

Deanne M. O'Dell, Esq.
717.255.3744
dodell@eckertseamans.com

September 20, 2024

Via Electronic Filing

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

Re: Duquesne Light Company's Supplement No. 81 Tariff Filing Requesting Interim Default Rate Adjustment Docket No. M-2024-3050905

Dear Secretary Chiavetta:

The Retail Energy Supply Association ("RESA")¹ respectfully requests that the Commission accept and consider this letter in response to the Tariff filing of Duquesne Light Company ("Duquesne Light") proposing to implement an interim default service rate adjustment effective September 25, 2024. Although a Secretarial Letter dated September 17, 2024 was issued wherein the Bureau of Audits Staff ("Staff") has concluded that the proposed rates are consistent with the tariff, RESA questions the use of a tariff filing to effectuate a significant modification of an existing Commission approved default service plan which was carefully developed in a fully litigated proceeding wherein all interested parties were given the opportunity to be heard. While RESA does not take a position on the substance of Staff's determination that Duquesne Light's calculations are consistent with its tariff, RESA does urge the Commission to consider the potential negative impacts to current and future shopping customers that could result from approving an unplanned interim rate adjustment outside of the change period approved as part of a default service plan proceeding.

Duquesne Light's current default service rate was calculated in accordance with the Commission's direction in its last default service plan proceeding.² As part of that proceeding, Duquesne Light requested and received Commission approval to maintain the default service rate for a six month period. Over the years, the Commission has determined that holding the default

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² *Petition of Duquesne Light Company for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522, Opinion and Order entered January 14, 2021.

service rate for a longer period, i.e. six months, is preferable to provide consumers with “rate stability.”³ Utilities seeking to make changes to the terms of a default service plan have always done so through the filing of a Petition requesting modification.⁴ Making such requests through the filing of a Petition permits interested parties notice of the filing and an opportunity to present their positions on the requested modification and any unforeseen but worthwhile policy considerations like the *Fixed Price Label Order*⁵ requirements that warrant timely consideration. Rather than file a Petition, Duquesne Light filed its tariff supplements to effectuate an interim default service rate adjustment and received approval after a Staff technical review. The broader impacts of the interim rate change and/or potential long term consequences to the competitive market of default service rates appear to not have been considered. .

Both the default service rate and the frequency of default service rate changes are matters of significant importance to EGSs in the development of competitive supply products. Because of Commission approved messaging of the default service rate as the “Price to Compare,” which encourages consumers to use the default service rate as the benchmark upon which to judge competitive offers, EGSs have to price their competitive products in consideration of the default service rate. Therefore, existing EGS customer contracts as well as ones currently under development are based, in part, on expectations about when an EDC has the next regularly scheduled opportunity to adjust the default service rate. Permitting an EDC to implement unplanned, interim default service rate adjustments through a tariff filing which does not allow for a full review of the impacts of such change on the default service structure and the competitive market may have negative impacts for both current and future shopping customers. For this reason, RESA asserts that allowing a revision to an already approved Commission default service plan to permit a default service rate adjustment outside of the planned period cannot be properly evaluated through just a technical review of a tariff filing by Staff. Additionally, Duquesne Light’s proposal raises questions and implications for the Commission’s *Fixed Price Label Order* requirements that warrant further consideration. Duquesne Light proposes to modify Rider No. 8 - Residential/Lighting Default Service Supply Rates which is clearly described and marketed as “fixed.” By approving Duquesne Light’s request to

³ Prior to 2017, Duquesne Light adjusted its default service rates on a quarterly basis and this was consistent with the adjustment periods utilized by the other EDCs. *Petition of Duquesne Light Company for Approval to Modify its Default Service Plan for the Period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2543140, Order entered December 22, 2016.

⁴ See, e.g., *Petition of Duquesne Light Company for Approval to Modify its Default Service Plan for the Period June 1, 2017, through May 31, 2021*, Docket No. P-2016-2543140, Order entered July 16, 2020 (approving Duquesne Light’s request to utilize a Capacity Proxy Price.); *Petition of PPL Electric Utilities Corporation for Approval to Modify Its Procurement of Solar Alternative Energy Credits Under the Default Service Procurement Plan*, Docket No. P-2008-2060309, Opinion and Order entered March 1, 2011; *UGI Utilities, Inc. -- Electric Division, Petition for Expedited Interim Approval of Modifications to Default Service Security Requirements and Waiver of Wholesale Supplier Bid Limitation*, Docket No. P-2010-2184286, Order entered October 21, 2010; *Joint Petition of Citizens' Electric Company of Lewisburg, PA, and Wellsboro Electric Company for the Amendment of their Joint Default Service Plan to Account for Distribution Losses*, Docket No. P-2022-3036537, Order entered December 22, 2022.

⁵ *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013. (“*Fixed Price Label Order*”)

implement an unplanned interim rate adjustment through a tariff review process, the Commission has not been given the opportunity to fully consider the significant impacts of this flexibility provided to EDCs on the competitive market.

Just like EDCs, EGSs must also determine how to address the significant increase in capacity prices. However, unlike EDCs, EGSs do not have the cost recovery options available to EDCs. EGSs have no ability to request Commission approval of mid- contract price changes to recover the unanticipated costs. For existing mass market EGS customers with fixed price contracts, the Commission's *Fixed Price Label Order* does not allow the EGS to adjust the contract during the term to recover costs such as those here – regardless of whether or not such right is reserved in the contract.⁶ EGSs also cannot rely on a “regulatory out” clause in the contract to recover the cost from the fixed price customer because the *Fixed Price Label Order* requires an EGS dealing with an unpredicted increase in costs to provide the customer prior notice of the EGS's intent to pass on the costs to the customer. If the customer does not affirmatively agree to the price increase, then the EGS must cancel the contract. Thus, for mass market customers, the *Fixed Price Label Order* limits the ability of EGSs to make mid-contract adjustments to account for increased costs due to the capacity charges. The likely outcome then is for shopping customers to be returned to default service. The Commission's review of the interim rate adjustment through a Petition process would have also provided a venue for EGSs to make suggestions that can help promote the growth of the competitive market and reduce the disparity between EDCs and EGSs with regards to cost recovery options – including a request that the Commission consider approving a one- time exception for EGSs of the *Fixed Price Label Order* requirements.

To be clear, RESA recognizes that the tariff supplement will likely go into effect and RESA is not supportive of initiating a costly, litigation proceeding to review the technical determinations of Staff. However, RESA does urge the Commission to be clear that revisions to an existing default service plan cannot be approved through a technical tariff review process in the future. Rather, utilities should continue to be required to file Petitions for Revisions or Modification of their existing default service plan so that notice and an opportunity to be heard is provided to all interested stakeholders. Such process is in the public interest because it will position the Commission to make a decision in consideration of all the potential impacts of the proposal beyond a technical review of the specific tariff provisions.

Sincerely,



Deanne M. O'Dell

DMO/lww

cc: per Certificate of Service

⁶ *Fixed Price Label Order* at 24.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Letter 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):

ELECTRONIC MAIL

Bureau of Investigation & Enforcement
Scott B. Granger
Richard Kanaskie
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
sgranger@pa.gov
rkanaskie@pa.gov

Office of Consumer Advocate
David T. Evrard
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
DEvrard@paoca.org

Excel Consulting
Brian Kalcic
225 S. Meramac Avenue
Suite 720-T
St. Louis, MO 63105
Excel.consulting@sbcglobal.net
On behalf of OSBA

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Office of Small Business Advocate
Sharon Webb
Steve Gray
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov
sgray@pa.gov

Norris McLaughlin, P.A.
John F. Lushis, Jr.
515 W. Hamilton Street
Suite 502
Allentown, PA 18101
jlushis@norris-law.com
jaskey@norris-law.com
On behalf of
Calpine Retail Holdings, LLC

Pennsylvania Utility Law Project
Elizabeth R. Marx
John Sweet
Ria Pereira
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
On behalf of CAUSE-PA

Keyes & Fox LLP
Scott Dunbar
1580 Lincoln Street
Suite 1105
Denver, CO 80203
sdunbar@keyesfox.com
On behalf of ChargePoint

Thomas, Niesen & Thomas, LLC
Charles E. Thomas, Jr.
212 Locust Street, Ste. 302
Harrisburg, PA 17101
cthomasjr@tntlawfirm.com
On behalf of MAREC Action

ChargePoint
Matthew Deal
254 East Hacienda Avenue
Campbell, CA 95008
Matthew.deal@chargepoint.com

MAREC Action
Bruce Burcat
P.O. Box 385
Camden, DE 19934
Marec.org@gmail.com

Tishekia E. Williams, Esq.
Duquesne Light Co.
411 Seventh Avenue
Mail Drop 15-7
Pittsburgh, PA 15291
twilliams@duqlight.com

Post & Schell, P.C.
Michael W. Gang
Anthony D. Kanagy
17 North Second Street
12th Floor
Harrisburg, PA 17101
mgang@postschell.com
akanagy@postschell.com
On behalf of Duquesne Light Company

Fair Shake Environmental Legal Services
Andrew J. Karas
647 E. Market Street
Akron, OH 44304
akaras@fairshake-els.org
On behalf of NRDC

StateWise Energy PA LLC & SFE Energy
Gregory L. Peterson
201 West Third Street
Suite 205
Jamestown, NY 14701-4907
gpeterson@phillipslytle.com

Natural Resources Defense Council
Jackson Morris
Kathy Harris
1152 15th Street, Suite 300
Washington, DC 20005
jmorris@nrdc.org
KHarris@nrdc.org

/s/ Deanne M. O'Dell

Deanne M. O'Dell, Esquire

Dated: September 20, 2024