



COMMONWEALTH OF PENNSYLVANIA

September 30, 2014

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
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 Chiavetta:

Enclosed for filing is the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon E. Webb".

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Enclosures

cc: Parties of Record
Brian Kalcic

**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 :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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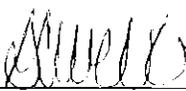
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: September 30, 2014

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I. PROCEDURAL HISTORY

On April 24, 2014, the Duquesne Light Company (“Duquesne” or “Company”) initiated the above-captioned proceeding by filing with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Plan for the period of June 1, 2015, through May 31, 2017 (“Petition” or “POLR VII”) pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §5.41, and the Commissions Retail Market Orders at Docket No. I-2011-2237952, including the Default Service End-State Order.¹

On May 15, 2014, the OSBA filed a Notice of Intervention, a Public Statement, an Answer to the Petition, and a Notice of Appearance.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on May 12, 2014. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on May 20, 2014.

Interventions were filed by: Noble Americas Energy Solutions, LLC (“Noble”); Citizens for Pennsylvania’s Future (“Penn Future”); FirstEnergy Solutions (“FES”); Retail Energy Supply Association (“RESA”); Exelon Generation Corp., LLC (“ExGen”); Duquesne Industrial Intervenors (“DII”); Coalition for Affordable Utility Services and Energy Efficiency of Pennsylvania (“CAUSE-PA”); and NextEra Energy Power Marketing (“NextEra”).

A Prehearing Conference took place on June 2, 2014, before Administrative Law Judge (“ALJ”) Katrina L. Dunderdale, where the parties agreed to a procedural schedule and certain discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony and Surrebuttal Testimony of its witness, Brian Kalcic.

¹ *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Order entered February 15, 2013 (“*Default Service End-State Order*”).

Evidentiary hearings were held in Harrisburg, with the ALJ appearing telephonically from the Pittsburgh, on August 25, 2014. No cross examination was conducted after the parties reviewed the Rejoinder Testimony filed by the Company. The testimony and exhibits of the parties were entered into the record at the evidentiary hearing.

The OSBA and other parties submitted Main Briefs on September 15, 2014, pursuant to the procedural schedule set forth in the Prehearing Order issued by ALJ Dunderdale and entered on June 12, 2014.

II. SUMMARY OF ARGUMENT

In its Main Brief, the OSBA addressed most of the arguments made by the various parties on issues in which the OSBA has an interest. Those arguments will not be repeated here. This Reply Brief includes responses to other, specific arguments raised in the Main Brief of RESA in which the OSBA has an interest.

III. REPLY ARGUMENT

The OSBA will only address the default service procurement plans for the Small Commercial and Industrial (“Small C&I”) and Medium Commercial and Industrial (“Medium C&I”) procurement groups (*i.e.*, Sections B.2 and B.3, respectively, in the common briefing outline). The OSBA agrees in principle with Duquesne’s proposal to use load-following, full requirements contracts to acquire default service supply for Small C&I customers. However, the OSBA opposes Duquesne’s Medium C&I proposal and requests that the Company continue to employ its currently approved procurement strategy, *i.e.*, six-month full requirements, load following contracts with no laddering, for Medium C&I customers.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

2. Small C&I Procurement Issues-OSBA’s Response to RESA

In its Main Brief, RESA laments that Duquesne’s proposed procurement plan for Small C&I customers somehow represents a step backwards in terms of market responsiveness for those customers.²

As set forth more fully in the OSBA’s Main Brief, RESA fails to acknowledge that the Commission has explicitly rejected RESA’s argument that the “least cost” standard of Act 129 mandates that default service prices be “market-reflective” and “market-responsive” and has explicitly recognized that price stability should remain an important consideration when designing a default service procurement plan.³

RESA’s proposal to introduce three-month products to the Small C&I default service supply portfolio will subject customers to unreasonable price instability in pursuit of a more

² RESA Main Brief at 8-9.

³ OSBA Main Brief at 8-9.

market-reflective and market-responsive default service rate, which is in direct contravention of Act 129's objectives. On that basis alone, the Commission should reject it.

However, RESA's argument that that the proposed plan is a step backwards is disingenuous and should also be rejected. In its Main Brief, RESA argues that the Duquesne's current DSP (DSP VI) included a six-month contract at the end of the procurement plan period and that the proposed plan for DSP VII does not include the same six-month contract at the end and is therefore somehow a step backwards.⁴

What RESA fails to acknowledge is the June 5, 2014 filing by Duquesne in which the Company sought, and received, approval from the Commission to extend the contract terms for the final Default Service procurements for the Residential and Small C&I customer classes for DSP VI by an additional six months.⁵ In approving Duquesne's petition, the Commission concluded that extending the final Small C&I procurement in DSP VI by an additional six months would provide "appropriate layering and laddering of supply purchases."⁶

As background, in its June 5th filing, Duquesne requested expedited approval to exercise the Commission-approved option under the DSP VI to extend the contract terms for the final default service procurements for the Residential and Small C&I customer classes by an additional six months. Additionally, the Company sought to move the final scheduled procurement for Residential, Small C&I and Medium C&I customers from November 2014 to October 2014. The proposed procurement plan for DSP VI was designed to ensure that fixed-

⁴ RESA Main Brief at 8.

⁵ *Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI*, Docket No. P-2012-2301664, Order entered September 11, 2014, at 4-5.

⁶ *Id* at 4.

price load-following contracts would not extend beyond May 31, 2015.⁷ However, in approving Duquesne's DSP VI, the Commission also approved a provision that would allow the Company to extend the term of the final DSP VI program procurements by an additional six months should it continue its role of default service provider to Residential and Small C&I customers beyond May 31, 2015.⁸

Subsequent to entry of the Commission's order approving DSP VI, the Commission entered its Order on the end state of Default Service in which it concluded that EDSs would continue in the default service provider role.⁹

Given the Commission's approval of Duquesne's request to modify and extend its procurement schedule for DSP VI by six-months, RESA's representation that the Company's proposed procurement schedule is a step backwards is inaccurate and should be rejected.

3. Medium C&I Procurement Issues-OSBA's Response to RESA

In its Main Brief, RESA supports Duquesne's proposal for Medium C&I customers with peak demands between 25kW and 100kW, but recommends that customers above 100kW up to 300kW who have interval meters, be incorporated into the Large C&I class and receive hourly default service pricing.¹⁰

Duquesne argues that because Medium C&I customer exhibit high levels of shopping, they therefore have a reduced need for default service rate stability. To that end, Duquesne's Medium C&I proposals are intended to deemphasize price stability in favor of making Medium

⁷ *Id.* at 2.

⁸ *Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI*, Docket No. P-2012-2301664, Order entered September 11, 2014, at 2.

⁹ *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (February 15 Order) at 20.

¹⁰ RESA Main Brief at 17.

C&I default service rates more reflective of market prices and more responsive to market changes.¹¹

As set forth in the OSBA's Main brief, based on the testimony of Mr. Kalcic, not all customers choose to shop. Additionally, certain customers who shop may elect to remain with default service because they do not receive an attractive offer. Whatever the customer's reason for not switching to an alternative supplier, those customers should not be stuck with an unnecessarily volatile rate. Price stability should remain an important consideration when designing a default service procurement plan for Medium C&I customers.¹²

RESA's proposal to introduce three-month products to the Medium C&I default service supply portfolio will subject customers to unreasonable price instability in pursuit of a more market-reflective and market-responsive default service rate, which is in conflict Act 129's objectives. On that basis alone, the Commission should reject it.

Moreover, consistency with the Commission's End State Order does not mean that RESA's proposal for Medium C&I class procurement should be adopted in this proceeding. Similar to the arguments the OSBA advanced in its Main Brief, the End State Order may be viewed as a kind of "wish list" regarding what the Commission envisions for the future of default service. However, it is not at this time a mandate to be implemented in the current round of default service proceedings, despite RESA's best efforts to argue the contrary.

RESA's proposal to move Medium C&I customers with interval meters to hourly pricing is premature and should be rejected. As the OSBA set forth in greater detail in its Main Brief, even the Commission is not comfortable with treating the End State Order as a mandate, opting

¹¹ OSBA Main Brief at 13, *citing* OSBA Statement No. 1 at 4.

¹² *See* OSBA Main Brief at 14 and OSBA Statement No. 1 at 4-5.

instead to seek legislative changes to avoid legal uncertainty. The Commission's End State Order explains as follows:

While the Commission is steadfast in its view that our decisions to permit [100%] spot market approaches in specific situations are 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.*¹³

To date no such legislative changes have been effectuated. RESA incorrectly characterizes its proposals as only a transition towards the End State Order and therefore concludes no legislative changes are needed.¹⁴ RESA is wrong.

In summary, RESA's proposal is unnecessary to promote competitive retail market growth, would result in unreasonable price volatility for the remaining Medium C&I default service customers, and is not in compliance with the applicable statutory standards for default service. RESA's reliance on the End State Order as support for its Medium C&I procurement proposal is misguided and its proposal for the Medium C&I customer class should be rejected.

¹³ See OSBA Main Brief at 10, *citing* End State Order at 45 (emphasis added).

¹⁴ RESA Main Brief at 20.

IV. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein. The OSBA also respectfully requests that the Commission require Duquesne to file its compliance tariff(s) with redlines, noting the changes from the present tariff(s).

Respectfully submitted,



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