential consumer protection that should be adopted, especially since the Opt-In Auction Program is a brand new, untested program. The OCA, therefore, will except to the ALJ's recommended rejection of its proposal for a 20% participation cap.

The OCA has also determined that it will not except to certain aspects of ALJ Dunderdale's recommendations regarding the retail competitive enhancement programs. The design of these programs has been the subject of much testimony in this case, and the ALJ carefully considered the recommendations of the parties. The ALJ recommended approval, in substantial part, of Duquesne's proposed designs, which the OCA can accept for the purposes of this proceeding in conjunction with the Company's procurement plan. The ALJ did not, however, accept certain key consumer protections that the OCA submits are critical to any competitive enhancement program that will be deployed. The OCA provides its Exceptions below to demonstrate the need for these critical consumer protections in the competitive enhancement programs.

II. EXCEPTIONS

OCA Exception No. 1: The ALJ Erred In Rejecting the Proposal of the OCA That Duquesne Should Include A Small Portion of Two-Year Full Requirements Contracts In its Residential Default Service Procurement. (R.D. at 28-29; OCA M.B. at 12-16; OCA R.B. at 4-7)

In this proceeding, the OCA presented the testimony of Dr. Steven L. Estomin with regard to procurement issues.¹ Specifically, with respect to the issue of the length of contracts Duquesne should employ for its residential default service procurement, Dr. Estomin testified as follows:

To better address the Act 129 requirements, I recommend that four of the 24 tranches be of two-year duration rather than the uniform one-year duration for all of the tranches as proposed by Duquesne. This recommendation serves two purposes. It provides the portfolio with an additional product element and hence is in more conformity with the Act 129 guidance. Additionally, current forward market prices in PJM are generally favorable for consumers relative to historical experience and a set of longer term FRCs may provide residential customers with some degree of benefit in hedging potential unanticipated future price increases in PJM.

OCA St. 1 at 15.

The dispositive language in the R.D. on the issue of contract length is as follows:

Duquesne Light wants one-year full requirements contracts and OCA wants a mix of one- and two-year contracts while RESA wants quarterly and annual contracts. I agree with the Company and the EGS Parties that Duquesne's plan provides the least amount of risk for consumers in the current market.

R.D. at 28. The OCA respectfully disagrees with the ALJ's conclusion that inclusion of four tranches of two-year contracts imposes any additional risk.

The ALJ bases her decision on arguments made by Duquesne and the EGS Parties in this case. In its testimony and briefs, Duquesne argued that including two-year FRCs to take

¹ Dr. Estomin is a principal and senior economist with Exeter Associates. Dr. Estomin received his B.A., M.A. and Ph.D. in economics from the University of Maryland. Dr. Estomin has provided expert testimony in more than 40 proceedings. He has also authored over 70 major publications and reports.

advantage of current favorable forward market prices “equates to market speculation, in an effort to ‘second guess,’ ‘time,’ or ‘beat the market.’” Duquesne St. 8-R at 30. Dr. Estomin effectively refuted these assertions. He testified:

Contrary to Mr. Scott Fisher’s representation, my proposal is in no way second-guessing the market. I do not know whether a combination of two-year contracts will ultimately be more favorable to Default Service customers than a suite made up entirely of one-year FRCs. Mr. Scott Fisher, however, does not know whether a suite of one-year contracts would be preferable to a combination of one-year and two-year FRCs. I am not suggesting that the solicitation schedule be modified based on my assessment of future market movements, which would justify Mr. Scott Fisher’s position. Rather, I have suggested that the market be relied upon, with the recognition that product diversification provides a measure of risk mitigation and that based on historical prices, the risk of potential price increases from current futures levels is greater than the risk of potential price declines.

In short, the recommendation to purchase a mix of one-year and two-year FRCs to satisfy the residential Default Service supply requirement is no more speculative than the Company’s recommendation to purchase only one-year FRCs.

OCA St. 1-S at 20.

Duquesne witness Mr. S. Fisher also asserted that simultaneously purchasing two separate one-year products, as Duquesne proposed, would allow default service rates to track market prices more closely from year-to-year than if a two-year product were procured at a fixed price. Mr. S. Fisher referred to the \$10/MWH difference in PJM capacity prices for the two years of the default service period. He stated that if two-year FRCs were used, the different capacity costs for each year of the two-year period would be blended, resulting in a default service rate in each year that is less reflective of that year’s actual market price. Duquesne St. 8-R at 31. See also, Duquesne M.B. at 29-30; Duquesne R.B. at 12-13.

In response to the issue of market-reflective rates, Dr. Estomin pointed out that the difference in the yearly capacity costs is relatively small and its overall impact on the default service rate is not clear. Dr. Estomin testified:

I agree that the difference in the capacity prices will likely be averaged over the two years. The overall impact, however, owing to this one factor is small and, when other market factors are considered, the overall impact on the relationship of the PTC to retail market prices is not clear. Mr. Scott Fisher notes that the difference in capacity prices is about \$10 per MWh between the first year and the second year. This equates to a \$5-per-MWh difference in each of the two years, though in opposite directions, which is less than 10 percent of the total PTC. This difference would be mixed with other cost components (e.g., energy, ancillary services, RECs) and the ultimate relationship between the Default Service prices that would be paid and the competitive alternative can only be assessed as speculative.

OCA St. 1-S at 20-21.

The OCA would further note that in the recently concluded default service proceedings involving PECO Energy and the FirstEnergy operating companies, the Commission approved residential supply portfolios that included a combination of one and two-year FRCs.²

The OCA submits that the arguments raised by Duquesne against the inclusion of two-year contracts for a portion of its residential default service portfolio are not persuasive and that the Commission has found a mix of one and two-year contracts to be appropriate for residential customers in other default service proceedings. For these reasons, the OCA submits that in the instant proceeding, the Commission should reject the ALJ's recommendation to adopt Duquesne's procurement plan that utilizes one-year FRCs exclusively and, instead adopt the OCA's proposal for adding two-year FRCs for a small portion (4 of 24 tranches) of Duquesne's residential default service portfolio.

² See Petition of PECO Energy Company for Approval of its Default Service Program II, Docket No. P-2012-2283641 at 17 (Order entered October 12, 2012) and Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2011-2273650, *et al* at 25-26 (Order entered August 16, 2012).

OCA Exception 2: The ALJ Erred By Not Recommending Adoption of the OCA's 20% Customer Participation Cap for the Opt-In Program. (R.D. at 82-87; OCA M.B. at 42-46; OCA R.B. at 25-26).

The ALJ recommended that a 50% customer participation cap be adopted for Duquesne's Opt-In Program. R.D. at 82-87. In recommending a 50% customer participation cap, the ALJ relied on the IWP Order. Id. The OCA respectfully submits that a 20% customer participation cap should be adopted for Duquesne's Opt-In Program in order to mitigate the increased volumetric risk in providing default service, which could result in an increase in the cost of providing default service. See OCA M.B. at 42-46.

It is the OCA's position that all non-CAP residential default service customers should be solicited for participation in the Company's Opt-In Program.³ The maximum number of customers who should be permitted to enroll in the program, however, should be limited to no more than 20% of the total number of customers eligible for solicitation. The OCA's primary concern in this regard is that a larger pool of potential Opt-In Auction Program enrollees will directly contribute to uncertainty for FRC suppliers bidding in Duquesne's residential default service auctions that will take place prior to commencement of the program. Such uncertainty will likely increase the level of risk premiums that such FRC suppliers will include in their default service bids, thereby increasing the price of default service. OCA St. 1 at 13-14. 21-24; see gen'ly OCA M.B. at 42-46.

OCA witness Dr. Estomin testified:

The Opt-in EGS Service Program proposed by Duquesne could exacerbate the volumetric risk faced by the wholesale suppliers, since as much as 50 percent of the Default Service load could abruptly (i.e., within one month) migrate to EGS suppliers and away from assumed Default Service supply. The magnitude of the

³ As discussed in OCA's Main Brief, the OCA supported Duquesne's proposal to not include CAP customers in its Retail Market Enhancement Programs. See OCA M.B. at 62. Therefore, CAP customers should not be solicited for the programs.

abrupt migration would not be known by the wholesale suppliers at the time that the bids in response to the Company's RFPs were submitted. Rather, the wholesale suppliers would price their bids based on their own subjective evaluation of their volumetric risk exposure.

OCA St. 1 at 13-14.

Additionally, there are policy reasons why OCA's proposed 20% cap should be adopted. OCA witness Barbara Alexander⁴ testified:

This program should limit enrollment to 20% of residential default service customers. My position is a not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-in Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be an excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself. Indeed, such a result would stimulate even more EGS offers to these customers. The purpose of this program should be to leverage the EDC involvement in promoting this program to encourage those customers who have not yet entered the retail market for generation supply service with a specific offer that is designed to assure a positive experience. It would be more prudent to start with reasonable expectations to jump-start the retail market.

OCA St. No. 2 at 10-11. Ms. Alexander also points out that Duquesne already has a robust level of retail migration at this time and implementing a Retail Auction that would capture 50% of the remaining default service customers is not necessary to "jump start" this market. Id. at 11.

The OCA's proposal is designed to curb the risk of increased default service prices, while ensuring a successful Opt-In Program for all stakeholders. A 20% customer participation cap would provide a better level of load certainty for FRC suppliers. If the cap is

⁴ Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney and a graduate of the University of Michigan and the University of Maine School of Law. Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets.

reached and additional customers exhibit interest in the program, EGSs could make similar offers to the additional customers directly, outside of the program. As such, the OCA respectfully requests the Commission to review the substantial evidence provided by the OCA on this issue and adopt the OCA's recommendation to implement a 20% customer participation cap for Duquesne's Opt-In Program.

OCA Exception 3: The ALJ Erred in Recommending that Customers Calling with a High Bill Complaint Be Among the Group Solicited for the Standard Offer Referral Program. (R.D. at 133-137; OCA M.B. at 55-57; OCA R.B. at 32-34).

The ALJ discusses the Standard Offer Program in the R.D., which included the provision that customers calling with a high bill complaint would be solicited for the Program.

Specifically, the R.D. provides:

I recommend approving Duquesne Light's proposal to include High Bill Callers among the class of customers to whom the SO Program would be offered. Although it's true that a customer calling with a high bill complaint is likely the very type of customer who would benefit most directly from being informed about competitive offers, OCA's point is legitimate and accurately reflects the typical high bill dispute context initiated by, typically, an unhappy ratepayer. However, there may be times when Duquesne Light's customer representatives realize the dispute over high bills has been resolved and suggesting a referral to the Standard Offer Program is appropriate and consistent with the goal of the DSP. The Company should be permitted to make that referral.

R.D. at 71-72. After noting the OCA's valid concerns, the ALJ erred by recommending that the Company can offer the Standard Offer Program to High Bill Callers.

OCA witness Alexander testified regarding the potential problems that could arise with high bill calls being included and raised several possible scenarios where a referral to the Standard Offer Program may be inappropriate. As a result of these potential problems, calls relating to utility obligations to respond to high bills, as well as calls relating to billing and usage questions, payment difficulties or payment plan options, collection, service quality and outages,

and appointments for utility service in the field, should not be included in the obligation to present the Referral Program. The focus of these calls should only be on resolving the customer's specific concerns without delay. OCA witness Alexander testified:

The Referral Program should not be automatically marketed to customers who call DLC with regard to high bill complaints. These calls reflect a wide variety of potential concerns about the nature of the electric bill, some of which can be resolved with meter investigations, but others of which typically result in the need for discussion of payment arrangements and customer assistance programs, including referrals to utility and community bill payment assistance programs. It is not appropriate for calls in this category to be routinely treated as merely a proposal to potentially lower the bill by selecting an EGS. While I certainly agree with DLC's proposal to handle the substance of such calls prior to introducing the Referral Program, I am concerned about the potential adverse impact on the quality of what should be a more extensive discussion of regulated services that this proposal implies

OCA St. 2 at 16.

Burdening such calls with unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa.C.S. § 2807(d). Section 2807(d) states:

The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa.C.S. § 2807(d).

The OCA submits that with a high bill problem, customer satisfaction can be ambiguous. See, OCA M.B. at 56-57. Unlike a call requesting the transfer of service or a new service request call, high bill complaint calls may not be resolved in a single customer contact. These calls may be escalated through supervisors or result in field work, such as meter testing, or filing an informal complaint with the Commission's Bureau of Consumer Services or a Formal Complaint. At what point during the customer calls would the customer "be satisfied" and

provided information regarding the Standard Offer Program, after each customer contact or once the succession of calls and/or field work has been completed? Is the information provided if the customer call results in an informal or Formal Complaint? The OCA submits that these issues have not been addressed by either the Company's proposal or the ALJ's R.D.

Consistent with Ms. Alexander's testimony, the OCA submits that the Standard Offer Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the Standard Offer Program. Other customer calls to the EDC should not trigger a requirement to offer the Standard Offer Program. Accordingly, the OCA requests the Commission to review the evidence on this matter and adopt the OCA position.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate respectfully Excepts to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale, and requests the Commission to review the evidence on the issues pertaining to these Exceptions and to adopt the positions advanced herein.

Respectfully Submitted,



David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

E-Mail: DEvrard@paoca.org

Jennedy S. Johnson

Assistant Consumer Advocate
PA Attorney I.D. # 203098

E-Mail: JJohnson@paoca.org

Counsel for:

Tanya J. McCloskey

Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

December 5, 2012

163155

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Exceptions to the Recommended Decision of Administrative Law Judge Katrina Dunderdale, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of December 2012.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Charles Daniel Shields, Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Michael W. Gang, Esq.
Anthony D. Kanagy, Esq.
Post & Schell, PC
17 North Second Street, 12th Fl.
Harrisburg, PA 17101-1601

Sharon E. Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Charles E. Thomas III, Esq.
Thomas T. Niesen, Esq.
Thomas, Long, Niesen & Kennard
212 Locust St., Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Victor P. Stabile, Esq.
Dilworth Paxson LLP
112 Market Street, 8th Fl.
Harrisburg, PA 17101

Brian R. Greene, Esq.
GreenHurlocker, PLC
707 East Main Street, Suite 1025
Richmond, VA 23219

Patrick M. Cicero, Esq.
Harry S. Geller, Esq.
118 Locust Street
Harrisburg, PA 17101

Theodore S. Robinson, Esq.
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

Amy M. Kodowski, Esq.
FirstEnergy Solutions Corp.
800 Cabin Hill Dr.
Greensburg, PA 15601

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Fl.
Harrisburg, PA 17101-1503

Gary A. Jeffries, Esq.
Dominion Retail, Inc.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817

Stephen Bennett
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348

Todd S. Stewart, Esq.
William E. Lehman, Esq.
Hawke, McKeon & Sniscak LLP
100 N. 10th Street
P.O. Box 1778
Harrisburg, PA 17101

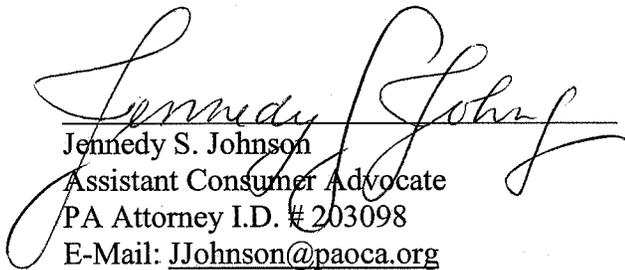
Vincent A. Parisi, Esq.
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016

Pamela C. Polacek, Esq.
Teresa K. Schmittberger, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Divesh Gupta, Esq.
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Stephen L. Huntoon, Esq.
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, D.C. 20004

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Ave.
St. Louis, MO 63105



Jennifer S. Johnson
Assistant Consumer Advocate
PA Attorney I.D. # 203098
E-Mail: JJohnson@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
156326