

Citizens for Pennsylvania's Future  
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September 15, 2014

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

Re: Petition of Duquesne Light Company for approval of Default Service  
Plan for the Period June 1, 2015 through May 31, 2017

Docket No. P-2014-2418242

Dear Secretary Chiavett:

Enclosed, please find the Main Brief of Citizens for Pennsylvania's Future for filing in the above captioned case.

Copies are being served in accordance with the attached Certificate of Service.

Sincerely,



Heather M. Langeland

cc. Certificate of Service

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company	:	
For Approval of a Default Service Plan	:	P-2014-2418242
Service Program and Procurement	:	
For the Period June 1, 2015	:	
Through May 31, 2017	:	

**CERTIFICATE OF SERVICE**

I, Heather M. Langeland, do hereby certify that a true and accurate copy of the foregoing document was served on September 15, 2014 on the following by depositing a copy of the same in the United States mail, postage prepaid and addressed to:

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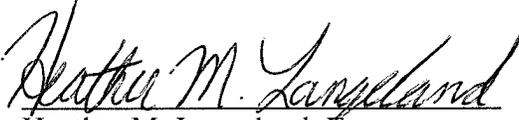
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

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**MAIN BRIEF OF CITIZENS FOR PENNSYLVANIA’S FUTURE**

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Submitted 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 :

**MAIN BRIEF OF CITIZENS FOR PENNSYLVANIA’S FUTURE**

Now comes Intervenor, Citizens for Pennsylvania’s Future, and submits its Main Brief in this matter:

**I. Procedural History**

On or about April 24, 2014, Duquesne Light Company (“Duquesne”) filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) a Petition seeking: (i) approval of a default service plan (“DSP”) for the period June 1, 2015 through May 31, 2017, (ii) approval of a Time-of-Use (“TOU”) Program, and (iii) other approvals required for the implementation of the DSP. This fifth (VII) DSP would apply to all retail customers in Duquesne’s service territory.

The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Katrina L. Dunderdale for investigation and the scheduling of hearings. On May 7, 2014, ALJ Dunderdale issued a Prehearing Conference Order indicating that a telephonic prehearing conference was scheduled for June 2, 2014. On May 23, 2014, Citizens for Pennsylvania’s Future (“PennFuture”) timely filed its Petition to Intervene in

this matter. At the Prehearing Conference on June 2, 2014, a procedural schedule was adopted and PennFuture's Petition to Intervene was granted.

On July 8, 2014, PennFuture timely served the direct testimony of Michael Speerschneider, Chief Permitting and Public Policy Officer for EverPower Wind Holdings Inc. This testimony focused on electric distribution companies ("EDC")s entering into long term contracts for Alternative Energy Credits ("AEC")s for Alternative Energy Portfolio Standard ("AEPS") compliance. Thereafter, PennFuture timely served the surrebuttal testimony of Mr. Speerschneider on August 15, 2014.

The evidentiary hearing was held on August 25, 2014. At the hearing, the parties' respective testimony and exhibits were admitted into the evidentiary record. While some of the parties to this matter have reached a partial settlement, the issues raised by PennFuture, namely issues regarding the procurement of long-term AECs, have been reserved for litigation.

## **II. Summary of Argument**

Duquesne should enter into long term contracts for a portion of its AEC obligation in this DSP. Duquesne should procure a prudent mix of AECs through long-term, short-term and spot procurement. For example, a base amount of AEPS requirements could be fulfilled through ten and twenty year strips of AECs. This annual base amount would be subtracted from the company's total AEPS obligation for the DSP VII. The remaining AEPS obligations for DSP VII would be procured through the full requirement, load following contracts. The AEC quantities procured for the ten and twenty year strips should be for a portion (not to exceed an amount equivalent to 25 percent of total AEPS compliance) of Duquesne's AEPS obligation, based on a conservative estimate of Duquesne's load for those years to avoid over-procurement

as a potential result of retail load shifting. If over-procurement occurs due to load shifting, excess credits can be banked for future use or sold.

Act 129 requires that EDC's default service plans procure electric supply and AEC's<sup>1</sup> through a competitive process that shall include electricity procured through a prudent mix of spot market, short term and long-term contracts.<sup>2</sup> The prudent mix of spot, short-term and long-term supply contracts shall be designed to ensure adequate and reliable service, that is competitively procured, and at the least cost to customers over time.<sup>3</sup> In addition, the PUC has expressed interest better aligning the default service price to compare with market prices. Procuring AEC's through a mix of spot, short and long term contracts provides a valuable hedge against price spikes, which is important given the volatile nature of the AEC market.

The recent Commonwealth Court decision regarding Pike County Light and Power (Pike) is that PUC has the authority to consider and approve DSPs that do not include all mix types (i.e. long, short, spot) under specific situations. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Commonwealth Court Docket No. 1179 C.D. (2012). In Pike, the Commission was presented with data and forecasts (i.e. substantial evidence) on various hedging strategies by Pike, a small jurisdictional EDC. The Commission considered this data and determined that a mix only including spot market purchases of power would be prudent, given that it would result in the least cost to consumers over time and provided the greatest benefit compared to other product mixes. As acknowledged by the Commission, this authority may be limited to specific situations and legislative changes may be needed to provide broader authority.<sup>4</sup> In addition, the

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<sup>1</sup> Title 66 §2807 (e)(3.5)

<sup>2</sup> Title 66 §2807 (e)(3.2) and 52 PA Code §54.186

<sup>3</sup> Title 66 §2807 (e)(3.4) and 52 PA Code §54.186

<sup>4</sup> PUC's Retail Market Investigation End State Final Order, p. 45 "While the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are

PUC has been very clear that small EDCs have the ability to petition the Commission with evidence as to why it may not be appropriate, beneficial to customers or feasible to implement certain specifics of the PUC's DSP preferred model in its service territory.<sup>5</sup>

The PUC's Retail Market Investigation End State Final Order (End State Order) made no final recommendation on future use of long-term contracts for procurement of AEC's for default service load. The End State Order did not prescribe a specific procurement methodology for long term contracting of AECs, rather the order deferred to the legislature to develop a specific strategy. Absent a specific recommendation on various methods to procure long term contracts for AECs, the order failed to discourage or encourage the use of long term contracts for AEPS compliance. The End State Order did determine that all existing long term contracts (e.g. AEC contracts) for default service requirements should be held harmless. The Commission has supported long term contracts for AECs in its final Policy Statement in Support of Pennsylvania Solar Projects (Docket No. M-2009-2140263). In addition, the Commission has supported long-term contracts for AEC's in several in default service plans.<sup>6</sup>

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appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers and an hourly LMP product for "medium" C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act. To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery."

<sup>5</sup> PUC's Retail Market Investigation End State Final Order, various locations.

<sup>6</sup> Met-Ed and PenElec procurement of 10,000 SRECs annually for a 10-year period. Joint Petition of Metropolitan Edison Company And Pennsylvania Electric Company For Approval Of Their Default Service Programs, Docket Nos. P-2009-2093053 & P-2009-2093054; PECO procurement of 8,000 solar Tier I credits annually for a 10-year period. Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits, Docket No. P-2009-2094494; PPL Electric Utilities Corporation Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2013 for Approval to Modify its Procurement of Solar Alternative Energy Credits, Docket Nos. P-2008-2060309 and R-2010-2170296; West Penn procurement of 775,000 Tier I AECs in 10-year contracts: West Penn Power Company

The legislature has indicated support for long term contracts for AECs to meet AEPS compliance. For example, if AECs are not available in sufficient quantities for the EDC to meet its AEPS obligations, EDCs can request a “force majeure” determination from the PUC. If the PUC makes a positive force majeure determination, then the EDC’s AEPS obligation for that compliance year may be reduced or modified in various ways. If they make a negative force majeure determination, then the EDC must pay alternative compliance payments that cannot be recovered through rates.

The commission, in making its determination, is required to consider (*inter alia*) if EDCs made, “a good faith effort to acquire sufficient alternative energy to comply with their obligations. Such good faith efforts shall include, but are not limited to, banking alternative energy credits during their transition periods, seeking alternative energy credits through competitive solicitations and seeking to procure alternative energy credits or alternative energy through long-term contracts.”<sup>7</sup> Failure to consider procurement of AECs through long term contracts could result in additional costs for the EDC and could lead to greater cost volatility for customers.

Given 1) Act 129’s directive on procuring AECs via a prudent mix of spot, short and long term contracts in order to ensure adequate and reliable service, that is competitively procured, and at the least cost to customers over time, 2) neither expressed support or opposition for long term contracts for AECs in the End State Order, 3) the Commission’s historic support for long

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d/b/a Allegheny Power Default Service Program and Competitive Procurement Plan Results of Request for Proposals Process and Rules – AEC Procurement, Docket No. P-00072342; PECO’s procurement of up to 450,000 non-solar Tier I AECs through a five-year long term contracts: Petition of PECO Energy Company for Approval of (1) a Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recovery AEPS Costs, Docket P-00072260.

<sup>7</sup> 73 P.S. § 1648.2

term contracts in default service plans, and 4) provisions of law that indicate the legislature's value of long term AEC contracting, it is unclear under what circumstances an EDC's DSP can be approved without long-term AEC contracts.

Specifically, the Commonwealth Court decision in *Pike* established the PUC's authority to approve DSP's that do not include all of the prudent mix contract types (i.e. spot, short, long) if "substantial evidence" is provided indicating that inclusion of all these contract types would harm the customer (e.g. fail to ensure adequate and reliable service, that is competitively procured, and at the least cost to customers over time). The small size of the *Pike* territory and customer base presented a unique situation (i.e. inability to negotiate favorable long-term contracts) that analysis indicated would result in customers harm if long term contracts were procured. Specifically, the benefit of the financial hedge provided by the long-term contract was projected to be less than the increased cost associated with entering into unfavorable (i.e. uncompetitive) long term contracts.

In DSP VII, Duquesne has not presented the substantial evidence required to provide the Commission with the information needed to determine if approval of a plan that excludes long term contracts for AECs will harm customers. PennFuture has found no indication that the Commission has developed a set of criteria, standards or assessment methodology to guide EDCs in developing analysis needed to meet the substantial evidence requirement. This lack of guidance is especially concerning, given statements made by the EDCs regarding their lack of expertise in evaluating market conditions.

### **III. Argument**

#### **A. Legal Standards**

##### **1. Burden of Proof**

A party seeking a rule or order from the Commission bears the burden of proof. 66 Pa. C.S. § 332(a). As such, 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.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990)(denying petition where based only on substantial evidence). If a party upon whom the burden of proof is placed fails to carry that burden, denial of the relief requested is necessary. *See, e.g., Warwick Water Works, Inc. v. Pennsylvania Public Utility Com’n*, 699 A. 2d 770, 774-75 (Pa. Cmwlth. 1997).

## 2. Legal Standards Applicable to Default Service

Generally, “an EDC as a default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.” 52 Pa. Code § 54.184(a). In fulfilling this obligation, an EDC must file a default service plan with the Commission. “A DSP shall file a default service program with the Commission’s Secretary’s Bureau no later than 12 months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for the particular EDC service territory . . .” 52 Pa. Code § 54.185(a).

Importantly, the Pennsylvania Code sets forth specific requirements for standards that these procurement plans must adhere to:

(b) A DSP’s procurement plan must adhere to the following standards:

(1) The procurement plan shall be designed so that the electric power procured under § 54.184(c) (relating to default service provider obligations) includes a prudent mix of the following: (i) Spot market purchases. (ii) Short-term contracts. (iii) ***Long-term purchase contracts***, entered into as a result of auction, request for proposal or bilateral

contract that is free of undue influence, duress or favoritism *of greater than 4 years in length but not greater than 20 years.*

52 Pa. Code § 54.186 (b)(emphasis supplied). This prudent mix must further be designed to ensure adequate and reliable service and least cost to customers over time. *Id.*

**B. Default Supply Procurement Issues**

PennFuture takes no position on this issue.

**C. Alternative Energy Credit Procurement Issues**

As noted, Duquesne should enter into long-term contracts for a portion of its AEC obligation in this DSP. Duquesne should procure a mix of AECs through long-term, short-term and spot procurement. In support of this position, PennFuture provided the testimony of Michael Speerschneider. Mr. Speerschneider received a B.S. in Physics and a B.A. in environmental studies from the University of Pittsburgh. He received a M.S. in Technology and Policy and a M.S. in Materials Science and Engineering from the Massachusetts Institute of Technology. Prior to attending MIT, he worked for Cambridge Energy Research Associates developing models for demand, supply and pricing in North American natural gas markets.

Mr. Speerschneider joined EverPower in 2004 and has been involved in all facets of its developed projects and operations. He has also worked closely with financial, commercial and operations teams to help ensure efficient development, construction and operation of projects and of the retail electric and renewable energy credit (REC) markets. He has provided project-specific testimony to the Ohio Power Siting Board and the Maryland Public Service Commission. He has also developed written comments and/or testimony on retail market proceedings and related legislative efforts to the Pennsylvania Public Utilities Commission, the

New York Public Service Commission and the Ohio General Assembly. Direct Testimony of Michael Speerschneider at p. 2 line 21 through p. 3 line 13.

*AEC Requirements for an EDC's DSP*

EDCs are required to submit DSPs for procurement of electric generation supply for customers that do not choose competitive electricity generation suppliers (EGSs). The Alternative Energy Portfolio Standard Act of 2004 (AEPS) requires that an annually increasing percentage of electricity sold to retail electric customers by EDCs be derived from alternative energy sources. Therefore, an EDC's DSP must ensure that the company procures AECs to meet AEPS compliance obligations associated with providing electricity supply. *Id.* at p 3 line 21 through p. 4 line 3.

As Mr. Speerschneider notes, an EDC must consider various factors when procuring AECs for DSPs.

The EDC's DSP must procure electric supply and AEC's<sup>8</sup> through a competitive process, and shall include electricity procured through a prudent mix of spot market, short term and long-term contracts.<sup>9</sup> The prudent mix of spot, short-term and long-term supply contracts shall be designed to ensure adequate and reliable service, that is competitively procured, and at the least cost to customers over time.<sup>10</sup> In addition, the PUC has expressed interest better aligning the default service price to compare with market prices.

*Id.* at p. 4 lines 6 through 11.

Additional legislative support for long-term contracts for AEPS compliance is evidenced by the requirement for the PUC to consider whether EDCs and EGSs made good faith efforts to

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<sup>8</sup> Title 66 §2807 (e)(3.5)

<sup>9</sup> Title 66 §2807 (e)(3.2) and 52 PA Code §54.186

<sup>10</sup> Title 66 §2807 (e)(3.4) and 52 PA Code §54.186

seek procurement of AECs through long-term contracts before making a force majeure determination. The legislature also empowered the PUC to require solicitations for AECs as part of default service before requests of force majeure can be made. Act of July 17, 2007 P.L. 114, No. 35. As noted in Mr. Speerschneider's testimony, the Commission has a history of supporting long-term contracts in DSPs. See, Speerschneider direct at p. 6 lines 2 through 25. Indeed, any Commission directive encouraging limitation of long-term contracts for energy do not extend to long-term contract for AECs. See, December 15, 2011 Final Order on Recommendations Regarding Upcoming Default Service Plans (I-2011-2237952) and Speerschneider Surrebuttal at p. 3 lines 13 through 26.

#### *Benefits of Long Term Contracts for AECs*

In addition to the Legislative mandate that EDCs employ a prudent mix of contracts, long-term contracts provide great benefits to ratepayers. Mr. Speerschneider testified to five specific areas in which long term contracts can benefit ratepayers.

##### *1) Reduction of overall AEC prices*

Reliance on wholesale suppliers strips out transparency and can lead to high cost to consumers. Duquesne Light will have no way to know if the wholesale supplier has procured AECs through a prudent mix of contract terms as required by the act. And, in fact, because the long term default service commitments for suppliers is unknown, there is a disincentive for these suppliers to enter into long term contracts for AECs. Therefore customers miss out on locking in lower prices and hedging against increasing or volatile AEC markets.

In addition, regardless of how the AECs are procured, the wholesale providers will likely be purchasing AECs from renewable energy producers and selling those credits to Duquesne Light with a built-in margin. This adds unnecessary premium on the AEC price by passing the credit through a "middleman." If Duquesne Light were instead to procure AECs outside of its full service default supply, across all customer classes, using a prudent mix of short, medium and long term contracts, those AECs will be

purchased at an overall lower costs and without an extra premium added by the default service provider.

2) *Rationalization of AEC markets*

If rational markets are defined as being reflective of the marginal costs of a product, then long term contracts will allow utilities such as Duquesne Light to procure AECs at a price that is more reflective of the actual value of the AEC. Rather than create the potential for a “boom-bust” AEC market, AEC prices will be based on the actual value of the AEC. This is a desirable outcome of a competitive market and consumers will benefit from increased price stability.

3) *Potential to reduce capital costs, and therefore reduce AEC values*

In a rational market, with long term contracts available to capital investors, the benefits to ratepayers would also include a lower cost of capital for project owner/operators. Not only do long-term contracts reduce risks (and therefore, the cost of borrowing), it also allows owner/operators to leverage the asset, freeing additional low-cost capital to invest in other projects.

Because there are no fuel costs, the capital costs of wind energy projects represent the greatest component in determining the levelized cost of the energy (LCOE) for a wind plant. As a result, the cost to finance the capital expenditure is a key to reducing the LCOE. Project developers may use debt, equity, or some combination to finance the initial capital costs of a project. As with any investment, the cost of capital is related to risk. High risk investments generally carry a higher cost of securing the necessary debt or equity, whereas low risk investments see lower costs of capital.

The lowest risk renewable energy project, from an investor’s perspective, is a project that is fully contracted (power, AECs, capacity, etc.) for a long term (up to 20 years). The highest risk renewable energy project is one that is fully merchant, selling to the PJM spot markets. Procuring a long term AECs only contract is not as de-risked as a fully contracted project, but is far less risky than a pure merchant project. As a result, long term contracts for AECs will help stabilize the revenue profile of a wind energy plant and reduce the risk to potential investors. This will result in a lower cost of capital and, necessarily, a lower LCOE.

4) *Provides a low cost compliance option for the Clean Power Rules*

The Environmental Protection Agency recently released draft rules to regulate carbon from existing power plants. While details of the Clean Power Rules are still being worked out, and Pennsylvania's compliance plan won't be known for years, prudent action by utilities and the PUC in order to provide ratepayer benefits should be considered.

In the rules, the EPA has set target carbon reductions based on each states' capabilities under the "four building blocks" for carbon reduction, including heat rate improvements, re-dispatch of natural gas facilities, low or zero emission technologies (renewables) and demand side efficiency. In the draft rules, the EPA expects that Pennsylvania can add another 31 million GWh of renewable generation (source: EPA: Clean Power Rule Technical Documents, "Data file: Proposed RE Approach. <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule-technical-documents>). Using a 35% capacity factor, that equates to about 10,000 MW of new wind energy projects. Given that Pennsylvania currently hosts about 1,400 MW of wind energy projects, this suggests substantial new build. Not all of that incremental supply must be met by wind energy; however, wind energy does provide among the lowest cost options for new generations across all technologies, not just renewable. See Lazard's Levelized Cost of Energy Analysis, August 2013 attached as Exhibit A.

5) *Provides economic benefit for Pennsylvanians*

EverPower is headquartered in Pittsburgh and owns and operations four wind farms in Pennsylvania. In total, those wind farms represent an installed capacity of 307 megawatts and produce enough electricity to power 75,000 average US households. These projects employed over 400 construction workers and now support 25 long-term, good paying operations and maintenance jobs. Over the next 20 years, these projects will pump \$65 million into local economies in the form of purchases of local goods and services and salaries. In addition, the project will pay approximately \$25 million in total taxes and over \$2 million per year in landowner lease payments.

These projects have had profound impacts on local economies, allowing local governments to invest in equipment and services while keeping taxes down for their

residents. These impacts are not limited to local areas. EverPower has sources equipment and services from companies across the state and with its headquarters located in Pittsburgh, the benefits to all Pennsylvanians are clear.

In summary, a prudent mix of short, medium and long term contracts for AECs would provide developers with a mechanism to procure longer term contracts, incentivizing more development and lower capital costs, while also rationalizing markets. The projects that are built using the longer term contracts will provide ongoing economic benefits to the local areas where the projects are located and to the state as a whole. All of these effects would result in lower AEC prices and a benefit for customers.

Speerschneider Direct Testimony at p. 7 line 20 through p. 11 line 6.

According to the Commission's website, AEC prices are trading in the neighborhood of \$15 per MWh.

[http://www.puc.state.pa.us/consumer\\_info/electricity/alternative\\_energy.a](http://www.puc.state.pa.us/consumer_info/electricity/alternative_energy.a)

[spx](#). According to Mr. Speersshneider, the market outlook for AEC values in for AEPS compliance (as established through supply and demand with in the PJM Interconnection electricity grid that serves Pennsylvania and 12 other states) indicates an increase in prices.

While each state in PJM has adopted different renewable energy portfolio standard targets with different implementation timelines, they all share a feature in that the renewable energy portion of the total electric consumption must increase over time. As a result, the total installed capacity of renewable generation in the region should increase to satisfy this growing demand. Failing to meet demand will put upward pressure on AEC market prices. Based on earlier experiences in PJM and current conditions in New England we believe failure to balance AEPS demand with new renewable generation will expose consumers to much higher AEC prices, characteristic of markets that exhibit binary behavior. That is, today's

relatively low AEC values will switch quickly to relatively high credit values as the market becomes under-supplied.

Speerschneider Direct Testimony at p. 11 line 15 through p. 12 line 2. Mr. Speerschneider expects that the number of renewable energy projects providing Tier I RECs will likely increase in the PJM over the next 10 years. He is aware that renewable energy projects in PJM are being developed and there is every expectation that new projects will be brought on line. However, Mr. Speerschneider feels that, given current market structures, it is unlikely that the number of new renewable energy projects will be adequate to keep up with increasing demand, creating a supply deficit within the next five years.

As Mr. Speerschneider testified at length, the potential benefit to ratepayers from long term contracts is great. Given this potential benefit, Mr. Speerschneider suggested one way in which Duquesne could approach procurement of long term contract for AECs in DSP VII. Numerous EDCs maintain long-term contracts for AECs in default service plans, each with varying sets of underlying energy, capacity, AEPS and ancillary services procurement strategies and contract term mixes. This is evidence that long term contracts for AECs can be executed in EDC DSPs. PennFuture believes that Duquesne is in the best position to determine the exact volume of credits to be procured in the long-term contract solicitation and in what manner those contracts should be managed in the context of the company's other obligations.

Duquesne should procure a mix of AECs through long-term, short-term and spot procurement. For example, a base amount of AEPS requirements would be fulfilled through ten and twenty year strips of AECs. This base amount would be subtracted from the company's total obligation. The remainder would be procured through the full requirements, load following contracts. Other EDCs have layered in full requirement contracts with existing long-term REC purchases. For example, PPL's DSP I included long term AEC obligations that PPL has layered

into subsequent DSPs that include full requirement contracts.

The AEC quantities procured for the ten and twenty year strips should be for a portion of Duquesne's AEPS obligation, based on a conservative estimate of Duquesne's load for those years to avoid over-procurement as a potential result of retail load shifting.

Speerschneider Direct Testimony at p. 19 lines 9 through 15.

*Duquesne's Approach to AEC Procurement*

Despite the mandate in Act 129 to do so, and disregarding the ratepayer benefits of long term contracts, Duquesne does not intend to meet any of its AEPS obligations through long term contracts. In fact, the company did not even consider utilizing long-term contracts for AECs, let alone provide the substantial evidence required to inform the Commission.

Specifically, when asked how the company considered spot, short term and long term contracts, Mr. Habberfield simply re-states the company's spot and short term procurement plan in DSP VII for residential/lighting/ small & medium C&I and further states Duquesne did not consider long term contracts for large C&I customers (set I, question 8). Duquesne could not produce any qualitative or quantitative scenarios, data, assumption, analysis or results to support consideration of spot, short term or long term contracts for AECs (set 1, question 8). Duquesne did not consider procuring AECs outside of full requirement contracts nor did they consider long term contracts for AEC's for their large C&I customers (set 1, questions 8 & 9). Duquesne did not analyze or consider the value of the financial hedge and cost reductions provided by using a combination of all three procurement (spot, short term, long term) options versus the incremental cost of using all three of these procurement options for AECs (set 1, question 10). Duquesne did not perform any forecast of AEC pricing (set 1, question 11), even though they performed extensive forecasting of energy, capacity, ancillary and other services (set 2, question 1).

Speerschneider Direct at p. 16 line 16 through p. 17 line 3.

In its rebuttal testimony, Duquesne's witness Fisher claimed that procuring AECs through long term contracts in DSP was considered. Fisher Rebuttal p. 46 lines 8-14. However, Duquesne merely notes it proposed to procure Solar AECs via 20-year long term contracts in its DSP V case, but one party opposed the proposal. Opposition by one party in a previous default service proceeding should not prevent Duquesne from considering long-term contracts in subsequent default service proceedings. See Speerschneider surrebuttal at p. 1 lines 16-21. At any rate, opposition by a party in a previous case does not fulfill Duquesne's obligations to consider long-term contracts for AECs in this case.

In its rejoinder testimony, the company provides qualitative reasons for why it did not propose long-term contracts for AECs. Specifically, the company maintains that the Commission has indicated a preference for short-term contracts (for energy), and because the company made the decision that no long-term full requirement contract would be proposed it was consistent that no long-term AEC purchases would be made. See Habberfield rejoinder testimony at p.2, lines 21-22 continuing through p. 3 lines 1 to 21. This and other qualitative justification from Duquesne is not consistent with the substantial evidence requirement and provides no data about the comparative benefits and costs to consumer of including or excluding long term contracts for AECs.

#### *Speculation about Potential Legislative Changes*

Finally, Duquesne argues against long-term contracts citing the "unknown future of default service" given the recent debates in Pennsylvania about whether EDCs like Duquesne will continue to serve in the default role. Habberfield Rebuttal, p. 15 lines 4-12. Essentially,

Duquesne argues that it may ignore legislative mandates based on mere speculation. As Mr. Speerschneider notes,

The legislature has not taken action to change the EDC's role in providing default service in Pennsylvania. It is unclear whether or not the legislature will ever take this action. Duquesne Light is in part basing their opposition to long term contracts for AECs on conjecture and theories about the actions of the legislature and the details of legislation that the legislature may or may not consider. The compounded speculation used by Duquesne is inappropriate, given lack of sufficient evidence or proof. Furthermore, failing to comply with legal requirements (i.e. consider long term contracts for AECs) based on speculation about future, potential changes to the law would set harmful precedent.

Speerschneider surrebuttal at p. 3 lines 3 through 11. As noted above, Duquesne is required to consider long-term contracts in this DSP. Speculation as to future legislative actions – which may or may not bear into fruition – is, at best, insufficient to disregard its clear legal obligations. In rejoinder testimony, Duquesne witness Habberfield maintains the company's concerns over the future of default service are not limited to legislative changes, maintaining that an EGS can petition the Commission to take over this role from the EDC. See Habberfield rejoinder testimony at p.4, lines 15-19. Duquesne has not presented any evidence that an EGS is interested in petitioning the Commission to take over default service in its territory and absent this evidence, the potential for such a petition is speculative.

*The Future of Long-Term Contracts under Duquesne's Rationale*

Finally, if the Commission were to entertain Duquesne's arguments against long-term contracts for AECs, it is entirely reasonable to assume EDCs would never enter into long-term contracts for AECs. In expanding on this, Mr. Speerschneider testified:

Duquesne seems to be claiming complete dependency on the wholesale suppliers to meet all of the requirements of

default service and seems unwilling to enter into any complimentary procurement for components of their default service obligation. Given Duquesne's position against managing any aspect of their portfolio, and their complete reliance on spot brokers or short term full requirement contracts with wholesale suppliers, it is unclear if, how, or under what circumstances the company would ever enter into another long term contract for AECs. This raises a host of questions about compliance with various aspects of Pennsylvania law, including Act 129 and the AEPS.

**Q. How does Duquesne's position impact the future outlook for long-term AEC contracts in Pennsylvania?**

A. If other EDCs agree with Duquesne's position that they lack the expertise to responsibly managing any aspect of their own portfolio, and continue to be primarily reliant on wholesale providers for AEPS compliance, it is unlikely that there will be any long term contracts for AECs in Pennsylvania. The wholesale suppliers Duquesne relies on are not regulated by the PA PUC, and therefore are not subject to the prudent mix requirements of Act 129. This raises a host of questions regarding the ability to comply with the prudent mix language of Act 129, the ability for Duquesne Light to meet the good faith effort requirements of AEPS force majeure determination, and the company's responsibility to provide rate payers with least cost, stable rates over time.

Speerschneider surrebuttal at p. 6 lines 12 through 31. Approval of Duquesne's position on long term contract for AECs would be tantamount to an implicit approval of a utility company unilaterally disregarding legislation and essentially changing the legal landscape, in absence of presentation of substantial evidence and instead relying solely on qualitative reasoning and speculation. This result is unlikely to consistently lead to outcomes that are in the best interest of the consumer. For these reasons, the Petition should be rejected.

**D. Standard Offer Program**

PennFuture takes no position on this issue.

**E. Rate Design**

PennFuture takes no position on this issue.

**F. Time-of-Use Program**

PennFuture takes no position on this issue.

**G. Supply Master Agreement Issues**

PennFuture takes no position on this issue.

**H. Request for Proposal and Independent Evaluator Process Issues**

PennFuture takes no position on this issue.

**I. General Miscellaneous Issues**

None at this time.

**IV. Conclusion**

For the foregoing reasons, PennFuture respectfully requests that Duquesne's Petition seeking: (i) approval of a default service plan ("DSP") for the period June 1, 2015 through May 31, 2017, (ii) approval of a Time-of-Use ("TOU") Program, and (iii) other approvals required for the implementation of the DSP be denied. Duquesne should enter into long-term contracts for a portion of its AEPS obligation in DSP VII. Duquesne's entire Tier I obligation should be procured through long-term contracts.

  
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