

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Petition of Duquesne Light Company  
for Approval of a Default Service Program for  
the Period from June 1, 2015 through  
May 31, 2017**

**Public Meeting held January 15, 2015  
2418242-OSA  
Docket No. P-2014-2418242**

**STATEMENT OF COMMISSIONER GLADYS M. BROWN**

Before the Commission for consideration and disposition is the Petition of Duquesne Light Co. (Duquesne) for Approval of its Default Service Program for the period of June 1, 2015 through May 31, 2017. On September 15, 2014, the Parties entered into a partial Settlement which resolved several issues. By Recommended Decision issued on October 31, 2014, ALJ Dunderdale approved the partial Settlement and made recommendations on the litigated issues. The Parties failed to settle on a number of issues, one being whether Duquesne should assume responsibility for non-market-based PJM charges for all customer load, both shopping and non-shopping, and recover those costs through a non-bypassable charge.<sup>1</sup> Another being whether or not Duquesne's Plan should include long-term contracts for alternative energy credits (AECs).

ALJ Dunderdale's Recommended Decision approved the Partial Settlement and, *inter alia*, denied the proposal by the Retail Energy Supply Association (RESA) and Exelon Generation Company, LLC (ExGen) to incorporate non-market-based PJM charges into a non-bypassable charge. RESA filed Exceptions on this issue.

It is my opinion that the collection of non-market based charges such as NITS in a competitively-neutral manner can work to benefit consumers by reducing the risk-premiums that EGSs and wholesale generation providers embed in their prices. This is particularly relevant for EGSs given the Commission's recently issued Guidelines on fixed price products at Docket Number M-2013-2362961. As RESA points out in its Exceptions, these costs are non-hedgeable. Therefore, requiring the EDCs to assume the cost responsibility associated with these non-market based PJM charges for all load removes additional costs from the price customers will pay. This is the case because, unlike an EGS, an EDC is permitted to recover on a full and current basis all reasonable costs incurred to provide default service. Therefore, the EDC will not place a risk premium on the recovery of these costs. This is contrary to what an EGS would do since the costs cannot effectively be hedged.

Another issue which was not settled regards the lack of long-term contracts within Duquesne's proposed DSP. PennFuture raised this issue with regard to the lack of long-term AECs. However, the record reflects that neither Duquesne's DSP VI nor this proposed DSP VII include any long-term contracts, be they for energy or AECs. In my opinion, this lack of any-long term contracts is a fatal flaw under 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e). Section 2807(e) provides that a default service provider must procure electric power via a prudent mix of

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<sup>1</sup> Non-market-based PJM charges include network integration transmission service, regional transmission expansion, generation deactivation, and unaccounted for energy charges.

spot market, short term, and long-term contracts designed to ensure adequate and reliable service at the least cost to customers over time. The ALJ concluded that based upon the Commission's interpretation of the Act 129 prudent mix requirement, the Commission's approval of Duquesne's DSP VI plan, and the Commission's statement in the *Investigation of Pennsylvania's Retail Electricity Market; end State of Default Service*, Docket No. I-2011-2237952 at 31-32 (February 15, 2013) (*RMI Order*), long-term contracts are not required by Act 129. (RD at 30).

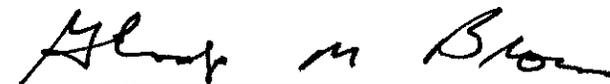
I would be remiss not to mention that the Commonwealth Court has since ruled that this Commission acted within the bounds of Act 129 when the Commission approved Pike County Electric Company's 100% spot market procurement in its last default service filing. *Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal den.*, 2013 Pa. Lexis (2013). However, the court in *Popowsky* also found that the Commission's approval of a spot market only procurement in light of the prudent mix standard was lawful since the Commission properly considered the possibility of including short-term contracts (including financial hedges) and determined it was not prudent to do so. *Popowsky*, 71 A. 3d 1112, 1118. As acknowledged by the court in *Popowsky*, "the Preamble to Act 129 indicates that **price stability was one of the goals to be achieved by that act, and that price instability was one of the harms the act was intended to ameliorate ...**" 71 A.3d 1112, 1117 (Emphasis added). The court ultimately determined that the Commission had not discounted the importance of price stability, and that the Commission concluded that the additional benefits of a financial hedge would not be justified by the additional costs. 71 A.3d 1112, 1118.

I note that if the default service plans that were in place during the recent polar vortex had been priced solely on short-term or hourly contracts, default service customers would have been exposed to extreme pricing volatility. I acknowledge that the mix of contracts offered in any EDC's default service plan is by no means an exact science; as such, the Commission should give deference an EDC's chosen supply portfolio proposal unless it is blatantly imprudent. In this case, Duquesne's proposed plan is neither prudent nor legal under Section 2807(e) of Act 129.

As such, I will vote no on Duquesne's default service program.

January 15, 2015

Date



Gladys M. Brown, Commissioner