

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held January 14, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement  
David W. Sweet, Vice Chairman  
John F. Coleman, Jr.  
Ralph V. Yanora

Petition of Duquesne Light Company for  
Approval of its Default Service Plan  
for the Period from June 1, 2021 through  
May 31, 2025

P-2020-3019522

**OPINION AND ORDER**



3.	Recommended Decision.....	52
4.	EGS Parties Exception No. 1 and Replies .....	53
5.	Disposition .....	58
C.	Solar PPA Proposal .....	61
1.	Positions of the Parties .....	61
2.	Recommended Decision.....	66
3.	Exceptions and Replies .....	71
4.	Disposition .....	81
D.	CAP Shopping .....	87
1.	Positions of the Parties .....	87
2.	CAP Shopping Stipulation .....	91
3.	Recommended Decision.....	92
4.	EGS Parties Exception No. 4 and Replies .....	92
5.	Disposition .....	96
VII.	Conclusion.....	99

## **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions to the Recommended Decision (Recommended Decision or R.D.) of Administrative Law Judge (ALJ) Mark A. Hoyer, served on November 12, 2020, in the above-captioned proceeding. On November 23, 2020, the following Parties filed Exceptions: MAREC Action (MAREC) and, collectively, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services LLC (the EGS Parties). On November 30, 2020, the following Parties filed Replies to Exceptions: Duquesne Light Company (Duquesne Light or Company), the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Natural Resources Defense Council (NRDC), and Calpine Retail Holdings, LLC (Calpine). For the reasons set forth in detail herein, we shall deny the Exceptions filed by the EGS Parties and MAREC and adopt the ALJ's Recommended Decision, as modified by this Opinion and Order.

### **I. Background**

Duquesne Light is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Pittsburgh, Pennsylvania. Duquesne Light provides electric delivery service to approximately 603,500 customers. Duquesne Light is a public utility as that term is defined in Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102, and serves as an electric distribution company (EDC) and a default service provider (DSP) as those terms are defined in Section 2803 of the Code, 66 Pa. C.S. § 2803.

## II. History of the Proceeding

On April 20, 2020, Duquesne Light filed the Petition of Duquesne Light Company for Approval of its Default Service Plan (DSP IX or Default Service Plan) for the Period from June 1, 2021 through May 31, 2025 (Petition or DSP IX Petition), following the expiration of its current default service program (DSP VIII), *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2017 Through May 31, 2021 (DSP VIII Order)*, Docket No. P-2016-2543140 (Order entered December 22, 2016). The Petition was filed pursuant to 66 Pa. C.S. § 2807, the Commission's Default Service Regulations at 52 Pa. Code §§ 54.181-190, and the Commission's Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817. Petition at 1, 2. The applicable statute requires that the Commission issue its decision on this matter no later than nine months after the filing date of the proposed DSP, or, in this case, on or before January 20, 2021. 66 Pa. C.S. § 2807(e)(3.6).

In the Default Service Plan, Duquesne Light proposes to continue separate default supply procurements for: (1) Residential and Lighting customers, (2) Small Commercial and Industrial (Small C&I) customers, (3) Medium Commercial and Industrial customers with demands under 200 kW (Medium C&I <200 kW), and (4) Hourly Price Service (HPS) for Medium C&I customers with monthly metered demand equal to or greater than 200 kW and Large Commercial and Industrial (Large C&I) customers (collectively, HPS-Eligible). Petition at 3-4. Duquesne Light proposes to procure supplies for Residential and Lighting and Small C&I customers through the combination of twelve- and twenty-four month fixed price, full requirements, laddered contracts. *Id.* at 4, 7. Duquesne Light will continue to supply Medium C&I <200 kW default service customers through fixed-price full requirements supply contracts with three-month terms from third-party suppliers with no laddering. *Id.* at 8. Duquesne Light proposes to continue to procure supply for

HPS-Eligible default service customers through the day-ahead PJM energy market prices. Duquesne Light proposes to continue the current structure and administration for HPS customers, to conduct a Request For Proposal (RFP) to supply HPS customers, and to preserve the demand threshold for HPS at  $\geq 200\text{kW}$ . *Id.* at 10.

In the Default Service Plan, Duquesne Light also proposes to: (1) create an Electric Vehicle Time-of-Use Pilot Program (EV-TOU) for Residential, Small C&I and Medium C&I  $<200\text{kW}$  customers who own or lease an EV or who operate EV charging infrastructure at the service location; (2) allow customers participating in the Company's Customer Assistance Program (CAP) to purchase supply from the Electric Generation Suppliers (EGSs), subject to certain protections (CAP Shopping), provided that there are sufficient EGSs that are willing to serve the CAP customers; (3) use a third-party vendor to administer the Company's Standard Offer Customer Referral Program (SOP); and (4) enter into a long-term Solar Power Purchase Agreement (Solar PPA) to support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area. *Id.* at 15, 16, 18, 19-20.

The following Parties filed Petitions to Intervene: Calpine, CAUSE-PA, the EGS Parties, StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania (collectively, StateWise), MAREC, ChargePoint, Inc. (ChargePoint), NRDC, and Solar United Neighbors of Pennsylvania (SUN-PA).<sup>1</sup>

On May 20, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Answer. On May 22, 2020, the OCA filed a Notice of

---

<sup>1</sup> On July 7, 2020, the ALJ issued an Initial Decision denying SUN-PA's Petition to Intervene. The Initial Decision became final without further Commission action by operation of law on August 28, 2020. The ALJ granted all other Petitions to Intervene by a Prehearing Order issued June 23, 2020.

Intervention and Answer. On June 9, 2020, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On July 10, 2020, Duquesne Light filed a Petition for Protective Order. A Protective Order was issued on August 3, 2020.

The Parties undertook discovery and served written direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on September 9, 2020. All Parties agreed to waive the cross-examination of witnesses. The written testimony and exhibits of Duquesne Light, the OCA, the OSBA, NRDC, the EGS Parties, CAUSE-PA, Calpine, and MAREC were admitted into the record. The hearing produced a forty-nine-page transcript.

On September 30, 2020, Duquesne Light, the OCA, CAUSE-PA, the EGS Parties, NRDC, Calpine, and MAREC filed Main Briefs.

Also on September 30, 2020, Duquesne Light, CAUSE-PA, and the OCA filed a Joint Stipulation, agreeing to the implementation of the Company's SOP as proposed by the Company at Paragraphs 60-66 of the Default Service Plan, with five modifications set forth in subparagraphs a-e of the Joint Stipulation (the SOP Stipulation). Additionally, Duquesne Light, CAUSE-PA and the OCA agreed to the withdrawal of the Company's proposal regarding Customer Assistance Program (CAP) shopping, as described in Paragraphs 68-72 of the Default Service Plan. Duquesne Light, CAUSE-PA, and the OCA further agreed that within six months of a final, unappealable order implementing CAP shopping in PPL Electric Utilities Corporation's (PPL Electric) service territory, Duquesne Light will make a filing with the Commission regarding CAP shopping that is consistent with Duquesne Light's CAP design, and which is informed by all available information and data (CAP Shopping Stipulation).

On the same date, Duquesne Light, NRDC, CAUSE-PA, the OCA, and the OSBA filed a Joint Stipulation, agreeing to the implementation of the Company's EV-TOU Pilot Program as proposed at Paragraphs 47-53 of the Default Service Plan, with five modifications set forth in subparagraphs a-e of the Joint Stipulation (EV-TOU Stipulation). None of the Parties filed objections to the Stipulations.

On October 6, 2020, the ALJ issued a First Interim Order admitting the Joint Stipulations filed on September 30, 2020 into evidence and directing the Parties to address the Joint Stipulations in their Reply Briefs.

On October 13, 2020, NRDC, CAUSE-PA, the EGS Parties, Duquesne Light, MAREC, Calpine, and the OCA filed Reply Briefs. Additionally, on October 13, 2020, Duquesne Light, the OCA, the OSBA, CAUSE-PA and NRDC (collectively, the Joint Petitioners) filed a Joint Petition for Approval of Unopposed Partial Settlement (Partial Settlement).<sup>2</sup> The record closed on October 13, 2020.

In the Recommended Decision served on November 12, 2020, ALJ Hoyer recommended approval of Duquesne Light's Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation.

As previously noted, on November 23, 2020, the EGS Parties and MAREC filed Exceptions to the Recommended Decision. Calpine, the OCA, I&E, and Duquesne Light filed letters indicating that they would not be filing Exceptions. On November 30, 2020, Duquesne Light, the OCA, CAUSE-PA, NRDC, and Calpine filed Replies to

---

<sup>2</sup> In addition to the Joint Petitioners, I&E, the EGS Parties, Calpine, StateWise, MAREC, and ChargePoint indicated that they do not oppose the Partial Settlement.



Exceptions. I&E and MAREC each filed a letter indicating they were not filing Replies to Exceptions.

### **III. Legal Standards**

#### **A. Burden of Proof**

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP IX complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 49 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or "weight," the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al., v. Metropolitan Edison Co. (Metropolitan Edison Co.)*, Docket No. R-00061366C0001 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens' Electric Co.)*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

## **B. Standards Applicable to Default Service**

The requirements for a Default Service plan appear in the Electricity Generation Customer Choice and Competition Act (Competition Act) or Section 2807 of the Code. 66 Pa. C.S. § 2807. These requirements include: (1) that the Default Service provider follow a Commission-approved competitive procurement plan; (2) that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements; (3) that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time; and (4) that the Default Service provider shall offer a time-of-use (TOU) rate program for customers who have smart meter technology. 66 Pa. C.S. §§ 2807(e)(3.1), (e)(3.2), (e)(3.4), (f)(5).

Also applicable are the Commission's Default Service Regulations, 52 Pa. Code §§ 54.181-54.189, and a Policy Statement addressing Default Service plans, 52 Pa. Code §§ 69.1802-69.1817. The Commission's Default Service Regulations require that a Default Service plan include: a rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules, and conditions of default

service in the form of proposed revisions to its tariff; contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. *See* 52 Pa. Code §§ 54.185(e)(3),(e)(5). Additionally, the Commission's Regulations require that a default service plan include copies of agreements or forms to be used in the procurement of electric generation supply for Default Service customers. *See* 52 Pa. Code § 54.185(e)(6).

Additionally, the Commission's Default Service Regulations require that a Default Service plan be consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the Regional Transmission Organization (RTO) or other entity in whose control area the default service provider is providing service, and that the default service procurement plan's period of service must align with the planning period of that RTO or other entity. *See* 52 Pa. Code § 54.185(e)(4).

The Commission's Regulations further require EDCs to obtain Alternative Energy Credits (AECs) in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth in compliance with the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. §§ 1648.1 – 1648.8. *See* 52 Pa. Code § 54.182.

Section 69.1807(8) of the Commission's Default Service and Electric Retail Markets Statement of Policy provides that the competitive bid solicitation process used in a Default Service program should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. 52 Pa. Code § 69.1807(8). The Default Service and Electric Retail Markets Statement of Policy also states that the independent evaluator should have expertise in the analysis of wholesale energy markets, including methods of energy procurement. *Id.*

Further, the Commission has directed EDCs to consider incorporating certain program changes into their Default Service plans in order to foster a more robust retail competitive market. *See Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, 2011 Pa. PUC LEXIS 65 (Final Policy Statement entered Sept. 23, 2011) (hereinafter “*DSP Policy Statement*”); *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, 2013 Pa. PUC LEXIS 306; 303 P.U.R. 4th 28 (Final Order entered Feb. 15, 2013) (hereinafter “*End State Order*”).

### **C. Standards Applicable to Settlements**

This Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401, *et seq.*, relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all of the customers of the public utility involved in the case.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners have reached an accord on many of the

issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

#### **D. General Legal Standards**

In his Recommended Decision, the ALJ made forty-four Findings of Fact and reached eighteen Conclusions of Law. R.D. at 7-15, 59-62. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In reviewing the Exceptions in this proceeding, we note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### **IV. The Partial Settlement**

#### **A. Terms and Conditions of the Partial Settlement**

The Joint Petitioners have agreed to the Partial Settlement, which resolves many of the issues among the Joint Petitioners, with the exception of the following five issues reserved for litigation: (1) EGS Payment of Network Integration Transmission Service (NITS) charges; (2) EV-TOU Pilot Program issues; (3) Solar PPA issues; (4) SOP issues; and (5) CAP shopping issues. Partial Settlement ¶ 36, at 10.

The Partial Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, Appendix A, which is the revised Electric Service Tariff, Appendix B, which is the revised Electric Service Tariff (with redline), and Appendix C, which is the revised Default Supplier Master Agreement (with and without redline). The Joint Petitioners submitted Statements in Support of the Partial Settlement, denoted as follows:

<b>Statement in Support of Joint Petition for Partial Settlement</b>	<b>Joint Petitioner</b>
<b>Appendix D</b>	Duquesne Light Company
<b>Appendix E</b>	Office of Consumer Advocate
<b>Appendix F</b>	Office of Small Business Advocate
<b>Appendix G</b>	Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
<b>Appendix H</b>	Natural Resources Defense Council

The essential terms of the Partial Settlement are set forth in Section III, Paragraphs 37 through 52. *See* Partial Settlement ¶¶ 37-52, at 10-15. These essential terms and conditions are set forth below regarding each resolved issue, with the original paragraph numbers maintained, followed by a discussion of the individual terms and conditions of the Partial Settlement.

### **1. Program Term**

The terms and conditions of the DSP IX “Program Term” Section B. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

37. The Program Term for Duquesne Light's DSP IX shall be for a four-year period commencing on June 1, 2021, and ending on May 31, 2025.

Partial Settlement ¶¶ 37, at 10.

Duquesne Light noted that it initially proposed June 1, 2021 through May 31, 2025 as the Program Term, explaining that a four-year term is the same length of term as its current DSP program and that the current default service programs for all of the other major EDCs are for a four-year period. Duquesne Light further noted that, when compared to prior DSPs with two-year term periods, the four-year term conserves the cost and time of litigation for Duquesne Light, the Commission, and other parties that participate in DSP proceedings. Duquesne Light Statement in Support at 5 (citing Partial Settlement ¶¶ 5-6). Duquesne Light added that none of the Parties contested the Program Term. Duquesne Light Statement in Support at 5.

## **2. Procurement Plans and Rates**

The terms and conditions of the "Procurement Plan and Rates" Section C. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

38. The procurement plans described in paragraphs 7-11 and 13-46 of Duquesne Light's Petition are approved as proposed without modification. The DSP IX Plan includes a portfolio of four (4) separate supply plans tailored to meet the specific needs of major customer groups, as described in paragraph 7 of the Petition, which are: (1) Residential and Lighting, (2) Small C&I, (3) Medium C&I <200 kW, and (4) HPS-Eligible. Each of these separate supply plans is approved as follows:

(a) The supply plan applicable to Residential & Lighting Customers set forth in paragraphs 8-11 and paragraphs 13-15 of the Petition is approved without modification. The residential reconciliation period described in paragraph 12 of the Petition is also approved without modification.

(b) The supply plan applicable to Small C&I Customers set forth in paragraphs 16-21 of the Petition is approved without modification.

(c) The supply plan applicable to Medium C&I <200kW Customers set forth in paragraphs 22-28 of the Petition is approved without modification.

(d) The supply plan applicable to HPS-Eligible Customers set forth in paragraphs 29-33 of the Petition is approved without modification.

(e) Relatedly, the Supply Master Agreement (“SMA”) described in paragraphs 15, 21 and 28 and of the Petition and identified as Duquesne Light Exhibit JP-3 is approved without modification for Residential and Lighting, Small C&I and Medium C&I procurements.<sup>3</sup>

39. Duquesne Light’s Petition also described Competitive Procurement Guidelines applicable to (1) Residential and Lighting, (2) Small C&I, (3) Medium C&I <200kW, and (4) HPS-Eligible customers. Duquesne Light’s Competitive Procurement Guidelines set forth in paragraphs 34-37 of the Petition are approved without modification.

---

<sup>3</sup> A true and correct copy of the SMA is attached to the Partial Settlement as Appendix C.



40. As described in paragraphs 38-44 of the Petition, Duquesne Light's DSP IX Plan, as modified by the Unopposed Parties Settlement, meets the standards set forth in Act 129, and enables the Commission to make the necessary findings per Section 2807(e)(3.7). Specifically, the Parties agree that the DSP IX Plan, as modified by the Unopposed Parties Settlement, includes prudent steps necessary to negotiate favorable generation supply contracts, and to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.<sup>4</sup> The Parties further agree that under the DSP IX Plan, as modified by the Unopposed Parties Settlement, neither Duquesne Light nor its affiliated interest has withheld or will withhold from the market any generation supply in a manner that violates Federal law.

41. Duquesne Light's proposal to continue to fully recover the costs incurred from supply solicitations for Residential & Lighting, Small C&I, Medium C&I customers with demands less than 200 kW, and HPS-Eligible customers, gross receipts taxes, along with the costs of hiring the independent monitor, through fully reconcilable Section 1307(e), 66 Pa. C.S. § 1307(e), cost recovery mechanisms for each class, set forth in paragraph 45 of the Petition, is approved without modification.

42. Duquesne Light's proposal to continue to recover its administrative costs for HPS service through a Fixed Retail Administrative Charge, set forth in paragraph 46 of the Petition, is approved without modification.

---

<sup>4</sup> The Joint Petitioners agree that this provision of the Partial Settlement is agreed upon without prejudice to the Solar PPA issue reserved for litigation by the Parties.

43. With respect to the MOPR, established by FERC at FERC Docket No. EL18-178, Duquesne Light agrees that it will expand the role of its Market monitor, currently Charles River Associates, to include certifying that Duquesne Light's Default Service Supply solicitations are conducted through a resource-neutral, non-discriminatory and competitive bidding process.

Partial Settlement ¶¶ 38-43, at 11-13.

Duquesne Light stated that its four separate supply plans proposed under DSP IX are tailored to meet the specific needs of the customer groups and for consistency with the Commission guidance regarding the “prudent mix” standard under Act 129. Duquesne Light Statement in Support at 6. Duquesne Light explained that Residential and Lighting customers will continue to be offered default service supply rates that adjust every six months based on fixed-price full requirements (FPFR) contracts with twelve-month and twenty-four-month overlapping delivery periods, adding that the contracts will be procured within three months of the start of their delivery periods. Duquesne Light further explained that default supply for Residential and Lighting customers will be obtained through competitive auctions, with winning bidders selected based on the lowest price. Duquesne Light Statement in Support at 7 (citing Duquesne Light St. 1 at 10).

Duquesne Light stated that default service supply for Residential and Lighting customers will be split into forty-eight equal tranches, each representing approximately 2.08333% of the total hourly default service load for the Residential and Lighting class. Further, Duquesne Light noted that although no supply portfolio changes to the Residential and Lighting class procurement plan were proposed, the procurement plan for Residential and Lighting customers will continue to include products from the current DSP that extend into the proposed DSP IX period (or “overhang” products) to account for Duquesne Light's modification of its current DSP procurement schedule regarding the 2022/2023 PJM planning year. Duquesne Light Statement in Support at 7

(citing Duquesne Light St. 2 at 8-11). Moreover, Duquesne Light averred that the Residential and Lighting procurement plan will continue the same supplier load cap approved by the Commission in Duquesne Light's current DSP. *Id.*

Duquesne Light explained that Small C&I customers will continue to be offered default service supply rates that adjust every six months based on FPFR contracts with twelve-month and twenty-four-month overlapping delivery periods, adding that the contracts will be procured within three months of the start of their delivery periods. Duquesne Light further explained that default supply for Small C&I customers will be obtained through competitive auctions, with winning bidders selected based on the lowest price. Duquesne Light Statement in Support at 7-8 (citing Duquesne Light St. 1 at 9-10).

Duquesne Light stated that default service supply for Small C&I customers will be split into eight tranches consisting of twelve-month and twenty-four-month products, each representing approximately 12.5% of the total hourly default service load for the Small C&I class, and the delivery period for each product will overlap on a semi-annual basis. Further, Duquesne Light noted that although no supply portfolio changes to the Small C&I class procurement plan were proposed, the procurement plan for Small C&I customers will continue to include products from the current DSP that extend into the proposed DSP IX period (or "overhang" products) to account for Duquesne Light's modification of its current DSP procurement schedule regarding the 2022/2023 PJM planning year. Duquesne Light Statement in Support at 8 (citing Duquesne Light St. 2 at 8-11). Moreover, Duquesne Light averred that the Small C&I procurement plan will continue the same supplier load cap approved by the Commission in Duquesne Light's current DSP. *Id.*

Duquesne Light explained that Medium C&I <200kW customers will continue to be offered default service supply rates that adjust quarterly based on FPFR contracts with three-month non-overlapping delivery periods, adding that the contracts

will be procured within three months of the start of their delivery periods. Duquesne Light further explained that default service supply for Medium C&I <200kW customers will be obtained through competitive auctions, with winning bidders selected based on the lowest price. Duquesne Light Statement in Support at 8 (citing Duquesne Light St. 1 at 9).

Duquesne Light stated that Medium C&I <200kW customers will continue to be composed of three-month products with 100% of the supply replaced every three months and supply continuing to be split into four equal tranches of 25% of the total Medium C&I <200kW hourly default service load. Further, Duquesne Light noted that default service rates for this class will continue to change quarterly (*i.e.*, on June 1, September 1, December 1, and March 1). Moreover, Duquesne Light noted that it did not propose supply portfolio changes to the Medium C&I <200kW class procurement plan, and the procurement plan will continue to not include supplier load caps. Duquesne Light Statement in Support at 8-9 (citing Duquesne Light St. 2 at 12-13).

Regarding HPS-Eligible customers, which consists of Large C&I customers and Medium C&I  $\geq$ 200kW customers, Duquesne Light explained that it plans to continue to offer default service supply rates that are based on hourly spot market energy prices, and that customers will continue to be charged a pass-through of PJM capacity and ancillary services costs, as well as the administrative costs of providing HPS. Duquesne Light further explained that it proposed to continue to procure the supply for this service through a competitive auction process and that it will maintain its current DSP procurement plan for the HPS-Eligible service product. Duquesne Light added that the procurement plan will continue to not include supplier load caps. Duquesne Light Statement in Support at 9 (citing Duquesne Light St.1 at 9; Duquesne Light St. 2 at 13).

Duquesne Light addressed a concern that was raised by the OCA in this proceeding regarding the Minimum Offer Price Rule (MOPR), established by the Federal

Energy Regulatory Commission (FERC) Docket No. EL-18178. Specifically, Duquesne Light continued, the OCA requested that Duquesne Light expand the role of its Market Monitor to include certifying that the solicitations are conducted through a resource-neutral, non-discriminatory and competitive bidding process, and that Duquesne Light's requests for proposals meet all of the requirements for an exemption from the definition of state subsidy under the MOPR. Duquesne Light Statement in Support at 10 (citing OCA St. 1 at 11). Duquesne Light noted that although it believed that its procurement process complied with the MOPR, Duquesne Light proposed to expand the role of its Market Monitor by having it certify that the solicitation was conducted through a resource-neutral, non-discriminatory and competitive bidding process, beginning with the September 2020 default service supply procurement and extending through to the DSP IX. OCA Statement in Support at 4-5; Duquesne Light Statement in Support at 10 (citing Duquesne Light St. 2-R at 4-5). Duquesne Light added that under the Partial Settlement, it agreed to expand the role of its Market Monitor, currently Charles River Associates, to include certifying that Duquesne Light's default service supply solicitations are conducted through a resource-neutral, non-discriminatory and competitive bidding process. This provision of the Partial Settlement, Duquesne Light continued, addresses the OCA's concerns and ensures that Duquesne Light's default service supply solicitation process will continue to be resource-neutral, nondiscriminatory and competitive. Duquesne Light Statement in Support at 10.

Duquesne Light provided that it established a contingency plan to procure supply for each of the classes. Duquesne Light elaborated that, in the event that it receives bids for less than all tranches, or the Commission does not approve of the results for all of the tranches, or a supplier is in default, Duquesne Light will provide the balance of the default supply through PJM spot market purchases and it will file an emergency plan with the Commission to address any shortfall in default service within fifteen days of such an event. Duquesne Light added that all costs associated with implementing the

contingency plan will be included in the Default Service Support (DSS) Rider. Duquesne Light Statement in Support at 10-11 (citing Duquesne Light St. 2 at 15).

Duquesne Light also provided that, although it proposed to continue to use the SMA template developed by the Procurement Collaboration Working Group, Duquesne Light proposed three categories of modifications to capture changes to PJM nomenclature, expand assignment provisions, and make housekeeping changes for clarity. Duquesne Light Statement in Support at 11 (citing Duquesne Light Exh. JP-3; Duquesne Light St. 2 at 19). Duquesne Light added that none of the Parties opposed Duquesne Light's proposed procurement plans and guidelines. Duquesne Light Statement in Support at 11.

Duquesne Light acknowledged its proposal to continue to fully recover the costs incurred from supply solicitations for Residential and Lighting, Small C&I, Medium C&I customers with demands less than 200 kW, HPS-Eligible customers, gross receipts taxes, and the costs of hiring the independent monitor, through fully reconcilable Section 1307(e), 66 Pa. C.S. § 1307(e), cost recovery mechanisms for each class. Specifically, Duquesne Light asserted that its witness, Mr. David B. Ogden, explained the basis for calculating each class's rates and provided exhibits that demonstrated the derivation of the rate for each class and the rate factors used to derive those rates. Duquesne Light Statement in Support at 12 (citing Duquesne Light St. 4 at 6-13). Duquesne Light noted that the OCA argued that in order to provide additional rate stability, Duquesne Light should revise its reconciliation mechanism to be a six-month reconciliation mechanism with cost recovery over a twelve-month period, as opposed to a six-month reconciliation mechanism with a cost recovery over a six-month period. Duquesne Light Statement in Support at 12 (citing OCA St. 1 at 17). Duquesne Light explained that Mr. Ogden offered that there is little variability in the over/under collection component of default service rates because Duquesne Light procures default supplies through full-requirements contracts, adding that changing from a six-month cost

recovery period to a twelve-month cost recovery period would not have a material impact on the price-to-compare (PTC). Duquesne Light Statement in Support at 12 (citing Duquesne Light St. 4-R at 10). Duquesne Light concluded by noting that its position was adopted by the Partial Settlement on this matter. Duquesne Light Statement in Support at 12; OCA Statement in Support at 6.

Finally, Duquesne Light addressed its proposal to continue to recover its administrative costs for HPS service through a Fixed Retail Administrative Charge. Specifically, Duquesne Light noted that its witness, Mr. Ogden, supported the proposal to continue to include only the implementation of ongoing annual costs in the price billed to HPS customers. Duquesne Light Statement in Support at 12-13 (citing Duquesne Light St. 4 at 13). Duquesne Light added that none of the Parties challenged this proposal. Duquesne Light Statement in Support at 13.

### **3. Purchase of Receivables (POR)**

The terms and conditions of the “POR” Section D. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

44. Duquesne Light’s proposal to continue its POR program for Residential, Small C&I, and Medium C&I customers set forth in paragraph 67 of the Petition is approved.

Partial Settlement ¶ 44, at 13.

Duquesne Light explained that it currently engages in activities that support retail competition, including the administration of a POR program. Duquesne Light elaborated that, under the POR program, it agrees to purchase the accounts receivable, without recourse, associated with the EGS’ sales of retail electric commodity services to

Residential, Small C&I and Medium C&I customers within Duquesne Light's service territory. Duquesne Light Statement in Support at 13 (citing Duquesne Light St. 4 at 25). Duquesne Light added that none of the Parties challenged this proposal. Duquesne Light Statement in Support at 13.

#### **4. Recovery of Net-Metered Excess Generation Costs**

The terms and conditions of the "Recovery of Net-Metered Excess Generation Costs" Section E. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

45. Duquesne Light's proposal for the Recovery of Net-Metered Excess Generation Costs set forth in paragraphs 73-76 of the Petition is approved without modification.

46. Duquesne Light will be permitted to recover these payments for generation as an expense in the respective default service class over/under collection calculation within the Company's Rider No. 8 — DSS and Appendix A — Transmission Service Charge 1307(e) reconciliations.

Partial Settlement ¶¶ 45-46, at 13.

Duquesne Light explained that, effective with the DSP IX, it is proposing to recover the cash-out payment for net-metering customers to recoup the customer class compensation (*i.e.*, excess kilowatt hours multiplied by Duquesne Light's PTC on May 31) as an expense in the respective default service class over/under collection calculation. Duquesne Light Statement in Support at 14 (citing Duquesne Light St. 4 at 27-28). Duquesne Light added that none of the Parties contested this proposal. Duquesne Light Statement in Support at 14.



## 5. Bill Redesign

The terms and conditions of the “Bill Redesign” Section F. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

47. With respect to the recommendations made by CAUSE-PA witness [Mr. Harry Geller] on page 53, lines 13-21 and page 59, lines 15-21 of CAUSE-PA Statement No. 1, Duquesne Light will consider these recommendations as a part of Duquesne Light’s ongoing bill redesign initiatives.

Partial Settlement ¶ 47, at 13.

Duquesne Light noted that CAUSE-PA made several recommendations regarding Duquesne Light’s bill design. Duquesne Light explained that it was already in the process of redesigning its bill, to simplify the presentation of billing information and to enable “next-generation bill messaging and targeting” that is not currently available. Duquesne Light Statement in Support at 14-15 (citing Duquesne Light St. 5-R at 37; CAUSE-PA St. 1 at 53, 59). Duquesne Light elaborated that the new bills will clearly display the PTC to facilitate the “at-a-glance” customer comparison of the PTC to an EGS’s rates. Duquesne Light Statement in Support at 15 (citing Duquesne Light St. 5-R at 37). Duquesne Light contended that some of CAUSE-PA’s recommendations may be incompatible with the specific billing type (*i.e.*, bill-ready vs. rate-ready) or that CAUSE-PA’s concerns are already addressed by Duquesne Light’s existing tariff. Duquesne Light Statement in Support at 15 (citing Duquesne Light St. 5-R at 37-41). Duquesne Light concluded by noting that this provision reflects a reasonable compromise and ultimately allows for Duquesne Light to consider and implement billing design changes that benefit customers. Duquesne Light Statement in Support at 15.

**6. Bill Presentment of Residential Bill-Ready EGS Charges**

The terms and conditions of the “Bill Presentment of Residential Bill-Ready EGS Charges” Section G. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

48. Duquesne Light’s bills for consolidated-billed residential EGS customers taking basic supply service will clearly display the PTC, as well as basic supply charges in actual dollars or cents per kWh, average dollars or cents per kWh, and/or flat monthly charge(s).

49. Rule 12.1.6 of Duquesne Light’s Supplier Coordination Tariff shall be revised to state as follows, reflecting the addition of the bolded and underlined language:

**12.1.6 EGS BILLING DATA**

The EGS shall provide all necessary data in its possession for the timely computation of bills. Where the EGS uses bill-ready billing for residential customers taking basic electric supply service, the EGS shall provide electric supply charges in actual dollars or cents per kWh, average dollars or cents per kWh, and/or flat monthly charge(s). A failure of the EGS to provide necessary data to the Company in a timely fashion may delay generation of a bill for the month to which the data pertains. In such instances, the EGS is responsible for all fines and violations, if any, arising as a consequence of the Company's inability to render a timely bill.

50. Revised Rule 12.1.6 of Duquesne Light’s Supplier Coordination Tariff is included in Appendices A-B to the Unopposed Partial Settlement.

Partial Settlement ¶¶ 48-50, at 13-14.

Duquesne Light noted that both the OCA and CAUSE-PA raised concerns pertaining to bill-ready billing, asserting that customers need to be able to compare their current supply price with the PTC, regardless of whether the customer's supplier delivers bill-ready or rate-ready charges to Duquesne Light. Duquesne Light Statement in Support at 16 (citing OCA St. 2 at 5; CAUSE-PA St. 1 at 53). Duquesne Light explained that, although Rule 12.1.1 of its Supplier Coordination Tariff requires the EGSs using consolidated billing to employ pricing plans based on fixed and variable charges that are similar to those it employs for billing distribution service and default service, Duquesne Light proposed to further clarify its tariff to ensure that these pricing plans are clearly represented on customer bills. Duquesne Light asserted that this proposal maintains the EGS' flexibility to offer innovative pricing structures through bill-ready billing, while ensuring that the pricing structures are clearly communicated to customers. Duquesne Light Statement in Support at 16 (citing Duquesne Light St. 5-SR at 7-8).

## **7. Non-Basic Service Charges in Residential Bill-Ready EGS Charges**

The terms and conditions of the "Non-Basic Service Charges in Residential Bill-Ready EGS Charges" Section H. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

51. Duquesne Light's proposed revision to Rule 12.1.7 of its Supplier Coordination Tariff, as described at Duquesne Light Statement No. 5-R and set forth in bolded and underlined text below, is approved:

### 12.1.7 PURCHASE OF EGS RECEIVABLES (POR) PROGRAM

Duquesne will purchase the accounts receivable, without recourse, associated with EGS sales of retail electric commodity, comprised of generation and transmission services, to residential customers and commercial and industrial (“C&I”) customers with monthly metered demand less than 300 kW within Duquesne’s service territory. Eligible customers are those customers taking delivery service under the Company’s retail tariff Rate RS, RH, RA, GS/GM and GMH, and who purchase their electric commodity requirements from the EGS through consolidated billing with the Company. Upon request, an EGS shall provide a written certification to Duquesne that the EGS is providing only basic electric supply to residential customers billed through consolidated billing with the Company.

52. Revised Rule 12.1.7 of Duquesne Light’s Supplier Coordination Tariff is included in Appendices A-B to the Unopposed Partial Settlement.

Partial Settlement ¶¶ 51-52, at 14-15.

Duquesne Light noted that CAUSE-PA raised concerns regarding non-basic charges that may be billed by a bill-ready EGS. Duquesne Light Statement in Support at 17 (citing CAUSE-PA St. 1 at 55). Duquesne Light explained that although it is not privy to contracts between customers and the EGSs, Duquesne Light’s tariff prohibits the inclusion of non-basic charges in consolidated EGS bills to residential customers. Duquesne Light asserted that it proposed to modify Rule 12.1.7 of its Supplier Coordination tariff to further enhance the enforceability of this requirement and for consistency with the requirements found in the supplier coordination tariffs of the

FirstEnergy Companies<sup>5</sup> and PECO. Duquesne Light Statement in Support at 17-18 (citing Duquesne Light Exhs. DBO-3R and DBO-4R; Duquesne Light St. 5-R at 39-41).

The Partial Settlement also contained Settlement Conditions. The Joint Petitioners agree that the Partial Settlement was conditioned upon the Commission's approval without modification. If the Commission modifies the Partial Settlement, any Joint Petitioner may elect to withdraw from the Partial Settlement and proceed with litigation and, in such event, the Partial Settlement shall be void and of no effect. Partial Settlement ¶ 54. Additionally, the Partial Settlement is made without any admission against, or prejudice to, any position that any Joint Petitioner may adopt in the event of any subsequent litigation in this proceeding or in any other proceeding. Partial Settlement ¶ 55.

#### **B. ALJ's Recommendation of the Partial Settlement**

The ALJ concluded that the Partial Settlement was reasonable and in the public interest and should be approved without modification. R.D. at 30. The ALJ agreed with the Joint Petitioners' averments in their supporting statements that this Partial Settlement resolves contested issues in this case, fairly balances the interests of the Company and its ratepayers and is consistent with the requirements of the Code. The ALJ reasoned that the Partial Settlement is supported by a broad range of Parties with diverse interests and that each of these Parties have maintained that the interests of their respective constituencies have been adequately protected. The ALJ found that the Partial Settlement is consistent with the Commission's goal of encouraging parties in contested proceedings to settle cases and noted that settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail

---

<sup>5</sup> The FirstEnergy Companies include Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company.

review of the Commission’s decision by the appellate courts of Pennsylvania. *Id.* at 29. In this case, the ALJ determined that resolution of the issues in the negotiated Partial Settlement removes the uncertainties of litigation and benefits all Parties by the reduction in expense and the conservation of resources made possible by adoption of the proposed Partial Settlement in lieu of litigation. *Id.* at 30.

### **C. Disposition of the Partial Settlement**

Upon our review of the Partial Settlement and the accompanying Statements in Support, we find that the Partial Settlement is reasonable and in the public interest and, therefore, we shall approve the Partial Settlement without modification. We agree with the ALJ that the Partial Settlement represents a reasonable compromise by a wide variety of Parties with diverse interests and that the Partial Settlement has served to reduce litigation expenses and to conserve the resources of the Parties. We also find that the terms of the Partial Settlement will benefit residential and lighting customers, small commercial and industrial customers, medium commercial and industrial customers, and large commercial and industrial customers.

In addition to the avoidance of litigation and associated costs, the beneficial aspects of the Partial Settlement include the following: (1) a four-year DSP IX term, to minimize future litigation time and expenses and reduce administrative costs; (2) the use of one-and two-year FPFR products, which will continue to provide an appropriate level of price stability for the Residential and Lighting customers and the Small C&I customers; (3) the portfolio of FPFR products for the Residential and Lighting customers and the Small C&I customers, which constitutes a “prudent mix” of supply resources; (4) the consistency of no supply portfolio changes for the Residential and Lighting class, the Small C&I class, and the Medium C&I <200kW class; (5) the agreement to expand the role of Duquesne Light’s Market Monitor, to ensure that the default service supply solicitation process is resource-neutral, non-discriminatory, and competitive; (6) the

agreement on contingency plans, to obtain supply for each of the classes in the event of failure to receive bids for less than all of the tranches, or Commission rejection of the bid results for any procurement, or supplier default; (7) the agreement on the modifications to the SMA; (8) the agreement that the DSP IX Plan, as modified by the Partial Settlement, meets the standards set forth in Act 129 and enables the Commission to make the necessary findings pursuant to 66 Pa. C.S. § 2807(e)(3.7); (9) the consistency of no changes to the POR program; (10) the agreements regarding upgrades and changes to the treatment of net metering customers and the bill design; and (11) the agreement on clarifying select language in Duquesne Light's Supplier Coordination Tariff to ensure clear communication of pricing structures and stronger enforceability of EGS billing requirements.

Accordingly, we shall adopt the ALJ's recommendation to grant the Joint Petition for Partial Settlement and approve the Partial Settlement without modification.

## **V. SOP Stipulation**

### **A. Duquesne Light's SOP Proposal**

Duquesne Light's witness, Ms. Katherine M. Scholl, explained the Company's current SOP as follows:

The Company's SOP was initially implemented as part of its Default Service Plan VI. The SOP targets residential and small C&I customers who are not served by an Electric Generation Supplier ("EGS") and who contact the Company with four types of calls. Specifically, customers who contact the Company: 1) to initiate or move service, 2) to discuss choice questions, 3) to resolve high bill concerns, or 4) to inquire about the SOP, are provided information regarding participation in the Company's SOP. After the customer's

specific inquiry has been resolved, Duquesne Light's customer service representative ("CSR") offers the customer the opportunity to participate in the SOP utilizing an established script. When the customer indicates that he/she is interested in participating in the SOP, he/she is transferred to a participating EGS for program details and enrollment. Customers who enroll with an EGS through SOP have the option of choosing a fixed price 7% below the Company's then-effective price to compare ("PTC") for a period of 12 months. Customers can leave the SOP at any time during these 12 months without penalty.

Duquesne Light St. 1 at 3.

Duquesne Light currently administers its own SOP directly using its own CSRs to offer the SOP to customers. Duquesne Light is the only large EDC in Pennsylvania that directly administers the SOP. All of the other EDCs outsource administration of their SOPs to third party vendors. Duquesne Light St. 1 at 4.

In this proceeding, the Company proposed to outsource administration of the SOP to a third-party vendor. Duquesne Light St. 1 at 5. Duquesne Light's SOP enrollment numbers have lagged behind other EDCs and Duquesne Light believes that outsourcing could increase customer participation. Duquesne Light St. 1 at 8. Outsourcing administration of the SOP also will allow the Company's CSRs to focus on core distribution company issues. In addition, outsourcing the SOP will align administration with the other EDCs in Pennsylvania. Duquesne Light St. 1 at 9-10.

The OCA initially opposed outsourcing the administration of the SOP to a third-party vendor. The OCA argued that a third-party vendor could present the SOP in a promotional manner and not fair and neutral. OCA St. 2 at 14. The OCA also presented concerns regarding the Company's scripting. OCA St. 2 at 15. The OCA and CAUSE-PA also argued that the Company should conduct a study of prices charged by



SOP suppliers following the twelve-month SOP term. OCA St. 2 at 16-17; CAUSE-PA St. 1 at 30. As explained below, Duquesne Light has entered into a stipulation with the OCA and CAUSE-PA regarding the SOP, which resolves all issues among those Parties as to the SOP.

The EGS Parties did not oppose Duquesne Light's proposal to outsource administration of the SOP to a third-party vendor. However, the EGS Parties argued that Duquesne Light should automatically enroll new and moving customers with an EGS, rather than being given the option to enroll in default service or choose an EGS. EGS Parties St. 1-SR at 2-3. The EGS Parties' witness, Mr. Christopher H. Kallaher, admitted that this type of change could only be accomplished with input from a broad range of stakeholders. EGS Parties St. 1-SR at 3. They argued that the rationale for this recommendation is that the Competition Act never envisioned a vast majority of customers still receiving default service after twenty-five years. EGS Parties. M.B. at 9.

## **B. SOP Stipulation**

On September 30, 2020, Duquesne Light filed with the Commission an SOP stipulation between the Company, the OCA and CAUSE-PA. The Stipulation is set forth below:

- a. Per its initial proposal, DLC will outsource administration of the SOP to a third party, initially Allconnect. The costs associated with the third party administrator will be recovered, as proposed by DLC, from participating EGSs. As part of its transition to Allconnect, DLC agrees to develop customer education scripts that are consistent with the practices of Pennsylvania's EDCs that currently utilize third party SOP administrators. DLC will provide these scripts to the parties for review/comment. Upon implementation of such scripting, DLC agrees to monitor Allconnect's adherence to the scripts at regular intervals to ensure compliance and provide a report of its

efforts at the midpoint of DSP IX, including a random sampling of call recordings of monitored solicitations, as part of such report. Additionally, DLC will provide a report in its next Default Service filing that will document the third party administrator's compliance with the Company's SOP directives.

- b. DLC will continue its current practice of referring eligible customers to SOP, rather than automatically placing them into SOP.
- c. DLC will continue its current practice of allowing SOP participants to remain with their EGS following the initial 12-month SOP period, absent affirmative action by the customer.
- d. DLC will add a section to the "Customer Choice" page of its website that specifically addresses SOP and participating customers' options upon expiration of their initial 12-month SOP contract.
- e. DLC will conduct an analysis of SOP participants' effective supply rates following their initial 12-month SOP period, and will present results annually beginning in 2022.

#### SOP Stipulation at 1-2.

The Stipulation adopts the Company's proposal to outsource administration of the SOP to a third-party vendor. This makes the Company's SOP administration consistent with the other EDCs in Pennsylvania and allows the Company's CSRs to focus on addressing other customer issues.

The Stipulation also addresses customer protection concerns raised by the OCA, including revised scripting, and ensures additional education regarding customer options upon expiration of the initial 12-month SOP contract. In addition, the Stipulation adopts the OCA's proposal to conduct an analysis regarding SOP participants supply rates following their initial 12-month SOP period. This analysis will give parties and the

Commission additional information regarding the price impacts to customers after their SOP term expires.

Duquesne Light believes that this SOP Stipulation is a reasonable compromise of the stipulating parties' positions and asks that the Stipulation be adopted without modification.

### **C. Recommended Decision**

The ALJ's discussion of the SOP issues is on pages 51-55 of the Recommended Decision.

Regarding the EGS Parties' proposal, the ALJ found that there is nothing in the Competition Act that supports the EGS Parties' position that the Competition Act did not envision customers still taking default service after twenty-five years. R.D. at 54. The ALJ reasoned that the Act's short title is the Choice and Competition Act, which makes it clear from the start that the Act is about customer choice. Further, the Act requires that there be a Default Service Supplier even if the EDC is replaced in this responsibility. R.D. at 54 (citing 66 Pa. C.S. 2807(e)(3.1)). The ALJ agreed with Duquesne Light's position that if the EGS Parties' proposal were accepted, it would be poor policy with the potential for significant customer harm. Forcing a new or moving customer to switch to an EGS when the customer may be focused on the many issues of establishing a new residence is simply unreasonable. In the ALJ's opinion, a customer that does not voluntarily and affirmatively elect service from an EGS should not be forced to accept service from an EGS. R.D. at 54 (citing Duquesne Light R.B. at 18).

The ALJ noted that the SOP Stipulation provides for reporting by the Company of the prices paid by customers who remain with an EGS after the twelve-month period. The Company shares the concerns of CAUSE-PA and the OCA about

customers paying prices above the PTC when customers remain with an EGS without an affirmative decision by the customer to accept another EGS product. R.D. at 55.

The ALJ stated that Duquesne Light's proposal to outsource administration of its SOP, as modified by the SOP Stipulation of Duquesne Light, the OCA and CAUSE-PA, is in the public interest and recommended that it be approved. According to the ALJ, the SOP Stipulation terms will yield useful information necessary for smart policy decisions; better protect customers; and ensure customers have the information and tools necessary to ensure they make financially smart choices regarding electric supply. R.D. at 55.

The ALJ recommended approval of the SOP the Company proposed at Paragraphs 60-66 of the Default Service Plan, as modified by the SOP Stipulation. R.D. at 55.

#### **D. Disposition**

This SOP Stipulation is in the public interest and should be approved. None of the Parties filed Exceptions concerning the SOP issues in this proceeding. We find that the ALJ's decision on the SOP issues is legally sound, and we will adopt it in this Opinion and Order.

## VI. Contested Issues

### A. EGS Payment of NITS Charges

#### 1. Background

The first contested issue in this proceeding centers on the allocation of NITS charges. NITS charges refer to costs that PJM charges load serving entities (LSEs) for the use of the transmission system. Duquesne Light St. 3-R at 23. NITS rates are formula-based rates adjusted annually through FERC-approved formula rate filings to account for changes in operating costs, system loads, or cost recovery requirements for new transmission projects. NITS rates are based on a number of factors including: (1) the transmission owner's cost of service; (2) cost of capital in rate base, including allowed return on equity and interest costs; (3) depreciation and amortization; and (4) taxes, operation, and maintenance expenses. EGS Parties M.B. at 11-12.

Duquesne Light currently recovers PJM transmission charges associated with default service, including NITS through its bypassable transmission service charge (TSC). These charges are billed pursuant to the PJM open access transmission tariff (OATT). The TSC provides the Company recovery of its costs for transmission service associated only with default service load and establishes the basis of the transmission component of the PTC. These costs are defined within the SMA as the responsibility of the EDC. Conversely, customers who elect to shop with an EGS do not pay the TSC. Duquesne Light St. 4-R at 18-19; Duquesne Light Exh. JP-3 at 1-11. Historically, Duquesne Light has always paid NITS charges for default service customers, and the EGSs operating in Duquesne Light's service territory have always paid NITS charges for the shopping customers they serve. Duquesne Light proposed to continue to recover NITS through a bypassable charge applicable only to customers receiving default service from the Company in its DSP IX. However, as will be discussed in more detail below,

the EGS Parties have challenged Duquesne Light's proposal and argued that Duquesne Light's NITS costs should be recovered by the Company through a Non-Bypassable Transmission (NBT) charge applicable to all Duquesne Light distribution customers, regardless of whether such customers receive default service from Duquesne Light or competitive generation supply service from an EGS. Duquesne Light M.B. at 12.

## **2. Positions of the Parties**

### **EGS Parties**

The EGS Parties argued that Duquesne Light should be required to implement an NBT charge to collect and remit NITS costs for all customers in its service territory. According to the EGS Parties, this will improve Duquesne Light's default service program by assisting shopping customers and their suppliers in managing the risks from the sudden and volatile changes to NITS charges. In this regard, the EGS Parties submitted that NITS charges change annually because both the FERC-approved NITS rate and the individual customer's Network Transmission Service Peak Load Contribution (PLC) can, and usually do, change from year to year; and in recent years have been changing in an increasingly more volatile manner. The EGS Parties contended that because these rates change frequently and suddenly, this makes an LSE's NITS obligation on behalf of an individual customer, and its total NITS payment, difficult to predict and even more difficult to influence. EGS Parties M.B. at 1, 2, 12.

The EGS Parties next submitted that Duquesne Light recovers NITS and other non-market-based charges from default service customers in a manner that allows the customer to pay only the exact amount, and which allows Duquesne Light to remit only the exact amount, resulting in no party taking on any risk on the NITS charges. As such, the EGS Parties framed Duquesne Light's role as merely one of a collection agent, and not a payee. In contrast, the EGS Parties argued that given the volatility in the NITS

rates, the impact is far more negative for shopping customers, especially for larger customers. According to the EGS Parties, most EGSs cannot absorb the risk of these volatile charges and often pass this risk through to the customers. Thus, the EGS Parties took the position that Duquesne Light's current mechanism of recovering NITS through a bypassable charge applicable only to customers receiving default service grants an advantage to default service customers to the detriment of shopping customers and their suppliers. EGS Parties M.B. at 12-13

The EGS Parties continued that such discriminatory practices are prohibited under the Code. Instead, the EGS Parties asserted that the Code requires EDCs to provide terms of access for the EGSs and customers that are comparable to their own abilities. EGS Parties M.B. at 13 (citing 66 Pa. C.S. §§ 1502, 2804(6)). The EGS Parties further contended that in *Pa. PUC et al v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577 (Order entered December 16, 2018) (*Columbia*), the Commission found that the provision of billing service for "non-commodity products and services" was a public utility service and must comply with the non-discrimination provisions of the Code. EGS Parties M.B. at 14; EGS Parties R.B. at 12. In the EGS Parties' view, it is definitive that Duquesne Light's billing of NITS charges is, likewise, a public utility service that is subject to the same non-discrimination requirements. The EGS Parties reinforced their position that Duquesne Light's current practice of billing only default service customers for NITS charges that are identical to their shopping counterparts on a basis that differs only because of a customer's status as a non-shopping customer constitutes discrimination and is prohibited. Therefore, the EGS Parties stressed their position that NITS charges should be collected via an NBT charge for all customers, based upon each customer's contribution to the overall charge. EGS Parties M.B. at 14-15.

## Duquesne Light

Duquesne Light countered that the EGS Parties' proposed changes to the Company's current Commission-approved cost assignment for NITS charges should be rejected. Duquesne Light noted that the Commission rejected similar proposals in two of Duquesne Light's previous DSP Proceedings. Duquesne Light M.B. at 12-13 (citing *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2301664 (Order entered January 25, 2013) (*Duquesne Light DSP VI Order*) at 221-22; *Duquesne Light DSP VII Order* at 45-46, 52-53. According to Duquesne Light, the EGS Parties have failed to offer any new evidence or argument that would justify the Commission's revision of its decision not to include NITS charges as part of an NBT charge. Duquesne Light M.B. at 13.

Duquesne Light also proffered several reasons in support of its claim that the Commission should deny the EGS Parties' proposal based on the record in this proceeding. First, Duquesne Light argued that including NITS in its TSC ensures that the transmission component of the rate is unbundled and "portable." According to Duquesne Light, customers switching to an EGS would also purchase their transmission requirements from the EGS. For this reason, Duquesne Light asserted that modifying the TSC such that it is non-bypassable would reduce the scope of products subject to meaningful competition and customer choice. Second, Duquesne Light pointed out that the Company has continued with the same methodology to recover transmission costs for default service since customer choice began. Therefore, Duquesne Light contended that changing the content and structure of the TSC to an NBT charge would change the fundamental composition of the PTC, which could create customer confusion. Duquesne Light M.B. at 13-14.



Third, Duquesne Light submitted that changing the content and structure of the TSC could have a negative impact on current shopping customers. In this regard, Duquesne Light noted that current shopping customers are paying their EGS for applicable transmission charges through the rates charged by their EGS. Therefore, Duquesne Light took the position that implementing an NBT charge could cause shopping customers to pay twice for transmission service for the remainder of their EGS contracts. Duquesne Light M.B. at 14.

Fourth, Duquesne Light argued that the EGSs should be able to address their concerns in the pricing offerings they make available to customers. Duquesne Light posited that, for example, some EGSs could offer to fix only the supply portion of their charges and pass through the transmission charges in question. Duquesne Light also posited that the EGSs also could offer to fix some, but not all, charges. Additionally, Duquesne Light submitted that even if the Commission were to accept the EGS Parties' position that NITS costs are volatile and hard to predict, this alone would not justify making such charges non-bypassable. Rather, Duquesne Light contended that the competitive market in Pennsylvania established generation and transmission charges to be included in the PTC. As such, Duquesne Light claimed that because these costs, including NITS, are incurred by the EGSs, it is not proper to socialize such costs to all distribution customers simply on the basis that they are unpredictable. Duquesne Light M.B. at 14-15.

Finally, Duquesne Light noted that not all EGSs agree with the EGS Parties' proposal. More specifically, Duquesne Light highlighted Calpine's position, *infra*, that the EGS Parties' NITS proposal would limit EGS competition and should be denied in this proceeding, just as it has been denied many other times by the Commission. Duquesne Light M.B. at 15-16.

## **Calpine**

Calpine echoed Duquesne Light's assertion that the EGS Parties' proposed allocation of NITS charges should not be adopted. Calpine explained that like the specific EGSs that comprise the EGS Parties in this proceeding, it is a Commission-licensed EGS serving customers in Pennsylvania, including customers in Duquesne Light's service territory, and is also an LSE and a member of PJM. As such, Calpine stated that like the EGS Parties, it incurs NITS costs. According to Calpine, it has been able to successfully manage NITS costs and its customers' loads while still offering products and services that its customers desire. Calpine surmised that the EGS Parties, in contrast, have not been successful in this regard and are, therefore, attempting to shed their individual retail business risks by moving the NITS costs from the competitive retail market to all customers of Duquesne Light, regardless of the existing market, contracts, products, and services. According to Calpine, such cost shifting would harm the retail competitive market and remove any incentive and opportunity to create customized products and services that are, or may potentially be, formulated to assist EGS customers in addressing these costs. In Calpine's view, the EGS Parties' proposal constitutes nothing more than a bailout and predatory attempt to remove a competitor's products and services from the market. Calpine M.B. at 3, 4.

Calpine argued that the EGS Parties failed to acknowledge that the Commission has previously considered and rejected similar proposals in prior DSP proceedings. Additionally, Calpine submitted that the EGS Parties' argument regarding the changes in how NITS are set and the resulting volatility in rates is without merit because the formulas now used by FERC are still subject to a ratemaking process overseen and approved by FERC. Therefore, Calpine asserted that there is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates. According to Calpine, this process at FERC does not negate the ability of the

EGS companies to manage their loads and manage their NITS costs. Calpine M.B. at 3-4.

Additionally, Calpine characterized the EGS Parties' attempt to compare retail electric market products and services to a fully regulated default service as an "apples to oranges comparison." Calpine reasoned that default service is a one-size-fits-all service based on a uniform master supply agreement with no individually negotiated terms of service. Conversely, Calpine submitted that EGSs have the freedom to build, establish, and promote innovative products and services to meet their individual customers' needs, as well as the structure and timing of those services based on the EGS's own business and management decisions. Calpine M.B. at 4-5.

### **3. Recommended Decision**

The ALJ agreed with the arguments of Duquesne Light and Calpine that Duquesne Light should not be required to implement an NBT charge to recover NITS charges from all customers. The ALJ quoted the testimony of Duquesne Light that this proposal has been rejected in two prior Duquesne Light DSP proceedings. The ALJ also found compelling the reasons proffered by Duquesne Light and Calpine for why the EGSs should be required to recover NITS charges from their customers directly. According to the ALJ, Duquesne Light should continue to collect NITS charges only from default service customers, while EGSs should continue to collect NITS charges from shopping customers. Therefore, the ALJ recommended that the Commission reject the EGS Parties' proposal. R.D. at 32-36.

### **4. EGS Parties' Exception No. 2 and Replies**

In their Exception No. 2, the EGS Parties remain of the opinion that Duquesne Light should be required to charge the EGS customers for NITS charges, and

argue that the ALJ erred by failing to recommend the adoption of this proposal. The EGS Parties insist that disparity exists as a result of Duquesne Light's current practice of collecting NITS through a bypassable TSC applicable only to its default service customers, resulting in harm and unwarranted discrimination for shopping customers and their suppliers. Namely, the EGS Parties contend that the ALJ failed to recognize that this current practice permits Duquesne Light to use its position as a monopoly provider of billing services to provide an advantage to default service customers at the expense of shopping customers. The EGS Parties restate their position that while Duquesne Light collects NITS from default service customers through a reconciled charge that levelizes recovery over time and minimizes the rate shock that can be associated with the volatile and increasing NITS costs, the EGSs must bill their customers for the full amount of any increase on an immediate basis. EGS Parties Exc. at 1, 3.

According to the EGS Parties, the ALJ also erred in adopting Duquesne's assertion that because the EGSs have the ability to charge customers for NITS on a dollar-for-dollar basis, no discrimination exists. The EGS Parties claim that given the Commission's Order on *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362962 (Order entered November 14, 2013) (*Fixed Price Order*), the Commission does not allow a fixed rate to change to adapt to varying transmission charges. As such, the EGS Parties posit that a fixed rate, which is the most commonly used rate structure, would not be able to recover NITS charges without the EGS having to negotiate the contract for each rate change, which, the EGS Parties claim, is not practical. In the EGS Parties' view, the Company's arguments, as adopted by the ALJ, are nothing more than a smokescreen designed to hide the fact that the Company discriminates against suppliers so that it can maintain a competitive advantage. Accordingly, the EGS Parties submit that the Commission should reverse the ALJ's recommendation. EGS Parties Exc. at 3-4.

## Duquesne Light Replies

In its Replies to Exceptions, Duquesne Light counters that the ALJ correctly recommended that the EGS Parties' proposal be denied, and correctly noted that the Commission denied similar proposals in *Duquesne Light DSP VI* and *Duquesne Light DSP VII*. Duquesne Light submits that contrary to the EGS Parties' assertion, the Company is not a monopoly biller on its system because the EGSs have the option to separately bill their own services to customers. Additionally, Duquesne Light observes that in their briefs, which they incorporated by reference in their Exceptions, the EGS Parties relied on the Commission's decision in *Columbia* for the premise that the provision of billing service for "non-commodity products and services" is a public utility service and must comply with the non-discrimination provisions of the Code. However, Duquesne Light submits that *Columbia* centered on the billing of non-basic service charges. In contrast, Duquesne Light contends that the instant proceeding centers on the billing of unbundled basic service transmission costs that are required to be separately stated to customers for generation, transmission, and distribution. According to Duquesne Light, requiring a default service provider to collect EGS transmission charges with default service transmission charges would rebundle those charges in contravention to the unbundling requirements of the Competition Act. Duquesne Light R. Exc. at 10-11.

Duquesne Light also refutes the EGS Parties' argument that Commission Regulations prevent an EGS from changing fixed price contracts. Duquesne Light submits that an EGS may offer fixed prices for generation and use a variable price for transmission charges. Additionally, Duquesne Light posits that the EGS Parties are clearly able to mitigate or eliminate the risk of NITS price variations in their contracts with customers. Therefore, Duquesne Light asserts that the EGS Parties' second Exception should be denied. Duquesne Light R. Exc. at 11.

## **Calpine's Replies**

In its Replies to Exceptions, Calpine submits that if the Commission reverses the ALJ's recommendation and the EGS Parties' proposal is adopted, this would eliminate an important element of competition among the EGSs as LSEs. According to Calpine, there is a clear distinction between default service and service from an EGS. More specifically, Calpine restates that default service is intended to be a "one size fits all program" implemented through a very prescriptive standardized master service agreement in which all terms and conditions, including timing, amount of load, and risk of load migration, are based on these predetermined terms. In contrast, Calpine explains that the EGSs are not under any default service set of mandated requirements, but are instead able to customize offerings based upon their own business model, management decisions, load, and demands. As such, Calpine argues that the EGSs should be responsible and accountable for their own business decisions. Calpine opines that the EGS Parties' proposal erroneously assumes that all EGSs would be presumed to face the exact same load and demand when this is not the case in reality. Rather, Calpine points out that each EGS has its own demand load and level of expertise, operational capability, and management and decision making. Therefore, Calpine submits that the EGS Parties' Exception No. 2 should be rejected. Calpine R. Exc. at 2-3.

### **5. Disposition**

We shall deny the EGS Parties' Exception No. 2. As the Parties proposing that Duquesne Light include NITS charges in its existing NBT, the EGS Parties bear the burden of proof for this proposal. *Metropolitan Edison Co.; Citizens' Electric Co.* In reaching his conclusion on the EGS Parties' proposal, ALJ Hoyer correctly determined, based on the evidence in this proceeding that: (1) it is appropriate for Duquesne Light to recover NITS costs only from default service customers; (2) the EGSs should recover

these costs from their customers; and (3) the EGS Parties did not satisfy their burden of proof that the Company's current cost recovery method should be altered. R.D. at 36, 51.

As Duquesne Light and Calpine both noted, in *Duquesne Light DSP VI* and *Duquesne Light DSP VII*, we considered and rejected proposals similar to what the EGS Parties have proffered in this proceeding. Moreover, we have considered and rejected similar proposals in DSP proceedings involving other Pennsylvania EDCs. For example, in our recent Order in *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Order entered December 3, 2020) (*PECO DSP V Order*), we reaffirmed this precedent in rejecting a nearly identical proposal set forth by the same group of EGSs that comprise the EGS Parties in the instant case. *PECO DSP V Order* at 51-53, 58-60. We find that the EGS Parties have not set forth any arguments or evidence in this proceeding that would cause us to deviate from our prior decisions in which we have established that an EDC collects NITS only from its default service customers.

The crux of the EGS Parties' argument in this proceeding is that Duquesne Light should be directed to recover NITS charges via an NBT charge because its current practice is discriminatory and causes undue harm to shopping customers and their EGSs. We find no merit in this argument. Rather, in its Reply Briefs, Duquesne Light noted that the Company is not discriminating based upon any service it is providing as an EDC under the Code. Instead, the Company is charging its default service customers for costs it incurs to obtain interstate transmission service. The Company argued that it has no obligation under the Code to charge shopping customers for costs incurred by an EGS to provide service, particularly those that are subject to FERC's jurisdiction. Duquesne Light R.B. at 4-5. We agree.

Additionally, as Calpine pointed out in its Replies to the EGS Parties' Exception No. 2, Duquesne Light's Default Service and the products and services offered by the EGSs in an open retail market possess inherently different characteristics. Therefore, comparing retail electric market products and services to a fully regulated default service is an "apples to oranges comparison." We find that Calpine has proffered testimony that is particularly convincing on this point. The record indicates that NITS charges are demand based, which creates an opportunity for the EGSs in the marketplace. Not every customer has the same load profile, nor does every LSE. Therefore, the LSEs in the competitive market, in contrast to a utility that offers a simplified one-size-fits-all default service, can work with customers to adjust their usage to more efficiently use only the amount of transmission to meet the individual needs of the customer. As Calpine points out, Calpine, like the companies that make up the EGS Parties, is an EGS that incurs NITS costs. However, Calpine has been able to successfully manage these costs by managing its customers' loads. *See* Calpine St. 1 at 3-4; Calpine M.B. at 3.

The record also indicates that there is robust competition among the EGSs in Duquesne Light's service territory, which puts downward pressure on the risk premium associated with NITS charges. Namely, this risk is shifted away from the ratepayer onto the market, and the price is reflective of the competitive efficiencies and the discipline of the market, to the benefit of Pennsylvania customers. Therefore, we concur with Calpine's position that requiring all shopping and non-shopping customers to have their NITS costs collected through an NBT, as the EGS Parties envision, would simultaneously limit existing and potential customers' product and service choices. As a result, this would not only harm the competitive retail market, but it would also remove any incentive and opportunity to create customized products and services that are, or potentially might be formulated, to assist the EGSs in addressing these specific costs. *See* Calpine St. 1 at 3-4.



Further, we find the EGS Parties' citation to *Columbia* in support of its discrimination arguments to be flawed. In *Columbia*, we addressed Columbia Gas of Pennsylvania Inc.'s (Columbia) billing practice of providing "on bill" billing to certain parties for the non-commodity goods and services offered by third parties, while simultaneously declining to provide this same "on bill" billing service to other parties. *See Columbia* at 34-51. We concluded that "the billing practice at issue discriminates by preferential treatment of the third parties, Columbia's former affiliates, when Columbia affords the option of "on bill" billing for goods and services offered by former affiliated third parties but denies the same billing option to the NGS Parties." *Columbia* at 46 (emphasis added). On the other hand, in the instant proceeding, we have determined that Duquesne Light is not discriminating among the EGSs in how it bills NITS charges. Rather, as Calpine pointed out, there is a clear distinction between default service and service from an EGS. Moreover, *Columbia* did not involve a proposal to create an NBT charge applicable to all customers. *See Duquesne Light R. Exc.* at 11, n.11.

Consistent with the forgoing, we shall deny the EGS Parties Exception No. 2 and adopt the ALJ's recommendation to deny the EGS Parties' proposed allocation of NITS charges. Accordingly, we shall approve Duquesne Light's proposal to continue in its DSP IX its present allocation of NITS charges such that it will collect NITS charges only from its default service customers, while the EGSs operating in Duquesne Light's service territory will continue to collect NITS charges from shopping customers.

## **B. EV-TOU Pilot Program**

### **1. Positions of the Parties**

As previously noted, in its DSP IX, Duquesne Light proposes to establish an optional EV-TOU Rate for Residential, Small C&I, and Medium C&I customers with less than 200 kW of demand who use Default Service (Rider 8) supply. DSP IX

Petition at 15. To be eligible for the EV-TOU Rate, a customer must own or lease a plug-in battery electric vehicle or a plug-in hybrid electric vehicle (collectively, EV) or offer charging services. Duquesne Light St. 5 at 19; Duquesne Light M.B. at 16. Customers electing the EV-TOU Rate will receive TOU service for the entire usage served by the existing smart meter. Duquesne Light averred that this rate option will reduce the costs of electric, EV-TOU service to the customer because a separate meter installation will not be required. Nevertheless, the Company plans to continue to monitor technology changes that may offer solutions to separate metering of EV usage. Duquesne Light St. 5 at 22; Duquesne Light M.B. at 18. As the EV-TOU Rate will include total premises usage in order to avoid the cost to the customer of separate metering, the Company plans to provide online tools and assistance to customers in evaluating the effects of electing whole-premises TOU service. Duquesne Light St. 5 at 27; Duquesne Light M.B. at 19.

The EV-TOU Rate supply will be provided by the Default Service wholesale suppliers, who will continue to receive the fixed price accepted in the Company's competitive procurements. The supply costs paid to these wholesale suppliers and the revenues recovered through EV-TOU rates shall be reconciled, by customer class, through the Default Service reconciliation process. DSP IX Petition at 16; Duquesne Light St. 4 at 19-20; Duquesne Light M.B. at 19. Duquesne Light witness David Ogden, Manager of Rates and Tariff Services for Duquesne Light, testified that the Default Service fixed price for each class will be segregated into Off-Peak, On-Peak, and Shoulder Period rates based upon each class's respective energy consumption and capacity requirements. DSP IX Petition at 16; Duquesne Light St. 4 at 17-19; Duquesne Light Exh. DBO-3; Duquesne Light St. 4-R at 3-4; Duquesne Light M.B. at 19.

The On-Peak, Off-Peak, and Shoulder Periods for the EV-TOU pilot are as follows:

**EV-TOU Schedule**

Schedule	Time Period
Peak	1 pm – 9 pm
Shoulder	6 am – 1 pm; 9 pm – 11 pm
Off-Peak	11 pm – 6 am

DSP IX Petition at 15-16.

Mr. Ogden explained that Duquesne Light chose the EV-TOU time periods to encourage EV charging overnight when demand is low and costs are lower and to discourage charging during peak periods when market costs of electricity are higher. Mr. Ogden also explained that the same Off-Peak Period of 11 p.m. through 6 a.m. every day of the week is easy for customers to understand. Duquesne Light St. 4 at 17; Duquesne Light M.B. at 19.

Duquesne Light averred that Section 2807(f)(5) of the Code, 66 Pa. C.S. § 2807(f)(5), states that TOU service is to be provided by the DSP. Duquesne Light also averred that the Commission’s *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020) (*January 23, 2020 Secretarial Letter*) directs parties participating in Default Service proceedings to consider how EV-specific TOU rate offerings could be made available to customers. Duquesne Light noted that a Company EV-TOU rate is necessary to achieve the benefits offered by EV-TOU rates because no EGS is currently offering such a rate. Duquesne Light M.B. at 20.

NRDC supports implementation of an EV-TOU program and noted the benefits of increasingly wider EV adoption, including EV users saving money over the life of the vehicle, reduction in greenhouse gas emissions, and the ability of EV users to shift load to off-peak hours, resulting in downward rates for all customers. NRDC M.B. at 5; NRDC St. 1 at 3-7. Nevertheless, NRDC suggested several modifications to the Company's EV-TOU proposal. NRDC averred that approval of the EV-TOU program as a pilot program was unnecessary because the benefits of EV-TOU rate offerings are well-established and present little to no risk to non-participating customers. NRDC M.B. at 5. NRDC noted the importance of clear price signals to end-use customers in order to achieve the most potential EV load-shifting. *Id.* at 5-6. For C&I users that make EV infrastructure available to third parties, NRDC stated that the default arrangement should be pass-through pricing. NRDC M.B. at 6; NRDC St. 1 at 7-10. NRDC also recommended that in addition to providing customers a whole-premises rate, the Company should educate customers on the possibility of separately metering their EV load and the potential tradeoffs of pursuing either option. NRDC M.B. at 6; NRDC St. 1 at 11-13. Further, NRDC suggested that C&I TOU rate design should consider certain customers, such as those offering Direct Current Fast Charging, that may be less able to shift load to off-peak hours than other C&I customers. NRDC M.B. at 5-6; NRDC St. 1 at 18-21. NRDC states that the Company's proposed EV-TOU rate is consistent with Act 129's requirement that DSPs offer TOU rates to smart-metered customers and is supported by substantial evidence in this proceeding. NRDC M.B. at 6.

The EGS Parties argued that Duquesne Light's EV-TOU proposal is not supported by the record and can potentially harm the market. EGS Parties M.B. at 7. The EGS Parties requested that implementation of the EV-TOU rate be referred to either "a working group of interested stakeholders" or "for proposals from competitive entities...that could be implemented within the scope of Duquesne's DSP." The EGS Parties wanted to reserve a potential market for EGSs if they decided to participate in

that market. EGS Parties St. 1 at 21-22. The EGS Parties did not support utilities using default service to provide competitive offerings, particularly offerings with the subsidized default service rate as the core. The EGS Parties opined that suppliers would find it difficult to offer rates that compete with the subsidized default rate. EGS Parties M.B. at 8.

## **2. EV TOU Stipulation**

As previously discussed, Duquesne Light, CAUSE-PA, NRDC, the OCA, and the OSBA entered into the EV-TOU Stipulation on September 30, 2020. These Parties agreed to the Company's proposed EV-TOU Pilot Program as set forth in Paragraphs 47-53 of the Company's DSP IX, with the following modifications in the EV-TOU Stipulation:

- a. Prior to filing its next Default Service Plan (DSP X), the Company will provide a report on the EV-TOU Pilot Program. The report will include:
  - i. Customer enrollment levels by customer class (i.e., residential, small commercial, small industrial, medium commercial, and medium industrial) and enrollment levels of confirmed low-income customers and multi-unit residential buildings
  - ii. Net customer bill impacts as compared to non-TOU rate, by customer classes identified in a.i. above
  - iii. Net energy usage shifted from on-peak hours (for those customers for whom the Company has sufficient historical usage data)
  - iv. Number of customers on the EV-TOU rate who elected to install a separate Duquesne Light meter for their EV charging facilities

- b. Customer Education:
  - i. Prior to implementing the EV-TOU Pilot Program, the Company will provide parties with draft educational materials and solicit their feedback for consideration.
  - ii. The Company's educational materials will include, as applicable:
    - I. Information on the EV-TOU rates and its benefits
    - II. Discussion of the 200kW threshold for C&I customers, including recognition that customers whose demands exceed 200kW are not eligible for the EV-TOU rate but are instead eligible for hourly price service under Rider No. 9.
    - III. Discussion of customer protections and assistance programs for Residential customers
    - IV. Referral to Duquesne Light's online bill estimate tool for Residential customers
    - V. Express recognition that the EV-TOU rate may not be the least-cost option for all customers
    - VI. The option, and potential benefits, for customers to elect to separately meter their EV load on the EV-TOU rate
- c. The Company's costs of outreach and education associated with the EV-TOU Pilot Program shall be allocated and recovered per the Company's initial proposal, as described in Duquesne Light St. No. 4 and Exhibit DBO-5.

- d. The Company will annually reset the EV-TOU supply rate factors as part of its tariff supplements updating Default Service Supply rates.
- e. The Company will convene one collaborative meeting with the parties around the midpoint of DSP IX to discuss the EV-TOU Pilot Program implementation and results available to date. The collaborative meeting will include discussion of EV-TOU rates for mass transit and fleet EVs.

EV-TOU Stipulation at 1-2. The EV-TOU Stipulation fully resolves the stipulating Parties' disputes regarding the EV-TOU program. Only the EGS Parties object to Duquesne Light's EV-TOU pilot, as modified by the EV-TOU Stipulation.

### **3. Recommended Decision**

ALJ Hoyer recommended that the Commission approve the EV-TOU pilot in the Default Service Plan, as modified by the EV-TOU Stipulation, finding that approval serves the public interest and is consistent with the statutory mandates and policy goals of the Competition Act and the Commission's Regulations. R.D. at 42. The ALJ reasoned that the provision of TOU service by the Default Supplier is clearly permitted by Act 129 and codified in Section 2807(f)(5) of the Code, 66 Pa. C.S. § 2807(f)(5). R.D. at 41. The ALJ noted that the Commission stated the following in the *January 23, 2020 Secretarial Letter*:

The Default Service Provider shall offer the Time-of-Use rates and real-time price plan to all customers that have been provided with Smart Meter Technology under Paragraph (2)(III). Residential and Commercial customers may elect to participate in Time-of-Use Rates and Real Time Pricing. *See* 66 Pa. C.S. § 2807(f)(5).

*Id.* (citing *January 23, 2020 Secretarial Letter* at 6, n.4). Accordingly, the ALJ determined that the Commission acknowledged that the Default Service Provider is obligated to provide the TOU program, and there is no basis for an argument that the Company cannot provide EV-TOU service, particularly when there is no other supplier of such service in its market. R.D. at 42 (citing *Duquesne Light M.B.* at 23; *Dauphin County Industrial Development Authority v. Pa. PUC (Dauphin County)*, 123 A.3d 1124 (Pa. Cmwlth. 2015)).

#### **4. EGS Parties Exception No. 1 and Replies**

In their Exception No. 1, the EGS Parties aver that the ALJ erred in approving Duquesne Light's EV-TOU proposal. The EGS Parties state that while there is a statutory requirement to provide TOU rates, there is not a requirement to provide a rate tailored to electric vehicles. EGS Parties Exc. at 1. The EGS Parties believe that the Company decided on its own to provide a rate that will compete in the marketplace and keep competitors out of the market or unfairly compete against competitors with a utility brand. *Id.* at 1-2. The EGS Parties oppose utilities providing competitive services that are not default service, noting that the Commission's Regulations limit default service to a single rate offering. *Id.* at 2 (citing 52 Pa. Code § 54.187(c)). The EGS Parties argue that the Default Service Rate Schedule "may" include demand side management rates only when the Commission "mandates" such rates pursuant to the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. § 1648.1, *et seq.*, which the EGS Parties state has not happened here. The EGS Parties continue that the market will be harmed if Duquesne Light's proposal is adopted, and competitors will not be able to enter the market. The EGS Parties contend that there is no need for the rate and that suppliers are the logical entities to provide such rates if a need arises that will make the rate profitable. EGS Parties Exc. at 2.



## Duquesne Light Replies

In its Replies, Duquesne Light states that the ALJ's decision is sound and should be adopted. Duquesne Light R. Exc. at 7. Duquesne Light explains that the ALJ referred to the Commission's *January 23, 2020 Secretarial Letter*, which specifically concluded that the default supplier is obligated to provide TOU service and that the record in this proceeding demonstrated that no EGS is providing EV-TOU service. *Id.* at 7-8 (citing R.D. at 10). Duquesne Light also avers that the EGS Parties raised in their Exceptions for the first time that the EV-TOU Pilot is a demand management rate that can only be provided through Commission approval. Duquesne Light asserts that the EV-TOU Rate Pilot is not a demand management rate but is a rate for time of use service, and even if it were a demand management rate, the Commission can grant the approval requested in this proceeding. Duquesne Light R. Exc. at 8 n.9. In response to the EGS Parties' argument that the Commission's Regulations require a single rate offering, Duquesne Light argues that the Commission's Regulations cannot override the statutory obligation that the EDC provide TOU service. Further, Duquesne Light avers that the EGS Parties raise in Exceptions, for the first time in this proceeding, that the Commission's approval of the EV-TOU Rate Pilot can only be approved if the Commission mandates demand side management rates, citing the AEPS Act generally. Duquesne Light contends that this unexplained and belated argument provides no basis to reverse the ALJ's conclusion that the default supplier is obligated to provide TOU service. *Id.* at 8, n.10.

Duquesne Light also argues that the EGS Parties' position that the EV-TOU Rate Pilot would improperly compete with potential EGS services and prevent EGSs from entering the market is flawed. The Company avers that it has no incentive to compete with EGSs, and EGSs are free to offer EV-TOU or any other TOU service and offer alternative terms, including different on/off peak rates and time periods than the Company. *Id.* at 8. Duquesne Light believes that the EGS Parties' statement is

speculative and that they did not offer any evidence in support of their argument, as EGSs will be able to offer EV-TOU supply on the same basis as they offer other products as an alternative to default service. *Id.* at 8-9. The Company notes that it explained its previous unbundling of procurement costs from base rates into default service rates - in the Company's Exhibits DBO-3 and DBO-5, unbundled procurement costs are included in the proposed EV-TOU rate, just as they are in designing other default service rates. *Id.* at 9 (citing Duquesne Light St. 4 at 17-18, 20; Duquesne Light Exhs. DBO-3, DBO-5).

Further, in response to the EGS Parties' argument that there is no current need for the EV-TOU Rate Pilot, Duquesne Light states that this argument is contrary to testimony from both the Company and NRDC that demonstrates the increasing actual and projected number of EVs in the Company's service territory. Duquesne Light continues that the testimony also explains the need for an EV-TOU rate to encourage EV adoption and to produce benefits to users, the Company, and its customers, resulting from greater off-peak use of its distribution grid and public benefit from environmental improvements. Duquesne Light R. Exc. at 9 (citing Duquesne Light St. 5 at 20-22).

Moreover, Duquesne Light argues that the EGS Parties' positions disregard the Commission's guidance in the *January 2020 Secretarial Letter*, which urged all interested parties to consider how specific TOU rate offerings could be made available to customers. Duquesne Light asserts that it has directly responded to the *January 2020 Secretarial Letter* with a specific rate proposal. It further asserts that should the Commission deny its proposed EV-TOU Pilot, as modified by the EV-TOU Stipulation, while waiting to see if EGSs decide to offer an EV-TOU rate, such result would harm the EV market and delay the benefits that EV expansion will produce for all customers and the public. Duquesne Light R. Exc. at 9.

## NRDC Replies

In its Replies to the EGS Parties Exception No. 1, NRDC avers that the evidence and applicable law support adoption of the Company's proposed EV-TOU rate, as modified by the EV-TOU Stipulation. NRDC R. Exc. at 2. NRDC cites to the ALJ's Findings of Fact noting the benefits of the Company's proposed EV-TOU Rate to both participating customers and ratepayers. *Id.* (citing R.D. at 9-11). NRDC specifically notes the ALJ's findings that the rate "has the potential to benefit EV customers by lowering the cost of owning and operating an EV" and that the rate will "benefit Duquesne Light's customers by increasing the usage of the Company's existing electric grid during non-peak periods, thereby producing increased revenues to offset existing grid costs and reducing the need to build new facilities to serve EV load." NRDC R. Exc. at 2-3 (citing R.D. at 9-10). NRDC also cites to the rate's "potential to benefit the general public by reducing greenhouse gas (GHG) emissions." NRDC R. Exc. at 3 (citing R.D. at 10).

In response to the EGS Parties' argument that Duquesne Light is acting like a competitor, rather than a supplier of last resort, NRDC states that the EGS Parties do not acknowledge or dispute the considerable evidence to the contrary. NRDC R. Exc. at 3. NRDC notes that in reliance on the Company's testimony, the ALJ found that the EV-TOU rate "does not prevent an EGS from designing and offering its own EV-TOU rates, including different on-peak and off-peak periods that may benefit specific customers." *Id.* (citing R.D. at 11, 41). NRDC avers that as it stated in its Main Brief and testimony, the EGS Parties did not offer any concrete reasons why the default service TOU rates prevent EGSs from developing their own EV-TOU products, and there is no evidence in this proceeding demonstrating that the generation supply market has been harmed in other parts of the country where EV-TOU rates have been implemented. NRDC R. Exc. at 4 (citing NRDC M.B. at 21; NRDC St. 2). NRDC notes that as the Company points out, Duquesne Light is not attempting to compete with EGSs

because there is not currently an EGS offer to compete with. NRDC R. Exc. at 4 (citing Duquesne Light R.B. at 6).

NRDC additionally asserts that the EGS Parties' arguments lack merit because they ignore the plain language of Act 129, which mandates that "a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans," and that the "default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology." NRDC R. Exc. at 4 (citing 66 Pa. C.S. § 2807(f)(5)). NRDC states that the Commonwealth Court has explained that a default service provider itself must provide this TOU rate and may not fulfill this obligation by relying on EGSs to offer TOU products. NRDC R. Exc. at 4 (citing *Dauphin County*, 123 A.3d at 1130-1136). NRDC continues that the statute clearly contemplates that a default service TOU rate can be permissibly "tailored" to EVs, or to any other subset of ratepayer, by its language that a provider must make available "one or more" TOU rates to default service customers. NRDC R. Exc. at 5 (citing 66 Pa. C.S. § 2807(f)(5)). NRDC points out that there is no other TOU rate offering in the Company's instant DSP IX proposal that would fulfill the Company's obligation to provide TOU rates to all smart metered customers, so it cannot be argued that the Company could offer some other TOU rate in order to fulfill the requirements of Section 2807(f)(5). NRDC R. Exc. at 5.

In reply to the EGS Parties' argument that 52 Pa. Code § 54.187(c) prohibits TOU offerings, NRDC contends that such a construction would contradict Section 2807(f)(5) of the Code, 66 Pa. C.S. § 2807(f)(5), and an agency's regulations may not contradict the General Assembly's requirements. *Id.* (citing *Hommrich v. Commonwealth (Hommrich)*, 231 A.3d 1027, 1034-1035 (Pa. Cmwlth. 2020)). In response to the EGS Parties' argument that demand side management rates may only be implemented when the Commission requires such rates pursuant to the AEPS Act,

NRDC states that the requirements in the AEPS Act do not address, much less contradict, the specific requirements of Section 2807(f)(5). NRDC R. Exc. at 5.

## 5. Disposition

Based on our review of the record, the Parties' arguments, and the applicable law, we agree with the ALJ's recommendation to approve the EV-TOU pilot in the Company's DSP IX, as modified by the EV-TOU Stipulation. The Company's EV-TOU proposal is legally sound. Under the Competition Act, the "default service provider shall submit to the [C]ommission one or more proposed time-of-use rates and real-time price plans" and shall offer them to all customers, residential and commercial, with smart meter technology. 66 Pa. C.S. § 2807(f)(5). In interpreting Section 2807(f)(5), the Commonwealth Court held that the express language of the statute places the burden on the DSP to offer TOU rates to customers and that the statute does not authorize a DSP to pass along its obligation to an EGS. *Dauphin County* at 1134. Contrary to the EGS Parties' arguments, there is nothing in Section 54.187(c) of our Regulations that prohibits Duquesne Light from providing a TOU rate tailored to EVs, and that Regulation cannot be read as overriding the clear language in the Competition Act. *Hommrich*, 231 A.3d at 1034-1035. Nor is the EV-TOU rate a demand side management rate that may only be approved if the Commission mandates such a rate under the AEPS Act. Duquesne Light's proposed EV-TOU Rate is a rate for time-of-use service. The Company's witness, Mr. Ogden, explained that the Company previously unbundled procurement costs from base rates into default service rates and that in the Company's Exhibits DBO-3 and DBO-5, unbundled procurement costs are included in the proposed EV-TOU Rate, just as they are in designing other default service rates. Duquesne Light St. 4 at 17-18, 20; Duquesne Light Exhs. DBO-3, DBO-5.

The Company's proposal is also consistent with the guidance we provided to EDCs in the *January 23, 2020 Secretarial Letter*, wherein we offered guidance to

EDCs, including guidance on TOU rate offerings, as they prepared for their next round of DSPs. We acknowledged the past difficulties associated with implementing TOU rates in a default service context. Nevertheless, we noted that as EV usage will increase in the future and will increase during the timeframe covered by the upcoming DSPs, TOU rates in the context of EV expansion should be considered. As such, we “urge[d] all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.” *January 23, 2020 Secretarial Letter* at 6-7.

The record in this case is replete with evidence supporting the benefits and the need for Duquesne Light’s proposed EV-TOU Rate offering. Duquesne Light witness Katherine Scholl, Duquesne Light Director of Customer Experience, testified that EVs are an ideal flexible load because they are parked most of the time and can be easily programmed to begin charging at pre-defined times. Ms. Scholl explained that as the number of EVs registered in the Company’s territory is projected to grow from over 3,000 EVs today to an estimated 18,500 EVs by the end of 2025, the electric load associated with EVs is also expected to grow. Duquesne Light St. 5 at 20. As this load expands, the Company wants to optimize existing grid and generation capacity by shifting EV charging to off-peak times and anticipates that flattening the growing EV load will help reduce the need for additional distribution upgrades, resulting in benefits to all distribution customers and not only customers on the EV-TOU rate. *Id.* at 20-21. Ms. Scholl also explained that by offering lower supply rates during the off-peak period when underlying electricity supply costs are usually lower, the EV-TOU Pilot Program is designed to reduce the costs to customers by encouraging them to shift their charging time, which, in turn, can benefit all customers by decreasing the proportion of higher-priced, on peak energy needed to serve default service customers. *Id.* at 21.

Ms. Scholl also testified regarding the various environmental and economic benefits associated with EVs. Ms. Scholl stated that greater use of EVs can help reduce

GHG emissions because charging EVs in Pennsylvania are estimated to emit one-third of the GHG emissions of gasoline-fueled vehicles and produce no tailpipe emissions, helping to improve local air quality. Ms. Scholl explained that because of the greater fuel efficiency and lower maintenance requirements of EVs, drivers of EVs will save on maintenance and fuel costs over the lifetime of their vehicles, producing economic benefits for drivers and companies deploying EVs in their fleets. *Id.* The Company's EV-TOU Rate encourages EV adoption by helping to lower the total cost of ownership for EV drivers, particularly for fleets. Ms. Scholl noted that since cost continues to be an impediment to more wide-spread EV adoption, the Company's goal is to give customers additional tools to lower the costs of EV fueling by providing more rate flexibility. *Id.* at 22.

NRDC's witness Kathleen Harris, a Clean Vehicles and Fuels Advocate for NRDC, similarly testified in great detail about the benefits of the Company shifting EV charging to off-peak hours. Ms. Harris stated that this can lower electricity bills for all customers, reduce operating costs for EV drivers, and drive down GHG emissions. Ms. Harris explained that if EV charging load is properly managed, the net present value of cumulative benefits from greater EV use in Pennsylvania could exceed \$8 billion by 2050. NRDC St. 1 at 4. Ms. Harris also explained that \$1.3 billion will accrue to electric utility customers in the form of reduced electric bills; \$4.6 billion will accrue directly to Pennsylvania drivers in the form of reduced annual vehicle operating costs; and \$2.2 billion will accrue to society as the monetized value of reduced GHG emissions. *Id.* at 4-6. None of the Parties in this proceeding have presented evidence to refute the many benefits of and the need for the EV-TOU rate, nor are there any other TOU rate proposals on the record.

There is also no evidence in this proceeding that an EGS is currently offering an EV-TOU rate (Duquesne Light St. 5-R at 22; EGS Parties' Exh. KMS-IR) or that the Company is somehow inappropriately competing with the EGSs. The

Company's proposal does not prevent the competitive supplier market from implementing EV-TOU rates or other programs that will shift charging to off-peak hours. Duquesne Light testified that it has supported and will continue to support EGS-offered EV-TOU programs in its service territory, and the EGSs that wish to offer an EV-TOU rate in the Company's service territory may do so using the Company's dual-billing or consolidated bill-ready billing options. Duquesne Light St. 5-R at 22. For all of these reasons, we shall deny the EGS Parties' Exception and adopt the ALJ's recommendation on this issue.

### **C. Solar PPA Proposal**

#### **1. Positions of the Parties**

##### **Duquesne Light**

Duquesne Light requested pre-approval from the Commission to seek to enter into a long-term Solar PPA (more than four but less than twenty years) in order to support a utility-scale solar project of up to seven MW in Pennsylvania. The Company intends to purchase the AECs from this facility in order to meet its Alternative Energy Portfolio Standards (AEPS) requirements. The Company also intends to acquire the energy from this facility and will sell this energy back into the PJM market on a real-time basis and credit these revenues back to default service customers. The Company plans to assess the potential of also purchasing the capacity and ancillary services from the facility, but it has not made a final determination on this issue. Duquesne Light St. 1 at 13, 15; Duquesne Light M.B. at 25.

According to Duquesne Light, the purposes of this long-term Solar PPA are to: (1) support the further development of solar energy in Pennsylvania, preferably in Duquesne Light's service area; and (2) gain more information about the solar generation



market in Duquesne Light's service area, while doing so in a limited quantity that mitigates risks associated with the long-term commitment. Duquesne Light intends to conduct a competitive solicitation for the Solar PPA sometime during the DSP IX period and report the results of the Solar PPA to the Commission for final approval before entering into the Solar PPA. Duquesne Light St. 1 at 14; Duquesne Light M.B. at 25.

Duquesne Light contended that a long-term Solar PPA is one of the types of contracts that can be used to achieve the prudent mix requirements of Act 129, noting that Section 2807(e)(3.2) of the Code requires default service providers to enter into a prudent mix of contracts, such as spot market purchases, short-term contracts and long-term contracts. 66 Pa. C.S. § 2807(e)(3.2). The statute further defines long-term contracts as more than four but not more than twenty years. 66 Pa. C.S. § 2807(e)(3.2)(iii). Finally, the prudent mix of contracts shall be designed to ensure adequate and reliable service at the least cost to customers over time. Duquesne Light M.B. at 25.

In addition to its conclusion that a long-term seven MW Solar PPA is a necessary part of a prudent mix of supply contracts in this proceeding, Duquesne Light stated that it proposed the Solar PPA to encourage additional solar development in Pennsylvania, both generally and specifically within the Company's service area. The Company believes that the long-term Solar PPA may provide greater opportunity for cost-effective financing for the developer of a utility-scale solar project. The Company had previously proposed to acquire AECs only as part of its DSP VIII proceeding, but ultimately learned in that process that solar developers preferred a contract for all of the attributes of the facility (energy, capacity and ancillary services), not just the AECs, to enable developers to obtain financing for projects. Therefore, the Company has expanded its proposal in DSP IX to potentially cover all of the attributes of a solar facility, to better assist developers who are trying to obtain financing. Duquesne Light St. 1 at 13 and 16-17, Duquesne Light M.B. at 27.

The Solar PPA is expected to procure slightly more than 50% of the required solar AECs or SAECs on a long-term basis. The Solar PPA will also provide energy. Noting that solar facilities produce intermittent energy, the Company proposes to sell this energy into the market and credit the sales revenues to the default service reconciliation. According to Duquesne Light, this proposal will avoid interfering with the load-following, fixed-price wholesale contracts that it uses to provide default service energy requirements. It is also designed to avoid creating potential increased prices under the wholesale contracts due to uncertainty about how much energy the solar facility will produce. Importantly, the Company will not own the solar generating facility. According to Duquesne Light, the purchase of the energy is simply a process to balance supply and demand and obtain for default service customers additional value from the Solar PPA. Duquesne Light R.B. at 11.

### **EGS Parties**

The EGS Parties opposed the Company's long-term Solar PPA proposal as an activity that should be reserved for the EGSs, given the risk that the costs of such contracts may end up being uneconomic over the life of the contracts. The EGS Parties argued that such a project would essentially put Duquesne Light back in the generation business – with the default customers shouldering the entirety of the risk under the guise of a SAEC acquisition program. EGS Parties St. 1 at 24-25. According to the EGS Parties, such a contract is not authorized by the Competition Act, 66 Pa. C.S. § 2801, *et seq.* In particular, according to the EGS Parties, the Company's plan to sell the energy into the wholesale market as a means of “offsetting” default service costs, goes well beyond what is authorized in Section 2807(e)(3.1), *et seq.* EGS Parties M.B. at 5.

The EGS Parties also opposed the Solar PPA because Duquesne Light's long-term contract plans run the risk of outliving its proposed DSP IX plan and even subsequent default service plans. According to the EGS Parties, while that is potentially

problematic from a cost perspective, it also presents the possibility that Duquesne Light could no longer be the Default Service Provider and the costs of such a contract could become stranded, or worse, be used as an excuse why a new default provider should not be approved. The EGS Parties argued that Duquesne Light has failed to establish a need for such an arrangement, or how that need might have changed, despite its failure to reach a Solar PPA agreement previously. The EGS Parties argued that, if the Commission feels compelled to approve some sort of acquisition program for SAECs, the EGS Parties could accept an AEC-only acquisition, but there should be no authorization for the purchase (or resale) of energy, capacity, or ancillary services. EGS Parties St. 1 at 23; EGS Parties M.B. at 5-6.

The EGS Parties also were concerned that utility ratepayer-funded, long-term contract-supported solar projects could crowd out competitive projects in the marketplace and put suppliers at a disadvantage for capital and a place in the market for such projects. The EGS Parties asserted that ratepayer funding creates a lower risk profile for investors that drives such decisions. The EGS Parties argued that this type of project also is a direct assault on current efforts to enact Community Solar initiatives that democratize energy production by providing ownership opportunities in solar projects for even very small investors. The EGS Parties contended that Duquesne Light's proposed contract will provide fodder for those who say we do not need community solar initiatives because the utility already provides an avenue for project development. In short, the EGS Parties concluded there is no legal basis on which to approve the proposed solar PPA, and there are multiple policy reasons to reject it. EGS Parties St. 1 at 24, EGS Parties M.B. at 6-7.

## **MAREC**

In contrast to the position of the EGS Parties, MAREC argues that Duquesne Light's description of the Solar PPA program as "manageably sized" because

it accounts for less than 55% of the Company's projected solar AEC requirements, does not mean that it should not be larger or that a larger program could not be managed. MAREC recommended that Duquesne Light should enter into a higher quantity of and larger sized long-term renewable contracts than Duquesne Light is currently proposing. MAREC R.B. at 7.

MAREC asserted that an appropriate analysis to determine a prudent mix of contracts would be an All-Resource Request for Proposals followed by Integrated Resource Modelling to determine the least-cost mix of resources that meet the Company's other requirements, including its AECs obligation. MAREC St. 1 at 8-17. MAREC explained that long-term renewable contracts benefit consumers in the following ways: (1) long-term contracts for renewable energy can offer price stability over a multi-year timeframe, thereby protecting customers from constant rate adjustments during periods when energy and capacity markets are unstable; (2) long-term contracts encourage the development of new renewable generation resources by offering increased price certainty and lower financing costs; (3) the addition of renewable generators leads to an increase in the availability of Renewable Energy Certificates (RECs), and an increase in the supply of RECs helps to lower the price, which, in turn, reduces the cost of meeting the Renewable Portfolio Standard (RPS) and benefits ratepayers; (4) the addition of renewable generation to the wholesale market supply curve displaces the most expensive generating units and lowers the wholesale market price of energy, and utilities dealing directly with developers in a competitive process are able to pass along cost savings (such as lower financing costs) to customers; (5) in-state development of renewables adds jobs and promotes economic development; and (6) displacement of fossil-fired generators with non-emitting renewables leads to a reduction in air emissions and a corresponding increase in health benefits for consumers. MAREC St. 1 at 9-10; MAREC M.B. at 6.

MAREC submitted that the best path forward for the Company to achieve a prudent mix of renewables at the lowest costs to consumers is to establish a stakeholder working group at the conclusion of this case to bring a proposal forward to the Commission for its review. MAREC asserted that Duquesne Light should be required to work with stakeholders to design a prudent mix that allows consumers to receive the benefits of long-term renewables contracts. MAREC M.B. at 12; MAREC R.B. at 8.

## **OCA**

While the OCA did not oppose the Company's proposed long-term Solar PPA, it argued, however, that the Company should provide a long-term projection of future prices to justify the approval of the actual contract by the Commission. The OCA contended that Duquesne Light should demonstrate that any such long-term contract is expected to be at least revenue-neutral over its term. OCA M.B. at 3-7.

## **2. Recommended Decision**

The ALJ concluded that Duquesne Light justified the solicitation of a seven MW long-term Solar PPA for development in Pennsylvania, preferably in the Company's service territory. Duquesne Light's proposed seven MW Solar PPA provides a prudent amendment to past supply mixes approved by the Commission for the Company. R.D. at 47 (citing Duquesne Light St. 1 at 14-15 and Duquesne Light St. 3-R at 13-14). Regarding the OCA's recommendation, the ALJ stated there is no need for a long-term projection of future prices to justify the approval of the actual contract by the Commission. Rather, the ALJ agreed with Duquesne Light that projecting long-term prices is speculative and without purpose in evaluating whether to proceed with a long-term contract. The ALJ recommended that the Commission approve the

Company's proposal, as part of the DSP IX procurement plan, subject to its actual review of the contract with the selected project sponsor. R.D. at 47.

The ALJ noted that Duquesne Light provided evidence and detailed explanations of how its DSP meets the statutory prudent mix standard. This evidence explains how the mix of contracts, which also includes products and terms previously employed and approved by the Commission, is designed to ensure least cost over time, taking into account the benefits of price stability and including prudent steps to obtain least cost generation supplies. The ALJ further noted that Duquesne Light also supplied an extensive quantitative analysis regarding price stability benefits of the supply products in the plan and explained how it considered Commission guidance on the prudent mix to be employed. *Id.* In addition, the ALJ observed that, except with respect to MAREC's and the EGS Parties' specific concerns related to the Solar PPA, no party objected to the prudence of Company's proposed contract mix, as memorialized in the Partial Settlement. *Id.* (citing Duquesne Light St. 3 at 10-13 and 21-25; Duquesne Light St. 3-R at 30-31; Duquesne Light R.B. at 7-8).

Taking each objecting party's arguments in turn, the ALJ considered first, MAREC's proposal to employ an "all-resource Request for Proposals followed by Integrated Resource Modelling to determine the least-cost mix of resources that meet the Company's other requirements including its AECs obligation." R.D. at 48 (citing MAREC M.B. at 5). The ALJ concluded that MAREC's proposal does not address requirements for Commission approval in its presentation. According to the ALJ, MAREC's recommendation is vague and lacks the necessary specificity for it to be actionable or to address issues it may entail. The ALJ noted that, for example, MAREC failed to address the RFP design, the types of eligible resources, the products that would be solicited, the contract terms, the basis for selection of the winning bidders, how definitional differences between the different types of products would be considered, or how the process would be designed and implemented before the start of DSP IX on

June 1, 2021. R.D. at 48 (citing Duquesne Light St. 3-R at 28-30; Duquesne Light St. 3-RJ at 1-3; Duquesne Light R.B. at 8). The ALJ found that the evidence presented by MAREC in this proceeding does not justify a change in the DSP proposed by Duquesne Light. R.D. at 48.

The ALJ also recognized that, while MAREC proposed a collaboration on long-term contracts with a possibility for requesting to reopen this DSP IX proceeding to change the plan, there is no basis to believe that further consideration of additional long-term renewable contracts would provide a basis for reconsideration of the supply mix ultimately approved by the Commission in this case. *Id.*

Turning next to the arguments presented by the EGS Parties, the ALJ noted that the Company is proposing to acquire a long-term contract for about half of its default service solar AEC requirements and is not offering a solar rate or product. Therefore, the ALJ concluded that the issue is only whether a long-term Solar PPA is an appropriate component of a prudent mix strategy for default service customers. The ALJ observed that the only argument the EGS Parties made in this regard is that the price under the PPA may deviate from the market in some future years. The ALJ agreed with Duquesne Light that, if this were a basis for objecting, then all long-term contracts should be prohibited. Notably, however, the Competition Act specifically permits long-term contracts of between four to twenty years. R.D. at 48 (citing 66 Pa.C.S. § 2807(e)(3.2); Duquesne Light R.B. at 10-11).

Next addressing the EGS Parties' argument that the sale of the energy from the solar facility places the Company back in the generation business, the ALJ explained that the critical requirement under the AEPS Act is for the EDC to obtain requisite AECs. The ALJ noted that Duquesne Light's procurement of a seven MW long-term solar contract is expected to secure slightly more than 50% of the required solar AECs on a long-term basis. Further, the Company proposes to sell this energy into the market, and

credit the sales revenue to the default service reconciliation. R.D. at 49 (citing 73 P.S. §1648.1 *et. seq.*; Duquesne Light R.B. at 11).

The ALJ agreed with Duquesne Light that, contrary to the EGS Parties' contention, the sale of this energy does not put the Company back in the generation business. The Company will not own the solar generating facility; instead, the working of the Solar PPA would simply be a process to balance supply and demand and obtain for default service customers additional value from the Solar PPA. The ALJ noted that the Commission has previously permitted a Default Service Supplier to sell excess energy into the market when default service supply purchased under a block product exceeded the demands of default service customers. R.D. at 49. Thus, the ALJ found that an EDC's sale of excess energy that was purchased to serve default service load is not prohibited by the Competition Act, as contended by the EGS Parties. *Id.* (citing *Petition of PECO Energy for Approval of Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered April 16, 2009), at 6-7, 9; Duquesne Light R.B. at 11).

The ALJ found important that, in its last DSP proceeding, DSP VIII, Duquesne Light sought a PPA to purchase only solar AECs. The Company found that solar developers were not interested in disaggregating the credits from the energy supply. Thus, the ALJ explained, the proposed long-term Solar PPA in this case is designed to resolve that problem and provide long-term solar AECs required by the Competition Act for default service customers. R.D. at 49 (citing Duquesne Light St. 1 at 16; Duquesne Light R.B. at 12).

Next, addressing the EGS Parties' contention that capacity from the Solar PPA, if sold into PJM would potentially make Duquesne Light subject to FERC's proposed MOPR, the ALJ found this concern to be meritless. The ALJ noted that the Company responded that it is not committed to acquiring capacity, and further that it



would not enter into the Solar PPA, or acquire or sell capacity, if doing so would invoke such rule as ultimately adopted by FERC. R.D. at 50 (citing Duquesne Light St. 1-RJ at 2; Duquesne Light R.B. at 12).

The ALJ also rejected the EGS Parties' argument that the long-term contract could outlive the proposed and even subsequent default service plans, presenting the possibility that Duquesne Light could no longer be the default service provider and the costs of such a contract could become stranded or be used as an excuse why a new default service provider should not be approved. R.D. at 50 (citing EGS Parties M.B. at 5). The ALJ found merit in the OCA's procurement witness Dr. Serhan Ogur's explanation that the contractual obligations could be transferred to a new default service provider if one were to be approved, and that Pennsylvania EDCs as default service providers routinely enter into power supply contracts (which are approved by the Commission) that extend beyond the end date of the default service plan period to mitigate price shock risk at the start of a new default service plan period. R.D. at 50 (citing OCA St. 1-R at 8-9; Duquesne Light R.B. at 12-13).

The ALJ dismissed the EGS Parties' contention that a seven MW solar contract could crowd out other solar contracts in the PJM market as without evidentiary support in the record. R.D. at 5 (citing EGS Parties M.B. at 6). The ALJ emphasized evidence presented by the OCA's procurement witness, Dr. Ogur, that posited that such a result is highly unlikely given the over 269 solar projects in the PJM interconnection queue, representing more than 9,000 MW. R.D. at 50 (citing OCA St. 1-R at 9). The ALJ also found persuasive the fact that the EGS Parties' witness Mr. Kallaher admitted in discovery that he was not aware of any specific potential solar projects that might be displaced by the Company's proposed solar PPA. R.D. at 50 (citing Duquesne Light St. 1-R at 3-4; Duquesne Light R.B. at 13). Finally, the ALJ determined that the EGS Parties' argument that the solar PPA is a direct assault on efforts to enact Community

Solar initiatives was not supported by any evidence from the EGS Parties. R.D. at 51 (citing EGS Parties M.B. at 6).

To summarize, the ALJ determined that Duquesne Light had provided adequate explanations of how its DSP meets the prudent mix standard in the Code. This evidence explains how the mix of contracts, which also includes products and terms previously employed and approved by the Commission, is designed to ensure least cost over time, taking into account the benefits of price stability and including prudent steps to obtain least cost generation supplies. The ALJ also found that Duquesne Light supplied an extensive quantitative analysis regarding price stability benefits of the supply products in the plan. The Company also explained how it considered Commission guidance on the prudent mix to be employed. Except with respect to MAREC's and the EGS Parties' specific concerns related to the solar PPA, no party objected to the prudence of the Company's proposed contract mix, which is accordingly memorialized in the Partial Settlement. R.D. at 51 (citing Duquesne Light St. 3 at 10-13; Duquesne Light St. 3-R at 30-31; Duquesne Light R.B. at 7-8). The ALJ concluded that the arguments of MAREC and the EGS Parties opposing the Solar PPA as part of the prudent mix in this DSP IX proceeding were not persuasive. R.D. at 51.

### **3. Exceptions and Replies**

#### **a. EGS Parties Exception No. 3 and Replies**

In their Exception No. 3, the EGS Parties plainly focus their objections on issues that would, in their view, impact them as competitors in the marketplace, would harm competition or alternatively, would create structures that would make competition more challenging in the future. The EGS Parties identify Duquesne Light as their primary competitor and cast the Company as becoming a promoter of the solar energy market through the Solar PPA proposal. EGS Parties Exc. at 1. The EGS Parties claim

that the Recommended Decision errs by adopting the positions and reasoning of the Company in proposing the long-term Solar PPA, without fairly considering the arguments of the opposing parties. EGS Parties Exc. at 4. The EGS Parties point to their testimony detailing alleged harm that would result from the approval of the proposed solar PPA. EGS Parties St. 1 at 22-24; EGS Parties Exc. at 4. The EGS Parties assert that they have serious concerns that a “utility ratepayer funded, long-term contract supported” solar project will crowd out competitive projects in the marketplace and put suppliers at a disadvantage for capital and eventually in the market for such projects. The EGS Parties also contend that ratepayer funding creates a lower risk profile for investors that drives such decisions. In addition, this type of project also is a direct assault on current efforts to enact Community Solar initiatives that provide ownership opportunities in solar projects for even very small investors. *Id.* The EGS Parties repeat their claim that Community Solar democratizes energy production, while Duquesne’s long-term solar PPA proposal will provide fodder for those who say we do not need that; the utility already provides it. In short, the EGS Parties claim that there is no legal basis on which to approve the proposed Solar PPA Project, and there are multiple policy reasons to reject it. EGS Parties St. 1 at 22-25; EGS Parties Exc. at 4.

The EGS Parties contend that, perhaps the most serious concern is that the solar PPA would put Duquesne Light into the business of buying and selling electricity – on behalf of – default service customers. In particular, the plan to sell the energy into the wholesale market as a means of “offsetting” default service costs, goes well beyond what is authorized in Section 2807(e)(3.1), *et seq.* As discussed by the EGS Parties’ witness Kallaher, if Duquesne Light wanted to invest shareholder money into adventures in solar energy production and procurement, and to sell AECs, and even energy, apart from the default service procurement, that could be permitted. EGS Parties St. 1 at 24-25, 66 Pa. C.S. § 2807(e)(3.5). However, the EGS Parties contend that there is nothing in the Code that would allow a default service provider to engage in a purchase and subsequent sale into the wholesale electricity market, at unknown terms and conditions, where the

ratepayers are ultimately on the hook for any losses. 66 Pa. C.S. § 2801, *et seq.* The EGS Parties claim that the Recommended Decision glossed over the requirement that such a contract will be “least cost over time” when Duquesne Light does not even have a contract. EGS Parties St. 1 at 24-25; EGS Parties Exc. at 5.

The EGS Parties submit that, if Duquesne Light desires to purchase SAECs via a long-term contract to satisfy its AEP needs, that is clearly allowed. But putting its customers at risk for its purchase and re-sale of energy “on their behalf” over that same long period should not be permitted. EGS Parties Exc. at 5.

### **Duquesne Light Replies**

In response to the EGS Parties’ Exceptions, Duquesne Light notes that the EGS Parties’ basic contention is that a solar PPA will somehow interfere with products the EGS Parties offer to retail customers. EGS Parties Exceptions at 4; Duquesne Light R. Exc. at 4. However, as the ALJ recognized, Duquesne Light would be procuring some of its solar requirements for default service customers through a long-term contract instead of as it does currently from wholesale suppliers who provide all requirements, including solar requirements. Duquesne Light R. Exc. at 4.

The Company submits that the EGS Parties also contend, without record evidence or any citation to pending legislation, that the Solar PPA could crowd out community solar projects under a hypothetical future statutory regime. This is speculative; there is no basis in the record to conclude that acquiring a long-term contract to meet a portion of solar requirements of default service customers would interfere with potential future community solar legislation. Duquesne Light R. Exc. at 5.

The Company argues that the ALJ also properly rejected the EGS Parties’ unsupported contention that a solar PPA would interfere with solar development in PJM,

citing the OCA's witness' testimony on the PJM market. Duquesne Light R. Exc. at 5. The EGS Parties also reiterate their contention that the Company's sale of energy from the solar contract into the market, for the convenience of managing load, would violate a prohibition concerning ownership of generation. The Company submits that the ALJ considered and properly rejected this argument. Duquesne Light R. Exc. at 5. The Company points out that the EGS Parties do not acknowledge, much less rebut, prior instances in which the Commission has authorized default service providers to sell excess energy into the market for purposes of managing load. *Id.*

Finally, in response to the EGS Parties' contention that it would be acceptable for the Company to enter into a long-term contract for solar credits, the Company replies that the ALJ correctly recognized the evidence of record that the Company had tried this and had not been able to obtain a competitive contract that was solely for solar AECs. R.D. at 49; Duquesne Light R. Exc. at 6. According to the Company, the broader long-term Solar PPA proposed here is the next logical step in the process, as appropriately recognized by the ALJ. *Id.*

The Company submits that for these reasons, the ALJ properly rejected the EGS Parties' objections to the Solar PPA, which supplies a mechanism to add a market-based (7 MW) long-term contract to the already previously approved and successful DSP VIII procurement plan. Duquesne Light R. Exc. at 7.

## OCA Replies

The OCA responds to the Exceptions of the EGS Parties, urging the Commission to adopt the Recommended Decision as rendered by the ALJ without modification. OCA R. Exc. at 1-2. The OCA notes that the EGS Parties contend that “there is no legal basis on which to approve the proposed Solar PPA project.” EGS Parties Exc. at 4. Yet, as Duquesne Light explains in its Main Brief, the Company is proposing to enter into the long-term Solar PPA, which is one of the types of contracts that can be used to satisfy the “prudent mix” requirements of Act 129. Duquesne M.B. at 25 (citing § 2807(e)(3.2) of the Code). The OCA notes that Code section requires default service providers to enter into a prudent mix of contracts, including spot market purchases, short-term contracts, and long-term contracts. In pursuing a long-term power purchase agreement with a solar power facility, the OCA contends that Duquesne Light is acting well within its rights, and indeed its obligations, under the Code.

The OCA also responds to the EGS Parties’ argument that the most serious concern with the Solar PPA is that it would put Duquesne Light into the business of buying and selling electricity on behalf of default service customers. EGS Parties Exc. at 5. This is because in addition to purchasing the solar facility’s AECs, Duquesne Light also proposes to purchase the facility’s energy and to resell that energy into the PJM wholesale market. Revenue from the resale of the energy is to be credited to default service customers. The EGS Parties maintain that the plan to sell energy into the wholesale market goes well beyond what is authorized in Section 2807(e) of the Code. OCA R. Exc. at 2-4.

The OCA submits that the Recommended Decision appropriately rejects the concerns of the EGS Parties in stating that the resale of the solar facility energy does not put Duquesne Light in the generation business. The Company will not own the solar facility, but rather it will contract with the facility for its AECs and energy. Notably,

bilateral contracts are an authorized procurement method under Section 2807(e)(3.1), 66 Pa. C.S. § 2807(e)(3.1). The OCA points out that the Recommended Decision notes that the resale of the energy is “simply a process to balance supply and demand and obtain for default service customers additional value from the solar PPA.” R.D. at 49, OCA R. Exc. at 3. The OCA stated that it is also important to note that Duquesne Light has explained its rationale for reselling the solar energy. The Company states that reselling the energy will avoid interfering with the load following fixed price wholesale contracts it relies upon to provide default service energy requirements. Without reselling the solar energy, the prices of the wholesale contracts could increase due to uncertainty over how much energy the solar facility will produce. Duquesne Light R.B. at 11; OCA R. Exc. at 3-4.

The OCA argues that Duquesne Light has appropriately noted that the Commission has previously authorized a Default Service Supplier to sell excess energy into the market when default service supply purchased under a block product exceeded the demands of default service customers. *Petition of PECO Energy for Approval of Default Service Program and Rate Mitigation Plan (PECO Energy 2009 Order)*, Docket No. P-2008-2062739 (Order entered April 16, 2009) at 6-7 and 9. OCA R. Exc. at 2-3.

Finally, with regard to the purchase of energy from the proposed solar facility, the OCA stresses that it is important to remember that the Commission approved a PPA for the purchase of solar AECs in Duquesne Light’s DSP VIII proceeding. As explained by Duquesne Light and the ALJ, that PPA never came to fruition because solar developers were not interested in separating the AECs from the energy supply. Duquesne Light St. 1 at 16; Duquesne Light R.B. at 12; and R.D. at 49. As a result of this experience, Duquesne Light proposed in DSP IX to purchase both AECs and energy under a Solar PPA.

The OCA submits that Duquesne Light's proposed Solar PPA establishes reasonable long-term contracts permitted by law, does not return the Company to the generation business, and as proposed, is reasonably structured. The Commission has previously permitted the sale of excess default service energy, and the DSP IX Solar PPA is designed to complete a proposal that the Commission approved in DSP VIII. For all of these reasons, the OCA argues that the Company's Solar PPA proposal should be approved as recommended by the ALJ and the EGS Parties' Exception should be denied. OCA R. Exc. at 3-4 and 6.

**b. MAREC Exception Nos. 1, 2, and 3, and Replies**

MAREC states that it continues to believe that long-term renewable contracts benefit consumers by providing price stability, incentives to renewable development, lower renewable energy certificate prices, lower energy costs, economic development, and reduced pollution. MAREC agrees with the ALJ's characterization of MAREC's position with regard to the path forward, that being the establishment of a stakeholder working group on a prudent mix, including renewables contracts. MAREC claims that the Recommended Decision errs by failing to order same. MAREC Exc. at 1-2.

MAREC claims that the Recommended Decision ignores the Commission's directive with respect to contracts in the *January 23, 2020 Secretarial Letter*, where the Commission referenced MAREC's Comments concerning long-term contracts for renewables, agreed on the importance of this issue, and requested EDCs to address this procurement mechanism in their DSP proposals.

The Commission's directive in this regard was quite clear:

Concerning procurement and long-term contracts, the Commission agrees that long-term contracts need to be carefully considered and that we need



to consider this topic further in upcoming DSP proceedings. We request that the EDCs include in their filings evidence showing how its DSP proposal complies with the prudent mix requirements of the Public Utility Code [Act 129] and case law.

*January 23, 2020 Secretarial Letter at 8.*

MAREC claims that the record in this proceeding, as it stands now, does not support Duquesne Light's contention that its plan achieves a prudent mix of contracts for its DSP and that this mix is "the least cost to customers over time." MAREC Exc. at 2-3.

MAREC notes that the Recommended Decision refers to MAREC's proposal to employ an all-resource Request for Proposals followed by Integrated Resource Modelling to determine the least-cost mix of resources that meet the Company's other requirements, including its AECs obligation, but concludes that MAREC's recommendation is vague and lacks the necessary specificity for it to be actionable. MAREC claims that the Recommended Decision overlooks the fact that a stakeholder group would resolve any specificity and vagueness issues, including the requirements for Commission approval. MAREC Exc. at 3.

MAREC argues that, while the Recommended Decision briefly considers MAREC's proposal for a collaboration on long-term contracts and the possible reopening of this DSP IX proceeding to change the plan, contrary to the Recommended Decision's conclusion, additional long-term renewable contracts could provide a basis for reconsideration of the supply mix ultimately approved by the Commission in this case. MAREC submits that this would be a subject for the stakeholder group. MAREC Exc. at 3-4.

For all of these reasons, MAREC submits that its Exceptions should be granted, and Duquesne should be required to work with stakeholders to design a prudent mix that allows consumers to receive the benefits of long-term contracts for renewables. MAREC asserts that the Commission could determine to amend DSP IX to include the proposal that would take effect after year one or two of Duquesne's DSP IX. MAREC offers that, in the event that a stakeholder disagrees with the outcome of the working group's efforts, it should be permitted to file a Petition with the Commission to contest the proposal or to request consideration of its own proposal. MAREC Exc. at 4.

### **Duquesne Light Replies**

In its Replies to Exceptions, Duquesne Light asserts that the Recommended Decision is well-reasoned and supported by applicable law and the record evidence in this proceeding. Duquesne Light submits that, therefore, the Exceptions of MAREC and the EGS Parties should be rejected and the Recommended Decision should be approved by the Commission. Duquesne Light R. Exc. at 1.

Duquesne Light reiterates that it proposes to solicit bids for a long-term (four-twenty years) Solar PPA to meet a portion of the Solar AEPS Act requirements of its default service customers. Duquesne Light M.B. at 24-26; 66 Pa. C.S. § 2807(e)(3.2); Duquesne Light R. Exc. at 1. Under the currently-effective DSP VIII procurement plan, wholesale suppliers under fixed price contracts provide all of this requirement to Duquesne Light for its default service customers. Duquesne Light St. 2 at 5. The Solar PPA would provide about half of the solar requirement for default service customers. Duquesne Light M.B. at 30.

Duquesne Light explains that MAREC continues to contend that Duquesne Light should be using more long-term renewable contracts in its proposed DSP IX procurement plan and that the plan, including the Solar PPA, does not meet the prudent

mix standard of Act 129. In contrast, the EGS Parties contend that no long-term solar PPA should be approved. The Company submits that the ALJ properly rejected both MAREC's and the EGS Parties' objections. Duquesne Light R. Exc. at 2-4; R.D. at 51.

The Company notes that in its four separate Exceptions, MAREC advances reasons why a stakeholder group should be mandated to reconsider the procurement plan for DSP IX and to adopt more long-term contracts for renewable generation than proposed by the Company. Duquesne Light R. Exc. at 3. The Company submits that the primary purpose of this proceeding was to establish the DSP IX procurement plan. MAREC had a full and fair opportunity to advance and justify its proposed long-term renewable procurements, but failed to advance any specific proposal, offering only its vague and undefined proposal that the Company should employ an "all-resource request for proposals followed by Integrated Resource Modelling to determine the procurement plan." MAREC Exceptions at 3; R.D. at 45; Duquesne Light R. Exc. at 3. The Company argues that the ALJ, relying on Duquesne Light's expert testimony, correctly concluded that MAREC had an opportunity to present a detailed proposal, but did not. Duquesne Light R. Exc. at 3. Duquesne Light avers that the ALJ correctly concluded that MAREC did not present sufficient evidence to justify its proposed development of an alternative procurement plan for the Company's DSP IX. Further, Duquesne Light argues that the ALJ correctly concluded that there is no basis to give MAREC a second chance to do that in a subsequent stakeholder process. Duquesne Light R. Exc. at 3.

Duquesne Light submits that MAREC's statement in its Exceptions that the Recommended Decision ignores the Commission's directive with respect to long-term contracts is neither fair to the ALJ nor reasonable. MAREC Exceptions at 2; Duquesne Light R. Exc. at 3. Basically, it is uncontested that the Commission directed consideration of long-term contracts in the EDCs' individual DSP proceedings. R.D. at 47. The Company claims that it was responsive to the Commission's directive by proposing a long-term Solar PPA, which most other parties either support or do not

oppose. Duquesne Light states that it has considered the matter and has produced a constructive solution. Duquesne Light R. Exc. at 3.

Finally, Duquesne Light submits that the ALJ appropriately rejected MAREC's claim that the record in this proceeding does not support a conclusion that the Company's plan achieves a prudent mix of contracts for DSP IX. MAREC Exc. at 3, Duquesne Light R. Exc. at 3-4. The Company submits that competent evidence of record supports a contrary conclusion. *Id.* For these reasons, MAREC's Exceptions should be rejected and the ALJ's well-reasoned Recommended Decision should be adopted. Duquesne Light R. Exc. at 4.

#### **4. Disposition**

Based on our review of the record and the applicable law, we shall deny the Exceptions of the EGS Parties and MAREC and adopt the ALJ's well-reasoned recommendation on the Solar PPA issue.

We begin by noting that all of Duquesne Light's default service supplies will be procured through competitive procurement processes. Duquesne Light is proposing a prudent mix of contracts for customers that will provide least cost to customers over time, while taking into account the benefits of price stability for customers. Accordingly, we find that Duquesne Light's proposal is consistent with the Competition Act, which provides that the Default Service provider follow a Commission-approved competitive procurement plan; that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements; and that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. §§ 2807(e)(3.1), (e)(3.2), (e)(3.4), (f)(5).

As the ALJ noted, there is no need for a long-term projection of future prices to justify the approval of the actual contract by the Commission. Thus, we shall reject the OCA's recommendation regarding the same. The ALJ appropriately concluded that projecting long-term prices is speculative and without purpose in evaluating whether to proceed with a long-term contract. We approve the Company's proposal, as part of the DSP IX procurement plan, subject to review of the contract with the selected project sponsor.

Duquesne Light provided explanations of how its DSP meets the prudent mix standard set forth in the Competition Act. This evidence explains how the mix of contracts, which also includes products and terms previously employed and approved by the Commission, is designed to ensure least cost over time, taking into account the benefits of price stability and including prudent steps to obtain least cost generation supplies. As noted by the ALJ, Duquesne Light also supplied an extensive quantitative analysis regarding price stability benefits of the supply products in the plan. The Company also explained how it considered Commission guidance on the prudent mix to be employed. In addition, except with respect to MAREC's and the EGS Parties' specific concerns related to the Solar PPA, no Party in this proceeding objected to the prudence of the Company's proposed contract mix, which is accordingly memorialized in the Partial Settlement.

Duquesne Light proposed its long-term Solar PPA, in part, in response to the Commission's guidance. It is important to examine the Solar PPA in the context of the DSP Plan. The Company here is proposing to acquire a long-term contract for about half of its default service solar AEC requirements. As noted by the ALJ, the Company is not offering a solar rate or product. R.D. at 48. The critical issue at hand is only whether this long-term Solar PPA is an appropriate component of the Company's prudent mix strategy for default service customers. As noted by the ALJ, the only argument the EGS Parties make in this regard is that the price under the Solar PPA may deviate from the

market in some future years. Given that Act 129 specifically contemplates contracts as long as twenty years, this argument does not hold up well. We agree with Duquesne Light that if price variability were a valid basis for objecting, then all long-term contracts should be prohibited. Such is not the case under the Code.

We also agree with the ALJ that the Company's proposal to sell the excess energy procured under the Solar PPA from the solar facility does not place the Company back in the generation business. Thus, we shall reject the EGS Parties' contention regarding the same. The Company will not own the solar generating facility; instead, as the purchaser in the Solar PPA, Duquesne Light will procure both energy and solar AECs from the seller – that is, the developer who owns the solar facility – to meet the demand levels of its default service customer. Should the energy procured under the Solar PPA exceed the demands of its default service customers, the Company proposes to sell the excess energy into the wholesale market. By selling any excess energy, the Company is simply seeking to employ a process to balance supply and demand and obtain for default service customers additional value from the Solar PPA. Notably, the Commission previously has permitted a Default Service Supplier to sell excess energy into the market when default service supply purchased under a block product exceeded the demands of default service customers. *PECO Energy 2009 Order* at 6-7, 9; Duquesne Light R.B. at 11. Thus, an EDC's sale of excess energy that was purchased to serve default service load is not prohibited by the Competition Act, as contended by the EGS Parties.

The ALJ observed that the critical requirement under the AEPS Act is for the EDC to obtain requisite AECs. Duquesne Light's plan here to procure a seven MW long-term solar contract is expected to secure slightly more than 50% of the required solar AECs on a long-term basis to achieve the desired result. As aptly noted by the ALJ, in its last DSP proceeding, DSP VIII, Duquesne Light sought a PPA to purchase only SAECs. Unfortunately, it found that solar developers were not interested in disaggregating the credits from the energy supply. The proposed Solar PPA in this case

is therefore designed to resolve that problem and provide long-term solar AECs required by the Competition Act for default service customers. R.D. at 49.

The EGS Parties also contend that capacity from the Solar PPA if sold into PJM would potentially make Duquesne Light subject to FERC's proposed MOPR. The Company has indicated that it is not committed to acquiring capacity and it would not enter into a solar PPA, or acquire or sell capacity, if doing so would subject it to the rule ultimately adopted. Nevertheless, we shall not speculate here about an as-yet unconcluded proceeding or base our decision on conjecture. *See* R.D. at 49-50.

The EGS Parties further contend that the long-term contract could outlive the Company's DSP IX and even subsequent default service plans, presenting the possibility that Duquesne Light could no longer be the default service provider. The EGS Parties posit that the costs of such a contract could become stranded or be used as an excuse why a new default service provider should not be approved. We agree with the ALJ that the OCA's procurement witness Dr. Ogur has the better of the argument when he observes that the contractual obligations could be transferred to a new default service provider if one were to be approved, and Pennsylvania EDCs as default service providers routinely enter into power supply contracts (which are approved by the Commission) that extend beyond the end date of the default service plan period to mitigate price shock risk at the start of a new default service plan period. R.D. at 50.

The EGS Parties also contend unconvincingly that a seven MW solar contract could crowd out other solar contracts in the PJM market. The record is clear that with over 269 solar projects in the PJM interconnection queue, representing more than 9,000 MW, it is not likely that this contract will have a measurably deleterious impact. Moreover, as emphasized by the ALJ, the EGS Parties' witness Mr. Kallaher admitted in discovery that he was not aware of any specific potential solar projects that might be displaced by the Company's proposed Solar PPA. Duquesne Light St. 1-R at 3-4;

Duquesne Light R.B. at 13; R.D. at 50. The EGS Parties also argue that the Solar PPA is a direct assault on efforts to enact Community Solar initiatives. There is no record support for this contention, and we reject it as specious. R.D. at 51.

With regard to MAREC's proposal to employ an "all-resource Request for Proposals followed by Integrated Resource Modelling to determine the least-cost mix of resources that meet the Company's other requirements including its AECs obligation", we determine that, not only does it not address requirements for Commission approval in its presentation, it is also vague and lacks the necessary specificity for it to be adopted. R.D. at 48. MAREC's offering is devoid of crucial details, such as the RFP design, the types of eligible resources, the products that would be solicited, the contract terms, the basis for selection of the winning bidders, how definitional differences between the different types of products would be considered, or how the process would be designed and implemented before the start of DSP IX on June 1, 2021. R.D. at 48. We agree with the ALJ's assessment that the evidence presented by MAREC in this proceeding does not justify a change in the DSP proposed by Duquesne Light.

In addition, MAREC continues to propose a collaboration on long-term contracts with a possibility for requesting to reopen this DSP IX proceeding to change the plan. We must conclude, as did the ALJ, that there is no basis to believe that further consideration of additional long-term renewable contracts would provide a basis for reconsideration of the supply mix ultimately approved by the Commission in this case. *See* R.D. at 48. There is no need to conduct a collaborative before going forward with the Solar PPA proposal. As explained by Mr. Davis, before executing the Solar PPA, the Company will provide the Solar PPA to the Commission for review and approval. If the Commission determines that the Solar PPA is not consistent with the approvals in this



Opinion and Order or otherwise not in the public interest at that time,<sup>6</sup> it can deny the Solar PPA.

In summary, the central question here is whether Duquesne Light has demonstrated with substantial evidence, not sufficiently rebutted by other parties, that a prudent mix of supplies includes it undertaking the proposed seven MW, long-term Solar PPA. We conclude that Duquesne Light has met its burden of proof by demonstrating with substantial evidence that its DSP IX supply portfolio meets the “prudent mix” standard under Section 2807(e)(3.2)(iii), by proposing a combination of spot purchases, short, and long-term contracts, including its Solar PPA proposal.

We find instructive *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (*2011 Default Service Order*) where we discussed at length the EDC’s obligation under the prudent mix standard and the issue of long-term contracts as part of the supply mix. The Commission elaborated as follows on this issue in the *2011 Default Service Order* by stating:

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

---

<sup>6</sup> We note here that while the Company submitted details about its solar project proposal in the Direct Testimony of C. James Davis, Duquesne Light St. 1 at 13-17, it did not provide a *pro forma* or template agreement for the Solar PPA indicating the terms and conditions of the agreement.

position of USA 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.

*2011 Default Service Order* at 60.

There is no precise formula for the correct prudent mix and the policy set forth in the *2011 Default Service Order* requires that the EDC, on a case-by-case basis, show that its proposed portfolio of contracts complies with the requirements of the Code. The record in this proceeding provides substantial evidence supporting Duquesne Light’s proposal to seek a long-term Solar PPA and bring it to this Commission for review and approval. We adopt the ALJ’s well-reasoned and focused conclusions on the Solar PPA issue. The Exceptions of the EGS Parties and MAREC on the Solar PPA issue are denied.

## **D. CAP Shopping**

### **1. Positions of the Parties**

#### **Duquesne Light**

Currently, Duquesne’s CAP customers do not have the option to shop for their electricity generation supply. Pursuant to *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order (Proposed Policy Statement)*, Docket No. M-2018-3006578 (Order entered February 29, 2019) and the *January 23, 2020 Secretarial Letter*, Duquesne Light proposed a CAP shopping program based on those of the FirstEnergy Companies, at

Docket Nos. P-2017-2637855 *et. al.*<sup>7</sup> Duquesne DSP IX at ¶¶ 68, 69. Specifically, Duquesne Light proposed to allow CAP shopping with the following primary conditions:

- (1) Participating EGSs must charge CAP customers at a rate at or below the applicable residential PTC throughout the duration of the contract.
- (2) EGSs must use “rate-ready” consolidated EDC billing for all contracts with CAP customers. Any EDI transactions to enroll a CAP customer at a rate above the PTC, or into a non-rate-ready product, will be rejected.
- (3) If at any time the EGS’s rate charged to a CAP customer would exceed the Company’s applicable residential PTC, the customer would be automatically unenrolled from the EGS and returned to default service within three business days.
- (4) EGSs’ contracts with CAP customers also may not include early cancellation or termination fees, or fees for anything unrelated to electric supply service.
- (5) At the expiration of a CAP customer’s contract with an EGS, the customer may renew the contract with his or her existing EGS at a new Program-compliant rate, switch to another supplier offering a Program-compliant rate, or return to default service.
- (6) Where an EGS seeks to enter into a new contract or revise an existing contract with a CAP customer, it must comply with the Commission’s notice regulations at 52 Pa. Code § 54.10.
- (7) Where an EGS elects to return a CAP customer to default service upon contract expiration or cancellation, the contract cancellation and notice provisions described in the EGS’s disclosure statement will apply.

---

<sup>7</sup> *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket No. P-2017-2637855 (Order entered February 28, 2019).

(8) If the EGS disclosure does not address cancellation and notices, the EGS must provide at least one notice fifteen days in advance of discontinuing service to the customer.

Duquesne Light DSP IX at ¶¶ 69, 70; Duquesne Light St. 5 at 14; Duquesne Light M.B. at 42.

Duquesne Light stated that implementing CAP shopping would require modifications to the Company's billing system that would cost approximately \$160,000. Duquesne Light DSP IX at ¶ 71. The Company proposed to recover the capital portion of these costs, approximately \$120,000, through base rates and the expense portion through the Universal Service Charge. Duquesne Light St. 5 at 18-19; Duquesne Light M.B. at 42-43. Additionally, in order to avoid unnecessary costs, the Company proposed to only implement the CAP Shopping Program upon receipt of CAP Notice Affidavit from five EGSs indicating their interest (not obligation) to market to and enroll CAP customers. Duquesne Light DSP IX at ¶ 71; Duquesne Light M.B. at 43.

### **OCA**

The OCA supported the CAP Shopping program Duquesne Light proposed, but provided some suggestions for improvements to the implementation of the program. These suggestions concerned educational materials for the CAP customers; revisions to the CAP Shopping Program if the number of participating suppliers drops below five over a period of time; and recovering implementation costs for the program from EGSs as a way of testing the EGSs' commitments to participate in the program. OCA St. 2 at 19-20.

The OCA also supported the CAP Shopping Stipulation as an exercise in administrative economy. The OCA recognized that litigation on the proposal would inevitably lead to litigation of the same issues litigated in *Petition of PPL Electric*

*Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Order entered December 17, 2020) (*PPL DSP Proceeding*), and found it would be better to have the benefit of the Commission's decision in the *PPL DSP Proceeding* before reaching a conclusion on Duquesne Light's CAP shopping proposal. The OCA also argued that the CAP Shopping Stipulation is superior to the EGS Parties' proposals because those proposals do not adequately protect the vulnerable population of CAP customers. OCA M.B. at 18.

### **CAUSE-PA**

CAUSE-PA stated that the CAP customers in Duquesne Light's territory are currently protected from excessive prices in the competitive market and this status quo must continue. CAUSE-PA emphasized the consistent pattern of excessive supplier pricing for residential and confirmed low-income customers. CAUSE-PA M.B. at 9; CAUSE-PA St. 1 at 7-20; CAUSE-PA Exhs. 1, 2. CAUSE-PA believed that the CAP customers will routinely exceed the PTC if allowed to shop for electric service in the competitive market. CAUSE-PA M.B. at 9; CAUSE-PA St. 1 at 44. CAUSE-PA explained that when a CAP customer exceeds the PTC, the cost of CAP is also increased, and such increase is shouldered by other residential ratepayers that subsidize the program. CAUSE-PA M.B. at 21. CAUSE-PA expressed further concern that even carefully crafted shopping restrictions in the PPL Electric Utilities Corporation (PPL Electric) and FirstEnergy service territories have not succeeded in preventing excessive CAP shopping prices that exceed the PTC due to holdover contracts for customers that were already shopping and had a contract with an EGS when they entered CAP. CAUSE-PA M.B. at 25; CAUSE-PA St. 1 at 46-48. CAUSE-PA asserted that the only reasonable option on the record that is capable of preventing harm to low-income customers is to maintain Duquesne Light's current prohibition on CAP shopping

pending a resolution of the CAP shopping issues in the *PPL DSP Proceeding*. CAUSE-PA M.B. at 10, 30.

### **EGS Parties**

The EGS Parties averred that Duquesne Light's CAP Shopping proposal should be approved with minor modifications. The EGS Parties stated that when a CAP customer's shopping term expires, if the customer makes no affirmative choice, then the customer should continue to be served by its existing EGS at a program-compliant price. The EGS Parties also stated that the CAP Shopping proposal be clarified to allow CAP customers to participate in the Company's SOP, provided it is a CAP-compliant product. EGS Parties St. 1 at 17-18; EGS Parties M.B. at 9-10.

## **2. CAP Shopping Stipulation**

As previously noted, on September 30, 2020, Duquesne Light, the OCA, and CAUSE-PA filed the CAP Shopping Stipulation. The Stipulation provides the following:

- a. DLC's CAP Shopping proposal is withdrawn.
- b. Within 6 months of a final, unappealable order implementing CAP Shopping in PPL Electric service territory, Duquesne will make a filing with the Commission regarding CAP shopping that is consistent with Duquesne's CAP design, and which is informed by all available information and data.

Duquesne Light M.B. at 43-44 (citing CAP Shopping Stipulation at 2).

Under the CAP Shopping Stipulation, Duquesne Light is withdrawing its proposed DSP IX CAP Shopping proposal pending the Commission's decision in the

*PPL DSP Proceeding*. Duquesne Light stated that in that proceeding, PPL Electric was proposing to eliminate its CAP shopping program for several reasons, including that newly enrolled CAP customers often have contracts that are higher than the PTC and lack of EGS participation in the program. Duquesne Light M.B. at 44.

### **3. Recommended Decision**

The ALJ determined that approval of the CAP Shopping Stipulation and Duquesne Light's withdrawal of its CAP shopping proposal was in the public interest, particularly given CAUSE-PA and the OCA's opposition to CAP shopping in this proceeding. The ALJ found it reasonable to wait for additional clarity from the Commission and/or courts before going forward with CAP shopping. R.D. at 58-59. The ALJ noted that if the Commission orders PPL Electric to continue its CAP shopping program in the *PPL DSP Proceeding*, then Duquesne Light should be directed to make a separate filing with the Commission regarding CAP shopping. *Id.* at 59.

### **4. EGS Parties Exception No. 4 and Replies**

In their Exception No. 4, the EGS Parties argue that the ALJ erred by not enforcing the rights of CAP customers to shop for electricity. EGS Parties Exc. at 5. The EGS Parties aver that one of the fundamental changes stemming from the Competition Act was that all customers gained the right to shop for electricity. *Id.* at 5 (citing 66 Pa. C.S. § 2806(a)). The EGS Parties state that Duquesne Light CAP customers are not currently permitted to shop for electricity despite the Commission's preference that they be permitted to do so. EGS Parties Exc. at 5-6 (citing *Proposed Policy Statement; January 23, 2020 Secretarial Letter*). The EGS Parties note that Duquesne Light proposed a CAP Shopping program similar to that of other public utilities; however, the Company postponed the implementation of the CAP Shopping program until after a

decision in the *PPL DSP Proceeding*. The EGS Parties assert that the issue was briefed in this case and should have been decided and not deferred. *Id.* at 6.

### **Duquesne Light Replies**

In its Replies, Duquesne Light explains that it provided a good faith proposal to expand shopping to its CAP customers, consistent with the Commission's guidelines. The Company notes that in its proposal, it expressed concern that EGSs might not make offers under the conditions the Commission established and, as a result, proposed a requirement that five EGSs commit to providing compliant offers before the Company incurred the costs necessary to operate the program. The Company also notes that during this proceeding, CAUSE-PA and the OCA expressed significant concerns, similar to the concerns expressed in the *PPL DSP Proceeding*, about documented problems associated with CAP shopping. Duquesne Light submits that because the Parties realized the Commission would consider CAP shopping issues in the *PPL DSP Proceeding* prior to reviewing Duquesne Light's DSP IX Plan, the Parties, other than the EGS Parties, entered into the CAP Shopping Stipulation. Duquesne Light R. Exc. at 5.

Duquesne Light avers that the ALJ properly recognized the judicial efficiency of this approach in recommending approval of the CAP Shopping Stipulation. Duquesne Light also disagrees with the EGS Parties' argument that the Competition Act requires the Commission to allow CAP customers to shop. The Company states that CAP customers can choose to withdraw from CAP if they wish to shop, and the Commission can set conditions for participating in CAP, consistent with *CAUSE-PA v. Pa. PUC (CAUSE-PA)*, 130 A.2d 1087 (Pa. Cmwlth. 2015). Duquesne Light R. Exc. at 5-6.



## **OCA Replies**

In its Replies to Exceptions, the OCA avers that the ALJ properly approved the CAP Shopping Stipulation that defers Duquesne Light's submission of a CAP Shopping plan. OCA R. Exc. at 4. The OCA believes that moving forward with Duquesne Light's CAP Shopping proposal would inevitably result in litigation of most of the same issues considered in the *PPL DSP Proceeding* and, accordingly, that waiting for a decision in that case is a prudent exercise in administrative economy. The OCA states that Duquesne Light will then have the benefit of the *PPL DSP Proceeding* decision to design its revised CAP Shopping plan. The OCA also states that it is reasonable to wait for additional clarity from the Commission and/or courts before proceeding with CAP Shopping in the Company's service territory. *Id.* at 5.

## **CAUSE-PA Replies**

In its Replies to the EGS Parties' Exception No. 4, CAUSE-PA states that the decision to maintain the status quo in Duquesne Light's service territory is wholly consistent with the Commission's statutory obligation to ensure that CAP is cost-effective and available to all those in need. CAUSE-PA also states that deferring CAP shopping in Duquesne Light's territory is the only option on the record that is supported by substantial and unrebutted record evidence that CAP shopping, even with carefully crafted restrictions, will result in substantial financial harm to low-income customers and other residential ratepayers. CAUSE-PA R. Exc. at 2. CAUSE-PA argues that the record here demonstrates a clear and consistent pattern of excessive supplier pricing for residential and confirmed low-income customers. *Id.* (citing CAUSE-PA St. 1 at 7-20; CAUSE-PA Exhs. 1, 2). CAUSE-PA submits that based on the record, it is likely that CAP customers will routinely exceed the price to compare if permitted to shop for

electric service in the competitive market. CAUSE-PA R. Exc. at 2 (citing CAUSE-PA St. 1 at 44).

CAUSE-PA cites to data from PPL Electric's service territory, stating that CAP customers and other residential ratepayers continue to pay millions of dollars in avoidable costs as a result of CAP shopping. CAUSE-PA R. Exc. at 2 (citing CAUSE-PA St. 1 at 46-48). CAUSE-PA states that in 2018 and 2019, after implementation of a special CAP shopping program, CAP shopping in PPL Electric's service territory cost other residential ratepayers a net of over \$7 million. *Id.* CAUSE-PA also states that since Duquesne Light's original CAP shopping proposal was withdrawn pursuant to the CAP Shopping Stipulation, the only CAP shopping proposal that remains on the record is that of the EGS Parties, which would permit CAP customers to shop at any rate after the expiration of an initial twelve-month contract. CAUSE-PA R. Exc. at 2-3. According to CAUSE-PA, approval of such a proposal would undermine enforcement and result in immediate and substantial financial harm to CAP customers and other residential ratepayers, and is wholly unsupported by the record evidence. *Id.* at 3.

CAUSE-PA avers that all of Duquesne Light's residential customers, including CAP customers, will continue to have the right to shop in the competitive market - CAP customers merely have to remove themselves from the program in order to exercise that right. *Id.* CAUSE-PA argues that such a rule does not violate the Competition Act, because the Commonwealth Court concluded that the Commission "may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits." *Id.* (citing *CAUSE-PA*, 130 A.2d 1087 at 1104). CAUSE-PA concludes that ALJ Hoyer's resolution of this complex issue which has statewide implications is prudent and avoids potentially duplicative litigation costs for the Parties, the Commission, and other ratepayers.

## 5. Disposition

Based on the record in this case, we agree with the ALJ and the Stipulating Parties that permitting Duquesne Light to defer implementation of CAP shopping until the Commission provided more guidance was reasonable. This is particularly true given the documented problems PPL Electric experienced in implementing its CAP shopping program, the financial implications for both CAP customers and non-CAP customers associated with CAP shopping, and the contested nature of CAP shopping in proceedings before the Commission. Under the circumstances, we will approve the CAP Shopping Stipulation and the withdrawal of the Company's proposed CAP Shopping program, with one modification, as discussed below. The CAP Shopping Stipulation stated as follows:

... within 6 months of a final, unappealable order implementing CAP Shopping in PPL Electric service territory, Duquesne Light will make a filing with the Commission regarding CAP shopping that is consistent with Duquesne Light's CAP design, and which is informed by all available information and data.

CAP Shopping Stipulation at 2.

In the *PPL DSP Proceeding*, the Commission approved PPL's proposal to have its CAP customers receive default service supply at the PTC. *See PPL DSP Proceeding* at 123-130. Nevertheless, PPL Electric stated in that proceeding that if the Commission issued a future order in the *Proposed Policy Statement* proceeding directing differently than what PPL Electric proposed, PPL Electric would seek to amend its DSP V regarding CAP shopping to be consistent with the Commission's guidelines. *See PPL DSP Proceeding*, PPL Electric St. 3 at 17; PPL Electric M.B. at 31, n.10; PPL Electric R.B. at 16, n.4.

Instead of relying on a final, non-appealable decision regarding CAP shopping in PPL Electric's service territory, we believe it would be more reasonable for Duquesne Light to also follow the Commission's guidance in its *Proposed Policy Statement* once it becomes final and effective, particularly since Duquesne Light's original CAP Shopping proposal in this proceeding was consistent with the guidelines in the *Proposed Policy Statement*. The Commission is currently considering comments and reply comments to the *Proposed Policy Statement*, including those Duquesne Light submitted. The Commission's guidance in the Final Policy Statement, which will be based on various stakeholders' opinions on and experiences with CAP shopping, will assist Duquesne Light in making an informed decision regarding a future CAP shopping filing. Accordingly, we will modify a portion of the CAP Shopping Stipulation to state the following:

~~... within 6 months of a final, unappealable order implementing CAP Shopping in PPL Electric service territory,~~ [after a Final Policy Statement becomes effective at Docket No. M-2018-3006578], Duquesne Light will make a filing with the Commission regarding CAP shopping that is consistent with the Commission's guidelines and Duquesne Light's CAP design, and which is informed by all available information and data.

This modification will apply provided that the Commission's final guidelines call for CAP shopping within all EDCs' service territories.

Contrary to the EGS Parties' contentions, we find that this carefully considered deferral of CAP shopping in Duquesne Light's service territory is consistent with applicable law and with the Commission's statutory obligation to ensure that CAP is cost-effective and available to all those in need. 66 Pa. C.S. § 2804(9). In the *PPL DSP Proceeding*, we concluded that the shopping restrictions in that case were consistent with the Commonwealth Court's decision in *CAUSE-PA*, as PPL Electric presented substantial evidence supporting its proposal and the harm associated with its current CAP shopping

program, while the other parties did not present reasonable alternatives to PPL Electric's proposal. *PPL DSP Proceeding* at 124-128; CAUSE-PA at 1104. Similarly, here, there is substantial evidence to support deferring CAP shopping based on the harms associated with it, including harms to the CAP customers and the non-CAP customers when the CAP customers pay more than the PTC. More specifically, when the retail generation price a CAP customer pays exceeds the PTC, the program costs of CAP are increased, and such increase is paid by other residential ratepayers that subsidize the program through distribution rates. CAUSE-PA St. 1 at 44. Additionally, there is evidence in this proceeding that even carefully crafted shopping restrictions in the PPL Electric and FirstEnergy service territories have not prevented CAP shopping prices that exceed the PTC due to holdover contracts for customers that were already shopping and had a contract with an EGS when they entered CAP. CAUSE-PA St. 1 at 46-48. None of the Parties have offered a proposed solution to this problem.

Moreover, the EGS Parties' modifications to the Company's original proposal would not be a reasonable or viable alternative based on the record. The EGS Parties did not clearly explain their recommendation that the CAP customer remain with the EGS at a "program compliant price" at the end of the CAP contract, as this offer could be the same in terms of the savings offered to the CAP customer in the original contract or it could be at a different or lower level of savings compared to the original contract. It may also be difficult for Duquesne Light to monitor pricing and supplier compliance with the CAP shopping rules in the instance of a roll-over contract. The EGS Parties' other proposal that the CAP customers participate in the SOP is not feasible for the CAP customers nor is it compliant with the CAP shopping rules, as there is no guarantee that customers will be given a price equal to or lower than the PTC during the 12-month term of the SOP contract. *See* OCA St. 2-R at 7; CAUSE-PA St. 1-R at 12.

For all of these reasons, we shall deny the EGS Parties' Exceptions and adopt the ALJ's decision to approve the CAP Shopping Stipulation, as modified in this Opinion and Order.

## **VII. Conclusion**

Based on the foregoing, we shall deny the Exceptions filed by the EGS Parties and MAREC and adopt the ALJ's Recommended Decision, as modified by this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions filed by NRG Energy, Inc., Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services LLC on November 23, 2020, are denied.
2. That the Exceptions filed by MAREC Action on November 23, 2020, are denied.
3. That the Recommended Decision of Administrative Law Judge Mark A. Hoyer, served on November 12, 2020, is adopted as modified by this Opinion and Order.
4. That the Joint Petition for Approval of Unopposed Partial Settlement filed by Duquesne Light Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Natural Resources Defense Council on October 13, 2020, is approved without modification.

5. That the Customer Assistance Program (CAP) Shopping Stipulation filed by Duquesne Light Company, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Office of Consumer Advocate on September 30, 2020, is modified consistent with this Opinion and Order.

6. That Duquesne Light Company is granted all necessary authority and approvals to procure power as set forth in its Default Service Plan, as modified by the Joint Petition for Approval of Unopposed Partial Settlement, the Electric Vehicle Time-of-Use (EV-TOU) Stipulation, and the Standard Offer Customer Referral Program (SOP) Stipulation and the CAP Shopping Stipulation, as modified in this Opinion and Order.

7. That Duquesne Light Company's Default Service Plan, as modified by the Joint Petition for Approval of Unopposed Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation, as modified in this Opinion and Order, is approved.

8. That the network integration transmission service proposal of NRG Energy, Inc., Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services LLC is denied.

9. That the proceeding at Docket No. P-2020-3019522 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: January 14, 2021

ORDER ENTERED: January 14, 2021