



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Anthony D. Kanagy

akanagy@postschell.com
717-612-6034 Direct
717-731-1985 Direct Fax
File #: 2267/158273

November 24, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, 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 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 Duquesne Light Company's Replies to Exceptions for the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Anthony D. Kanagy

MWG/jl

Enclosures

cc: Honorable Katrina L. Dunderdale
Certificate of Service

CERTIFICATE OF SERVICE

Docket No. P-2014-2418242

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

David T. Evrard, Esquire
Kristine E. Robinson, Esquire
Aron J. Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
E-mail:DEvrard@paoca.org
KRobinson@paoca.org
ABeatty@paoca.org
Phone: 717-783-5048

Richard A. Kanaskie, Esquire
Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
E-mail: rkanaskie@pa.gov
sgranger@pa.gov
Phone: (717) 783-6184

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
E-mail: swebb@pa.gov
Phone: 717-783-2525

Charles E. Thomas, III, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 600
PO Box 9500
Harrisburg, PA 17108-9500
E-mail: cet3@tntlawfirm.com
Phone: 717-255-7611
Noble Americas Energy Solutions LLC

Harry S. Geller, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
E-mail: pulp@palegalaid.net
Phone: 717-236-9486
*Coalition for Affordable Utility Services
and Energy Efficiency in Pennsylvania*

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street, Suite 400
Harrisburg, PA 17101
E-mail: dzambito@cozen.com
Phone: 717-703-5892
FirstEnergy Solutions Corp.

Heather M. Langeland, Esquire
Citizens for Pennsylvania's Future
200 First Avenue Suite 200
Pittsburgh, PA 15222
E-mail: langeland@pennfuture.org
Phone: 412-456-2901
Citizens for Pennsylvania's Future

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
E-mail: ppolacek@mwn.com
tschmittberger@mwn.com
Phone: 717-232-8000
Duquesne Industrial Intervenors

Thomas J. Sniscak, Esquire
Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
E-mail: tjsniscak@hmslegal.com
tsstewart@hmslegal.com
Phone: 717-236-1300
NextEra Energy Power Marketing, LLC

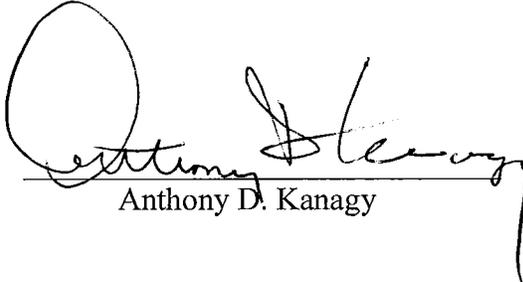
Colleen P. Kartychak, Esquire
Consolidated Edison Solutions
698 Gamble Road
Oakdale, PA 15061
E-mail: kartychakc@conedsolutions.com
Phone: 215-341-5273
Retail Energy Supply Association

Brian R. Greene, Esquire
GreeneHurlocker, PLC
1807 Libbie Avenue, Suite 102
Richmond, VA 23226
E-mail: BGreene@GreeneHurlocker.com
Phone: 804-672-4542
Retail Energy Supply Association

Divesh Gupta, Esquire
Exelon Business Services Corp.
100 Constellation Way, Suite 500C
Baltimore, MD 21202
E-mail: divesh.gupta@constellation.com
Phone: 410-470-3158
Exelon Generation Company, LLC

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720-T
St. Louis, MO 63105
E-mail: excel.consulting@sbcglobal.net
Phone: 314-725-2511
Office of Small Business Advocate

Date: November 24, 2014



Anthony D. Kanagy

**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 :

**DUQUESNE LIGHT COMPANY
REPLIES TO EXCEPTIONS**

Robert H. Hoaglund II (ID # 313383)
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue, 16th Fl.
Pittsburgh, PA 15219
Phone: (412) 393-1058
Fax: 412-393-5695
E-mail:rhoaglund@duqlight.com

Michael W. Gang (ID # 25670)
Anthony D. Kanagy (ID #85522)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: (717) 731-1970
Fax: (717) 731-1985
E-mail:mgang@postschell.com
E-mail:akanagy@postschell.com

Date: November 24, 2014

Attorneys for Duquesne Light Company

Table of Contents

	Page
I. INTRODUCTION	1
II. SUMMARY OF ARGUMENT	1
III. REPLIES TO SPECIFIC EXCEPTIONS.....	3
A. THE ALJ PROPERLY ACCEPTED DUQUESNE LIGHT'S PROCUREMENT PLAN FOR SMALL C&I DEFAULT SERVICE CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 1.)	3
B. THE ALJ CORRECTLY CONCLUDED THAT DUQUESNE LIGHT'S PROCUREMENT PLAN FOR MEDIUM C&I DEFAULT SERVICE CUSTOMERS WILL ENHANCE COMPETITION AND PROVIDE REASONABLE RATE STABILITY. (RESPONSE TO RESA EXCEPTION NO. 2.).....	7
1. Hourly Priced Service Is Not Necessary To Enhance Competition In Duquesne Light's Medium C&I Class.....	7
2. The End-State Order Does Not Justify Hourly Priced Service For Duquesne Light's Medium C&I Customers With Demands Over 100 kW.....	9
3. The ALJ Correctly Rejected RESA's Proposal To Remove 42% Of The Load From The Medium C&I Procurements By Placing Customers With More Than 100 kW Of Demand On Hourly Price Default Service.....	11
4. The ALJ Properly Considered The Technical Billing Challenges That The Company Will Have In Implementing Hourly Priced Service By June 1, 2015.....	12
C. THE ALJ CORRECTLY DETERMINED THAT DUQUESNE LIGHT SHOULD NOT BE REQUIRED TO BID OUT ITS HOURLY PRICED DEFAULT SERVICE FOR LARGE C&I CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 3.)	12
D. THE ALJ CORRECTLY DETERMINED THAT DUQUESNE LIGHT SHOULD NOT ASSUME RESPONSIBILITY FOR NMB TRANSMISSION COSTS FOR SHOPPING CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 4.)	16
1. Introduction.....	16

2.	Duquesne Light’s NMB Transmission Cost Recovery Methodology Is Not Anti-Competitive.	17
3.	RESA’s Arguments Regarding The Legality of The Competing Cost Recovery Proposals Must Be Denied.	18
4.	The Fixed Price Label Order Does Not Support RESA’s Position	19
5.	RESA’s Alternative NMB Transmission Cost Recovery Proposal Should Be Denied.....	21
IV.	CONCLUSION.....	22

TABLE OF AUTHORITIES

Page

Pennsylvania Court Decisions

<i>Irwin A. Popowsky v. Pennsylvania Public Utility Commission,</i> Commonwealth Court Docket No. 1179 C.D. 2012.....	10
--	----

Pennsylvania Administrative Agency Decisions

<i>Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause,</i> Docket No. M-2013-2362961, Final Order entered November 14, 2013.....	19
<i>Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service,</i> Docket No. I-2011-2237952, Order entered February 15, 2013 (“Default Service End-State Order”).....	1, 6, 9, 1, 14
<i>Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI,</i> Docket No. P-2012-2301664, Order entered September 11, 2014	4
<i>Petition of Duquesne Light for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015,</i> Docket No. P-2012-2301665, Order entered January 25, 2013 (“DSP VI Order”).....	19
<i>Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan,</i> Docket No. P-2011-2252042 (Opinion and Order entered February 25, 2011)	10
<i>Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan,</i> Docket No. P-00072245 (Opinion and Order entered August 16, 2007)	10
<i>Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan,</i> Docket No P-2008-2044561 (Opinion and Order entered March 23, 2009)	10
<i>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,</i> Docket No. P-2014-2417907, Recommended Decision issued October 30, 2014	22

Pennsylvania Statutes

66 Pa.C.S. § 2803.....18, 19
66 Pa.C.S. § 2804(6).....18, 19

I. INTRODUCTION

On October 31, 2014, the Recommended Decision (“RD”) of Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) was issued by the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned proceeding. The ALJ’s RD recommends approval of the Company’s default service plan (“DSP VII”) with respect to the issues that were not settled in the proceeding.

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files these Replies to the Exceptions of the Retail Energy Supply Association (“RESA”). RESA was the only party that filed substantive exceptions to the RD in this proceeding.¹

II. SUMMARY OF ARGUMENT

RESA repeatedly notes that the ALJ rejected its positions and accepted the proposals of Duquesne Light, arguing that the ALJ ignored the evidence, the law and Commission policy. RESA’s exceptions and arguments in support thereof are erroneous. The ALJ properly rejected these arguments because RESA’s positions are based solely on advancing the expansion of retail markets without regard to the responsibilities placed on the Commission to balance advancing retail markets with statutory requirements that default service provide for reasonably stable rates at least cost over time. RESA also improperly presses for transitioning to the procurement approaches of the *Default Service End-State Order*² when the Commission has noted that implementing the procurements in the *Default Service End-State Order* is not appropriate

¹ Duquesne Light filed Exceptions in the nature of clarification with respect to the ALJ’s determination regarding the Medium C&I Procurement Plan. Noble Americas Energy Solutions, LLC (“Noble”) filed Exceptions stating that it was taking no position with respect to the settlement.

² *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*”).

without further guidance from the General Assembly, which does not appear to be forthcoming at this time.

In contrast, Duquesne Light has proposed procurements for DSP VII that continue to further enhance retail competition while also meeting the other standards of the Competition Act. The Company has a long history of shortening procurement delivery periods and moving classes to more frequent rate changes to make default service prices more market responsive, while at the same time balancing those changes with customer expectations of default service rate stability.

An illustration of the reasonableness of the ALJ's recommended approval of the Company's plan is provided by comparison of the positions of the parties with regard to Medium C&I procurements. Duquesne Light, recognizing that its Medium C&I class has achieved a significant level of shopping (72% of load), proposed to move Medium C&I procurements from 6-month non-laddered procurements with 6-month price changes under DSP VI to 3-month non-laddered procurements with 3-month price changes under DSP VII. The change was proposed to make default service rates more market responsive for Medium C&I customers, allowing the Price-to-Compare to more closely track contemporaneous market prices. The Office of Small Business Advocate ("OSBA") opposed the change in favor of maintaining 6-month non-laddered supply products with 6-month price changes, while RESA recommends going even further beyond Duquesne Light's proposal and offering hourly priced default service for customers in this class between 100 kW and 300 kW of demand. As more fully explained in these Reply Exceptions, the ALJ's acceptance of the Company's proposal and rejection of RESA's proposal is not blind acceptance of the Company's proposal, but rather results from a balanced and fully supported weighing of all the requirements of the Competition Act.

III. REPLIES TO SPECIFIC EXCEPTIONS

A. THE ALJ PROPERLY ACCEPTED DUQUESNE LIGHT'S PROCUREMENT PLAN FOR SMALL C&I DEFAULT SERVICE CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 1.)

Duquesne Light proposed to retain in DSP VII the use of laddered one-year procurements obtained every six months for Small C&I default service customers. This procurement plan for Small C&I customers was first implemented in DSP VI, and provides for replacement of 50% of default service supplies every six months and semi-annual default service price changes. In DSP V, Small C&I default service customers transitioned to annual price changes; whereas in DSP IV, these customers had fixed default service prices over a three-year period. As can be seen, the Company has made significant progress toward more market responsive default service rates for Small C&I customers.

RESA criticizes Duquesne Light's proposal in DSP VII for failure to increase further the market responsiveness of Small C&I default service rates. All other factors, such as rate stability and the fact that Small C&I rates were made more market responsive as recently as June 1, 2013, are ignored by RESA.

In this regard, Duquesne Light has historically matched the procurement plan for Small C&I customers with the plan for Residential customers because these customer groups have similar consumption levels, similar load factors and similar levels of shopping. However, in the DSP VI plan, the Company moved the Small C&I class to six-month price changes and now, for DSP VII, follows that pattern by moving the Residential procurement plan in the DSP VII plan to match the Small C&I procurement plan in DSP VI. RESA improperly views these changes in isolation, failing to credit the Company's progress of moving procurement plans as a whole to more market responsive rates over time.

RESA's contentions that the Small C&I class should be served by a mix of three-month, six-month and one-year procurements also should be rejected because it would significantly reduce price stability of Small C&I default service rates. While RESA disputes this, as explained below, the credible evidence in this proceeding clearly supports this conclusion.

RESA's Small C&I procurement plan would provide higher rate instability for two reasons. The first is that RESA's plan provides for two "hard stops" – points in time when 100% of supply for the next delivery period must be purchased at one time. These points are June 1, 2016 and June 1, 2017. Duquesne Light St. No. 3-R, p. 18. The Commission has recognized that procuring 100% of supply at one time can create volatility due to market distortions and recently has remedied that situation with regard to the Company's DSP VI plan by permitting extension of contracts that overlap into DSP VII.³ *Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI*, Docket No. P-2012-2301664, Order entered September 11, 2014.

The second reason that RESA's Small C&I procurement plan could create increased rate instability is the mix of the procurements proposed by RESA. In its Exceptions, when discussing Duquesne Light's Small C&I customer procurement plan, RESA presents the recent 12-month procurement history from Maryland's procurements of 90-day contracts for Type II (Medium C&I) customers for the Baltimore Gas and Electric Company. RESA Exc., p. 12. RESA used this schedule to contend that the ALJ's finding with respect to the impact of market disruptions on default service prices is flawed because volatility in the wholesale LMPs does not mean that

³ RESA argues that the Commission should again institute hard stops in the Small C&I procurement plan and allow the Company to petition to change the hard stop at the end of the DSP VII Plan. RESA Exc., p. 11. Scheduling hard stops is neither justified nor reasonable. There is no reason to require Duquesne Light to file a Petition to modify its default service plan to eliminate a hard stop, especially because the Commission granted Duquesne Light's prior Petition to eliminate the hard stop for DSP VI. Moreover, RESA proposes no solution for the hard stop on June 1, 2016 in the middle of the DSP VII Plan.

customers who receive default service procured through the use of shorter term, full requirements fixed price contracts, such as the contracts that RESA recommends, will experience rate volatility typically seen with LMP pricing. RESA claims that the ALJ – and Duquesne Light and OSBA – are comparing apples to oranges. RESA Exc., p. 13.

RESA's comparison is flawed. If anything, RESA compares apples to oranges, not Duquesne Light. The Company compared the rate instability for the supply portfolio which RESA proposes for the second year of DSP VII, namely 50% 3-month and 50% 12-month products, to that associated with the Company's proposed supply portfolio of 100% laddered 12-month products. RESA did not make such a comparison. The Company compared prices applicable to Duquesne Light's customers in the Duquesne zone. RESA did not make such a comparison. The Company calculated rates under the two alternative supply portfolios over time based on actual market forward energy prices, capacity prices, class-specific load profiles, basis differentials, and other supply costs. For each supply portfolio, product prices were evaluated over a nine-year period beginning in September 2005 and ending June 2014. In contrast, RESA only considered a 12-month period and failed to compare the results under its proposal with the procurement proposal recommended by the Company. RESA's claim that Duquesne Light's analysis is somehow based on wholesale spot prices (i.e., LMPs) also is untrue. Based on historical market forward price information applicable to Duquesne Light's customers, the Company calculated the quarter-to-quarter supply rate changes that would have occurred under the two different supply portfolios. The Company's analysis demonstrated that RESA's recommended supply portfolio does indeed result in significantly increased rate instability, indicating that rate instability for Small C&I default service customers would double if the type

of supply portfolio to which RESA recommends were approved.⁴ During the course of this proceeding, no party, including RESA, attempted to rebut or dispute the results of the Company's detailed analysis of quarterly rate changes based on historical forward energy prices applicable to customers in the Duquesne zone. RESA's attempt now to rely on a limited procurement history from Maryland's procurements for different types of customers using different supply products than those that either RESA or Duquesne Light has proposed for Small C&I customers in this case should be disregarded.

RESA's Small C&I procurement plan also appears to be a thinly disguised plan to move Small C&I procurements to solely quarterly procurements by DSP VIII. In this regard, 50% of procurements for Small C&I default service customers would be quarterly procurements by the last six months of DSP VII. See Duquesne Light St. No. 3-R, Exhibit NSF-2. If the RESA plan is adopted, RESA can be expected to press for all quarterly procurements for Small C&I customers in DSP VIII. Effectively, RESA is pressing for a transition to solely quarterly procurements for Small C&I customers which the Commission concluded in the End-State Order it did not intend to implement without legislative guidance. *Default Service End-State Order*, p. 46. RESA has failed to explain why a transition should be made now to an end state procurement plan before the Commission decides that it is appropriate to implement the end state. Further, RESA has provided no basis for creating so much more potential volatility in Small C&I default service rates as compared to Residential rates which will be based on laddered twelve-month procurements as a result of the Settlement in this proceeding.

⁴ Duquesne Light Statement No. 3-R, pp. 13-14 and No. 3-SR, pp. 12-15. This increased rate instability is due primarily to the inclusion of short-term products and "hard stops" in supply. The Company also noted that actual future outcomes could exceed those experienced in the past, as there certainly are potential outcomes even more extreme than what has already occurred in recent years.

In its Exceptions, RESA argues that the ALJ improperly relied on Duquesne Light's shopping statistics as a reason for denying RESA's procurement plan for Small C&I customers. RESA argues that the Competition Act does not state that a less than 50% shopping rate is "good enough." RESA Exc., p. 15. RESA overstates the ALJ's decision. She did not find that a less than 50% shopping rate was "good enough." She found that Duquesne Light's Small C&I procurement plan was reasonable because it avoided unnecessary rate instability and that Duquesne Light had a history of providing stable default service rates that support high levels of retail competition. RD at 23.

For all the foregoing reasons, the ALJ properly rejected RESA's Small C&I procurement plan.

B. THE ALJ CORRECTLY CONCLUDED THAT DUQUESNE LIGHT'S PROCUREMENT PLAN FOR MEDIUM C&I DEFAULT SERVICE CUSTOMERS WILL ENHANCE COMPETITION AND PROVIDE REASONABLE RATE STABILITY. (RESPONSE TO RESA EXCEPTION NO. 2.)

1. Hourly Priced Service Is Not Necessary To Enhance Competition In Duquesne Light's Medium C&I Class

Duquesne Light proposed to acquire default service supplies for its Medium C&I customers using solely non-laddered three-month procurements. Accordingly, all the default service supply for each three-month billing period would be acquired in one RFP two to three months before the start of the delivery period. Duquesne Light Ex. No. 1, p. 11; Duquesne Light MB, p. 18. This plan would not only provide for default service rates that are clearly market responsive, but provides for an increase in market responsiveness as compared to the Company's DSP VI plan, which obtains default service supplies using solely non-laddered six-month procurements.

While RESA acknowledges the Company's initiative in proposing to make Medium C&I default service rates more market responsive, RESA argues that such movement is not sufficient. However, RESA provides no substantive basis as to why the Company's proposal is not sufficient to encourage further competition. In this regard, 72% of customers in the Medium C&I class are already shopping. Duquesne Light's careful movement to more market responsive rates over time has helped support the robust shopping levels for Medium C&I customers.

Nevertheless, RESA proposes to break up the Medium C&I class into two groups, those with demands from 25 kW to 100 kW and those with demands from 100 kW to 300 kW. RESA proposes that the Company provide default service using quarterly procurements for the first group (25 kW to 100 kW) and use hourly priced default service for the second group (100 kW to 300 kW). RESA presents no evidence that requiring hourly priced default service for customers between 100 kW and 300 kW is necessary to encourage the retail market, admitting that 77.4% of this subset of Medium C&I customers are already shopping under a DSP VI plan that uses solely non-laddered 6-month procurements.⁵ RESA Exc., p. 20.

RESA ignores the fact that moving these customers to hourly priced service will eliminate any default service rate stability. Instead, RESA states, without any evidentiary support “. . . that these customers can still obtain fixed-price electric generation supply from the market.” RESA Exc., p. 21. However, even if there were evidence to support this statement, it ignores the requirements under the Competition Act to consider the benefits of providing some stability in default service rates.

⁵ RESA argues that a 77% shopping level demonstrates that customers in the class are well equipped for hourly priced default service. RESA Exc., p. 20. There is no basis for such contention. First, these customers have not experienced rate changes more frequently than every six months. Second, 23% of the customers are not currently shopping, so there is no basis for the conclusion that the non-shopping customers are equipped to deal with hourly price service.

For these reasons, RESA has simply not demonstrated that hourly priced service is necessary to enhance competition for Duquesne Light's Medium C&I customers.

2. The End-State Order Does Not Justify Hourly Priced Service For Duquesne Light's Medium C&I Customers With Demands Over 100 kW.

RESA contends that the Commission's End-State Order "expresses a preference" for hourly service for customers over 100 kW, but recognizes that the Commission stated that "... it would prefer to pursue legislative amendments that clearly provide that authority." RESA Exc., p. 18. However, RESA incorrectly states, without citation, that the "ALJ's finding that the Commission concluded that legislative changes were a necessary precondition to moving C&I customers into the hourly priced group is too narrowly focused." RESA Exc., p. 18. The ALJ did not so conclude and simply recognized that the Commission appropriately expressed caution about whether the Competition Act permitted the Commission to mandate hourly service. RD, p. 26. By overstating the ALJ's conclusion, RESA improperly creates an issue with the RD that does not exist. The ALJ, instead, properly referenced the Commission's caution as one reason for not moving to hourly prices along with the evidence from the Company that it was not necessary to do so when retail competition can be enhanced by moving from six-month to three-month procurements. The ALJ also noted that customers and OSBA oppose moving Medium C&I customers to hourly priced default service. RD, p. 26.

RESA also argues that the Commission's decisions for Pike County Power and Light Company demonstrate that legislative changes are not required to implement hourly pricing for Medium C&I customers. RESA Exc., p. 18. RESA fails to acknowledge that the Commission considered its Pike County decisions in the *Default Service End-State Order* and rejected the broad application requested by RESA, stating as follows:

As noted by RESA, the Commission has found in Pike’s default service plan proceedings that the “prudent mix” standard may be fulfilled by only one product – a spot market product in Pike’s case – when it is the option that is most likely to produce the least cost over time and the benefits provided by the other products are not commensurate with their costs. While this finding originally occurred in 2007, prior to the passage of Act 129,⁶ the Commission has reached the same decision in 2009 and 2012.⁷ *It is important to note that, before reaching those decisions, the Commission considered a variety of factors that were unique to Pike. Most recently, those factors included Pike’s extremely small customer base and the fact that 73% of customers are served by EGSs, leaving only 1300 customers on default service.* Finding that the spot market approach complies with the law under those circumstances, the Commission concluded that requiring Pike to follow a procurement approach that includes hedging would produce an unreasonable result: namely, higher prices with little or no customer benefits. Similar rationales have applied to the approval of hourly LMP for large C&I customers.

While the Commission is steadfast in its view that our decisions to permit 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,⁸ 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. Further, as a creature of the Legislature, the Commission is well-served to ensure that the General Assembly is supportive of our overall policy direction on matters as important as the retail market for electricity. Although the Commission appears currently to have authority to establish shorter-term default service products that are more reflective of market conditions than existing products, our intention is to seek legislative changes that afford the Commission as much flexibility as possible going forward so that we can quickly adapt our policies as necessary to meet the needs of the competitive market and consumers.

⁶ *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan*, Docket No. P-00072245 (Opinion and Order entered August 16, 2007).

⁷ *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan*, Docket No P-2008-2044561 (Opinion and Order entered March 23, 2009); *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, Docket No. P-2011-2252042 (Opinion and Order entered February 25, 2011).

⁸ The most recent Pike decision is on appeal at the Commonwealth Court, in *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Commonwealth Court Docket No. 1179 C.D. 2012.

Default Service End-State Order, pp. 44 – 45 (Emphasis supplied).

3. The ALJ Correctly Rejected RESA’s Proposal To Remove 42% Of The Load From The Medium C&I Procurements By Placing Customers With More Than 100 kW Of Demand On Hourly Price Default Service.

Duquesne Light explained that 42% of the default service load would be removed from the Medium C&I Class by placing customers with demand from 100 kW to 300 kW on hourly priced default service. The Company noted that the remaining load may not be sufficient to attract bidders. Duquesne Light St. No. 2-SR, p. 3. The Company therefore suggested that further consideration of the effect on default service bids should be undertaken before moving 42% of the load out of the class. Duquesne Light MB, p. 21. The ALJ recognized this as another reason to reject RESA’s hourly priced default service proposal for the portion of the default service load between 100 kW and 300 kW of demand. RD, p. 26.

RESA argues that it is “illogical” to refrain from implementing its [the Commission’s] desired end state of hourly pricing for fear that doing so may have a negative effect on default service bids. RESA Exc., pp. 21-22.

Putting aside the fact that there is no competent evidence in this proceeding that hourly priced service is necessary to establish a competitive retail market for Duquesne Light’s Medium C&I customers, the issue is not whether implementing hourly priced service is necessary but, instead whether implementing it in the manner proposed by RESA will harm the remaining customers in the Medium C&I class. The issue is whether splitting up a procurement class will result in failed default service procurements for the remainder of the class. The Company submits that the Commission should give consideration to that issue along with all the other evidence that demonstrates that hourly priced default service is not now necessary for a portion of the Medium C&I class.

4. The ALJ Properly Considered The Technical Billing Challenges That The Company Will Have In Implementing Hourly Priced Service By June 1, 2015.

Duquesne Light explained that it will have interval meters for all Medium C&I customers with demands of 100 kW to 300 kW by June 1, 2015, capable of hourly readings. However, the Company would be required, if RESA's hourly priced service were approved, to make system adjustments to record reads and switch customers from monthly to hourly meter reads, and develop processes to pull hourly reads from the data management system and bill customers. Processes would also have to be developed to monitor customers moving above or below the 100 kW threshold. Finally, the number of customers on hourly priced default service would move from approximately 63 over 300 kW to 463 over 100 kW, resulting in many more manual operations and checks. Duquesne Light St. No. 4-SR, pp. 2-3; Duquesne Light MB, pp. 21-22.

These tasks will increase the expense of default service. As explained previously, RESA has provided no basis to justify the need to move more customers to hourly priced default service, and certainly no basis to do so during the DSP VII period of June 1, 2015 through May 31, 2017.⁹ See Duquesne Light MB, pp. 20 – 23; Duquesne Light RB, pp. 9 – 11.

C. THE ALJ CORRECTLY DETERMINED THAT DUQUESNE LIGHT SHOULD NOT BE REQUIRED TO BID OUT ITS HOURLY PRICED DEFAULT SERVICE FOR LARGE C&I CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 3.)

Duquesne Light offers hourly priced default service for its Large C&I customer class, which consists of customers with demand equal to or greater than 300 kW. Duquesne Light St.

⁹ RESA's suggestion that hourly priced service be phased-in with customers 200 kW and above receiving hourly priced service by December 31, 2015 and 100 kW – 200 kW receiving hourly priced service by June 1, 2016 will complicate default service bids for remaining customers and provide no assistance to Duquesne Light in developing and implementing new processes and systems. RESA's specific phase in proposed was not provided in the record in this proceeding, and therefore, the Company did not have an opportunity to respond to it on the record. If the hourly priced threshold is revised during the DSP VII period, which Duquesne Light opposes, it should be done at one time with no phase in and the reduction should be implemented no earlier than June 1, 2016.

No. 2, p. 6. Duquesne Light's Large C&I hourly priced default service is one of the most competitive default service product offerings in Pennsylvania and in the country. Duquesne Light was one of the first EDCs in the country to offer hourly priced service to all customers equal to or greater than 300 kW, and still has one of the lowest demand hourly priced service thresholds in the United States. Duquesne Light St. No. 3, p. 5. Even though Duquesne Light's hourly priced threshold includes smaller customers than other companies, approximately 96% of Large C&I load is being served by an EGS. Duquesne Light St. No. 2-R, p. 9.

In this proceeding, RESA proposed that the Company bid out the Large C&I hourly priced default service to a third party. RESA Exc., p. 23. However, RESA did not clearly define its proposal. As explained by the Company's witness, Mr. Fisher, Duquesne Light passes through PJM Interconnection LLC ("PJM") spot energy and other PJM costs to Large C&I default service customers under Rider No. 9 of its tariff. Duquesne Light St. No. 3-RJ, pp. 4-5. Duquesne Light MB, pp. 25-26. It is unclear whether RESA is proposing to bid out a fixed price adder on top of Rider No. 9 or whether the suppliers would offer the same scheduling flexibility that customers would have under Rider No. 9. Given that RESA's proposal was not clearly defined, it was also unclear what benefits, if any, RESA's proposal would provide to Large C&I customers.

The ALJ agreed that RESA's proposal was not clearly defined and would not benefit customers. On page 28 of the RD, the ALJ stated as follows:

I agree with the Company's argument that RESA's hourly priced service proposal is not clearly defined and RESA has not shown the potential or likelihood of benefit(s) to Large C&I customers. RESA's proposal to bid out hourly priced service would increase costs for Large C&I default service customers but provide no benefit in exchange for the increased costs.

RESA excepts to the ALJ's decision regarding this issue. First, RESA argues that the ALJ's decision is contrary to the *Default Service End-State Order* where the Commission indicated that it preferred that default service for Large C&I customers is auctioned to wholesale suppliers. RESA Exc., p. 24. The Commission's preference for auctioning hourly priced default service for Large C&I customers appears to be based on the desire to promote a robust competitive market. *See Default Service End-State Order*, p. 30. There is no need to auction hourly priced Large C&I default service in Duquesne Light's service territory because Duquesne Light already has robust Large C&I customer shopping with approximately 96% of the load taking service from an EGS. This leaves very little load to be auctioned to a wholesale supplier.

Moreover, unlike other EDCs in Pennsylvania, Duquesne Light's Large C&I customer class has a threshold of 300 kW. Therefore, 96% of all load above 300 kW is already taking service from an EGS in Duquesne Light's service territory.

In addition to robust Large C&I shopping levels, Duquesne Light has offered hourly priced default service since January 1, 2008. Large C&I customers that have remained on default service have indicated that they prefer to take service from Duquesne Light. Duquesne Light St. No. 3-RJ, p. 7. RESA has not presented any compelling reason to modify Duquesne Light's very successful hourly priced default service program for Large C&I customers. In this regard, Duquesne Light has been providing default service much longer than other major EDCs. The Company's mechanism for providing hourly priced service should not be upset under such circumstances.

RESA also argues that the ALJ's decision ignored the legislative finding that competitive market forces are more effective in controlling electricity costs. RESA Exc., p. 24. RESA argues that competitive bidding would ensure that resulting rates are reflective of all costs and

risks of providing services. RESA recognizes that the vast majority of hourly priced default service costs, including day-ahead hourly LMP, capacity and ancillary service costs are a direct pass through of all supply costs. However, RESA argues that Duquesne Light recovers certain costs through an administrative adder of \$4.49/MWh, and that this cost is a proxy figure that is not based on actual costs and that suppliers could offer a price that is lower than the current adder. RESA Exc., p. 24. RESA's arguments ignore unrefuted evidence in this proceeding. First, Duquesne Light demonstrated that the administrative adder reflects actual costs incurred. Duquesne Light St. No. 4-R, p. 17. Second, Duquesne Light also explained that the administrative adder largely recovers PJM interface and billing related costs that would remain even if a third party provided power at hourly prices because Duquesne Light must continue to do the billing and reconciliation associated with hourly priced default service costs. Duquesne Light St. No. 4-R, p. 18.

RESA also argues that the ALJ "misconstrues" the least cost standard as requiring the lowest absolute cost as opposed to whether the final price is the result of a competitive process. This argument is misguided for several reasons. First, the ALJ rejected RESA's proposal because it was not clearly defined and because RESA failed to show any benefits of its proposal. RD at 28. Second, Duquesne Light, as the default service provider, would continue to do the billing and reconciliation for Large C&I default service customers even if the default service supply was auctioned (just as Duquesne Light does the billing and reconciliation for other default service classes). Therefore the administrative adder would still be required even if the procurement is made subject to auction. For this reason, any profit to a third-party power provider simply would increase costs to the customer with no apparent benefit.¹⁰

¹⁰ RESA correctly notes in its exceptions that Duquesne Light supports relying on a competitive RFP procurement process to supply Residential, Small C&I and Medium C&I default service customers.

RESA also argues that its proposal will not lead to an unjust and unreasonable adder because all other major EDCs in Pennsylvania utilize the competitive bid approach. RESA Exc. p. 25. This argument cannot be evaluated and should be rejected because RESA failed to set forth a clear proposal for what services would be bid out and failed to describe how its proposal in this proceeding was similar to or different than other EDC's hourly priced default service.

RESA also argues that if the default service adder was bid out and the price was higher than Duquesne Light's current adder, this would indicate that Duquesne Light's current structure produces a subsidized rate. RESA Exc., pp. 25-26. As explained above, the administrative adder is designed to recover billing and PJM interface costs which remain with Duquesne Light as the default service provider even if the supply is bid out.

D. THE ALJ CORRECTLY DETERMINED THAT DUQUESNE LIGHT SHOULD NOT ASSUME RESPONSIBILITY FOR NMB TRANSMISSION COSTS FOR SHOPPING CUSTOMERS. (RESPONSE TO RESA EXCEPTION NO. 4.)

1. Introduction

In this proceeding, the Company proposed to maintain its existing cost recovery methodology for PJM transmission charges, including Network Integration Transmission Service ("NITS"), Regional Transmission Expansion ("RTEP") and Generation Deactivation Charges. Hereafter they are referred to collectively as "NMB Transmission Costs".¹¹ Duquesne Light

RESA Exc., p. 25. However, in these instances the third party supplier provides a benefit to customers in the form of rate stability over the term of the supply contract. In the case of hourly priced default service, a third party supplier would provide no rate stability benefits to customers as all supply costs are obtained in competitive wholesale markets and are a direct pass-through of costs.

¹¹ RESA refers to NITS, RTEP, Generation Deactivation Charges and Unaccounted for Energy ("UFE") as non-market based costs. The Company recovers NITS, RTEP and Generation Deactivation Charges through its TSC. UFE is not recovered through the TSC. UFE is allocated on a load share basis to wholesale suppliers and EGSs. Recovery of NMB Transmission Costs referenced herein does not include UFE.

recovers NMB Transmission Costs for default service customers through its Transmission Service Charge (“TSC”).

RESA argues that the Company should recover NMB Transmission Costs for all customers through a non-bypassable charge.¹² RESA continues to argue this position despite the fact that the Commission has rejected it on numerous occasions. See Duquesne Light MB, pp. 37 – 38. In the alternative, RESA argues that the Company should make wholesale suppliers responsible for NITS Costs. RESA Exc., p. 31.

The ALJ rejected RESA’s proposals, noting that RESA’s primary proposal that Duquesne Light should be required to recover NMB Transmission Cost for shopping customers had been previously rejected by the Commission. RD at 36.

2. Duquesne Light’s NMB Transmission Cost Recovery Methodology Is Not Anti-Competitive.

In its Exceptions, RESA argues that the current NMB Transmission Cost recovery methodology is anti-competitive because NMB charges are variable and cannot be hedged by EGSs. RESA argues that EGS are required to bear the risk of increases in NMB Transmission Costs while the Company can pass through changes in the charges to default service customers. RESA Exc., pp. 27-29.

RESA’s argument that Duquesne Light’s NMB Transmission Cost recovery methodology is anti-competitive fails for several reasons. First, EGSs can simply offer contracts to customers that pass through NMB Transmission Costs and fix all other costs. Under this type of contract, if NMB Transmission Costs increase, EGSs can simply pass the increase through to customers. This is how default service customers are charged NMB Transmission costs – on a pass through basis.

¹² If RESA’s recommendation is adopted, Duquesne Light must be guaranteed full cost recovery of all NMB Transmission Costs. See Duquesne Light MB, p. 40.

Moreover, the majority of NMB Transmission Costs are NITS costs, which are fixed on a yearly basis from June 1 – May 31 of each year. Duquesne Light St. No. 4-RJ, pp. 5-6. RESA is clearly overstating the risk associated with NMB Transmission Costs.

As explained in the Company’s Reply Brief, RESA’s proposal is anti-competitive. Duquesne Light RB, pp. 22-23. RESA’s proposal would prevent EGSs and customers from negotiating fixed price contracts for NMB Transmission Costs, thereby severely limiting competition with respect to these costs. Both Noble, an EGS, and DII, a representative of large customers, recognize this and oppose RESA’s proposal that NMB Transmission Cost recovery for EGS customers be shifted to Duquesne Light. Noble MB, p. 4; DII MB, pp. 19-20.

3. RESA’s Arguments Regarding The Legality of The Competing Cost Recovery Proposals Must Be Denied.

In its Exceptions, RESA argues that Duquesne Light’s NMB Transmission Cost recovery proposal is contrary to the Competition Act’s provision which requires that EGSs are provided direct access to the transmission and distribution system. See RESA Exc., p. 30; 66 Pa.C.S. § 2803, definition of “Direct Access”; 66 Pa.C.S. § 2804(6). RESA argues that if Duquesne Light assumes NMB Transmission Cost responsibility for wholesale suppliers and not EGSs, this is “discriminatory access” in violation of the Competition Act because wholesale suppliers get the right to full recovery of NMB Transmission Costs and not EGSs. RESA Exc., pp. 30-31. RESA’s legal argument relies on an inaccurate view of the facts and misinterprets the Competition Act.

The factual error in RESA’s argument is that EGSs can offer contracts that pass through NMB Transmission Costs to customers. This type of contract combined with Duquesne Light’s Purchase of Receivable (“POR”) program effectively substantially guarantees EGSs recovery of NMB Transmission Costs. In fact, if an EGS customer does not pay their bill, under this

scenario, Duquesne Light is the entity that bears the risk of non-payment because Duquesne Light pays the EGS for its receivables even if the customer does not pay.

Moreover, Sections 2803 and 2804(6) of the Public Utility Code address direct access to the transmission and distribution system for EGSs on the same terms and conditions. RESA is arguing that it does not have the same terms and conditions for NMB Transmission Costs. RESA is incorrect. NMB Transmission Costs are billed by PJM to both the EDCs and EGSs at the same rates. There is no discrimination by PJM as to the rates it charges, and RESA has not offered any evidence in this proceeding to support such an argument. Duquesne Light elects to pass NMB Transmission Costs through to customers, and as explained above, EGSs can offer contracts that pass these costs through to customers as well. There is no discrimination.

Moreover, Duquesne Light's proposed cost recovery has previously been approved by the Commission in the Company's DSP VI proceeding. *Petition of Duquesne Light for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2301665, Order entered January 25, 2013 ("DSP VI Order"). For the reasons stated above, Duquesne Light's NMB Transmission Cost recovery methodology clearly does not violate the Competition Act.

4. The Fixed Price Label Order Does Not Support RESA's Position

RESA also argues that the Commission's recent *Fixed Price Order*¹³ justifies recovery of NMB Transmission Costs by the EDC on a non-bypassable basis. RESA St. No. 1, p. 25. With respect to recovery of NITS costs, the Commission specifically rejected these arguments in the *FirstEnergy DSP Order*, stating as follows:

We find that neither our *Fixed Price Order*, entered in November of 2013, nor the single, alleged incident of volatile NITS costs in a

¹³ *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order entered November 14, 2013.

neighboring jurisdiction amount to “changed circumstances” which would warrant the requested non-bypassable collection of NITS costs as proposed by FES et al. We further conclude that the FES et al. arguments as to the volatility issue are simply unconvincing as only one, single instance was offered as evidence. We do not agree that this one instance of volatility would lead to the inference that all NITS costs are now unpredictable and should be collected via the EDCs’ non-bypassable DSSR.

FirstEnergy DSP Order, pp. 31-32.

RESA argues that the ALJ erred in following Commission precedent with respect to the effect of the *Fixed Price Order*. RESA argues that it has presented additional evidence regarding the volatility of NMB Transmission Costs in this proceeding and that nine of the 20 PJM Zones cited by RESA experienced NITS increases in June 2014. RESA Exc., p. 28. The NITS charge in the Duquesne Zone increased by 9%. RESA Exc., p. 28.

Contrary to RESA’s claims, RESA’s evidence is not significant and does not support its claim that NMB Transmission Costs are unmanageable. Transmission Costs, including NMB Transmission Costs, are a small component of the Price To Compare (“PTC”). Duquesne Light’s current residential PTC is 8.08 cents/kWh of which 1.21 cents/kWh is transmission costs. See Duquesne Light’s Tariff, Fourteenth Revised Page No. 113. Therefore, transmission costs are approximately 15% of the PTC. If the transmission costs increase by 9%, this only increases the PTC by 1.4%. In addition, 10 of the 20 zones cited by RESA had no change in the NITS rate and one other zone had a decrease. RESA St. No. 1-SR, p. 25. RESA’s snapshot of NITS changes in PJM for June 1, 2014 is not significant evidence supporting its claim that NITS charges are unmanageable.

Moreover, RESA is overstating the effect of the *Fixed Price Order*. The *Fixed Price Order* does not require Fixed Price contracts. It simply does not allow EGSs to use a “Fixed

Price” label when referring to a contract with variable rates. EGSs can still offer contracts with variable NMB Transmission Costs.

5. RESA’s Alternative NMB Transmission Cost Recovery Proposal Should Be Denied.

RESA argues that if Duquesne Light is not required to recover NMB Transmission Costs for shopping customers, Duquesne Light should revise its Supply Master Agreement to require wholesale suppliers to assume the costs for NITS Costs. RESA further argues that this is consistent with how the FirstEnergy Companies recover NITS charges. RESA Exc., p. 32. RESA’s alternative cost recovery proposal should be denied for several reasons.

First, RESA’s proposal to require wholesale suppliers to bear the risk of NITS Costs would give EGSs an advantage over wholesale suppliers because EGSs could offer contracts to customers to pass through NITS Costs but wholesale suppliers would be required to offer fixed prices to Duquesne Light.

Second, RESA only offered its alternative proposal for the first time in its surrebuttal testimony. This did not give other parties, including wholesale suppliers, other than Duquesne Light the opportunity to respond to this proposal on the record. See Duquesne Light MB, p. 40.

Third, the FirstEnergy Order does not support RESA’s position. The FirstEnergy Companies voluntarily proposed to require wholesale suppliers to be responsible for NITS charges. This issue was not litigated in the FirstEnergy proceeding and was voluntarily proposed by the FirstEnergy Companies. Moreover, PPL Electric does not require wholesale suppliers to bear NITS costs.¹⁴ *Petition of PPL Electric Utilities Corporation for Approval of a Default*

¹⁴ RESA argues that there should be uniform application of NMB Transmission Costs for all EDCs. Duquesne Light disagrees. EDCs should have flexibility in how they recover NMB Transmission Costs and should not be forced to change their historical cost recovery methodologies, especially given the negative competitive impacts of RESA’s proposals.

Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017,
Docket No. P-2014-2417907, Recommended Decision issued October 30, 2014, p. 46.

IV. CONCLUSION

Duquesne Light's DSP VII Plan, as modified by the Settlement, carefully balances the Act 129 requirements for the competitive procurement of default service supply and the continued development of the competitive retail market. Administrative Law Judge Katrina L. Dunderdale recognized the balance of the plan and appropriately recommended approval of the Company's DSP VII Plan, as modified by the Settlement. For the reasons explained herein and in the Company's Main and Reply Briefs, RESA's Exceptions should be denied and the Company's DSP VII Plan, as modified by the Settlement, should be approved.

Respectfully submitted,



Robert H. Hoaglund II (ID # 313383)
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue, 16th Fl.
Pittsburgh, PA 15219
Phone: (412) 393-1058
Fax: 412-393-5695
E-mail: rhoaglund@duqlight.com

Michael W. Gang (ID # 25670)
Anthony D. Kanagy (ID #85522)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: (717) 731-1970
Fax: (717) 731-1985
E-mail: mgang@postschell.com
E-mail: akanagy@postschell.com

Of Counsel:

Attorneys for Duquesne Light Company

Post & Schell, P.C.

Date: November 24, 2014