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September 30, 2014

BY FED EX AND EFILING

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

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

Dear Ms. Ciavetta:

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

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

Sincerely,

Brian R. Greene

BRG/wcd
Enclosures

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

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Dated: September 30, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION AND PROCEDURAL HISTORY

As the Retail Energy Supply Association ("RESA")[1] explained in its initial brief, the parties to this proceeding have agreed (or agreed not to oppose) a settlement of certain issues in this proceeding, and also agreed to continue litigating the remaining issues. The remaining issues include the appropriate procurement portfolios for each of Duquesne's non-residential default service customer classes, and the appropriate cost responsibility and methodology for recovering transmission-related charges.

Regarding the procurement portfolios, RESA has presented, and explained in its initial brief, portfolios for the Small C&I, Medium C&I, and Large C&I classes that are consistent with the Electricity Generation Customer Choice and Competition Act (the "Competition Act") and, particularly for this plan period, the directives set forth by the Commission in its *End State Order*.[2] This includes adjusting Duquesne's proposed procurement portfolios to move each portfolio to default service rates that more closely resemble underlying market prices that will benefit customers by enhancing retail competition and allowing EGSs to bring innovative products and services to customers to meet their needs and desires. For the Small C&I class, RESA proposes to move closer to the Commissions' desired end state. RESA's proposed Small C&I procurement schedule was introduced into evidence as RESA Exhibit RJH-6, a copy of which is attached to this brief for convenience as Attachment A. For the Medium and Large C&I classes, RESA proposes to reach the desired end state in adherence to the *End State Order*.

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

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

RESA also recommends that Duquesne assume the cost responsibility for the following PJM Charges for all load (default service and shopping) and recover the costs from all customers through a non-bypassable charge:

- Transmission Enhancement and Expansion Cost Recovery Charges ("TEC/ECRC)" sometimes also referred to a Regional Transmission Expansion Plan charges or "RTEP");
- Generation Deactivation Charges (also referred to as Reliability Must Run Unit charges or "RMR");
- Network Integration Transmission Services ("NITS");
- Unaccounted For Energy ("UFE"); and,
- Historical out of market tie line and retail customer meter adjustments.[3]

Addressing the cost assignment and cost recovery issues related to these non-market based charges ("NMB Charges") is an important component of developing a functional competitive retail market because the result impacts how much risk premium a customer will be required to bear as well as the customer's ability to accurately compare competitive prices to default service rates. Requiring the EDC to assume the cost responsibility for these charges for all load and recover the costs from all customers through a non-bypassable charge is the most reasonable way to ensure that: (1) customers pay only the actual costs of these charges rather than the cost of additional risk premiums; (2) a competitive advantage for default service is not created; and, (3) that EGSs have equal and nondiscriminatory access to the EDC's own use of its system.

II. SUMMARY OF ARGUMENT

RESA summarized its positions in its initial brief, submitted on September 15, 2014.

III. ARGUMENT

A. LEGAL STANDARDS

The legal standards applicable to this case, including the burden of proof and standards applicable to default service, are set forth in RESA's initial brief filed on September 15, 2014.

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

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

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

2. Small C&I Procurement Issues

Duquesne and OSBA continue to advocate for a Small C&I procurement that does not move Small C&I default service rates towards more market-reflective pricing than those in effect today. As Duquesne states in its Main Brief, "the DSP VII procurement for Small C&I customers is the same procurement plan that Small C&I customers are currently being offered under DSP VI."[4] RESA recommends that the Commission not merely continue the status quo of laddered 12-month contracts but instead approve a portfolio that consists of a blend of 12-month, 6-month, and 3-month procurement contracts. Such a blended portfolio represents progress towards market-reflective rates as endorsed by the Commission.

Duquesne and OSBA oppose RESA's recommended Small C&I portfolio. OSBA argues that RESA's proposed portfolio is not consistent with the Competition Act and that the *End State Order* basically should not play any role in this proceeding. Both Duquesne and OSBA argue that RESA's recommended portfolio exposes customers to rate instability. Finally, Duquesne argues that RESA's proposal would include a "hard stop" by not allowing the laddered contracts to continue into the next plan period, and that RESA's proposed 3-month and 6-month products are not necessary to support sustainable retail competition. RESA will address these arguments below.

[4] Duquesne Main Brief at 15. RESA points out that the Commission in DSP VI approved a Small C&I portfolio that included a six-month contract at the end of the plan period, and that the proposed DSP VII would replace that 6-month contract with a 12-month contract. Thus, Duquesne's proposal is to move Small C&I customers to 100% 12-month contracts, which RESA views as a step backwards. See RESA St. No. 1-R at 6. RESA sees no distinction between a portfolio that continues the status quo or one that replaces a 6-month contract with a 12-month contract: neither represents progress towards a portfolio that advances the Commission's desire for default service rates that more closely resemble underlying market prices.

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

OSBA's opposition to RESA's recommended blend of 12-month, 6-month, and 3-month procurement contracts for Small C&I of customers is based on its view that the Commission's *Act 129 Final Rulemaking Order*,[5] which OSBA claims rejected shorter term contracts as violating the Act's "least cost" standard.[6] In addition, OSBA claims that the *End State Order*'s clear pronouncements "may be viewed as a kind of 'wish list' regarding what the Commission envisions for the future of default service"[7] and that there have been no legislative changes to the Competition Act to support the implementation of 90-day contracts.[8] OSBA's legal arguments are incorrect, unpersuasive and must be rejected.

The purpose of the *Act 129 Final Rulemaking Order* – entered October 4, 2011 – was to update the Commission's regulations following the passage of the Act 129 amendments to the Competition Act. While the *Act 129 Final Rulemaking Order* also offered the Commission's view on broader policy questions as raised by stakeholders during the comment period, the Commission made clear that the *Act 129 Final Rulemaking Order* was not intended to create any mandates for future default service plans or require (or reject) any specific contract mix:

> In particular, the Commission wishes to make clear that the focus of this rulemaking is to bring our existing default service rules into compliance with Act 129 standards. Therefore, these final form regulations should not be construed to anticipate, pre-judge or otherwise foreclose our consideration of other default supply models or adjustments to the current default service model in the pending *Retail Electricity Markets Investigation* at Docket No. I-2011-2237952.[9]

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[5] *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking (Order Entered October 4, 2011) ("*Act 129 Final Rulemaking Order*").

[6] OSBA Main Brief at 8.

[7] OSBA Main Brief at 10.

[8] OSBA Main Brief at 10-11.

[9] *Act 129 Final Rulemaking Order* at 9 (emphasis added). *See Id* at 32. ("We assure the parties that any future decisions to amend these regulations as a result of the comments received on the policy questions, the outcome of the current investigation into default service or development resulting from evaluation of future DSP plans will be subject to the full rulemaking processes.").

Consistent with this clear pronouncement, the Commission specifically declined to establish specific percentages of default service load that should be served under various types of products[10] and the Commission has subsequently approved procurement plans with a varying degree of contract types.[11] As such, the *Act 129 Final Rulemaking Order* provides no basis upon which to reject RESA's recommendations for Small C&I customers.

In contrast, the Commission's subsequent *End State Order* – entered February 15, 2013 – was the result of an extensive investigation into Pennsylvania's retail electricity market (initiated in April 2011) and set forth the Commission's "proposed model for default service."[12] Specifically, the Commission stated that it recommended "fundamentally changing the default service product so that it more closely resembles market conditions" and made clear that it was committed to effectuating these changes on June 1, 2015.[13] With respect to Small C&I procurements, the Commission indicated a preference for quarterly contracts but was concerned that statutory changes "may" be required to employ quarterly contracts. ***The Commission was also clear, however, that "[s]hould legislative efforts fall short, we will consider an alternative shorter-term product that is more reflective of market conditions than the currently-offered default service products."***[14] Thus, Duquesne's proposal for Small C&I procurements to include solely 12-month contracts, which Duquesne and OSBA contend merely preserve the status quo and should be approved, is inconsistent with the Commission's desires expressed unambiguously in the *End State Order*. RESA's

[10] *Id*. at 66. *See Id.* at 60 (". . . we will continue to review each plan on a 'case by case' basis that independently evaluates the merits of each default service plan where input from stakeholders is assured.").

[11] *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered August 16, 2012; *Petition of PECO Energy Company for Approval of its Default Service Program* II, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2301664, Opinion and Order entered January 25, 2013; *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012.

[12] *End State Order* at 3.

[13] *Id.* at 15-16.

[14] *Id.* at 51; RESA St. No. 1-SR at 11.

proposal is more reflective of market conditions than the current DSP VI plan and reasonably transitions Small C&I customers towards the Commission's desired end state but does not rely upon the exclusive use of quarterly procurement contracts. OSBA and Duquesne have made no effort to adhere to the Commission's directives set forth in the *End State Order*.

b. Arguments regarding excessive price volatility are overstated.

RESA addressed in its Initial Brief the issue of price volatility regarding its proposed Small C&I procurement portfolio. First and foremost, Duquesne's and OSBA's concerns about volatility miss the point in that RESA's proposal would allow for default service rates that are more market-reflective than those in effect today, consistent with the express directives of the Commission. RESA's proposal would permit 50% of the underlying commodity price to move up or down on a quarterly basis, consistent with the market price, during the last six months of the plan period.[15] In contrast, Duquesne's proposed reliance on laddered 12-month contracts, with prices that are comprised of a blended price, would not permit the underlying commodity price to change quarterly consistent with the market price. Moreover, while RESA does not necessarily dispute that some customers may value price stability – even if that stable price is higher than the market price – the role of default service is not to provide that one particular product type.

The Commission has already rejected the notion that 3-month procurement contracts would create too much price instability.[16] The Commission has recognized the negative impacts on the retail market when default service prices become divorced from current market prices, and the potential for such a situation to result in a "boom" or "bust" business cycle.[17] Duquesne and OSGA ignore these decisions and present a "status quo" proposal. As RESA stated in its Initial Brief, the Commission has recommended a progression to a more market responsive default service product – namely, transition to 100% quarterly

[15] RESA St. No. 1-R at 7-8.
[16] *End State Order* at 23-24.
[17] *Id.* at 14-15.

contracts – and RESA is the only party in this proceeding that has proposed a Small C&I portfolio that will transition to the Commission's recommended portfolio.

Duquesne presented an analysis which it purports demonstrates that RESA's procurement plan would double rate instability as compared to Duquesne's plan.[18] RESA, on the other hand, presented the recent 12-month procurement history from Maryland's procurements of 90-day contracts for Type II customers. The Type II 90-day procurements have not resulted in the type of extreme price volatility that Duquesne and OSBA would have this Commission believe, and the recent history included procurements during the Polar Vortex.[19] This is consistent with Chairman Powelson's and Vice Chairman Coleman's statement that the use of procurement contracts more market-responsive that those in effect now will not harm customers, and that "customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price product."[20]

Finally, Duquesne's consistent references to the Polar Vortex as a reason to stay away from 3-month contracts is misguided. As RESA explained in its Initial Brief, market disrupting events such as the Polar Vortex support the use of more market responsive contracts.[21] There is always a risk that a solicitation will occur during a period of unusual market conditions. If that happens, customers are better off with shorter term contracts that will allow prices to moderate as market conditions normalize. Longer term contracts would lock in the resulting higher market prices for a longer period of time with longer lasting impacts to customers. The Type II Maryland SOS prices referenced above showed that prices increased during the March 2014 to May 2014 period, but there was a fairly significant decrease for the most recent pricing

[18] Duquesne Main Brief at 16.

[19] RESA St. No. 1-SR at 9.

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

[21] RESA St. No. 1-SR at 9-10.

period with prices dropping 17 percent.[22] Had that been a longer-term contract, Maryland's Type II SOS customers would be paying higher prices for a longer duration of time.

c. RESA's proposal to eliminate the proposed "overhang" contracts should be accepted.

Duquesne opposes RESA's recommendation in part because there would be two "hard stops," which Duquesne contends will expose customers to rate instability and risk.[23] This would not be a new circumstance, however, as Duquesne bid out 100% of its supply twice in the recent past – in DSP VI, 100% of the Residential default service procurement contracts began in June 2013 and expired in May 2014, when new contracts began.[24] While no one can predict where energy prices will be at any specific moment in time, it is incorrect to imply, as Duquesne does, that a "hard stop" will automatically result in price shock.

Moreover, in Duquesne's last default service plan proceeding, the Commission rejected Duquesne's plan to procure contracts that extended beyond the end of the plan period. The Commission held that "Duquesne's DSP can be revisited in the event that there are no significant changes to Duquesne's default service responsibilities as the end of the DSP period approaches."[25] The Commission also allowed Duquesne the option to request approval of "overhang" contracts closer to the end of the plan period, which Duquesne did. RESA recommends that the Commission take a similar course in this proceeding by not approving overhang contracts at this time. The process of allowing Duquesne to come in and request a modification of its final procurement contract of the DSP period worked well with respect to DSP VI and should be continued to DSP VII.

[22] RESA St. No. 1-SR at 10.
[23] Duquesne Main Brief at 16.
[24] RESA St. No. 1-R at 5.
[25] *See Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June I, 2013 through May 31, 2015*, Case No. P-2012-2301664, Opinion and Order at 80 (Order entered Jan. 25, 2013).

d. Reliance on shopping statistics is misplaced and overstated.

Duquesne's and OSBA's reliance on shopping statistics for the Small C&I customer class is misplaced. Adopting RESA's proposal for Small C&I procurements is consistent with the Commission's expressed intent in the *End State Order,* as explained above, and in the best interest of these customers as they will have an even better opportunity to participate in the competitive market. RESA also notes that slightly more than 50% of Duquesne's Small C&I customers remain on default service,[26] which is a high amount (regardless of Duquesne's claims to the contrary) and also does not reflect the types of products and services available in the market in which they are participating. A truly competitive retail electricity market will include not just price competition, but also other products such as renewables, energy efficiency, affinity programs and products, dual fuel, and other value-added products and service.

For these reasons, RESA supports a blend of 12-month, 6-month, and 3-month procurement contracts for Small C&I customers, which will reasonably transition them to 100% 3-month contracts in the next plan period.

3. Medium C&I Procurement Issues

There are three proposals in this case for Medium C&I default service procurements. RESA's proposal, however, is the only proposal that adheres to the objectives set forth in the *End State Order* and builds upon the advancements made to date in the Medium C&I market, enabling customers to continue to receive numerous products and services from EGSs. Specifically, RESA recommends 90-day procurement contracts for Medium C&I customers between 25 kW and 100 kW peak demands. RESA also recommends that customers from 100 kW, up to the Medium C&I ceiling of 300 kW, all of whom have fully-deployed interval meters, be incorporated into the Large C&I class and receive hourly default service pricing.

[26] Duquesne Exhibit NSF-1.

Duquesne's Medium C&I proposal is a step in the right direction but does not go far enough towards market reflective pricing for this class and in satisfying the Commission's end state objectives for default service. Duquesne proposes that Medium C&I default service load be procured through 100% full requirements 90-day contracts even though all customers in that class between 100 kW and 300 kW have interval meters. OSBA's proposal to continue the status quo – 100% full requirements 6-month wholesale supply contracts – does not move the dial towards more market reflective default service rates and should be rejected.

Many of the arguments advanced by Duquesne and OSBA in opposition to RESA's proposal are the same argument addressed above with respect to the Small C&I portfolio. Those arguments include that RESA's hourly proposal: (1) will lead to insufficient rate stability; (2) does not adhere to statutory standards for default service; (3) inappropriately implements the *End State Order*; (4) is unnecessary because of current shopping rates.[27] Duquesne also argues that it cannot properly implement the shift to hourly default service and that the 25 kW to 100 kW load, which would receive quarterly default service pricing under RESA's proposal, "may not be sufficient to attract potential RFP suppliers."[28] RESA addressed most, if not all, of these arguments in its initial brief. Simply put, the arguments are not valid reasons to reject RESA's recommendations.

For customers without interval meters, the next logical step is quarterly priced default service. As RESA explained in its initial brief, not only is that outcome consistent with the *End State Order*, but it is also consistent with the *DSP VI Order*, in which the Commission approved the current 6-month contracts because they represented "a more market responsive DSP plan than that which currently is in place."[29] Here, quarterly contracts for customers without interval meters is a more market responsive default service

[27] OSBA Main Brief at 14-15; Duquesne Main Brief at 20.
[28] Duquesne Main Brief at 21.
[29] *DSP VI Order* at 67.

plan than the current 6-month contracts. Moreover, the volatility that OSBA and Duquesne warn accompanies 90-day contracts has not been shown to exist in Maryland's Type II SOS and, if there were an incident that caused market prices to rise at the same time as a solicitation, the lasting effect of that solicitation would be three months shorter with quarterly contracts than with 6-month contracts.

The more controversial issue in this proceeding is RESA's hourly proposal. However, it simply should not be controversial. The Commission has made clear that it expected – effective June 1, 2015 – that EDCs would "offer only hourly LMP to medium and large C&I customers with interval meters."[30] Duquesne's and OSBA's proposals for 100% quarterly and 6-month contracts, respectively, for Medium C&I customers, with no commitment to move the customers above 100 kW (all of whom are interval metered) into the hourly pricing procurement group, are inconsistent with the *End State Order* and, therefore, must be rejected.

RESA addressed in its initial brief Duquesne's argument regarding technical deployment issues. Duquesne did not present any argument in its Main Brief that would cause RESA to deviate from its position regarding the technical implementation of hourly pricing. Duquesne can provide hourly priced service to these customers beginning in June 2015 by manually performing certain billing functions until an automated billing information technology solution is developed.[31] Therefore, RESA supports directing Duquesne to implement this customer move effective June 1, 2015. Alternatively, and only as a clear second choice, RESA would support a phased-in approach that would require 200 kW-300 kW customers to shift to the Large C&I class by the end of 2015, with those greater than 100 kW but less than 200 kW receiving hourly priced default service by June 2016. In the interim, all Medium C&I default service load

[30] *End State Order* at 29, 31.
[31] *Id*.; Duquesne St. No. 4-SR at 2-3; Duquesne Main Brief at 21-22.

would be served using quarterly contracts.[32] Duquesne's lack of planning and foresight to implement the Commission's objectives in the *End State Order* should not be reason for delay.

RESA also addressed in its initial brief the arguments regarding the legality of hourly default service. RESA will not repeat its positions here for the sake of brevity. In further support RESA's position, one only needs to look at the recent DSP cases of PPL Electric Utilities Corporation ("PPL"). In PPL's DSP II proceedings, PPL committed to reduce the peak demand for its Small C&I Customer Class from 500 kW to 100 kW in its next DSP plan filing. In July 2013, The Commission adopted PPL's commitment in the DSP II proceeding.[33] Consistent with its Commission-approved commitment, PPL proposed in its pending DSP proceeding to reduce the peak demand limitation for its Small C&I Customer class from 500 kW to 100 kW.[34] These customers have interval meters and would receive hourly priced default service. The fact that the Commission approved PPL's prior commitment and that another EDC in Pennsylvania is arguing in favor of reducing the threshold to 100 kW interval-metered customers supports RESA's position that the 100 kW hourly threshold is consistent with the Competition Act, the *End State Order*, and will benefit customers by enhancing competition.

Finally, as OSBA points out in its Main Brief at page 14, a significant number of 100 kW to 300 kW customers are shopping (EGSs serve 77.4% of these customers and 78.3% of the kWhs). It therefore is clear that Medium C&I customers with a demand of 100 kW or greater generally are well-equipped and educated to manage their commodity costs in an hourly spot market default service environment. Although approximately 384 customers with a demand between 100 kW and 300kW remain on default service as of

[32] RESA St. No. 1-SR at 12.

[33] *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. Docket No. P-2012-2302074, Slip Op. pp. 62-63 (Opinion and Order entered July 24, 2013).

[34] *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017*, Docket No. P-2014-2417907, PPL Main Brief at 12-15 (filed Sept. 12, 2014).

April 2014 and would be impacted by the proposed change,[35] these customers can still obtain fixed-price electric generation supply from the competitive market. When the Commission approves a default service plan that is reasonably calculated to produce a market reflective default service rate – which would occur here by moving these customers to hourly priced service – competitors will be encouraged to enter the market, resulting in a variety of products and services, which, in turn, enables each consumer to choose for him/herself which product best suits his/her own needs and desires. To the extent consumers desire a stable price, they will have the ability to select that option from the competitive market. As explained by the Commission, reducing the peak demand limitation for commercial and industrial customers is a "natural progression for the retail marketplace and . . . having EDCs offer hourly [locational marginal price] to these accounts will put EGSs on a level playing field for competing not only with the PTC but with each other."[36]

For the reasons set forth in RESA's initial brief and in the foregoing, RESA's recommendation to change the Medium C&I demand split from 300 kW to 100 kW is consistent with the Competition Act and the Commission's *End State Order* and, therefore, should be adopted.

4. Large C&I Procurement Issues

As RESA explained in its initial brief, the Commission prefers for EDCs to bid out the default hourly service and ruled in its *End State Order* that:

> …the Commission prefers the model under which these services are auctioned to wholesale suppliers. Having the EDC providing these services and charging an administrative adder to large C&I customers entails a degree of involvement by the EDC that the Commission seeks to avoid with this group of customers in the robust competitive market we are seeking to promote.[37]

Duquesne and the Duquesne Industrial Intervenors ("DII") oppose RESA's proposal to competitively bid out the service, which is how spot market service is procured for large customers in all of the other major

[35] RESA Exhibit RJH-7.
[36] *End State Order* at 38-39.
[37] *End State Order* at 30. In rendering this determination, the Commission specifically rejected DII's argument that the EDCs should provide hourly default service. *Id*.

Pennsylvania EDCs.[38] Duquesne's and DII's opposition should be rejected in favor of RESA's recommendation.

Duquesne and DII claim that bidding out the service could result in an increased adder that would be unjust and unreasonable.[39] This is a misplaced argument. First, RESA's proposal is to competitively bid out the Large C&I service. RESA cannot present information on the level of the adder, because it will be the result of an RFP. Second, Duquesne's and DII's argument ignores applicable law, notably the *End State Order*, quoted above, and the legislative finding that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity" which amounts to a fundamental policy underlying the Pennsylvania Code that competition is more effective than economic regulation in controlling the costs of generating electricity.[40] Third, the argument misconstrues the "least cost" standard as requiring the lowest absolute cost, which the Commission recognized in the *Act 129 Final Rulemaking Order* as incorrect. The appropriate test should not be whether the competitive bid approach might produce a higher or lower adder, but instead whether the final price is the result of a competitive process. Finally, the argument that RESA's proposal will lead to an unjust and unreasonable adder ignores the fact that all of the other major EDCs in Pennsylvania utilize the competitive bid approach.

It is worth noting that if a fair and open competitive procurement process produced a default service adder for the hourly priced service that is higher than Duquesne's current adder, this would be an indication that Duquesne's current structure produces a subsidized default service rate. This would not be consistent with Commission policy which prohibits the cross subsidization of default service. Duquesne's current

[38] RESA St. No. 1 at 19. RESA also recommends incorporating Medium C&I customers with interval meters into the Large C&I group, as discussed above.

[39] DII Main Brief at 6. DII seems to want a guarantee that a competitively bid price will be lower than the current price ("RESA fails to provide any indication regarding the level of the adder….").

[40] 66 Pa. C.S. § 2802(5); RESA St. No. 1 at 6-7.

adder cannot be completely based on actual cost data because Duquesne utilizes employees, systems and resources that are funded through Duquesne's regulated distribution rates.[41]

Finally, Duquesne recognizes that competitively bidding out default service is an efficient way to procure default service supplies. Duquesne's own testimony with respect to competitive solicitations for other default service classes is that competitive solicitations are "…intended to rely on the skills of the most adept suppliers to achieve the least cost for customers."[42] Neither Duquesne nor DII have provided evidence that the same argument should not hold true for the procurement of hourly priced supply for the Large C&I class.

5. Miscellaneous Procurement Issues

RESA is not aware of any miscellaneous procurement issues.

C. ALTERNATIVE ENERGY CREDIT PROCUREMENT ISSUES

RESA has no comments on this issue.

D. STANDARD OFFER PROGRAM

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

E. RATE DESIGN

1. Default Service Cost Unbundling Issues

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

[41] Duquesne noted in a discovery response that it has not determined an appropriate methodology to use to calculate and allocate certain default service costs. Duquesne has not attempted to allocate its administrative default service related costs to default service rates. This would mean that Duquesne's distribution ratepayers, including shopping customers, are unfairly subsidizing default service. This would create competitive disparities by forcing EGSs to compete against an artificially low rate. RESA St. No. 1 at 21.

[42] Duquesne St. No. 3 at 16.

2. Non-Bypassable Charge To Recover PJM Charges

While RESA anticipated the majority of the arguments in opposition to its recommendation that Duquesne assume the cost responsibility for NMB Charges for all load and recover the costs from all customers through a non-bypassable charge and incorporates them here, RESA offers the following response to some of the arguments opposing RESA's recommendation.

a. There is no serious debate regarding the legality of RESA's recommendation or the nature of the NMB charges.

Both Duquesne and DII attempt to make legal arguments in opposition to RESA's arguments based on Commission precedent and/or the Competition Act.[43] These arguments, however, ignore the Commission's *FE DSP III Order* where the Commission specifically stated:

> . . . we disagree with IUG that the NITS Proposal [i.e. EDC would assume the cost responsibility for all load and recover from all customers through a non-bypassable charge] would violate the Competition Act, the Public Utility Code or our Regulations. We find that IUG's arguments on these points are without merit, as neither the Competition Act nor the Code preclude the implementation of the NITS proposal. . . [44]

Thus, there is no legal bar to implementing RESA's recommendation that Duquesne be required to assume cost responsibility for all load (default service and shopping) and recover costs from all customers on a non-bypassable basis. Moreover, permitting Duquesne to continue to assume the cost responsibility for the NMB Charges exclusively for wholesale default service suppliers (and not also for EGSs) runs afoul of Section 2804(6) of the Competition Act, which requires an EDC to provide transmission and distribution service to all EGSs "on rates, terms of access and conditions that are comparable to the utilities own use of its system."

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[43] Duquesne Main Brief at 3717-18; DII Main Brief at 12-13.

[44] *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 at 38 ("*FE DSP III Order"*).

Furthermore, the efforts of both Duquesne and DII to extrapolate the Commission's decision in the *FE DSP III Order* regarding just one of these charges – NITS – to argue that the same treatment should be applied to all the NMB Charges here conveniently ignores that: (1) the Commission approved RESA's recommended approach for all of the other NMB Charges;[45] and, (2) if the FirstEnergy EDCs assume cost responsibility for the charge, then they assume it for all load (wholesale default service suppliers assume the cost responsibility for NITS not the EDCs).[46] As explained further below, translating the result of the *FE DSP III Order* here would require a change to the status quo and adoption of some version of RESA's recommendation.

Duquesne and DII disagree with RESA that the NMB Charges are volatile.[47] Duquesne states that NITS charges are fixed on an annual basis. That misses the point. As RESA explained in its Initial Brief, NITS charges in June 2014 ranged from a decrease of 15% to an increase of 29%. PPL's NITS rate effective January 1, 2013 increased by 52%.[48] EGSs enter into contracts with customers every day of the year for various durations, not merely on the days that new NITS prices become effective. Adopting RESA's recommendation will ensure that customers only pay the actual cost of the NMB Charges while shielding them from the negative market impacts that occur as a result of a significant increase in NMB Charges and customer contracts need to be cancelled or suppliers are forced out of business.

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[45] The *FE DSP III Order* approved the parties' agreement to use RESA's recommended approach for: (1) PJM charges associated with RMR unit declarations and deactivation of plants for which charges are set after the approval of the Revised DSP Programs by the Commission; (2) historical out of market tie line, generation and retail customer meter adjustments; and (3) unaccounted for energy. *FE DSP III Order* at 13-14. The Commission had previously permitted the FirstEnergy EDCs to assume the cost responsibility for all load for Regional Transmission Expansion ("RTEP") and Transmission Enhancement costs ("TEC") effective June 1, 2013. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered December 20, 2012 at 10-12.

[46] *See* Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Default Service Supplier Master Agreement at Appendix D, available at: *http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA_DSPIII_SMA.pdf*.

[47] Duquesne Main Brief at 39; DII Main Brief at 16.

[48] RESA St. No. 1-SR at 24-25.

b. The *Fixed Price Label Order* in combination with the unpredictability of NMB charges directly impacts EGS' decisions about products and pricing that will be offered to customers.

Both Duquesne and DII downplay the impact of the *Fixed Price Label Order*[49] and the interplay of recovering costs associated with the risk of future unpredictable price increases in NMBs Charges. More specifically, Duquesne states that "there is nothing to prevent EGSs from providing for variable recovery of these costs in their contracts with customers."[50] DII argues that EGSs are permitted to pass through the costs of NMB Charges rather than offer fixed prices for these costs.[51]

Importantly, these interpretations of the *Fixed Price Label Order* come from two entities that are neither EGSs nor mass market customers. Duquesne is an EDC and provides generation service as the default service supplier and not through individual contracts with consumers. DII is comprised of Large C&I customers, none of which provided any testimony in this proceeding. Neither Duquesne nor DII are parties to the contracts most impacted by the *Fixed Price Label Order* nor do either of these entities engage in the pricing/product structuring process in which all EGSs must engage. As such, Duquesne's and DII's views on the real world, practical implications of the *Fixed Price Label Order* should not be given significant weight.

On the other hand, RESA is a trade association of EGSs whose members are and have been directly impacted by the *Fixed Price Label Order* and who actively enter into competitive generation supply contracts with all customer classes in Pennsylvania. As explained by RESA Witness Richard J. Hudson, Jr., the *Fixed Price Label Order* places practical constraints on the ability of EGSs to recover the costs of future rate increases in NMB Charges.[52] This is because – under the present process – there is only one way for an

[49] *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013 ("*Fixed Price Label Order*").
[50] Duquesne Main Brief at 39.
[51] DII Main Brief at 16; Duquesne St. No. 1-R at 6.
[52] RESA St. No. 1-SR at 27.

EGS to guarantee its ability to recover from customers the future, unpredictable rate changes in NMB Charges and that is to offer a variable priced product.[53] An EGS offering a fixed price product cannot adjust the contract during the term to recover the costs from customers for unpredictable rate changes to the NMB Charges – regardless of whether or not such right is reserved in the contract.[54] EGSs also cannot rely on a "regulatory out" clause in the contract to recover the cost from the fixed price customer because the *Fixed Price Label Order* requires an EGS dealing with an unpredicted rate increase in NMB Charges (that it did not already factor into the fixed price product) to provide the customer prior notice of the EGS's intent to pass on the charge to the customer. If the customer does not affirmatively agree to the price increase, then the EGS must cancel the contract.[55] The likely outcome of this action is for the EGS to lose the customer.

For all these reasons, the practical impact of the *Fixed Price Label Order* for the competitive market is that EGSs assessing how to deal with unpredictable future rate changes in NMB Charges need to determine whether to: (1) rely exclusively on variable contracts to recover these costs; or, (2) take on the risk of offering fixed price contracts knowing that the contracts will likely be cancelled if the EGS attempts to recover the costs from the customer. Neither result is good for customers because each limits the variety of potential competitive products and competitive pricing that could be offered. The Commission acknowledged this reality in the *Fixed Price Label Order* when it stated:

> We. . . understand that if EGSs are not able to recover costs that are imposed upon them, they may indeed limit the variety of long-term fixed price offers they make available.

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[53] Notably, the Commission has expressed "particular concern for customers receiving their electric supply service from an EGS under a contract with a monthly adjusted variable rate" and has undertaken numerous measures (including implementing new regulations) to help ensure that consumers are more informed about variable rate products. *See, e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices to Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Final-Omitted Rulemaking Order, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered April 3, 2014 at 6-8 ("*Final-Omitted Rulemaking Order*").

[54] *Fixed Price Label Order* at 24 ("a 'fixed price' product must not change in price during the term of the agreement").

[55] *Id.* at 26. DII's claim that mass market customers can just negotiate a pass through clause (DII Main Brief at 19) with EGSs does not reasonably take into consideration the realistic characteristics of this group of customers.

> Additionally, such offers may have to include a substantial risk-premium that would increase customer costs.[56]

Thus, and despite the attempts of Duquesne and DII to argue otherwise, the *Fixed Price Label Order* has presented new practical obstacles to the ability of customers to have a variety of competitive products available to them. In the *Fixed Price Label Order*, the Commission noted that "there may be mechanisms to help address this concern that are more legally tenable than allowing a 'fixed' price to change."[57] RESA's recommendation here presents the Commission one of those more legally tenable alternate mechanisms because the end result would be to remove the need of EGSs to factor into their pricing and product decisions the risk of future unpredictable price increases related to NMB Charges thereby giving them more flexibility to design a greater array of competitive products and pricing.

In sum, requiring Duquesne to assume the cost responsibility for all load would lead to significant positive impacts for customers especially given the practical effect of the *Fixed Price Label Order*. First, the resulting price paid by customers (whether default service customers or shopping customers) will not include any amount to account for the risk of future rate changes in the NMB Charges. Second, EGSs would have more flexibility to design their products and pricing without factoring in the risk of unpredictable increases in NMB Charges, which would benefit customers with a greater variety of competitive products. Finally, as RESA explained in its Initial Brief, the wholesale default service supplier and the EGS would have equal and non-discriminatory access to the EDC's ability to ensure that only actual costs of the NMB Charges are paid by all customers.

[56] *Id.* at 25-26.
[57] *Id.* at 26.

c. Customers benefit from products that do not need to factor in the costs of unpredictable charges.

i. Eliminating the option for customers to negotiate the impact of risk premiums ignores the better option to customers of eliminating risk premiums entirely.

As explained above, adopting RESA's proposal would give EGSs the flexibility to design a greater variety of competitive product offerings for the benefit of customers. Notwithstanding this, some parties argue that recovering the costs of NMB Charges would eliminate the ability of customers to obtain fixed price contracts that account for the risk of future price increases to the NMB Charges – regardless of whether or not those increases actually happen.[58] According to these arguments, customers should not be denied the opportunity to negotiate these types of contracts. There are two significant flaws with this theory.

First, these arguments ring hollow for mass market customers who generally do not engage in these types of negotiations for their competitive generation supply. Mass market customers do not review a proposed contract from an EGS and negotiate with that EGS whether the contract price either includes or excludes the costs of future price changes to the NMB Charges. If such were the case, then the Commission's existing regulations would be futile.[59] On the contrary, the Commission views its regulations as necessary to provide shopping customers concise, transparent terms and conditions and greater clarity of customers' rights and responsibilities when shopping for electricity generation supply.[60] Therefore, rejecting RESA's recommendation on the basis of preserving the alleged choice to negotiate contract terms is meaningless because such option does not exist in reality for mass market customers.

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[58] Noble Initial Brief at 4; DII Main Brief at 16.

[59] The Commission has numerous regulations governing an EGS's interactions with residential and small commercial customers including marketing, disclosure statements and enrollment. *See, e.g.* 52 Pa. Code §§ 54.4-54.10; 111.1-111.14.

[60] *Final-Omitted Rulemaking Order* at 6.

Second, even for those who negotiate contract terms with EGSs, the nature of the non-market charges is not the same as the nature of the market-based energy commodity cost. Each EGS has to undertake an analysis of energy markets to determine the price that it can offer to customers. This analysis relies on transparent, market-based factors. Further, EGSs can manage the risk associated with offering fixed-price commodity service precisely because hedging and other risk management tools are available through the market itself. Conversely, the market offers no such tools for mitigating the risk associated with the non-market based charges. Allowing customers – any customers – the ability to negotiate the energy commodity price with EGSs (or compare the prices offered by different EGSs) is an important part of the competitive market which would not be impacted by adopting RESA's proposal here. Rather, RESA's recommendation focuses on non-market based charges which are very different from the market-based nature of energy. As explained by RESA Witness Richard J. Hudson, Jr.:

> Each of these cost items is a non-hedgeable wholesale cost obligation that all load service entities are subject to in the wholesale market. These cost items are not market based because they are either fully regulated or quasi-regulated costs imposed at the wholesale level on all load serving entities. These costs are unpredictable and cannot be hedged by competitive retail suppliers or wholesale default service suppliers.[61]

Because of the nature of these NMB Charges, there is no market-based, transparent way for EGSs to reasonably calculate future rate increases and then reasonably factor them into contract prices. While some individual customers may get a "benefit" when the EGS' calculations lead to a result where the EGS has to absorb the costs because it did not factor in the correct risk premium into the retail price (or the EGS negotiated away the right to include one), the long-term impact to the market will be negative. Suppliers will not be able to continue to take the risk of being forced to absorb these unpredictable rate increases – whether by design or through negotiation – and, over the long term, there is likely to be less competitive options offered by suppliers. Therefore, any short term appeal to preserving the ability to negotiate

[61] RESA St. No. 1 at 22.

contracts whereby EGSs are required to absorb the costs of increased NMB Charges is not a reasonable way to design a functioning competitive retail market that will be sustainable over the long term and RESA's recommendation must not be rejected on this basis.

ii. RESA's recommendation advantages all customers and eliminates the current inequity in which Duquesne provides discriminatory access to wholesale default service suppliers only.

The various arguments against RESA's proposal regarding NMB Charges ignore the customer's perspective. Regardless of what entity assumes the cost responsibility for NMB Charges, all customers will pay them. Currently, Duquesne recovers the costs for default service load through the default service rate and EGSs recover the costs from shopping customers through their retail pricing. The fact that all customers pay for the costs of NMB Charges does not change if RESA's proposal is adopted and Duquesne is required to assume the cost responsibility for NMB Charges for all load. The difference is that RESA's proposal eliminates the need to deal with risk premiums that require customers to pay something more than the actual costs of the NMB Charges because the entity developing the pricing (whether wholesale default service supplier or EGS) factors in some amount to account for the unpredictable future price change in NMB Charges.[62] Thus, RESA's proposal ultimately benefits all customers because the price paid by customers is only the actual cost of the NMB Charges.

Further, the arguments presented against RESA's proposal regarding NMB Charges ignore the inequities that result when Duquesne assumes the cost responsibility only for wholesale default service suppliers but not for EGSs. For a regulated EDC in a default supplier role, the methodology of rate development is fundamentally different because the EDC is permitted to recover on a full and current basis all reasonable costs incurred to provide default service to customers.[63] As explained further in RESA's Initial Brief, leveraging this advantage for the benefit of default service customers only (which occurs when

[62] *See* RESA St. No. 1 at 25; RESA St. No. 1-SR at 28.
[63] *See, e.g.* RESA St. No. 1 at 24; RESA St. No. 1-SR at 23.

the EDC assumes the cost responsibility only for wholesale default service suppliers as Duquesne currently does) results in the EDC providing discriminatory and advantageous access to the wholesale default service suppliers that is not similarly made available to the EGSs, in contravention of the Competition Act. Like EGSs, wholesale default service suppliers are contractually and financially responsible for supplying default service load yet Duquense has no problem with assuming the cost responsibility on their behalf and giving them the advantage of the EDC's right to full cost recovery.[64] Adopting RESA's proposal that Duquesne assume the cost responsibility for EGSs would be consistent with how Duquesne treats wholesale default service suppliers.[65]

d. The record does not support DII's claims of potential negative impact to Large C&I customers.

DII devotes significant time to claiming that RESA's proposal would create difficult transition issues for Large C&I customers and relies exclusively on testimony submitted by Duquesne and Commission dicta from other proceedings.[66] Duquesne, however, does not enter into contracts with Large C&I customers. In fact, the record does not include any testimony from any Large C&I customers supporting the factual claims made in DII's Main Brief. While RESA acknowledges that in other proceedings and based on the record in those proceedings (which did include testimony from Large C&I customers) the Commission expressed concerns about the impact of this proposal on Large C&I customers, the fact remains that a similar record

[64] This situation does not exist for the FirstEnergy EDCs because wholesale default service suppliers are required to assume the cost responsibility for the one NMB Charge (NITS) for which the Commission declined to allow the FirstEnergy EDCs to assume responsibility.

[65] If RESA's recommendation is not adopted, then maintaining the status quo whereby Duquesne continues to assume the cost responsibility on behalf of wholesale default service suppliers must be revised. As explained more fully in RESA's Initial Brief, the status quo provides a competitive advantage to wholesale default service suppliers that is not similarly provided to EGSs. This is because the EDC's involvement enables default service providers to remove the need to factor into their default service supply bid a risk premium for future price increases to the NMB Charges although EGSs would still be required to do so. In lieu of adopting RESA's recommendation, removing Duquesne from the equation entirely (by not permitting Duquesne to assume the cost responsibility on behalf of the default service suppliers) would at least result in a more equal comparison of the default service rate and Duquesne prices (because both would include risk premiums).

[66] DII Main Brief at 20-21.

was not developed in this case. Nonetheless, as explained in more detail in RESA's Initial Brief, the record does show that the customer transition issues raised on the record by Duquesne that Duquesne alleges might result from adopting RESA's recommendation can be adequately addressed just as they were for the FirstEnergy EDCs. DII's effort to include factual advocacy in its Main Brief that is not supported in the record by any impacted Large C&I customer should be summarily rejected.

e. RESA's recommended outcome would be consistent with *FE DSP III Order* and create uniform treatment among EDCs.

Regarding the assignment of cost responsibility and cost recovery of the NMB Charges, RESA supports uniform statewide application across all EDCs. Such is not the case in Pennsylvania today. Each EDC treats the specific charges in their own manner without regard for how the same charges are treated by another EDC. Even within each EDC, the assignment of cost responsibility can vary with respect to each charge.[67] The result of the varying treatment among EDCs and within each EDC creates difficulty for competitive suppliers in assessing each market and determining whether or not they can enter that market. RESA maintains that all EDCs in Pennsylvania should assume the cost responsibility for all load and recover the costs from all customers through a non-bypassable charge for all NMB Charges. If, however, this recommendation is not accepted, then – at a minimum – the Commission should better align Duquesne with the outcome of the *FE DSP III* proceeding. To achieve that result:

- Duquesne should be directed to assume cost responsibility for all load for Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-firm Point-to-Point Transmission Service Credits, Regional Transmission Expansion Plan and Generation Deactivation Charges; and,

[67] *See* RESA Exhibit RJH-9 for a comparison of the assignment of cost responsibility in the Duquesne service territory with the assignment of responsibility in the FirstEnergy company territories.

- Wholesale default service suppliers should be required to assume cost responsibility for NITS.[68]

While this outcome would still not provide consistency of treatment for all NMB Charges within Duquesne's service territory or among all the service territories of all the EDCs, it would be an improvement over the situation that currently exists for Duquesne and would better align Duquesne with how the charges are being treated in the FirstEnergy service territories. Further, this result would also be closer aligned to the Partial Settlement pending before the Commission in the PECO DSP III proceeding where PECO agreed to support RESA's recommended approach for the following charges: Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan "RTEP"); Expansion Cost Recovery charges ("TEC/ECRC"); and, Generation Deactivation/Reliability Must Run ("RMR") charges for which charges are set after the approval of PECO's Revised DSP III by the Commission; and, the parties reserved for litigation all issues related to the treatment of NITS.[69]

A. TIME-OF-USE PROGRAM

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

B. SUPPLY MASTER AGREEMENT ISSUES

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

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[68] This is not RESA's preferred outcome whereby Duquesne would assume the cost responsibility for all NMB Charges but this alternative recommendation would be consistent with how the FirstEnergy EDCs handle this charge. *See* Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, And West Penn Power Company Default Service Supplier Master Agreement at Appendix D, available at: *http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA_DSPIII_SMA.pdf*. To effectuate this recommendation, the SMA would need to be updated to reflect that the wholesale default service suppliers are required to assume the cost responsibility for the NMB Charges.

[69] *Petition of PECO Energy Company for Approval of its Default Service Program for The Period From June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2409362, Joint Petition for Partial Settlement dated August 28, 2014 at ¶ 48.

C. REQUEST FOR PROPOSAL AND INDEPENDENT EVALUATOR PROCESS ISSUES

RESA has no comments on this issue.

D. GENERAL MISCELLANEOUS ISSUES

RESA is not aware of any miscellaneous procurement issues.

VI. CONCLUSION

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

Respectfully submitted,

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