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December 5, 2012

VIA E-FILING

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 *Exceptions 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)
Office of Special Assistants (via email only: ra-osa@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
FIRSTENERGY SOLUTIONS CORP.**

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Dated: December 5, 2012

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXCEPTIONS	4
	Exception No. 1: The R.D.’s Recommendation To Leave Duquesne Light’s Proposed SMA Unchanged Must Be Modified To Reflect Duquesne Light’s Uncontested Revision To The SMA’s Cross Default Threshold. R.D. at 206, 208-209, COL 7, Ordering ¶11	4
	Exception No. 2: The R.D.’s Conclusion That The Commission’s August 16, 2012 Order In The ME/PN/PP/WP Default Service Case Controls Duquesne Light’s Case With Regard To Wholesale Load Caps Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 52-53, Ordering ¶6	5
	Exception No. 3: The R.D.’s Conclusion That Duquesne Light Should Recover The Costs Of The Retail Opt-In Program And The Costs Of The Standard Offer Program Solely From EGSs And Potentially Through A Discount On Purchased Receivables Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 142-153, Ordering ¶13	9
	Exception No. 4: The R.D.’s Conclusion Approving Duquesne Light’s Proposed Procurement Plan for TOU Service Is Erroneous As A Matter Of Law And Unsupported By The Evidence Of Record. R.D. at 196-202, Ordering ¶17	13
	Exception No. 5: The R.D.’s Conclusion Approving Duquesne Light’s Proposal To Delay Implementation Of The Standard Offer Program Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 120-129, Ordering ¶12	16
	Exception No. 6: The R.D.’s Conclusion That Duquesne Light’s Wholesale Procurement Plan For Medium C&I Customers Would Result In Less Volatile Rates Than The Procurement Plan Proposed By OSBA Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 44-48, Ordering ¶5	18
III.	CONCLUSION.....	20

FirstEnergy Solutions Corp. ("FES"), by its attorneys, files the following Exceptions to the Recommended Decision ("R.D.") of Administrative Law Judge Katrina L. Dunderdale issued November 15, 2012 with respect to the default service program filed by Duquesne Light Company ("Duquesne Light").

I. INTRODUCTION

FES takes exception to six recommendations of the R.D. FES's first Exception relates to a serious omission in the R.D.'s recommendations concerning Section 12.1(h) of Duquesne Light's default service Supplier Master Agreement ("SMA"), which sets a supplier cross default threshold of \$50,000,000. FES explained in testimony that such a low threshold is inconsistent with industry standards and will likely preclude supplier participation in Duquesne Light's default supply procurements. In response, Duquesne Light agreed in Rebuttal Testimony to revise the threshold to the lower of \$100,000,000 or 5% of tangible net worth ("TNW"). While the R.D. notes Duquesne Light's revision of the cross default threshold in its testimony, and that the proposed revision is acceptable to FES, the R.D. recommends "approval of Duquesne Light's proposal to leave the SMA unchanged," specifying only one modification unrelated to the important cross default threshold issue. The R.D. should be modified to approve the SMA with Section 12.1(h) revised in accordance with Duquesne's testimony.

FES's second Exception challenges the R.D.'s recommendation to approve Duquesne Light's proposed 50% load cap on its default supply procurements. R.D. at 52-53. The R.D. concludes that such low load caps will limit consumers' exposure to supplier defaults, are consistent with prior Commission decisions, should increase competition and lower bid prices, and "shouldn't increase default service rates." FES submits that substantial record evidence

exists in this proceeding that contradicts each one of these stated grounds and distinguishes the prior Commission decisions on which the R.D. relies. The R.D.'s recommendation to set Duquesne Light's default supply load cap at 50% is erroneous and not supported by the evidence of record and should be reversed.

FES's third Exception relates to the R.D.'s conclusion that Duquesne Light should recover the costs of its Opt-In EGS Service Program ("Opt-In Program") and the costs of its Standard Offer Customer Referral Program ("Standard Offer Program") (the Opt-In Program and Standard Offer Program collectively referred to as the "RME Programs") solely from electric generation suppliers ("EGSs"). In addition, FES excepts to any recovery of RME Program costs through a discount on EGS receivables which Duquesne Light purchases through its purchase of receivables ("POR") program. As explained below, the R.D. gives undue weight to the IWP Order¹ on this particular subject, and lacks credible and substantial evidence supporting the recovery of costs through a POR discount.

FES's fourth Exception concerns the R.D.'s adoption of Duquesne Light's proposed Time-Of-Use Program ("TOU") procurement methodology. While FES supports the proposal insofar as the TOU service would be bid out to EGSs, FES objects to the adoption of vague language in the SMA that potentially places the TOU obligation on wholesale suppliers in the event the EGS bidding proposal is unsuccessful.

FES's fifth Exception relates to the R.D.'s adoption of Duquesne Light's proposal to delay the implementation of the Standard Offer Program until June, 2014, based on, among other things, the claimed need for IT improvements to accommodate the program. FES respectfully submits that this delay is unsupported by record evidence, and that Duquesne Light should be

¹*Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("IWP Order").

required to implement the Standard Offer Program in June, 2013 as envisioned by the IWP Order. The record does not support the need for IT improvements to accommodate the Standard Offer Program, and FES opposes any proposal that the costs associated with the IT improvements Duquesne Light contends are necessary in order to implement the Standard Offer Program should be borne by EGSs. Since those costs will be associated with system improvements that will benefit all Duquesne Light ratepayers, they should be borne by all Duquesne Light customers, not EGSs.

FES's sixth Exception addresses the adoption of Duquesne Light's proposed default supply procurement plan for Medium C&I customers as opposed to the superior plan proposed by the Office of Small Business Advocate ("OSBA"), and in particular the assertion in the R.D. that Duquesne Light's proposal will result in less volatile rates than the plan proposed by OSBA. OSBA's proposed 12-month, non-laddered contracts will necessarily result in more stable default service rates for Medium C&I customers than the 6-month non-laddered contracts that Duquesne Light proposes.

For reasons explained further below, FES respectfully requests that its Exceptions be granted and that the referenced portions of the R.D. be reversed and modified consistent with these Exceptions.

II. EXCEPTIONS

Exception No. 1: The R.D.'s Recommendation To Leave Duquesne Light's Proposed SMA Unchanged Must Be Modified To Reflect Duquesne Light's Uncontested Revision To The SMA's Cross Default Threshold. R.D. at 206, 208-209, COL 7, Ordering ¶11.

FES takes exception to the R.D.'s recommendation that the proposed SMA be left "unchanged" except for a single minor modification. FES strongly opposed SMA Section 12.1(h) as initially proposed by Duquesne Light. That section contained a cross default provision under which an event of default would occur with a supplier's default on unrelated debt in the aggregate amount of \$50,000,000. FES presented testimony that this threshold is inconsistent with industry standards and could prevent wholesale suppliers from participating in Duquesne Light's default supply procurements. In response to FES's concerns, Duquesne Light revised Section 12.1(h) in its Rebuttal Testimony, to set the cross default threshold at the lower of \$100,000,000 or five percent (5%) of the supplier's TNW. Duquesne Light St. No. 9-R at 2-4. The R.D. acknowledges this revision and that FES deemed it acceptable. R.D. at 206. No other party addressed this issue. However, the R.D.'s disposition of SMA issues at pages 208-209 "recommend[s] approval of Duquesne Light's proposal to leave the SMA unchanged," with only one specified minor change to a section unrelated to the important cross default issue. As a result, the R.D. does not clearly recommend approval of Duquesne Light's uncontested revision to Section 12.1(h). FES respectfully requests that the Commission remedy this serious omission and approve Duquesne Light's SMA with the agreed-upon revised cross default threshold in Section 12.1(h). The Commission's approval of the SMA as revised in Duquesne Light's testimony is necessary to avoid limiting supplier participation in Duquesne Light's wholesale procurements auctions. FES St. No. 1 at 6-7; FES St. No. 1-S at 4-5.

Exception No. 2: The R.D.'s Conclusion That The Commission's August 16, 2012 Order In The ME/PN/PP/WP Default Service Case Controls Duquesne Light's Case With Regard To Wholesale Load Caps Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 52-53, Ordering ¶6.

FES excepts to the R.D.'s recommended adoption of Duquesne Light's proposal to reduce its wholesale supplier load cap for Small and Medium C&I customers from the 75% cap of POLR V to 50%, and to establish a 50% load cap for its Residential customer procurements. The R.D. bases this recommendation on several grounds: limiting consumers' exposure to supplier defaults, consistency with prior Commission decisions, increased competition, and lower bid prices; the R.D. also states that lower load caps "shouldn't increase default service rates." FES submits that substantial record evidence contradicts each one of these stated grounds.

First, with regard to limiting consumers' exposure to supplier default, the terms and conditions under which suppliers may participate in Duquesne Light's wholesale procurements contain substantial credit protections for Duquesne Light in the unlikely event of a default. FES St. No. 1-R at 9. While Duquesne Light contends that reduced load caps are necessitated by the risk of supplier default, and offered hearsay testimony concerning an alleged near-incident of default nearly ten years ago in DSP II, Duquesne Light St. No. 3-R at 28, FES explained in testimony that no default supplier has in fact defaulted on its supply obligations to Duquesne Light. There is a significant difference between an alleged near-default and an actual default. FES submits that Duquesne Light's customers should not be penalized through higher rates, based on something that Duquesne Light contends nearly happened. The near-default occurred prior to the above-mentioned DSP II testimony in 2004, well before the POLR V period. If no

load caps in earlier POLR time periods, or the aggregate load cap of 75% during POLR V, did not cause Duquesne Light concern, its alleged concern about supplier default risk now ring hollow. The evidence does not justify Duquesne Light's proposal to reduce supplier load caps in the wholesale procurements. FES St. No. 1-SR at 8.

Second, in regard to Commission precedent on the issue, while the R.D. does not specify which “previous Commission decisions” it relies on in making its determination, FES assumes those decisions are the recent orders in the ME/PN/PP/WP and PECO DSP proceedings.² The ME/PN/PP/WP Order’s conclusion regarding default supply load caps was based on perceptions and beliefs (with which FES disagrees), which were specific to the four affiliated electric distribution companies (“EDCs”) in that proceeding.³ The PECO Order stated the Commission’s belief that the 50% supplier load cap limited “potential market power” by increasing supplier participation in wholesale procurements in “large EDC service territories.” PECO Order at 41.

The circumstances of the ME/PN/PP/WP Order and the PECO Order have no applicability to Duquesne Light. 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

² *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-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) (the “ME/PN/PP/WP Order”), and *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”).

³ Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “ME/PN/PP/WP”).

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.

Further, Commission precedent recognizes that load caps are "part of the analysis in meeting the 'least cost over time' standard," *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053, P-2009-2093054 (Opinion and Order entered November 6, 2009) ("*ME/PN/PP/WP 2009 Order*"), slip op. at 18, and that they present a tension between supplier diversity and the lowest price to customers:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

ME/PN/PP/WP 2009 Order, slip op. at 16.

Third, the R.D.'s stated ground of increasing competition as a basis for establishing the load cap in this proceeding is unsupported. There is no evidence in the record that Duquesne Light's wholesale procurements have suffered from a lack of supplier participation, or that reduced load caps will result in an increase in the number of suppliers participating in those procurements.

Fourth, the R.D. inexplicably asserts that reduced load caps will result in “lower bid prices” and “shouldn’t increase default service rates.” R.D. at 53. These findings are unsupported, and in fact are directly contradicted by the evidence in this proceeding. Load caps prevent the default service provider from achieving the lowest price in supply procurements, since a cap on the amount of load the lowest cost supplier can provide ensures that higher cost suppliers will serve more of the load, resulting in higher prices for customers rather than the least cost to customers over time. FES St. No. 1 at 9.

In fact, Duquesne Light acknowledged 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 for its Small and Medium C&I customers. Duquesne Light M.B. at 40. Duquesne Light carefully chose its words in explaining the magnitude of the price increases that would have resulted from 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. Based on this vague wording, one could infer that in as many as 9 of 10 RFPs, a 50% load cap would have resulted in an increase in the clearing price. A single percent change in the price of generation is significant, as the Commission will recall from extensive discussions in the Retail Markets Investigation and default service proceedings over the appropriate level of discounts for RME Programs that are intended to deliver customers value and savings. Thus, Duquesne Light’s own acknowledgement contradicts the statement in the R.D. that reducing default supply load caps will result in the lowest price supply prices.

Moreover, adoption of the reduced load cap will adversely impact the level of savings resulting from Duquesne Light's RME Programs, since the percentage discounts in the programs will be based on Duquesne Light's PTC. 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%. Therefore, adoption of the R.D.'s recommended reduced default supply load caps would unnecessarily penalize both Duquesne Light's default service customers and participants in the RME Programs through higher prices.

For the above reasons, the R.D.'s recommendation that the 50% wholesale supplier load cap be adopted is unsupported by record evidence, is unnecessary and potentially harmful and therefore should be rejected.

Exception No. 3: The R.D.'s Conclusion That Duquesne Light Should Recover The Costs Of The Retail Opt-In Program And The Costs Of The Standard Offer Program Solely From EGSs And Potentially Through A Discount On Purchased Receivables Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 142-153, Ordering ¶13.

FES excepts to the finding in the R.D. that all costs of the RME Programs should be recovered from EGSs. In addition, FES excepts to the R.D.'s recommendation that some of those costs may be recovered through a discount on EGS receivables which Duquesne Light purchases through its POR program.

As an initial matter, FES believes the costs of both programs should be recovered from all customers in the class of customers that are eligible to participate. All these customers stand to experience significant savings from a robust, competitive retail electricity market that includes an increase in the number of EGSs from which they can choose. The Opt-In Program and

Standard Offer Program promote such a market, and the benefits to customers will continue well beyond the expiration of this program. Therefore, recovery of costs for these programs should be through a charge applicable to all eligible customers. Also, the R.D. recommends expanded eligibility to participate in the RME Programs to additional customers, including Small C&I customers, in which case the costs would be spread over an even larger customer pool, which would result in an even lower cost per customer. While the costs of the program would be spread among this large number of customers, not imposing these costs on a relatively small number of suppliers will allow those suppliers to offer lower RME Program rates, thus encouraging greater customer participation in the RME Programs. Recovering costs of the programs from all customers in any class eligible to participate in the program eliminates the need for a contingency plan in the event there are no winning EGSs in the Opt-In Program or under-recovery of costs in the Standard Offer Program. FES St. No. 1 at 18-19; FES St. No. 1-R at 22.

If it is decided that any costs are to be recovered from EGSs, such costs should be a known, capped amount. Otherwise it is unreasonable to expect significant EGS participation in either of the RME Programs. There should also be some type of sharing mechanism, whereby at the end of the default service plan period, any under-collection should be recovered from all customers in any class eligible to participate in the RME Programs.

FES notes that the Commission in the ME/PN/PP/WP Order and the PECO Order left the issue of cost recovery design 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. While the

ME/PN/PP/WP Order directed that EGSs are to bear all costs of the ME/PN/PP/WP RME Programs, the PECO Order directed EGSs and interested parties to address how “participating EGSs or customers” will pay for the costs of PECO’s RME Programs, a directive that was confirmed in the recently issued Opinion and Order in that proceeding.⁴ *Id.*(emphasis added).

As stated above, FES strongly disagrees with the R.D. recommendation to recover costs of an unsuccessful Opt-In Program through implementing a discount on purchased EGS receivables in its POR program. If the Opt-In Program fails, there will have been no increase in shopping in the Duquesne Light service territory. The appeal of the Opt-In Program to EGSs is diminished when cost recovery from EGSs is considered together with a requirement that EGSs include a \$50 bonus payment in their offers. According to the IWP Order, certain EGSs (not including FES) expressed support for an incentive signing "bonus" of \$50-\$150, representing customer acquisition cost the EGSs avoided by participating in an opt-in program. IWP Order at 64. No cost-benefit analysis of participation in the program is possible without making significant assumptions regarding the outcome of the program, including but not limited to the number of participating customers and the number of customers won by a given EGS. Nonetheless, since these other EGSs believed the opt-in programs would save them enough costs to justify a signing bonus, it is reasonable to conclude that any potential additional costs to EGSs contained in an opt-in program will cause them to revisit their interest in participating in the program. Combining bonus payments with the recovery of program costs from EGSs will discourage participation and could make the program ineffective in increasing shopping in the Duquesne Light territory. FES St. No. 1 at 19-22.

⁴ *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered November 21, 2012), slip op. at 15-16.

Further, the implementation of a POR discount may discourage new EGSs from entering the territory or encourage EGSs that currently participate to drop out of the POR program. That is, the use of a POR discount in connection with the RME Programs may have an effect that is the opposite of what Duquesne Light intended when designing them. Further, recovery of costs through an EDC's POR program violates the principle that cost recovery should follow cost causation. Imposing a POR discount to account for RME Program costs would unfairly allocate costs of the programs among EGSs based on market share, including market share obtained through the EGS's investment in the territory unconnected with the retail programs, and without regard to whether an EGS participating in POR actually wishes to participate in the programs. *Id.* at 19-20.

There is no relationship between the RME Programs and the discount on purchased receivables. A discount on purchased receivables should be used only for reasons that have a logical connection to the purposes of the POR program, not as a mechanism for recovering costs of programs completely unrelated to POR. Such unrelated cost imposition will encourage EGSs to discontinue their participation in POR programs. Indeed, FES explained in briefs that under Duquesne Light's Electric Generation Supplier Coordination Tariff, participation in its POR program is voluntary and not all EGSs must participate. FES M.B. at 41-42. An EGS which does not participate in Duquesne Light's POR program would not pay any share of retail program costs. Since POR programs were implemented for the purpose of attracting increased EGS activity in EDC service territories where they might otherwise not participate, it would be ill-advised to make POR programs unattractive to EGSs. Unfair and disproportionately allocated cost recovery will be harmful to the success of retail competition in an EDC's service territory if it discourages EGSs from participating in the territory. *Id.*

For all of these reasons, the R.D.'s conclusions should be reversed, and if costs associated with the RME Programs are to be recovered from EGSs, they should not be recovered through a POR discount but rather through a capped amount communicated to EGSs before they must commit to participation in the programs. In the event there is an under-recovery of the costs of a program, the under-recovery should be paid by all customers in any class of customers eligible to participate in the program.

Exception No. 4: The R.D.'s Conclusion Approving Duquesne Light's Proposed Procurement Plan for TOU Service Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 196-202, Ordering ¶17.

FES excepts to the R.D.'s recommendation that Duquesne Light's TOU proposal be adopted. The R.D. finds that "it is unlikely wholesale suppliers will be called on to provide the TOU service" but also cites Duquesne Light's proposal to bid out TOU load to EGSs "after more customers obtain smart meters and to use wholesale default service suppliers if no Commission-approved bids are received." R.D. at 202 (emphasis in original). The R.D. notes that "to date Duquesne Light has almost no customers using smart meters" and "the Company projects to have 2,000 smart meters installed by June 2014 and approximately 35,000 smart meters by June 2015." *Id.* Thus, based on Duquesne Light's proposal that TOU load will be bid to EGSs after more smart meters are in place, it is a real possibility that default service suppliers will be called upon to provide TOU load during Duquesne Light's DSP VI. The proposal approved by the R.D. is inadequate to protect default suppliers' contractual interests and improperly prices any TOU load those suppliers will provide.

In particular, FES remains troubled by Section 4.3 of Duquesne Light's default service SMA. Section 4.3 of the SMA is very vague, stating that "[Duquesne Light] *may* request TOU

supply from Seller." (Emphasis added). Under this provision wholesale suppliers would still be required to agree to provide TOU load as a portion of full requirements load. TOU load and full requirements load are completely different products, with different risk profiles. As a result, including the TOU product with a fixed price default service product could limit supplier participation and/or unnecessarily increase default service prices. While it is understandable for Duquesne Light to try to plan for multiple scenarios and contingencies, its contingency plan as currently reflected in the SMA may compromise its procurements for its standard default service.

SMA Section 4.3 should be deleted. Alternatively, at the very least, this section should be revised to address the possibility of obtaining TOU from wholesale suppliers through an Addendum to the SMA, rather than combining the TOU load with suppliers' full requirements load:

Time of Use. In accordance with PUC statutes, regulations and Orders, Buyer may provide Time of Use rates to its customers when Smart Meters are installed. At that time, Buyer may request **through a separate Addendum to this Agreement that Seller agree to provide** TOU supply. **[Delete:** from Seller pursuant to the terms and conditions included in this Agreement. Buyer will charge TOU customers the rates that are approved by the PUC for TOU service, and Seller will be paid the revenues that Buyer receives for TOU service for that portion of supply used by TOU customers, netted to reflect any other adjustments set forth herein. Seller assumes the risk that these TOU revenues may be higher or lower than the fixed price provided for under Exhibit A. Buyer reserves the sole right to bid TOU supply out separately from this Agreement, and if that occurs, that amount of TOU supply will not be included in this Agreement.]

FES M.B. at 45-46.

FES recognizes that Duquesne Light's TOU program is still in the early "pilot" stages of development, but while the current usage is small it may become more robust during the POLR VI time period. FES believes that Duquesne Light's TOU load should be served by an EGS either through a bid separate from its full requirements products, or as RESA suggests through an

EGS solicitation on a less formal basis, after which Duquesne Light would post the information to a clearing house website, and certify the information to the Commission. RESA St. No. 2-R at 21. The Commission recently approved the TOU plan submitted by PECO Energy Company, in which TOU service was successfully bid to an EGS. *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).

Constellation suggested an alternative methodology by which Duquesne Light could obtain TOU load from its default service suppliers, in order to obviate the risks of both customers shopping for EGS service and customers who choose the TOU offering from Duquesne Light. Constellation's proposal is that Duquesne Light allocate a pro-rata percentage share of TOU load to each tranche (including those awarded in the DSP RFPs) and not revise the price paid to default service suppliers under their contracts. Duquesne Light would establish the TOU price through a "retail pricing matrix," and differences between the payments to wholesale suppliers and amounts paid by TOU customers could be dealt with through the reconciliation process. Constellation St. No. 1 at 41-42. While FES's preference is for TOU load to be separately bid to EGSs, FES believes Constellation's proposal to be a reasonable resolution of the TOU load problem. If this proposal is adopted, Duquesne Light's proposed SMA should be revised accordingly. FES M.B. at 44-47.

Duquesne Light's TOU proposal inadequately protects default service suppliers both in terms of contracting and pricing. If Duquesne Light contemplates that default service suppliers should provide this load in the future, either the SMA should be revised as FES proposes above or Constellation's pro-rata load allocation and pricing proposals should be adopted. However,

FES's preference is that Duquesne Light's TOU load should be served by an EGS. Accordingly, the recommendations in the R.D. should be rejected.

Exception No. 5: The R.D.'s Conclusion Approving Duquesne Light's Proposal To Delay Implementation Of The Standard Offer Program Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 120-129, Ordering ¶12.

FES excepts to the R.D.'s recommendation that the Commission adopt Duquesne Light's proposal to delay implementation of its Standard Offer Program until June 1, 2014. The R.D. cites Duquesne Light's new CIS system, which will not be operational until 2014, as one reason for approving the delay. In addition, the R.D. agrees with Duquesne Light and the OCA "that the Standard Offer Program should not be implemented at the same time as the Opt-In Program because doing so will likely create significant customer confusion and the potential for adverse comparisons to the prices and terms of service associated with these various options." R.D. at 128 (emphasis in original). The R.D. also expresses concern that "risk premiums in wholesale default service products would be difficult, if not impossible to isolate if the two retail market initiatives were implemented simultaneously." R.D. at 129. The R.D. recommendation should be rejected, and Duquesne Light directed to implement the Standard Offer Program beginning June 1, 2013.

First, FES submits that the evidence in this proceeding does not support the proposition that a new CIS system is necessary for implementation of the Standard Offer Program, nor that the implementation of a new CIS system should delay the start of the Standard Offer Program. Customers are currently being switched to EGS service in Duquesne Light's service territory without Duquesne Light's having whatever capabilities the new CIS system will provide, and the current system should be able to accommodate switches through a Standard Offer Program. A

new CIS system is not necessary for this purpose. FES M.B. at 36. In that regard, if EGSs are required to bear costs associated with Duquesne Light's RME Programs, they should not have to assume any costs associated with Duquesne Light's new CIS system. Such costs should be borne by Duquesne Light's ratepayers, not by EGSs in connection with Duquesne Light's Standard Offer Program.

Second, the OCA made the same arguments about potential customer confusion and adverse comparisons of various products in the ME/PN/PP/WP DSP⁵ and the PECO DSP,⁶ and its arguments were correctly rejected by the Commission in both of those proceedings. In the ME/PN/PP/WP Order, the Commission held as follows:

We are persuaded by the arguments made by FES that there is very little overlap between the two programs and customer confusion should be minimal. Shopping customers will have been solicited for the ROI Program in the second quarter of 2013 and participants will be enrolled in the one-time program by June 1, 2013. The Companies proposed that the Standard Offer Customer Referral Program would be implemented beginning in June 2013. However, even if some overlap would occur, we agree with the position of FES that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market. Accordingly, we shall grant the Exceptions of FES, and reject the recommendation of the ALJ that the Standard Offer Customer Referral Program be delayed.

ME/PN/PP/WP Order at 150. In the PECO Order, the Commission held as follows:

Marketing and enrollment for the Opt-In Program will have been completed before marketing and enrollment for the Standard Offer Program begins. Accordingly, we agree with FES that there will be little overlap between these key periods of the two programs. We are not persuaded that having the two programs in effect at the same time is a concern. We also agree with FES' observation that, because the Standard Offer Program will be marketed only to default service customers and not to customers who have enrolled

⁵ OCA St. No. 2 at 15; OCA St. No. 2-R at 9; OCA St. No. 2-SR at 13.

⁶ OCA St. No. 2 at 15-16; OCA St. No. 2-R at 2-3; OCA St. No. 2-SR at 4.

in the Opt-In Program, the potential for customer confusion is diminished.

PECO Order at 121. The R.D.'s recommended adoption of the OCA's position on delaying the Standard Offer Program should be rejected in this proceeding as well.

Finally, FES is a wholesale supplier in Duquesne Light's territory. As such, FES sees no validity to the concern expressed in the R.D. about any potential impact on wholesale supplier risk premiums if Duquesne Light were to implement its Referral Program in June, 2013, concurrent with the start of its POLR VI plan. FES St. No. 1 at 15-16.

FES's exception to the R.D.'s recommended delay in the implementation of Duquesne Light's Standard Offer Program should be granted, and the R.D. recommendation should be rejected.

Exception No. 6: The R.D.'s Conclusion That Duquesne Light's Wholesale Procurement Plan For Medium C&I Customers Would Result In Less Volatile Rates Than The Procurement Plan Proposed By OSBA Is Erroneous And Unsupported By The Evidence Of Record. R.D. at 44-48, Ordering ¶5.

FES excepts to the recommendation that the Commission adopt Duquesne Light's proposed default supply procurement plan for Medium C&I customers as opposed to the superior plan proposed by OSBA. The assertion in the R.D. that Duquesne Light's proposal will result in less volatile rates than the plan proposed by OSBA is empirically incorrect. For customers in the Medium C&I class, which includes customers with peak demands greater than or equal to 25 kW but less than 300 kW, Duquesne Light proposes to procure default supply through 6-month non-laddered, full requirements load following contracts. Duquesne would conduct competitive

solicitations in April and November of each year, and as a result, Medium C&I default service rates would change every six months. Duquesne Light St. No. 2 at 13-14.

The OSBA proposed that Medium C&I customer default supply be obtained via one-year, non-laddered, FPFR contracts. OSBA St. No. 1 at 6. While a substantial portion of Medium C&I customers are shopping (66%), a significant minority still take default service (34%). *Id.* at 5. The OSBA's procurement strategy would be similar to that utilized by Duquesne Light in POLR V, but would eliminate laddering of contracts. By using one-year contracts instead of Duquesne Light's proposed 6-month contracts, the OSBA's proposal would result in greater price stability for those Medium C&I customers who still take default service than would Duquesne Light's proposal, while still being more market-reflective for these customers than Duquesne Light's POLR V procurement strategy. *Id.* at 6.

The R.D.'s recommended approval of Duquesne Light's proposed default service procurement schedule for Medium C&I customers should be rejected, and the OSBA's proposal adopted.

III. CONCLUSION

For the reasons set forth above, FirstEnergy Solutions Corp. respectfully requests that the Pennsylvania Public Utility Commission modify the Recommended Decision as requested in these Exceptions.

Respectfully submitted,

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Dated: December 5, 2012

Attorneys for FirstEnergy Solutions Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

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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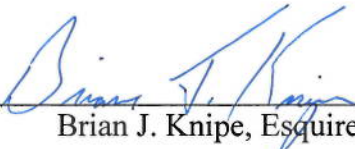
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