

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, 2017 through  
May 31, 2021

Public Meeting held December 22, 2016  
2543140-ALJ  
Docket Nos. P-2016-2543140

JOINT STATEMENT OF CHAIRMAN GLADYS M. BROWN &  
COMMISSIONER DAVID W. SWEET

Before the Commission for consideration and disposition is the Petition of Duquesne Light Company (Duquesne) for Approval of its Default Service Program for the period of June 1, 2017 through May 31, 2021. On September 3, 2016, the Joint Petitioner Parties filed a Joint Petition for Approval of a Non-Unanimous Settlement (Settlement).<sup>1</sup> On September 23, 2016, Noble Americas Energy Solutions LLC (Noble) filed Objections to Paragraph 22 of the Settlement. On November 8, 2016, the Administrative Law Judge issued a Recommended Decision approving the Settlement and denying the Objections of Noble.

There is one important concern we must raise, namely, the lack of any new or grandfathered long-term contracts within Duquesne's proposed default service portfolio.<sup>2</sup> In our 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) which warrants our dissent in this proceeding. Section 2807(e) provides that a default service provider must procure electric power via a prudent mix of spot market, short-term, and long-term contracts designed to ensure adequate and reliable service at the least cost to customers over time.

The Commonwealth Court 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 a 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 other 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 the additional benefits of a financial hedge would not be justified by the additional costs. 71 A.3d 1112, 1118. The instant proceeding lacks any express justification and evidence for the omission of long-term contracts.

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<sup>1</sup> Joint Petitioners include Duquesne Light Company, the Office of Consumer Advocate, the Office of Small Business Advocate, The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Retail Energy Supply Association, and the Exelon Generation Company, LLC.

<sup>2</sup> Long-term contracts may include fixed price full requirements energy contracts, block energy contracts, or alternative energy credit contracts with a term-length in excess of four years.

We emphasize that our interpretation of *Popowsky* is not that a default service portfolio must include long-term contracts. Rather, our reading is that a utility has the burden of proof of providing evidence justifying the omission of any type of contract enumerated in 2807(e) of the Public Utility Code, whether it spot, short-term, or long-term.

The record in this proceeding references the Commission's 2011 Default Service and Retail Electric Markets Order Final Rulemaking Order at L-2009-2095604 (2011 Default Service Order) as justification for Duquesne's proposed prudent mix. Duquesne references language on page 60 of the 2011 Default Service Order, stating:

"[t]he Commission has previously stated that it rejects the position of those parties that a "prudent mix" be defined to always require a specific mix or percentage of contract components in default service plan or a minimum of two types of products."<sup>3</sup>

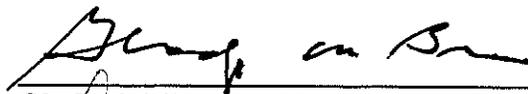
The Commission further elaborated on this issue in the 2011 Default Service Order when it stated:

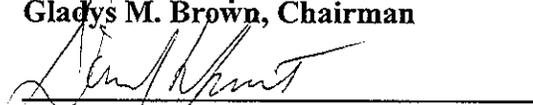
"As we have done on other aspects of the plan review process, we will continue to review each plan on a "case by case" basis that independently evaluates the merits of each default service plan where input from stakeholders is assured. We reaffirm our commitment that a "prudent mix" include a combination of spot purchases, short, intermediate and long-term contracts recognizing the limitation of 25% on long-term contracts under Section 2807(e)(3.2)(iii).

We do reject the positions of those parties that "prudent mix" be defined to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products. We also reject the position of RESA that long term contracts should not be part of the "prudent mix" standard. Our concern with adopting specific parameters is that adoption of specific component requirements creates constraints that limit the flexibility of the DSP to design a combination of products that meets the requirements under the Competition Act and Act 129."<sup>4</sup>

We submit that the policy set forth in the 2011 Default Service Order merely established that there is no exact formula for the correct "prudent mix." Rather, it is the responsibility of the utility on a case-by-case basis to show that its proposed portfolio of contracts complies with the requirements of the Public Utility Code. *Popowsky* established a further threshold that substantial evidence is required to deviate from the statutory requirements under 2807(e). Since the record in this proceeding does not provide substantial evidence supporting the omission of long-term contracts, we must respectfully dissent.

**December 22, 2016**  
Date

  
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Gladys M. Brown, Chairman

  
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David W. Sweet, Commissioner

<sup>3</sup> Testimony of Neil S. Fisher at pg. 33.

<sup>4</sup> 2011 Default Service Order at pg. 60