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December 17, 2012

BY FED EX AND EMAIL

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Ms Ciavetta:

Enclosed for filing in the above referenced matter please find the Retail Energy Supply Association's Reply Exceptions. Copies have been provided pursuant the attached Certificate of Service.

Please feel free to contact me should you have any questions.

Sincerely,

Brian R. Greene

BRG/wcd
Enclosures

c: Honorable Katrina L. Dunderdale
Service List (see 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 :
:

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**REPLY EXCEPTIONS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REPLY TO OCA’S EXCEPTIONS.....	3
	A. OCA’S EXCEPTION NO. 1 SHOULD BE REJECTED, AS THE EVIDENCE DOES NOT SUPPORT THE INCLUSION OF TWO-YEAR DEFAULT SERVICE SUPPLY CONTRACTS.....	3
	B. OCA’S EXCEPTION NO. 2 SHOULD BE REJECTED, AS THE EVIDENCE AND COMMISSION PRECEDENT DO NOT SUPPORT A 20% CUSTOMER PARTICIPATION CAP FOR THE OPT-IN PROGRAM.	5
	C. OCA’S EXCEPTION NO. 3 SHOULD BE REJECTED, AS THE EVIDENCE AND COMMISSION PRECEDENT SUPPORT INCLUSION OF HIGH BILL COMPLAINTS IN THE STANDARD OFFER REFERRAL PROGRAM.	6
III.	FES’ EXCEPTION NO. 6, ADVOCATING ADOPTION OF OSBA’S MEDIUM C&I PROCUREMENT PLAN, SHOULD BE REJECTED.....	7
IV.	OSBA’S EXCEPTION ADVOCATING EXCLUSION OF SMALL C&I CUSTOMERS IN THE RME PROGRAMS SHOULD BE REJECTED.	8
V.	DUQUESNE’S REQUEST THAT THE COMMISSION CLARIFY OR AMEND THE ALJ’S RECOMMENDATION RELATING TO RME PROGRAM COST RECOVERY SHOULD BE REJECTED.	11
VI.	CONCLUSION	13

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits these Reply Exceptions to respond to certain issues raised by the Office of Consumer Advocate (“OCA”), Duquesne Light Company (“Duquesne”), FirstEnergy Solutions (“FES”), and the Office of Small Business Administration (“OSBA”) in their respective Exceptions. As RESA explained in its Exceptions, Duquesne’s proposed default service procurement plan and competitive retail market enhancements (“RMEs”) should be modified, consistent with RESA’s recommendations, to be compliant with the Electricity Generation Customer Choice and Competition Act (“Competition Act”)² and to have a reasonable chance of successfully accomplishing its intended goal of creating a more and robust competitive market. The contrary views of other parties, as set forth in their exceptions, should be rejected for all the reasons already addressed by RESA in its main brief, reply brief, and exceptions – all of which are incorporated herein by reference.

As explained below, RESA recommends that the Commission reject OCA’s and FES’ recommended proposed changes to the default service procurement plans for Duquesne. OCA’s and FES’s modifications will not result in a default service plan that meets the requirements of the Competition Act. Moreover, RESA recommends that the Commission reject the modifications OCA and OSBA propose for the RME initiatives relating to the inclusion of callers with high bill concerns in the standard offer referral program, and the inclusion of small

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² 66 Pa. C.S. § 2801, et. seq.

C&I customers in the RME programs. OCA's and OSBA's proposals will decrease the likelihood that these RME initiatives will achieve their goal of moving default service customers to the competitive retail market. Furthermore, RESA recommends that the Commission reject Duquesne's request to clarify or amend the ALJ's recommendations relating to cost recovery, as the ALJ's recommendation was inconsistent with Commission precedent and the facts in this proceeding.

In sum, the ALJ's Recommended Decision ("RD"), which adopts virtually all of Duquesne's default service procurement and RME proposals, consists almost entirely of recommendations that are legally and factually deficient, and which should be rejected to ensure consistency with the law, Commission precedent, and the record facts. The exceptions of OCA, FES, OSBA, and Duquesne, to which RESA responds below, would render Duquesne's DSP even more inconsistent with the law and facts.

It bears mentioning, once again, that the ALJ's recommendations warrant rejection not only because they are inconsistent with the record evidence in this case, but also because they are inconsistent with the wealth of recent precedent handed down by the Commission around which default service procurement plans and RMEs should be shaped. Since the inception of this case, the Commission has issued a Tentative Order in its retail markets investigation which provides the Commission's vision for the default service end state is so far as procurement plans are

concerned.³ In addition, the Commission has entered orders in FirstEnergy's⁴ and PECO's⁵ default service proceedings. The *FirstEnergy Default Service Order* and the *PECO Default Service Order* addressed proposed RMEs similar, if not identical, to the ones at issue in this case. RESA's testimony in this case included proposals on how to properly implement default service procurement plans that comply with the Competition Act, prior Commission orders such as the *November 2012 Tentative Order*, and pave the way for a robust, sustainable competitive retail market. RESA's testimony also introduced successful RME programs for the Duquesne territory consistent with the *FE* and *PECO* decisions. Yet, the ALJ recommended virtually every one of Duquesne's proposals and rejection of virtually all of RESA's proposals. Most of the ALJ's recommendations do not follow the recent Commission precedent, and the ALJ does not give sufficient reasons to deviate from the Commission's clear guidance on these important issues.

II. REPLY TO OCA'S EXCEPTIONS

A. OCA'S EXCEPTION NO. 1 SHOULD BE REJECTED, AS THE EVIDENCE DOES NOT SUPPORT THE INCLUSION OF TWO-YEAR DEFAULT SERVICE SUPPLY CONTRACTS.

OCA contends incorrectly that the ALJ erred in not requiring Duquesne to include two-year default service supply contracts in the residential portfolio mix.⁶ The ALJ correctly rejected two-year contracts although, as RESA explained in its Exceptions, the ALJ erred in adopting

³ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order at 10; Entered Nov. 8, 2012 ("*November 2012 Tentative Order*").

⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, et. al, Opinion and Order entered Aug. 16, 2012 ("*FirstEnergy Default Service Order*" or "*FE decision*").

⁵ *Petition of PECO Energy Company for Approval Of Its Default Service Program*, Docket No. P-2012-2283641, Opinion and Order entered Oct. 12, 2012 ("*PECO Default Service Order*" or "*PECO decision*").

⁶ OCA Exceptions at 4.

Duquesne's portfolio proposal of 12-month contracts and rejecting RESA's proposal of blended 12-month and 3-month contracts.

As RESA explained throughout this case and in other cases before the Commission, and as the Commission recently held in its *November 2012 Tentative Order*, default service rates need to be market reflective to ensure the long-term development of a sustainable, robust competitive retail market. RESA has taken exception in this case to the ALJ's recommendation to adopt Duquesne's proposal for 12-month residential default service supply contracts, because 12-month contracts would lead to default service rates that are out of market and harm the development of competition. RESA and, for that matter, Duquesne opposed OCA's two-year contract proposal in large part for the same reasons.

In advocating for two-year contracts and being accused of trying to "second guess," "time," or "beat the market," OCA conceded, as it must, that it did not know whether the inclusion of two-year contracts would result in market reflective default service rates. Not only that, but OCA also conceded that its recommended mix of one-year and two-year contracts "is no more speculative than the Company's recommendation to purchase only one year [contracts]."⁷ Thus, the evidence showed that the inclusion of one-year and/or two-year contracts would ensure a disconnect between the locked-in default service rate and market prices.

Moreover, the entire concept of one-year and two-year contracts is inconsistent with the Commission's recently-explained vision for the default service end state, which includes quarterly procurements for residential default service. RESA's recommendation for blended one-year and quarterly contracts is a reasonable transition to that goal and should be approved, and neither Duquesne's nor OCA's residential procurement plans should be adopted.

⁷ OCA Exceptions at 5.

B. OCA’S EXCEPTION NO. 2 SHOULD BE REJECTED, AS THE EVIDENCE AND COMMISSION PRECEDENT DO NOT SUPPORT A 20% CUSTOMER PARTICIPATION CAP FOR THE OPT-IN PROGRAM.

In its Exception No. 2, OCA claims that the ALJ erred by not adopting OCA’s recommended 20% participation cap for the opt-in auction program.⁸ As the ALJ noted, the imposition of a 50% customer participation cap for the ROI program is consistent with the Commission’s recent decisions in the *FirstEnergy Default Service Order* and the *PECO Default Service Order*.⁹ It is also consistent with the *Intermediate Work Plan Final Order*.¹⁰ OCA has not articulated any compelling reason to diverge from the Commission’s 50% standard.¹¹

OCA contends that a 50% cap could lead to greater migration uncertainty, causing wholesale bidders to increase the risk premiums that are included in the bids for default service supply. This, according to OCA, will increase the rate for default service. In other words, OCA’s position is, in large part, that the ROI program cannot be allowed to become too successful in getting customers into the competitive market for fear that wholesale suppliers will perceive a market where most customers are shopping as “more risky” and, therefore, include a material risk premium. That is not a valid reason to limit participation in these RME programs to 20%, and it would be antithetical to the policies of the Commonwealth to develop competitive markets. This is especially so where, as here, OCA submitted no evidence that an ROI program

⁸ OCA Exceptions at 7.

⁹ RD 87; *FirstEnergy Default Service Order* at 112; *PECO Default Service Order* at 59.

¹⁰ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. 1-2011-2237952, Tentative Order entered March 2, 2012, at 59 (“*Intermediate Work Plan Final Order*” or “*IWPFO*”).

¹¹ In the *PECO Default Service Order*, the Commission ruled that, “We previously have considered and rejected the OCA’s arguments and, in our view, the OCA has not presented any new evidence or argument that would persuade us to depart from our prior resolution of this issue.” *PECO Default Service Order* at 95. Likewise, OCA has presented no new evidence or argument relating to the customer cap issue that would distinguish this case from the *PECO* and *FE* cases.

open to just half the default service load would result in wholesale suppliers including a risk premium in their wholesale bids beyond that which they already include.¹²

OCA also argues that enrollment numbers below the 50% cap would be viewed as a public failure, and that the remedy for such a risk is to reduce the cap by 60%. OCA's argument is speculative and unpersuasive.¹³ It is not clear who OCA believes would have these negative perceptions of the program in the event the participation cap is not reached, as customers who participate are likely to be satisfied because they will save money, and they, as well as non-participants, will benefit from the competitive market.¹⁴

C. OCA'S EXCEPTION NO. 3 SHOULD BE REJECTED, AS THE EVIDENCE AND COMMISSION PRECEDENT SUPPORT INCLUSION OF HIGH BILL COMPLAINTS IN THE STANDARD OFFER REFERRAL PROGRAM.

In its Exception No. 3, OCA claims that the ALJ erred by recommending that Duquesne offer the standard offer referral program to customers calling to express concerns about high bills.¹⁵ OCA's primary concern seems to be that the focus of high bill calls should be the customer's bill concerns, and that it could be ambiguous as to when that concern is satisfied. The Commission has addressed these issues, however, ruling that the standard offer customer referral program should include high bill complaints, but "only and explicitly after the customer's [high bill] concerns are satisfied."¹⁶ This position was recently affirmed in the *FE* and *PECO* cases; in the *FirstEnergy Default Service Order*, the Commission agreed with RESA that "customers calling with high bill complaints are likely those customers that can most

¹² RESA St. No. 2-R at 5.

¹³ OCA Exceptions at 8; RESA St. No. 2-R at 8.

¹⁴ RESA St. No. 2-R at 5-6.

¹⁵ OCA Exceptions at 9.

¹⁶ *Intermediate Work Plan Final Order* at 32.

directly benefit from becoming informed about competitive offers such as the Customer Referral Program.”¹⁷ In the *PECO* decision, the Commission held that,

We agree with RESA that the OCA has not presented any new evidence or argument that convinces us to alter the conclusion that we reached in the *IWPF Order*. That being said, we expect PECO to adhere to its commitment to resolve the issue about which a customer is calling before the referring the customer to the Standard Offer Program.¹⁸

In this case, OCA has presented no new evidence or argument that would require treating Duquesne’s high bill callers differently from FE’s or PECO’s.¹⁹

III. FES’ EXCEPTION NO. 6, ADVOCATING ADOPTION OF OSBA’S MEDIUM C&I PROCUREMENT PLAN, SHOULD BE REJECTED.

FES claims in its Exception No. 6 that the ALJ erred in not adopting OSBA’s procurement plan for medium C&I customers. The record does not support FES’ argument.

First and foremost, OSBA has not taken exception to the ALJ’s denial of its proposal. It stands to reason that if OSBA proposed it, and now does not object to its rejection, then FES’ objection should be denied.

Second, the evidence showed that OSBA’s proposal for medium C&I load represented a step backwards for the development of robust sustainable competitive retail markets and will result in default service rates that are *less* market reflective than those proposed by Duquesne (6-month contracts/PTC adjustments) and by RESA (quarterly contracts/PTC adjustments).²⁰ OSBA recommended that Duquesne utilize one-year (non-laddered) contracts to acquire 100% of the default service medium C&I load.²¹ The only apparent difference between OSBA’s proposal for medium C&I customers and the current DSP is that, under the current DSP, the 12-

¹⁷ *FirstEnergy Default Service Order* at 139.

¹⁸ *PECO Default Service Order* at 118-119.

¹⁹ See RESA Main Brief at 58.

²⁰ RESA St. No. 1-R at 6-7.

²¹ OSBA St. No. 1 at 6.

month contracts are laddered whereas with OSBA's proposal they would not be laddered.²² In fact, under OSBA's proposal, the default service contract durations and PTC adjustments for medium C&I customers would be the same as the contracts and PTC adjustments that Duquesne proposed for residential customers.²³ With more than two-thirds of Duquesne's medium C&I customers shopping, it is the perfect time to transition these customers to a more robust sustainable competitive market capable of delivering the myriad products and services these customers deserve. For that reason, and to provide a smooth transition to the Commission's vision for the default service end state as described in the *November 2012 End State Order*, RESA proposed 3-month contracts for medium C&I customers.

IV. OSBA'S EXCEPTION ADVOCATING EXCLUSION OF SMALL C&I CUSTOMERS IN THE RME PROGRAMS SHOULD BE REJECTED.

OSBA has taken exception to the ALJ's recommendation to include small C&I customers in the RME programs. OSBA's exceptions runs counter to the Commission's recent decisions in the *FE* and *PECO* cases, and OSBA has not offered any reason to deviate from those rulings on this issue.

Initially and primarily, OSBA contends that the high percentage of shopping and Duquesne's proposed DSP for small C&I customers justify exclusion of small C&I customers from the RME programs.²⁴ That is simply wrong. In the *FirstEnergy Default Service Order*, the Commission found that small commercial customers should be included in the RME programs due to "the relatively low levels of current shopping in the Companies' service territories."²⁵

²² OSBA St. No. 1 at 6.

²³ RESA St. 1-SR at 11-12.

²⁴ OSBA Exceptions at 3-4.

²⁵ *FirstEnergy Default Service Order* at 103-104.

The record in that case indicated that “over half of the small commercial customers in the Companies’ service territories are not participating in the competitive market and the reasons for these customers not shopping are similar to those for residential customers.”²⁶ In the *PECO Default Service Order*, the Commission directed PECO to include small commercial customers, agreeing with RESA that “the relatively small number of customers involved, and the need to increase shopping statistics for small commercial customers, support the inclusion of small commercial customers less than 25 kW.”²⁷ This decision was “consistent with the decision that we reached in the *FE DSP Order*.”²⁸

The record in this case indicates that, as with the small commercial customers in the FE Companies’ service territories in the *FE* case, over half of Duquesne’s small C&I customers are not shopping. In fact, assuming that OSBA’s contention of 42% small C&I shopping as of August 2012 is correct,²⁹ that percentage is similar to PECO’s small commercial shopping of 39%³⁰ when the Commission directed PECO to include small commercial customers in the RME programs. Thus, OSBA’s attempt to distinguish Duquesne from the FE and PECO EDCs is incorrect.

OSBA’s argument that small C&I customers do not need to be included because Duquesne is proposing to make its DSP plan “more market responsive” also falls short.³¹ As RESA proved in this case, Duquesne’s proposed small C&I portfolio requires modifications, and RESA has proposed a blend of 12-month and 3-month contracts. The fact that Duquesne’s small C&I proposal is a step in the right direction as compared to the current DSP is not enough to

²⁶ *FirstEnergy Default Service Order* at 104.

²⁷ *PECO Default Service Order* at 85-86.

²⁸ *Id.* at 86.

²⁹ OSBA Exceptions at 4.

³⁰ See *PECO Default Service Order* at 84.

³¹ OSBA Exceptions at 4.

allow for the exclusion of small C&I customers from the RME programs for all of the reasons that RESA has stated in this case. Those reasons include that small C&I customers as of May 2012 were switching at a rate materially less than the switching rates of Duquesne's residential and even the smaller (25 kW to 100 kW) medium C&I customers.³² The fact that less than half of the small C&I customers are currently shopping, and that the small C&I sector shows the lowest switching rates indicates that more needs to be done to reach this group. An ROI program that presented small business owners with a simple way to test the market is a "particularly good option."³³ Moreover, Duquesne's small C&I proposal offers no obvious advantage over the procurement plan approved by the Commission in the *FE* case, which would rely on 6-month and 12-month contracts, and yet the Commission still opted to include small commercial customers in the RME programs.³⁴

Second, OSBA argues that the record does not provide sufficient details on how the RME programs would work if small C&I customers were included.³⁵ RESA agreed that the details for including small C&I customers would need to be worked out, but the details are not so numerous that they cannot be easily addressed.³⁶ RESA identified the term of the offer and the bonus payment as the two most important issues, and RESA made recommendations for both:

Because the price for small commercial customers would be fixed for the first six months of the term of the default service plan, offering a six-month fixed price

³² RESA St. No. 2 at 13-14 and Exhibit CK-1; RESA St. No. 2-SR at 3. As of May 2012, 54% (representing 60% of load) of business customers with peak demand in the 25-100 kW range had shopped. *Id.*

³³ RESA St. No. 2 at 13-14.

³⁴ RESA St. No. 2-SR at 3-4.

³⁵ OSBA Exceptions at 4-5.

³⁶ RESA St. No. 2-SR at 4.

product would seem like one obvious option. Regarding the bonus amount, while we would welcome any thoughts on the subject the OSBA might have, one option would be to increase the bonus so that the ratio between the small commercial bonus and the \$50 bonus offered to residential customers is the same as the ratio between the average small commercial monthly bill and the average residential monthly bill.³⁷

Thus, there is sufficient evidence to support including small C&I customers in the RME programs, with the details to be resolved amicably in the near future. RESA's proposals with respect to term and bonus provide a proper starting point, and the parties can glean from the progress that has been made by the parties in the *FE* and *PECO* cases in fashioning these programs to include small C&I customers. OSBA is absolutely wrong when it contends that the parties would be "starting from a blank piece of paper."³⁸ Finally on this issue, the programmatic details were not thoroughly resolved prior to the issuance of the *FE* and *PECO* decisions, so again there is no reason to treat Duquesne's small C&I customers differently from their counterparts in the *FE* and *PECO* service areas.

V. DUQUESNE'S REQUEST THAT THE COMMISSION CLARIFY OR AMEND THE ALJ'S RECOMMENDATION RELATING TO RME PROGRAM COST RECOVERY SHOULD BE REJECTED.

As RESA explained in its Exception No. 15, the ALJ erred in recommending that EGSs be solely responsible for all costs associated with the RME programs.³⁹ Duquesne has requested that the Commission clarify or amend the ALJ's recommendation and conclude that Duquesne's cost recovery proposals, as amended during the proceeding, "will be the structure used to recover RME costs."⁴⁰ Duquesne's request is premised on the ALJ's recommendation that EGSs be

³⁷ RESA St. No. 2-SR at 4.

³⁸ OSBA Exceptions at 5.

³⁹ RESA Exceptions at 31-34.

⁴⁰ Duquesne Exceptions at 6-7.

solely responsible for all costs. RESA and other parties have objected to the ALJ's recommendation, and it should not be allowed to stand.

As RESA explained in its Exceptions, the ALJ's recommendation is inconsistent with recent Commission decisions and the record facts in this case.⁴¹ The Commission has not, contrary to the ALJ's recommendation, concluded that EGSs should bear all the costs of these programs; rather, as the Commission recently confirmed, "participating customers or EGSs" will pay the costs of PECO's programs.⁴² Duquesne's cost recovery proposal, which the ALJ recommends, will make the programs less attractive to EGSs, deter EGS participation, and potentially doom the programs' success.⁴³

Furthermore, RESA agrees with FES, Dominion Retail and IGS Energy that the Commission should reject the ALJ's recommendation to allow the POR discount rate to backstop the costs of the standard offer program should EGSs elect not to participate.⁴⁴ The record in this case shows that a cost recovery mechanism that involves the POR discount rate will deter EGS participation not only in the RME programs but potentially in the entire Duquesne service area.⁴⁵ Rejecting the ALJ's recommendation on this issue is also consistent with the Commission's decision in the *PECO Default Service Order*, in which the Commission rejected the ALJ's adoption of PECO's proposed 0.3% POR discount to fund the programs. The Commission found

⁴¹ RESA Exceptions at 31-34.

⁴² *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered on Nov. 21, 2012), slip. op. at 15-16.

⁴³ See RESA Exceptions at 33; FES Exceptions at 10-11; IGS and Dominion Retail Exceptions at 3.

⁴⁴ See RESA Main Brief at 61-62; FES Exceptions at 12; IGS and Dominion Retail Exceptions at 3.

⁴⁵ See, e.g., FES Exceptions at 12.

“significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participation.”⁴⁶

Moreover, any cost recovery through the POR discount rate is inappropriate from a traditional ratemaking perspective, as it would involve the collection of costs through the POR discount rate that are unrelated to the POR program. It would also skew the discount rate such that it would not be proportional to the load that the EGS serves, and set a dangerous precedent for using the POR discount as a catch-all mechanism for collecting costs in a manner that is not transparent to the market.⁴⁷ In RESA’s view, it is far better for the Commission to continue to make the positive case for why these programs are beneficial to the public generally, as it has done very well to date, and to use a cost recovery mechanism that reflects this benefit rather than taking the more expedient route of imposing all of the costs unfairly and inequitably among EGSs. For these reasons, Duquesne’s attempt to build upon the ALJ’s erroneous recommendation by seeking a “structure” for cost recovery should be rejected.

VI. CONCLUSION

For the reasons set forth above and in its Exception, RESA respectfully requests that the Commission grant RESA’s Exceptions and issue a decision which substantially rejects the ALJ’s November 15, 2012 Recommended Decision.

⁴⁶ *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer at 4 (Sept. 27, 2012).

⁴⁷ RESA St. No. 2 at 25.

Respectfully submitted,



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Date: December 17, 2012

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Petition of Duquesne Light Company
for approval of Default Service Plan for
the Period June 1, 2013 through May
31, 2015

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P-2012-2301664

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the Retail Energy Supply Association's Reply Exceptions have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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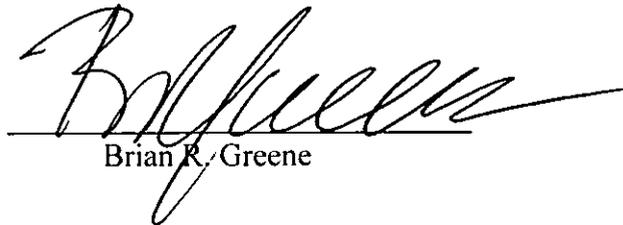
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Honorable Katrina L. Dunderdale
Administrative Law Judge
Pennsylvania Public Utility Commission
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Pittsburgh, PA 15222
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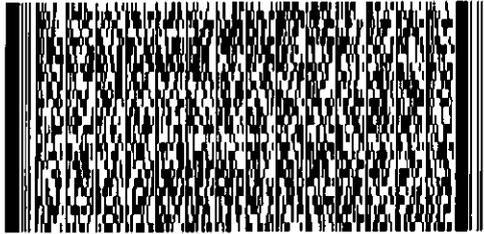


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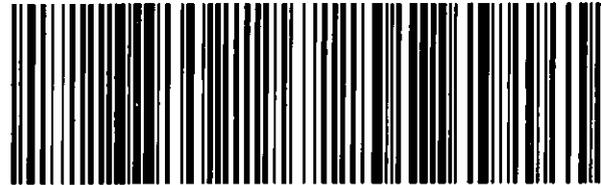
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