



1 **I. INTRODUCTION**

2 **Q. Are you the same James Habberfield who sponsored direct testimony in this**  
3 **proceeding?**

4 A. Yes.

5  
6 **Q. What is the purpose of your rebuttal testimony?**

7 A. My rebuttal testimony is divided into four sections. The first section responds to  
8 arguments and recommendations made by various interveners regarding the  
9 power procurement methods and the supply product portfolios used in Duquesne  
10 Light Company's ("Duquesne Light" or the "Company") proposed default service  
11 plan ("Default Service Plan," "Plan," or "DSP VII Plan"). The second section  
12 responds to the direct testimony of Mr. Richard J. Hudson, Jr., on behalf of the  
13 Retail Energy Supply Association ("RESA"), that relates to the proposed Time of  
14 Use Program. The third section responds to the direct testimony filed by Mr.  
15 Michael Speerschneider, on behalf of Citizens for Pennsylvania's Future, that  
16 relates to the purchase of Renewable/Alternative Energy Credits ("AECs") for  
17 compliance with the Pennsylvania Alternative Energy Portfolio Standard  
18 ("AEPS") requirements. The fourth section responds to the Direct Testimony of  
19 Lael Campbell on behalf of Exelon Generation Company, LLC ("ExGen") and  
20 Sean Cheslock on behalf of NextEra Energy Power Marketing, LLC ("NextEra")  
21 regarding proposed revisions to the Supply Master Agreement ("SMA"). I note  
22 that the Company, including through the Company's other rebuttal witnesses, is  
23 responding to many of the comments raised by the other parties in this

1 proceeding. The Company's silence on any issue should not be construed as an  
2 agreement with any particular position taken by other parties.

3

4 **II. DUQUESNE LIGHT'S DSP VII PROCUREMENT PLAN**

5 **Q. What is the purpose of this section of your rebuttal testimony?**

6 A. The purpose of this section of my rebuttal testimony is to respond to the direct  
7 testimony filed in the case that relates to supply procurement for default service  
8 customers.

9

10 **Q. What do intervening parties recommend as changes to DLC's DSP VII**  
11 **procurement plan?**

12 A. Brian Kalcic, on behalf of the Pennsylvania Office of the Small Business  
13 Advocate ("OSBA"), recommends that the Commission direct Duquesne Light to  
14 continue to use its existing procurement strategy, i.e., six-month full  
15 requirements, load-following contracts, with no laddering, to serve Medium C&I  
16 customers. Richard J. Hudson, Jr., for RESA, recommends that the Company  
17 replace certain of the 12 month contracts proposed for Residential and Small C&I  
18 classes with a mixture of three and six-month contracts. The result of Mr.  
19 Hudson's changes to the procurement schedule would also eliminate the  
20 "overhangs" for the Residential and Small C&I classes that would extend beyond  
21 the end of the DSP VII period. Mr. Hudson also recommends that Duquesne  
22 Light move any Medium C&I customers with interval meters into the Large C&I  
23 procurement group which relies on hourly priced default service. Mr. Hudson

1 further recommends that the Company competitively bid out the hourly priced  
2 service supply. Steven L. Estomin, Ph.D, on behalf of the Pennsylvania Office of  
3 the Consumer Advocate (“OCA”), recommends that the Company include some  
4 24-month supply contracts into the mix of procurements for the Residential class  
5 supply portfolio. Dr. Estomin also recommends that a longer timeframe be used  
6 to conduct Residential class procurements to meet the first year’s Default Service  
7 supply obligation. In addition Dr. Estomin recommends that each Residential  
8 class full requirements contract include a small portion of supply priced at spot  
9 market prices.

10  
11 **Q. Why does the Company believe that the procurement plans filed in this DSP  
12 VII plan are appropriate?**

13 A. Duquesne Light believes that supply product portfolios for the different customer  
14 classes are tailored to the particular classes, taking into account each class’s need  
15 for price stability, the different shopping propensity and market sophistication of  
16 each customer class, and the Company’s desire to progressively develop the  
17 competitive retail market in Duquesne Light’s service area. The Company points  
18 out that the length of the supply contracts and/or the frequency of default service  
19 supply rate changes generally has grown shorter over time as the Company  
20 implements subsequent default service plans. The Company believes that, to an  
21 appropriate degree, default service prices should become more responsive to  
22 changes in market conditions over time, and has taken steps in this proposed  
23 default service plan to increase the frequency and degree of default service supply

1 rate changes. At the same time, the Company strives to balance this objective  
2 with the customers' desire and need for stable default service rates, particularly  
3 for Residential and Small C&I customers.  
4

5 **Q. More specifically, why does the Company believe that the procurement plan**  
6 **filed in this DSP VII plan for Residential & Lighting and Small C&I**  
7 **customers is appropriate?**

8 A. The Company believes that 12-month laddered, full requirement, load-following  
9 contracts are appropriate for both the Residential and Small C&I classes. The  
10 Company points out that RESA has recommended shorter term supply contracts  
11 for these classes, while OCA has recommended longer term supply contracts for  
12 the Residential class. In addition, OSBA agrees with the Company's proposal for  
13 12-month laddered contracts for the Small C&I class. The Company anticipated  
14 these positions when crafting this default service plan and believes the proposed  
15 procurement schedule for the Residential & Lighting and Small C&I classes is an  
16 appropriate balance between the interests of RESA and price stability for default  
17 service customers.  
18

19 **Q. Why does the Company believe that "overhang" contracts are appropriate**  
20 **for the Residential & Lighting and Small C&I classes?**

21 A. The Company has included some overhang contracts for supply to be delivered  
22 after May 31, 2017 for Residential and Small C&I customers to provide some  
23 price stability benefits to these small customers. These contracts will avoid

1           subjecting these customers to a “hard stop” with regard to their supply products at  
2           the end of the DSP VII Plan period. By so doing, the Company will avoid the  
3           need to replace all of the default service supply for these customer classes in a  
4           short period of time at the end of the DSP VII period, a situation which could  
5           expose customers to magnified risks and rate instability. The Company would  
6           like to note that OCA, through the testimony of Dr. Estomin, has given their  
7           support for overhang contracts for the Residential customer class. RESA, through  
8           the testimony of Mr. Hudson, expresses concern that overhang contracts may  
9           complicate any future decision of the Commission or the legislature to alter the  
10          future of default service, but the Company believes that this situation can be dealt  
11          with if it presents itself. In the meantime, customers should not be burdened with  
12          lessened price stability to guard against such an uncertain outcome. Further, the  
13          Company notes that it has filed on June 5, 2014 a separate petition at Docket No.  
14          P-2012-2301664 to extend the Residential and Small C&I supply contracts from  
15          DSP VI into the first six months of DSP VII, to create overhang contracts that  
16          increase the price stability for these customers during the transition from DSP VI  
17          to DSP VII. This separate petition and the uncertainty present in the upcoming  
18          final energy supply RFP for DSP VI could have been avoided if overhang  
19          contracts had been adopted in DSP VI. Including overhang contracts also avoids  
20          the need to have multiple RFPs “clustered” together several months before the  
21          delivery period begins. This situation has occurred in the past as the Company  
22          has awaited Commission approval of its next default service plan. The Company  
23          believes that having limited overhang contracts avoids the need for multiple RFPs

1 to be held in a tight window, which spreads out market risk for customers by  
2 having supply contracts procured several months apart. The Company notes that  
3 in his testimony representing OCA, Dr. Estomin supports a longer timeframe  
4 between supply procurements and recognizes that overhang contracts would help  
5 avoid the risk that multiple procurements could be conducted during a short  
6 period of adverse market conditions (e.g., during the Polar Vortex conditions  
7 experienced this past winter). In fact, Dr. Estomin notes that granting the Petition  
8 I referenced earlier would eliminate these problems at the beginning of the DSP  
9 VII delivery period.

10  
11 **Q. Does the Company believe that including spot market energy as a component**  
12 **of Residential & Lighting energy supply, as recommended by OCA witness**  
13 **Dr. Estomin, is desirable?**

14 A. No, the Company does not believe that including spot market energy as a  
15 component of Residential & Lighting energy supply is desirable.<sup>1</sup> The Company  
16 believes that including spot market purchases in the procurement increases the  
17 volatility of rates and presents more risk for customers. The Company notes that  
18 this past winter of 2014 saw the effects of the “Polar Vortex” which taxed the  
19 electricity industry and resulted in spot market prices as much as 20 times higher  
20 than normal. Everyone in the electricity industry is now familiar with the outcry  
21 resulting from energy suppliers attempting to place the burden for those costs  
22 directly on customers. Duquesne Light does not believe it would be appropriate  
23 to burden customers with the increased risk of spot market energy supply, at any

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<sup>1</sup> Duquesne Light witness Fisher also addresses this issue in his rebuttal testimony.

1 degree. In addition, the Company points out that including spot market energy in  
2 the procurement plan would not prevent default service suppliers from having to  
3 balance their own load obligations under the load following contracts with hourly  
4 procurements in the spot market. In other words, the load following and spot  
5 market price risk premium that default service suppliers incorporate into their bids  
6 for default service supply would not be removed just because the Company  
7 separately obtains a portion of its requirements in the spot market. Further, the  
8 Company would need to obtain and pay for personnel to schedule and settle this  
9 spot market energy with PJM, including billing and payment and the  
10 reconciliation of costs for the price to compare (“PTC”). This will increase  
11 administrative cost to the Company, which will be passed on to customers, while  
12 once again adding to the risk being placed on these customers. OCA’s proposal  
13 would also require that the Company estimate or forecast future spot market  
14 prices in advance in order to establish the PTC for each default service supply rate  
15 period. Undoubtedly, these estimates will be wrong and will need to be  
16 reconciled, with the adjustments reflected in future default service supply rates.  
17 These under and over collections would increase from current and previous levels,  
18 since the Company currently and in the past has not had to forecast such supply  
19 costs to establish the PTC. Reconciliation of these under and over collections can  
20 potentially distort the relationship between default service supply rates and market  
21 prices and harm retail competition. For these reasons, Duquesne Light does not  
22 agree with including spot market energy in the procurement plan for default  
23 service customers.

1 **Q. Does the Company oppose OSBA’s recommendation to maintain the**  
2 **Medium C&I procurement schedule currently in place in DSP VI?**

3 A. No, the Company does not oppose OSBA’s recommendation to maintain the six-  
4 month, non-laddered, full requirements contracts that are currently in place in  
5 DSP VI. The Company notes that it proposed in its DSP VII Plan to shorten these  
6 supply contract lengths to three months each, and increase the supply rate change  
7 frequency from biannually to quarterly, in order to further the Medium C&I  
8 class’s movement to more market responsive rates over time. However, the  
9 Company agrees with OSBA witness Mr. Kalcic that while Medium C&I  
10 customers tend to be very sophisticated about the market, it does not remove their  
11 desire to avoid unnecessarily volatile rates. The Company also notes that  
12 maintaining the current portfolio mix for Medium C&I customers would eliminate  
13 four RFPs in the DSP VII period, which would have each existed solely to  
14 procure supply for the Medium C&I class. Therefore, the OSBA’s  
15 recommendation would have administrative cost savings for Medium C&I default  
16 service customers, and similarly, less RFPs would need to be evaluated and  
17 approved by the Commission. In summation, OSBA’s recommendation for  
18 Medium C&I customers is not unreasonable. The degree to which procurements  
19 should be shortened is ultimately a matter of judgment.

20

21 **Q. Does the Company agree with RESA witness Mr. Hudson’s recommendation**  
22 **that Medium C&I customers with peak demand above 100 kW should be**  
23 **moved to Hourly Priced Service in the Plan?**

1 A. No, the Company does not agree with RESA's recommendation. The Company  
2 notes that OSBA witness Mr. Kalcic has recommended that the Company  
3 maintain its current procurement plan for Medium C&I customers, which consists  
4 of six-month, non-laddered, full requirements contracts, rather than adopt the plan  
5 proposed in the DSP VII Plan of three-month, non-laddered, full requirements  
6 contracts. Clearly, Mr. Kalcic does not believe that Medium C&I customers'  
7 desire a move to more frequent rate changes or a willingness to take on more  
8 volatile rates or energy price risk. The Company also does not believe that  
9 Medium C&I customers with peak demand above 100 kW desire to receive  
10 hourly priced service. In addition, as Duquesne Light witness Fisher  
11 demonstrates in his direct testimony, Duquesne Light was one of the first utilities  
12 in the nation to offer hourly pricing default service to all customers equal to or  
13 greater than 300 kW, and still has one of the lowest kilowatt demand thresholds  
14 for hourly price default service for Large C&I customers in the United States.<sup>2</sup>

15

16 **Q. Does the Company agree with RESA witness Mr. Hudson's recommendation**  
17 **that Hourly Priced Service (Large C&I) supply in the Plan should be bid out**  
18 **to a competitive bid?**

19 A. No, the Company does not agree. 96% of the Company's Large C&I customer  
20 load is shopping with an alternative supplier as of June 2014. These large  
21 customers have many options available to them to switch to an alternative  
22 supplier, and some customers have chosen not to at the current time. The Large  
23 C&I customers that remain on default service have expressed to Duquesne Light

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<sup>2</sup> Duquesne Light Statement No. 3, Direct Testimony, p. 5.

1 in the past their desire to receive their power from Duquesne Light at PJM spot  
2 market prices, rather than through an alternative supplier. The Company believes  
3 that conducting an RFP for these customers would only increase administrative  
4 expenses without any benefit.<sup>3</sup>

5

6 **Q. Does the Company agree with the testimony of Lael Campbell, on behalf of**  
7 **Exelon Generation Company, LLC, that changes need to be made to the**  
8 **Duquesne Light default service procurement bid process to reduce potential**  
9 **“price hold risk” for bidding suppliers?**

10 A. No, the Company does not agree. The Duquesne Light default service supply  
11 RFP process already includes many of the measures recommended by Mr.  
12 Campbell. More specifically, Mr. Campbell recommends that the independent  
13 market monitor apply specific criteria to the bids placed in the RFP prior to  
14 notifying winning bidders and providing the RFP results to the Commission for its  
15 approval. Duquesne Light already instructs the independent market monitor to do  
16 exactly this, and indeed the monitor has been doing this during the DSP VI  
17 period. Prior to the RFP taking place, the market monitor develops a “Pre-Bid”  
18 report that is provided confidentially to the Commission. This report reviews the  
19 current energy market and provides a range of potential bid prices that would be  
20 deemed to be in line with the current energy market. Subsequent to the closing of  
21 the RFP bid submittal period, the market monitor reviews the bids to determine if  
22 the bids placed fall within this appropriate range. The market monitor also  
23 evaluates the bid submissions to ensure that there is no evidence of collusion

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<sup>3</sup> Duquesne Light witness Fisher also addresses this issue in his rebuttal testimony.

1 among bidders, and that the supplier load cap has not been violated. At this point,  
2 the market monitor makes the decision to recommend that the Commission  
3 approve or reject the results, and prepares a “Post-bid” report to the Commission  
4 to outline the result and the determining factors. All of this information is  
5 confidential, and cannot be shared with bidding parties. Prior to the close of  
6 business on the RFP bid day, the market monitor notifies the bidding parties by  
7 phone of the preliminary result of their specific bids – either accepted or  
8 unsuccessful. This is not meant to be notice of a final approval of the RFP result,  
9 as only the Commission has the authority to certify the final RFP results. This is  
10 done as a courtesy to the bidding suppliers so that, if they wish, they can choose  
11 to place energy hedges at that point. The Company acknowledges that there is  
12 still risk that the Commission could reject the results, and that if the winning  
13 suppliers were to place energy hedges at that point they would be bearing such  
14 risk.<sup>4</sup> However, the Company has no way of reducing this risk any further as the  
15 Commission must review the results and provide final approval. Over the years,  
16 the Company has designed the RFP process to obtain pre-approval of  
17 standardized contracts so that the RFP results can be determined solely on prices  
18 offered and the Company has tried to minimize the time required for the  
19 Commission approval process in an effort to minimize the amount of time that  
20 suppliers have to hold their offers open.

21  
22 **Q. Does the Company support the recommendation of Lael Campbell, on behalf**

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<sup>4</sup> The Company notes that to date the Commission has not rejected the results of a Duquesne Light RFP for default service supply.

1           **of Exelon Generation Company, LLC, that the Commission provide in any**  
2           **order, letter, or other decision regarding RFP results an explanation for the**  
3           **reasons and rationale for rejecting a particular RFP result(s), in the event**  
4           **the Commission ever takes such action?**

5    A.    Yes, the Company believes that this would be an appropriate action for the  
6           Commission to take in such a circumstance. However, this decision is ultimately  
7           in the Commission’s discretion, and Duquesne Light does not believe that it  
8           should be a requirement included in an individual EDC’s default service plan.

9

10    **III. DUQUESNE LIGHT’S PROPOSED TIME OF USE PROGRAM**

11    **Q.    What is the purpose of this section of your rebuttal testimony?**

12    A.    The purpose of this section of my rebuttal testimony is to respond to the direct  
13           testimony filed in the case by Mr. Richard J. Hudson, Jr., on behalf of RESA, that  
14           relates to the proposed Time of Use Program in this plan.

15

16    **Q.    Does the Company agree with the recommendation of Mr. Hudson, on behalf**  
17           **of RESA, that the Time of Use program should be able to accommodate**  
18           **multiple EGSs each utilizing differentiated time periods and product**  
19           **structures?**

20    A.    No, the Company does not agree with the recommendation of Mr. Hudson at this  
21           time. The Company is currently building the functionality into its new customer  
22           care platform, named “FOCUS,” that is platformed on Oracle Utilities  
23           Application Suite to allow Time of Use pricing for those customers with smart

1 meters that are installed and validated. The FOCUS project is scheduled to go  
2 live in the fourth quarter of 2014. The Company believes that the functionality to  
3 support one EGS offering a single Time of Use product will be ready to go on the  
4 Oracle Utilities solution for the proposed start of the Time of Use program in June  
5 of 2015. However, to add the functionality to support multiple EGSs, each of  
6 whom could be offering differentiated Time of Use products, would require  
7 additional development work that cannot be developed, tested and implemented  
8 within the time frame between FOCUS stabilization after the system goes live and  
9 June 2015.

10

11 **Q. Why is the Time of Use program designed to select just one EGS in the first**  
12 **year, and a second potential EGS in the second year?**

13 A. The Company will only have a small number of customers eligible for Time of  
14 Use rates at the start of DSP VII, due to the rollout of smart meters which is just  
15 getting underway. Further, the Company expects only a limited number of these  
16 customers to enroll in the Time of Use program, based upon the experiences of  
17 other Electric Distribution Companies (“EDCs”) in the Commonwealth.  
18 Therefore, the Company believes that it makes more sense to consolidate this  
19 small amount of customers for one EGS to serve, as it will make it more likely  
20 that the combined volume will motivate an EGS to bid a competitive price into  
21 the Time of Use RFP. In addition, the Company is committed to evaluating the  
22 results of the program in an attempt to measure the amount of energy and/or cost  
23 savings that customers achieve. Additionally, it is essential that a large enough

1 sample size of customers are all acting under the same program parameters and  
2 price signals, in order to conduct a statistically significant analysis of the program  
3 results. Supporting multiple EGSs offering Time of Use rates at various different  
4 price levels would harm the ability of this program to produce results that would  
5 be beneficial to the Company for future Time of Use programs.

6  
7 **Q. Does the Company agree with the recommendation of Mr. Hudson that the**  
8 **Company hold a collaborative with interested EGSs to design the details of**  
9 **the Time of Use program?**

10 A. No, the Company does not believe that a collaborative is necessary, due to the  
11 reasons stated above. Moreover, the Company is concerned that a collaborative  
12 will not allow its proposed Time of Use program to go into effect at the beginning  
13 of its DSP Plan period, and the Company believes that it is more efficient for the  
14 program to be decided as part of its overall DSP Plan. Finally, the Company's  
15 program is only for the DSP VII Plan period.

16  
17 **IV. ALTERNATIVE ENERGY PORTFOLIO STANDARD**

18 **Q. What is the purpose of this section of your rebuttal testimony?**

19 A. The purpose of this section of my rebuttal testimony is to respond to the direct  
20 testimony filed in the case by Mr. Michael Speerschneider, on behalf of Citizens  
21 for Pennsylvania's Future, that relates to the purchase of AECs for compliance  
22 with the Pennsylvania AEPS requirements.

1 **Q. Does the Company agree with the recommendation of Mr. Michael**  
2 **Speerschneider that the Company should procure AECs through long-term**  
3 **contracts (4+ years in length)?**

4 A. No, the Company does not agree with Mr. Speerschneider's recommendation.  
5 The Company does not believe it is appropriate to enter into long-term contracts  
6 for AECs at this point in time.<sup>5</sup> Recently, there has been much debate about the  
7 future of default service in the state of Pennsylvania, specifically on whether  
8 EDCs such as Duquesne Light will continue to serve that role. The Company  
9 believes that entering into long-term contracts for AECs would not be prudent  
10 given the unknown future of default service. Further, the Company does not  
11 believe that there is any reasonable basis to project that this approach would  
12 produce cost savings for customers, for reasons explained below.

13

14 **Q. Does the Company believe that the statement made on page seven of Mr.**  
15 **Speerschneider's testimony, regarding the existence of an "extra premium"**  
16 **on AEC prices caused by acquiring AECs from suppliers through full**  
17 **requirements contracts, is accurate?**

18 A. No, the Company does not believe that this statement is accurate. Mr.  
19 Speerschneider states that by using a "middleman," wholesale suppliers are  
20 marking up the cost of AECs delivered to the Company. The Company believes  
21 that suppliers that bid into the default service RFPs do so very competitively and  
22 they compete on margins. Because the RFPs are for full requirements contracts,

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<sup>5</sup> Duquesne Light witness Fisher also addresses issues with injecting long-term supply contracts into the default service supply portfolio.

1 the estimated cost of AECs is combined with the costs for energy, capacity,  
2 ancillary services, and all other expenses for serving default service load. The  
3 Company believes that suppliers certainly build in a margin on top of all of these  
4 projected costs, but because AECs are such a small component of the bid price the  
5 margin added by bidding suppliers should be viewed as compensation for  
6 managing a wide range of risks, of which renewable energy compliance is just a  
7 tiny component.

8

9 **Q. Does the Company believe that purchasing AECs through short-term or spot**  
10 **market purchases is more costly than long-term contracts?**

11 A. No, the Company does not necessarily believe that is the case. The AEC market  
12 is unique in that AECs expire after a certain period of time and then become  
13 worthless for compliance in Pennsylvania. This drives the short-term and spot  
14 market prices down as the compliance deadline nears each year. It is therefore  
15 possible for wholesale suppliers to obtain low-cost AECs to fulfill their obligation  
16 for AEPS requirements even if operating solely through short-term or spot market  
17 purchases.

18

19 **Q. Does the Company agree with the statement made on page 17 of Mr.**  
20 **Speerschneider's testimony that Duquesne Light should be analyzing the**  
21 **future market conditions of AECs and that failure to do so may result in**  
22 **higher, less stable prices to customers, or the statement made on page 18 that**  
23 **Duquesne Light did not make a good faith effort to consider long-term**

1           **contracts?**

2    A.    No, the Company does not agree. The Company does not believe it should be in  
3           the business of predicting future market conditions. The default service plans  
4           proposed in this case are based around the concept that the market should  
5           determine pricing for energy supply and AECs. The Company believes that  
6           suppliers are the entities best suited to analyze and attempt to predict the future  
7           conditions of the markets. The Company believes that customers are better  
8           served when suppliers take on this risk and compete against each other to supply  
9           both energy and AECs, as customers will be able to take advantage of the  
10          suppliers' ability to better manage these market risks than the Company would.  
11          The Company believes this arrangement is what ultimately leads to lower prices  
12          for customers.

13

14    **V. PROPOSED SMA REVISIONS**

15    **Q.    Mr. Campbell proposes a number of revisions to the SMA. Does the**  
16          **Company agree with any of these proposed revisions?**

17    A.    Yes, the Company agrees with the following revisions proposed by Mr.  
18          Campbell:

- 19          • The Company agrees to remove the phrase “and transmission services  
20           including Network Integration Service” from the definition of “DS Supply.”
- 21          • The Company agrees to remove the definition for “Seasonal Billing Factor.”
- 22          • The Company agrees to replace the word “particulate” with “particular” in the  
23          definition of “Transaction.”

- 1           • The Company agrees to replace the word “duration” in Section 8.1 with “de-
- 2           ration.”
- 3           • The Company agrees to reconcile the Mobile-Sierra language in Sections 11.2
- 4           and 16.15 of the SMA so that both sentences provide, in pertinent part, as
- 5           follows:

6                           To the extent permitted by law and absent agreement to the

7                           contrary, each Party, for itself and its successors and

8                           assigns, hereby expressly and irrevocably waives its rights

9                           to argue before any governmental authority that any

10                          review, modification, or rescission of this Agreement

11                          should be considered under any standard of review other

12                          than the “public interest” standard set forth in *United Gas*

13                          *Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332

14                          (1956) and *Federal Power Commission v. Sierra Pacific*

15                          *Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan*

16                          *Stanley Capital Group, Inc. v. Public Utility District No. 1*

17                          *of Snohomish County, Washington, et al.*, 554 U.S. 527

18                          (2008) (the “Mobile-Sierra Doctrine”).

19

20   **Q.    Mr. Campbell proposes a number of other revisions to the SMA. Please**

21   **explain the Company’s position with respect to these proposed revisions.**

22   A.    The Company does not agree with the other revisions proposed by Mr. Campbell.

23   I will respond to these proposed revisions below.

24   (1)   Mr. Campbell argues that the Company should eliminate any “regulatory

25           out” language in the SMA that would provide Duquesne Light, the

26           Commission or the Commonwealth an ability to exit the SMA at any time

27           with no penalty or recourse to the DS Supplier. ExGen St. No. 1, p. 11.

28           However, Mr. Campbell does not propose to modify any particular section

29           of the SMA. If Mr. Campbell is suggesting that the SMA should be

30           revised to address this issue, I disagree. Duquesne Light will be subject to

1 the express terms of the SMA and will only have the ability to exit the  
2 SMA pursuant to the terms set forth therein. If the Commission decides to  
3 cancel a particular SMA after it is executed, the Commission can  
4 determine the appropriate obligations and/or recourse for each party at that  
5 time.

6 (2) Mr. Campbell argues that DS Suppliers should not be required to transfer  
7 AECs to Duquesne Light on a quarterly basis. He further argues that  
8 transferring AECs on a quarterly basis is not common and not in line with  
9 how AECs are traded. ExGen St. No. 1, p. 13. I disagree with his  
10 assertions. Duquesne Light proposes to require DS Suppliers to deliver  
11 AECs on a quarterly basis to avoid situations where all DS Suppliers  
12 deliver AECs at the end of the compliance year. This increases the risk of  
13 non-compliance because it provides Duquesne Light limited time to  
14 acquire AECs if DS Suppliers do not deliver sufficient AECs. I also  
15 disagree that deliveries of AECs throughout the compliance year is not  
16 common practice. Duquesne Light has recently requested that DS  
17 Suppliers begin to voluntarily deliver AECs on a quarterly basis and  
18 certain DS Suppliers have agreed to do this. I also understand that PPL  
19 Electric Utilities Corporation requires DS Suppliers to deliver AECs on a  
20 monthly basis and has maintained this requirement since 2010. In  
21 addition, in discovery, Mr. Campbell acknowledged that PECO Energy  
22 Company requires biannual transfers of AECs from wholesale suppliers.

1                   Also, Mr. Campbell argues that quarterly delivery of AECs is not  
2                   in line with the market in which AECs are traded. I disagree with this  
3                   statement as well. AECs are created each month of the year, and DS  
4                   Suppliers can buy AECs at any time of the year. They do not have to wait  
5                   until the end of the year to buy AECs. AECs are traded throughout the  
6                   year. In a confidential discovery response, Duquesne Light to ExGen Set  
7                   I, Number 7, ExGen provided a listing of the Renewable Energy Credits  
8                   and AECs it has transferred by month since January 2009. A copy of this  
9                   discovery response is provided as **Confidential** Exhibit JH-1R to my  
10                  Rebuttal Testimony.

11                  Mr. Campbell argues that it would be better for Duquesne Light to  
12                  include a calculation of risks for failure to deliver AECs in its calculation  
13                  of credit exposure for each DS Supplier. I disagree with this assertion as  
14                  well. DS Suppliers attempt to limit credit requirements whenever  
15                  possible. It is a simple matter for DS Suppliers to deliver AECs on a  
16                  quarterly basis to mitigate Duquesne Light's risk of AEC non-compliance  
17                  and allow Duquesne Light more time to become compliant in the event  
18                  that one or more DS Suppliers fail to deliver AECs at the end of the year.

19                  (3) Mr. Campbell argues that Duquesne Light should revise its SMA to  
20                  remove DS Supplier's obligation to provide actual AECs and instead  
21                  allow them to provide an Alternative Compliance Payment ("ACP") to  
22                  meet any shortfall. This revision should not be adopted. Under the AEPS  
23                  Act, Duquesne Light has an obligation to deliver AECs, not make an ACP,

1 unless the Company fails to deliver AECs, and after a hearing, the  
2 Commission imposes an ACP. However, the Company has an obligation  
3 in the first instance to attempt to deliver AECs. See also Implementation  
4 Order II entered July 14, 2005 at Docket No. M-00051865. In addition, in  
5 determining whether *force majeure* exists, the Commission must consider  
6 whether EDCs and EGSs “made a good faith effort to acquire sufficient  
7 alternative energy to comply with their obligation.” See 73 P.S. § 1648.2  
8 Therefore, it is not sufficient under the AEPS Act to simply make an ACP  
9 rather than deliver AECs absent an express order by the Commission.

10 Making the revision proposed by Mr. Campbell could allow DS  
11 Suppliers to make ACPs instead of AECs and still require Duquesne Light  
12 to acquire AECs in order to comply with the AEPS Act. This is not the  
13 intent of the SMA. Duquesne Light is seeking full requirements supply  
14 for default service customers, and DS Suppliers should be required to  
15 deliver AECs not make ACPs.

16 (4) Mr. Campbell argues that DS Suppliers should not bear the risk of revised  
17 AEPS Standards during the term of an executed SMA. ExGen St. No. 1,  
18 p. 15. Mr. Campbell argues that AECs are typically locked in place as of  
19 the date that DS Suppliers submit their winning bids, and any increased  
20 AEC obligations are procured by the EDC under future procurements. I  
21 disagree with Mr. Campbell’s arguments. As I stated above, Duquesne  
22 Light’s SMA requires DS Suppliers to provide full-requirements service  
23 for the period of the contract. DS Suppliers are responsible for changes in

1 supply requirements and should be responsible for changes in AEPS  
2 requirements as well. I note that Duquesne Light's current SMA for its  
3 DSP VI period has the exact same requirement, and Duquesne Light has  
4 seen active participation in its DSP VI RFPs.

5 (5) Mr. Campbell argues that Sections 2.7, 3.2 and 3.3 should be reciprocal in  
6 the SMA. The Company disagrees with these changes. With respect to  
7 Section 2.7, this provision relates to the indemnification of the Company  
8 for DS Supplier's noncompliance and the obligation is only triggered  
9 when DS Supplier is not in compliance. As a supplier of the Company's  
10 default service load, DS Supplier must be in compliance with these  
11 obligations. It is unnecessary for there to be a reciprocal provision for  
12 Duquesne Light. Duquesne Light is a regulated entity which has a right to  
13 establish rates that provide it with a fair opportunity to recover its costs,  
14 including the right to fully recover its default service costs. Therefore,  
15 there is little to no risk of Duquesne Light experiencing the type of  
16 business failure that might justify bilateral indemnity provisions.

17 With respect to Section 3.2, the SMA contains representations and  
18 warranties of the Company, and they are not the same based on the nature  
19 of the agreement. Moreover, as stated above, Duquesne Light is regulated  
20 by the Commission and is not subject to the same business risks as a DS  
21 Supplier. Therefore the reciprocal provisions are unnecessary.

22 Finally, for Section 3.3, the Company does not agree to the  
23 proposed changes but can agree to modify the last sentence to read

1 “Company, may, in its sole discretion, treat any such materially incorrect  
2 or misleading representation or warranty as an Event of Default  
3 hereunder.”

4 (6) Additionally, Mr. Campbell argues that the reference to “sole discretion”  
5 in Sections 3.3 and 4.4 should be modified to “reasonable discretion.”  
6 The Company disagrees. As a general matter, the Company believes that  
7 it is appropriate to use the term “sole discretion” to avoid potential  
8 litigation over what is meant by “reasonable discretion.” With regard to  
9 Section 4.4, the use of “sole discretion” first appears in this section as to  
10 the determination of creditworthiness for a replacement supplier. The  
11 Company believes that “sole discretion” in this context is appropriate.  
12 The second reference relates to the Company’s right to either accept  
13 damages or a cure of an event of default that has occurred under the SMA  
14 which a new supplier has agreed to be responsible. The “cure” in this  
15 provision must be satisfactory to the Company and the “sole discretion” is  
16 to insure that the Company is satisfied.

17 Mr. Campbell makes a general statement that other references to  
18 “sole discretion” in the SMA should be changed to “reasonable  
19 discretion.” The Company disagrees. He has made no effort to identify  
20 where this occurs or why the legal standard is inappropriate. The  
21 Company carefully drafted the SMA and the protections therein and as  
22 explained above, believes that it is appropriate to use the term “sole

1 discretion” to avoid potential litigation over what constitutes “reasonable  
2 discretion.”

3 (7) Mr. Campbell argues that the second paragraph of Section 2.4 regarding  
4 PJM shortnames should be removed. Mr. Campbell believes that this  
5 paragraph restricts DS Suppliers’ ability to manage their PJM accounts.  
6 ExGen St. No. 1, p. 17. I disagree with Mr. Campbell’s conclusion. This  
7 paragraph does not limit DS Suppliers’ ability to manage their PJM  
8 accounts. This paragraph clarifies the DS Suppliers’ obligation to work  
9 with Duquesne Light to meet this particular PJM requirement. DS  
10 Suppliers are free to utilize an existing or create a new PJM account to  
11 serve DS Supply. DS Suppliers need to simply inform Duquesne Light of  
12 the PJM account they would like to use. There is no need to remove this  
13 paragraph as it does not inhibit a DS Suppliers’ ability to manage its PJM  
14 account. Rather, it gives DS Suppliers the freedom to designate PJM  
15 accounts in a manner of their choosing.

16 (8) Mr. Campbell argues that Sections 2.4 and 9.2 of the SMA should be  
17 revised to allow Duquesne Light and the DS Supplier to reconcile PJM  
18 billing errors through Article 9 invoices, other than seeking re-bills from  
19 PJM. ExGen St. No. 1, pp. 17-18. I do not agree with this  
20 recommendation. In my experience, in the event of a PJM billing error, it  
21 is better to ask PJM to issue a re-bill. PJM has the ability to make billing  
22 adjustments on the month-end bill when notified of an error in the  
23 assignment of PJM billing line items resulting from the PJM Declaration

1 of Authority. In these instances, it is simpler for both parties to allow PJM  
2 to make the correction and have it reflected on each party's PJM bill.

3 (9) Mr. Campbell argues that Section 5.1(iv) should be made reciprocal such  
4 that a dissolution or a merger event for Duquesne Light may also  
5 constitute an event of default. ExGen St. No. 1, p. 19. Of note, the  
6 dissolution language in Section 5.1(iv) is reciprocal as it applies to both  
7 Duquesne Light and DS Suppliers. For the Merger Event language, it is  
8 unnecessary to make this reciprocal because in the case of a merger event  
9 involving Duquesne Light, the surviving EDC will continue to be  
10 regulated by the Commission. Duquesne Light does not have a similar  
11 protection if the DS Supplier is subject to a merger event. In addition, any  
12 merger filing involving Duquesne Light would be a public filing before  
13 the Commission that would include substantial disclosure of information  
14 and the opportunity for DS Suppliers to participate in the proceeding.  
15 This would not be true if a DS Supplier was subject to a merger event.

16 (10) Mr. Campbell argues that Section 5.4(e) should be reciprocal. The  
17 Company disagrees. The provision relates specifically to defaults for  
18 agreements between the DS Supplier and the Company and calculating  
19 one termination payment regarding all agreements. As explained above,  
20 Duquesne Light is a regulated entity with a right to recover its costs from  
21 customers, including a statutory right to full cost recovery of its default  
22 service costs. Duquesne Light does not have the same risks as a DS  
23 Supplier. Therefore, it is unnecessary to make this Section reciprocal.

1           Moreover, PPL Electric, the FirstEnergy Companies and PECO do not  
2           have a bilateral default provision in their SMAs, so I disagree with Mr.  
3           Campbell's assertion that his recommendation is industry standard.

4           (11) The Company agrees to revise Section 6.12 to clarify that the provisions in  
5           SMA Appendix A will control for the purpose of calculating exposure  
6           under all prior SMAs with a party; provided, however, that if another  
7           SMA has a more stringent threshold then the more stringent credit  
8           threshold shall apply.

9           (12) Mr. Campbell argues that Section 10.3 of the SMA should be revised to  
10          include a requirement that Duquesne Light: (1) will provide DS Suppliers  
11          with prior notification of any curtailment, interruption or reduction in  
12          service to DS Customers, to the extent reasonably practicable, and (2)  
13          should resume service to DS customers as promptly as reasonably  
14          practical. ExGen St. No. 1, p. 20. This language is unnecessary and  
15          would create a burdensome obligation for Duquesne Light.

16                 Under the Public Utility Code, Duquesne Light has a statutory  
17          obligation to provide reasonably continuous service, without unreasonable  
18          interruptions or delay, to all customers. See 66 Pa.C.S. § 1501. This  
19          statutory obligation is enforced by the Commission, and it is unnecessary  
20          to include similar provisions in an SMA.

21                 In addition, the contractual language could create a burdensome  
22          obligation for the Company. The language suggests that Duquesne Light  
23          would be required to provide prior notification to DS Suppliers in the

1 event of curtailment, interruption or reduction of service to DS customers.  
2 Under this provision, if Duquesne Light were interrupting service to  
3 default service customers for any reason, including construction or for the  
4 repairs of facilities, it would be required to notify DS Suppliers of the  
5 interruption. This would be an unduly burdensome increase to the  
6 Company's workload that could distract or delay restoration of service. In  
7 discovery, ExGen stated that this provision was not intended to apply to a  
8 single customer outage or for 10 customers. See the Response to  
9 Duquesne Light Set I to ExGen, Number 13 in Exhibit JH-2R. However,  
10 ExGen's proposed SMA language does not make any exceptions and is  
11 not clear as to when Duquesne Light would be required to notify DS  
12 Suppliers and when notice would not be required. In discovery, ExGen  
13 was not able to provide a list of all situations where such notice would be  
14 required. (See Exhibit JH-2R, response to question 12). ExGen's  
15 proposed language is vague and does not clearly define when notice would  
16 or would not be required.

17 Moreover, the proposed language would require Duquesne Light to  
18 resume service to DS customers as promptly as reasonably practical. If  
19 this section were interpreted to require restoration of service to DS  
20 customers before shopping customers, it would improperly discriminate  
21 against shopping customers, which would be a violation of the Public  
22 Utility Code. Duquesne Light has a statutory obligation to restore service  
23 to all customers as promptly as reasonably practical and should not be

1 required to adopt any such provision in SMA contracts nor should the  
2 Company be required to provide prior notification to DS Suppliers in the  
3 event of curtailment, interruption or reduction in service. In discovery,  
4 ExGen states that the language is not intended to provide priority of  
5 service to default service customers over shopping customers. (See  
6 Exhibit JH-2R, response to question 11). However, ExGen's proposed  
7 language does not make this clear.

8 (13) Mr. Campbell requests that Duquesne Light broaden the jurisdictions  
9 identified in Sections 11.2 and 16.4 to include all Pennsylvania federal and  
10 state courts rather than courts located near Pittsburgh. ExGen St. No. 1, p.  
11 20. Duquesne Light disagrees with this request. Duquesne Light is  
12 located in Pittsburgh, the supply under the SMAs is being provided for  
13 service to customers in the Pittsburgh area, and it is reasonable for any  
14 disputes to be resolved in the Pittsburgh area. This reduces legal costs for  
15 Duquesne Light's customers. The Company should not be required to  
16 incur additional cost or inconvenience to defend the SMA in jurisdictions  
17 outside of the Company's service territory. I also note that the POLR VI  
18 SMA contains a similar provision.

19 (14) Mr. Campbell argues that Duquesne Light should add a sentence to the  
20 SMA regarding assignment of the agreement by the DS Supplier. ExGen  
21 St. No. 1, p. 21. Duquesne Light does not agree with this provision. The  
22 provision would require the Company to agree to an assignment of the  
23 SMA if the assignee meets the Company's creditworthiness criteria and

1 load cap restrictions. Duquesne Light does not believe that it is  
2 appropriate to require the Company to provide a blanket consent to  
3 assignment even if these criteria are met.

4 (15) Mr. Campbell argues that the SMA does not define “Market Price Hub”  
5 and that the Market Price Hub should be defined as the PJM West Hub.  
6 ExGen St. No. 1, p. 21. Page 2 of Appendix B provides that the mark to  
7 market calculation is based off of the AEP Dayton Hub prices. In  
8 Duquesne Light’s experience, the AEP Dayton Hub provides a better  
9 correlation to energy prices in the Duquesne Light zone than does the PJM  
10 West Hub. Therefore, Duquesne Light will clarify in the SMA that the  
11 Market Price Hub is the AEP Dayton Hub.

12 (16) The Company disagrees with the change to the defined term “Termination  
13 Payment” as the language in the SMA is accurate.

14  
15 **Q Do you agree with Mr. Cheslock’s argument regarding the change made in**  
16 **the SMA to raise the minimum credit rating for issuers of letters of credit?**

17 A. No. Mr. Cheslock refers to the EEI Master Power Purchase & Sale Agreement as  
18 authority for what is acceptable in the industry. However, Mr. Cheslock does not  
19 include any information on what is standard for Pennsylvania. I also note that the  
20 FirstEnergy Companies will rely on the A/A2 ratings for default supply procured  
21 for June 1, 2015 through May 31, 2017. PPL Electric is also proposing the A/A2  
22 standard. I also disagree that the EEI form is standard in the industry. Moreover,  
23 Mr. Cheslock has made unsubstantiated statements regarding the costs associated

1 with a higher standard and the cause and effects of the same on wholesale  
2 suppliers and their willingness to participate in the Company's default service  
3 plan. The Company asked Mr. Cheslock to substantiate these assertions in  
4 discovery, but he did not provide any substantial evidence in support of these  
5 assertions.

6

7 **Q Does this conclude your rebuttal testimony?**

8 **A.** Yes, it does.

**Exhibit JH-1R**  
**CONFIDENTIAL**

# **Exhibit JH-2R**

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**EXGEN RESPONSE TO DLC DATA REQUEST I**

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**DR I-11:** Does the proposed “Good Faith Efforts” language provide priority of service restoration to default service customers over shopping customers? If your answer is anything other than an unqualified “No,” please explain your response.

**ExGen Response**

No, the proposed “Good Faith Efforts” language does not provide priority of service restoration to Default Service customers over shopping customers.

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## EXGEN RESPONSE TO DLC DATA REQUEST I

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**DR I-12:** Provide a list of all situations where Duquesne Light would be required to provide prior notification of curtailment, interruption or reduction in service to DS customers.

### **ExGen Response**

ExGen objects to this request and, in response to DR I-12, incorporates by reference its General Objections. Subject to and without waiving the foregoing objections, ExGen responds that a list of all situations may not be possible, as situations may arise that could warrant providing prior notification to DS Suppliers. Examples of these situations include a known or expected system outage, where DLC would be expected to use Good Faith Efforts to notify DS Suppliers of the outage in advance, to the extent practicable.

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**EXGEN RESPONSE TO DLC DATA REQUEST I**

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**DR I-13: Would Duquesne Light be required to provide prior notification to the DS Supplier of curtailment, interruption or reduction in service:**

- (a) To a single DS customer?**
- (b) To 10 DS customers?**
- (c) In anticipation of interruptions due to storms?**
- (d) In anticipation of interruptions due to construction or repairs?**

**ExGen Response**

ExGen objects to this request and, in response to DR I-12, incorporates by reference its General Objections. Subject to and without waiving the foregoing objections, ExGen responds as follows:

- (a) No, though larger system outages effecting a significant portion of customer load may require that DLC use Good Faith Efforts to notify DS Suppliers.
- (b) No, though larger system outages effecting a significant portion of customer load may require that DLC use Good Faith Efforts to notify DS Suppliers.
- (c) Yes, but only to the extent practicable and to the extent that DLC expects curtailment, interruption or reduction in service to a significant portion of customer load.
- (d) Yes, but only to the extent practicable and to the extent that DLC expects curtailment, interruption or reduction in service to a significant portion of customer load.