



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

September 30, 2014

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
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 please find the Bureau of Investigation and Enforcement's (I&E) Statement in Support of Stipulation in the Settlement of Duquesne Light Company Default Service Plan for Period June 1, 2014 through May 31, 2017 ("Statement in Support")

Please also be advised that I&E will not be serving a Reply Brief in this case.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 425-7593.

Sincerely,

Scott B. Granger

Prosecutor

Bureau of Investigation and Enforcement  
PA Attorney I.D. # 63641

SBG/sea  
Enclosure

cc: ALJ Katrina L. Dunderdale  
Certificate of Service

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 hereby certify that I am serving the foregoing **Statement in Support** dated September 30, 2014, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Via Electronic Mail and First Class Mail**

Michael W. Gang, Esquire  
Anthony D. Kanagy, Esquire  
Post & Schell, PC  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Tanya J. McCloskey, Esquire  
Office of Small Business Advocate  
300 North Second Street  
Suite 202  
Harrisburg, PA 17101

Todd S. Stewart, Esquire  
Judith D. Cassel, Esquire  
Hawke, McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101

Brian R. Greene, Esquire  
GreeneHurlocker, PLC  
707 E. Main Street  
Suite 1025  
Richmond, VA, 23219-2812

Aron J. Beatty, Esquire  
David T. Evrard, Esquire  
Kristine E. Robinson, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Heather M. Langeland  
Citizens for Pennsylvania's Future  
200 First Avenue, Suite 200  
Pittsburgh, PA 15222

Theresa K. Schmittberger, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166

Patrick M. Cicero, Esquire  
Harry S. Geller, Esquire  
Elizabeth R. Marx, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17102

  
\_\_\_\_\_  
Scott B. Granger  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. No. 63641

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**BUREAU OF INVESTIGATION AND ENFORCEMENT  
STATEMENT IN SUPPORT OF  
STIPULATION IN SETTLEMENT OF  
DUQUESNE LIGHT COMPANY DEFAULT SERVICE PLAN  
FOR THE PERIOD JUNE 1, 2015 THROUGH MAY 31, 2017**

---

**TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:**

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") hereby respectfully submits this Statement in Support of Stipulation in Settlement of Duquesne Light Company Default Service Plan for the Period June 1, 2015 through May 31, 2017 ("Statement in Support").

I&E, Duquesne Light Company ("Duquesne Light", "DLC" or the "Company"), the Office of Consumer Advocate ("OCA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company ("ExGen"), NextEra Energy Power Marketing, LLC ("NextEra") and the Retail Energy Supply Association ("RESA") hereby enter into this Stipulation in Settlement ("Stipulation" or "Settlement") to resolve the issues set forth below and to reserve certain

issues for litigation. This Stipulation has been agreed to or not opposed by all Parties in this proceeding.<sup>1</sup>

I&E respectfully submits that terms and conditions of the forgoing Stipulation are in the public interest and represent a fair, just, and reasonable balance of the interests of the signatory parties notwithstanding the issues preserved for litigation.

## **I. BACKGROUND**

1. I&E is charged with representing the public interest in Commission proceedings related to rates, rate-related services, and applications affecting the public interest. In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any issue in any such proceeding benefits the public interest and to ensure that the public interest is served. Based upon I&E's analysis of Duquesne Light's default service plan filing, acceptance of this proposed Stipulation is in the public interest and I&E recommends that the Administrative Law Judge Katrina L. Dunderdale and the Commission approve the Stipulation in its entirety.

2. On April 24, 2014, Duquesne Light filed the Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2015 through May 31, 2017 ("Petition" or "Default Service Plan" or "DSP VII") seeking the Commission's approval of the Company's default service plan for the period from June 1, 2015 through May 31, 2017.

---

<sup>1</sup> The Stipulation is not opposed by the Office of Small Business Advocate ("OSBA"), Citizens for Pennsylvania's Future ("PennFuture"), Duquesne Industrial Intervenor ("DII"), FirstEnergy Solutions Corp. ("FES") and Noble Americas Energy Solutions, LLC ("Noble").

3. In its Petition the Company sought approval to continue separate default supply procurements for: (1) Residential and Lighting (“Residential”) default service customers; (2) Small Commercial and Industrial (“Small C&I”) default service customers with monthly metered demands less than 25 kW; (3) Medium Commercial and Industrial (“Medium C&I”) default service customers with monthly metered demands equal to or greater than 25 kW but less than 300 kilowatts; (4) and Large Commercial and Industrial (“Large C&I”) default service customers with monthly metered demands equal to or greater than 300 kW.

4. Duquesne Light proposed to procure supplies for Residential, Small C&I and Medium C&I default service customers through fixed-price full requirements contracts. Duquesne Light proposed to continue to procure supplies for Large C&I default service customers through the PJM Interconnection, LLC (“PJM”) day-ahead hourly spot market.

5. In addition, the Company proposed to revise its Standard Offer Program (“SOP”) to provide for third party enrollment as employed by other EDCs in Pennsylvania in order to enhance competition in its service territory.

6. The Company also proposed a Time-of-Use (“TOU”) Program under which electric supply for TOU customers would be provided by an electric generation supplier (“EGS”) selected through a competitive Request for Proposal (“RFP”) process.

7. Along with its Petition, the Company also filed the direct testimony of David B. Bordo, James Habberfield, Neil S. Fisher, William V. Pfrommer and Michele R. Sandoe.

8. On May 12, 2014, the Office of Consumer Advocate ("OCA") filed its Notice of Intervention, Public Statement, and Answer to Petition.

9. On May 15, 2014, the Office of Small Business Advocate filed its Notice of Intervention, Public Statement, and Answer to Petition.

10. And, consistent with its duty to represent the public interest in matters before the Commission that have an impact on rates, I&E filed its Notice of Appearance indicating its participation in this proceeding on May 20, 2014.

11. Petitions to Intervene were filed by Citizens for Pennsylvania's Future ("PennFuture"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company, LLC ("ExGen"), Duquesne Industrial Intervenors ("DII"), FirstEnergy Solutions Corp. ("FES"), NextEra Energy Power Marketing, LLC ("NextEra"), Noble Americas Energy Solutions, LLC ("Noble") and the Retail Energy Supply Association ("RESA").

12. This proceeding was assigned to Administrative Law Judge Katrina L. Dunderdale (the "ALJ"). On May 7, 2014, the ALJ issued a Prehearing Conference Order which set forth certain rules for the prehearing conference and for the proceeding in general. In response to the Prehearing Conference Order, parties filed Prehearing Memoranda.

13. A Prehearing Conference was held on June 2, 2014. At the Prehearing Conference, the parties agreed to a litigation schedule and discovery rules for the proceeding. Furthermore, as no evidence of the need for public input hearings was presented nor a request for one made, none was scheduled or held. In addition, the ALJ

granted the Petitions to Intervene that were filed by the parties. On June 12, 2014, the ALJ issued a Prehearing Order which memorialized the actions taken during the Prehearing Conference.

14. On July 8, 2014, I&E, OCA, OSBA, ExGen, NextEra, PennFuture and RESA served direct testimony. I&E timely served to all active parties I&E Statement No. 1, the direct testimony of Jeremy B. Hubert, addressing the subject of Time-of-Use cost recovery:

15. On August 1, 2014, Duquesne Light, OCA, OSBA, and RESA served rebuttal testimony.

16. On August 15, 2014, Duquesne Light, I&E, OCA, OSBA, NextEra, PennFuture and RESA served surrebuttal testimony. I&E timely served to all active parties I&E Statement No. 1-SR, the surrebuttal testimony of Jeremy B. Hubert, further addressing the subject of Time-of-Use cost recovery:

17. On August 21, 2014, Duquesne Light served rejoinder testimony.

18. In accordance with Commission policy favoring settlements at 52 Pa. Code § 5.231, I&E participated in multiple telephonic settlement discussions with the Company and the other Parties to the proceeding.

19. A hearing was held on August 25, 2014. All parties waived cross-examination. At the hearing, parties stipulated to the admission of the previously served testimony and exhibits. In addition, the ALJ directed the Company to send a Common Brief outline to the parties.

20. On September 15, 2014, Duquesne Light entered into the forgoing Stipulation with I&E, OCA, CAUSE-PA, ExGen, NextEra and RESA, which resolved issues regarding the Residential Procurement Plan, the SOP, the TOU Program, the Supply Master Agreement ("SMA") and unbundling of default service costs. The Stipulation also reserves for litigation issues regarding the Small C&I procurement plan, the Medium C&I procurement plan, the Large C&I procurement plan, procurement of alternative energy credits ("AECs") and the methodology for recovering certain PJM transmission charges. The Stipulation has been agreed to or not opposed by all Parties in this proceeding and was filed contemporaneously with Parties' Main Briefs. As directed by the ALJ, I&E (along with the other signatory Parties) is filing this Statement in Support with respect to the settled issues on September 30, 2014, contemporaneously with Reply Briefs.

## II. TERMS AND CONDITIONS OF SETTLEMENT

21. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."<sup>2</sup> The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."<sup>3</sup>

22. I&E submits that the Stipulation in the instant proceeding balances the interests of the Company, its customers, and the Parties in a fair and equitable manner and presents a resolution for the Commission's adoption that best serves the public

---

<sup>2</sup> *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

<sup>3</sup> *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

interest. Furthermore, the negotiated Stipulation demonstrates that compromises are evident throughout the Stipulation. Accordingly, for the specific reasons articulated below, and in order to achieve the full scope of benefits addressed in the Stipulation, I&E requests that the Stipulation in Settlement be approved by ALJ Dunderdale and the Commission without modification.

**A. Default Service Procurement and AEC Contracts.**

The Bureau of Investigation and Enforcement did not address this issue in neither its direct testimony nor its surrebuttal testimony, and therefore, I&E has no comment regarding this issue.

**B. Standard Offer Program ("SOP").**

The Bureau of Investigation and Enforcement did not address this issue in neither its direct testimony nor its surrebuttal testimony, and therefore, I&E has no comment regarding this issue.

**C. Time of Use ("TOU") Program.**

***1. Stipulation in Settlement Terms.***

In the Stipulation in Settlement, the parties agreed that Duquesne Light's TOU Program for the first year of DSP VII will be approved for Residential (other than those customers enrolled in Duquesne Light's Customer Assistance Program ("CAP")), Small C&I and Medium C&I customers with interval meters, as long as the customer also has the necessary data collection and communications systems in place, and the systems have been successfully tested. CAP customers will not be eligible for the TOU Program in the first year of DSP VII because issues regarding CAP portability have not been finally

determined at this time, and there will be a limited window for TOU enrollment in the first year of DSP VII. *See*, Stipulation, ¶ 9.

The parties also agree that Duquesne Light will conduct a collaborative to develop a TOU Program and cost recovery mechanism for the year commencing June 1, 2016 and ending May 31, 2017, to identify ways to permit multiple EGSs to participate in a TOU offering(s) and will explore how to effectively integrate the TOU Program with CAP provided that general issues regarding CAP portability have otherwise been decided by the Commission. In order to permit the Company time to identify new options available for TOU service and assess necessary TOU Program changes to potentially integrate CAP customers if CAP portability issues have been decided, the collaborative will commence no later than June 30, 2015. The collaborative will continue for 60 days. Following the collaborative, the Company will file with the Commission by September 30, 2015, a TOU Program proposal reflecting any consensus that has been achieved and the Company's proposal on unresolved issues. The Commission will provide an opportunity for comments by interested parties, and issue a final order by January 31, 2016, so that any actions necessary to commence the approved TOU program commencing June 1, 2016 can be completed. *See*, Stipulation, ¶ 10.

I&E has chosen to participate in the collaborative, rather than proceed to litigation, as a means of keeping the cost allocation issue alive for the reasons more fully set forth *infra*.

## 2. *Duquesne Light's Original Proposal.*

As stated by Duquesne Light witness David B. Bordo, Duquesne Light filed its original TOU plan on December 28, 2009, which consisted of four phases and was intended to provide data that would ultimately assist in the establishment of a fully developed TOU program (phase 4) to be applicable to customers upon the broader deployment of smart meters. Due to a delay in smart meter deployment, the Commission agreed in Docket No. P-2009-2149807 to allow the Company to delay implementation of the final phase of its TOU program to better align TOU plans with smart meter deployment plans and submit revised plans for the final phase of its TOU program as part of the Company's next default service filing. *See*, DLC St. No. 1, pp. 13-14. *See also*, I&E Statement No. 1, p. 3.

Duquesne Light has proposed in its filing that it will solicit EGS participation to provide TOU supply service associated with DLC's TOU program. The Company will issue an announcement to all EGSs licensed to do business in DLC's service territory informing them of the opportunity to compete to be the TOU supplier through request for proposals ("RFP"). Customers who elect TOU service will become customers of the winning EGS. *See*, DLC St. No. 4, pp. 16-17. *See also*, I&E Statement No. 1, p. 4. If a given TOU RFP fails to attract a qualifying bid from any EGS, the Company will offer TOU service to eligible customers for the applicable TOU program year. *See*, DLC St. No. 2, pp. 23-24. *See also*, I&E Statement No. 1, p. 4.

Regarding the allocation of costs related to the proposed TOU program, as stated by Company witness William V. Pfrommer, the EGS supplying the TOU service will be

responsible for recovering its own costs. Any incremental costs incurred by the Company to implement and retain the TOU program will be borne by default service customers. See, DLC St. No. 4, p. 23. *See also*, I&E Statement No. 1, p. 5. As described by Duquesne Light, the Company expects the incremental costs to implement the TOU program to be \$512,500. These incremental costs consist of \$250,000 for communication and promotion of the TOU program, \$200,000 for analyzing and reporting the results of the TOU program; \$50,000 attributable to billing resources and \$12,500 expected for training costs. *See*, DLC St. No. 5, pp. 12-13. *See also*, I&E Statement No. 1, p. 5.

### ***3. I&E's Response to Duquesne Light's Original Proposal.***

I&E's review of the allocation of the TOU costs focused on the allocation of the proposed \$512,500 incremental costs associated with the TOU Program as the allocation of those costs relates to the fundamental ratemaking principal that the customers that receive the benefits of a program should bear the costs of the program. Duquesne Light identified these incremental costs as \$250,000 for communication and promotion of the TOU program; \$200,000 for analyzing and reporting the results of the TOU program; \$50,000 attributable to billing resources; and, \$12,500 expected for training costs. *See*, DLC St. No. 5, pp. 12-13. *See also*, I&E Statement No. 1, p. 5.

After I&E completed its thorough review, I&E agreed with the Company's argument that Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. §2807(f)(5), requires that "the default service provider shall submit to the Commission an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices." 66 Pa. C.S. §2807(f)(5).

Therefore, I&E agrees with Duquesne Light that it, as the EDC, should assume the responsibility of compiling and analyzing the data in order to report on the results of the TOU program and that the associated estimated incremental cost of \$200,000 be recovered through default service rates. *See*, I&E Statement No. 1-SR, p. 4. This leaves the remaining \$312,500 of incremental costs.

I&E recommended that the remaining \$312,500 of incremental costs (\$250,000 for communication and promotion of the TOU program; \$50,000 attributable to billing resources; and, \$12,500 expected for training costs) be included as part of each TOU RFP, requiring the winning bidder to perform these functions. *See*, I&E Statement No. 1-SR, p. 5-6. I&E believes that if an EGS successfully bids and begins to provide TOU service, all residential, small commercial and industrial customers availing themselves of the TOU service will become de-facto customers of that EGS. As such, the EGS that wins the TOU bid, and receives customer revenues as a result, ought to also bear the associated incremental costs of the TOU program. *See*, I&E Statement No. 1-SR, p. 5-6.

RESA witness Hudson disagreed with I&E's position and believes that including the functions to implement and retain the TOU program and the associated incremental costs, totaling \$312,500, as part of each TOU RFP will discourage EGSs from bidding or participating in the TOU program. Mr. Hudson speculated that this level of costs, when spread over the potential pool of customers who are likely to elect the TOU service, will significantly outweigh any benefit that an EGS receives in acquiring customers through the TOU program. *See*, RESA St. No. 1-R, pp. 17-18. *See also*, I&E Statement No. 1-SR, p. 6.

I&E believes that the differing opinions expressed by I&E and RESA, as well as the position taken by Duquesne in its original proposal, are evidence that a collaborative is needed to continue to develop Duquesne Light's TOU Program and cost recovery mechanism for the future. The cost allocation issue will grow in importance as shopping continues grow in popularity and the number of default service customers continues to shrink. I&E will continue to promote adherence to the fundamental ratemaking principal that the customers that receive the benefits of a program should bear the costs of the program in this matter, as it does in every ratemaking case.

**D. Supply Master Agreement ("SMA").**

The Bureau of Investigation and Enforcement did not address this issue in neither its direct testimony nor its surrebuttal testimony, and therefore, I&E has no comment regarding this issue.

**E. Transmission Charges.**

The Bureau of Investigation and Enforcement did not address this issue in neither its direct testimony nor its surrebuttal testimony, and therefore, I&E has no comment regarding this issue.

**F. Unbundling Default Service Costs.**

The Bureau of Investigation and Enforcement did not address this issue in neither its direct testimony nor its surrebuttal testimony, and therefore, I&E has no comment regarding this issue.

**G. Miscellaneous Provisions.**

See the provisions set forth in Section III – The Settlement Satisfies the Public Interest *infra*.

**III. THE SETTLEMENT SATISFIES THE PUBLIC INTEREST**

23. I&E submits that the Stipulation in the instant proceeding balances the interests of the Company and the signatory Parties in a fair and equitable manner that best serves the public interest going forward. Furthermore, the negotiated Stipulation demonstrates that compromises are evident throughout the Stipulation. Accordingly, I&E requests that the Stipulation in Settlement be approved by ALJ Dunderdale and the Commission without modification.

24. I&E recognizes that this Stipulation is the result of compromises by the Parties. I&E, therefore, fully supports the proposed collaborative as set forth in Paragraph 10 of the Stipulation as a viable means to develop a TOU Program and cost recovery mechanism which are consistent with protecting the public interest while maintaining sound cost allocation methods all the while competition grows, shopping increases, and the number of default service customers inevitably shrinks.

25. The very nature of a settlement requires compromise on the part of all parties. This Stipulation exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The Parties have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Stipulation in Settlement.

26. Based upon I&E's analysis of the filing, resolution of this case pursuant to the forgoing Stipulation, rather than litigation, avoids the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense and regulatory uncertainty.

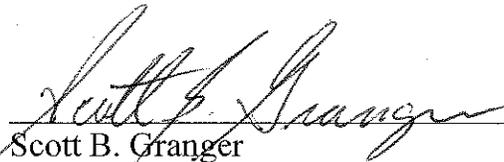
27. I&E further submits that the acceptance of this Stipulation provides regulatory certainty with respect to the disposition of issues which all of the Parties agree benefits their discrete interests.

28. The Stipulation Settlement is conditioned upon the Commission's approval of all terms without modification. Should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by the Company, I&E, or any other party.

29. This Stipulation in Settlement is being presented only in the context of this Default Service Program (DSP VII) proceeding. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the Settlement. Furthermore, the Settlement reflects compromises on all sides, and is presented without prejudice to the positions that any of the parties may advance in the future on the merits of the issues.

**WHEREFORE**, the Commission's Bureau of Investigation and Enforcement represents that it supports the forgoing Stipulation in Settlement of Duquesne Light's DSP VII as being in the public interest and respectfully requests that Administrative Law Judge Katrina L. Dunderdale recommends, and the Commission approve, the terms and conditions contained in the Stipulation.

Respectfully submitted,



---

Scott B. Granger  
Attorney I.D. #63641

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265  
(717) 787-1976

Dated: September 30, 2014