COMMONWEALTH OF PENNSYLVANIA

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December 17, 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 Reply 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,

Jennedy S. Johnson
Assistant Consumer Advocate
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Enclosures
cc: Hon. Katrina L. Dunderdale
Edward Berzonsky, Technical Utility Services
Office of Special Assistants
Certificate of Service
156325

BEFORE THE
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	: : : :	Docket No. P-2012-2301664

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On November 15, 2012, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale in the Default Service Plan (DSP) proceeding of Duquesne Light Company (Duquesne or the Company). Exceptions were filed on December 5, 2012. The OCA's positions in this proceeding are fully addressed in its Main Brief, Reply Brief, and Exceptions. The OCA files these Reply Exceptions to in response to certain Exceptions filed by Duquesne, Retail Energy Supply Association (RESA), FirstEnergy Solutions (FES) and Dominion Retail, Inc./Interstate Gas Supply, Inc. (Dominion).

II. REPLY EXCEPTIONS

Reply Exception 1: The ALJ Properly Rejected RESA's Proposal to Shorten the Interval Between Procurement and Delivery of Default Supply Contracts to 60 Days. (RESA Exc. 2 at 9-11; R.D. at 33-34; OCA M.B. at 25-26; OCA R.B. at 14-15)

Duquesne's proposed procurement schedule incorporates lead times (the time between supply contract procurement and delivery) ranging from two to fourteen months. RESA proposed that the lead time for any of Duquesne's procurements should be no more than two months. ALJ Dunderdale recommended approval of Duquesne's proposal and rejection of RESA's. The Judge stated:

> The Company's proposal balances the need for more market responsive rates while still providing the consumer with a hedge against unexpected energy price increases. This balance allows the [Price to Compare] to reflect the market energy and capacity prices in each year of the plan while providing a reasonable level of rate stability.

R.D. at 33-34. RESA excepts to the ALJ's decision asserting that it is inconsistent with the record evidence and Commission precedent. RESA Exc. at 9-11. The OCA submits that RESA's exceptions are in error.

With respect to record evidence, both Duquesne and the OCA presented testimony that clearly supports the ALJ's recommendation. For its part, Duquesne's witness Scott Fisher testified to the advisability of Duquesne's approach as compared to RESA's:

> The choices of the various procurement lead times for the different default service supply products in Duquesne Light's proposed Plan are not arbitrary. Instead, and as I explained in detail in my rebuttal testimony, the procurement lead times in Duquesne Light's proposed supply portfolios are carefully integrated with the proposed product delivery periods in a way that provides specific hedging and price stability benefits for customers.
>
> RESA's recommendations to simply require all procurements to be held within a set period of time (e.g., 60 days) of the start of delivery of the respective supply products would eliminate carefully designed price stability benefits for small customers that otherwise would be provided under Duquesne Light's proposed Plan. In short, Duquesne Light's proposed procurement lead times are appropriate.

Duquesne St. 8-SR at 11.

OCA witness Dr. Steven Estomin also testified to the problems with RESA's approach which are mitigated by Duquesne's procurement schedule. Dr. Estomin testified:

> The compressed procurement schedule recommended by [RESA] witness Williams will not allow for diversity in the timing of the procurements, thus exposing residential Default Service customers to more "market timing" risk than is necessary. The schedule proposed by the Company, which OCA generally supports, will help to mitigate the "market timing" risk problem of having procurements that are too close together in time.

OCA St. 1-R at 4. In Surrebuttal testimony, OCA witness Estomin again testified to the appropriateness of Duquesne's approach to procurement scheduling:

> [T]he residential Default Service supply portfolio should be procured in a manner that reasonably mitigates the exposure of Default Service customers to the risks inherent in buying all of the Default Service supply at the same time or within a short period of time. The only way to accomplish this is to contract for some of the Default Service supply months in advance of the initial delivery date and contract for some of the supply on a date closer to the start of deliveries. This approach is consistent with what Duquesne's residential Default Service supply plan reflects and an aspect of the Company's plan that I recommend be retained. The approach included in the Company's plan reasonably balances Default

> Service supply risk mitigation and portfolio costs reflective of then-current wholesale market prices.

OCA St. 1-S at 6. Inasmuch as the ALJ based her decision on the need to establish a balance, the OCA submits that the record contains more than sufficient evidence to support her determination.

With respect to whether the ALJ's decision accords with Commission precedent, RESA cites the Commission's Order in the default service proceeding of the FirstEnergy Operating Companies in which the Commission directed these Companies to shorten the lead time of their procurements. The OCA would note, however, that the Commission specifically declined to adopt the lead times recommended by RESA. 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 No. P-2011-2273650, *et al*, at 26 (Order entered August 16, 2012) (FirstEnergy DSP Order). The First Energy DSP Order serves as no precedent in support of RESA's proposal.

The ALJ's recommendation in favor of Duquesne's procurement schedule is well-supported by the evidence in this case and RESA's reliance on the First Energy DSP Order is unavailing. The ALJ's recommendation should be adopted and RESA's exceptions denied.

Reply Exception 2: The ALJ Properly Rejected RESA's Proposal to Replace Duquesne's Residential Default Service Portfolio of 100% 12-Month Contracts With 50% 12-Month Contracts and 50% 3-Month Contracts. (RESA Exc. 3 at 3-9; R.D. at 28-29; OCA M.B. at 23-24; OCA R.B. at 11-14)

In this proceeding, Duquesne proposed to procure the electricity for residential default service through the use of 12-month full requirements contracts. RESA opposed Duquesne's use of 12-month contracts and proposed, instead, that the Company acquire 50% of the residential default service supply through 12-month contracts and 50% through 3-month

contracts. In the R.D., Judge Dunderdale rejected RESA's proposal in favor of the Company's proposal, finding that, "Duquesne Light's plan mitigates the risk of procuring the entirety of its default supply at the peak of the market. This plan allows for more stability in the default service rate." The ALJ also found that "Duquesne's plan provides the least amount of risk for consumers in the current market," and is "logical and prudent and meets the least cost requirements." The ALJ further stated that, "To use quarterly and annual contracts will compromise price stability too far, resulting in customers who refuse to shop due to lack of predictability beyond three months and the need for almost constant monitoring of retail market rates." R.D. at 28-29.

RESA excepted to the ALJ's decision on a number of grounds. Among them, RESA argues that the ALJ improperly elevated "price stability," which appears in the Preamble to Act 129, above the specific statutory requirements of Act 129 (now part of Section 2807(e) of the Public Utility Code) in making her determination, thereby rendering the statutory requirements virtually non-existent. RESA Exc. at 3-5. RESA also argues that: (1) the ALJ ignored evidence that market-reflective default service rates will help develop a competitive, sustainable retail market; (2) the ALJ relied in part on unsupported and backwards reasoning when she concluded that quarterly default service price changes could result in customer paralysis that would deter shopping; (3) the ALJ used an improper "least risk" standard to assess Duquesne's plan; and (4) RESA's procurement proposal is consistent with the Commission's recently announced default service end state proposal. RESA Exc. at 5-9.

The OCA submits that RESA's arguments are incorrect. Initially, the OCA notes that the ALJ explicitly determined that Duquesne's plan "meets the least cost requirements" of Act 129. R.D. at 28. That the ALJ also factored in considerations of price stability in reaching

her decision is not legally flawed as RESA suggests. On the contrary, the OCA submits that the ALJ's consideration of price stability is entirely consistent with Pennsylvania law.

The General Assembly made specific policy findings and declarations in passing Act 129 that were set forth in the Preamble. The Preamble to Act 129 provides very specific guidance as to the purpose of Act 129 and the goals that have been set by the General Assembly for each default service provider to achieve. Specifically, the General Assembly declared:

> (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, *taking into account any benefits of price stability over time* and the impact on the environment.
>
> (2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to *ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth and ensures affordable and available electric service to all residents.

See, Preamble to Act 129, 2008 Pa. Laws 129 (emphasis added). The Commission's regulations provide:

> We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Implementation of Act 129 of October 15, 2008, Docket No. L-2009-2095604, *slip op.* at 39-40 (Final Rulemaking Order entered Oct. 4, 2011) (Final Rulemaking Order). The Commission

further recognized the benefits of rate stability as it relates to the "least cost over time" standard, as follows:

> In our view, a default service plan that meets the "least cost over time" standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both relatively stable and also economical relative to other options. In this regard, we agree with those points raised by both PECO and PPL. To reiterate our prior point, the "least cost over time" standard should not be viewed as synonymous with maximizing market timing benefits at the expense of **price stability** and economy.

Final Rulemaking Order at 40-41 (emphasis added). The Commission elaborated on the importance of price stability, noting that the reliance on short term pricing is not consistent with Act 129:

> Price stability benefits are very important to some customer groups, so **an interpretation of "least cost" that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives**.

Final Rulemaking Order at 41 (emphasis added).

RESA would have the ALJ and the Commission ignore or downplay Act 129 and the Commission's own regulations when considering a default service procurement plan. Yet, RESA has provided no reason for the Commission or the ALJ to overlook this legislative intent or the regulations when applying this statute. The OCA submits that by considering price stability, the ALJ did not raise the language of the Preamble above the language of the statute as RESA contends. Rather, the ALJ, reviewed the applicable statutory and regulatory provisions in manner fully consistent with the law.

Given the Commission's clear direction that price stability is an important consideration under Act 129's requirements, the ALJ's determination in this case was clearly reasonable and appropriate. The ALJ correctly found stability to be an important factor in

evaluating Duquesne's default service plan. Doing so was not improper as RESA asserts, but was a reasonable application of the statute. The ALJ's review of the Preamble for use in determining the appropriate legal standards in this proceeding was appropriate and legally supportable.

RESA's assertion that the ALJ ignored the evidentiary record in this case with respect to market-reflective pricing and its effect on competitive markets is also misplaced. Duquesne witness Mr. Scott Fisher offered some very pertinent testimony on this point, which the ALJ considered. In response to a question about whether the sustainability of the competitive retail market will be jeopardized unless the term length of supply products are shortened as RESA has proposed, Mr. Fisher stated:

> No, not at all. RESA contends that the default service supply product term lengths (procurement lead times and/or delivery periods) must be shortened more than Duquesne Light has already proposed to shorten them, in order to reduce the possibility that market prices will diverge from default service rates for an extended period of time, because otherwise "retail suppliers are likely to view that market as presenting only intermittent opportunities for competitive suppliers to attract customers, making the market unattractive for suppliers to enter or remain in the market." [RESA witness] Ms. Williams describes her allegation in more detail when she attests that, if default service supply product term lengths are not adequately shortened, there likely will be few or no competitive options for customers to be served by EGSs even when market prices are lower than default service rates, because EGSs will perceive the opportunity to serve the customers as intermittent.
>
> Contrary to Ms. Williams' claims, statistics from Duquesne Light's service area, as well as from other large EDC service areas in Pennsylvania, indicate that EGSs will enter markets and serve customers when they can provide added value for customers, regardless of whether or not the term lengths of the default service products or the frequency of the default service rate resets are what RESA would like them to be. For example, Duquesne Light's current residential default service rate is fixed for a 29-month period. During this time, the number of active EGSs serving Duquesne Light's residential load has grown to 34, and the percentage of residential load being served by EGSs has grown to approximately 43%, which is one of the highest residential customer switching
> percentages in the United States.

Duquesne St. 8-R at 40-41. Moreover, the OCA submits that Duquesne's default service rate *is* market-reflective. The generation purchased for default service is procured from the competitive wholesale market that serves both EDCs and EGSs in Pennsylvania and the price paid by an EDC reflects market conditions for the product procured. RESA's proposal would unnecessarily increase the risk and volatility of the default service price.

In its Exceptions, RESA also argues that its residential procurement proposal should be adopted because it is consistent with the Commission's goal for the default service end state as expressed in its Tentative Order in Investigation of Pennsylvania's Retail Electricity Market: End State Default Service, Docket No. I-2011-2237952 (Tentative Order entered November 8, 2012) (Tentative Order); RESA Exc. at 8-9. The OCA submits that RESA's reasoning on this point is in error. The Tentative Order specifically states that the end state proposal will require legislative changes. Tentative Order at 12. The current law supports the determination made by the ALJ in favor of the longer-term, more stable default service contracts proposed by Duquesne. Moreover, the use of three month contracts is not necessary or desirable in this default service period regardless of the possible transition to a different default service model. Any possible transition would require a myriad of issues to be addressed including proper method of implementing the transition.

The OCA submits that the ALJ properly rejected RESA's proposed procurement approach. RESA's proposal introduces unnecessary instability into the default service price that neither satisfies Act 129 nor is needed to achieve a strong competitive marketplace.

Reply Exception 3: The ALJ Properly Rejected RESA's Proposal to Eliminate Residential Default Supply Contracts that Extend Beyond May 31, 2015. (RESA Exc. 5 at 14-16; R.D. at 56; OCA M.B. at 31-33; OCA R.B. at 16-19)

Duquesne's proposal for procuring residential default service supply included acquiring, in April 2014, 25% of the supply needed for the June 2015 to May 2016 period, one year past the default service period under review. The Company proposed this to avoid subjecting residential customers to the potential rate volatility associated with having to replace a large portion of default service supply in a short period of time at the end of Default Service Period VI (DSP VI). Duquesne St. 2 at 10. The OCA supported this aspect of Duquesne's plan. RESA opposed having any procurement contracts that extended beyond May 31, 2015. Among other things, RESA argued that the Retail Markets Investigation would likely lead to new procurement processes beginning June 1, 2015 and that there should be a clean break between the current and future default service models. RESA M.B. at 34-35.

The ALJ recommended approval of Duquesne's "overhanging" contracts. She found that they will provide price stability benefits yet will occur far enough into the future that DSP VI can be redesigned should the results of the Retail Markets Investigation dictate. The ALJ also noted that her determination was consistent with other Commission decisions. R.D. at 56.

RESA takes issue with the ALJ's finding that the overhanging contracts will provide price stability. RESA contends that there is no evidence that its proposal to eliminate such contracts will cause price instability. RESA ignores, however, OCA witness Dr. Estomin testimony on this very point:

> [RESA] Witness Williams recommends that all of the contracts entered into to supply residential Default Service terminate no later than May 31, 2015, the end of the proposed Default Service plan period. This would mean that 100 percent of

> the power supply under a successive plan would need to be procured with an initial delivery date of June 1, 2015, and that all of that supply would be subject to new prices. Duquesne's proposal, as well as the recommendation that I put forth in my Direct Testimony, calls for an "overhang," which would ameliorate the degree to which residential Default Service customers would be exposed to new prices at the beginning of the next Default Service plan period.

OCA St. 1-R at 4. The ALJ's finding that Duquesne's overhanging contracts will provide price stability benefits for residential customers is supported by the testimony in this case and any contention that it can only be supported by evidence of price instability three years hence is a red herring.

The ALJ further noted that her determination is consistent with other Commission decisions. Specifically, in the PECO Default Service proceeding the Commission approved the use of some overhanging contracts. Petition of PECO Energy Co. for Approval of its Default Service Program II, Docket No. P-2012-2283641, at 31 (Order entered October 12, 2012) (PECO DSP Order).

In sum, the OCA submits that the exceptions raised by RESA to the ALJ's recommendation concerning Duquesne's overhanging contracts lack merit and should be rejected.

Reply Exception 4: The ALJ Did Not Err when She Recommended Approval of Duquesne's Proposal for a ROI that Includes a 12-month Fixed Price Product with Guaranteed Savings for the Entire 12-Month Period and a Bonus to Be Paid After Three Months. (RESA Exc. 7 at 21-24, R.D. at 66-82; OCA M.B. at 38-42; OCA R.B. at 21-25)

The ALJ recommended approval of Duquesne's proposal for an Opt-In program that includes a 12-month fixed-price product, guaranteed savings for the entire 12-month period and a bonus to be paid after the customer has been with the EGS for three months. R.D. at 66-82. In making her recommendation, the ALJ noted the uniqueness of Duquesne as an EDC that currently has high levels of shopping and a stable PTC. R.D. at 72, 82. She also noted that

providing the bonus after three months and guaranteeing savings for the entire 12-month period will create confidence in the retail competitive market while avoiding the chilling effect that customer confusion can have on market participation. R.D. at 78, 82.

RESA excepts to the ALJ's recommendation on these issues and states that the ALJ's recommendation will not maximize EGS participation in the program because it guarantees too much to the participating customer. RESA Exc. at 21-24. RESA states that the Commission's rejection of similar provisions in the FirstEnergy and PECO Default Service proceedings supports its position in this case. RESA Exc. at 22-24.

RESA's exception with respect to these issues is without merit and should be denied by the Commission. First, the OCA would note that the ALJ rightfully considered the uniqueness of Duquesne in making her determination in this proceeding. As the OCA explained in its Briefs, Duquesne has been out from under rate caps for many years and 41.3% of the Company's residential customers are served by an EGS, equal to 44.7% of the residential customer load.[1] OCA M.B. at 33-34, OCA R.B. at 20. The ALJ was correct in considering these existing large levels of customer migration to an EGS when reviewing programs that are designed to "jump-start" the competitive market since these retail migration trends document that the Company has a mature retail market.

Additionally, Duquesne is unique in that flat rates were established as part of its last DSP, so its customers do not face the quarterly price changes experienced in other EDC's service territories. OCA M.B. at 34. As was discussed in OCA Reply Exception 14 below, the Company's current PTC has been set for the duration of their existing 29-month default service plan. OCA M.B. at 73. Further, as the ALJ noted, the reconciliation period of the Company,

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[1] See OCA M.B. at 33-34 *citing* www.PaPowerSwitch.com (September 19, 2012 update).

including changes to the PTC, should coincide with the mix and timing of the default service supply products and should, therefore, be done annually. R.D. at 183. This approach was either supported or not opposed by a number of parties in the proceeding including the OCA, OSBA, Dominion and Constellation. See OCA M.B. at 73, OCA R.B. at 42-43, OSBA St. 1 at 9, Dominion St. 1 at 4, Constellation St. 1 at 20-21.

Further, the Commission itself acknowledged the differences between the EDCs when it declined to set state-wide RME programs and instead ordered each EDC to propose RME programs specifically tailored to their service territory as part of these default service proceedings.[2]

The OCA also disagrees with RESA's assertion that guaranteeing savings will not maximize EGS participation. Preliminarily, the OCA would note that RESA witness Kallaher initially testified that RESA supported the Company's proposal. He stated: "RESA supports Duquesne Light's proposal for a 12-month, fixed price, guaranteed savings product for the opt-in auction provided that Duquesne Light's proposal to fix the price to residential customers for the first year is also adopted." RESA St. 2-R at 2-3. Additionally, to ensure customer participation in these programs, customer benefits should be guaranteed. The ALJ correctly acknowledges this purpose in her R.D. and recommends approval of a program that will enhance and create

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[2] In its December 16, 2011 Order regarding default service plans, the Commission provided discretion in implementing its recommendations as follows:

> The Commission clarifies that its intent is to issue recommendations and flexible guidelines with respect to the format and structure of EDCs' upcoming default service plans. The Commission encourages EDCs to view the recommendations as the starting point in developing the next phase of default service plans.

The Commission also indicated that "the recommendations are intended to provide EDCs with the flexibility to craft default service plan filings in a manner in which they see appropriate." See Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 at 4, 6 (Order entered December 16, 2011)

customer confidence in the market. R.D. at 78, 82. The adoption of these recommendations will ensure that customers have a positive experience and that the actual savings that appear to be promised to engage the customer to enroll in the program are, in fact, delivered for the entire program. Without these provisions, the Opt-In program could work contrary to its intent and cause participants to become dissatisfied with their shopping experience. OCA M.B. at 38-42, Citizen Power M.B. at 9, CAUSE-PA M.B. at 13.

For the foregoing reasons, the OCA submits that the Commission should deny RESA's exceptions on these issues.

Reply Exception 5: The ALJ Did Not Err when She Rejected RESA's Proposal to Enroll Customers in the ROI Program Prior to the Rate Being Established. (RESA Exc. 8 at 24-26; R.D. at 92-97, OCA M.B. 46-47, OCA R.B. at 26-27)

RESA excepts to the ALJ's recommendation that customers be informed of all of the terms of Opt-In program prior to enrollment. RESA Exc. at 24-26. RESA recommends adoption of its proposal to enroll customers into the Opt-In program prior to requiring EGSs to commit to participate in the program. Id. at 25. RESA states that EGSs must know the number of customers opting in, as well as the PTC, before they should be required to decide whether participate in the program. Id. at 26.

The OCA agrees with the recommendation of the ALJ that all participating suppliers be included in the letter mailed to customers and that the letter provide all key terms and conditions, including price, prior to enrollment. R.D. at 97. As the OCA explained in its testimony and briefs, the RESA proposal would effectively transform the Opt-In program to an opt-out program. As OCA witness Alexander explained:

> Mr. Kallaher's proposal that customers should be asked to enroll prior to receiving the price, the material terms and conditions, or even before the customer is told the identity of the EGS that will become the customer's generation supplier

> is unreasonable. This process would transform the Opt-In Auction into an Opt-Out Auction by requiring customers to take affirmative action to de-enroll after receiving the actual price and terms should they not agree with the results of the auction or for any other reason. Nor is this proposal remotely similar to actual practices in the retail competitive market where customers agree to accept a specific EGS offer based on knowledge of the price and other terms of service. Furthermore, if residential customers are interested in participating in this program and the price does indeed reflect a savings compared to the PTC during the term of the contract, there is no reason for EGSs to be concerned that the level of customer enrollment would not be robust.

OCA St. No. 2-R at 9-10 (footnote omitted); OCA M.B. at 47. Indeed, the provision of key terms and conditions to customers before they enroll was supported by FES witness Banks when he said:

> A customer must know the price of the product they are asked to purchase...If either party should be expected to proceed with less than perfect information, it is the EGS, not the residential customer. In the sequence recommended by the Commission and proposed by Duquesne Light, a customer will know the term, price and supplier- all information the customer would know if making a traditional choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best.

FES St. 1-R at 13-15.

Accordingly, the OCA submits that the ALJ's recommendation that Duquesne provide to the customer all key terms and conditions, including price and any potential changes to the price being offered, in advance of enrollment be adopted and that RESA's exception on this issue be denied.

Reply Exception 6: The ALJ Did Not Err when She Recommended that the Company Should Provide an Additional Notice to Customers at the End of the Term of Retail Market Enhancement Programs. (DUQ Exc. 2 at 5-6, Dominion Exc. 1 at 2-3, RESA Exc. 9 at 26-27, R.D. at 98-102, OCA M.B. at 47-49, OCA R.B. at 27-28)

In her R.D., the ALJ recommended approval of the OCA's proposal that Duquesne mail an additional notice at the end of the EGS Opt-In program. R.D. at 98-102. In its testimony and Briefs, the OCA recommended that three notices should be provided to

customers prior to the end of the program—one from the EDC stating that the program is coming to an end and two from the EGS as required by the Commission's regulations. See OCA M.B. at 47-49, OCA R.B. at 27-28. In recommending the adoption of the OCA's proposal, the ALJ notes that the mailings are important aspects of customer education and that a third notice "will ensure these customers are fully informed about available options." R.D. at 102.

Duquesne, RESA and Dominion excepted to the ALJ's recommendation. DUQ Exc. at 5-6, Dominion Exc. at 2-3, RESA Exc. at 26-27. The excepting EGSs argue that there is no reasons to a add notice requirement for the Opt-In program that is different than those required by any other EGS program. See RESA Exc. at 26, Dom. Exc. at 2. The Company states that any additional notices, if ordered by the Commission, should come from the EGSs and not the EDC. DUQ Exc. at 6.

The OCA respectfully submits that the exceptions of RESA, Dominion and Duquesne should be rejected. This program is not a program like others offered by EGSs. This is a utility-sponsored, Commission-approved program for customers who have been reluctant to enter the competitive market. As the ALJ noted, a third notice is an important additional step to educate these consumers. As witness Alexander explained:

> I recommend this notice as an important aspect of consumer education so that enrolled customers, most of whom have not previously participated in the retail market, understand their options. In my opinion, most customers will assume that when the auction term ends they will be returned to default service given their lack of familiarity with the "rules" of the retail market and the unique nature of this Opt-In Auction program. Moreover, they have entered this program based on DLC's notices and endorsement. Therefore, it will be important that customers be educated in multiple ways and by both DLC and the EGS prior to the end of the auction term about their options and how to exercise those options.

OCA St. 2 at 13; OCA M.B. at 48. The two notices sent from the EGSs under the Commission regulations are not specifically directed to the end of this special program and will not inform customer that this program is coming to an end.

For the reasons discussed above and in its Main and Reply Briefs, the OCA submits that the three notices recommended by the ALJ should be provided to customers prior to the end of the program. The OCA has submitted substantial evidence on this issue and provided good cause as to why the OCA's recommendation should be adopted. Accordingly, the Exceptions as to this issue should be denied.

Reply Exception 7: The ALJ Did Not Err when She Recommended Approval of a Standard Offer Program that Includes a 12-month Fixed Price Product with Guaranteed Savings for the Entire 12-Month Period. (RESA Exc. 11 at 28-29; R.D. at 106-111; OCA M.B. at 52-53; OCA R.B. at 30-31)

In her R.D., the ALJ recommended approving Duquesne Light's proposal regarding the Standard Offer program. R.D. at 111. RESA excepts to this determination and recommends adoption of a Standard Offer program with a discount provided for an introductory four-month period followed by the EGS moving to a month-to-month variable rate or a fixed price for the remainder of the 8 month term. RESA Exc. at 28.

The OCA disagrees with RESA's position. With respect to RESA's proposal for an introductory period, the OCA does not object, *per se*, to the 4-month introductory offer term, but participating EGSs should guarantee the savings off the PTC during the entire program term. OCA M.B. at 52.[3] The EGS should also offer a fixed-price product for the remaining 8 months of the program. The OCA submits that this is the point of the Standard Offer program: to allow customers to experience the competitive retail market, but to enable that experience to be

[3] The OCA would note that it supported a 12-month fixed price product if savings were guaranteed for the duration. See OCA M.B. at 52-53.

positive by producing savings. The overarching purpose of the retail market enhancements is to introduce default service customers to shopping in a positive way." Id. In contrast, if savings are not guaranteed, there is risk that the goal of the program will not be achieved.

Reply Exception 8: The ALJ Did Not Err when She Recommended that Duquesne Implement its Standard Offer Program on June 1, 2014 instead of June 1, 2013. (RESA Exc. 12 at 29-30; FES Exc. 5 at 16-18; R.D. at 120-129; OCA M.B. at 53-54; OCA R.B. at 31-32)

Duquesne proposed to implement its Standard Offer Referral Program on June 1, 2014. This start-up date reflects the Company's implementation of a new Customer Information System (CIS) and new functionalities that will be available at that time. Duquesne St. 6 at 9-10. RESA and FES opposed the delay in the implementation of the program, with RESA proposing that the referral program be implemented by June 1, 2013. RESA St. 2 at 5; FES St. 1 at 14. In her R.D., the ALJ recommended adopting Duquesne's proposal to begin the Standard Offer Program on June 1, 2014. R.D. at 128-129. RESA and FES excepted to the ALJ's decision. RESA Exc. at 29-30; FES Exc. at 16-18.

In making her determination, the ALJ found convincing the Company's evidence that implementation of the Standard Offer Program requires the completion of the information technology (IT) upgrades that Duquesne is in the process of implementing. As the Company has testified, the upgrades necessary to support the Standard Offer Program will not be completed until the second quarter of 2014. Duquesne St. 6-R at 6. In their exceptions, RESA and FES argue that implementation of the Standard Offer Program should not depend upon installation of the IT upgrades because Duquesne should be able to handle Standard Offer Program enrollments as they do any customer switch to an alternative supplier currently. Such an assessment is contrary to the testimony of Duquesne witness Wolfe who, in explaining why the Opt-In Program can be implemented on June 1, 2013, but the Standard Offer Program cannot, also

explained the connection between the Standard Offer Program and the Company's CIS. Mr. Wolfe stated:

> The proposed solution for the Opt-In EGS Service program enrollment process consists primarily of a manual set of activities that are not integrated with the Company's CIS along with a nightly batch EGS assignment process. This can be done manually because the Opt-In EGS Service is a one month one time enrollment. The Standard Offer Program is an ongoing program. The proposed solution for the Standard Offer program consists primarily of an automated set of activities that are tightly integrated within the Company's CIS along with a real-time EGS assignment process. These significant differences in the enrollment process along with the proposed Accelerated Switching system enhancements that are contemplated as part of the Standard Offer program implementation require at least 6 to 9 months of additional system life cycle development time than needed for the Opt-In EGS Service program which is estimated at 3 months.

Duquesne St. 6-R at 6-7. The OCA submits that on the basis of such testimony the ALJ properly determined that implementation of the Standard Offer Program can occur only after completion of the IT upgrades. The OCA further submits that because technical considerations dictate that the Opt-In and Standard Offer programs cannot be run simultaneously, the various other arguments of FES and RESA for why the programs should be offered simultaneously are moot.

Therefore, the ALJ's recommendation that the Standard Offer Program begin on June 1, 2014 should be adopted, and the exceptions of FES and RESA should be denied.

Reply Exception 9: The ALJ Did Not Err when She Recommended that the Company's Proposed Choice Referral Team be Rejected. (DUQ Exc. 1 at 4-5, RESA Exc. 13 at 30-31; R.D. at 137-139; OCA M.B. at 57-58; OCA R.B. at 34)

Duquesne proposed the formation of a Choice Referral Team to facilitate customer enrollment in the Standard Offer Program so that interested customers could avoid having to take numerous steps to enroll. Duquesne St. 5 at 8. The team would consist of customer service representatives from the Company's call center who would receive specialized training with respect to the Standard Offer Program. Id. at 11. The OCA opposed creation of

the Choice Referral Team due to concerns that it may result in increased costs that will unnecessarily burden the program and concerns that the activities of the team could raise consumer protection and satisfaction issues. OCA St. 2 at 18; OCA St. 2-S at 8. In her R.D., the ALJ agreed with the OCA and recommended that the Commission not approve creation of the Choice Referral Team. R.D. at 139. Duquesne and RESA filed exceptions to the ALJ's decision. Duquesne Exc. at 4-5; RESA Exc. at 30.

In her R.D. the ALJ noted that she agreed with the OCA that creating the Choice Referral Team may increase the cost of the program. In its Exceptions, Duquesne took issue with this conclusion arguing that having the Team in place should reduce costs. Notwithstanding the cost issue, the OCA offered testimony related to other concerns about the Team sufficient to warrant the ALJ's rejection of its formation. For instance, OCA witness Alexander stated in her Direct Testimony:

> I am also concerned… that this specialized team could actually enroll the customer with a specific EGS as suggested by Ms. Sandoe (DLC Statement No. 5) at 8. This potential option gives rise to significant consumer protection concerns because of the role that DLC appears to assume in presenting the terms and conditions of the program and obtaining consent to enroll in with a specific EGS. Rather, this interaction and verification should be the responsibility of the EGS.

OCA St. 2 at 18. Ms. Alexander also testified:

> I am not convinced that [Duquesne] needs to create a specific or dedicated group of call center employees to handle the Referral program because of the potential cost implications and the potential that this internal "referral" program from one customer service representative to another may result in customer dissatisfaction about the process. This two-step process may not be either efficient or necessary.

OCA St. 2-S at 8 (footnote omitted). The OCA submits that the record in this case contains sufficient evidence of the drawbacks of forming a Choice Referral Team that the ALJ's recommendation should be adopted by the Commission.

The ALJ also agreed with the OCA's recommendation that should the Choice Referral Team proposal be adopted, the costs of the Team should be allocated to the EGSs that participate in the Standard Offer Program.[4] RESA excepted to this portion of the ALJ's ruling. RESA Exc. at 30. The OCA submits that this is a matter of basic equity. It is the EGSs that will avoid marketing costs and gain customers. Regulated customers should not have to subsidize EGSs' marketing and customer acquisition costs. Therefore, RESA's exception should be denied.

Reply Exception 10: The ALJ Did Not Err when She Recommended that EGSs Should Bear the Costs of the Retail Markets Programs. (RESA Exc. 15 at 31-34, Dominion Exc. 2 at 3-4, FES Exc. 3 at 9-13, R.D. at 142-150, OCA M.B. at 58-62, OCA R.B. at 34-37, DUQ Exc. at 6-7)

In its Exceptions, RESA argues that all of the costs of the Retail Market Enhancement (RME) programs should be allocated only to default service customers or, in the alternative, to all customers through a non-bypassable surcharge.[5] R.D. at 142-153; RESA Exc. at 31-34; Dominion Exc. at 3-4. RESA goes on to state that it is "just and reasonable" for default service customers to be the only customers from which to recover the costs of the programs as such treatment "is the optimal way to incent them [default service customers] to participate in the competitive market." RESA Exc. at 32 (emphasis in original). Consistent with both the Commission's IWP Order and the recent FirstEnergy decision, the OCA submits that all of the costs of the Retail Market Enhancement Programs should be recovered from EGSs and, as such,

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[4] The OCA addresses the issue of cost recovery in OCA Reply Exception 10 below.

[5] RESA proposes a third alternative, a 0.5¢ per kWh adder. RESA Exc. at 35-37. The OCA addresses RESA's proposal separately in its Reply Exception to RESA Exception 18 but would note here that recovery of these costs solely from default service customers is particularly unfair since the remaining default service customers are the very individuals who, by definition, are not participating in these programs.

the exceptions of RESA and Dominion on this issue should be denied. IWP Order at 32, 84-85; FirstEnergy DSP Order at 136.[6]

RESA and Dominion have not demonstrated any good cause to deviate from the Commission's IWP Order on this issue. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs, and as such, should be responsible for the costs. As the OCA explained in its Main Brief, these programs are not necessary to implement retail choice. OCA witness Alexander explained:

> The Competition Act does not mandate these programs. The costs associated with these programs are significantly different from the costs that Pennsylvania electric customers have already paid to support the EDC's implementation of billing changes, customer education programs, and electronic data exchange protocols so that customers can switch to an EGS and receive bills that include EGS charges. Rather, the Opt-in Auction and Customer Referral Programs are "enhancements" that are intended to expand the current level of retail competition that already exists. Therefore, it would not be reasonable to view the costs associated with these "enhancements" as similar to those incurred and paid for by all customers to implement the basic requirements for a retail competitive market.

OCA M.B. at 60, OCA St. 2-R at 17-18. Especially troubling is RESA's argument that default service customers alone should be responsible for the programs. Witness Alexander explained:

> These costs are incurred by Duquesne to implement programs that will result in a transfer of default service customers to the EGSs who win the Opt-In Auction or offer Referral Programs that customers select. DLC's role in these programs is a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market. Therefore, it is only reasonable for the EGSs that directly benefit from these programs by gaining market share to pay for the incremental costs, which are likely to be far less than the incremental costs that each EGS would have to bear to acquire these customers on an individual basis.

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[6] RESA also argues that the Commission has indicated that it would consider alternative proposals. To be clear, as to the FirstEnergy reference cited by RESA, the Commission stated that it would consider different proposals for allocating costs among the EGSs, not as between EGSs and customers. FirstEnergy DSP II, Order at 137. In the PECO DSP reconsideration order that RESA cites, the Commission stated that the parties consider cost responsibility of EGSs and possibly customers in a collaborative process. PECO DSP II, Reconsideration Order at 15-16 (Nov. 21, 2012). This was not a determination of cost responsibility as RESA asserts.

OCA M.B. at 60-61, OCA St. 2-R at 17-18 (footnote omitted). OCA witness Estomin also pointed out the specific problem with assigning the costs to default service customers. He states:

> Further, it is the Opt-in Service Customers that are obtaining the benefit of the program in the form of a rebate and lower costs for a 12-month period. To the extent that the costs of the program are shared between the Opt-in customers and the EGSs, who would be able to secure additional customers at lower marketing expense, and have the ability to raise prices at the conclusion of the 12-month period, that sharing would be appropriate on equity grounds. The potential benefits of the program, both to the EGSs and to the customers that participate, are the underlying reasons for the offering of the programs. Hence, cost causality suggests that the Commission's IWP Order has appropriately assigned the program costs.

OCA M.B. at 61; OCA St 1-R at 8-9. Company witness Neil Fisher echoed the OCA's testimony on this issue. See Duquesne St. 3-R at 73-75.

Consistent with the Commission's position and for the reasons discussed here and in the OCA's briefs, the OCA opposes any cost recovery proposals that would impose retail enhancement costs on customers rather than the EGSs. OCA M.B. at 60-64; see also DUQ Exc. at 6-7, CAUSE-PA M.B. at 17-18, OSBA M.B. at 16-18, Citizen Power M.B. at 13. The Programs are a substitute for the costs of individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market and should, therefore, be paid for by the EGSs.

OCA urges the Commission to maintain the position that the costs of these retail market enhancement programs be recovered from the EGSs.

Reply Exception 11: The ALJ Did Not Err when She Recommended that CAP Customers be Excluded from the Retail Market Enhancement Programs. (RESA Exc. 16 at 34; R.D. at 153-159; OCA M.B. at 62; OCA R.B. at 37)

In her R.D., ALJ Dunderdale recommends that the Commission approve Duquesne Light's proposal to preclude CAP customers from participation in the RME Programs

until such time as the Commission sets rules and procedures about the portability of CAP discounts. R.D. at 159. In making her recommendation, she noted the need to address many unanswered questions and concerns, including how to move CAP discounts without running afoul of federal LIHEAP provisions, and determined that without resolution of these issues "it is imprudent and inappropriate to permit CAP customers to participate in these programs." R.D. at 159. RESA excepts to the ALJ's recommendation and states, "CAP customers are no different from other customers in their need to manage their electricity consumptions." RESA Exc. at 24.

The OCA supports the ALJ's determination that there are many unanswered questions and concerns with respect to the participation of CAP customers in these programs and in retail markets generally. In the IWP Order, the Commission referred the question of whether CAP customers can participate in the retail market enhancements to the RMI Universal Service working group. IWP Order at 18. While the OCA did not present specific testimony on this issue in this proceeding, the OCA supports the ALJ's recommendation that this question be considered as part of the Commission's RMI Universal Service subgroup. See OCA St. 2-R at 6. Accordingly, the OCA supports the recommendation of the ALJ and urges the Commission to deny RESA's exception.

Reply Exception 12: The ALJ Did Not Err when She Recommended that Shopping Customers be Allowed to Enroll in the Retail Market Enhancement Programs. (RESA Exc. 17 at 35; R.D. at 160-164; OCA M.B. at 62-63; OCA R.B. at 38)

In this proceeding, Duquesne indicated that it will not specifically market its Opt-In or Referral programs to those customers who have already selected an alternative generation supplier, but will allow these customers to participate in the RME Programs if they so request. See Duquesne St. 3-R at 13-14. This approach is consistent with the Commission's IWP Order. See IWP Order at 42. In its testimony and briefs, the OCA supported Duquesne's proposal.

OCA M.B. at 62-64; OCA R.B. at 38. RESA opposed this position arguing that only default service customers should be eligible to participate in the Opt-In Program. RESA M.B. at 66-68.

In her R.D., the ALJ recommended approval of Duquesne's proposal to allow existing shopping customers to participate in the RME programs, although she noted that the focus of the Company's marketing and education efforts should be solely on default service customers. R.D. at 163. RESA excepted to the ALJ's recommendation. RESA maintains that "numerous" Duquesne customers, despite having been exposed to many offers from alternative suppliers, have chosen to remain on default service. RESA Exc. at 35. Therefore, RESA is concerned that the spots in the RME programs will be filled by existing shopping customers who will leave their current suppliers for the RME providers.

The OCA submits that this matter has already been addressed by the Commission and that Duquesne's approach is fully consistent with the direction given in the IWP Order. The Commission stated:

> The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.
>
> However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will also maintain its original position that all marketing, notifications and consumer educations efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such, although a shopping customer may become aware of the Retail Opt-In Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

IWP Order at 42.

Duquesne's proposal to allow both default service and shopping customers to participate in its RME programs, but to focus its marketing and education efforts on default service customers, follows exactly the Commission's direction in the IWP Order. RESA's concern about how Duquesne's default service customers will behave when presented with the RME opportunities amounts to speculation and is no reason to deviate from the IWP Order. For the foregoing reasons, the Commission should adopt the ALJ's recommendation and reject RESA's exception.

Reply Exception 13: The ALJ Did Not Err when She Rejected RESA's Proposal for a 5 mil/kWh Adder. (RESA Exc. 18 at 35-37; R.D. at 172-179; OCA M.B. at 68-72; OCA R.B. at 40-42)

RESA witness Kallaher proposed that the costs of the Retail Market Enhancement Programs be recovered through a $5/MWH (or 5 mils per KWH) adder charged to default service customers. RESA St. 2 at 26-27. In its testimony and briefs, the OCA strongly opposed to RESA's proposal, and OCA witness Estomin calculated that, if this proposal were to be implemented, the Company would collect an additional $27 million from residential default service customers over the two-year period, resulting in an approximately $41 per year adder to the average residential customer bill. OCA St. 1-R at 12.; OCA M.B. at 68-72. In those two years, Duquesne would also receive approximately $4 million in excess of any costs incurred. OCA St. 1-R at 12; OCA M.B. at 68-72. It is important to note that despite this increased profit opportunity, Duquesne itself opposes RESA's proposed adder. See Duquesne St. 3-R at 82-83, Duquesne M.B. at 70.

In her R.D., the ALJ rejected RESA's 0.5¢ per kWh adder proposal as contrary to the public interest and to the established law in Pennsylvania. She stated:

> If approved, default service customers will pay all of the charge, but receive only a portion back from any residual funds. I agree with OCA that this proposal

> constitutes a wealth transfer from default service customers to shopping customers that is unsupported by any concept of cost causality and is on its face inequitable.

R.D. at 179. The ALJ went on to discuss the fact that the Public Utility Code gives a default service provider the right to "recover" all reasonable costs "incurred," and not hypothetical or illusory costs. Id. at 179-180.

The OCA submits that the ALJ's recommendation is consistent with the Commission's rejection of a similar adder proposed in FirstEnergy and PECO default service proceedings. FirstEnergy DSP Order at 62-63; PECO DSP Order at 76. RESA has submitted an Exception on this issue. In its Exception, RESA acknowledged the Commission's failure to adopt its proposal in other cases, but asked the Commission to reconsider it in this proceeding. RESA Exc. at 36. RESA asserted that ALJ was wrong in recommending rejection of its adder for the reasons it argued in briefs, namely that (1) the 0.5¢ per kWh adder would not artificially inflate the PTC and (2) collecting the 0.5¢ per kWh adder from default service customers and returning remaining amounts to all customers would not amount to cross-subsidization of shopping customers by non-shopping customers. RESA Exc. at 35-37. The OCA submits that the Commission should reject these arguments and adopt the ALJ's recommendation.

First, RESA's proposed adder would increase the PTC, which would, in turn, allow EGSs offering a percentage discount off the PTC to achieve the minimum savings level at a higher price. OCA St. No. 1-R at 20; OCA M.B. at 70-71. This would likely increase the costs to customers, including those who participate in the Opt-In or Customer Referral Programs. As a result, the real effect of the RESA proposal would be to increase the power supply costs for both default service customers and customers who take advantage of the retail market.

Second, although the PTC adder will apply only to default service customers under RESA's proposal, any remaining balance after payment of retail program costs, "uncollected" default service costs and Duquesne's profit share would be refunded to all distribution customers, including those shopping with an EGS. Thus, RESA's proposal would result in cross-subsidization of shopping customers by default service customers. Company witness Neil S. Fisher explained that RESA's recommendation would result in significant over-collection (about 10 times the estimated costs of the retail market initiatives) and that disbursement of the over-collection to all distribution customers would result in cross-subsidization. Duquesne St. 3-R at 82-83. He explained, "Although his [Mr. Kallaher's] PTC adder will apply only to default service customers under RESA's proposal, any remaining balance after payment of retail program costs and 'uncollected' default service costs would be to a much larger, different group of customers – distribution customers, including those shopping with an EGS." Id. at 83; OCA M.B. at 71-72. Thus, RESA's proposal would result in cross-subsidization of shopping customers by default service customers. OSBA witness Kalcic similarly opposes RESA's proposed adder and agrees with Duquesne witness Fisher's testimony that the RESA proposal will result in unlawful cross-subsidization. See OSBA St. 2 at 7-8.

Third, the OCA submits that, as noted by the ALJ in her R.D., there are legal prohibitions against the adder. As discussed in the OCA's briefs, a plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred." 66 Pa.C.S. § 2807(e)(3.9); see also Barasch v. Pa.P.U.C., 493 A.2d 653, 655 (Pa. 1985); Cohen v. Pa.P.U.C., 468 A.2d 1143, 1150 (Pa. Commw. 1983); Barasch v. Pa.P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa.P.U.C., 695 A.2d 448, 455 (Pa. Commw. 1997); OCA M.B. at 71-72; OCA R.B. at 37. The plain meaning of the relevant Section of the Public Utility Code

and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory "costs," such as RESA's proposed adder, are precluded from consideration in the rates that utility customers pay.

The OCA further submits that RESA's adder proposal would permit Duquesne to recover a profit on the provision of default service because it is pre-tax money that Duquesne is permitted to retain without any added risk. Pennsylvania law does not permit a profit on the provision of reconcilable default service. The Public Utility Code provides, in relevant part:

> The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

66 Pa.C.S. § 2807(e)(3.9); see also OCA M.B. at 69.

Additionally, the fact that RESA's proposal includes a potential profit handed over to Duquesne that might be tied to whether or not EGSs are successful in obtaining new customers is inappropriate and cannot be justified. Duquesne is providing statutorily required Default Service and will recover all of its costs on a reconcilable, dollar for dollar basis. Neil S. Fisher testified that it will be recovering all of its costs for this DSP period and that RESA's proposal should not be adopted. Duquesne St. 3-R at 82.

For all of these reasons, the OCA submits that there is no basis for RESA's proposed 0.5¢ per kWh adder as a cost recovery mechanism. Since it is more correctly classified as a wholly unjustified profit adder to the provision of default service, the ALJ's decision on this issue is in accord with the law and should be upheld.

Reply Exception 14: The ALJ Did Not Err when She Recommended Approval of the Company's Plan to Set the PTC on an Annual Basis and Reconcile Default Service Costs Annually. (RESA Exc. 19 at 37; R.D. at 180-183, OCA M.B. at 73, OCA R.B. at 42-43)

The Company proposed, and the ALJ recommended approval of, a 12-month reconciliation period for its default service plan coupled with annual changes to the PTC. Duquesne St. 4-R at 8-13; R.D. at 183. In recommending adoption of the Company's proposal, the ALJ stated that the reconciliation period of the Company should coincide with the mix and timing of the default service supply products and should, therefore, be done annually. R.D. at 183. This approach was either supported or not opposed by a number of parties in the proceeding including the OCA, OSBA, Dominion and Constellation. See OCA M.B. at 73, OCA R.B. at 42-43, OSBA St. 1 at 9, Dominion St. 1 at 4, Constellation St. 1 at 20-21.

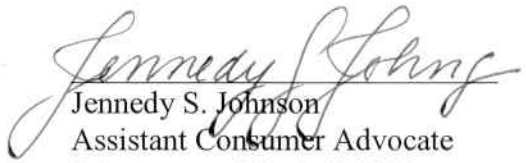
RESA excepts to the ALJ's recommendation and states that quarterly reconciliations and quarterly changes to the PTC should be adopted. RESA Exc. at 37. RESA's exceptions should be denied. As the OCA explained in its testimony and briefs, and as was discussed above, Duquesne is unique from other large EDCs in the Commonwealth. The Company's current PTC has been set for the duration of their existing 29-month default service plan. Therefore, Duquesne's customers are not accustomed to the quarterly shifts in the PTC that are experienced by the customers of other large EDCs. OCA M.B. at 73. Further, the Company has been out from under rate caps for a much longer time than other EDCs. Importantly, the relative stability in the PTC has helped customer shopping in Duquesne's service territory as it has experienced high levels of shopping for many years. Id. Therefore, annual reconciliations and changes in the PTC are appropriate.

For these reasons, the OCA supports the ALJ's recommendation with respect to annual reconciliation and changes in the PTC and encourages the Commission to deny RESA's exception on this issue.

III. CONCLUSION

For the reasons detailed in these Reply Exceptions, and its Main Briefs and Reply Briefs, the OCA submits that the Exceptions of Duquesne, RESA, FES and Dominion on the issues discussed herein should be denied and the ALJ's recommendations adopted.

Respectfully Submitted,



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December 17, 2012
163529

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply 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 17th day of December 2012.

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