

Brian J. Knipe
717 237 4820
brian.knipe@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.bipc.com

December 17, 2012

VIA E-FILING

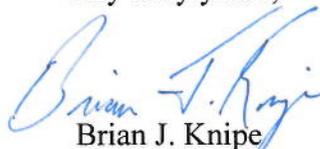
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 *Replies of FirstEnergy Solutions Corp. to the Exceptions of Other Parties*. 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 :
Approval of a Default Service Program and : Docket No. P-2012-2301664
Procurement Plan for the Period June 1, 2013 :
through May 31, 2015 :

**REPLIES OF FIRSTENERGY SOLUTIONS CORP.
TO THE EXCEPTIONS OF OTHER PARTIES**

Amy M. Klodowski, ID No. 28068
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
aklodow@firstenergycorp.com

Brian J. Knipe, ID No. 82854
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Telephone: (717) 237-4800
Facsimile: (717) 233-0852
brian.knipe@bipc.com

Attorneys for
FirstEnergy Solutions Corp.

Dated: December 17, 2012

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLIES TO EXCEPTIONS.....	3
A.	Reply To Exception Of The OCA	3
1.	The R.D. Correctly Rejected The OCA’s Recommendation That The Customer Participation Cap In The ROI Be Limited To 20% (OCA Exception No. 2)	3
B.	Replies To Exceptions Of RESA.....	5
1.	The R.D. Correctly Rejected RESA’s Recommendation To Replace Duquesne Light’s Proposed Residential Portfolio Of 100% 12-Month Contracts With 50% 12-Month Contracts And 50% 3-Month Contracts (RESA Exception No. A-1).....	5
2.	The R.D. Correctly Rejected RESA's Proposal To Replace Duquesne Light's Proposed Small C&I Portfolio Of 100% 12-Month Contracts With 50% 12-Month Contracts And 50% 3-Month Contracts (RESA Exception No. A-3).	12
3.	The R.D. Correctly Rejected RESA's Proposal To Replace Duquesne Light's Proposed Medium C&I Portfolio of 100% 6-Month Contracts With 100% 3-Month Contracts (RESA Exception No. A-4).....	13
4.	The R.D. Correctly Recommended Approval of Duquesne Light's ROI Auction Program and Rejection Of RESA's Proposed ROI Aggregation Program (RESA Exception No. B-6).....	15
5.	The R.D. Correctly Rejected RESA’s Request to Reject Duquesne's Proposal That The ROI Program Include A 12-Month Fixed Price Product (RESA Exception No. B-2).....	16
6.	The R.D. Correctly Rejected RESA's Proposal To Require Customers To Opt-In To The ROI Program Before The Auction Occurs (RESA Exception No. B-3)	17
7.	The R.D. Correctly Recommended Approval of Duquesne Light’s Proposal For The Standard Offer Program To Include A 12-Month Fixed Price Product (RESA Exception No. C-1)	19
III.	CONCLUSION.....	20

FirstEnergy Solutions Corp. ("FES"), by its attorneys, and in accordance with 52 Pa. Code § 5.535, submits these Replies to the Exceptions filed by the Office of Consumer Advocate ("OCA") and the Retail Energy Supply Association ("RESA") to the Recommended Decision ("R.D.") of Administrative Law Judge Katrina L. Dunderdale (the "ALJ") issued November 15, 2012 with respect to Duquesne Light's proposed default service program and retail market enhancement programs.

I. INTRODUCTION

FES's Replies to Exceptions address the following specific issues raised by the OCA and RESA in their Exceptions to the R.D. that cannot withstand analysis and should be disregarded by the Commission:

- Customer Participation In The Retail Opt-In ("ROI") Program Should Not Be Capped At 20%. The Commission should reject the OCA's claim that the R.D. erred in not adopting its recommendation that the customer participation cap in the ROI Program be limited to 20%. OCA Exceptions at 7. The OCA's proposal is not in customers' interests, is contrary to the IWP Order,¹ and is unsupported by any evidence that default suppliers will not be able to fully consider any risks associated with the ROI Program and make appropriate hedging decisions.
- RESA's Proposed Residential, Small C&I and Medium C&I Default Supply Procurement Plans Should Be Rejected. The Commission should reject RESA's proposed default supply procurement portfolios for Residential, Small C&I and Medium C&I customers. RESA Exceptions at 3-9; 11-14. The R.D. correctly rejected these proposals, which are

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

based on incorrect and inappropriate interpretations of the evidence and the mandates contained in the Competition Act² as amended by the General Assembly through Act 129 of 2008, and the Commission's recently amended default service regulations³ and policy statement,⁴ which reflect Act 129's amendments to the Competition Act.⁵

- The ROI Auction Program Should Be Retained. RESA's recommendation that the Commission convert the ROI Program into an ROI "aggregation" program should be rejected. RESA's Exceptions at 16-21.
- The ROI Program Should Include A 12-Month Fixed Price. FES supports a 12-month term for the ROI Program product. If the Commission determines that the ROI Program product described in the ME/PN/PP/WP Order and the PECO Opinion and Order control the ROI Program product in this case, FES recommends two further improvements to the product. First, the price should continue to be "at least 5% off" the price-to-compare ("PTC") with the discount decided through competitive bidding. Second, FES believes that the EGS provided fixed-price product should be established and made known to customers before they decide whether to participate in the ROI Program, not during the introductory 4-month period. RESA Exceptions at 21-24.
- Customers Should Not Be Required To Opt-In To The ROI Program Before The Auction Occurs. RESA argues that customers should be enrolled in the ROI Program before the auction occurs. Again, if the ME/PN/PP/WP Order and the PECO Opinion and Order apply to this proceeding, this question may be moot because the ME/PN/PP/WP Order

² The Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 ("Act 129"), codified at 66 Pa. C.S. §§ 2801, et seq. ("Competition Act").

³ 52 Pa. Code §§ 54.181-189.

⁴ 52 Pa. Code §§ 69.1801-1817.

⁵ Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) ("Act 129 Final Rulemaking Order"); Proposed Policy Statement Regarding Default Service and Retail Electric Markets, Docket No. M-2009-2140580 (Final Policy Statement entered September 23, 2011).

and the PECO Opinion and Order eliminated the ROI Program bidding competition. If the Commission preserves competitive bidding consistent with FES's recommendations, the Commission's IWP Order guidelines advise that EGS bidding precede customer enrollment and RESA has not presented good cause to deviate from that approach. RESA Exceptions at 24-26.

- The Standard Offer Program Should Include A 12-Month Fixed Price Product. The Commission should reject RESA's claim that the R.D. erred in rejecting RESA's recommendation that EGSs participating in the Standard Offer Program offer 7% off the PTC for only 4 months of the 12-month term, and that each EGS offer a price for the subsequent 8 months which is disclosed to the customer only following enrollment. RESA Exceptions at 28-29.

For the reasons explained herein and in the R.D., as well as in FES's Main Brief ("FES M.B.") and Reply Brief ("FES R.B."), the arguments of the OCA and RESA to which FES responds below should be rejected, and the referenced Exceptions of the OCA and RESA should be denied.

II. REPLIES TO EXCEPTIONS

A. Reply To Exception Of The OCA

- 1. The R.D. Correctly Rejected The OCA's Recommendation That The Customer Participation Cap In The ROI Be Limited To 20% (OCA Exception No. 2).**

The R.D. correctly notes that Duquesne Light's proposal to include a 50% customer participation cap in the ROI Program is consistent with the Commission's directive in the IWP Order. R.D. at 85. The R.D. rejected the OCA's recommendation to reduce the customer

participation cap to 20%, finding that the OCA's proposal will not provide for a sufficiently large customer participation pool in the ROI Program and that Duquesne Light's proposal is consistent with the Commission's previous orders in the ME/PN/PP/WP and PECO DSP proceedings.⁶ R.D. at 90. While FES does not support any participation caps in the Commission's retail enhancement programs, believing that every customer is entitled to shop for electricity supply without arbitrary limitations or restrictions, FES recognizes that Duquesne Light's proposal is consistent with the IWP Order guidelines and the aforementioned DSP orders.

The OCA's Second Exception maintains that its proposed 20% cap is designed to curb the risk of increased default service prices.⁷ OCA Exceptions at 7. According to the OCA, its proposal will prevent load uncertainty for default service suppliers which would lead to an increase in the risk premiums such suppliers would otherwise include in their default service bids, while allowing sufficient customer participation in the ROI Program for the program to be viewed as a success. OCA Exceptions at 7-9. However, the OCA never explains why wholesale suppliers choosing to bid into Duquesne Light's procurements with complete knowledge of the details of the upcoming ROI Program will not be able to consider fully the risks associated with the ROI Program and make the appropriate hedging decisions prior to delivery. FES submits that the OCA's proposal reflects its interest in maintaining what it perceives as the viability of

⁶ 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 (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 Opinion and Order"); Commission determinations on some issues covered in the PECO Order were modified by a further Opinion and Order in the case entered November 21, 2012.

⁷ In connection with this proposal, the OCA recommends that 20% of the default supply portfolio "be reserved for potential Opt-in EGS Service participation" (the "holdback" proposal). OCA St. No. 1 at 10, 17. FES opposes this holdback proposal, and believes that this proposal in combination with all the OCA's recommendations would diminish wholesale supplier interest in Duquesne Light's Residential default service solicitations, and would do much more to compromise Duquesne Light's ability to procure power at the least cost over time than do the OCA's concerns with the perceived volumetric risks created by Duquesne Light's proposed ROI Program. FES St. No. 1 at 6, 8-10.

the current default service structure at the expense of the ROI Program. The OCA's proposal would artificially limit customer participation in the ROI Program in favor of maintaining the current default service paradigm for non-shopping Residential customers. However, imposing such a low customer participation cap will discourage EGSs from participating in the ROI Program.

The OCA's proposal is not in customers' interests, is contrary to the Commission's intent as expressed throughout the Retail Markets Investigation ("RMI") and in the IWP Order and the ME/PN/PP/WP and PECO DSP orders, and is not supported by a preponderance of the evidence. There is no need for the Commission to depart from the R.D. on this issue and, accordingly, the OCA's Exception should be denied.

B. Replies To Exceptions Of RESA

1. The R.D. Correctly Rejected RESA's Recommendation To Replace Duquesne Light's Proposed Residential Portfolio Of 100% 12-Month Contracts With 50% 12-Month Contracts And 50% 3-Month Contracts (RESA Exception No. A-1).

FES opposes RESA's recommendation that Duquesne Light's procurement of default supply for Residential customers be largely dependent on 3-month contracts. RESA proposes a plan with half of the load being supplied through 12-month contracts and the remainder supplied through 3-month contracts for Residential customers, with quarterly PTC adjustments. FES addressed this proposal at length in its Main Brief and Reply Brief in this proceeding.⁸ RESA's Exception to the ALJ's rejection of its proposal is based on five enumerated reasons. RESA Exceptions at 3-9. FES will address each in turn below.

⁸ FES M.B. at 9-16; FES R.B. at 5-6.

First, RESA asserts that the ALJ “misapplied the statutory standard applicable to deciding whether to approve a default service plan.” RESA Exceptions at 3. RESA claims that the ALJ erroneously elevated the policy objective of “price stability” found in Act 129’s Preamble over the statutory requirements of the Competition Act, and cites the Commission’s recent Pike County decision⁹ as support for its contention. According to RESA, the Act 129 statutory requirements by which default service providers’ plans are evaluated do not include “price stability.” RESA claims that the ALJ went “astray...in the way she layers ‘price stability’ on top of these statutory requirements to conclude that the default service plan must provide price stability without consideration of the impact on the competitive market or on the resulting default service rate.” RESA Exceptions at 4.

RESA is incorrect to suggest that price stability is not among the requirements by which default service procurement plans are evaluated under Act 129. In the Act 129 Final Rulemaking Order, the Commission examined its statutory interpretation of Act 129 requirements and reached tentative conclusions. Act 129 Final Rulemaking Order at 31-32. Among other things, the Commission concluded that price stability is part of the determination of whether a mix of contracts ensures the "least cost over time:"

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

⁹ Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012. RESA notes that the Opinion and Order has been appealed to the Pennsylvania Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Case No. 1179 C.D. 2012.

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.

Act 129 Final Rulemaking Order at 39-40. Further, RESA never explains why the Commission's Order in Pike County, a case involving a different EDC, a different procurement plan and a different legal analysis by an ALJ, should have any bearing whatsoever on Duquesne Light's procurement plan.

While RESA incorrectly contends that the R.D. failed to apply Act 129's statutory standards, it is in fact RESA which misapplied the statutory standard. RESA's Exceptions acknowledged that Act 129 requires Duquesne Light to acquire a "prudent mix" of resources designed to ensure adequate and reliable service; designed to ensure the least cost to customers over time; and designed to procure power through competitive processes. RESA Exceptions at 4. However, RESA's Exceptions never apply any of these standards. Rather, RESA's own analysis incorrectly focuses entirely on the asserted need for "market reflective default service prices." RESA Exceptions at 5-6. The Commission has concluded that a general reliance on short term pricing which is reasonably likely to result in a "market reflective and "market-responsive" service rate is inconsistent with Act 129's "least cost" standard and price stability objectives:

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. *We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy market. 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. This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the "prudent mix" of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

Act 129 Final Rulemaking Order, slip op. at 41 (emphasis added). Accordingly, it is RESA that is elevating a non-statutory consideration above Act 129's statutory requirements.

Unlike RESA, the R.D. properly considered all the statutory requirements under which default service providers acquire supply, including through a "prudent mix" of resources designed to provide adequate and reliable service at the least cost to customers over time, in addition to statutory considerations of the competitive market. Indeed, RESA's Exceptions cite the very page of the R.D. where these requirements are enumerated. The R.D. applies these requirements to the record evidence, and concludes, among other things, that Duquesne's plan is logical and prudent and meets the least cost requirements "[b]ecause long-term prices continue to trade at premiums compared to short-term prices" R.D. at 40. Thus, the ALJ did in fact weigh the pros and cons of the competing proposals against all the criteria legally required for approving default service procurement plans and found RESA's wanting.

Finally, contrary to RESA's claims that the ALJ did not consider the competitive market impacts of her determinations concerning Duquesne Light's Residential default service procurement plan, the R.D. states that Duquesne Light's Residential supply procurement proposal would "maintain confidence in the retail market," and also that Duquesne Light's plan "mitigates the risk of procuring the entirety of its default supply at the peak of the market" and, as between the competing default supply proposals in this proceeding, "provides the least amount of risk for consumers in the current market." R.D. at 28-29.

Second, RESA asserts that the ALJ's recommendation ignores the evidentiary record in this proceeding. RESA Exceptions at 5-7. In support of this contention, RESA points to its evidence that quarterly procurements produce "market reflective default service prices [which] are necessary to facilitate the development of a robust sustainable competitive retail market." RESA Exceptions at 6. RESA asserts that the ALJ's recommendation should be rejected "because it ignores the evidence that RESA's proposal will result in the further development of the competitive market." *Id.* at 7. Again, the Competition Act requires consideration of evidence that satisfies all the statutory requirements, not just the non-statutory consideration of "market reflective" pricing upon which RESA focuses.

Third, RESA claims that "the ALJ relies in part on unsupported, backwards reasoning" and cites two alleged "mistakes" the ALJ makes in her R.D.: (1) all switching is based on price; and (2) a rate that changes every three months will result in customers who refuse to shop due to the lack of predictability and the need for almost constant monitoring of retail market rates. *Id.* However, neither of the findings of which RESA complains was unsupported by the evidence, nor were they "divorced from reality," as RESA also alleges. *Id.* at 8. FES presented evidence that fixed-price, full requirements ("FPFR") contracts are important to providing customers with relative price stability, to facilitating customers' evaluation of any retail offers from suppliers, and to enabling retail suppliers to develop a wider variety of short- and longer-term products to improve upon a defined default service product. RESA's heavy emphasis on 3-month contracts and achieving "market-responsive" rates would result in potentially significant quarterly changes in Duquesne Light's Residential default service rates. FES St. No. 1-R at 8. Under Act 129, the default service provider must offer residential customers a generation supply service rate that changes no more frequently than on a quarterly basis. 66 Pa. C.S. § 2807(e)(7). Since RESA is

not proposing multiple default service rates for Residential customers, RESA is recommending in this DSP the maximum frequency for potentially significant changes in Pennsylvania Residential default service rates. As of May 2012, however, there were still approximately 63% of Residential customers on default service in Duquesne Light's service territory. See FES Ex. TCB-4 (Duquesne Light Responses to RESA-I-1). RESA has not explained why it is appropriate to maximize the frequency of potentially significant default service rate changes in Duquesne Light's service territory with many customers remaining on default service and in need of further education on the benefits of competitive retail markets, as well as a stable default service price with which to evaluate competitive offers. FES M.B. at 11.

Contrary to RESA's assertions, FES believes that current shopping levels in Duquesne Light's territory indicate that default service price stability contributed to customers becoming more comfortable with EGS generation service. In response to discovery, Duquesne Light noted the continuous and steady increase in shopping levels among all customer classes in its territory. In fact, over the term of Duquesne Light's current default service program ("POLR V"), the number of Residential accounts that have switched to a competitive supplier has increased from 22% to 37%. This increase in shopping has occurred during a period of relatively stable default service pricing¹⁰ for Residential customers. See FES Ex. TCB-4. In addition to an increase in customers' shopping, Duquesne Light also noted that it has achieved high levels of EGS participation and customer shopping without exposing small customers to "significant rate increases and short-term market price volatility." FES Ex. TCB-7 (Duquesne Light Response to FES-I-8 and FES-I-9). This information shows that customers and EGSs are clearly comfortable with participation in the retail market in Duquesne Light's service territory and there is no reason

¹⁰ Under Duquesne Light's POLR V settlement, Residential rates were set at a 29-month fixed rate, and Small and Medium C&I rates were set annually.

to remove the default service price stability that is promoting this behavior. FES St. No. 1-R at 11.

Fourth, RESA asserts that the aforementioned statement in the R.D. that Duquesne Light's plan "provides the least amount of risk to consumers in the current market" refers to a nonexistent criterion in the Competition Act. *Id.* In context, it is clear the statement refers to the requirement of the Competition Act that the default service provider's procurement plan ensure "adequate and reliable service at the least cost to customers over time." FES supports RESA's determination to move default service customers to competitive service. However, FES believes that the immediate change from Duquesne Light's current 29-month fixed price default service pricing to RESA's suggested major reliance on 3-month contracts, without substantial customer education about the changes that will occur and the options available to them, would be inappropriate and counterproductive. The Commission seems to agree with this proposition, since customer education is an important component of its proposal for the end-state of default service, as discussed below.

Fifth, RESA states that its residential procurement proposal is consistent with "the Commission's now-stated goal for the default service end state." *Id.* The Commission issued a Tentative Order on the End-State of Default Service through the RMI docket on November 8, 2012 (the "RMI End-State Proposal") and invited comments on the many issues addressed therein;¹¹ comments were just filed December 10, 2012. The Tentative Order has no application to default service plans effective from June 1, 2013 to June 1, 2015, such as the one being

¹¹ Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service; Docket No. I-2011-2237952, Tentative Order entered November 8, 2012 ("Tentative Order"). It is noteworthy that RESA's Comments on the Tentative Order include the following statement: "Notably, other more mature retail electricity markets-such as New York- have implemented default service structures similar to that proposed here and have not experienced a significant shift of residential customers moving into the competitive market." RESA Comments at 5. Therefore, RESA's own Comments on the Tentative Order in the RMI docket contradict the evidence it has put forth in this proceeding that its default service procurement plans will result in default service customer migration to the retail market.

litigated in this proceeding. Further, the design of default service beginning June 1, 2015 is not nearly as settled as RESA asserts. It is far from certain that the final version of end-state default service will be identical to that set forth in the Tentative Order. Even assuming, *arguendo*, that the end-state were settled, it is instructive that one of the items prominent in the Tentative Order is the provision for statewide consumer education prior to the June 1, 2015 transition, the primary audience for which would be residential and small business customers.¹² The Commission has recognized throughout the RMI that consumer education is a critically important component of the success of retail shopping in Pennsylvania. Adoption of RESA's extreme proposal for Residential default service procurements in the current Duquesne Light POLR V program will undermine the Commission's recognized need for customer education before such time, if ever, that small default service customers begin experiencing frequent, potentially significant changes in the PTC.

RESA's Exception seeking to revise Duquesne Light's proposed Residential portfolio should be denied.

2. The R.D. Correctly Rejected RESA's Proposal To Replace Duquesne Light's Proposed Small C&I Portfolio Of 100% 12-Month Contracts With 50% 12-Month Contracts And 50% 3-Month Contracts (RESA Exception No. A-3).

FES addressed RESA's proposal for the default supply procurements for Small C&I customers in its Main Brief and Reply Brief. FES M.B. at 16-18; FES R.B. at 7. As with its Residential default service procurement proposal, RESA recommends that Duquesne Light procure half its default supply through 12-month contracts and half through 3-month contracts, with quarterly PTC adjustments. RESA Exceptions at 11-12. Again, RESA supports its

¹² Tentative Order at 38.

proposal on the basis that it is designed to make Small C&I default service rates more "market reflective" to "attain the goal of a robust, sustainable, competitive market." *Id.* at 12.

RESA's recommended portfolio for Small C&I customers should be rejected for the same reasons as its recommended portfolio for Residential customers. Default service largely dependent on 3-month contracts could result in significant quarterly changes in rates, and will not provide the rate stability smaller customers require during the transition to end-state default service. That end state of default service, as set forth in the Tentative Order, is to procure supply to serve Small C&I customers through 3-month contracts starting June 1, 2015, only after there has been consumer education. RESA's proposal to begin the 3-month contracts on June 1, 2013, without the vital consumer education, is premature. The evidence demonstrates that relative price stability is no bar to shopping, as Small C&I customer switching increased from 21% to 30% over the course of Duquesne Light's POLR V program. FES Ex. TCB-4 (Duquesne Light Response to RESA-I-2).

Accordingly, RESA's Exception seeking to revise Duquesne Light's proposed Small C&I default supply contract portfolio should be denied.

3. The R.D. Correctly Rejected RESA's Proposal To Replace Duquesne Light's Proposed Medium C&I Portfolio of 100% 6-Month Contracts With 100% 3-Month Contracts (RESA Exception No. A-4).

FES addressed default supply procurement for Medium C&I customers in its Main Brief and Reply Brief. FES M.B. at 18-19; FES R.B. at 7-8. FES supports the OSBA's proposal 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, a significant minority still take default service (66% vs. 34%, respectively). The OSBA's

procurement strategy would be similar to that utilized by Duquesne Light in POLR V, but would eliminate laddering of contracts, and would result in greater price stability for those Medium C&I customers who still choose to take default service than Duquesne Light's proposal, while still being more market-reflective for these customers than Duquesne Light's POLR V procurement strategy.

RESA recommends a Medium C&I default supply contract portfolio consisting entirely of 3-month contracts. RESA's proposal would not allow a reasonable transition to end state default service for the smallest customers in Duquesne Light's Medium C&I class and should be rejected. While the Medium C&I class includes customers with peak demands less than 300 kW, it also includes customers with peak demands as low as 25 kW. Again, these smaller customers, as well as the retail marketers who compete to serve them, will benefit from a measure of stability that RESA's proposal does not afford. Indeed, RESA's proposed 3-month contracts would implement the Tentative Order's proposed end-state default service paradigm for customers between 25 kW and 99 kW, without any transition period or vital customer education. The evidence demonstrates that the relative price stability of Duquesne Light's POLR V plan has presented no bar to shopping, as Medium C&I customer switching increased from 45% to 57% over the course of Duquesne Light's POLR V program. FES Ex. TCB-4 (Duquesne Light Response to RESA-I-3). Accordingly, RESA's Exception to the rejection of its proposed Medium C&I portfolio should be denied.

4. The R.D. Correctly Recommended Approval of Duquesne Light's ROI Auction Program and Rejection Of RESA's Proposed ROI Aggregation Program (RESA Exception No. B-6).

FES addressed the issue of whether the ROI Program should be structured as an auction versus an aggregation program in its Main Brief and Reply Brief. FES M.B. at 26; FES R.B. at 12-13. RESA excepts to the R.D.'s adoption of Duquesne Light's proposal to conduct an auction, instead of an aggregation as was ordered in the ME/PN/PP/WP Order and the PECO Opinion and Order on Reconsideration.¹³ RESA asserts that its proposal should be adopted on a uniform basis for all EDCs with DSPs pending before the Commission. RESA Exceptions at 17-18.

In her R.D., the ALJ cited several reasons for including an EGS bidding competition, and rejected RESA's proposal for a number of reasons:

RESA's proposed approach herein will alienate and/or intimidate non-shopping customers, resulting in lower customer participation and, therefore, is contrary to the primary goal in default service planning at this time...As correctly noted by the OCA, [Duquesne Light] was the only party in this proceeding afforded the due process opportunity to respond to RESA's proposal.

R.D. at 66. FES agrees with the R.D. that the bidding competition in Duquesne Light's ROI Program should be retained. Without a bidding competition, the price to participating customers will not provide the maximum savings, the program does not deliver any benefits of retail competition, and to date, there is no clear methodology for allocating customers among participating suppliers. Consistent with this position, FES also believes that the product should continue to be priced "at least" 5% below the PTC, as determined by a competitive bidding

¹³ Petition of PECO Energy Company For Approval of Its Default Service Program, Docket No. P-2012-2283641, Opinion and Order entered November 21, 2012 ("PECO Opinion and Order on Reconsideration").

process, since there needs to be a clear and sustained benefit to the customer for participation in the program. FES St. No. 1-R at 16-17. RESA's Exception should be denied.¹⁴

5. The R.D. Correctly Rejected RESA's Request to Reject Duquesne's Proposal That The ROI Program Include A 12-Month Fixed Price (RESA Exception No. B-2).

FES addressed this issue in its Main Brief and Reply Brief in this proceeding. FES M.B. at 26-27; FES R.B. at 13. FES supports a 12-month term for the ROI Program product. The ROI Program product described in the ME/PN/PP/WP Order and the PECO Opinion and Order is a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months. As with the auction versus aggregation issue discussed above, if the Commission determines that those previously decided cases control the ROI Program product in this case, this issue is moot as well. In that case, FES recommends two further improvements to the product. First, as explained above, the Commission should retain a bidding competition among EGSs to maximize savings for participating customers. Second, FES believes that the EGS provided fixed-price product should be established and made known to customers before they decide whether to participate in the ROI Program, not during the introductory 4-month period. FES St. No. 1-R at 16. By communicating the price at the time of enrollment, any concerns over "bait-and-switch" offers will be avoided.

Accordingly, RESA's Exception should be denied.

¹⁴ FES's contention on this point applies also to the arguments in Sections 5, 6 and 7 of these Replies to Exceptions, *infra*.

6. The R.D. Correctly Rejected RESA's Proposal To Require Customers To Opt-In To The ROI Program Before The Auction Occurs (RESA Exception No. B-3).

FES addressed this issue in its Main Brief and Reply Brief. FES M.B. at 30-32; FES R.B. at 15. RESA argues that if Duquesne Light conducts an auction in connection with its ROI Program, customers should be enrolled in the ROI Program before the auction occurs. RESA M.B. at 46-47. RESA made this same argument in the RMI and the PECO DSP, and the Commission rejected the argument in each of those proceeding. Again, if the ME/PN/PP/WP Order and the PECO Opinion and Order on Reconsideration apply to this proceeding, this question may be moot because the ME/PN/PP/WP Order and the PECO Opinion and Order on Reconsideration eliminated the ROI Program bidding competition.

If the ME/PN/PP/WP Order and the PECO Opinion and Order on Reconsideration do not apply to this proceeding, the Commission's IWP Order guidelines advise that EGS bidding precede customer enrollment and RESA has not presented good cause to deviate from that approach. RESA did not consult, review or prepare any studies or analyses to determine what it calls "the negative effect" the Commission's preferred sequence of bidding and enrollment will have on the ultimate value that is brought to customers through the ROI Program, or that putting the price-setting auction before the customer enrollment period will tend to decrease the number of EGSs that will participate in the auction.¹⁵ FES Ex. TCB-8 (RESA Response to FES-I-8(a), (b)).

While RESA asserts that insufficient shopping levels for Duquesne Light customers justify a deviation from the Commission's IWP Order guidelines, Duquesne Light's shopping levels are among the highest in the Commonwealth, and the Commission was aware of shopping

¹⁵ RESA's witness is not aware of whether any RESA members support its recommendation. FES Ex. TCB-8 (RESA Response to FES I-8(c)).

levels when it adopted the IWP Order. In the IWP Order, the Commission acknowledged that parties differed in their proposals as to the timing of the EGS auction relative to customer enrollment. However, the Commission emphasized the importance of avoiding a negative perception of competitive retail markets:

One of the underlying goals of the Retail Opt-In Programs is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission. The Commission is also concerned about a worst-case scenario in which the EGS auction does not fully subscribe all available tranches. Such a scenario could foster a negative perception toward the competitive retail markets if customers who expected auction service were not able to receive service or had to receive a different price and/or product.

IWP Order at 55. The Commission determined that holding the EGS auction before customer enrollment is the appropriate way to address these concerns. *Id.*

Also, while RESA speculates that under its proposal, customers would have sufficient information to be attracted to the program, FES respectfully disagrees. RESA Exceptions at 25. A customer must know the price of the product they are asked to purchase. The portion of the IWP Order cited above shows the Commission agrees. 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. Finally, it is unclear how reversing the sequence would resolve RESA's concerns with EGSs knowing the number of participating customers, since a customer who has opted in could subsequently leave the program before the price-setting auction, e.g., for a better EGS offer. While RESA's proposal might provide benefits

to suppliers, it would do so at the expense of customers. Therefore, FES recommends the Commission reject this proposal. FES St. No. 1-R at 14-16. Accordingly, RESA's Exception should be denied.

7. The R.D. Correctly Recommended Approval of Duquesne Light's Proposal For The Standard Offer Program To Include A 12-Month Fixed Price Product (RESA Exception No. C-1).

FES addressed this issue in its Main Brief and Reply Brief. FES M.B. at 33-35; FES R.B. at 16. Again, if the ME/PN/PP/WP Order and the PECO Opinion and Order control this proceeding, this question has been settled. If the ME/PN/PP/WP Order and the PECO Opinion and Order do not control, FES is concerned that RESA's proposed Standard Offer would combine two different products — a 4-month percent-off product and an 8-month fixed-price product — in a single contract term. RESA confirmed through discovery that each EGS would offer a different fixed-price product under its proposal. FES Ex. TCB-9 (RESA response to FES-I-10(c)). This combination of percent-off and fixed-price products is a complicated product for customers who likely have no experience with competitive retail electric offers.

In addition, under RESA's proposal customers apparently could be randomly assigned to a supplier whose price after the introductory 4-month period will be higher than another supplier's. This could well result in customer confusion and disappointment with the Standard Offer Program, the customer's supplier and the EDC which assigned the customer to the higher-priced supplier. To prevent customer confusion and dissatisfaction, FES could support RESA's longer-term proposal only if participating customers know the fixed price they will be paying over the remaining 8 months at the time of enrollment.

Accordingly, RESA's Exception should be denied.

III. CONCLUSION

For the foregoing reasons, the portions of the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale discussed in these Replies to other parties' Exceptions should be adopted without modification except as recommended above or in FES's Exceptions. The referenced Exceptions of the OCA and RESA to which FES responds in these Replies to Exceptions should be denied.

Respectfully submitted,

Amy M. Klodowski, ID No. 28068
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
aklodow@firstenergycorp.com

By: 

Brian J. Knipe, ID No. 82854
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Telephone: (717) 237-4820
Facsimile: (717) 233-0852
brian.knipe@bipc.com

Dated: December 17, 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).

Via Email and First Class Mail

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
717.612.6026
akanagy@postschell.com
717.612.6034
Counsel for Duquesne Light Company

Charles E. Thomas, III, Esquire
Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108-9500
cet3@thomaslonglaw.com
tniesen@thomaslonglaw.com
717.255.7600
*Counsel for Noble Americas Energy Solutions
LLC*

Kryisia M. Kubiak, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
KKubiak@duqlight.com
412.393.6924

Gary A. Jeffries, Esquire
Assistant General Counsel
Dominion Retail, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com

Charles Daniel Shields, Senior Prosecutor
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
chshields@pa.gov
717.783-6151

Sharon E. Webb, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
swebb@pa.gov
717.783.2525

Vincent A. Parisi, Esquire
IGS Energy
5020 Bradenton Avenue
Dublin, OH 43017
vparisi@IGSEnergy.com

Jennedy S. Johnson, Esquire
David T. Evrard, Esquire
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
jjohnson@paoca.org
DEvrard@paoca.org
717.783.5048

Stephen Bennett, Director, State Government
Affairs - East
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
stephen.bennett@exeloncorp.com
610.765.6594

Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pciceropulp@palegalaid.net
717.236.9486, Ext. 202
hgellerpulp@palegalaid.net
pulp@palegalaid.net
Counsel for CAUSE-PA

Todd S. Stewart, Esquire
William E. Lehman, Esquire
Hawke, McKeon & Sniscak LLP
100 N. 10th Street
PO Box 1778
Harrisburg, PA 17101
wlehman@hmslegal.com
tsstewart@hmslegal.com
717.236.1300
*Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.*

Brian R. Greene, Esquire
The Greene Firm, PLC
707 East Main Street
Suite 1025
Richmond, VA 23219
bgreene@thegreenefirm.com
804.672.4542
Counsel for RESA - admitted pro hac vice

Victor P. Stabile
Dilworth Paxton LLP
112 Market Street, 8th Floor
Harrisburg, PA 17101
vstabile@dilworthlaw.com
717.236.4812 Ext. 101
Counsel for RESA

Stephen L. Huntoon, Esquire
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, DC 20001
shuntoon@nexteraenergy.com
202.349.3348
*Counsel for NextEra Energy Services
Pennsylvania, LLC and NextEra Energy Power
Marketing, LLC*

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
ppolacek@mwn.com
717.237.5358 (direct)
tschmittberger@mwn.com
717.232.8000

Counsel for Duquesne Industrial Intervenors

Divesh Gupta, Esquire
Assistant General Counsel
Constellation Energy Group, Inc.
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com
410.470.3158

*Counsel for Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC*

Theodore S. Robinson, Esquire
Staff Attorney
Citizen Power Inc.
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com
412.421.7029

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Date: December 17, 2012



Brian J. Knipe, Esquire