

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

**Petition of Duquesne Light Company
for Approval of a Default Service Plan
for the Period from June 1, 2017
through May 31, 2021**

**Public Meeting December 22, 2016
2543140-ALJ
Docket No. P-2016-2543140**

**JOINT STATEMENT OF COMMISSIONER ROBERT F. POWELSON
AND COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) today for consideration and disposition is Duquesne Light Company's (Duquesne) Petition for Approval (Petition) of its Default Service Plan. This Petition seeks Commission approval of a program that secures default service supply for Duquesne's customers for the period of June 1, 2017 through May 31, 2021. We believe Duquesne's plan clearly satisfies the statutory requirements for default service procurement. In light of recent court decisions, we also want to use this opportunity to clarify how these requirements should be interpreted.

The Electric Generation Customer Choice and Competition Act (Act 129 or Act) requires that default service providers acquire electric energy through a "prudent mix" of "[s]pot market purchases . . . [s]hort-term contracts . . . [and] long-term purchase contracts" that are designed to: (1) provide adequate and reliable service; (2) provide the least cost to customers over time; and (3) achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1) and 2807(e)(3.4). When evaluating a particular default service plan, the Commission must consider the prudence of including each type of procurement method in the mix. *See Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal den.*, 623 Pa. 765 (2013). In these determinations, the Commission may find that it is prudent for a default service provider to include only one type of contract in its portfolio when that is the option most likely to produce the least cost over time. *See Id.*

The Commonwealth Court (Court) has affirmed the Commission's approval of a spot-market only procurement approach by a default service provider as consistent with the mandates of Act 129.¹ *Popowsky*, 71 A.3d 1112. In *Popowsky v. Pa. Public Utility Commission*, the Court found that the Commission's approval of a default service provider's procurement method through spot market purchases alone complied with the Act 129 "prudent mix" standard because the Commission "properly *considered the possibility* of including short-term contracts [in the procurement approach] and determined that to do so would not be prudent." *Id.* at 1117. Specifically, the Court found that the Commission's consideration of longer-term hedging contracts in that case would not be justified by the additional costs to customers. *Id.* at 1118.

It is important to note that, in the *Popowsky* case, the Court found it significant that not even the Office of Consumer Advocate (OCA) argued for the inclusion of a long-term contract in the default service provider's procurement approach to comply with the Act 129 "prudent mix"

¹ See *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042 (Order entered May 24, 2012).

standard. As such, it is clear that neither the Court nor the OCA interpret the “prudent mix” standard to uniformly require the inclusion of long-term procurement contracts to comply with Act 129. This interpretation confirms that it is within the Commission’s discretion to determine that one or more procurement methods are prudent to ensure least cost to customers over time in light of the particular facts of each case.

Based on the Commonwealth Court’s interpretation of the statutory language of Act 129, we wish to highlight that Act 129 does not require the Commission to blindly require all default service providers to include spot-market, short-term, *and* long-term purchases in every procurement portfolio. Rather, the Commission is required to consider the prudence of including one or more types of these procurement products under the particular circumstances involved in each case to ensure that the products procured result in compliance with all of the statutory requirements of Act 129, including least cost to customers over time. We caution that uniformly requiring all default service providers to include spot-market, short-term, and long-term purchases in every default service proceeding will come at the expense of the other Act 129 mandates to ensure that default service procurement is not only prudent, but also ensures adequate and reliable service to customers at the *least cost over time*.

Date: December 22, 2017


ROBERT F. POWELSON
COMMISSIONER


JOHN F. COLEMAN, JR.
COMMISSIONER