



COMMONWEALTH OF PENNSYLVANIA

November 24, 2014

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

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

If you have any questions, please contact me.

Sincerely,

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

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID #73995

Enclosures

cc: Parties of Record

Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Hon. Katrina L. Dunderdale
Administrative Law Judge
Pa. Public Utility Commission
301 Fifth Avenue - #220
Pittsburgh, PA 15222
(412) 565-3500
(412) 565-5692 (fax)
kdunderdal@pa.gov

Aron J. Beatty, Esquire
David T. Evrard, Esquire
Kristine E. Robinson, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
abeatty@paoca.org
devrard@paoca.org
krobinson@paoca.org

(E-mail and Hand Delivery)

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell
17 North Second Street - 12th Floor
Harrisburg, PA 17101-1601
(717) 612-6029
(717) 731-1985 (fax)
mgang@postschell.com
akanagy@postschell.com

Robert H. Hoaglund II
Duquesne Light Company
411 Seventh Avenue - 16th Floor
Pittsburgh, PA 15219
(412) 393-1058
(412) 393-5757 (fax)
rhoaglund@duqlight.com

Todd S. Stewart, Esquire
Thomas J. Sniscak, Esquire
Judith D. Cassel, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com
tjsniscak@hmslegal.com
jdcassel@hmslegal.com

Charles E. Thomas III, Esquire
Thomas Niesen & Thomas
P. O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7611
(717) 236-8278 (fax)
cet3@thomaslonglaw.com

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6765
aklodow@firstenergycorp.com

Scott B. Granger, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-4886
(717) 772-2677 (fax)
sgranger@pa.gov
(E-mail and Hand Delivery)

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
ppolacek@mwn.com
tschmittberger@mwn.com

Harry S. Geller, Esquire
Patrick M. Cicero, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 236-9486
(717) 233-4088 (fax)
pciceropulp@palegalaid.net
hgellerpulp@palegalaid.net
emarx@palegalaid.net

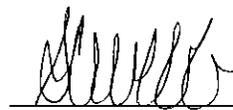
Brian R. Greene, Esquire
Green Hurlocker, PLC
707 East Main Street - #1025
Richmond, VA 23219
(First-class Mail Only)

Date: November 24, 2014

Heather Langeland, Esquire
PennFuture
200 First Street - #200
Pittsburgh, PA 15222
(412) 456-2901
(412) 258-6685 (fax)
langeland@pennfuture.org

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street - 4th Floor
Harrisburg, PA 17101
dzambito@cozen.com

Divesh Gupta, Esquire
Exelon Generation Company
100 Constellation Way - #500C
Baltimore, MD 21202
(First-class Mail Only)



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID # 73995

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Duquesne Light Company for :
Approval of a Default Service Program : Docket No. P-2014-2418242
and Procurement Plan for the Period :
June 1, 2013 through May 31, 2015 :**

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

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525**

Dated: November 24, 2014

TABLE OF CONTENTS

I. Introduction and Procedural History.....1

II. Reply Exceptions.....3

 A. Reply to RESA Exception No. 1: For Small C&I default service supply portfolio the ALJ erred in rejecting RESA’s proposal to incorporate 3-month and 6-month default service supply contracts into Duquesne’s proposed portfolio of solely 12-month supply contracts. (RD at 22-23; RESA Exceptions at 7).....3

 B. Reply to RESA Exception No. 2: For the Medium C&I default service supply portfolio, the ALJ erred in rejecting RESA’s proposal to incorporate: (1) hourly-priced default service for customers between 100 kW and 300 kW ; and (2) 3-month default service supply contracts for customers 25 kW to 100 kW. (RD at 25; RESA Exceptions at 15).....7

 1. Default service load for the 25 kW to 100 kW customers should be procured through 100% 3-month full requirements supply contracts.....10

 2. Medium C&I customers with interval meters should be incorporated into the Large C&I class and receive hourly priced default service9

 a. Legislative changes are not necessary to implement hourly pricing for Medium C&I interval-metered customers.....8

Reply to Duquesne Exception No. 1: The Commission should confirm the ALJ’s recommended conclusion concerning the Medium C&I default service procurement.

III Conclusion.....12

I. INTRODUCTION AND PROCEDURAL HISTORY

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

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

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

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

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

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

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

The OSBA submitted its Main Brief on September 15, 2014. The OSBA submitted a Reply Brief on September 30, 2014.

The Recommended Decision ("RD") of ALJ Dunderdale was issued on October 31, 2014. The OSBA did not file Exceptions. The OSBA submits the following Reply Exceptions in response to certain of the Exceptions filed by RESA, and the Company.

II. REPLY EXCEPTIONS

A. Reply to RESA Exception No. 1: For Small C&I default service supply portfolio the ALJ erred in rejecting RESA's proposal to incorporate 3-month and 6-month default service supply contracts into Duquesne's proposed portfolio of solely 12-month supply contracts. (RD at 22-23), (RESA Exceptions at 7)

Duquesne proposed to offer Small C&I customers a fixed-price default service option for the 2015-2017 default service period, which is the same as its currently approved plan. The Small C&I procurement group would continue to include all customers with peak demands of less than 25 kW taking service on Duquesne's Rate GS/GM - General Service Small and Medium or Rate GMH – General Service Heating rate schedules.² Default service rates would be reset twice per year and reconciled on a semi-annual basis. All Small C&I default service supply would be provided via six-month and one-year fixed price full requirements, load following contracts that would be awarded as the result of an RFP-based procurement.³

Under Duquesne's current default service program (POLR VI), the Company is authorized to use a mix of full requirements load-following contracts ranging from 6 months to 12 months in length to serve Small C&I customers. Procurements generally take place no more than three months prior to the delivery of energy, and the contracts are laddered. Default service rates are currently reset twice per year.⁴

Laddering the Small C&I procurement contracts will limit the turnover in default service supply to 50% (of the total supply) at each procurement. The OSBA continues to

² OSBA Main Brief at 7, *citing* OSBA Statement No. 1 at 3.

³ OSBA Main Brief at 7, *citing* OSBA Statement No. 1 at 2.

⁴ OSBA Main Brief at 8, *citing* OSBA Statement No. 1 at 3.

believe that price stability should remain an important consideration in the design of a default service procurement plan, and that OSBA believes that Duquesne's proposed approach should result in reasonable price stability for Small C&I default service customers over the 2015-2017 default service period. The ALJ agreed and recommended the approval of Duquesne Light's proposed procurement plan for small C&I noting that, "[t]he Company's customers already enjoy a high level of retail competition and the incentive to shop would be lessened due to price instability and a chilling effect on shopping if RESA's proposal were accepted over the Company's proposal...."⁵

In its Exceptions, RESA laments that the Company's proposed procurement plan for Small C&I customers somehow represents a step backwards in terms of market responsiveness for Small C&I customers.⁶ The ALJ disagreed with RESA that the plan was a step backwards noting the Commission's September 11, 2014 Order granting Duquesne's request to extend (by six months) the contract term of the final Small C&I procurement under DSP VI.⁷

RESA further objected to the Company's proposal and recommends that Duquesne be directed to modify its proposed portfolio for Small C&I to introduce three-month products to the Small C&I default service supply portfolio. In its Exceptions, RESA alleges that the ALJ's failure to recommend a portfolio that is more market

⁵ Recommended Decision at 22.

⁶ RESA Exceptions at 8.

⁷ Recommended Decision at 22 *citing* *Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI*, Docket No. P-2012-2301664.

reflective is in conflict with the Commission's End State Order.⁸ However RESA is wrong. As set forth more fully in the OSBA's Main and Reply Briefs, RESA fails to acknowledge that the Commission has explicitly rejected RESA's argument that the "least cost" standard of Act 129 mandates that default service prices be "market-reflective" and market-responsive" and has explicitly recognized that price stability should remain an important consideration when designing a default service procurement plan.⁹

Contrary to RESA's assertion, its proposal to introduce quarterly products to the Small C&I default service supply portfolio will subject customers to unreasonable price instability in pursuit of a more market-reflective and market-responsive default service rate, which is not consistent with the objectives of Act 129. On that basis alone, the Commission should reject it. Additionally, the ALJ found that RESA's proposed use of "hard stops" in the procurement process would expose customers to unnecessary rate instability.¹⁰

Further, consistency with the Commission's End State Order does not mean RESA's proposal for Small C&I class procurement should be adopted in this proceeding. The End State Order may be viewed as a kind of "wish list" regarding what the Commission envisions for the future of default service. However, it is not at this time a mandate to be implemented in the current round of default service proceedings, despite RESA's best efforts to the contrary. Even the Commission is not comfortable with

⁸ RESA Exceptions at 8.

⁹ See OSBA Main Brief at 8, and OSBA Reply Brief at 4.

¹⁰ Recommended Decision at 22.

treating the End State Order as a mandate, opting instead to seek legislative changes to avoid legal uncertainty. The Commission's End State Order expresses concern as follows:

While the Commission is steadfast in its view that our decisions to permit [100%] spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small-business customers and an hourly LMP product for "medium" C&I customers may raise legal questions about compliance with the above referenced provisions of the Competition Act. *To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.*¹¹

No such changes have been adopted by the legislature to date. For the reasons set forth above, the Commission should deny RESA's Exception No. 1, and adopt the ALJ's recommendation.

¹¹ End State Order at 45 (emphasis added).

B. Reply to RESA Exception No. 2: For the Medium C&I default service supply portfolio, the ALJ erred in rejecting RESA's proposal to incorporate: (1) hourly-priced default service for customers between 100 kW and 300 kW ; and (2) 3-month default service supply contracts for customers 25 kW to 100 kW. (RD at 25; RESA Exceptions at 15).

Reply to Duquesne Exception No. 1: The Commission should confirm the ALJ's recommended conclusion concerning the Medium C&I default service procurement. (RD at 25; Duquesne Exceptions at 1).

Duquesne proposed to offer Medium C&I customers a fixed-price default service option for the 2015-2017 default service period. Default service rates would be reset quarterly and reset on a semi-annual basis. All Medium C&I default service supply would be provided via three-month fixed price full requirements, load following contracts that would be awarded on an RFP-based procurement.¹² The Medium C&I group would continue to include all customers with peak demands greater than or equal to 25 kW but not less than 300 kW that take service on Rates GS/GM or GMH.¹³

Duquesne's currently approved procurement mix for Medium C&I consists of six-month full-requirements, load following contracts. The contracts are not laddered and default service rates are reset twice per year.¹⁴

The Company argued that because Medium C&I customers exhibit high levels of shopping, they therefore have a reduced need for default service rate stability. To that end, Duquesne's Medium C&I proposal is intended to deemphasize price stability in

¹² OSBA Main Brief at 12, and OSBA Statement No. 1 at 4.

¹³ OSBA Main Brief at 12, and OSBA Statement No. 1 at 3-4.

¹⁴ OSBA Main Brief at 12, and OSBA Statement No. 1 at 4.

favor of making Medium C&I default service rates more reflective of market prices and more responsive to market changes.¹⁵

As OSBA witness Mr. Kalcic testified, not all customers chose to shop. Additionally, certain customers who may shop elect to remain with default service because they do not receive an attractive offer. Whatever the customer's reason for not switching to an alternative supplier, those customers should not be stuck with an unnecessarily volatile rate. Price stability should remain an important consideration when designing a default service procurement plan for Medium C&I customers.¹⁶

1. Medium C&I customers with interval meters should be incorporated into the Large C&I class and receive hourly priced default service

The ALJ found that RESA's proposal to reduce the hourly priced service threshold from 300 kW to 100 kW runs counter to the Commission's decision in the End State Order.¹⁷ In its Exceptions, just as in its Main Brief, RESA supports the Company's initial proposal for Medium C&I customers with peak demands between 25 kW and 100 kW, but recommends that customers above 100 kW up to 300 kW who have interval meters, be incorporated into the Large C&I class and receive hourly default service pricing.¹⁸

The OSBA's objection to RESA's proposal for Medium C&I procurements is twofold and largely mirrors the arguments set forth above relative to Small C&I. First, as

¹⁵ OSBA Main Brief at 13, and OSBA Statement No 1 at 4.

¹⁶ OSBA Main Brief at 14, and OSBA Statement No 1 at 4-5.

¹⁷ Recommended Decision at 26, *citing* End State Order at 31.

¹⁸ RESA Exceptions at 15.

OSBA witness Mr. Kalcic testified, RESA's proposal "would deemphasize and/or minimize price stability in favor of making default service rates more responsive to market changes."¹⁹ Act 129 of 2008 replaced the "current market price" standard with the requirement that an EDC's procurement plan is to ensure adequate and reliable service through a "prudent mix of contracts...designed to ensure...the least cost to [default service] customers over time."²⁰ RESA's narrow focus on current market prices when procuring default supply is again misplaced.

Second, as justification for its drastic modifications to Duquesne's proposed procurement strategy for Medium C&I customers, RESA cites to the End State Order. However, the End State Order is not at this time a mandate to be implemented in the current round of default proceedings, despite RESA's best efforts to argue the contrary.

RESA's proposal to move Medium C&I customers with interval meters to hourly pricing is premature and must be rejected. Similar to the arguments the OSBA advanced in its Main Brief, and above herein in response to RESA's arguments pertaining to Small C&I (p. 6), even the Commission is not comfortable with treating the End State Order as a mandate, opting instead to see legislative changes to avoid legal uncertainty. As it pertains to Medium C&I customers, the Commission's End State Order expresses:

[The Commission's concern] that a general pronouncement directing...an hourly LMP product for "medium" C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act. *To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default*

¹⁹ OSBA Reply Brief at 7.

²⁰ 66 Pa. C.S. §2807(e)(3.4). See OSBA Main Brief at 4 for a general discussion of the change in legal standards applicable to default service.

*service plans containing products that more closely resemble market conditions at the time of delivery.*²¹

To date, no such legislative changes have been effectuated. RESA incorrectly characterizes its proposals as only a transition towards the End State Order and therefore concludes no legislative changes are needed.²² RESA is wrong.

In summary, RESA's proposal is unnecessary to promote competitive retail market growth, would result in unreasonable price volatility for the remaining Medium C&I default service customers, and is not in compliance with the applicable statutory standards for default service.

2. Default service load for the 25 kW to 100 kW customers should be procured through 100% 3-month full requirements supply contracts

As Mr. Kalcic further testified, shopping levels are lower among smaller users in Duquesne's Medium C&I customer subgroups.²³ OSBA's objections to Duquesne's proposal for Medium C&I were two-fold. First, over 37% of all of Duquesne's Medium C&I customers are choosing not to shop.²⁴ Such customers should not be subject to the price volatility inherent in a supply portfolio that consists solely of three-month supply contracts.

Second, Duquesne proposed a procurement plan that would effectively implement the Commission's End State Order for those Medium C&I customers with peak demands

²¹ See OSBA Main Brief at 10, *citing* End State Order at 45 (emphasis added).

²² RESA Exceptions at 18.

²³ See Table 1 in OSBA Main Brief at 14 *citing* and OSBA Statement No 1 at 5.

²⁴ *Id.*

less than 100 kW.²⁵ It would not be appropriate to implement the procurement directives contained in the Commission's End State Order immediately.

As an alternative, the OSBA recommended a Duquesne continue to use its existing procurement strategy, *i.e.*, six-month full requirements load-following contracts, with no laddering to serve Medium C&I customers.²⁶

The ALJ, noting that Duquesne has one of the lowest kilowatt demand thresholds for hourly priced default service, found that OSBA's proposal to maintain six-month, non-laddered contracts for Medium C&I customers was reasonable.²⁷ The ALJ, acknowledged Duquesne's rebuttal testimony in which the Company noted the benefits of the OSBA's proposal, including longer term price stability and eliminating RFPs, which should produce cost savings. Further, in ruling on the Medium C&I procurement, the ALJ stated, "I agree with Duquesne and OSBA that OSBA's recommendation for Medium C&I customers is reasonable."²⁸

For the reasons set forth above, the Commission should deny RESA's Exception No. 2, Duquesne's Exception No. 1, and adopt the ALJ's recommendation.

²⁵ OSBA Main Brief at 15, *citing* End State Order.

²⁶ OSBA Main Brief at 15, *citing* OSBA Statement No. 1 at 7.

²⁷ Recommended Decision at 25.

²⁸ *Id.*

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission deny the foregoing Exceptions, and adopt the ALJ's recommendation regarding default service procurements for Small and Medium C&I customers.

Respectfully submitted,



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: November 24, 2014