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September 15, 2014

BY FED EX AND EFILING

Rosemary Ciavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P. O. Box 3265
Harrisburg, PA 17105-3265

**Re: *Petition of Duquesne Light Company
For a Default Service Plan for the Period June 1, 2015 through May 31,
2017 - Docket No.P-2014-2418242***

Dear Ms. Ciavetta:

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

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

Sincerely,



Brian R. Greene

BRG/wcd
Enclosures

c: Honorable Katrina L. Dunderdale
Service List (see Certificate of Service)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company
for approval of Default Service Plan for * P-2014-2418242
the Period June 1, 2015 through May *
31, 2017 *

CERTIFICATE OF SERVICE

I certify that true and correct copies of the *Initial Brief on Behalf of the Retail Energy Supply Association to Duquesne Light Company, Set 1*, have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Dated: September 15, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
Approval of Default Service Plan for the : Docket No. P-2014-2418242
Period June 1, 2015 through May 31, 2017 :

**INITIAL BRIEF OF
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Retail Energy Supply Association (“RESA”)¹ presents this initial post-hearing brief for the Administrative Law Judge’s (“ALJ’s”) consideration of the remaining, unsettled issues in this case.

On April 24, 2014, Duquesne filed its petition (“Petition”) to establish the terms and conditions under which it will procure default service supplies and provide default service to non-shopping customers for the period of June 1, 2015 through May 31, 2017 (“DSP VII”). Duquesne is an electric distribution company (“EDC”) and is currently the default service provider (“DSP”) in its respective service area. The Petition was assigned to Administrative Law Judge (“ALJ”) Katrina L. Dunderdale. On June 2, 2014, Judge Dunderdale convened a prehearing conference and RESA’s timely Petition for Intervention was granted. The active parties conducted discovery.

The evidentiary hearing commenced August 25, 2014 and ended that same day. In addition to RESA, the following parties submitted testimony on their behalf or otherwise participated in the hearings: the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); Exelon Generation Company, LLC (“Exelon”); NextEra Energy Power Marketing LLC (“NextEra”); Citizen’s For Pennsylvania’s Future (“Penn Future”). The following testimony on behalf of RESA submitted by Richard J. Hudson, Jr. was also admitted into the record: RESA St. 1, RESA St. 1-R and RESA St. 1-SR.

Since the conclusion of the hearing, the parties have resolved numerous issues in this proceeding and will present a partial settlement agreement for the Commission’s consideration. The parties have

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

agreed to continue litigating the remaining issues, which are the focus of this brief, and which include the appropriate procurement portfolios for Duquesne's non-residential default service customer classes, and the appropriate cost responsibility and methodology for recovering transmission-related charges.

In evaluating the proposals offered by Duquesne and the other parties, the Commission is required to approve a default service plan that complies with the Electricity Generation Customer Choice and Competition Act (the "Competition Act") and, particularly for this plan period, the directives set forth by the Commission in its *End State Order*.²

As discussed further below, Duquesne's proposals on the unsettled issues do not satisfy the above-referenced requirements relating to default service. RESA presented recommendations that, if adopted, would cure the deficiencies in Duquesne's proposals. As an example, Duquesne's proposed procurement plans for each class of non-residential customers fail to meet the legal standards set forth above, to wit:

- Duquesne's proposal for small commercial and industrial customers ("Small C&I") represents a step backwards in terms of market reflective pricing and transitioning customers towards quarterly default service contracts pursuant to the *End State Order*, and RESA has presented a modified procurement schedule for Small C&I customers to bring this portfolio in line with the Competition Act and the *End State Order*;
- Duquesne's proposal for transitioning medium commercial and industrial customers ("Medium C&I") does not transition Medium C&I customers to hourly priced products as clearly expressed in the *End State Order*. Rather, Duquesne proposes to serve Medium C&I customers between 100 kW and 300 kW via quarterly default service contracts even though Duquesne has installed interval meters for these customers and the *End State Order* favors hourly pricing down to 100 kW; and
- Duquesne proposes to continue providing hourly service to its large commercial and industrial ("Large C&I") customers even though the *End State Order* favors bidding out that service to a willing supplier.

² *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952, Final Order entered February 15, 2013 ("*End State Order*").

Another unsettled issue involves cost responsibility and the methodology for recovering Network Integration Transmission Service, Regional Transmission Expansion Plan, Generation Deactivation, Unaccounted for Energy, and other non-market based charges. As explained below, RESA recommends transferring cost responsibility for these charges from EGSs to Duquesne, who would assume these cost obligations on behalf of all load on its system, including default service load and shopping load. Duquesne would then recover these costs from all distribution customers through a non-bypassable charge. These costs are not market based, can be unpredictable, and cannot be hedged. For the reasons set forth below, the proper, reasonable solution is to transfer these costs to Duquesne and allow Duquesne cost recovery from all distribution customers.

For these and all the reasons explained further below, RESA submits that the record in this proceeding does not support adoption of Duquesne's proposed default service procurement plans for its non-residential customers, and cost responsibility for non-market based charges. Duquesne's proposals are not consistent with Competition Act or the Commission's articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the competitive market. RESA urges the adoption of its various recommendations herein to address these concerns.

II. SUMMARY OF ARGUMENT

Adopting all of RESA's positions and proposed modifications will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and (c) best transitions the Duquesne market to the 2015 end-state recently articulated by the Commission, designed to move towards the development of a properly functioning and workable competitive retail electric market in Duquesne's service territory.

RESA recommends the following changes to Duquesne's proposed default service procurement plan for non-residential customers:

Small C&I Procurement Portfolio

- Revise to include a blend of 12-month, 6-month, and 3-month full requirements contracts; and
- In doing so, eliminate the “overhang” contract that extends beyond the end of the DSP VII plan period.

Medium C&I Procurement Portfolio

- Move customers between 100 kW and 300 kW – all of whom have interval meters – into the Large C&I procurement group which relies on hourly priced default service; and
- Replace 6-month contracts with 100% quarterly full requirements products for customers without interval meters between 25 kW and 100 kW.

Large C&I Procurement Portfolio

- Require Duquesne to bid out the hourly priced default service as opposed to continuing to provide the hourly service itself.

Transmission Service and Other Related Charges

- Create a non-bypassable charge for a variety of transmission related charges to ensure optimum price transparency and accuracy.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden Of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.³ It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁴ A preponderance

³ 66 Pa. C.S. § 332(a).

⁴ *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2301664, Opinion and Order at 9 (Jan. 25, 2013) (“*DSP VI Order*”) (citing *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990)).

of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.⁵ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁶ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁷

Duquesne has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

2. Standards Applicable to Default Service

The Competition Act addresses the requirements that Duquesne, as an EDC providing default service, must meet.⁸ The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a "prudent mix"⁹ of resources designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.¹⁰

The Competition Act also mandates that customers have direct access to a competitive retail generation market.¹¹ This is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity."¹² Thus, a

⁵ *DSP VI Order* at 9 (citing *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950)).

⁶ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

⁷ *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁸ See 66 Pa. C.S. § 2807(e).

⁹ 66 Pa. C.S. § 2807(e)(3.2).

¹⁰ 66 Pa. C.S. §§ 2807(e)(3.1).

¹¹ 66 Pa. C.S. § 2802(3).

¹² 66 Pa. C.S. § 2802(5). See *Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

fundamental policy underlying the Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.¹³

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

As stated above, the parties have agreed to a partial settlement of certain issues in this proceeding, one of which is the residential procurement plan. RESA intends to submit a brief in support of the partial settlement.

2. Small C&I Procurement Issues

Duquesne proposes to procure default service load for Small C&I customers through the use of 12-month, laddered contracts. Each procurement would procure 50% of the load for these customers. This is virtually the same portfolio in effect during the current DSP VI, with one exception described below, and should be rejected in favor of RESA's recommended procurement portfolio for this class.

The proposed DSP VII procurement plan represents a step backwards in terms of market responsiveness for Small C&I default service customers.¹⁴ First, the proposed DSP VII plan would transition Small C&I customers to 12-month procurement contracts exclusively by December 2015, whereas DSP VI included a six-month contract at the end of the plan period. In other words, the DSP VI and DSP VII Small C&I plans are the same except that DSP VII would replace a six-month contract with a 12-month contract. That is a step in the wrong direction for market reflective default service rates. For its part, Duquesne admits that the proposed Small C&I plan for DSP VII "is a continuation of the 12-month laddered contracts started in DSP-VI, and is essentially the same as the Company's" DSP-VI plan, and that there is "little difference" between the plans.¹⁵

¹³ 66 Pa. C.S. § 2802(5).

¹⁴ RESA Statement 1-R at 6.

¹⁵ Duquesne Statement No. 3-SR at 29.

Second, Duquesne's proposed 12-month contracts would continue to be laddered products, with the PTC being an average of the newly acquired product (50% of the supply) and the existing 50% supply product. As a result, the PTC will not fully reflect underlying wholesale market prices at any point in time.¹⁶

Rather than accept this step backwards or, at best, status quo procurement proposal, RESA recommends that Duquesne procure its Small C&I default service load through a blend of 12-month, 6-month, and 3-month full requirements contracts.¹⁷ RESA would replace one of Duquesne's proposed 12-month contracts with two 6-month products. RESA would replace a second 12-month contract – which currently extends into the next plan period by six months – with two 3-month contracts. RESA's proposed changes would: (1) increase the market responsiveness of the underlying supply mix, which better supports sustainable retail competition; (2) provide Small C&I default service customers with more accurate price signals that will better facilitate customer investment in energy efficiency and demand response; and (3) allow EGSs to continue to invest in the Pennsylvania market to bring a myriad of value-added products and services to customers in the Duquesne service territory.¹⁸ RESA's proposed 3-month contracts would comprise 50% of the procurement load beginning in November 2016 and would assist in paving the way for shorter-term procurements, including quarterly procurements as envisioned in the *End State Order*, in the next plan period.

Duquesne and OSBA oppose RESA's Small C&I proposal, contending that a portfolio with 50% quarterly contracts is not consistent with the Competition Act and would result in excessive price volatility.¹⁹ These arguments do not provide valid justification for rejecting RESA's recommendation for Small C&I customers.

¹⁶ RESA Statement 1-R at 6.

¹⁷ RESA Statement 1-R, Exhibit RJH-6.

¹⁸ RESA Statement No. 1 at 15-16.

¹⁹ OSBA Statement No. 2 at 3.

a. RESA's proposal is consistent with the Competition Act.

In interpreting the Competition Act, the Commission has entered various orders establishing its policies. Generally, all of these orders require EDCs to utilize a competitive procurement process designed to obtain a prudent mix of long-term, short-term and spot market supply contracts with the goal of providing the least cost to customers over time. While the Commission has indicated that there may be a benefit to default service customers of having a default service rate, the Commission has also made clear that such concerns need to be balanced with ensuring that the risk of the default service rate becoming "inconsistent with competitive rates over an extended period of time."²⁰

The Commission's most recent broad policy pronouncement regarding the structure of default service was issued on February 15, 2013 in its *End State Order*. There, the Commission addressed many issues related to default service procurement plans and clearly articulated its preferred policy approach on these issues. It addressed these issues after reaching the "inescapable conclusion that Pennsylvania's current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed" the Competition Act.²¹ With respect to Small C&I procurements, the Commission indicated a preference for quarterly contracts but was concerned that statutory changes "may" be required to employ quarterly contracts. Absent statutory changes, the Commission ruled that, "we will consider an alternative shorter-term product that is more reflective of market conditions than the currently-offered default service products."²² Thus, Duquesne's proposal for Small C&I procurements to include solely 12-month contracts, which is a step backwards from the current procurement plan in terms of market responsiveness, is inconsistent with the

²⁰ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-20122-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered August 16, 2012 at 25. ("FE DSP II Order").

²¹ *End State Order* at 11 (citation omitted).

²² *End State Order* at 51; RESA St. No. 1-SR at 11.

Commission's desires expressed in the *End State Order*. RESA's proposal is "more reflective of market conditions" than the current DSP VI plan and reasonably transitions Small C&I customers towards the Commission's desired end state but does not rely upon the exclusive use of quarterly procurement contracts.

Duquesne and OSBA also contend that RESA's proposal to transition towards quarterly contracts is inconsistent with the Competition Act and/or cannot be approved without legislative changes.²³ They also claim that the Commission, in its *End State Order*, conditioned this movement to shorter term contracts on receiving legislative changes. That view is incorrect given the Commission's clear directive, quoted above, that absent legislative changes it will consider portfolios that are more market reflective than the currently-offered default service products. That said, 3-month contracts are not illegal or otherwise inconsistent with the Competition Act. Nothing in either the text or the spirit of the Competition Act precludes reliance on 3-month contracts. Reliance on 3-month contracts is entirely consistent with existing statutory default service standards.²⁴ Two examples support this point.

First, for the large commercial and industrial class for every major Pennsylvania EDC, the Commission has found that *hourly* pricing (essentially a 100% spot market based portfolio) meets the prudent mix standard. Second, for Pike County Power & Light, the Commission has found a 100% spot market procurement plan to be consistent with the prudent mix standard.²⁵ That decision was upheld by the Appellate Courts. If the Commission did not have the statutory authority to implement such a plan, then it would not have survived appellate review. Also of significance is the fact that the appellate decision regarding Pike County Power & Light was issued on December 31, 2013 – approximately ten

²³ Duquesne St. No. R-3 at 10-11; OSBA St. No. 3 at 1-2.

²⁴ RESA St. No. 1 at 14-15.

²⁵ *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff'd Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71A.3d1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

months after the Commission entered its *End State Order*. Therefore, even if at the time of the *End State Order* the Commission was viewing legislative changes as a necessary component (RESA does not concede this point), the Commonwealth Court’s approval of an exclusive spot market plan for Pike County Power & Light firmly resolved any such concerns. Simply put, if 100% spot market procurement plans are consistent with the existing statutory default service standards, then there is absolutely no basis to believe that a blend of 12-month, 6-month, and 3-month procurement contracts, as proposed by RESA, is unlawful or otherwise inconsistent with the existing statutory default service standards. This same argument holds true for RESA’s procurement recommendations for the other customer classes, including expanding hourly pricing for Medium C&I customers above 100 kW as discussed further below.

b. Arguments regarding excessive price volatility are overstated.

The concerns over volatility are overreaching and place too much emphasis on just one component of pricing – its ability to change. Price volatility can be managed even with quarterly procurements as 3-months is longer than a typical “spike” event (such as the Polar Vortex). In fact, Chairman Powelson and Vice Chairman Coleman made clear at the time of the *End State Order* that they believed the 3-month default service product would “likely *decrease* the volatility felt by customers.”²⁶ Quarterly reconciliation also helps to offset the impact of price variations and helps ensure that there is a market responsive default service product. As such, the addition of 3-month contracts still results in a relatively stable platform for the PTC²⁷ and is still a “prudent mix” within the meaning of the Competition Act.

²⁶ *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Joint Statement of Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr. (Feb. 14, 2013)(emphasis in original)(“*Joint Statement*”).

²⁷ Relying on products longer than three months in duration does nothing to mitigate the risk of adverse price impacts from purchases made in unfavorable market conditions, but the over-reliance on longer-term contracts does increase the risk premiums embedded in the bid price by the wholesale default supplier.

Nonetheless, Duquesne and OSBA claim that 3-month contracts would create too much price instability and reject any attempt to incorporate such contracts into the portfolio. Specifically, Duquesne Witness Fisher purports to show that residential customers would experience “increased rate instability” if Duquesne were to adopt a portfolio with product term lengths similar to RESA’s recommendation.²⁸ Such testimony misses the point. It merely shows that RESA’s proposal would permit the underlying commodity price to move up or down on a quarterly basis consistent with the market price.²⁹ In contrast, Duquesne’s proposed reliance on laddered 12-month contracts would not permit the underlying commodity price to change quarterly consistent with the market price. Duquesne’s proposal would only permit the underlying changes in the commodity price to be reflected in the PTC nearly half as often as RESA’s proposal to reflect prices that are market-responsive on a more real time basis. It follows, then, that Duquesne’s proposal will do nothing more than insulate Small C&I consumers from market conditions and rates that are market responsive – a result inconsistent with the express directives of the Commission. While RESA does not necessarily dispute that some customers may value price stability – even if that stable price is higher than the market price – the role of default service is not to provide that one particular product type. In fact, Chairman Powelson and Vice Chairman Coleman specifically addressed concerns over price volatility resulting from the use of 3-month contracts and concluded:

. . . transitioning customers that remain on default service to a more market-based pricing will not harm those customers. Further, customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price product.³⁰

Rather than continuing to get mired in this already settled debate, the Commission should stay the course in ensuring that the default service plan is reasonably calculated to produce a market-

²⁸ See, e.g., Duquesne St. No. 3-R at 13-15.

²⁹ RESA St. No. 1-R at 7-8.

³⁰ *Joint Statement* at 4. Duquesne Witness Fisher acknowledges that customers can manage price volatility by contracting with EGSs for fixed-price contracts. Duquesne St. No. 3-RJ at 16-17.

reflective rate to encourage competitors to enter the market, prevent opportunities for “boom/bust” cycles, and provide a variety of products and services (including a higher priced, but stable product). This will allow Small C&I consumers to identify which product best meets their desires.³¹

The fundamental policy question being raised by Duquesne and OSBA is how “fixed” should the default service price be for Small C&I customers. The Commission has answered this question.³² The Commission has expressed on several occasions its concern with relying too heavily on longer term products. The Commission has recognized the negative impacts on the retail market when default service prices become divorced from current market prices, and the potential for such a situation to result in a “boom” or “bust” business cycle.³³ Yet, Duquesne in particular dedicates significant testimony in this case in apparent disregard for the Commission’s prior decisions. The Commission has rightfully recommended a progression to a more market responsive default service product – namely, transition to 100% quarterly contracts – and RESA is the only party in this proceeding that has proposed a Small C&I portfolio that will transition to the Commission’s recommended portfolio.

Duquesne points to the Polar Vortex to bolster its argument that RESA’s proposal for 50% 3-month contracts by 2017 would result in default service rates that are too volatile. Not only is Duquesne’s testimony on this point incorrect, but even if true, it is reason to use shorter term contracts and not longer term contracts.

RESA does not dispute that wholesale electricity markets exhibit price volatility. However, this does not mean that shorter term, full requirements fixed price contracts, such as the 3-month and 6-month contracts that RESA recommends, will translate into the same level of price volatility to customers remaining on default service. The price volatility experienced during the Polar Vortex

³¹ RESA St. No. 1 at 9-10, 15-16.

³² *End State Order* at 23-24.

³³ *Id.* at 14-15.

primarily manifested in significant increases in spot market energy prices (LMPs) and related ancillary services in the PJM administered markets. RESA is not recommending spot market pricing for Small C&I customers, nor is RESA recommending 100% 3-month, full requirements contracts for these customers. RESA is not even recommending that the PTC initially be adjusted quarterly as RESA recommended in Duquesne’s prior DSP proceeding, in which the Commission concluded that RESA’s proposal was moving too quickly towards quarterly pricing.³⁴

Here, RESA is recommending including some 3- and 6-month fixed price contracts in the portfolio. One can look to the experience with such shorter term contracts in Maryland under their Type II standard offer service (“SOS”) structure to see that such contracts have not resulted in the type of extreme price volatility that Duquesne witness Mr. Fisher implies with his references to the Polar Vortex events (or, for that matter, with his references to hypothetical contracts procured absent competitive bidding³⁵). For example, the recent Type II price changes for Baltimore Gas and Electric Company (“BGE”) are shown below.³⁶ Although the 3-month contracts for the March to May 2014 period *were procured in the very middle of the Polar Vortex*, the resulting price change (11.3%) compared to the immediately previous pricing period was relatively modest given the extremely anomalous market conditions occurring at the time.

Recent price changes for BGE’s Schedule G Type II SOS customers			
December 2013 to February 2014 (procured on October 28, 2013)	March 2014 to May 2014 (procured on January 27, 2014)	June 2014 to August 2014 (procured on April 21, 2014)	September 2014 to November 2014 (procured on June 9, 2014)
8.554 cents/kWh	9.523 cents/kWh	9.618 cents/kWh	7.968 cents/kWh

³⁴ *DSP VI Order* at 51, 58. Under RESA’s proposal in the present case, the initial quarterly PTC change would occur at the end of February, 2017 (after a PTC change at the end of November 2016). *See* RESA St. No. 1-R, Exhibit RJH-6

³⁵ Duquesne St. No. 3-SR at 13-15.

³⁶ The chart is taken from RESA St. No. 1-SR at 9.

Thus, Duquesne's and OSBA's argument that 3-month contracts add an unacceptable level of price volatility to the default service rate, which the Commission has already rejected anyway, has not been proven in this proceeding.

Also, Duquesne's concern about the Polar Vortex, and similar market disrupting events that may occur in the future, supports the use of more market responsive contracts as RESA recommends.³⁷ Longer term contracts procured during or soon after extreme market conditions will lock in the resulting higher market prices for a longer period of time with longer lasting impacts to customers. One can never predict when a disruptive event will occur, so regardless of when a solicitation event is scheduled, there is some risk that it may occur during a period of unusual market conditions. However, a shorter term contract will allow prices to moderate as market conditions normalize. As shown in the table above, although the Type II Maryland SOS prices did increase during the March 2014 to May 2014 period, there was a fairly significant decrease for the most recent pricing period with prices dropping 17 percent.³⁸

For all these reasons, RESA's proposed procurement plan changes for Small C&I customers are consistent with the Competition Act, the Commission's clear directives in the *End State Order*, and should be adopted.

3. Medium C&I Procurement Issues

Duquesne proposes that Medium C&I default service load be procured through 100% full requirements 90-day wholesale supply contracts, without laddering.³⁹ As explained below, RESA supports this procurement portfolio for those Medium C&I customers between 25 kW and 100 kW peak demands. RESA recommends that customers above 100 kW, up to the Medium C&I ceiling of 300 kW,

³⁷ RESA St. No. 1-SR at 9-10.

³⁸ RESA St. No. 1-SR at 10.

³⁹ Duquesne St. No. 3 at 13; RESA St. No. 1 at 16.

all of whom have fully-deployed interval meters, be incorporated into the Large C&I class and receive hourly default service pricing.⁴⁰

OSBA opposes quarterly pricing for any Medium C&I customer and also opposes RESA's recommendation for hourly pricing for those customers exceeding 100 kW. OSBA would have Duquesne continue serving all Medium C&I default service load through 6-month full requirements contracts, just as it does today, with no further advancement in market reflective default service rates. In rebuttal testimony, Duquesne stated it does not object to keeping the current structure as OSBA proposes, based in large part on OSBA Witness Kalcic's testimony that "while Medium C&I customers tend to be very sophisticated about the market, it does not remove their desire to avoid unnecessarily volatile rates."⁴¹ For the following reasons, RESA's recommendations should be accepted.

- a) **Load for Medium C&I default service customers without interval meters – in this case, between 25 kW and 100 kW – should be procured through 100% quarterly full requirement contracts.**

Duquesne and OSBA argue that the Medium C&I group, consisting of fairly large customers that are sophisticated when it comes to energy markets, should continue to have default service pricing that shields such customers from price volatility.⁴² For the reasons explained above regarding quarterly contracts for Small C&I customers, procuring 100% quarterly contracts for Medium C&I customers without interval meters is consistent with the Competition Act and the stated policy direction of the Commission set forth in the *End State Order*.⁴³ It is also a reasonable procurement plan to transition these customers to an hourly pricing default service model when they have interval meters. Rather than focus on the transitional procurement plan for these customers, focus should be on moving them to the hourly priced procurement class as soon as possible because doing so is a more appropriate default

⁴⁰ RESA St. No. 1-R at 7 and RESA Exhibit RJH-7.

⁴¹ Duquesne St. No. R-2 at 8.

⁴² See, e.g., Duquesne St. No. R-2 at 8, and OSBA St. No. 1 at 4-5.

⁴³ *End State Order* at 29-30.

structure for them as they are more aligned with large commercial customers (who are significantly shopping now) than the mass market. As RESA Witness Hudson testified:

Hourly pricing is a more sustainable default service design because it avoids the “boom” or “bust” business cycle that can result in periods of time where retail competition is stifled because longer term fixed price, utility-provided default service fails to reflect current market conditions. Hourly pricing also benefits customers and achieves broader public policy goals by providing more accurate price signals that can better encourage energy conservation and demand response.⁴⁴

Finally, for these customers without interval meters, the next logical step is quarterly priced default service. Not only is that outcome consistent with the *End State Order*, but it is also consistent with the *DSP VI Order*, in which the Commission approved the current 6-month contracts because they represented “a more market responsive DSP plan than that which currently is in place.”⁴⁵ Here, quarterly contracts for customers without interval meters is a more market responsive default service plan than the current 6-month contracts. Also in the *DSP VI Order*, the Commission rejected RESA’s proposed quarterly contracts as “premature.” RESA’s proposal is no longer premature for Medium C&I customers without interval meters.

b) Medium C&I customers with interval meters should be incorporated into the Large C&I class and receive hourly priced default service.

In the *End State Order*, the Commission directed that “in the next round of default service plans that begin on June 1, 2015, we expect that EDCs will offer only hourly LMP to medium and large C&I customers with interval meters.”⁴⁶ The Commission also directed that EDCs continue to move these customers to the hourly pricing group “as interval meters are deployed.”⁴⁷ Duquesne does not even attempt to adhere to this directive and instead proposes quarterly contracts, but would agree to 6-month contracts, and also argues that it cannot accommodate RESA’s proposal to provide hourly priced default

⁴⁴ RESA St. No. 1 at 18-19.

⁴⁵ *DSP VI Order* at 67.

⁴⁶ *End State Order* at 29; RESA St. No. 1 at 18.

⁴⁷ *Id.* at 31-32.

service to customers with interval meters over 100 kW.⁴⁸ It appears from Duquesne’s surrebuttal testimony that Duquesne can handle the increase in hourly customers by implementing manual processes while it upgrades its billing system.⁴⁹ Duquesne argues that it would be too complicated and would increase costs to effectuate this change as RESA requests – even though interval meters for all customers in this group are already installed. OSBA appears to argue that RESA’s proposal for Medium C&I customers with interval meters would “effectively implement the Commission’s End State Order” even though, according to OSBA Witness Kalcic, the Commission in that same order concluded that legislative changes were a necessary precondition to such result.⁵⁰

i. Technical Deployment Issues

The total number of customers in the 100 kW to 299 kW groups is 1,702, all of whom have interval meters capable of recording hourly kWh.⁵¹ Duquesne states that it could provide hourly priced service to these customers beginning in June 2015 by manually performing certain billing functions until an automated billing information technology solution is developed.⁵² Notwithstanding this, Duquesne opposes moving Medium C&I customers at or above 100 kW to the Large C&I class procurement group during the DSP VII period and makes no commitment about when this movement might occur beyond the DSP VII period.

Duquesne’s arguments to delay the implementation of hourly pricing for the over-100 kW Medium C&I customers should be rejected. Duquesne should be directed to comply with the *End State Order* and implement hourly pricing for these customers by June 2015. Duquesne’s concerns about needing to develop the back office systems to support hourly pricing are not a sufficient reason to justify

⁴⁸ Duquesne St. No. 4-SR at 2-3.

⁴⁹ *Id.*

⁵⁰ OSBA St. No. 1 at 4-6.

⁵¹ RESA St. No. 1-R at 7 and Exhibit RJH-7.

⁵² *Id.*; Duquesne St. No. 4-SR at 2-3. Duquesne declines to give a timetable pursuant to which such a system could be developed, or the costs associated with its manual processes. *Id.*

the requested delay. Duquesne has had sufficient notice about this issue to make the necessary preparations as part of its advanced metering deployment plans. The Commission's *End State Order* directing EDCs to make this change was issued in February 2013. This order followed the Retail Markets Investigation process that began in 2011. Therefore, RESA supports directing Duquesne to implement this customer move effective June 1, 2015. Alternatively, and only as a clear second choice, RESA would support a phased-in approach that would require 200 kW-300 kW customers to shift to the Large C&I class by the end of 2015, with those greater than 100 kW but less than 200 kW receiving hourly priced default service by June 2016. In the interim, all Medium C&I default service load would be served using quarterly contracts.⁵³

ii. Arguments Regarding Legislative Changes

OSBA's claim that the Commission concluded in the *End State Order* that legislative changes were a necessary precondition to adopting 3-month contracts for Small C&I customers and moving Medium C&I customers into the hourly priced group is too narrowly focused. In the *End State Order*, the Commission makes clear its view that "spot market approaches in specific situations are appropriate" but that it would "prefer to pursue legislative amendments that clearly provide the authority."⁵⁴ Nothing in the *End State Order* prohibits the movement of Medium C&I customers to the hourly priced procurement group or requires awaiting legislative changes. Notably, as discussed above, following the *End State Order*, the Commission's decision to rely on a 100% spot market procurement plan for Pike County Power & Light was upheld by the Commonwealth Court with the Supreme Court declining to review.⁵⁵ Thus, the Commission's authority pursuant to the Competition Act – as it is written – to move

⁵³ RESA St. No. 1-SR at 12.

⁵⁴ *Id.* at 45 (emphasis added).

⁵⁵ *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff'd Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

medium commercial customers to the hourly priced procurement class (or to adopt 3-month contracts for smaller customers) is clear.

Additionally, even if one were to accept OSBA's legal argument, it should be noted that OSBA's preferred procurement plan for the Medium C&I class would not survive the OSBA's own legal standard. The OSBA's legal argument is that the Commission requires legislative authority to move to quarterly contracts for smaller customers or to move to hourly pricing for over-100 kW customers. The only theoretical rationale to support this view, however, is that the existing statutory standards require a "prudent mix" of contracts notwithstanding the fact that OSBA advocates for 100% six month contracts.⁵⁶ Similar to RESA's proposal, this OSBA preferred procurement plan uses 100% of a single product type. Consequently, the OSBA is attempting to have it both ways. If a procurement plan that relies on 100% 6-month contracts is consistent with statutory standard, then so too is a plan that relies on 100% quarterly contracts or 100% spot market supply. As explained previously, the Commission and the courts have determined that this "prudent mix" standard need not include every type of contract (spot market, short term and long term). Accordingly, OSBA's legal arguments must be rejected.

4. Large C&I Procurement Issues

Duquesne has not proposed any changes to the manner in which its Large C&I class receives its default service. Currently, Duquesne obtains default supply for Large C&I customers at day ahead spot prices. RESA supports hourly pricing for the Large C&I. However, RESA recommends two changes to the procurement plan for this group. First, the spot market service should be competitively bid out, which is how spot market service is procured for all of the other major Pennsylvania EDCs. Second, RESA recommends changes to the make-up of the hourly priced procurement group to incorporate those Medium C&I customers with interval meters, as discussed above.⁵⁷

⁵⁶ OSBA St. No. 1 at 6-7.

⁵⁷ RESA St. No. 1 at 19.

Hourly pricing has proven to be a successful way to promote sustainable retail competition. As Duquesne acknowledges, 96% of its Large C&I load has switched to an alternative supplier.⁵⁸

Moreover, the Commission prefers for EDCs to bid out the default hourly service. As the Commission noted in its *End State Order* with respect to the provision of hourly priced default service:

...the Commission prefers the model under which these services are auctioned to wholesale suppliers. Having the EDC providing these services and charging an administrative adder to large C&I customers entails a degree of involvement by the EDC that the Commission seeks to avoid with this group of customers in the robust competitive market we are seeking to promote.⁵⁹

Competitively bidding out the hourly priced service is the best way to ensure that the resulting rates are reflective of all of the costs and risk involved in providing default service to customers. Duquesne's existing model accurately tracks changes in wholesale market prices by passing through the day-ahead hourly LMP, capacity charges and ancillary services. However, other retail servicing costs are approximated through an administratively set adder of \$4.49/MWh. This is essentially a proxy figure that was established through prior DSP cases and is not based on actual costs or bid prices.⁶⁰ Competitively bidding out the hourly priced service would add a degree of objectivity to this retail adder. As noted by Duquesne Witness Fisher, competitively bidding out default service is an efficient way to procure default service supplies. Mr. Fisher notes that competitive solicitations are "...intended to rely on the skills of the most adept suppliers to achieve the least cost for customers."⁶¹ Although Mr. Fisher was presumably discussing Duquesne's proposed procurements for fixed priced, full requirements supply products, the same arguments hold true for the procurement of hourly priced supply for the Large C&I class.

⁵⁸ Duquesne St. No. R-3 at 39.

⁵⁹ *End State Order* at 30. In rendering this determination, the Commission specifically rejected the Industrials' argument that the EDCs should provide hourly default service. *Id.*

⁶⁰ RESA St. No. 1 at 20.

⁶¹ Duquesne St. No. 3 at 16.

Moreover, Duquesne's argument that it should continue providing hourly default service because it "has one of the best retail access programs in the country for Large C&I customers in terms of switching and only a small portion of load remains on default service,"⁶² even if true, is beside the point. Regardless of how successful the program or how significant the load, competitive forces should provide the service. Doing so is consistent with the Competition Act and will not impose significant costs upon customers because the product will be obtained via competitive bid to the lowest bidder.⁶³

5. Miscellaneous Procurement Issues

RESA is not aware of any miscellaneous procurement issues but reserves the right to reply to others' issues in its reply brief.

C. ALTERNATIVE ENERGY CREDIT PROCUREMENT ISSUES

RESA has no comments on this issue but reserves the right to reply to other parties' arguments in its reply brief.

D. STANDARD OFFER PROGRAM

Issues regarding the SOP have been resolved by the parties and will be included in a settlement to be filed with the Commission.

- 1. Continuation of the SOP**
- 2. SOP Collaborative**
- 3. Use of a Third-Party Vendor to Enroll SOP Customers**
- 4. SOP Scripting**
- 5. SOP Cost-Recovery**
- 6. SOP Analysis and Customer Surveys**
- 7. Miscellaneous SOP Issues**

⁶² Duquesne St. No. R-3 at 42.

⁶³ RESA St. No. 1-SR at 12-13.

E. RATE DESIGN

1. Default Service Cost Unbundling Issues

Issues regarding the default service cost unbundling have been resolved by the parties and will be included in a settlement to be filed with the Commission.

2. Non-Bypassable Charge To Recover PJM Charges

Duquesne does not propose any changes to its current treatment of various non-market based (“NMB”) charges. Currently, Duquesne assumes the cost responsibility on behalf of wholesale default service suppliers, and not for EGSs, for the following charges: (i) Network Integration Transmission Services, (ii) Transmission Expansion, and (iii) Generation Deactivation Charges.⁶⁴ Wholesale suppliers and EGSs assume responsibility for their own load for Unaccounted for Energy and historic out of market tie line and retail customer meter adjustments.⁶⁵ Under both scenarios, EGSs are required to assume the cost responsibility for these charges on their own behalf. The costs for these NMB Charges are recovered from all customers. Duquesne recovers its NMB Charges for its default service load through the default service rate (i.e. the Price-to-Compare). EGSs recover them from shopping customers through their retail prices.

RESA recommends that Duquesne be required to assume the cost responsibility for all of these charges on behalf of both the wholesale and default service suppliers and EGSs. Pursuant to RESA’s recommendation, all customers would continue to be responsible for cost recovery (as they are today) but the mechanism for recovery would be through a non-bypassable charge assessed to all customers.⁶⁶ As explained further below, RESA’s recommendation would reasonably and fairly spread the costs of

⁶⁴ RESA St. No. 1 at RESA Exhibit RJH-2; RESA St. No. 1-SR at RESA Exhibit RJH-9.

⁶⁵ *Id.*

⁶⁶ RESA St. No. 1 at 21-25.

NMB Charges to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC's facilities.

a. General Overview of the NMB Charges and Recommendations

The NMB Charges at issue in this proceeding include:

- Transmission Enhancement and Expansion Cost Recovery Charges (“TEC/ECRC,” sometimes also referred to a Regional Transmission Expansion Plan charges or “RTEP”);
- Generation Deactivation Charges (also referred to as Reliability Must Run Unit charges or “RMR”);
- Network Integration Transmission Services (“NITS”);
- Unaccounted For Energy (“UFE”); and,
- Historical out of market tie line and retail customer meter adjustments.⁶⁷

As stated above, RESA’s view is that Duquesne should be directed to assume the cost responsibility of NMB Charges for all load. TEC/ECRC, Generation Deactivation/RMR, NITS and UFE are all non-hedgeable wholesale cost obligations that all load serving entities are subject to in the wholesale market. These cost items are not market based because they are either fully regulated or quasi-regulated costs imposed at the wholesale level on all load serving entities. These costs are unpredictable and cannot be hedged by competitive retail suppliers or wholesale default service suppliers.⁶⁸

The deactivation of generating units in the PJM region is governed by Part V of the PJM Open Access Transmission Tariff (“PJM Tariff”).⁶⁹ The costs incurred by the generation owners are allocated to the load in the zone of the transmission owner that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact resulting from the deactivation.⁷⁰ The pace of deactivation and the financial impact for a specific zone are unpredictable and subject to change.⁷¹

⁶⁷ RESA Exhibit RJH-9 sets forth the specific cost components included in these charges.

⁶⁸ RESA St. No. 1 at 22-23.

⁶⁹ PJM Tariff, FERC Electric Tariff, Part V, Generator Deactivation.

⁷⁰ *Id.* at Section 120 Cost Allocation.

⁷¹ *Id.* at 23.

RTEP recovers the cost of transmission system additions and improvements identified by PJM to address transmission overloads, voltage limitations and other reliability standards violations. The historical transmission upgrades approved pursuant to this process for each transmission zone and the associated cost allocation to each zone has been significant. The total for these historical transmission upgrades was about \$26 billion across the entire PJM system and about \$474 million allocated for the Duquesne zone.⁷² Again, these costs must be paid by all load in a particular zone but, like the other charges, the actual costs are unpredictable and can be quite significant.

NITS costs are essentially fully regulated cost-of-service rates that are imposed on all Load Serving Entities (“LSEs”) based on each LSE’s share of load served. Accordingly, all customer load on an EDC’s system is allocated a share of transmission service costs based on the customer’s Network Service Peak Load Contribution.⁷³ Duquesne is required to recalculate the appropriate rate on an annual basis and submit the NITS rate to FERC as part of PJM’s Open Access Transmission Tariff.⁷⁴ The evidence showed that these costs can be significant and volatile each year. For example, PJM has information on its website that lists the historical transmission upgrades approved under the RTEP process for each transmission zone and the associated cost allocation to each zone. The total for these historical transmission upgrades is about \$26 billion across the entire PJM system with about \$474 million allocated for the Duquesne zone.⁷⁵ Additionally, an analysis of the NITS rate that went into effect June 1, 2014 shows the potential volatility in transmission costs. The following chart, submitted

⁷² RESA St. No. 1-SR at 24 (citing <http://www.pjm.com/planning/rtep-upgrades-status/cost-allocation-view.aspx>).

⁷³ *Id.* at 22.

⁷⁴ See PJM Open Access Transmission Tariff, Attachment H-7.

⁷⁵ RESA St. No. 1-SR at 23 (citing <http://www.pjm.com/planning/rtep-upgrades-status/cost-allocation-view.aspx>).

into evidence by RESA, showed the range of NITS increase for various PJM utilities for the NITS rates that went into effect June 1, 2014:⁷⁶

Zone	% Change	Old Rate (\$/MW-Yr)	New Rate	Diff
AP	0%	17,895	\$17,895	-
APPA	0%	17,895	\$17,895	-
BGE	12%	22,369	\$25,047	2,678.00
CNTIVNJ	12%	28,526	\$32,049	3,523.00
COMED	11%	21,732	\$24,025	2,293.00
DMVDE	29%	23,938	\$30,793	6,855.00
DMVMD	29%	23,938	\$30,793	6,855.00
JCO1	0%	15,112	\$15,112	-
METED	0%	15,112	\$15,112	-
PECO	0%	20,942	\$20,942	-
PENELEC	0%	15,112	\$15,112	-
PEPCODC	7%	23,265	\$24,949	1,684.00
PEPCOMD	7%	23,265	\$24,949	1,684.00
PPL	6%	36,688	\$38,729	2,041.00
PSEG	0%	70,697	\$70,697	-
DUQ	9%	35,781	\$39,053	3,272.00
RECO	0%	32,114	\$32,114	-
PENN	-15%	15,087	\$12,769	(2,317.92)
CSP	0%	32,035	\$32,035	(0.25)
OPCO	0%	32,035	\$32,035	(0.25)

As can be seen in the chart, nine of the 20 illustrative zones experienced increases in June 2014, some as high as 29%.⁷⁷ As another example, the NITS rate for the PPL zone increased by 52% from January 1, 2013 to June 1, 2013.⁷⁸ While Duquesne “only” increased by 9%, the potential volatility in NITS costs is evident.

Finally, UFE is the energy associated with losses, theft, inaccurate metering equipment and other factors that result in a quantity of MWh being unaccounted for via the normal load allocation process. This unaccounted for energy is allocated to all load serving entities based on each entity’s load ratio

⁷⁶ RESA St. No. 1-SR at 25.

⁷⁷ RESA St. No. 1-SR at 24-25 (citing <http://www.pjm.com/markets-and-operations/market-settlements/network-integration.aspx>).

⁷⁸ *Id.*

share. Transferring these cost obligations to the EDC and recovering them through a non-bypassable tariff charge would be reasonable and efficient.⁷⁹

b. RESA's approach resolves the existing inequitable treatment of the NMB Charges between default and competitive retail supply.

Requiring Duquesne to assume the cost responsibility for the NMB Charges for all load resolves the inequitable treatment of these charges that currently exist. Cost responsibility for the NMB Charges differs for wholesale suppliers and the EGSs (who take on their own cost responsibility). As explained above, Duquesne currently assumes the following cost obligations for wholesale default service suppliers only, and not for EGSs: (i) NITS, (ii) Transmission Expansion (RTEP), and (iii) Generation Deactivation Charges.⁸⁰ The difference between the two cost assignment approaches (i.e. Duquesne taking on the NMB Charges for wholesale default service suppliers versus Duquesne assuming the responsibility for all load) has a direct impact on consumers and the ability of the competitive market to develop comparable pricing offers.

The difference is that allowing Duquesne to assume the cost responsibility for only wholesale default service suppliers (versus for all load) unfairly shifts a competitive advantage to Duquesne's default service. This is because when Duquesne assumes responsibility on behalf of the wholesale default service suppliers, the wholesale default service suppliers no longer need to factor in the risk of future price increases in the NMB Charges into the bids for default service supply. Therefore, the resultant bid price (which forms the final default service rate charged) does not account for the risk of cost increases for NMB Charges. Instead, Duquesne will simply pass on the actual costs to default service customers at the currently applicable level. If this structure is allowed to persist, EGSs will

⁷⁹ RESA St. No. 1 at 22-23.

⁸⁰ RESA St. No. 1-SR at 22. It is important to note that this disparity does not exist in any of the FirstEnergy EDC territories (because FirstEnergy does not assume the responsibility for only wholesale suppliers for any of the NMB Charges).

continue to be required to embed the costs of NMB Charges in their competitive prices. Duquesne's default service rate includes the current transmission rate but not any additional amount to account for the risk of future price increases to the NMB Charges. Duquesne does not need to include this additional cost factor because it is permitted to pass through the customers the actual future rates.

On the other hand, the retail price offered by EGSs must account for the current transmission rate and take into consideration how to factor into their retail pricing the risk for potential future rate increases in the NMB Charges. The result is that shopping customers may be required to pay more if an EGS chooses to embed the risk premium into its pricing. This disparity (i.e. default service customers only pay the actual costs of the NMB Charges while shopping customers pay actual costs plus an EGS' specific calculation to account for potential future price increases in NMB Charges) is a bad result for customers.

Moreover, the Commission's determinations in the *Fixed Price Label Order* have curtailed EGSs' abilities to adjust to cost changes through special contract terms with their customers, as the Commission now effectively requires EGSs to cancel contracts with mass market customers to address any changes in unpredictable charges.⁸¹ Further – because of default service reconciliation – price changes in NMB Charges are directly passed on to default service customers. The same is not true for shopping customers because the Commission's *Fixed Price Label Order* also does not permit EGSs to offer fixed price products (defined as a product with a contract term longer than three billing cycles) to mass market customers with pass through provisions. Therefore, the product offered by the default service rate (a fixed price for a period of time that can be adjusted through default service reconciliation

⁸¹ See, e.g., *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 ("*Fixed Price Label Order*"); *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, Final Order entered April 3, 2014.

to adjust for increases to NMB Charges) is not the equivalent of a fixed price product that an EGS is permitted to offer customers per Commission's directives (an EGS cannot offer a fixed price product that is subsequently adjusted for increases to NMB Charges). For all these reasons, a competitive disadvantage results because the EDC is using the tools available to it (right of full cost recovery and default service reconciliation) only for the benefit of default service customers while denying shopping customers the same opportunity. If the EDC were to assume the cost responsibility for all load (wholesale default service suppliers and EGSs), this issue could be reasonably addressed.

Thus, the only fair and equitable approach is for Duquesne to assume the costs of the NMB Charges on behalf of wholesale default service suppliers and EGSs instead of the current inequitable approach where Duquesne only assumes the cost responsibility for the wholesale default service suppliers. This approach would eliminate the need for either wholesale suppliers or EGSs to include risk premiums to account for the risk of future changes in these cost components.⁸² As such, RESA's recommendation reasonably and fairly spreads the actual costs of the NMB Charges and nothing more to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC's facilities. Thus, adopting RESA's recommendation ensures that all customers pay only the actual costs of the NMB Charges since no entity (either the wholesale default service suppliers or the EGSs) need to embed any risk premium into their retail pricing.

c. RESA's recommended approach is consistent with the Competition Act and recent Commission precedent.

The Commission adopted an order on May 24, 2014 regarding FirstEnergy's DSP III plan which approved a settlement of many of these NMB Charges and issued a decision regarding the treatment of NITS (which the parties agreed to reserve for litigation as part of the Joint Petition for Settlement).⁸³

⁸² RESA St. No. 1 at 24-25; RESA St. No. 1-SR at 27-28.

⁸³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-

The *FE DSP III Order* makes clear that requiring Duquesne to assume the cost responsibility for NMB Charges for all load and recovering the costs through a non-bypassable charge is consistent with the Competition Act, the Public Utility Code or the Commission's regulations.⁸⁴ While the Commission decided not to go in this direction for NITS, it did adopt the parties' settlement to require the EDCs to assume the cost responsibility for all load for Generation Deactivation Charges, UFE, and historic out of market tie-line, generation and retail meter adjustments.⁸⁵ As such, there is no legal bar to adopting RESA's preferred approach for all NMB Charges.⁸⁶ In essence, the Commission has approved RESA's preferred cost assignment approach for all charges but for NITS in the *FE DSP III Order*.⁸⁷

Further, the Commission recognized in its Guidelines for Use of Fixed Price Labels proceeding and its more recent rulemaking to revise EGS disclosure requirements concerns about how EGSs attempt to recover these costs from customers.⁸⁸ Importantly, in the Commission's *Fixed Price Label Order*, the Commission prohibited suppliers from exercising regulatory change provisions in order to pass through certain wholesale cost changes to residential and small business customers on fixed price products. Rather, if an EGS is faced with one of these unpredictable price increases for the NMB

2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 ("*FE DSP III Order*").

⁸⁴ *FE DSP III Order* at 38.

⁸⁵ RESA St. No. 1-SR at 21.

⁸⁶ Additionally, in the *FE DSP III Order* the Commission noted that even though it was rejecting requiring the EDCs to assume the cost responsibility for all load consistent with its determination in the prior *FE DSP II Order*, it made clear that the *FE DSP III Order* was based on the record in that proceeding and not because the Commission was constrained by the doctrine of issue preclusion. *FE DSP III Order* at 53.

⁸⁷ Some of the NMB Charges for FirstEnergy were shifted during the FirstEnergy DSP II proceeding. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered December 20, 2012 at 10-11. The current status of each of the NMB Charges as well as RESA's recommended outcome can be found in RESA St. No. 1-SR, Exhibit RJH-9. References in the table to Duquesne's "DSP III" should reference Duquesne's "DSP VII."

⁸⁸ See, e.g., *Fixed Price Label Order; Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, Final Order entered April 3, 2014.

Charges that cannot be absorbed through the contractual price, the *Fixed Price Label Order* requires the EGS to provide the customer notices of its intent to alter the contractual price and, if the customer does not affirmatively accept the new price, then the EGS must cancel the contract.⁸⁹ This further exacerbates the ability of EGS's competitive supply to fairly compete with default service because the EGS has no ability to ensure that only actual costs are recovered from its customers and then, when faced with an unpredictable rate increase for the NMB Charges, the EGS has to choose between receiving less than actual cost or not receiving anything at all. As explained by RESA Witness Hudson, requiring Duquesne to assume the cost responsibility for NMB Charges would eliminate this impossible situation and would have a direct impact on reducing the risk premiums embedded in EGS fixed price products which would reduce the likelihood of an EGS needing to trigger a regulatory change or cost pass through clause or cancel an existing contract.⁹⁰ This would be a good result for consumers which would: (a) be consistent with the Commission's goals as set forth in the *Fixed Price Label Order*; (b) benefit customers by removing risk cost components from the pricing calculations of EGSs; and, (c) would be consistent with the Commission's *FE DSP III Order*.⁹¹

d. Any customer transition issues resulting from adopting RESA's recommendation can be adequately addressed as they were for the FirstEnergy EDCs.

In defense of its opposition to RESA's recommendation, Duquesne raises concerns that requiring Duquesne to assume the cost responsibility for the NMB Charges for all load could negatively impact customers with existing contracts which may include fixed components for transmission related

⁸⁹ *Fixed Price Label Order* at 26.

⁹⁰ RESA St. No. 1 at 25; RESA St. No. 1-SR at 27-28.

⁹¹ It is worth pointing out that the Commission, in the Duquesne *DSP VI Order*, rejected proposals to shift the cost responsibility for NMB Charges to Duquesne for all load based on its reasoning in the prior *FE DSP II Order* as well as a PECO default service order. *DSP VI Order* at 221-22. Since the *DSP VI Order*, however, the Commission has approved RESA's recommendation for all charges but for NITS in the *FE DSP III Order*.⁹¹ Therefore, the *DSP VI Order* does not preclude adoption of RESA's recommendation here.

services.⁹² There is no record support for these concerns and, moreover, to the extent any exist there are ways that they can be addressed as they were for the FirstEnergy EDC.

First, Duquesne's claim that every customer would need to have a revised contract effective the date of the change ignores the fact that many other circumstances and assumptions underlying the fixed price may have also changed since the time the contract was first accepted. Customers on fixed products may be better off continuing on the originally agreed-to price instead of reopening the contract which may result in price changes not only for these NMB Charges, but other components as well.⁹³

Second, there are transition mechanisms to address the concern over existing EGS contracts. For example, in the *FE DSP III Order*, the change in cost responsibility for Generation Deactivation Charges was limited to only new charges associated with Reliability Must Run unit declarations occurring after the approval of the settlement.⁹⁴ Because the change in cost responsibility was limited to new charges there is no concern over "double recovery" for customers' existing EGS contracts. For NITS and other transmission charges, a similar approach could be implemented that fixes the costs at the current level with Duquesne assuming responsibility for any increases. Alternatively, the change in cost responsibility could be deferred to a later date, such as June 2016, to provide a transition period during which many EGS contracts would expire and renew. The new renewal rates offered would reflect removal of the cost obligations from EGSs and address concerns over potential "double recovery."⁹⁵ In sum, there are a variety of transition mechanisms that can be considered. If the Commission accepts RESA's proposal regarding non-market based charges, RESA would welcome Commission guidance on this transition issue.

⁹² Duquesne St. No. R-4 at 20.

⁹³ RESA St. No. 1-SR at 24-25.

⁹⁴ *FE DSP III Order* at 13-14.

⁹⁵ RESA St. No. 1-SR at 26.

- e. **Even if RESA’s recommendation is rejected, Duquesne’s current approach of assuming cost responsibility for wholesale default service suppliers must be modified.**

If RESA’s recommendation is rejected, maintaining the status quo will not reasonably address the issues identified above regarding the need for EGSs to factor the risk of future rate increases to the NMB Charges into their retail pricing and their unequal access to the EDC’s own use of its facilities. This is because the status quo permits Duquesne to assume cost responsibility for the NMB Charges only on behalf of the wholesale default service suppliers and EGSs assume their own cost responsibility. Therefore, pricing for shopping customers factors in the potential risk of future price changes in the NMB Charges whereas the pricing for default service customers does not. The most fair way to address this (consistent with the discussion above) is to require Duquesne to assume cost responsibility for all load. If, however, this superior approach is rejected, then Duquesne should be directed to modify its wholesale supplier master agreement (“SMA”) to require the wholesale default service suppliers to assume their own cost responsibility for the default service load just as EGSs would assume the cost responsibility for their shopping customers.⁹⁶ This is not an ideal outcome because it would result in the need for wholesale suppliers to account for the risk of increases to these NMB Charges in their bid prices. However, since EGSs would likewise be required to factor in the same risk premium calculation into their retail pricing as the wholesale default service suppliers factor into their default service bids, the result will at least be a more equal comparison of the default service rate and EGS prices.

B. TIME-OF-USE PROGRAM

Issues regarding the Time-of-Use program have been resolved by the parties and will be included in a settlement to be filed with the Commission.

⁹⁶ RESA St. No. 1-SR at 22-23.

C. SUPPLY MASTER AGREEMENT ISSUES

Issues regarding the Supply Master Agreement have been resolved by the parties and will be included in a settlement to be filed with the Commission.

D. REQUEST FOR PROPOSAL AND INDEPENDENT EVALUATOR PROCESS ISSUES

RESA has no comments on this issue but reserves the right to reply to other parties' arguments in its reply brief.

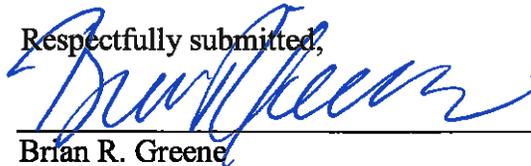
E. GENERAL MISCELLANEOUS ISSUES

RESA is not aware of any miscellaneous procurement issues but reserves the right to reply to others' issues in its reply brief.

VI. CONCLUSION

RESA respectfully requests that the ALJ issue a recommended decision consistent with RESA's positions and recommendations in this proceeding.

Respectfully submitted,



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Date: September 15, 2014

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