choice, suppliers should be able to act as agent for the customer to procure distribution, transmission, generation, and revenue cycle services on behalf of their principal-customers, and send them a single bill for these services as well as to bill and collect the CTC/ITC and transfer such payments to the utility or its agent.[383] Id. at 68-69.

Under any agency arrangement, suppliers would be able to accept orders for service from customers and, through contact with the EDC, initiate or continue service at the customer's location. Essentially, through the agency agreement, the supplier would become the customer of record and would be directly responsible for payment to Duquesne of the EDC's charges associated with distribution and transmission.[384] The reason that agency is a positive element of a competitive market for consumers is obvious: consumers want the efficiency and ease of being able to choose "one-stop shopping," and suppliers should be able to provide this service for their convenience. Id. at 69.

Such an agency relationship is not new to the Commission or to Pennsylvania utilities. In the natural gas industry, consumers have this option available to them in those markets which have been subject to competition; in fact, industrial natural gas customers have been able to enter into an agency relationship with their utility to procure gas service for more than ten years.[385] The agency service provided one bill and one point of contact while still

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[383] Enron St. 4.0 at 13.

[384] Naturally, consumers should also be able to seek transmission suppliers or other suppliers in any combination they select; having their supplier act as agent to procure these services is only one option among many, but it should be an option. Enron St. 4.1 at 8-9.

[385] See, e.g., Pennsylvania Public Utility Commission v. Equitable Gas Company, R-00963858 et seq. (December 4, 1997) at 59. Equitable successfully argued that through two
(continued...)

allowing the customer to receive competitive supply. For example, Columbia Gas introduced an "Experimental Special Agency Service Rate" in 1986.[386] This rate was extended each year until 1990, when it was made permanent by Commission Order.[387] Peoples Gas, for example, today offers agency service to residential as well as to industrial and commercial customers and permits marketers to act as agents for their customers and procure transportation services on their behalf - precisely what Enron is advocating for electric service.[388] The fact that agency is now the rule in the natural gas market, rather than the exception, indicates that there is no legal or technical bar to implementing an agency concept for electric suppliers.[389] Id. at 69-70.

The arguments, which have been made against allowing this manifest benefit to consumers to take place in the electric industry, have generally alleged concerns about reliability

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(...continued)
rate cases, eight §1307(f) proceedings, and multiple investigations "the Commission has not ever found that [Equitable's] agency service . . . serves any purpose other than to allow Equitable to satisfy its customers by meeting competition and maximizing recovery of fixed costs." In that particular context, Enron opposed agency on the basis that the distribution company used its position as agent for the customer to unfairly support its affiliated supply company, and Enron would again oppose it in a similar situation. However, implementing agency by suppliers in the electric market would present customers with more choices, not fewer, as there would be more suppliers offering "one-stop shopping," among which consumers would be free to choose.

[386] Petition of Columbia Gas for Permission to File Tariff Supplement on Less than Statutory Notice Period, Docket No. R-00860351.

[387] Docket No. R-891536 (February 2, 1990).

[388] Peoples' Tariff Gas Pa-PUC No. 42, at Rate GS-T.

[389] It should be noted that Enron has raised concerns about the use of agency in the gas context because it has resulted in services being provided in an unfairly competitive manner. The reference to the existence of agency in gas is to show that it has been approved by the Commission and that there are no legal or operational impediments to its implementation.

and quality of service.[390] But the preservation of reliability and service standards will be guaranteed by the Commission's Order in the Customer Services Order which supplies proposed guidelines for maintaining customer services at the same level of quality which is now enjoyed by consumers. In addition to mandating that standards remain constant, the Commission has indicated that policies will be developed to provide specific requirements that must be met when suppliers handle applications for new service.[391] Id. at 71.

In short, the procurement of additional services by suppliers via an agency relationship with customers is a benefit which consumers desire and value, and it should be available to them. Notwithstanding claims to the contrary, allowing suppliers to perform this function can only operate to the benefit of the consuming public, by allowing them to take advantage of the convenience of obtaining all of their electric services through one source, and ensuring that there are a wide variety of providers of this valuable service to choose from. Id. at 71.

Enron posits there is no legal impediment, which would prevent the Commission from approving the agency relationship between supplier and customer proposed by Enron. If allowed to occur, agency holds the possibility of many benefits for both consumers and for the competitive market. Enron R.B. at 42.

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[390] See, IBEW St. 1 at 3-8. Duquesne witness Mr. Allison, Duquesne St. 8-R at 22, claims that there are no benefits to the customer to be derived from agency.

[391] Customer Services Order at 18; Appendix B.

Enron notes Duquesne contends first that the Act does not authorize agency and that the Customer Services Order would appear to prohibit it.[392] Duquesne provides no citation for either of these propositions, because there are none. To the contrary, the Commission explicitly acknowledged the right of an EGS to act as agent for an end use customer in the PECO case.[393]

Duquesne further argues, incorrectly, that, as an agent, the EGS would have to provide metering and disconnection, which only an EDC may do. Again, the Commission specifically recognized the right of an EGS to act as the agent on behalf of its customer to have an advanced meter installed and meter reading services provided.[394] Finally, Duquesne contends that agency and the unbundling of billing, specifically the supplier single bill option, are inextricably linked, but that option has not been approved. Duquesne is wrong again. Agency is a viable and necessary option whether or not the supplier itself performs any of these functions, so long as it is authorized by the customer to arrange for them. The Commission has not only permitted such an agency function under the Act, it has also recognized the likelihood that it will permit the supplier single bill option.[395] Id. at 42-43.

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[392] Duquesne M.B. at 84.

[393] PECO Compliance Filing Order at 12-13, where the Commission required PECO to add to its tariff a requirement that, unless elsewhere prohibited, "an EGS may act as agent for an end user customer upon written authorization to PECO which may be part of the notice of EGS selection."

[394] PECO Compliance Filing Order at 18-21.

[395] PECO Compliance Filing Order at 22.

Accordingly, whether or not the Commission chooses to unbundle non-wire services at this time, it should allow agency arrangements to begin immediately. This will enable suppliers and customers to benefit from having the service in place now, and will also more easily accommodate future billing and unbundling changes. Id. at 43.

(d) Recommendation

A number of unanswered consumer protection issues abound in Enron's agency proposal. One of these unanswered issues concerns the proper interface between this agency proposal and the protections accorded residential customers in Chapter 56 of the Commission's regulations. For these reasons, any action on Enron's agency proposal should be delayed until a future proceeding can consider this subject in greater detail.

3. Other Issues

(a) Duquesne's Position

Prior to the Act, Duquesne explains it entered into a 15-year contract requiring Itron, Inc. to install, operate and maintain an automated metering service, Customer Advanced Reliability System (or "CARS"). Duquesne St. 8-R at 10. Upon a review of the arrangements, the Commission's Director, Bureau of Transportation and Safety, stated that "[w]e are extremely pleased that your company has decided to install an automatic, meter-reading system." Duquesne Exh. FRA-5. At present, Itron has installed a substantial portion of the system and it should be fully operational by December 31, 1998. Duquesne St. 8-R at 12; Duquesne M.B. at 84-85.

The Intervenors have three main objections to CARS: (i) CARS will not satisfy the Commission's Advanced Metering Guidelines.[396] OCA St. 5 at 40; (ii) CARS may be "anti-competitive" and hinder retail competition. Enron St. 3.1 at 4, 6-7; OCA St. 5 at 40-41; and (iii) the Commission should stop Duquesne from installing a "gold-plated" system, or alternatively, make Duquesne shareholders at risk for this investment. Enron St. 3.1 at 4-5, 6; OCA St. 5 at 41. Each is addressed below. Duquesne M.B. at 85.

First, the Commission has not yet finalized advanced metering standards. N.T. 855; Duquesne St. 8-R at 17-18. Once those standards are set, "Duquesne and Itron will work with the Metering Committee to qualify CARS, ensuring that distribution system benefits, etc. are accessible to competitive suppliers." Duquesne St. 8-R at 17-18. Second, CARS is pro customer choice and will promote, not hinder, competition. Duquesne St. 8-R at 11.[397] CARS will support a more reliable and accurate supplier settlement process than programs based on estimated load profiles. Id. at 11, 16. CARS will enable retail suppliers in Duquesne's service area to offer new value-added services to their customers, such as time-of-use pricing. Id.[398] Moreover, CARS does not preclude the unbundling of billing or other services in the future.

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[396] Advanced Meter Deployment for Electricity, Docket No. L-00970120, 28 Pa. Bull., No. 5 (Jan. 31, 1997) ("Advanced Metering Guidelines" or "Proposed Rulemaking").

[397] The OCA incorrectly asserts that CARS gives Duquesne a marketing advantage since the reliability benefits are not shared by suppliers. OCA St. 5 at 40-41. Duquesne will provide retail suppliers equal access to CARS' service offerings. Moreover, the reliability benefits relate to distribution service, not generation. Duquesne St. 8-R at 16.

[398] Duquesne will make optional services available to competitive suppliers and/or customers in a non-discriminatory manner, consistent with open access codes of conduct. These optional services will be cost-based and Duquesne will submit tariffs for these services for PUC approval. Duquesne St. 8-R at 11.

Id. Third, CARS is not a "gold plated" system. CARS streamlines the use of distribution system assets, lowering overall service costs. Id.[399] These benefits will accrue to customers that choose alternative suppliers as well as customers that do not. Duquesne St. 8-R at 11; Duquesne M.B. at 85-86.

(b) Enron's Proposal

Enron finds Duquesne is proposing to introduce an advanced metering system, known as CARS, which Duquesne has engaged Itron to install. There are two issues associated with CARS. Enron M.B. at 71.

First, Duquesne claims it will provide retail suppliers equal access to the service offerings of the CARS system, but it is significant that in describing these services, Duquesne witness Allison speaks of Duquesne offering these services.[400] To the extent that Duquesne provides these services to suppliers they should be at cost and should be fully available to resell by the supplier. Id. at 72.

Second, Duquesne must assure that its CARS system is fully open and capable of accommodating both the Commission's very limited metering proposed rule, as well as full competitive provision that the Commission has indicated it intends to implement in the future. The fact that Duquesne has signed a 15-year lease should not change the result. Once the Commission mandates competition in non-wire services, the Commission should order a revision

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[399] Meter reading costs have declined since the partial implementation of CARS. Duquesne St. 8-R at 15.

[400] Duquesne St. 8-R at 13.

in the lease, if necessary, that would guarantee that ratepayers did not lose the advantages of competitive metering. Finally, the Commission should direct Duquesne to work with suppliers and others to implement modifications in CARS to allow supplier-provided meters, automatic meter reading and billing through an IOA. Id. at 72.

(c) **Recommendation**

As discussed in this decision, supra, on the subject of metering, Duquesne must allow customers the option, in conjunction with their EGS, to request the use of a "qualified meter" that has been approved by this Commission as stated in PECO Energy, Slip Op. at 140-141. As the regulated EDC, Duquesne shall be responsible for all physical work related to the meter and the customer shall pay as a regulated rate any net incremental cost incurred by Duquesne as a result of the metering choice. Any further move to develop competition in this area should await further Commission rulemaking on this subject.

D. Consumer Protection and Service Issues

1. Termination

(a) The OCA's Proposal

In its filing, the OCA observes Duquesne's procedures regarding termination of a customer from the electricity grid for nonpayment of charges were unclear. In the Order concerning Licensing Requirements for Electric Generation Suppliers, Docket No. M-00960890 F004 (Order entered February 13, 1997), the Commission stated that an EDC could not terminate a customer for failure to pay an alternative supplier's charges. During cross-

examination, Duquesne witness Hoffman affirmed that Duquesne will not terminate under these circumstances. N.T. 1010; OCA Cross Exh. 9. The OCA submits that this is consistent with the Commission's Order and Duquesne's compliance filing should clearly set forth its procedures. OCA M.B at 76.

Similarly, Duquesne should not be permitted to condition restoration or reconnection of service on the payment of past-due supplier charges, unless those charges are owed to the customer's supplier of last resort. OCA St. 5 at 52; Order on Maintaining Customer Services at the Same Level of Quality at 45; OCA M.B. at 76-77.

(b) Enron's Position

Enron claims enabling electric suppliers to act as agents for customers, as described above, will allow the supplier to act on behalf of the customer to request the cancellation of electric supply from one source, and to replace it by ordering electric service from another supplier. This does not mean, however, that suppliers can physically disconnect customers for nonpayment. In fact, they cannot do so. Parties to this proceeding, most notably OCA,[401] have expressed concern that suppliers could act in their capacity as agents to have the EDC physically disconnect customers. Enron neither claims that it can, nor desires to make this a supplier prerogative as part of the supplier's agency responsibility. Enron M.B. at 72-73.

Suppliers can "cancel service" in that they can stop providing service to a nonpaying customer by terminating the contract with that customer, after complying with all applicable Chapter 56 requirements, including the sending of appropriate written notices to the

[401] OCA St. 5-R at 6-9.

customer and to the EDC.[402] At that point, the customer will either attempt to repair the relationship with the supplier, or will default to the supplier of last resort.[403] However, that is the extent of the power of suppliers to stop service to a customer. Customers run no more risk of being disconnected from the EDC in a competitive environment than they do in the current regulated one. Suppliers will still negotiate with customers to set reasonable terms for payment if payment becomes a problem, and customers will still be assured of Chapter 56 protections prior to disconnection from the grid. Id. at 73.

(c) **Recommendation**

With the apparent agreement of all parties and for the reasons cited by the OCA, the Company should be directed that, as an EDC, it cannot terminate service to a customer for failure to pay an alternative supplier's charges. For the same reasons, Duquesne should not be permitted to condition restoration or reconnection of service on the payment of past-due supplier charges, unless those charges are owed to the customer's supplier of last resort. Enron's agency proposal should be denied for the reasons discussed, supra.

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[402] The Customer Services Order provides appropriate guidelines for suppliers to terminate service. For example, the Order specifies that written notices from suppliers must clearly inform the customer that failure to pay will result in the cancellation of the contract with the supplier, not in termination of service, Id. at 39.

[403] Id. at 38.

2. Switching Fees

(a) The OCA's Position

(i) Fees

The OCA notes the Company has raised an issue concerning additional charges in its rebuttal testimony that needs to be addressed. In direct testimony, the Company gave no indication of any additional fees to be charged associated with a customer's service. However, in rebuttal testimony, Duquesne witness Allison stated that "Duquesne will charge customers and/or suppliers the "net incremental cost" of providing such services as: changing a customer's supplier of record, supplier settlement, customized billing, collection activities, customer payment processing, customer service, and other potential charges as well. During this proceeding, Duquesne has made no quantification of what these charges will be, or what their amount will be. Duquesne St. 8-R at 19-20. Therefore, the OCA has no way of evaluating whether such charges are justified or reasonable. OCA witness Alexander explains that this is inappropriate. She explains:

> This is the restructuring proceeding that should address the Company's procedures, tariff changes and fees, if any, associated with the move to retail electric competition. It is unreasonable to suggest, as does Mr. Allison, that fees and charges for a specified list of services will be charged at "net incremental cost" without Commission review. It is the Company's responsibility to unbundle its services and allow the Commission to determine whether fees should be charged and in what amount in this proceeding.

OCA St. 5S at 16. The OCA submits this proceeding was the proper forum to evaluate the need for such additional fees. Duquesne has not presented any quantification or qualification, and

should not be permitted to implement such charges, without proper review and justification. OCA M.B. at 77.

(ii) Change of Supplier

Regarding a customer's change of supplier, the OCA finds the Company has proposed Tariff Rule 27, which allows for a change of supplier based on either oral or written confirmation from the customer, but does not allow the supplier to contact Duquesne on behalf of the customer without written proof of authorization. OCA St. 5 at 38. OCA witness Alexander distinguished between customer-initiated changes and marketer-initiated changes. She recommends that:

> The Commission should allow customers to inform the distribution company directly of the identity of their preferred supplier as proposed by Duquesne Light and allow as well a supplier to notify the distribution company of the customer's selection as long as the customer's selection was either in writing or verified by an independent third party, or if accomplished via contact initiated by a marketer or supplier, accompanied by written authorization. However, if the customer initiates the contact, the requirement of a signature or the creation of an additional hurdle by requiring that the customer communicate directly with the distribution company is not reasonable.

OCA St. 5 at 38-39; OCA M.B. at 77-78.

The OCA also submits that the Company's proposed 5-day notice to switch suppliers is reasonable, but the requirement of a physical meter reading should not be necessary if a customer agrees to a prorated bill for the billing period. OCA St. 5 at 39-40. The OCA requests that these proposals be adopted. OCA M.B. at 78.

(b) **Enron's Position**

To the extent that Duquesne is proposing any fee for switching suppliers, Enron posits such fees should be prohibited in accordance with the policy articulated in PECO Energy and Duquesne's failure to support the fee.[404] Enron M.B. at 73.

(c) **Recommendation**

No substantial evidence exists in this record to support the Company's claim for a fee for switching suppliers. Accordingly, the Commission should deny this claim until such time as Duquesne can substantiate the cost-basis for this charge. On the other hand, the Company's proposed Tariff Rule 27, which allows for a change of supplier based upon either an oral or written confirmation from the customer, but does not allow the supplier to contact Duquesne on behalf of the customer without written proof of authorization, appears to be a reasonable attempt to prevent "slamming" and should be approved until such time as the Commission approves a rulemaking on this subject. Further, the Company's five day notice requirement to switch suppliers and obtain a meter reading should be approved as presented by Duquesne without further modification.

E. Partial Payments

1. The OCA's Position

The OCA observes the Company has committed to apply customer payments "in the consolidated bill scenario consistent with the Guidelines for Maintaining Customer Services

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[404] PECO Reconsideration Order at 17.

. . . ," thus implementing the partial payment procedures in the Commission's Order. Duquesne St. 8-R at 24. The OCA believes that this resolves this issue. OCA M.B. at 78.

2. Enron's Position

Enron finds Duquesne appears to be intending to first apply all partial payments to extinguish its receivables – unless otherwise directed by the customer.[405] Enron's only request of the Commission in its determination of the distribution of partial payments received by the EDC is that payment application be fair and nondiscriminatory. The only reasonable way to assure equitable application of partial payments is to apply payments on a *pro rata* basis. As explained by Enron witness Muench, any other method would be:

> [C]learly unfair to Alternative Electric Suppliers. The Commission should require that payments received from customers by Duquesne, or other billing agent, be applied to the services provided by the entity that does not have direct access to the customer. There is no reason why Duquesne's charges should be given priority over a supplier's, unless Duquesne relinquishes billing responsibility.[406]

Enron M.B. at 74.

If payments are not applied on a *pro rata* basis, a disproportionate amount of delinquencies will be allocated to suppliers likely leading to early discontinuance of service by the supplier and, through return to the PLR, elimination of competitive benefits to those customers – customers who may most need the price reductions offered by the competitive

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[405] Enron St. 4.0 at 17.

[406] Id.

environment. Furthermore, EDCs, including Duquesne, are already recovering all uncollectibles, including those uncollectibles associated with the generation portion of the bill, in current rates. Since, in a competitive environment, suppliers will assume the risk of generation related uncollectibles, assigning a disproportionate amount of potential uncollectibles to suppliers will result in double recovery of uncollectible expense by Duquesne.[407] Id. at 74-75.

Duquesne witness Allison has set forth a priority order for payment based upon the PUT's present view on the subject.[408] That method should be altered to "pro rata." Even if the PUT interim method is accepted, the priority order listing of "supply charges" as a priority item should not give Duquesne's supply charges a leg up over the supply charges of suppliers not affiliated with Duquesne. Id. at 75.

3. Recommendation

Since the Company has committed to apply customer payments in the consolidated bill scenario consistent with the Commission's Guidelines for Maintaining Customer Services, no further action appears warranted to modify Duquesne's proposal for handling partial payments.

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[407] Enron St. 4.0 at 18-19.

[408] Duquesne St. 8-R at 23-25.

XII. UNIVERSAL SERVICE AND ENERGY CONSERVATION

A. Introduction

1. The OTS' Position

The OTS explains the universal service fund charge is a fee des the costs of providing universal service and energy conservation for low inc Pursuant to the Act, universal service and conservation is defined as:

> ". . . policies, protection, and services that help low incon customer to maintain electric service. The term includes custom assistance programs, termination of service protection and polici and services that help low income customers to reduce or manage energy consumption in a cost effective manner, such as the Low Income Usage Reduction Program, application of renewable resources and customer education."

66 Pa. C.S. §2803; OTS M.B. at 86-87.

According to Section 2804(8) and (9) of the Act, the cost of universal service is to be funded in each electric distribution territory by a non-bypassable, competitively neutral cost recovery mechanism that fully recovers the costs of universal service and energy conservation services. How such a cost recovery mechanism is to be designed is at the discretion of the Commission. OTS St. 3 at 7; OTS M.B. at 87.

Currently, Duquesne's 1996 actual universal service and conservation fund expenses are approximately $12,275,000. These expenses are being recovered through existing rates. Those programs included in these expenses are the customer assistance program, smart comfort, customer assistance and referral evaluation service ("CARES"), hardship fund, gatekeeper, low income home energy assistance program ("LIHEAP"), write-offs and waivers. Id.

2. OCA's Position

Under traditional regulation, the OCA relates certain programs were created to address the Commission's and utilities' concern to effectively provide utility services to low income customers. Historically, such programs as the Customer Assistance Program ("CAP") and the Low Income Usage Reduction Program ("LIURP") have attempted to serve this need. These programs have traditionally been administered by the jurisdictional utility, with the assistance of community based organizations. With the advent of competition in the electric industry, the Pennsylvania General Assembly recognized the importance of ensuring that such universal service programs continue to be available to Pennsylvania's low-income ratepayers. OCA M.B. at 78.

Specifically, Section 2804(9) of the Competition Act provides: "The [C]ommission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory." 66 Pa. C.S. §2804(9). Under the Act, "Universal Service" is defined as:

> Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low income usage reduction programs, application of renewable resources and consumer education.

66 Pa. C.S. §2803. To carry out this purpose, the Act requires that "at a minimum" universal service and energy conservation programs continue at current levels. 66 Pa. C.S. §2802(10); OCA M.B. at 78-79.

CAAP witness Wilson also expressed a concern for low income customers during competition, stating:

> Low income customers are not likely to share in the benefits of a restructured industry. In fact, they may be substantially harmed by it unless strong and meaningful programs and policies are put into place to protect them. Low income customers are perhaps the most captive of customers. As such, their ability to exercise choice in generation as the industry restructures will be less than other residential customers.

CAAP St. 1 at 2-3; OCA M.B. at 79.

Duquesne currently provides a pilot Customer Assistance Program ("CAP") and Smart Comfort, a Low Income Usage Reduction Program ("LIURP"). Pursuant to the mandate of the Act, Duquesne filed a preliminary universal service plan as part of its Restructuring Filing. This was then supplemented by the submission of a more comprehensive Universal Service plan on November 3, 1997, which took into account the Commission's July 11, 1997 Order. This plan contained (a) a description of applicable legislative and regulatory requirements, (b) an overview of Duquesne's universal service and energy conservation goals, (c) a detailed itemization of Duquesne's existing policies, (d) Duquesne's proposed response to three new requirements necessitated by the unbundling of service elements and the introduction of competition, (e) a universal service needs assessment, (f) a review of current universal service and energy conservation expenditures, (g) a description of proposed universal service and energy conservation programs operations, (h) program delivery mechanism proposals, (i) cost recovery proposals, and (j) proposals on reporting, evaluation, and advisory panels. OCA St. 6 at 10-11. Duquesne has also identified a number of other methods of addressing universal service in its Plan. Duquesne Exh. JPF-1 at 9. These potentially include matching programs to more rapidly

reduce a customer's arrearage, and creative payment arrangements to recognize temporary hardships. Id. Duquesne has also indicated that it "may choose to explore alternate metering or usage control devices." Id.; OCA M.B. at 79-80.

The OCA has reviewed and evaluated Duquesne's proposed Universal Service and Energy Conservation plan and finds that while Duquesne's approach is innovative and has made impacts in some areas, overall, it lacks certain necessary elements to ensure that it will be operated in a manner that meets the objectives of the Act and the Commission's Order. Id. at 80.

OCA witness Brockway expressed concern about the Company's approach. She stated: "[w]hile Duquesne's holistic approach is commendable, the Duquesne plan does not contain adequate assurances that it will be operated in such a way as to meet the objectives of the statute and the Commission's Final Order on Universal Service and Energy Conservation." OCA St. 6 at 13. Ms. Brockway identified three general reasons why the Company's approach is risky for low-income customers and the Commission. OCA St. 6 at 14. She explains:

> First, the Company does not match its commitment to tailored customer services with an adequate budget commitment. Second, the failure to adopt target enrollment and benefit amounts leaves too much uncertainty about actual levels of CAP service under the Plan. Third, some of the concepts for "additional services" proposed in the Plan sound like punitive or counterproductive measures that degrade the quality of service a participant receives.

OCA St. 6 at 14; OCA M.B. at 80.

Additionally, OCA witness Brockway raised an important issue regarding the Company's proposal to explore alternate metering or usage control devices:

> The description of these possible "service" additions is cryptic, and so it is possible that they represent advances in thinking on

> how to accomplish universal service. However, . . . alternate metering and usage control devices sounds like a possible reference to prepayment metering and service limiters. Neither prepayment meters nor service limiters are sound measures to use as universal service tools in the homes of low-income customers. In both cases, a low-income customer is at risk of loss of service without advance warning in person by Company or CAP program personnel. . . . The devices avoid the problem of determining the nature of the underlying problem that has caused the household to fall into arrears. They also remove the Company's incentive to address the underlying problem.

OCA St. 6 at 19-20; OCA M.B. at 80-81.

As set forth below, in addition to the OCA's concerns regarding Duquesne's Universal Service and Energy Conservation Plan, the OCA has found that Duquesne's existing programs require certain modifications, as well as expansion in both eligibility requirements and funding levels. Id. at 81.

The OCA submits that Duquesne should be required to modify its Universal Service plan to adequately address the needs of its low-income customers, consistent with the testimony of OCA witness Brockway and the reasons stated below. Id.

3. The OSBA's Position

The Company filed its restructuring plan with the Commission on August 1, 1997. The OSBA finds this plan, as filed, omitted a mechanism to recover the Company's universal service and energy conservation costs over the lives of these programs. Such a design is statutorily required as part of the standards in restructuring the Company in order to complete the transition to a competitive generation market. See, 66 Pa. C.S. §2804(15). The universal service and energy conservation programs have associated public purpose costs, which have been

included in bundled rates of the utilities. The public purpose is to continue to be promoted through "universal service and energy conservation policies, protections and service and full recovery of such costs is to be permitted through a nonbypassable rate mechanism." 66 Pa. C.S. §2802(17); OSBA M.B. at 21.

The Company cured this defect in its restructuring filing by submitting a detailed plan for recovery of universal service and energy conservation costs on November 3, 1997. The universal service and energy conservation plan was submitted in response to an interrogatory sponsored by the OCA. The plan contained (1) a description of the applicable legislative and regulatory requirements, (2) an overview of the Company's universal service and energy conservation goals and methods to achieve these goals, (3) an itemized showing of the Company's existing policies, protections, and services, (4) the Company's response to requirements necessary for the unbundling of service elements to enter a competitive market, (5) an assessment of universal service needs, (6) a review of current expenditures, (7) a proposal for universal service and energy conservation programs operations, and cost recovery proposals, and (8) proposals on evaluation, reporting, and advisory panels. Id. at 21-22.

The functionality of the programs as they aid low income families and the criteria of the applicant to satisfy need, while clearly necessary for the operation of the plan, will not be addressed by the OSBA. The cost recovery procedure utilized to fund the plan, however, is a pertinent issue for OSBA. The statute conspicuously gave deference to the Commission in establishing appropriate cost recovery mechanisms concerning the funding of the universal service and energy conservation plans of utilities. 66 Pa. C.S. §2804(8); OSBA M.B. at 22.

The Commission has already provided guidelines for utilities to follow in constructing their universal service and energy conservation plans. Universal Service Order, Docket No. M-00960890F0010 (Order entered July 11, 1997). The OSBA recommendations discussed below serve to build compliance with the Universal Service Order and to implement the "restructuring of the electric utility . . . in a manner that does not unreasonably discriminate against one customer class to the benefit of another." 66 Pa. C.S. §2804(7); OSBA M.B. at 22.

4. DII's Position

DII suggests the Act requires that the Commonwealth maintain the existing level of universal service protection afforded to the low income citizens in Pennsylvania. 66 Pa. C.S. §2802(10). The Duquesne funding mechanism appears to adhere to the dictates of the Act and should be accepted by the Commission. DII St. 1-R at 3-5; DII M.B. at 96; DII R.B. at 46.

5. The Environmentalists' Position

The Environmentalists note electricity has become a necessity of life,[409] but for many of Duquesne's low-income customers, it is a necessity they cannot afford. Unfortunately, this situation is not going to get better under restructuring. As Roger Colton testified for the City of Pittsburgh,

> [m]oving to a competitive marketplace in the electric industry will likely have significant adverse impacts on low-income consumers. A review of competitive, non-electric industries (such as health care, personal lines of insurance, telecommunications) reveals

[409] 66 Pa. C.S. §2802(9).

> that, even if regulated, these industries have not achieved and maintained universal service. Universal service is *not* the norm in these industries and the competitive market has operated to impede rather than to promote universal service. In each instance, it tends to be the poor and minority consumers who are charged higher rates, provided lesser service or excluded from the market altogether.[410]

In implementing electric restructuring in Pennsylvania, we must all work to avoid this deterioration of service. Env. M.B. at 41-42.

6. CAAP's Position

On December 3, 1996, CAAP notes Governor Tom Ridge signed into law the Competition Act. The Act revised the Public Utility Code. 66 Pa. C.S. §§101, et seq., by inter alia, adding Chapter 28, relating to restructuring of the electric utility industry. The Commission is the agency charged with implementing the Act. CAAP M.B. at 1.

CAAP argues low income ratepayers have special needs and concerns that must be addressed in a restructured electric industry. Low income customers are not likely to share in the benefits of a restructured industry. In fact, they may be substantially harmed by it, unless strong and meaningful programs and policies are put into place to protect them. Low income customers are perhaps the most captive of customers. As such, their ability to exercise choice in generation as the industry restructures will be less that other residential customers. CAAP St. 1 at 3; CAAP M.B. at 1.

Additionally, low income households have virtually no discretionary income for investments in efficiency measures and carry higher risk with respect to arrearage, which makes

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[410] City St. 2 at 3, l. 12-20.

them even less attractive to potential aggregators. This leaves them especially vulnerable as costs begin to shift from larger customers to smaller ones. In essence, the low income, seniors, minorities, rural and other at risk customer groups may suffer from neglect and redlining by providers because they pose more difficulties in being served. CAAP St. 1 at 3; CAAP M.B. at 1.

Finally, we must remember that low-income households are generally less educated and informed about energy use than typical customers. This situation reduces their ability to take advantage of what benefits may fall their way. Since the pursuit of adequate food and clothing, employment, and mere housing itself are of paramount importance to these people, it is unlikely they will become informed or take advantage of a market-based decision making. CAAP St. 1 at 3; CAAP M.B. at 1-2.

The Pennsylvania General Assembly recognized the special needs and concerns of low income ratepayers by making certain policy declarations in the Act including the creation of appropriately funded and available universal service and energy conservation programs. It is clear that the *raison d'etre* of the Act is not to promote *laissez faire* competition in the area of generation. Rather, Section 2802 defines no less than three public policy requirements directly relevant to ensuring that the special needs of low income ratepayers are adequately addressed as Pennsylvania restructures its electric industry. These requirements are:

- Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions (emphasis added, §2802(9));

- The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service (emphasis added, §2802(10); and

- There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by the continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism (emphasis added, §2802(17)).

CAAP M.B. at 2-3.

In support of these public policy requirements, the Act specifies specific programs that must be developed and implemented. The Act defines the programs under the general heading of Universal Service and Energy Conservation, and specifically states that:

- Universal service and energy conservation is defined as policies, protections and services that help low-income customers to maintain electric service. *The term includes customer assistance programs; termination of service protection and policies and services that help low-income customers to reduce or manage consumption in a cost-effective manner, such as the low income usage reduction programs, and applicable renewable resources and consumer education* (emphasis added, §2803).

Though the Act does not specify low income participation funding levels with respect to Universal Service and Energy Conservation, it does give the broad powers to make such determinations. Specifically, the Customer Choice Act states that:

- The Commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each distribution territory. These policies, activities and services shall be funded in each electric distribution territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service and energy conservation services. (emphasis added, §2804 (9)).

CAAP M.B. at 3-4.

The Commission implemented a two-step process for meeting its responsibilities as declared and outlined in the Act with the goal of establishing meaningful and strong universal

energy conservation programs in each utility's service territory. The Commission 'entative Order on Universal Service and Energy Conservation Requirements and put and comments from all interested stakeholders. In keeping with the low income irements of the Act, the Commission proposed its Tentative Order Re: Guidelines al Service and Energy Conservation Programs Made Pursuant to 66 Pa. C.S. §2803 2804(8) and 2804(9) at Docket No. M-00960890 F 0010 at a Public Meeting held 997, and requested comments for consideration. These

> "[g]uidelines were intended to assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each utility by setting forth the Commission's current views regarding how those issues should be addressed in the restructuring proceedings. It is our intention that the Guidelines will enable the parties to more efficiently focus on the relevant factual determinations necessary to comply with the Act. . . . The sole intent of this tentative order is to propose guidelines for universal service and energy conservation programs and to request written comments from the electric utilities and other interested parties on these guidelines. The Commission will use the comments to this tentative order to develop guidelines for universal service and energy conservation programs that will be issued in a final order . . ."

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nong other things, the Commission's Tentative Order on Universal Service and tion suggested a methodology for determining the funding and participation provide strong and meaningful programs. The Commission pointed out that : for similar programs in California was nearly 56%, and that given that ; have non-income eligibility requirements to consider as well, it would be e a 40% penetration rate of the total 150% of Federal poverty guideline

households in each utility service territory was a good estimation of that level. CAAP M.B. at 5.

The Commission issued its Final Order on Universal Service and Energy Conservation which, among other things, stated that participation and funding levels for low income programs will be "based on a needs assessment of the market for and acceptance of universal service programming in the territory." After evaluating the comments provided by 52 parties in response to the Commission's Tentative Order on Universal Service and Energy Conservation Requirements, the Commission issued its Final Order on such at Docket No. M-00960890F0010 at a Public Meeting held July 10, 1997. The Final Order reiterated the purposes of the Tentative Order regarding the Commission's intention that its Universal Service and Energy Conservation Guidelines are to "assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each EDC by setting forth the Commission's current views regarding how those issues should be addressed in the restructuring proceedings . . . ." But in its Final Order, the Commission declined to offer "any precise requirements that must be a part of the universal service and energy conservation plans of any utility." Exh. CRK-3 at 2 Rather, the Final Order specifies that such "decisions will be made only in the restructuring order, after the EDCs and all interested parties have had an opportunity to address the issues based upon [its] guidelines. CAAP M.B. at 5-6.

Of particular note is the Final Order acknowledgment that:

> "the Code, as now amended by the Act, for the first time imposes a mandate for universal service and energy conservation policies, programs and protections that are 'appropriately funded and available in each electric distribution territory' and the Commission can and will meet this mandate while meeting the other requirements of the Code." Id. at 3.

CAAP M.B. at 6.

Further, the Final Order notes that the "neither the Act nor [the] Guidelines specify any particular spending level for universal service and energy conservation as a whole . . ." Id. at 3. The only requirement being that "total level of resources directed to universal service and energy conservation is 'appropriate' and the benefits are made 'available'." Id. In this regard, the Final Order provides means for defining, what is "appropriate" and "available" within the context of each EDC Restructuring Proceedings. Id.; CAAP M.B. at 6.

Specifically, the Final Order states that "in order to ensure that universal service and energy conservation programs are "appropriately funded and available in each service territory." Each EDC plan must address:

- Identification of existing and proposed efforts;
- Needs assessment of the market for and acceptance of universal service programming in the territory;
- Identification of the greater of the current level of spending or the amounts included in existing rates to support existing efforts;
- Other statutory mandates and these guidelines. Id. at 34.

CAAP M.B. at 6.

7. **Enron's Position**

Duquesne's proposed restructuring plan includes a universal service proposal which, it asserts, meets the requirements of the Act. However, under its proposal, Enron asserts all universal service support towards payment of universal service customer bills would be

ed by Duquesne and no portion would be allocated to suppliers serving customers eligible iiversal service support.[411] Enron M.B. at 75.

Enron strongly supports initiatives to maintain universal service programs to de support to low income, payment troubled Pennsylvanians; however, such programs l be designed on a competitively neutral basis as required by the Act. In order to achieve petitively neutral universal service program, the support must be portable and should be ited to each component of a low income customer's electric bill on a *pro rata* basis in rtion to the average comparative level of charges on customer bills.[412] Id. at 75-76.

The Commission apparently agrees. PECO's proposed restructuring plan included le support within its universal service plan proposal. In PECO Energy, the Commission ed PECO's proposed universal service program without modification on this point.[413] Id.

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. Eligibility and Funding Levels

(a) Duquesne's Proposal

The Company finds the intervenors advocate a broader definition of need than thus expanding the pool of persons eligible for assistance. OCA St. 6 at 17-18; City . 12, 14-15. They base their estimates of the number of eligible persons solely upon

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)uquesne St. 8 at 7-11:

ıron St. 5.0 at 32-33.

fact, this is one of the few components of PECO's proposed restructuring plan ımission approved.

income criteria. However, neither the Act nor the Commission's Guidelines on Universal Service and Energy Conservation Guidelines (the "Guidelines") require that all customers with a specific level of income be eligible for all services, or that additional eligibility criteria, as proposed by Duquesne, are improper. Specifically, Section 2804 of the Act only requires that such activities be "appropriately funded and available" and operated in a cost-effective manner. Moreover, the Commission's Guidelines (at 31-34) specifically include "other non-income criteria" in the definition of eligibility. Duquesne St. 14-R at 9. Furthermore, Duquesne's use of additional eligibility criteria is consistent with PECO Energy, Slip Op. at 143-144, which approved PECO's use of additional eligibility criteria. Duquesne M.B. at 87.

(b) The OCA's Position

(i) Eligibility

The OCA contends the Company uses a very narrow definition of eligibility for its CAP program - one that requires a customer to be delinquent in their bills before being eligible for the program. OCA St. 6 at 33. Although the OCA agrees that it may make sense to target CAP benefit dollars to the most at-risk customers, passing a payment-trouble screen should not be an absolute requirement. OCA St. 6 at 34. As explained below, the Company's eligibility criteria are too limited to meet the needs of the low-income community and ensure that the goals of the Act are met. OCA M.B. at 81.

OCA witness Brockway recommends that Duquesne broaden its eligibility criteria to include non-delinquent, high-risk customers, consistent with PP&L's proposal to extend eligibility to customers, who are at risk of not being able to maintain service. OCA St. 6 at 35.

She states, "I have endorsed this concept, and recommend that the list suggested by PP&L, with two narrow additions I have proposed, be used by Duquesne to enable a more complete group of at-risk customers to qualify for CAP assistance." OCA St. 6 at 35. This list includes:

- Injury or illness of the primary wage earner,
- High medical bills,
- Loss of job or other reduction in income,
- Abandoned spouse with young children,
- Very low-income elderly,
- Very low-income households with children under school age, and
- Very low-income households with a permanently disabled person residing in the house and requiring personal care for daily living.

OCA St. 6 at 36. Ms. Brockway describes the reasons for these groups as such: "Taken together, these categories describe households where the adult(s) is unable to take on jobs outside the house to increase the family income sufficiently to afford service, and are locked into their very low-income situation so long as these constraints persist." OCA St. 6 at 36; OCA M.B. at 81-82.

The OCA submits that this expansion of eligibility is particularly important due to the high burden of low-income customers in meeting their electric bills in Duquesne's service territory. Ms. Brockway explained:

> For example, today, the median family income in the Duquesne service area spends about 2.8% of its income on electricity in the case of a general use customer, and 4.3% in the case of a customer who heats with electricity. By contrast, low income families without electric space heat can spend as much as 25% of their income on electricity, and those with space heat can spend almost 38% of their income for electricity. These high burdens

are a function of the level of income and the typical bills of such customers.

OCA St. 6 at 26. Ms. Brockway went on to note that even customers in the income range of 100-150% of poverty carry twice the payment burden as median income customers on average. Id. Moreover, in the last three years, Duquesne has disconnected 22,464 accounts with an average length of time without electricity being more than one month. OCA St. 6 at 21; OCA M.B. at 82.

Despite this need, Duquesne has not set any specific targets for customer enrollment in its universal service programs, even though its own estimates show a need to expand services beyond the current levels. OCA St. 6 at 18. OCA witness Brockway recommended that the Company make reasonable efforts to achieve a 50% participation rate of he eligible households. While Ms. Brockway estimated the number of low-income customers need of assistance to be as high as 117,000, she said the number who fall into the core group ntemplated by the Commission in its Final Order on Universal Service is between 25,000 and .000 households. OCA St. 6 at 32. As such, the OCA submits that it is a reasonable ommendation to require that Duquesne set a goal for its CAP program of providing bill stance to 24,000 eligible customers by the end of three years. OCA M.B. at 82-83.

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(ii) Funding Levels for CAP and LIURP

The OCA observes Duquesne has proposed that its Universal Service budget be al to its current universal service spending. This suggests a CAP budget of $550,000. CA submits that this level of funding does not meet the need of Duquesne's service . To provide assistance to the OCA's recommended level of eligible customers, the

OCA recognizes that Duquesne's budget may have to be increased. OCA witness Brockway proposed a budget of 0.5% of gross revenues or $5,725,000. OCA St. 6 at 32-33. The amount would serve the targeted goal of 24,000 participants. OCA M.B. at 83.

In considering *funding* for the Low Income Usage Reduction Program ("LIURP") contained in Duquesne's filing (Smart Comfort), OCA witness Brockway noted that the Company's budget for its LIURP program of $700,000 per year currently consists of between 0.06% and 0.07% of the Company's gross operating revenues. OCA St. 6 at 42. She recommends that Duquesne ramp up the funding for the LIURP program to 0.2% of its gross operating revenues, or approximately $2.2 million, over four years. Id. While Ms. Brockway acknowledges the value of the individual approach to usage reduction that Duquesne has taken, she also recognizes that there are many more customers who could benefit from these services. She states:

> A ramp-up such as that I propose need not interfere with the Company's proposal to tailor universal service approaches to individual clients. While the Company has not performed a needs assessment for LIURP services, it has provided its comprehensive services so far to 6,000 low-income customers. As there are upwards of 117,000 low-income households in the service area, and as many as 25,000 to 35,000 payment-troubled low-income households, even a faster ramp-up would take many years to provide services to all low-income households.

OCA St. 6 at 42-43. However, Ms. Brockway has recognized that care should be taken not to jeopardize the successful qualities of Duquesne's program, due to a speedy ramp-up. OCA St. 6 at 43. She explains that, "Ramping up too soon, and ramping up beyond the capacity to maintain the hands-on involvement of current managers, would jeopardize the intangible qualities that make Smart Comfort successful." Id.; OCA M.B. at 83-84.

For the reasons set forth above and in the testimony of OCA witness Brockway, the OCA recommends that the Company be directed to increase its funding for its CAP and LIURP programs. Id. at 84.

The OCA notes Duquesne stated that other parties have proposed that eligibility for its universal service and energy conservation programs be determined solely on the basis of income criteria. Duquesne M.B. at 87. The Company argues that neither the Act nor the Commission's Universal Service Guidelines require that eligibility be determined in this manner. Id.; OCA R.B. at 30.

The OCA submits that as demonstrated by the testimony of OCA witness Brockway, CAAP witnesses Wilson and Kuennen and Environmentalists witness Colton, Duquesne eligibility criteria are so restrictive that the numbers of eligible customers would be far too limited in this competitive environment.[414] Although the OCA recommended broadening eligibility criteria based primarily on income, the OCA recognized the need to "target" limited funds and proposed criteria to properly reach customers in need. Indeed, other parties who have addressed this issue agree that the Company's eligibility criteria should be expanded and its dollars properly targeted. OCA M.B. at 81-84; CAAP M.B. at 6-13; Env. M.B. at 42; OCA R.B. at 30-31.

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[414] The OCA notes that its funding recommendations are related to direct program costs for CAP and LIURP. The Company's proposed Universal Service budget of $12 million includes approximately $10.8 million in low-income collection and write-off costs. The OCA's proposal is to take a portion of this amount and redirect it to provide services designed to aid low-income customers meet their service obligations.

In surrebuttal, OCA witness Brockway explained that, contrary to the Company's assertion that her proposal is too broad, her proposed eligibility and funding levels actually serve a conservative number of customers. She explains:

> Mr. Flynn's November 3, 1997 Universal Service program proposal identifies about 115,000 low-income payment-troubled households. These are households with incomes at or below 150% of the federal poverty guidelines who also have missed a payment in a payment arrangement. Such customers meet the terms of eligibility as defined in the Commission's guidelines. I proposed in my direct testimony to limit intake to the [CAP] program to observe a level-of-effort cap of 0.5% of gross operating revenues. This in practice limits the pool to about 24,000 customers. This is only about 20% of the low-income payment-troubled households in the Duquesne service area. It is less than the 26,000 low-income customers Mr. Flynn identifies whose arrerages [sic] are over three times the average residential bill.

OCA St. 6 at 9. Ms. Brockway continues by explaining that Duquesne's proposal would limit the pool to about 2,350 customers. She testifies, "This tiny number is only about half again as many as participate today in the pilot, and hardly represents a full scale CAP. Serving only 2,350 customers in CAP would mean only 2% of the low-income payment troubled households in the Duquesne service areas would receive CAP assistance." Id. at 9-10; OCA R.B. at 31.

This illustration clearly shows the severe limitations that the Company has placed on eligibility for its low income programs. As discussed above, the eligibility for Duquesne's universal service programs should be increased. The OCA submits that it is a reasonable recommendation to require that Duquesne set a goal for its CAP program of providing bill assistance to 24,000 eligible customers by the end of three years. OCA R.B. at 31.

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Additionally, the OCA submits that the funding for the Company's LIURP and CAP programs be increased commensurate with the greater eligibility. OCA M.B. at 83-84; OCA R.B. at 31.

(c) The Environmentalists' Position

The Environmentalists contend the most serious deficiency in the Duquesne universal service program is that it imposes improper eligibility criteria, which greatly decrease the number of households which are to be served by the programs. The eligibility guidelines in the Commission's Guidelines for Universal Service and Energy Conservation Programs begin with the statement that:

> [i]n general, these universal service and energy conservation programs shall be available to electric customers whose household income is at or below 150% of federal poverty guidelines and who meet other non-income criteria.[415]

The Guidelines go on to specify the "other non-income criteria," which are to be applied for each of the various programs. For example, the non-income criteria for the Customer Assistance Program ("CAP") consists of one criteria: that the CAP applicant is "payment troubled," which the Guidelines define as "a household who has failed to maintain one or more payment arrangements."[416] For the Low-Income Usage Reduction Program ("LIURP"), the one

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[415] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(1) at 31. The eligibility guideline allows up to 20% of the total universal service program budget to be applied to special needs customers with income between 150% and 200% of the federal poverty guidelines.

[416] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (continued...)

recognized non-income criteria is that the household must have "high energy usage," which each EDC is allowed to define.[417] Env. M.B. at 42-43.

Duquesne's Universal Service and Energy Conservation Plan[418] violates these Guidelines by adding additional eligibility criteria for each of its programs. Duquesne's CAP imposes the additional non-income requirements that the customer has lived at their current address for one year, has housing expenses more than 45% of their gross income and has a bill arrearage of at least $500. Duquesne's LIURP imposes the requirement that the customer has lived at their current address for one year. Id. at 43.

The result of these added eligibility requirements is to greatly reduce the number of households who are eligible to receive assistance. Duquesne states that they have "identified 115,055 customers who are 'low-income, payment troubled.'"[419] Since those are the eligibility criteria the Guidelines have made applicable for CAP, the number of Duquesne customers who are eligible for CAP should be 115,055. But Duquesne states that only 5,731 customers "appeared eligible" for CAP.[420] Their additional eligibility criteria improperly rejects 95% of the eligible households. Id. at 43-44.

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[416](...continued)
(Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(2)(c) at 33.

[417] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(2)(b) at 32. Duquesne defines high usage as 125% above the average customer usage.

[418] This document was attached as Exhibit JPF-1 of Duquesne St. 14-R.

[419] Duquesne St. 14-R at 8, l. 8-9.

[420] Duquesne St. 14-R at 8, l. 9.

The corresponding numbers for LIURP are unknown, since the Duquesne plan does not identify the number of "low income, high usage" customers. The number of customers estimated to be eligible for LIURP is 21,226. Id. at 44.

When various parties pointed out this problem, Duquesne responded with testimony from Joe Flynn that:

> [n]either the Competition Act nor the Guidelines for Universal Service and Energy Conservation Programs require that all customers with household income at or below 150% of the Federal poverty guideline be eligible for all universal service and energy conservation policies, protections, and services.[421]

True enough, but the Guidelines do state that customers who are low-income and payment-troubled are eligible for CAP and Duquesne itself says that number is 115,055 customers and ·ot the 5,731 Duquesne recognizes. Id.

Mr. Flynn justifies Duquesne's additional eligibility criteria by noting:

> [t]he Commission's Guidelines specifically include "other non-income criteria" in the definition of eligibility. Accordingly, the Company has included such criteria to enable it to better target its resources and to maximize the likelihood of accomplishing its stated universal service goal.[422]

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is a misreading of the Guidelines. As noted above, the Guidelines list the non-income ›ility criteria which apply for CAP and LIURP. The Guidelines then go on to list other s for both CAP and LIURP which an EDC can use to prioritize the delivery of services, ·se are not additional eligibility criteria. As Roger Colton noted:

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[21] Duquesne St. 14-R at 8, l. 26-29.

[2] Duquesne St. 14-R at 9, l. 6-9.

> Prioritizing the enrollment based on one of the four articulated factors is completely different from restricting enrollment to those customers who meet only one of the four factors. To deny enrollment to someone who meets the three "eligibility" criteria articulated by the PUC but who does not meet the "prioritization" for enrollment is contrary to the PUC order.[423]

What Duquesne has done is take suggested "prioritization" factors and turned them into eligibility criteria and that is an error. Id. at 44-45.

One additional general point must be made on the topic of program costs. At least three times in his rebuttal testimony, Mr. Flynn states that if the Company is directed to increase its universal service funding, it will "approach the PUC for relief from its rate cap to meet the need."[424] This statement is at direct odds with the Commission's Guidelines, which provides that:

> [f]unding for universal service and energy conservation programs should not be determined after all other funding requirements are met. The total amount of dollars available under the rate cap should be adjusted to meet all the requirements of the Act including universal service and energy conservation. If total expenditures by the Company were to exceed the rate cap, Universal Service costs would be no more the "cause" than any other expenditure of the Company.[425]

Id. at 45-46.

The Environmentalists support the testimony of Roger Colton and his estimate of an "appropriately funded and available" budget should be for Duquesne's universal service

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[423] City St. 3-R at 4.

[424] Duquesne St. 14-R at 3. See, also, pp. 6 and 16.

[425] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section D(2) at 35.

programs. Based on the assumption that 50% of the customers who are eligible for each program will participate, Mr. Colton's recommended budget is $17.49 million. Id. at 46.

The Commission's Universal Service Guidelines cites a handful of Policy Statements and 19 different Secretarial Letters which, along with Chapter 56, make up the existing universal service and energy conservation policies, protections and services.[426] Duquesne's universal service plan acknowledges the applicability of Chapter 56, but is does not mention the other Policy Statements and Secretarial Letters cited in the Guidelines. The plan should be revised to include these other requirements. Id. at 52.

(d) CAAP's Position

CAAP argues Duquesne's proposed Universal Service and Energy Conservation Program neither meets the requirements of the Act, nor the Commission's Final Order requirement that such programs be appropriately funded and available as determined through a "needs assessment of the market and acceptance of universal service programming in [its] territory" and should, therefore, be rejected. Duquesne offers a universal service and energy conservation program in this proceeding that amounts to a continuation of historic participation and spending levels developed within and destined to serve the needs of low income customers in a regulated electric market. Duquesne would have us believe that low income needs and concerns will not change with the onset of competition. This line of thinking is contrary to that expressed in the Act, the Commission's Tentative and Final Orders on Universal Service and

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[426] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(1), at 29-30 and Appendix C.

Energy Conservation, and the testimony of CAAP witness Wilson, which strongly suggests that low income needs and concerns will be quite different in a competitive electric market. CAAP St. 1 at 4; CAAP M.B. at 7.

Recognizing the changing needs and concerns of low income ratepayers, the Competition Act mandated the creation of "appropriately funded and available" universal service and energy conservation programs in each utility service territory. The Tentative Order suggested that "appropriately funded and available" should be defined as programs designed to provide services to 40% of the income eligible low income population. Exh. CRK-11 at 10-12. The Final Order explicitly stated that programs should be meaningful and strong. Exh. CRK-3 at 40. Additionally, participation and funding should be determined through a needs assessment. Id. at 34. Finally, CAAP witness Wilson has pointed out in no uncertain terms that "[l]ow income customers are not likely to share in the benefits of a restructured industry . . . [i]n fact, they may be substantially harmed by it unless strong and meaningful programs and policies are put into place to protect them." CAAP St. 1 at 3; CAAP M.B. at 7-8.

Duquesne's proposed plan does not take into consideration these concerns. It does not ensure that low income programs will be "appropriately funded and available." It is not based on a needs assessment that takes into consideration the special needs and concerns that low income customers will face in the new competitive market place. Rather, its needs assessment as described in Duquesne witness Flynn's testimony amounts to nothing more than an apology for historically inadequate program participation and funding levels. CAAP M.B. at 8.

CAAP maintains Duquesne's proposed CAP underestimates annual households in need by 11,921 and annual funding requirements by $9,221,812. As CAAP witness Kuennen

points out, an analysis of U.S. Census data for Duquesne's service territory shows that as many as 104,057 households in Duquesne's service territory are income eligible for CAP. The Commission's Final Order suggests that basic CAP eligibility should be as follows:

1. Status as a ratepayer or new applicant is verified.

2. Household income is verified at or below 150% of the Federal poverty guidelines.

3. The CAP applicant is payment troubled. Payment troubled is defined as a household which has failed to maintain one or more payment arrangements.

CAAP M.B. at 8-9.

Duquesne witness Hoffmann states Duquesne has 55,538 identified low income payment troubled households, and 33,802 "delinquent" payment troubled households. These figures strongly suggest that Duquesne has between 33,802 and 55,538 CAP eligible households in its service territory. Id. at 9.

Duquesne proposes a Customer Assistance Program designed to help low income customers afford electric service, but limits this program to 1,600 participants annually with funding set at $500,000 a year. Based on the payment trouble numbers provided by Duquesne above, this equates to a proposed CAP penetration level of between 2.8 and 4.7 percent. Additionally, these figures are well below that which is necessary to meet the CAP needs as suggested by Duquesne witness Hoffman and CAAP witnesses Wilson and Kuennen. Duquesne witness Hoffman "conservatively" estimates that as many as 7,000 of its low income households may be eligible for CAP based on need. CAAP witness's Wilson and Kuennen show that Duquesne CAP needs may be as high as 13,521 households annually assuming 40% of Duquesne's delinquent payment troubled customers apply and enroll with funding needs

approaching $10,459,556 annually. Based on CAAP's numbers, assuming a conservative 40% of Duquesne's identified delinquent payment troubled customers are eligible and apply, Duquesne's proposed CAP underestimates annual households in need by 11,921 and annual funding requirements by $9,221,812. CAAP M.B. at 9.

Assuming a ten-year completion goal of 40% of the remaining unserved income eligible population, Duquesne's proposed Low Income Usage Reduction Program ("LIURP") underestimates annual households in need by 3,249 and annual funding requirements by $3,800,845. Duquesne proposes a LIURP designed to help low income customers afford electric service by providing energy conservation measures, including energy efficient appliances and energy education, but limits participation to 700 participants annually with funding set at $700,000 a year. Duquesne witness Hoffman testified that Duquesne has no way of estimating the actual level of remaining LIURP need in its service territory. In rebuttal, Duquesne witness Flynn suggests that Duquesne's historic LIURP funding levels are sufficient to meet the low income need in the new competitive environment, but provides no needs assessment to support this conclusion. CAAP M.B. at 10.

As CAAP witness Kuennen points out, an analysis of U.S. Census data for Duquesne's service territory shows that as many as 104,057 households in Duquesne's service territory are income eligible for LIURP. Using the Commission's Tentative Order methodology for determining the low income need and participation levels, i.e., assuming a conservative 40% of Duquesne's identified income eligible customers are eligible and apply so as to take into consideration non-income eligibility requirements, and assuming a ten-year window for provision

of services, Duquesne's proposed LIURP underestimates annual households in need by 3,249 and annual funding requirements by $3,800,845. CAAP M.B. at 10.

CAAP's proposed Universal Service and Energy Conservation Program participation and funding levels meet the requirements of the Act, and the Commission's Final Order requirement that such programs be appropriately funded and available as determined through a "needs assessment of the market and acceptance of universal service programming in [its] territory" and should, therefore, be accepted. CAAP has proposed specific universal service and energy conservation program funding and participation levels in this proceeding. CAAP's plan meets the requirements of the Act, the Commission's Tentative and Final Orders on Universal Service and Energy Conservation, as well as the special concerns and needs of low income customers in the new competitive electricity market described by CAAP witness Wilson, while taking into consideration other requirements of the Act, and the Tentative and Final Orders. CAAP M.B. at 11.

Contrary to Duquesne witness Flynn's contention that CAAP's proposed participation and funding levels are "based on income alone," CAAP's proposed participation and funding levels were determined using the Commission's proposed "40% methodology" for determining need as described in its Tentative Order on Universal Service and Energy Conservation using 1990 U.S. Census data for specific cities, boroughs, and townships included in Duquesne's Tariff. The Commission specifically stated that a conservative 40% participation goal for Universal Service and Energy Conservation Program participation instead of California's 56% penetration, because Pennsylvania's low income programs contain "other no income criteria." CAAP M.B. at 11.

To be in compliance with the Act's mandate that universal service and energy conservation programs be appropriately funded and available, CAAP posits Duquesne should be required to develop and implement a full scale CAP designed to serve 13,251 low income households annually with funding set at $10,459,556 annually. As CAAP witness Kuennen has testified, Duquesne estimates that it has 52,538 low income payment troubled customers, and 33,802 low income delinquent payment troubled customers. The Commission's Final Order eligibility criteria states:

> A CAP applicant must meet the following eligibility criteria:
>
> 1. Status as a ratepayer or new applicant is verified.
>
> 2. Household income is verified at or below 150% of the Federal poverty guidelines.
>
> 3. The CAP applicant is payment troubled. Payment troubled is defined as a household who has failed to maintain one or more payment arrangements.

CAAP witness Kuennen has testified that a good estimate of per household CAP costs for a full scale Duquesne program would be $773.59 per household. These figures suggest that a full scale CAP program based on a needs assessment coupled with other Commission criteria would be one that targets between 13,521 annually at an annual cost of $10,459,556 and 21,015 annually at an annual cost of $16,257,149. Given the immediate need to balance other policy goals of the Act to meet the rate cap, Duquesne should be required to implement a program targeting the lower end of this range. CAAP M.B. at 12.

To be in compliance with the Act's mandate that universal service and energy conservation programs be appropriately funded and available, CAAP asserts Duquesne should be required to expand its Low Income Usage Reduction Program ("LIURP") so as to serve

3,949 low income households annually with funding set at $4,500,845 annually. Using the standard LIURP definition of low income of households at or below 150% of Federal poverty guidelines as required by the Commission Final Order, 1990 U.S. Census data for Duquesne cities, boroughs, and townships suggest an estimated 104,057 of Duquesne's 522,574 residential households are income eligible for LIURP. Considering the 5,328 low income households previously served, this further suggests that 98,729 low income Duquesne households are still in need of LIURP services. CAAP M.B. at 13.

Given the need to take into consideration non-income eligibility criteria, the Commission suggested in its Tentative Order on Universal Service and Energy Conservation it would be reasonable to assume a 40% penetration rate of the total 150% of Federal poverty guideline households with a given utility service territory would be necessary and adequate to meet the low income need. Using the Tentative Order methodology, Duquesne has an estimated 39,492 low income households still in need of LIURP services. At an estimated per household cost of $1,140, this equates to total budget needs of $45,008,452. Assuming a ten-year window for completion, this equates to annual completions of 3,949 homes and annual spending of $4,500,845. CAAP M.B. at 13.

If necessary, CAAP argues Duquesne should be required to shift costs between accounts to fund the increases in universal service and energy conservation programs such that they are "appropriately funded and available" as required by the Act and the Commission's Final Order. As the Commission's Final Order makes clear, expenditures for universal service and energy conservation programs must be examined in conjunction with other requirements of the Act, and EDCs are not to determine universal service and energy conservation funding levels

after other funding requirements are met. Exh. CRK-3 at 35. Rather, "the total amount of dollars available under the rate cap should be adjusted to meet the requirements of the Act including universal service and energy conservation" funding. Id. Further, in its Final Order, the Commission specifically allows for the shifting of programs between current accounts that support low income access to electricity, including gross write-offs, collection costs, and dunning letter postage costs. CAAP M.B. at 14.

Duquesne states that it spent an estimated $39,799,899 in gross write-offs, collection costs, and dunning letter postage costs on low income customers during 1996. Duquesne could transfer a portion of these funds to the increases necessary to bring universal service and energy conservation programs into compliance with the Act and Commission's Final Order without any adverse effect on the rate caps. CAAP M.B. at 14.

CAAP posits ongoing technical and training assistance will be a vital component of any universal service and energy conservation program and should be funded accordingly. Ongoing technical and training assistance will be vital to insuring that universal service and energy conservation programs offer the highest quality services available. In this regard, Duquesne should establish a $50,000 annual budget for T&TA to be used to provide up to date training and technical assistance for its network of service providers. CAAP M.B. at 14-15.

Ongoing research and development assistance will be a vital component of any universal service and energy conservation program and should be funded accordingly. Ongoing research and development will be vital to insuring that Duquesne's universal service and energy conservation programs offer the most "cutting edge" of technologies available. As such, Duquesne should be required to establish a $100,000 annual budget to fund a central research

and development program to seek out new techniques, evaluate national trends, etc. CAAP M.B. at 15.

A first step in ensuring that "cutting edge" technologies are made available to low income households would be to institute a renewables pilot program along the lines of that described in OCA witness Brockway's testimony. As Brockway points out, the General Assembly authorized the use of renewable technologies in universal service and energy conservation programs. The Commission should require Duquesne to develop and institute a low income renewables pilot program. CAAP M.B. at 15.

Effective consumer education will be vital to the success of restructuring and it will be particularly for low income household participation. Low income consumers will need programs designed to meet their specific needs. Duquesne should fund these programs and provide them through the same agencies that provide existing low income energy services. Distribution through the network of independent low income assistance agencies is necessary to ensure that low income, handicapped and elderly customers have the knowledge and tools needed to objectively evaluate information presented and make informed choices, as well as their rights. Duquesne should be required to create a low income education program that would be delivered through its existing network of low income assistance organizations within its service territory. Initially, this program should be funded at $300,000 per year for renewal upon positive evaluation. CAAP M.B. at 15-16.

(e) **Recommendation**

Based upon the evidence presented in this proceeding, the Company's proposed eligibility and funding levels for its universal service and conservation programs appear to comply with the requirements of the Act and the Commission's Guidelines on Universal Service and Energy Conservation; no further modification appears needed at this time.

2. Cost Allocation and Rate Design

(a) Duquesne's Proposal

Duquesne has proposed to allocate and collect the universal service charge by rate class on a cents per kWh basis based on allocated distribution costs for each rate class. Duquesne St. 14-R at 24-25. City witness Mr. Colton agrees with this approach and OCA witness Ms. Brockway agrees that it is consistent with the Commission's Final Order (though she has her own preferred method). City St. 2 at 13-14; OCA St. 6 at 49. Only Mr. Yarolin of the OTS presents a contrary view and suggests the charge be collected on a dollars per customer basis. OTS St. 3 at 5-6. This proposal is patently unfair, since it results in a small residential customer and a major corporation making the same monthly payment to support universal service. Thus, Mr. Yarolin's suggestion should be rejected and Duquesne's proposal accepted. Duquesne St. 14-R at 24-25. Also, Mr. Yarolin's suggestion that this charge be unbundled from the Distribution Charge should be rejected. OTS St. 3 at 6-7. It is contrary to PECO Energy, Slip Op. at 144. Duquesne M.B. at 88.

(b) **The OTS' Position**

The OTS observes the Company proposes to establish the universal service charge on a per kwh basis for each rate class under its current tariff. The Company calculated the charge per kwh for each rate class based upon the allocation of distribution costs assigned to each rate class. Duquesne St. 14R, Exh. JPF1. In its original filing, the Company approximated the funding for the universal service and energy conservation funding to be $12,183,000, but in the rebuttal testimony it is shown to be approximately $12,275,000. The Company also proposes to include the universal service charge within the distribution charge. Duquesne St. 14-R at 24, Exh. JPF-1 at 6. The OTS disagrees with the Company's proposed application of the universal service charge and its presentation on customers' bills. OTS M.B. at 88.

In his testimony, OTS witness Yarolin addressed the Company's universal service charge in the restructured environment. It is OTS's position that this charge should be on a customer basis, rather than on a per kilowatt basis. Id.

The OTS' position is based upon the rationale that by applying a universal service charge based upon kilowatt usage, and applying the charge to all rate classes, high volume users would bear an excessive burden which would be discriminatory. On the other hand, by applying this none bypassable universal service charge on a customer basis, there would be greater equity in sharing the cost for these social programs. OTS St. 3 at 6; OTS M.B. at 88-89.

This recommendation goes along with OTS' second recommendation that all customers should bear the cost of maintaining the universal service and conservation fund.

Though certain classes of customers may allege that its class is not responsible for Duquesne's poor customers, OTS submits that this rationale is unfair and short sighted. Id. at 89.

The OTS contends that if society benefits directly or indirectly from a sound universal service and energy conservation program, it is appropriate for all customer classes to share in the funding of these programs. Additionally, Section 2804 of the Competition Act specifically requires the establishment of a non-bypassable universal service charge. This certainly suggests that all customers, regardless of customer class, must contribute to the fund. Id.

The OTS views this issue as one of fairness. The poor are a social problem and if responsibility for helping the poor pay their electric bills is thrust upon Duquesne's customers, then the responsibility should be shared by all of Duquesne's customers. Those residential customers who pay their bills on time are no more responsible for Duquesne's low income customers than are Duquesne's commercial and industrial customers. This burden should be shared evenly. Id.

If the universal service charge is applied to all customers, the monthly service charge per customer would be approximately $1.85 per month. This charge is determined by dividing the 1996 universal expense of $12,275,000 by the average number of customers (579,740). This results in a figure of $1.76 per customer. When the Pennsylvania Gross Receipts Tax factor is applied, this produces a $1.85 per month universal service charge. OTS St. 3 at 8; OTS M.B. at 90.

Finally, it is OTS's position that the universal service charge should appear as a line item on the customers' bills. The primary reason for this recommendation is that if this

charge appears as a line item, it makes customers more informed of the composition of their bill. This will allow customers to understand where their monthly electric bill payments are being spent. Another reason to have the universal service charge appear as a separate line item is that it aides in tracking accountability of the universal conservation fund. It could be that when customers know what composes their cost of electric, they can make more informed choices about their choice of suppliers. Id.

Some of the parties to this proceeding including the Company and the OCA propose to allocate universal service costs on a per kilowatt hour basis. OCA M.B. at 97; Duquesne M.B. at 88. It is OTS's position that this is not a fair allocation of this charge. OTS submits that the universal service charge should be on a per customer basis rather on a kilowatt basis. If the universal service charge is based upon kilowatt usage, high volume users would bare an excessive burden. Additionally, OTS submits that to apply universal service charges on a per kilowatt hour basis is contrary to the Commission's Universal Service Order. See, Universal Service Order Slip Op. at 20; OTS R.B. at 17.

It is also OTS' position that the universal service costs should be spread over all customer classes. This is contrary to the position advanced by parties such as the Duquesne Industrial Intervenors. DII M.B. at 98; OTS R.B. at 17.

This is an issue of fairness. Those who are unable to pay their electric bills are a societal problem and if responsibility for helping the poor to pay their electric bills is thrust upon Duquesne's customers, then the responsibility should rest with all of its customers. Those residential customers who pay their bills on time are no more responsible for Duquesne's low

income customers than Duquesne's commercial and industrial customers. OTS M.B. at 89; OTS R.B. at 17-18.

It is OTS' responsibility to represent the public interest. This representation should be viewed broadly enough to include those interests of all parties to this proceeding. It is OTS' task to review this case and to be as fair to each party as possible. Therefore, OTS submits that it is fair to have all customer classes share the burden of universal service costs. However, it is not fair for commercial and industrial customers to take on more of the burden than others. Since universal service costs accrue predominantly to residential customers, it is not fair for a large industrial to be charged the universal service cost on a per kilowatt hour basis, thus causing that customer to pay considerably more than those customer belonging to the class in which the costs are incurred. Nor is it fair for those individuals in the residential class to be expected to pay for all the universal costs simply because they are classified as residential. Id. at 18.

For the foregoing reasons, OTS submits that a fair and reasonable way to address universal service costs is for all customer classes to share in those costs on a per customer basis. This spreads the burden of the universal customer service cost, which is a social burden, over all customer classes. On the other hand, these costs should be done on a per customer basis as opposed to a per kilowatt hour basis. This prevents those classes of customers who are not directly responsible for those costs from paying more than the rest of society. Id. at 18-19.

(c) **The OCA's Position**

In its filing, the OCA notes the Company has proposed to recover its universal service costs through a non-bypassable per-kilowatthour charge assessed on all distribution customers. Duquesne Exh. JPF-1 at 9. The charge would vary based on the allocated distribution costs for each customer class. Id. In evaluating the Company's proposal, OCA witness Brockway found that:

> In the Commission's decision in the Universal Service docket, the Commission stated that all customers should support universal service costs, but a per-kWh charge should not be used as the allocator for such costs. However, since the Company's proposed allocator is relative distribution costs, and not energy, the fact that the Company proposes a kWh charge as the rate design to collect class allocated universal service charges would appear not to be inconsistent with the Commission's directives in the Final Order.

OCA St. 6 at 48-49; OCA M.B. at 84.

The OCA submits Duquesne's universal service costs should be recovered from all customers on an equitable basis, and recommends that the Commission adopt an allocation of universal service costs, which ensures that all customer classes contribute to universal service funding in an equitable fashion. OCA witness Brockway recommended that universal service costs be assessed to all customer classes on a per kilowatt hour basis. OCA St. 6 at 52; OCA M.B. at 84.

In the event that the Commission rejects the use of a per kilowatt hour basis for allocation of universal service costs, the OCA recommends use of Ms. Brockway's non-production revenue allocator. OCA St. 6 at 50-51; OCA Exh. NB-Duquesne-4. This allocator focuses on the regulated, non-production related costs. By doing so, the method imposes a higher allocation of universal service costs on residential customers than the per kilowatt hour

basis. For example, the non-production allocator produces an allocation to the residential classes of 44.8% of the universal service costs as opposed to 26.8% using the kWh allocator. OCA St. 6 at 51; OCA M.B. at 84-85.

While the OCA recognizes that the Commission in the PECO case allocated all universal service costs to residential customers, the OCA respectfully submits that such a determination would not be appropriate in this case. Allocating universal service costs to the residential class only allows other customers to bypass this cost. This was not the General Assembly's intent in that it provided for the recovery of these costs through a non-bypassable mechanism. 66 Pa. C.S. §2804(9); OCA M.B. at 85.

In addition, in PECO Energy, the Commission was concerned with cost-shifting of the Company's substantial costs that had previously been allocated to residential customers. The Commission believed that any change in the allocation would create cost shifting. While the OCA respectfully disagrees with the Commission's PECO Energy decision on this point, the OCA would note that in PECO Energy, the Commission was addressing existing costs for existing programs that had been previously allocated to residential customers. Here, however, the OCA submits that the costs of Duquesne's expanded programs, i.e., new costs, presents a different issue. As such, these costs should be allocated to all customers. OCA M.B. at 85.

Moreover, Mr. Baron's and Mr. Kalcic's arguments that the rate cap and ratemaking principles require allocation of these costs to residential customers are without merit. First, as OCA witness Brockway explained, the suggestion that allocation of these costs to all customers would violate the rate cap are overstated. The rate cap requires that total charges,

both generation and non-generation, do not exceed the level in effect on January 1, 1997. OCA St. 6S at 13-15. These rate caps do not require a specific allocation of costs. OCA M.B. at 85.

As to arguments regarding cost causation principles, these arguments prove too much. Mr. Baron argues that ratemaking principles require these costs to be paid by the customers causing the costs. DII St. 1R at 4-5. As Ms. Brockway explained, taking this to its logical conclusion would mean that all universal service costs would be assigned to universal service recipients, thus eliminating all benefits. OCA St. 6S at 15-16. Additionally, this argument ignores the benefits to the system as a whole that flow from such programs. Ms. Brockway noted that these benefits include (a) economic stability, (b) secure and stable neighborhoods and (c) better public health and safety. OCA St. 6S at 16-17; OCA M.B. at 85-86.

For these reasons, the OCA submits that the OCA's proposed allocation of universal service costs be adopted in this proceeding. Id. at 86.

(i) Cost Allocation

A number of parties have addressed the issue of cost allocation and rate design in addition to the OCA. Both DII and OSBA have opposed recovery of universal service costs from all customer classes.[427] The OCA submits that recovery of universal service costs from only the residential class is improper, and that universal service costs should be collected from

[427] DII seems to say that Duquesne has proposed to collect universal service charges solely from the residential class. DII M.B. at 96-97. The OCA submits that this interpretation is incorrect, as is evidenced by the Company's Main Brief. Duquesne M.B. at 88.

all customer classes, either on a per kilowatt hour basis or – in the alternative – on a non-production revenue allocator basis. OCA M.B. at 84-86; OCA R.B. at 32.

The OCA submits that requiring the residential customer class to foot the entire bill for these important programs would violate the Act's requirement that universal service charges be "non-bypassable." OCA witness Brockway explains that the General Assembly's use of the term "non-bypassable" should be understood as implying that all customers share in the costs. OCA St. 6S at 12. She explained:

> The General Assembly provided for a non-bypassable charge for universal service and energy conservation programs. Sections 2804(9) and 2802(17) use this term. In the jargon of restructuring, the term "non-bypassable" has been used in a case where some customer classes (particularly those made up of larger customers with greater competitive options) are in a position to secure competitive supplies, and, by leaving the bundled electric utility's service, bypass any public benefits obligations such as universal service. Thus, use of the term "non-bypassable" by the General Assembly should be understood in this light as implying that all customers share in the costs. Section 2802(17) reads in plain language that EDCs must be permitted to recover their universal service costs, and that the costs shall be recovered from all customers via a non-bypassable charge.

OCA St. 6S at 12; OCA R.B. at 32.

Second, DII's argument that the rate cap does not permit the Commission to charge other classes for universal service was rebutted by Ms. Brockway:

> That section [§2804(4)] provides that during the rate cap period, for customers who take service from the incumbent utility, two restrictions generally apply: the total charges of the utility may not exceed the total charges approved by the PUC as of the effective date of the legislation, and the generation component of charges may not exceed the generation component of the rates as of the effective date of the legislation. In the case where the customer buys generation elsewhere, the statute provides that total non-generation prices (including the low-income program charges) may

> not exceed the non-generation charges approved by the PUC at the effective date of legislation.
>
> These provisions do not contemplate that the Commission must observe the identical cost allocation methods in effect in the last rate case (and indeed one can hypothesize cases where these provisions would be violated if the Commission were to do so). The Act is clear that the generation rates and the non-generation rates for each class cannot exceed present rates during the period of the cap. That is quite different from saying that each allocator must be the same as it was whenever the Commission last looked at a Company's rates.
>
> Aside from the Act's limitation on shifting CTC costs from one class to another, the statute is not intended to lock the Commission in to any particular form of cost allocation, but rather to limit the rates for each class. So long as rates for each class (broken out separately into generation and non-generation) do not exceed the cap, the Commission is free to apply sound ratemaking principles, and to establish a policy that all classes contribute to a non-bypassable universal service cost recovery.

OCA St. 6S at 14-15; OCA R.B. at 32-33.

Additionally, the OCA explains the costs of expanded universal service programs are new costs, and as such, have not previously been included in the rates of any class. OCA M.B. at 85. Thus, requiring all classes to pay for a share of these costs, would not shift any existing costs from other rate classes. OCA R.B. at 33.

Furthermore, DII and OSBA's argument that universal service costs should be assigned to the residential classes, due to cost of service ratemaking principles, should be rejected. As Ms. Brockway explained in testimony:

> [T]here is again no more reason to allocate costs to non-low-income residential customers under this reasoning than there is to allocate them to non-residential customers. Non-low-income residential customers benefit, as they do, exactly and only in the ways and to the extent that non-residential customers benefit.

OCA St. 6S at 16. The OCA submits that DII's and OSBA's argument would mean that low-income customers would be required to pay for the costs of low-income programs, producing no benefit at all. Such a result is not what the General Assembly nor the Commission intends. Thus, the OCA respectfully requests that all of Duquesne's customers share in the payment of these universal service costs. OCA R.B. at 33-34.

(ii) Rate Design

The OCA notes the OTS argues that the universal service charge should appear as a separate line item on a customer's bill. OTS M.B. at 85-90. The OCA submits, however, that showing the charge as a separate line item would bring disproportionate attention to the charge that is not warranted. Moreover, the Commission held in PECO Energy that the charge would be embedded in the distribution charges, and only accounted for separately. Slip Op. at 145. For these reasons, the OCA submits that the universal service charge should not appear as a separate line item on the customer's bill. OCA R.B. at 34.

(d) The OSBA's Position

The OSBA explains the statute mandates that restructuring should be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another. 66 Pa. C.S. §2804(7). Mr. Kalcic testified that to comply with Section 2804(7) of the Competition Act and the Commission's Universal Service Order, the Company's universal service charge ("USC") should be developed in a manner that is consistent with the Company's most recent rate case treatments. To do otherwise would shift costs among Duquesne's rate

classes, in violation of the Competition Act prohibition against interclass and intraclass cost shifting. OSBA St. 1R at 10-11. The Commission has previously recognized that Section 2804(7) is a prohibition against interclass and intraclass cost shifting when it stated just that in its Universal Service Order, discussing cost recovery of universal service and energy conservation programs. Universal Service Order, Docket No. M-00960890F0010, (Order entered July 11, 1997) at 20 Section G; See, also, PECO Energy at 53 (noting its interpretation of Section 2804(7)); OSBA M.B. at 22-23.

Mr. Flynn testified that the Company's preferred method for collecting the universal service costs is on a per kilowatt hour basis. Duquesne St. 14-R at 25; N.T. 962, 970. However, Mr. Flynn agrees that this allocation method would result in a larger user of electricity paying a disproportionate amount of universal service cost. N.T. 962. In fact, the Commission has already rejected this allocation method, ". . . because it would place a disproportionate responsibility for funding universal service and energy conservation programs on high [volume] kilowatt hour users in violation of Section 1301." Universal Service Order, Docket No. M-00960890F0010, (Order entered July 11, 1997) at 20 Section G; OSBA M.B. at 23.

In place of a strict kilowatt hour USC allocator, Duquesne proposes to allocate universal service costs in proportion to each classes' total distribution-related revenue requirement. Duquesne St. 14-R at 25. As discussed below, the USC as proposed by the Company is in violation of the Competition Act. Consequently, the OSBA recommends that the Company be ordered to amend its filing such that universal service costs are allocated in a

manner that is consistent with the rate treatments contained in the Company's most recent base rate case. Id. at 23-24.

The record in this proceeding is complete with information necessary to compute a USC that is consistent with the rate treatments that applied in the Company's most recent rate case. Using Exhibit JAL-1B, at 15 and 17, JAL-1D at 2-5, and OSBA Cross Examination Exhibit 1, Mr. Kalcic has provided a table comparing a true cost-based USC assignment with that proposed by Duquesne for the residential class. See, Table 1 at OSBA M.B. at 25.

If universal service costs are properly allocated by account according to the allocation factor contained in the Company's cost-of-service study, the total residential class would be assigned $10,217,601 of the Company's total $12,275,000 universal service budget. Yet, the Company's universal service cost allocation for the entire residential class amounts to only $5,740,221. Clearly the allocation proposed for the USC by the Company does not match that of the Company's most recent base rate proceeding. In fact, the allocation would provide a significant reduction to the residential class in the amount of $4,477,380 or 43.8%. Id. at 26.

OSBA Table 1, OSBA M.B. at 25, focuses solely on the Company's residential class. It is evident, however, that if the residential customers are receiving less than a cost-based allocation, some or all of the non-residential classes are receiving an over-allocation in order to recover the residential shortfall. OSBA M.B. at 26.

OCA witness Ms. Nancy Brockway recommends an alternative to Duquesne's proposed USC where costs would be assigned to rate classes using a non-production revenue allocation factor. OCA St. 6 at 50. However, Ms. Brockway fails to address the extent to which her recommended allocator would be consistent with past ratemaking treatment. OSBA St. 1R

at 11. According to Exhibit NB-Duq-4, the OCA's preferred universal service cost allocator would reflect an assignment of just 44.8% of Duquesne's total universal service budget to the residential class.[428] Table 1 above shows that Duquesne's proposed USC encompasses a total residential allocation of 46.8%.[429] Therefore, the OCA's USC proposal would result in an even greater cost-shifting than the Company's proposal. Consistent with the Commission's interpretation of the Competition Act, the OCA recommendation for use of a non-production revenue allocator must also be rejected. OSBA M.B. at 26-27.

The OSBA notes the OCA asserts that universal service costs should be recovered on a per kWh basis from all distribution customers and that this allocation would ensure that all customer classes contribute in an equitable fashion. OCA M.B. at 84. Assuming in arguendo, that the Commission would reject the per kWh basis, the OCA would recommend the use of a non-production revenue allocator. Id. The OSBA has already addressed (and incorporates here by reference) the arguments against both of these methods of allocation. OSBA M.B. at 23, 26-27, respectively. Neither of these methods comply with the statutory mandates of the Competition Act. 66 Pa. C.S. §2804(7); OSBA R.B. at 6-7.

The OSBA also notes the OCA advocates that this proceeding differs from PECO Energy in that Duquesne has proposed expansion of its programs. In PECO Energy, the Commission addressed existing costs for maintaining existing programs. OCA M.B. at 85. This

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[428] 44.8% equals the total sum of 0.4%, 41.1%, and 3.3%, representing the RA, RS, and RH classes respectively.

[429] 46.8% equals the total sum of the USC for the residential class as proposed by the Company, divided by the total universal service costs, $5,740,221/$12,275,000.

difference, in the OCA's view, justifies its proposal that these costs be allocated to all customers and not just confined to the previous allocation of residential customers. Id.; OSBA R.B. at 7.

The OSBA asserts the allocation of universal service costs should be consistent with the Company's last rate case, in compliance with the Competition Act. 66 Pa. C.S. §2804(7). The OSBA also asserts that its proposal, contrary to the OCA's claim, would not burden the residential class with a 100% allocation of universal service costs. OSBA M.B. Table 1 at 25. In fact, the residential class would be properly allocated $10,217,601 or 83%[430] of Duquesne's total universal service budget of $12,275,000. OSBA R.B. at 7.

In summary, the universal service allocation methodology recommended by OSBA is in compliance with the Competition Act and its prohibition against intraclass and interclass cost shifting. 66 Pa. C.S. §2804(7). Consequently, the assertions of OCA against Mr. Kalcic specifically referring to the cost allocation of the universal service charge are without merit. OSBA R.B. at 7.

(e) **DII's Position**

DII expounds the Act requires that existing protection policies and services assisting low-income customers must, at a minimum, be maintained. 66 Pa. C.S. §2802(10). The Commission instituted a generic proceeding to address universal service issues because "the subject matter of these guidelines requires consistent policy determinations to be applied across the local distribution service territories." Universal Order. DII M.B. at 96.

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[430] 10,217,601/12,275,000 equals 0.83 or 83%.

Duquesne proposes to allocate universal service costs to classes based on the allocation currently embedded in each rate class bundled rates in the last base rate proceeding. OSBA Cross Exh. 1-2. DII agrees with this approach. DII St. 1-R at 4-5. Duquesne's approach is consistent with the Act, the Universal Service Order and the PECO proceeding. DII M.B. at 96-97.

The OCA (and others) proposes to allocate universal service costs on other bases, including a kWh basis or a non-production allocator. OCA St. 6 at 47-52. These proposals are clearly contrary to the mandate in the Commission's Universal Service Order.[431] Universal Service Order, Slip Op. at 20. Universal service program costs cannot be allocated to customers on a per kWh basis. DII St. 1-R at 11. In addition, Universal Service costs cannot be allocated based on the non-production demand allocator because that allocator is inconsistent with the treatment of universal service costs in Duquesne's last base rate proceeding. Id. The Commission reiterated the need for consistency with the prior rate case allocation of universal service costs in the PECO proceeding. PECO Energy, Slip Op. at 146; DII M.B. at 97.

The Commission's determination in this regard is fully supported by the Act. First, the Act prohibits interclass and intraclass cost shifting. 66 Pa. C.S. §§2808(a) & 2804(7).

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[431] The Universal Service Order states:

> Several commentators support a kWh assessment on all customer classes. We cannot accept this recommendation because it places a disproportionate responsibility for funding universal service and energy conservation programs on high kWh (high volume) users in violation of Section 1301. Further the Act at §2804(7) prohibits interclass and intraclass cost shifting. Assessing a funding mechanism on kWh use is inconsistent with rate treatments for these programs in recent base rate cases.

The mechanism to ensure that such cost-shifting does not occur is to maintain consistency with the allocation for these costs used in the utility's last base rate case. Id. The Commission recognized this necessity in PECO Energy, wherein it stated:

> We agree that the program costs now to be included in the USFC have previously been allocated solely to residential class. In order to avoid cost shifting, we will retain that principle.

Slip Op. at 146; DII M.B. at 97.

Universal service costs are a component of current bundled rates. 66 Pa. C.S. §2802(17). As those rates are being unbundled, the non-generation portion of the rates, including the portion devoted to universal service costs, is subject to a rate cap for 54 months to the termination of CTC recovery by the utility. Id.; §2804(4)(i)(B). All components of the capped rates are unbundled based on the Company's cost of service study. Because universal service costs are one component of bundled rates, a specific amount is embedded in current rates for universal service costs. To increase that allocation will violate both the total rate cap and the rate cap on the individual components established under the Act. Id.[432] DII M.B. at 97-98.

In addition, assigning universal service costs predominately to the residential and general service classes is reasonable and follows sound cost of service ratemaking principles. DII St. 1-R at 7-8. Cost of service ratemaking mandates that costs be recovered from the ratepayers for whom the costs were incurred to serve. Cost causation principles militate in favor

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[432] The overall rate cap (66 Pa. C.S. §2804(4)) and the prohibition against cost shifting (66 Pa. C.S. §§2808(a) & 2804(7)) logically create a cap on the individual rate components at their January 1, 1997, levels. It is simply not possible to change the individual allocation currently within rates without violating one provision or the other. An increase in one allocation will either result in the exceedence of the rate cap or the need to reduce some other component of the formerly bundled rate. The reduction in that component must be shifted to another rate class if the Company is to recover its full cost of service.

of recovering the bulk of universal service costs should be allocated primarily to the residential and general service classes. DII St. 1-R at 7; DII M.B. at 98.

In allocating universal service cost recovery, Duquesne complies with the dictates of the Act and the Commission's Orders. Arguments to allocate universal service costs on a kWh basis or a non-production demand basis should be rejected by this Commission on the same rationale stated in the Universal Service Order. Specifically, the PUC should reject these arguments as violations of the just and reasonable requirement pursuant to Section 1301, 66 Pa. C.S. §1301, and as violations of the prohibition against cost shifting in Section 2804(7), 66 Pa. C.S. §2804(7). DII recommends that the Company's proposed universal service cost recovery mechanism be accepted. DII M.B. at 98.

(f) The Environmentalists' Position

The Environmentalists also note Duquesne proposes to collect the costs of its universal service programs in the rates of all ratepayers and this cost allocation is appropriate and correct. The cost of providing universal service is recognized as a "public service cost" in the Act.[433] As a public service cost, all sectors of the public should bear the costs.[434] To support this conclusion, City witness Roger Colton presented a compelling argument that universal service is the compensation for the valuable public perquisites of eminent domain and the right to use public streets. These rights are of tremendous value to Duquesne and to all who

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[433] 66 Pa. C.S. §2802(17).

[434] Another example of a public cost are the various economic development tariffs for "payment-troubled" industrials. These programs are included in the rates for all customers.

receive service from Duquesne, for without them, all ratepayers would bear higher costs. As Mr. Colton testified, "[t]he commitment to universal service is simply the compensation to the public for having provided these public benefits."[435] Env. M.B. at 46-47.

Some parties argue that the Act's prohibition against cost shifting means that universal service costs should be assessed only against the residential class. Their argument is based on the assumption that the universal service costs are exclusively residential costs, but as shown above, the entire system benefits and the program costs are appropriately called "public service costs" in the Act. There is no cost shifting if the costs appropriately belong to everyone. Id. at 47.

This analysis is supported by the Universal Service Guidelines, which state:

> 1. The cost of an EDC's universal service and energy conservation programs should be allocated among the classes of the distribution company's ratepayers consistent with sound rate design principles and in accordance with the Act's prohibition against the interclass and intraclass cost transfer and the Act's rate cap. . . .
>
> . . .
>
> 4. All customer classes should share in providing funding of universal service consistent with sound rate design principles and in accordance with the Act's prohibition against the interclass and intraclass cost transfer and the Act's rate cap.[436]

Id. at 47-48.

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[435] City St. 2 at 11.

[436] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section G(1) and (5) at 40.

In the commentary section of the Order, the Commission cites a kWh assessment on all customer classes as violating this cost transfer principle since this sort of assessment "places a disproportionate responsibility for funding universal service and energy conservation programs on high kWh (high volume) users in violation of Section 1301."[437] In other words, a straight kWh assessment across all customer classes is rejected not because it assesses the industrial customers for universal service costs, but because under such a mechanism, industrial customers would pay more than their class's proper share of the costs. What the commentary indicates is allocating the universal service program costs among the various rate classes is acceptable provided it is done in accordance on a valid cost-of-service basis. Duquesne has done this, by determining each class's share of the universal service costs and then establishing a distinct kWh charge for each customer class. Id. at 48.

(g) Recommendation

The Company proposal to allocate universal service costs on a cents per kWh to classes based on the allocation currently embedded in each rate class' bundled rates in the last base rate proceeding conforms with the Act, the Commission's Universal Service Guidelines and PECO Energy. Therefore, the Commission should accept this proposal without modification.

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[437] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010 at 20. We believe the reference to "high volume users" refers to a class of customers (i.e., industrial customers) rather than to individual customers. Individual customers who are high users pay more of the variable costs for everything than low consumption customers in that same class. We do not think the Guidelines were addressing this issue on an individual customer level.

C. Specific Programs

1. CAP Program

(a) Duquesne's Proposal

Duquesne observes OCA witness Brockway and City witness Mr. Colton make numerous recommendations as to particular items that should be included in the program. OCA St. 6 at 27-38; City St. 2 at 8-14. Mr. Flynn addresses each of their recommendations in detail in his rebuttal testimony. Duquesne St. 14-R at 11-21. Mr. Flynn notes that many of Ms. Brockway's recommendations have already been incorporated into Duquesne's plan or that Duquesne's plan adequately addresses her concerns. Id. The remaining recommendations of Ms. Brockway and Mr. Colton result primarily from differences between the intervenors and the Company on program eligibility criteria and levels of funding, as described above. Ms. Brockway notes in her testimony that Duquesne's approach may be successful. OCA St. 6 at 13. The Commission will also oversee the Company's plan to ensure that it is successful. Duquesne St. 14-R at 19; Section 2804 of the Act. Thus, Duquesne's plan should be accepted by the Commission. Duquesne M.B. at 88-89.

(b) The OCA's Position

The OCA finds Duquesne currently offers two programs to provide assistance to its low-income customers. These are the Customer Assistance Program ("CAP") and the Low Income Usage Reduction Program ("LIURP"). OCA witness Brockway reviewed the proposals contained in Duquesne's filings to evaluate their compliance with the mandates contained in the Act and the orders that the Commission has issued on universal service. Her comments on

Duquesne's individual programs, contained in OCA St. 6 and 6S, are summarized below. OCA M.B. at 86.

The OCA submits that Duquesne's CAP program requires modification in certain areas to meet the elements of a successful CAP program set forth in OCA witness Brockway's testimony and to effectively promote the goal of universal service. First, Duquesne uses a tiered structure for determining the maximum copayment for a CAP participant. While the OCA supports the concept of a tiered structure for the maximum copayment for CAP participants, Duquesne makes no distinction between heating and non-heating customers. As such, for general use customers, customers at the higher tiers are subject to a burden greater than the 5% of income that OCA witness Brockway recommends as the maximum, and residential heat customers are below Ms. Brockway's recommended 8% of income. OCA St. 6 at 29. The OCA submits that, consistent with the recommendations of OCA witness Brockway, Duquesne keep the current matrix for space heat customers and create a separate and lower set of burden guidelines for its general use CAP customers. OCA St. 6 at 29-30. The maximum burdens by tier would be as follows: (1) 0-50% : 4%; (2) 51-100% : 6%; (3) over 100% : 8%. Id.; OCA M.B. at 86.

Second, Duquesne's program should be expanded and target a 50% participation rate. Id. at 86-87.

Third, OCA witness Brockway explains that the Company's program guidelines create unnecessary barriers to eligibility and contain unnecessary limitations on program participation. OCA St. 6 at 33-34. Ms. Brockway explains:

> It does make sense to target CAP benefit dollars to the most at-risk customers. The Company goes too far, however, in screening out

> customers who are at risk of falling behind on their bills and losing service. The Company uses two indicia of payment-trouble to screen potential CAP participants: past-due balance of at least $500, and housing expenses exceeding 45% of the household income. Apparently, a customer must pass both payment-trouble screens to qualify under Duquesne's CAP. Only one payment-trouble screen is needed to ensure proper targeting of CAP benefits.

OCA St. 6 at 34; OCA M.B. at 87.

OCA witness Brockway continues by explaining that both of the screens used by Duquesne are too limited for a universal service program. The requirement of a $500 past due balance could set up a situation where customers are encouraged to allow their bills to reach that level in order to qualify for the assistance. OCA St. 6 at 34. The requirement that household expenses exceed 45% of household income is an extremely high threshold, especially when HUD guidelines consider unaffordable housing to be in excess of 30% of income. OCA St. 6 at 34-35. Further, such detailed screening may require the Company to incur unnecessary administrative costs, given the specificity of information required to determine eligibility. OCA St. 6 at 35. OCA witness Brockway recommends that the Company rely more on a modified arrearage screen to target potential enrollees, as it is more readily identifiable and less cumbersome and expensive than the "excess housing cost" screen. OCA St. 6 at 35; OCA M.B. at 87.

Fourth, OCA witness Brockway suggests reducing the flat $5 per month payment toward customer arrearage to $3 per month for those customers in the lower tiers of the federal poverty level. OCA St. 6 at 37; OCA M.B. at 87.

Fifth, Ms. Brockway recommends that Duquesne be required to implement a more detailed evaluation plan than the Company has proposed. This is necessary due to the existence

of the CAP pilot and Duquesne's approach to universal service issues. OCA St. 6 at 38; OCA M.B. at 87.

Finally, the low income benefits should be made portable so low income customers enjoy the same choice of suppliers as other customers. OCA St. 6 at 36; OCA M.B. at 88.

While OCA witness Brockway found that Duquesne's universal service program has a "sound basic design," she also enumerated a number of concerns with the program set forth above. Among her concerns are the size and funding for the CAP program, the customer eligibility requirements, and the need for a comprehensive evaluation. Each of Ms. Brockway's suggestions will strengthen Duquesne's universal service program to the benefit of not only Duquesne's low-income customers, but all ratepayers. Therefore, the OCA submits that Duquesne be directed to incorporate the recommendations of OCA witness Brockway as part of its Customer Assistance Program. Id.

The OCA notes Duquesne has stated that a number of OCA witness Brockway's recommendations have been incorporated into Duquesne's plan, or are already sufficient. Duquesne M.B. at 89. The OCA submits that this is not evident from the filings that the Company has made and asks the Commission to direct Duquesne to incorporate the OCA's recommendations in a detailed compliance filing. OCA R.B. at 34.

(c) <u>The Environmentalists' Position</u>

Other than the eligibility and budget issues discussed above, the Environmentalists believe that Duquesne's CAP is generally well designed and effective. They would like to see

the program be modified to ensure that CAP operates closely with the other universal service programs. They suggest that all CAP recipients are referred to LIURP so that their usage can be reduced. The Environmentalists also oppose the use of prepaid meters and find them inappropriate for low income households. Env. M.B. at 49.

2. LIURP

(a) Duquesne's Proposal

The Company explains Smart Comfort is Duquesne's low-income usage reduction program ("LIURP"). This program evolved from strictly a weatherization program into an "end use" strategy. As such, reduction measures include cost-effective appliance and lighting replacements. Duquesne Exh. JPF-1 at 3. Again, the primary disputes between the Company and intervenors regarding this program center on eligibility and funding levels, which have been addressed above. Duquesne St. 14-R at 21; OCA St. 6 at 41-43; City St. 2 at 14-16. However, Duquesne agrees with Mr. Colton about the need to further link its Smart Comfort and CAP programs and is taking steps to do that now. Duquesne St. 14-R at 22; City St. 2 at 16-17. Thus, Duquesne's plan should be accepted as proposed. Duquesne M.B. at 89.

(b) The OCA's Position

OCA witness Brockway also reviewed the Low Income Usage Reduction Program ("LIURP") component of Duquesne's universal service plan. Duquesne's LIURP program primarily addresses baseload uses and is delivered free to eligible customers, those with incomes below 150% of federal poverty guidelines. OCA St. 6 at 41. The Company budgets $700,000

per year for this program, but its spending has varied. The program is delivered by community-based organizations in Duquesne's service territory. Specific recommendations regarding LIURP funding levels are addressed above. OCA St. 6 at 40-43; OCA M.B. at 88.

(c) **The Environmentalists' Position**

Other than the eligibility and budget issues discussed above, the Environmentalists believe that the Low-Income Usage Reduction Program is a cost-effective means of reducing the energy costs of low income households. Energy conservation, as well as bill subsidies, should be the core elements of the universal service program. Duquesne's LIURP program is seen as one of the state's most effective energy programs. The key is a highly skilled staff supported by proper tools and instrumentation, giving the program the ability to accurately diagnose a house's situation and recommend appropriate treatments. Env. M.B. at 49.

3. **Renewables**

(a) **Duquesne's Proposal**

The Company currently does not have, and it did not propose, a specific renewable resource plan. Moreover, the Guidelines (at 30) do not require the implementation of a specific plan, but allow for a flexible approach to be adopted by the Company. Duquesne St. 14-R at 25. Duquesne continuously evaluates new technologies for its Smart Comfort program and will incorporate promising technologies into its programs. Duquesne Exh. JPF-1 at 4. However, Ms. Brockway's suggestion of a photovoltaic program should not be accepted. OCA St. 6 at 43-47. Pittsburgh is too cloudy (only 42% of possible sunshine) and the payback

period is too long (14 years) for such a program to be efficient or cost-effective. Duquesne St. 14-R at 25-26; Duquesne M.B. at 90.

(b) The OCA's Position

In addition to the Company's successful LIURP initiatives, the OCA also recommends that Duquesne implement a renewables pilot program. In the OCA's direct testimony, OCA witness Brockway identified the elements of a renewables pilot program to be incorporated into Duquesne's universal service program as follows:

- Issuing an RFP to solicit proposals to install ten units of photovoltaic ("PV") electricity panels at 1 kW in 1999, and 20 units of PV in 2000, on the dwellings of low-income customers.
- Seeking bids in a price range of $5.00 per watt.
- Seeking proposals to install up to $50,000 worth of passive or active solar hot water heating.
- Requiring a diversity of building types, locations, land tenancies, sizes and metering arrangements.
- Conducting a process and impact evaluation of the installations, capturing such features as customer acceptance of the measures, landlord acceptance in the case where the customer is a renter, cost per unit, payback per unit, Total Resource Cost on a present value basis per unit, and the like.
- Involving the Universal Service Advisory Committee during pilot development and evaluation.
- Submitting a report to the Commission in 1999 and 2000 regarding the pilot's status and findings, together with recommendations regarding extending or renewing the pilot.

OCA St. 6 at 43-47; OCA M.B. at 88-89.

OCA witness Brockway identified a number of reasons that the pilot should be implemented. OCA St. 6 at 46. First, the inclusion of renewables in the language of the Act relating to universal service and energy conservation demonstrates the General Assembly's interest in testing the viability of renewable generation in this context. OCA St. 6 at 46. Second, PV power addresses not only environmental concerns, but also can help reduce the cost of distribution upgrades by delaying or alleviating their need. OCA St. 6 at 46. This is especially true in densely packed urban areas, such as Duquesne's service territory. Third, PV power requires low maintenance, and very little customer/machine interaction to provide its benefits. OCA St. 6 at 46; OCA M.B. at 89.

Additionally, it should be noted that in PECO Energy, the Commission directed that a renewables pilot be included, consistent with OCA witness Brockway's recommendation. Slip Op. at 147. The OCA submits that for the reasons stated above, Duquesne should be directed to include a renewables pilot, such as the PV pilot contained in OCA witness Brockway's testimony, as part of its universal service plan. OCA M.B. at 89.

The OCA notes Duquesne argues against the inclusion of a PV pilot in its Universal Service and Energy Conservation plan, stating that the Commission's Guidelines do not require the inclusion of a renewables pilot. Duquesne M.B. at 90. Addressing OCA witness Brockway's photovoltaic proposal directly, Duquesne witness Flynn stated, and the Company has argued that the proposal is not cost effective, and due to the cloudy weather in Pittsburgh, the pilot has little likelihood of being successful. Duquesne M.B. at 90; Duquesne St. 14-R at 25-26; OCA R.B. at 34-35.

The OCA submits that Ms. Brockway's recommendation for a renewables pilot was to specifically address the inclusion of such language in the Act. The purpose of this proceeding was to consider such proposals in specific cases. Indeed, the Commission in PECO Energy, recognized the value of such a pilot and directed its implementation. Slip Op. at 147. Additionally, the Company's argument that it is "too cloudy" in Pittsburgh is misplaced with respect to the technology involved. As OCA witness Brockway explained:

> Mr. Flynn's criticisms of that PV pilot are misplaced. First, photovoltaics operate during cloudy periods. While they do not put out as much electricity, they continue to generate electricity under a cloud cover. Second, PV is most useful to the system precisely when the system is peaking from heavy air-conditioning load during hot sunny days. Finally, the objective of the pilot, in addition to exploring cost-effectiveness issues, is to explore questions of infrastructure need and suitability to low-income housing situations.

OCA St. 6R at 10-11. Thus, the OCA submits that Duquesne should be directed to include a renewables pilot as part of its LIURP programs. OCA R.B. at 35.

(c) The Environmentalists' Position

The Environmentalists observe the one explicit reference in the Act to renewable energy is found in the definition of the phrase "universal service and energy conservation."[438] The Universal Service Guidelines require the universal service plans to "propose how the application of renewable resources will be accommodated."[439] Duquesne's universal service plan

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[438] 66 Pa. C.S. §2803, definition of "universal service and energy conservation."

[439] Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(2)(b) at 30.

brushes off this requirement by simply noting that "Duquesne Light has no existing renewable resource programs in place nor does it have any plans for any at this time."[440] The Environmentalists urge the Commission to direct Duquesne to develop and offer a renewable energy pilot program as a component of its universal service program. This pilot could offer renewable technologies such as solar domestic water heating, solar photovoltaics, wood-fired water and/or space heating, etc. Env. M.B. at 50.

(d) Recommendation

The Company's proposals for the CAP, LIURP and renewables conforms with the Act, the Commission's Guidelines on University Service and PECO Energy. Therefore, the Commission should approve these proposals without modification.

D. Energy Conservation

1. Duquesne's Proposal

As noted above, Duquesne's Smart Comfort program includes energy conservation measures. This program is very successful and is being imitated by other utilities. Duquesne St. 14-R at 11; OCA St. 6 at 20-21. Duquesne proposes to continue this program at current funding levels. Duquesne St. 14-R at 11. If Duquesne determines that additional funds are required due to increased needs, Duquesne will seek Commission approval for rate cap relief to collect additional funds for universal service programs. Id. at 6. This flexible approach is fair and prudent, and should be adopted by the Commission. Duquesne M.B. at 90.

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[440] Duquesne St. 14-R, Exh. JPF-1 at 4.

2. The OTS' Position

With regard to energy conservation, the OTS notes it has addressed this issue previously. OTS M.B. at 91.

3. Recommendation

In light of the foregoing discussion, no further action appears warranted on the Company's energy conservation proposals.

XIII. CUSTOMER EDUCATION

A. Scope of Customer Education

1. State-Wide v. Company Specific

(a) Duquesne's Proposal

Duquesne posits there should be statewide customer education as well as local, company-specific efforts. Duquesne St. 6-R at 25. The only issue seems to be Duquesne's role in such communication efforts, which is discussed, infra. Duquesne M.B. at 91.

(b) The OCA's Position

In PECO Energy, the OCA finds the Commission directed implementation of a statewide program for consumer education. The Commission recognized the value of a statewide approach to consumer education, finding that in addition to geographic reasons, such an approach would lower the costs for all EDCs, due to economies of scale; it will address consumer education on a statewide basis; and that "a statewide approach . . . insures a consistent, honest and competitively neutral approach to consumer education." PECO Energy at 152. In order to implement this directive, the Commission has created a committee to address the statewide campaign. Most recently, the Commission initiated a separate proceeding to address the formation of this committee.[441] OCA M.B. at 89-90.

The OCA fully supports the Commission's statewide approach to consumer education and submits that a statewide consumer education plan coupled with a local effort

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[441] Creation and Implementation of a Statewide Consumer Education Program for Electric Restructuring in the Commonwealth of Pennsylvania, Docket No. M-00981036, adopted on January 15, 1998.

coordinated by Duquesne is the best method of ensuring that Duquesne's customers receive the knowledge that will allow them to make educated choices as we enter into full retail access, and also accomplish the educational goals of the General Assembly and the Commission. The Commission's initiative is consistent with the OCA's testimony in this proceeding. OCA St. 5 at 20-23. As such, the OCA submits that Duquesne should be directed to participate in the statewide program. OCA M.B. at 90.

In short, the OCA supports the Commission's decision in PECO Energy, which provides for a two-tiered approach to consumer education: a statewide campaign coupled with local efforts by the EDC. OCA R.B. at 35.

The OCA notes the Company has acknowledged the two-tiered approach. Duquesne M.B. at 91-93. However, Duquesne has alleged that the OCA does not recognize the role of the EDC in consumer education. Duquesne M.B. at 91. This is simply incorrect. The OCA reaffirms that it is critical that Duquesne play a role in local consumer education issues. However, to this point, Duquesne has submitted an incomplete consumer education plan with a number of deficiencies. OCA M.B. at 91. See, OCA St. 5 at 5. Again, the OCA submits that Duquesne be directed to provide a detailed consumer education plan with its compliance filing. OCA R.B. at 36.

(c) The Environmentalist's Position

The Environmentalists posit consumer information and education were important components of the Act, which clearly recognized that they were vital to the success of

restructuring. Recognizing that consumers need an educational foundation for the purchasing and other market decisions they will soon be called upon to make, the Act requires that:

> [p]rior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot program and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service.[442]

Env. M.B. at 55.

In addition to the education program responsibility, the Act made the Commission responsible for ensuring that consumers have quality information to help them make sound decisions in the new marketplace. The Commission was directed to promulgate regulations:

> . . . to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.[443]

Id. at 56.

The importance of educated consumers and access to objective, understandable information was certainly reinforced by the recent experience with the retail access pilot programs. One needs to look no further than the barrage of confusing and empty advertisements which have been flooding over us in the pilot programs to see that the Act was correct. An

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[442] 66 Pa. C.S. §2807(d)(3).

[443] 66 Pa. C.S. §2807(d)(2).

active Commission role is appropriate and necessary. Consumers are clamoring for accurate information in a uniform and understandable format. Without it, many of those who volunteered for the pilot programs are giving up and dropping out. There should be no lingering doubts that the Commission must implement a statewide consumer education program.[444] Id.

(d) Enron's Position

Consistent with the testimony of its witness Muench, Enron asserts consumer education should be conducted on a statewide basis with funding from customers through non-bypassable charges.[445] Any other system will risk Duquesne using customer-supplied funds to promote its own brand and market presence to the exclusion of suppliers. Enron M.B. at 76.

2. Role of EDC

(a) Duquesne's Proposal

The Company defines the issue as whether it should have a role in consumer education. Duquesne posits "the responsibilities for customer education should be shared between the Commission and the EDU." Duquesne St. 6-R at 27 (emphasis in original); See, also, PECO Energy, Slip Op. at 156. However, the OCA, Enron and the Environmentalists support a centralized approach without EDU participation that would be led by the Commission

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[444] The Commission has opened several generic dockets to address the education and information issues and the Environmentalists have participated (and will continue to participate) in those proceedings.

[445] Enron St. 4.0 at 26-32.

or a neutral third body. OCA St. 5 at 23-24; Enron St. 4 at 28; Enron St. 4.1 at 13; Env. St. 2 at 25; Duquesne M.B. at 91.

The intervenors' "one-size fits all" education program is contrary to the Act, and is inadequate in light of PECO Energy and the Consumer Education Program Rulemaking.[446] "[T]he Act contemplates that all consumers throughout the Commonwealth be educated on a statewide and local basis so that they fully understand their choices in obtaining electric service." PECO Energy, Slip Op. at 156 (emphasis added); Consumer Education Rulemaking at 1. The Commission has "recognized that consumer education at the local level is extremely important." Consumer Education Rulemaking at 5. Indeed, in PECO Energy, the Commission expressly noted that "participation in a statewide plan does not exonerate PECO from all its consumer education duties" and included a laundry list of specific educational obligations. Slip Op. at 155; Duquesne M.B. at 91-92.

(b) The OCA's Position

In PECO Energy, the OCA notes the Commission also recognized that the existence of a statewide plan does not exonerate the local EDC from all of its consumer education obligations. Slip Op. at 155. The Commission elaborated that each company still has obligations associated with "plain language, direct mail and bill insert communications to consumers, customer services, low income education, training of personnel to answer questions from the public, participation in education policy issues and keeping this Commission informed

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[446] Creation and Implementation of a Statewide Consumer Education Program for Electric Restructuring in the Commonwealth of Pennsylvania, Docket No. M-00981036, adopted on January 15, 1998 (Consumer Education Rulemaking).

of issues, problems and successes in their educational efforts." Id. at 155. OCA witness Alexander also testified to the important role of the EDC in this effort. Ms. Alexander explained:

> The role of the distribution company's own program will be to provide customers with the utility-specific information such as the specific nature of the pilot programs in their service territory, prices for distribution services, format of the distribution company bill, how to select a supplier, and how and where to contact the utility for further information (get copies of brochures, handbooks, etc.).

OCA St. 5 at 23; OCA M.B. at 90-91.

In light of the role of the EDC, Ms. Alexander reviewed Duquesne's plan and noted a number of deficiencies. OCA St. 5 at 5. Overall, she stated that Duquesne had not proposed a plan, and omitted a great deal of substantive information on the objectives, goals, and budget for consumer education. Id. The specific deficiencies in the Company's filing identified by Ms. Alexander are:

- There is no suggestion in the Company's materials or proposals that customers may need to be motivated to learn and read the materials associated with the development of a competitive market.

- Duquesne has not conducted extensive customer research to determine what information its customers already know and what they would like to know about electric competition. The Company's research to date merely tests customer awareness of electric competition. Its customer focus groups only explored customer reaction to Company materials and seemed more interested in exploring the customer's reaction to the Company's image after reviewing the draft materials.

- The Company's proposal does not have any time lines or interim goals and objectives to determine whether the program is achieving its objectives.

- The plan fails to identify or describe the development of information targeted to particular customer groups or how the Company will work

with community-based organizations and other grass roots efforts to target educational information to low income customers and others who may have a heightened concern with the risks associated with electric competition, such as the elderly.

- The Company promises evaluation, but does not describe how and when this will occur.

- The Company's communications with its customers and its educational materials published in 1997 emphasize the role of Duquesne Light Company in the new market structure and are more in the nature of image advertising.

- The materials developed for the Pilot Program are confusing and not adequate to assist customers in learning to shop for their electricity supplier.

- The Company does not propose a budget for its educational initiatives beyond 1997.

OCA St. 5 at 5-6. Ms. Alexander explains that Duquesne's proposed customer education plan does not comply with the requirements of the Act, as there are too many important details missing. OCA St. 5 at 7. While Duquesne has proposed a list of outreach vehicles to employ, there is no overall theme to link these materials. Id. Moreover, much of the Company's effort to date has been directed at bolstering the Company's image through "advertorials" rather than providing objective consumer education. OCA St. 5 at 13-14. OCA witness Alexander concluded that "the Company has approached its obligation very narrowly and has not devised a consumer education plan to stimulate consumer interest and involvement in choosing an electricity supplier." OCA St. 5 at 7; OCA M.B. at 91-92.

The OCA submits that Duquesne should be directed to coordinate its education efforts with the statewide program. In addition, the Company should be directed to provide a detailed plan with its compliance filing. Id.

3. Recommendation

On the subject of consumer education, the Commission in PECO Energy, Slip Op. at 148-150, found:

> The promise of customer benefits from electric competition will only be fulfilled through a comprehensive education program. This important policy consideration in the implementation of electric competition was thoroughly discussed during the legislative debate and the final passage of the Act. The expectations of the Act are significant and the Commission and PECO must endeavor to meet those expectations. There are a number of key policy issues which need to be addressed.
>
> The customer education process must have specific direction so the industry, consumers and this Commission can be assured that education efforts are designed to reach all customers in ways which are most responsive to their cultural and educational needs. Since program expenditures will be recovered from ratepayers, the Commission has an obligation to determine whether the consumer education funds meet the provisions of the Act. Consequently, this section will outline a detailed set of rules for the implementation of the consumer education provisions consistent with the expectations of the Act.
>
> The Act clearly instructs us to direct consumer education programs so that the public is adequately educated about electric competition. The following provisions of the Act authorize our directives concerning consumer education.
>
> First, the Act recognized the importance of consumer education by including the term in the definition of universal service and energy conservation at Section 2803 of the Act. In addition, the Act clearly articulates the requirement that consumers need to be well-informed about purchasing electricity services from alternative providers. Specifically, the Legislature at Section 2807(d)(2) states that "[t]he Commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices

> and services on a uniform basis." The Act further directs the Commission and each electric distribution company at Section 2807(d)(3) to implement a consumer education program informing customers of the changes in the electric utility industry prior to the implementation of any restructuring plan. The Act also instructs the Commission at Section 2807(d)(3), to approve a program which provides consumers with information necessary to help them make appropriate choices as to their electric service.
>
> One example of new information which will assist in customer choice concerns energy sources. There is a growing consumer interest in renewable energy sources being made available in Pennsylvania. The Commission encourages EDCs to inform customers about their energy resources. Suppliers should provide a written disclosure statement of energy sources including a break-out by percentage of all energy sources with renewables separately addressed. (Footnotes omitted).

As part of its compliance filing, the Commission should direct Duquesne to submit a consumer education plan that conforms to the dictates set forth in PECO Energy, Slip Op. at 148-157. The latter decision portrays the Commission's determination of the proper role of an EDC in local and state-wide consumer education efforts.

B. Implementation Issues

1. Duquesne's Proposal

The Company notes the OCA and the City assert that Duquesne's evaluation procedures for its customer education program is insufficient. OCA St. 5 at 6; OCA St. 5-S at 2; City St. 2 at 26. Duquesne believes it has devised a plan, as described by Company witness Hoffman, to evaluate the efficacy of its customer education plan. Duquesne St. 6-R at 23-24. Even though the Act is silent regarding specific evaluation procedures, "Duquesne

recognizes that the ongoing evaluation and adjustment of its consumer education efforts are crucial to the introduction of customer choice." Id. at 24; Duquesne M.B. at 92.

2. **The OCA's Position**

OCA witness Alexander recommended that Duquesne should work closely with Community-Based Organizations ("CBOs"), representatives of vulnerable populations and consumer organizations in the design and implementation of the Company's consumer education plan. OCA St. 5 at 17. This will allow Duquesne to obtain "insight into local information needs and methods of interaction and communication that will be successful." Id. In rebuttal, Duquesne endorsed the involvement of CBOs, but did not demonstrate how they would be involved. OCA St. 5S at 6. OCA witness Alexander explains that this is important, because "it is more likely that low income customers will learn more effectively about electric competition through their local community organizations than through a reliance solely on bill inserts or newspaper advertisements." OCA St. 5 at 7. CAAP witness Wilson echoed these concerns. CAAP St. 1 at 7; OCA M.B. at 92.

The OCA submits that pursuant to Ms. Alexander's recommendations, Duquesne be directed to include involvement with CBOs as part of its consumer education program. Id.

The OCA notes Duquesne has stated that its consumer education plan provides sufficient evaluation procedures. Duquesne M.B. at 92. The OCA disagrees with this assertion and again submits that Duquesne be directed to supplement its consumer education plan, including its evaluation procedures consistent with the suggestions of OCA witness Alexander. OCA M.B. at 91; OCA St. 5 at 5-6. Additionally, the OCA again requests that Duquesne be

directed to include involvement with CBOs in its consumer education plan. OCA M.B. at 92; OCA R.B. at 36.

3. The Environmentalists' Position

The Environmentalists find one curious aspect of this proceeding is that Duquesne has not submitted its plan for an education program either as part of its restructuring filing, the direct testimony of Frank Hoffman, the rebuttal testimony of Mr. Hoffman, or as in response to an OCA data request,[447] which the Environmentalists contend is inadequate. The education plan should have the following components:

As described in the testimony of Roger Colton[448] and Barbara Alexander[449], the first step in the development of a quality consumer education plan should be consumer research to determine what consumers already know, what other information they want to know, and whom they trust for their information. This type of baseline data survey is critical in the design of a good program because you cannot decide how to get to where you want to be unless you first know where you are. A number of states have already conducted such research, and it should be reviewed for its lessons. Duquesne should also conduct its own research of its own customers. Env. M.B. at 57.

The Environmentalists suggest that after the consumer research is completed, an education plan should be drafted to address the following issues:

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[447] OCA St. 5-A at 3, l. 8-11.

[448] City St. 2 at 24, l. 13-19.

[449] OCA St. 5 and 5-A.

a. Goals and Objectives - using the customer research, set the specific goals and objectives for the program. Also identify strategies and tactics

b. A Staged or Phased Message

c. Specific Themes and Content for Each Phase

d. Delivery Mechanisms for Each Message

e. Evaluation and Feedback

f. Identification of In-House Staff and Outside Consultants

g. Identification of Advisory Counsel

Id. at 58.

4. Recommendation

As part of its compliance filing, the Commission should direct Duquesne to submit a consumer education plan that conforms to the dictates set forth in PECO Energy, Slip Op. at 148-157. The latter decision portrays the Commission's determination that CBOs play a proper role in consumer education.

C. Funding Levels and Recovery

1. Duquesne's Proposal

The Company suggests the key issue is whether Duquesne recovers the costs of any customer education program required by the Commission. If the Commission requires Duquesne to increase education funding during the transition period, Duquesne should be permitted to recover those incremental expenses as transition costs. Duquesne St. 6-R at 14-15.

Under traditional cost of service principles, the Company should be entitled to recover its costs for expenses incurred in the transition to restructuring and which exceed the cost of service. Id. Since the PECO Energy and the Consumer Education Rulemaking contemplate cost recovery by the EDUs for consumer education expenses, the Commission should permit Duquesne to "treat these incremental expenses as transition costs and recover them through the appropriate mechanism." Id.; Duquesne M.B. at 91.

2. The OCA's Position

The OCA does not dispute that reasonable consumer education funding should be recovered from ratepayers. At this time, however, the Company has not provided a budget or a detailed Consumer Education Plan upon which such decisions can be made. The Company should be directed to provide a budget and a detailed plan in its compliance filing. OCA M.B. at 92; OCA R.B. at 36.

3. The Environmentalists' Position

The Environmentalists support an education budget for the four-year program of at least $5 per customer. The PECO education budget is $5.33 per customer. The Environmentalists support the Commission's 65/35 split contained in PECO Energy. Env. M.B. at 58.

4. Recommendation

The Commission should direct Duquesne to provide a budget for its proposed customer education plan in its compliance filing. Thereafter, Duquesne may, upon Commission approval, claim customer education costs as transition costs. 66 Pa. C.S. §2803. On the matter of allocation, 65% of the consumer education budget should be allocated to the state-wide effort, while 35% of that budget should be allocated to local efforts. PECO Energy, Slip Op. at 154.

XIV. MISCELLANEOUS ISSUES

A. DII's Position

DII observes the Environmentalists propose that uniform environmental standards should be imposed on all retail suppliers that sell electricity in Pennsylvania. Env. M.B. at 65-66. This requirement is unnecessary and could hinder development of a robust competitive market. One of the goals of the Act is to provide businesses a cost-effective market in which to operate. 66 Pa. C.S. §§2802 (4)-(7). Businesses in Pennsylvania will not be provided with a cost-effective environment if restrictions are levied on electricity supply that surrounding states do not place on that supply. Moreover, the Commission cannot accurately assess the impacts of the ill-defined and potentially administratively-complex Environmentalists' proposal. The proposal must be rejected. DII R.B. at 49.

B. The PRA's Position

1. Aggregation

The PRA notes this Commission should insure and require Duquesne to permit aggregation of customer load. As indicated by PRA witness Albrecht, aggregation is a means of permitting smaller customers to replicate larger customers so as to attract the largest number of alternative, competitive generation suppliers for their service needs. A failure to require Duquesne to permit aggregation will frustrate the intent of the Legislature and the Act. Furthermore Duquesne should be required affirmatively to permit customers who have multiple sites to aggregate their load. That is, if a customer has the ability to switch supply between different sites in Duquesne's territory, it should be given that opportunity. Finally, the

Commission should also require that the first electricity through the meter is that supplied by the alternative generation supplier. In this fashion the customer will receive the greatest benefit in the move to the competitive retail generation market. Furthermore, since at a future date (as implemented in the PECO case, probably two years from the ending of this proceeding) Duquesne will be required to fully *unbundle* its services and to require and to permit 100% direct access to the competitive generation market, now is the time to start that process to determine whether the Commission must institute other items to insure a smooth transition to that market. PRA M.B. at 71.

C. The Environmentalists' Position

1. Consumer Information

In adopting the Competition Act, the Environmentalists opine Pennsylvania lawmakers were keenly aware that customers need ample and accurate information in order to exercise informed choice about their electric supply options. Thus, under terms of the Act, the Commission is required to facilitate informed customer choice, by issuing regulations ensuring that the information supplied to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.[450] The Environmentalists contend that one of the important pieces of information needed and desired by many customers is the environmental byproducts of their electricity. Env. M.B. at 59.

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[450] 66 Pa. C.S. §2807(d)(2).

On July 10, 1997, and during the pendency of this proceeding, the Commission issued interim requirements, but not final regulations, pertaining to customer information.[451] These interim requirements include, inter alia, the obligation that suppliers disclose the source and fuel mix of their supply. This requirement will ensure that customers receive basic information about the sources of their supplier's electricity. This policy also includes the requirement that suppliers verify specific environmental claims.[452] The latter requirement should supplement commercial law in protecting consumers from fraudulent environmental claims. Id.

The Commission should be applauded for joining the other pro-active states of Vermont, Massachusetts and Maine in including mandatory disclosure provisions as an element of the electric industry restructuring. This policy provides an excellent foundation upon which to build a comprehensive environmental disclosure process. Id. at 60.

The Environmentalists propose a modest extension of the Commission's interim requirements. Environmentalists' testimony in this case speaks to the need to address additional aspects of informed customer choice; namely, the need for disclosure of key air and other waste emissions to consumers in a standard and easy to comprehend label. These requirements should pertain to all suppliers selling into the PP&L service territory, if not the entire state of Pennsylvania. Id.

Extension by the Commission in its interim requirements to add environmental disclosure would represent sound public policy for the following reasons:

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[451] 1997 Interim Requirements for Customer Information, Docket No. M-00960890F0008.

[452] 1997 Interim Requirements for Customer Information, Docket No. M-00960890F0008, Appendix B, Section III.C.6

- Electricity generation has a tremendous environmental footprint, accounting for roughly two-thirds of all SO_2 emissions, nearly one-third of total NO_x emissions, and more than one-third of total CO_2 emissions. Electricity generation is responsible for a host of other land-, water- and air-related environmental costs and risks. These environmental considerations are related to, but not entirely addressed by fuel mix disclosure;

- Survey data reveals that many consumers are interested in the environmental implications of their purchasing decisions, and would be willing to pay more for electricity from less harmful sources;

- Many electricity suppliers are positioning themselves to fill the "green power" niche. Many suppliers are interested in marketing a clean product. Unfortunately, others will be green in name alone. Mandatory disclosure of environmental attributes will (1) allow verification of claims; (2) provide customers with information on "dirty" suppliers, and not just those who make environmental claims; and (3) make comparisons between suppliers easier;

- In order for customer choice to be most meaningful, customers should have basic information about the suppliers in a standardized, easy-to-understand format. Fuel mix and environmental information can be disclosed along with standardized information on price and price volatility.

- The fuel mix disclosure requirement already endorsed by the Commission will require a system of tracking transactions to attribute generation at power plants to sales at retail. As pointed out by Mr. Biewald, it is a relatively simple (and inexpensive) matter to extend the fuel mix disclosure system to key environmental attributes, since the basic protocols for tracking will be in place.

Id. at 60-61.

In sum, the Commission should require all retail suppliers to provide accurate, verifiable and uniform information about the sources and environmental impacts of the power they sell. The generation of electricity has tremendous impacts on the environment and customers are interested in the environmental implications of their electricity purchases. The Commission should not simply rely on commercial law to protect consumers from fraudulent

claims. Rather, it should take affirmative steps to ensure that every supplier provides customers with uniform and reliable information about the power they purchase. Only in this way can the Commission ensure that customers can make informed and meaningful choices in a competitive marketplace. Id. at 61.

At a minimum, the Commission should require retail suppliers to disclose the fuel mix and emission rates (lbs/MWH) of NO_x, SO_2 and CO_2 of the power they sell. Most power generators must report emissions data for these substances and will have the information readily available to supply to retail sellers for the purpose of compliance with a disclosure requirement. To the extent that other major environmental impacts, such as waste creation, can be quantified, these should be included as well. A standardized point of comparison, such as the regional average level of pollution per kWh, should be indicated for reference. As discussed in the Regulatory Assistance Project report which was an exhibit to the Biewald testimony, much good work is taking place around the country on this issue. Whether in the restructuring Order or the generic proceeding, emission and waste information should be added to the consumer information requirements. Id. at 61-62.

As a way of answering the question what do the people of Pennsylvania get in exchange for allowing Duquesne to recover a fair portion of its stranded costs, the Environmentalists have proposed three new initiatives to be undertaken for Duquesne's customers. Id. at 62.

2. The Sustainable Development Fund

(a) Introduction

Since the PECO securitization proceeding, the Environmentalists have been advancing a proposal to the Commission for a Sustainable Development Fund to finance and promote energy conservation and efficiency, renewable energy and other clean-energy technologies. While a large part of the restructuring proceeding is looking backwards and charging ratepayers billions of dollars for past mistakes, we should also be looking forward and making a modest investment in Pennsylvania's sustainable energy future. Id. at 62-63.

(b) The Mission and Structure of the Sustainable Development Fund

Environmentalists' witness David Schoengold presented the Environmentalists' proposal for the Sustainable Development Fund.[453] The mission goals of the Fund are summarized at Env. M.B. at 63.

(c) The Budget of the Sustainable Development Fund

The Environmentalists propose that the Sustainable Development Fund be financed by all suppliers through an annual contribution equal to 1% of their gross revenues. On a statewide basis, this would provide annual funding of approximately $22 million. By way of

[453] Env. St. 1 at 8-9.

comparison, the Clean Energy initiative of the Long Island Power Authority is very similar to the Sustainable Development Fund and its annual budget is $32 million.[454] Id. at 64.

3. The Million Solar Roof Program

The Million Solar Roof Program is a joint effort of the U.S. Department of Energy ("DOE") and the Utility Photovoltaic Group ("UPVG") to accelerate the commercialization of photovoltaic systems. The Environmentalists recommend that the Commission direct Duquesne to become a full partner in this important program and to offer financing for the installation of such systems by its customers at an interest rate 0.5% higher than its cost of capital.[455] Id.

4. The Conservation Loan Fund

The Environmentalists recommend that Duquesne establish an energy loan program to help its residential customers make energy efficiency improvements to their existing or new facilities. Loans would be given priority on the basis of electricity savings, system reliability benefits, customer class contributions and need. The Loan Fund would receive an initial capitalization from Duquesne at a level equal to 2% of the Company's stranded cost recovery.[456] Id. at 64-65.

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[454] Env. St. 2.0 at 15.

[455] Env. St. 1.0 at 8.

[456] Env. St. 1.0 at 9.

5. Environmental Comparability

In order to create a level playing field for all market participants, the Commission should implement uniform environmental standards that all retail suppliers must meet in order to sell power in Pennsylvania.[457] At present there is considerable disparity between the emission standards applied to generating units of different vintages or located in different states or regions. Restructuring could have a dramatic impact on the air quality in Pennsylvania if it encourages generators of relatively dirty power who are subject to less stringent environmental regulations to increase production. Id. at 65.

The Commission must ensure that the introduction of competition to the electric industry in Pennsylvania does not result in dirtier air and the attendant harm to the environment and public health. In the absence of uniform federal emission standards, the Commission should require all retail sellers to ensure that the power they sell in Pennsylvania has been generated by plants that meet the state's most recent environmental standards. Id. at 65-66.

D. Recommendation

The various miscellaneous issues raised in this section either are not strictly required by the Act or are inappropriate for consideration in this restructuring application. Of course, the Commission may decide a particular issue deserves further scrutiny, in which case a generic proceeding may determine the merits of the matter.

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[457] Env. St. 1.0 at 3-5.

XV. CONCLUSIONS

This decision recommends adoption of the restructuring plan, which Duquesne Light Company filed with the Commission pursuant to Section 2806(d) of the Competition Act, 66 Pa. C.S. §2806(d), as herein modified.[458]

A. Phase-In of Customer Choice

This decision recommends a three-year phase-in period, with the first one-third of Duquesne's customers eligible for choice on January 1, 1999, the second third on January 1, 2000 and the final third on January 1, 2001.

Beginning July 1, 1998, Duquesne should conduct an open enrollment period for residential customers on a "first-come, first-served" basis. If less than 33% of the customer load for that tariff class enrolls as of September 30, 1998, Duquesne shall notify all customers who have volunteered as of that date that they can participate in the phase-in beginning

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[458] Please note: In drafting this decision, I have taken the positions of the parties nearly verbatim from the briefs filed in this case and other documents due to the exigencies of time. While this process results in a lengthy document, the only alternative would be to draft a decision that is incomprehensible to a reader unfamiliar with the record and quite possibly misstate the positions of parties. Given these alternatives, the better course appears to be to state the various positions on the issues accurately, rather than succinctly. As a result, the manner of citation may not be entirely uniform throughout the decision.

I do not include the position of every party on every issue in this decision. I do not include a position if it is a cursory handling of an issue, adopts the position of another party without adding argument, or does not adhere to the common brief outline which I directed the parties to follow. Given the voluminous briefs and record, I could not always take the time to hunt for a party's position if it did not appear in the appropriate place in the common brief outline. Where possible, and to keep the decision at a manageable length, at times I shorten a position and indicate that it is similar to a position already stated. In instances where a party fails to properly identify statements or exhibits as marked for the record, I have eliminated those citations and I refer the reader to the party's brief on the subject.

January 1, 1999. If more than 33% of the customer load for that tariff class enrolls as of September 30, 1998, Duquesne shall have an independent party conduct a lottery to determine which customers may participate in the phase-in beginning January 2, 1999.

Subscription for large industrial customers for each stage of phase-in will occur on a first-come, first-served basis, unless a class load is oversubscribed. In such event, each customer nominating a portion of load in the oversubscribed class will experience a pro-rata reduction in their nominated load, so the total load available for direct access in that class meets the Act's 33% requirements for that phase.

For small business customers receiving service from Duquesne via Rate GS/GM, which is available to all non-residential customers whose billing demands do not exceed 300 kW, Duquesne should segment the Rate GS/GM class group into "Small Rate GS/GM" and "Large Rate GS/GM." The OSBA suggests a segment limitation for the Small Rate GS/GM at a 40-kilowatt load; however, the Company may determine a more appropriate breakpoint after a detailed billing frequency analysis of all Rate GS/GM accounts. Thereafter, customers within each class may designate their loads in the same manner described above for large industrial customers until one-third of the peak load of each class for that phase-in period is reached.

For all other customers, the pure "first-come, first-served" approach described above for residential customers should apply.

B. <u>Transmission and Distribution Rates</u>

The Commission should accept Duquesne's 1996 cost of service study, subject to the adjustments denoted below.

Duquesne should unbundle its transmission and distribution rates based upon a realized rate of return. It should assign costs associated with line losses to the generation function. Duquesne should unbundle the line loss function and allow customers to choose the line loss supplier. The Company should include in its compliance filing a new rate design showing the calculation of separate line losses for the distribution function. Since a third party may now supply line losses, Duquesne will incur additional stranded costs, because line loss costs incorporated in the T&D function are based upon the embedded cost of the Company's generation. To the extent customer choice supplants recovery of the embedded cost, the credit offered to the customer to shop for line losses should reflect an increased CTC charge.

Duquesne should remove the following ancillary service accounts from T&D rates and move them into generation costs: $4,021,675 for reactive power, $5,187,040 for regulation and frequency control and $8,913,265 for operating spinning reserve, for a total of $18,121,980.

Further, the Commission should disallow Duquesne's proposed imbalance charges and the $100 scheduling charge.

The Commission should reject Enron's proposal for voltage-differentiated rates.

Likewise, the Commission should reject the HSS/ARI's proposal to adjust Duquesne's projected capital expenditures for distribution-related services.

In addition, the Commission should reject the Environmentalists' proposal for "Targeted Area Planning."

C. Transition or Stranded Costs

1. Generation-Related Stranded Costs

If the proposed merger of DQE, Inc., Allegheny Power System, Inc., et al., at Docket No. A-110150F00015, is not consummated within eighteen months of the final Order of the Commission disposing of this application, the Commission should accept Duquesne's proposal to offer an immediate divestiture of its generating assets to determine the value of its stranded assets. Within ninety days of entry of the Commission's final Order in this case, Duquesne should file with the Commission a plan of divestiture, together with a proposal for addressing its continuing obligation to serve under the rate cap. All interested parties should have an opportunity to respond to either or both proposals. Concerning the issue of an interim CTC to take effect January 1, 1999, Duquesne should apply the same rates and credits approved in the pilot program for customers electing direct access during this interim period. Finally, relating to the issue of what method to use for calculating a "permanent" CTC, using market values produced by the auction, the Commission should direct the Company to adopt the general approach used in PECO Energy. Duquesne should be permitted to fully recover (e.g., with no "sharing" and a compensatory return on equity) its stranded costs, as established by the market values produced by the auction. The Company should also submit a proposal to address its continuing obligation to serve at the same time that it files a final CTC calculation, using market values produced by the auction.

In addition, certain claims of the Company for treatment as stranded costs should be disallowed as noted, infra.

In the event the merger is approved and consummated, and a one-time administrative valuation of stranded costs is required, the Commission should adopt the Company's calculation of net book value for its generation-related stranded costs, with the following adjustments. The Commission should allow Duquesne its claim of $41.11 million ($33.40 million nuclear and $7.70 million fossil) for the category "M & S and Fuel-Related Sunk Costs." The Commission should also allow the Company its stated claim of $475.57 million representing the lease expense for Beaver Valley 2, but the Commission should treat the lease payments as an "owned-generation" regulatory asset subject to recovery under Section 2808(c)(1). Finally, the Commission should disallow the Company's claim of fossil plant stranded costs of $65.58 million net book value for Units 1, 2, 3, and 4 at Phillips Power Station and Units 3 and 4 at Brunot Island Power Station.

The Commission should also reject the argument of the HSS/ARI concerning how the burden of proof should be applied in this case, especially as it relates to the valuation of stranded costs. While the applicant clearly bears generally the burden of proof in restructuring proceedings, a party must, nonetheless, place at issue the specific expenditure that it claims should be disallowed so as to place the applicant on notice what it must prove.

In the event a merger between DQE, Inc. and APS is not consummated or the Commission decides a final administratively determined methodology for valuation of stranded costs must be found in this proceeding, the Commission should adopt the approach of the OCA, which uses the ENPRO model to determine the value of the Company's generating assets.

In the event the proposed merger is not consummated or the Commission decides a final administratively determined methodology for valuation of stranded costs must be made

in this proceeding, the Commission should allow the Company to collect stranded costs until December 31, 2005, the statutory period.

The Commission should adopt the OCA's adjustment of $170.72 million to reflect an appropriate economic life extension for Duquesne's generating plant assets.

Since there is inadequate time in this proceeding to investigate the feasibility of any recommendation to shut down any of Duquesne's power plants, the Commission should adopt the Company's commitment to file a detailed study regarding potential plant closures by December 31, 1998 and thereafter, allow the Commission to determine whether any units should be shut down.

The Commission should reject a productivity gain adjustment to Duquesne's generation related stranded costs.

The Commission should approve the Company's claim for costs independent of operation.

The Commission should reject the proposals of the HSS/ARI relating to projected capital additions and O&M expense.

The Commission should reject Duquesne's proposal to further adjust its stranded costs to reflect the impact of environmental regulations.

The Commission should adopt the OCA's proposed adjustments for working capital, pilot program incentive credits and half-year discounting for first year of analysis.

2. Merger Savings

The Commission should adopt the OCA's proposed adjustment of $152.28 million at 1/1/99 on an after tax basis and net of costs to account for the savings due to the synergies that will be achieved, if the merger is successfully consummated.

3. Decommissioning

The Commission should adopt the OCA's proposed adjustment to the Company's claim for nuclear decommissioning costs to reflect the level of $7,949,000 per year for the seven year CTC recovery period.

The Commission should deny the Company's claim for fossil plant decommissioning costs in its entirety.

4. Regulatory Assets and Liabilities

The Commission should treat the Company's SFAS 109 obligation as a tax liability from the balance of plant in service and not as a regulatory asset. This adjustment reduces Duquesne's regulatory asset claim by $62.94 million.

The Company's claim for unamortized debt costs should be valued as of December 31, 1998.

The Commission should adopt the claim of Duquesne for unamortized sale and leaseback premiums, as modified by the OCA's treatment. This adjustment will result in a net present value amount of $513.36 million for this claim.

The Commission should permit the Company's claim for deferred rate synchronization costs of $23.5 million, on a net present value basis.

The Commission should allow the Company's claim for deferred employee costs of $13.830 million, on a net present value basis.

The Commission should disallow the Company's claim for deferred coal costs of $13.5 million in its entirety.

The Commission should deny Duquesne's claim for deferred caretaker costs for the Brunot Island and Phillips plants of $3.92 million, on a net present value basis, in its entirety.

The Commission should allow the Company to claim as a regulatory asset pre-accrual of nuclear outages in the amount of $10.29 million, on a net present value basis.

The Commission should allow the Company to claim the full amount of its transition expenses in the amount of $10.59 million, on a net present value basis.

The Commission should deny Duquesne the entire amount of its claim for SFAS 106 of $1.92 million, on a net present value basis.

The Commission should disallow the entire amount of the Company's claimed Warwick Mine costs and direct Duquesne to specify this amount in its compliance filing.

The Commission should deny the HSS/ARI's proposed adjustment to deferred employee costs for compensated absences.

The Commission should deny the HSS/ARI's proposed adjustment to deferred employee costs for injuries and damages.

5. Recovery of Stranded Costs

The Commission should accept Duquesne's efforts to mitigate its stranded costs.

The Commission should deny proposals of certain intervenors for the Company to share its stranded costs by not allowing Duquesne a return on the stranded portion of its investment during the transition period.

The Commission should reject the DII's securitization proposal.

The Commission should accept the Company's proposal for accelerated amortization under Section 2804(4)(v) with the ROE spill-over mechanism set at the level discussed, infra.

The Commission should reject the OCA's proposal for immediate rate reductions and the parties' request to extend the transition period.

The Commission should deny the arguments of Mr. Hughes relating to the justness and reasonableness of Duquesne's existing rates, the inclusion of certain nuclear units in the Company's stranded cost claim and Duquesne's mitigation efforts. Mr. Hughes' arguments concerning the inclusion in stranded costs of the Company's Brunot Island and Phillips power plants, now in cold-reserved status, have received attention, supra.

D. The Competitive Transition Charge

In the event the proposed merger is not consummated or the Commission finds it is more appropriate to administratively determine the amount of stranded costs and proper recovery method in this proceeding, then the Commission should also determine the appropriate CTC to enable Duquesne to recover its stranded costs during the transition period. The

Commission should reject the Company's RFP proposal for determining the appropriate market price of electricity annually. The Commission should adopt the OCA's approach, which sets the CTC as a residual that declines each year as the forecasted market prices for the CGC increase each year during the transition. The OCA shows the Company's current total average rate is 8.930¢/kWh. Subtracting out the OCA's calculations of the appropriate unbundled charges for T&D combined of 2.211¢/kWh as shown on OCA Exhibit LS-7, leaves remaining revenue at current rates of 6.719¢/kWh. The OCA's analysis indicates a market price for 1999, including avoidable generation-related A&G, of 2.529¢/kWh. The remaining balance of 4.19¢/kWh represents the average CTC contribution for 1999.

The Company's collection of the CTC should be subject to annual review by the Commission. 66 Pa. C.S. §2808(f).

The Commission should direct Duquesne to complete the transition period and cease collecting any CTC from its customers by December 31, 2005.

The Commission should adopt the OCA's recommendation to allocate stranded cost responsibility to each customer class on the basis of the production capacity allocator utilized in the Company's last rate case. 66 Pa. C.S. §2808(a).

The Commission should also adopt the OCA's recommendation to establish a levelized rate reduction. Due to the OCA's estimated increases in market prices, the CTC will decline annually, while allowing for a levelized rate reduction calculated to allow full recovery of stranded costs. OCA Exh. LS-7 (Revised).

The Commission should deny Duquesne's proposal to redesign its rates pursuant to a two-part Customer Transition Charge, which would include a fixed (customer-specific) charge and a usage-based (class-specific) charge.

The Commission should also adopt the OCA's proposals to calculate an avoidable generation credit for administration and general costs, which competitive suppliers incur. Consistent with the statutory requirement for annual reconciliation and with OCA's proposal to allocate stranded costs by rate class, stranded costs should also be reconciled annually on a class-specific basis.

The Commission should reject the Company's proposal to roll in its Energy Cost Rate (ECR) at a rate higher than was in effect on January 1, 1997. The Commission should direct Duquesne to roll in its ECR at the rate in effect on January 1, 1997. 66 Pa. C.S. §2804(4)(ii).

E. Rate of Return

The Commission should adopt the OTS' proposed 10.5% rate of return.

F. Special Customer Classes

Duquesne's contracts and tariffs for special customer classes should be modified to comply with the requirements stated by the Commission in PECO Energy , Slip Op. at 116-121, and as discussed in this decision, supra.

The Commission should approve the Company's proposal for Rider 8, as herein modified, and deny the Company's proposal for Riders 9 & 20.

The Commission should reject the Environmentalists' proposal for using a "net metering" arrangement. The remaining issues raised by the Environmentalists in this section should be more appropriately considered in generic proceedings.

The Commission should deny the Company's proposed changes to its current tariffs for Interruptible Service (Rider 7), Time-of-Day Service (Rider 5) and High Voltage Power Service (HVPS).

G. Competitive Safeguards

The Commission should direct the Company to modify its proposed Code of Conduct in the following respects:

1) Duquesne's Interim Code of Conduct must prohibit preferential treatment between affiliated and non-affiliated suppliers.

2) Duquesne's Interim Code of Conduct must require all tariffed services to be offered in the same manner to affiliates and non-affiliates alike.

3) Duquesne's Interim Code of Conduct must include a prohibition on anti-competitive pricing.

4) Duquesne's Interim Code of Conduct must require it to make confidential market information available simultaneously to all suppliers, affiliated and non-affiliated alike.

5) Duquesne's Interim Code of Conduct must require physical separation of employees, and must require segregated accounts and records or allocation of shared facilities.

6) Duquesne's Interim Code of Conduct must prohibit the tying of regulated and unregulated services.

7) Duquesne's Interim Code of Conduct must preclude the EDC from promoing "its competitive affiliate any differently than non-affiliated suppliers."

The Commission should reject Enron's proposal for a Pro Forma Electric Generation Supplier Tariff, which is better suited for a generic proceeding.

H. Duty To Serve

The Commission should deny the Company's proposal for a twelve month "stay-in" provision for returning customers, until it can satisfactorily demonstrate that a serious problem exists with "gaming" customers.

The Commission should defer considering here the Environmentalists' Better Choice Plan assignment of customers to suppliers, but consider this option when it promulgates regulations required by Sections 2808(e)(2) & (3).

As to an issue raised here concerning the provider of last resort providing electric service at "prevailing market prices," all parties apparently now agree this matter should await the proposed POLR rulemaking.

The Commission should direct Duquesne to provide all billing services, including billing for generation services, unless a customer indicates a preference to receive a separate bill directly from the supplier for generation services. A "third" billing option, permitting customers to opt to receive a single bill from their EGS that includes billing for the EDC charges should await the results of the Commission's generic rulemaking on this subject.

The Commission should permit billing consolidation for customers with multiple sites to aggregate their load with a single EGS.

The Commission should direct Duquesne to allow customers the option, in conjunction with their EGS, to request the use of a "qualified meter" that has been approved by

this Commission as stated in PECO Energy. As the regulated EDC, Duquesne should be responsible for all physical work related to the meter and the customer must pay as a regulated rate any net incremental cost incurred by Duquesne as a result of the metering choice. Any further move to develop competition in this area should await further Commission rulemaking on this subject.

The Commission should defer any action on Enron's agency proposal until a future proceeding can consider this subject in greater detail.

The Company should be directed that, as an EDC, it cannot terminate service to a customer for failure to pay an alternative supplier's charges. Duquesne should not be permitted to condition restoration or reconnection of service on the payment of past-due supplier charges, unless those charges are owed to the customer's supplier of last resort.

The Commission should reject the Company's claim for a fee for switching suppliers, until such time as Duquesne can substantiate the cost-basis for this charge. On the other hand, the Company's proposed Tariff Rule 27, which allows for a change of supplier based upon either an oral or written confirmation from the customer, but does not allow the supplier to contact Duquesne on behalf of the customer without written proof of authorization, appears to be a reasonable attempt to prevent "slamming" and should be approved, until such time as the Commission approves a rulemaking on this subject. Further, the Company's five day notice requirement to switch suppliers and obtain a meter reading should be approved as presented by Duquesne without further modification.

The Commission should approve Duquesne's proposal for handling partial payments.

I. Universal Service and Energy Conservation

The Commission should accept the Company's proposed eligibility and funding levels for its universal service and energy conservation programs without modification.

The Commission should accept the Company's proposal to allocate universal service costs on a cents per kWh to classes based on the allocation currently embedded in each rate class' bundled rates in the last base rate proceeding.

The Commission should accept the Company's proposals for the CAP, LIURP and renewables without modification.

The Commission should accept the Company's proposals for energy conservation.

J. Customer Education

The Commission should direct Duquesne to submit a consumer education plan in its compliance filing that conforms to the dictates on this subject set forth in PECO Energy, Slip Op. at 148-157.

The Commission should direct Duquesne to provide a budget for its proposed customer education plan in its compliance filing. Thereafter, Duquesne may, upon Commission approval, claim customer education costs as transition costs. 66 Pa. C.S. §2803. On the matter of allocation, 65% of the consumer education budget should be allocated to the state-wide effort, while 35% of that budget should be allocated to local efforts. PECO Energy, Slip Op. at 154.

K. Miscellaneous Issues

The various miscellaneous issues raised in this section either are not strictly required by the Act or are inappropriate for consideration in this restructuring application. Of course, the Commission may decide a particular issue deserves further scrutiny, in which case a generic proceeding may determine the merits of each matter.

XVI. RECOMMENDED ORDER

THEREFORE,

IT IS ORDERED:

1. That the Application of Duquesne Light Company for approval of its restructuring plan pursuant to Section 2806(d) of the Public Utility Code, 66 Pa. C.S. §2806(d), filed on August 1, 1997 and docketed with the Pennsylvania Public Utility Commission at No. R-00974104, is hereby adopted as herein modified.

2. That Duquesne Light Company shall remain the provider of last resort consistent with the determinations made herein and the requirements of 66 Pa. C.S. §2802(16).

3. That Duquesne Light Company shall phase-in direct access to alternative generation suppliers in the manner specified in this decision, pursuant to the following schedule:

a. 33% of the peak load of each customer class shall have the opportunity for direct access as of January 1,1999;

b. 66% of the peak load of each customer class shall have direct access as of January 1, 2000;

c. All customers shall have direct access as of January 1, 2001.

4. That in the event the proposed merger of DQE, Inc., Allegheny Power System, Inc., et al., at Docket No. A-110150F00015, is not approved by this Commission or is not consummated within eighteen months of entry of the final Opinion and Order of the Commission disposing of this application, Duquesne Light Company must divest itself of its generating assets to determine the value of its stranded assets in the following manner:

a. Within ninety days of entry of the Commission's final Order in this case, Duquesne Light Company shall file with the Commission a plan of divestiture, together with a proposal for addressing its continuing obligation to serve under the rate cap.

b. Pursuant to Commission direction, all interested parties shall have an opportunity to respond to either or both proposals.

c. Commencing January 1, 1999, Duquesne Light Company is permitted to collect an interim competitive transition charge from customers applying the same rates and credits approved in the pilot program for customers electing direct access during this interim period.

d. Using market values produced by the auction, Duquesne Light Company shall calculate a competitive transition charge to recover any remaining stranded costs until December 31, 2005 by adopting the general approach used in the Application of PECO Energy Company at Docket No. P-00973953 (Opinion and Order entered December 23, 1997) and as consistent with the determinations and findings herein.

e. Duquesne Light Company shall submit a proposal to address its continuing obligation to serve at the same time that it files a final competitive transition charge calculation, using market values produced by the auction.

f. The competitive transition charge may be collected from January 1, 1999 until December 31, 2005 or for a shorter period of time as the Commission deems appropriate.

5. That in the event a merger is approved and consummated and consistent with the determinations and findings herein, Duquesne Light Company is permitted to recover, through the application of a competitive transition charge to customers' bills, the amount of stranded costs, subject to its compliance filing.

6. That the competitive transition charge authorized in the preceding ordering paragraph is subject to the following requirements:

a. The competitive transition charge may be collected from January 1, 1999 *until* December 31, 2005.

b. The competitive transition charge shall be calculated and applied consistent with the directives contained herein.

c. The competitive transition charge shall be reconciled and may be modified on an annual basis as required by 66 Pa. C.S. §2808(f).

d. Any reconciliation and modification of the competitive transition charge shall be done on a customer class basis.

e. The competitive transition charge shall be calculated in a manner recognizing monthly receipt of competitive transition charges revenues.

7. That Duquesne Light Company shall modify its transmission and distribution revenue requirement and rate structure to incorporate the adjustments, including cost allocation method, as directed herein.

8. That Duquesne Light Company continue to provide service to existing customers through existing tariffs throughout the transition period, and all special contracts shall remain in force, except as modified herein.

9. That Duquesne Light Company comply with the determinations contained herein relating to customer billing and metering and that Duquesne Light Company reflect this action in its compliance filing.

10. That, pending the outcome of the Commission's rulemaking proceeding on a generic Code of Conduct, Duquesne Light Company shall modify its proposed Code of Conduct as herein directed.

11. That Duquesne Light Company's proposed Universal Service and Energy Conservation Programs are approved as modified herein.

12. That Duquesne Light Company participate in the state-wide consumer education initiative, which the Commission established in its decision in the Application of PECO Energy Company at Docket No. P-00973953 (Opinion and Order entered December 23, 1997); that in its compliance filing, Duquesne Light Company include a comprehensive plan for consumer education with an associated budget for both mass media and local educational efforts and set forth its proposals for its role in consumer education; and that Duquesne Light Company recover the costs of its consumer education program from its ratepayers.

13. That Duquesne Light Company shall, within twenty (20) days of entry of the Commission's final Opinion and Order at this docket, submit a compliance filing that incorporates all of the conclusions and directives contained in this Recommended Decision, including, but not limited to:

a. For each tariff class or schedule, the compliance filing shall:

i. Identify the unbundled charges for generation, transmission and distribution service;

ii. In the event the aforesaid merger is not approved by this Commission, identify the competitive transition charge, calculated to recover the authorized principal amount, consistent with the allocation methodology, collection period, monthly amortization, total sales, and return adopted herein;

iii. In the event the aforesaid merger is not approved by this Commission, identify the competitive transition charge, calculated as the difference between the average rate for that tariff class or schedule in effect on January 1, 1997 and the sum of the transmission and distribution and competitive generation credit rates for that tariff class or schedule; and

iv. Identify all other adjustments necessary to the terms and conditions of service to reflect a competitive generation market as provided herein.

b. Each tariff class or schedule shall reallocate Administrative and General expense to production, as provided herein without including a separate return component for capitalized items.

c. A new supplier tariff providing procedures for competitive generation supply consistent with this Recommended Decision.

14. That Duquesne Light Company serve a copy of its compliance filing on all parties to this proceeding on the same date that it is filed with the Commission.

15. That all parties to this proceeding may file written comments concerning non-compliance with the Commission's Opinion and Order within seven (7) days after the filing of Duquesne Light Company's compliance filing.

16. That, in addition to the specific requirements contained in the foregoing ordering paragraphs, Duquesne Light Company shall comply with all other directives contained in this Recommended Decision.

17. That the complaints filed by the Office of Consumer Advocate (at Docket No. R-00974104C0001), the City of Pittsburgh (at Docket No. R-00974104C0002), the Community Action Association of Pennsylvania (at Docket No. R-00974104C0003), the Duquesne Industrial Intervenors (at Docket No. R-00974104C0004), the Low Income Advocate Parties, the Environmentalists, and the Pittsburgh Chapter of the NAACP at this docket are granted or denied to the extent set forth in this Recommended Decision.

18. That the complaint of David Hughes v. Duquene Light Company, filed with the Commission at Docket No. C-00945953, is hereby denied.

Dated: March 18, 1998

JOHN H. CORBETT, JR.
Administrative Law Judge

END