

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for : P-2020-3019522
Approval of Its Default Service Plan for the Period :
From June 1, 2021 through May 31, 2025 :

RECOMMENDED DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

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I. INTRODUCTION

This Recommended Decision recommends approval of Duquesne Light Company's Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation. Approval of the Partial Settlement is recommended because the Settlement meets the requirements of the Public Utility Code and the Commission regulations, is supported by substantial evidence and is in the public interest. Approval of the Company's Default Service Plan, as modified by the Partial Settlement and the Stipulations, resolves the five litigated issues in this proceeding and denies proposals made by other parties with respect to those issues.

The Public Utility Code requires the Commission to issue a final order on the plan within nine months of the date that the plan was filed, or it is deemed approved. The plan was filed on April 20, 2020 and therefore must be addressed at the public meeting on January 14, 2021 or sooner.

II. HISTORY OF THE PROCEEDING

On April 20, 2020, Duquesne Light Company (Duquesne Light or the Company) filed the above-captioned Petition with the Pennsylvania Public Utility Commission (Commission) requesting approval of a Default Service Plan for the period of June 1, 2021 through May 31, 2025 (DSP IX, Default Service Plan or Plan).

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 (C&I) customers, (3) Medium C&I customers with demands under 200 kW (Medium C&I <200kW), and (4) Medium C&I customers with demands equal to or greater than 200 kW and Large C&I customers (collectively, HPS-Eligible). Duquesne Light proposes to procure supplies for Residential and Lighting and Small C&I customers through the combination of twelve (12) and twenty-four (24) month fixed price, full requirements, laddered contracts. Duquesne Light will continue to supply Medium C&I <200kW default service customers through fixed-price full

requirements supply contracts with three-month terms from third-party suppliers with no laddering. 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 an RFP to supply HPS customers, and to preserve the demand threshold for HPS at ≥ 200 kW.

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 <200kW 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 EGSs, subject to certain protections (CAP Shopping), provided that there are sufficient EGSs that are willing to serve 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 to support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area.

On April 27, 2020, a Call-In Telephone Prehearing Conference Notice was electronically served. On April 30, 2020, the undersigned issued a Prehearing Conference Order scheduling a Telephonic Initial Prehearing Conference on June 12, 2020 at 10:00 a.m.

On April 30, 2020, Calpine Retail Holdings, LLC (Calpine) filed a Petition to Intervene.

On April 30, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a Petition to Intervene through its counsel at the Pennsylvania Utility Law Project.

On May 1, 2020, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services, LLC (collectively, EGS Parties), filed a Petition to Intervene.

On May 9, 2020, notice of the filing of the Petition and of the scheduled prehearing conference was published in the *Pennsylvania Bulletin*. 50 Pa.B. 2508.

On May 19, 2020, EGS Parties filed a Prehearing Memorandum.

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

On May 22, 2020, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Answer.

On June 2, 2020, Calpine filed a Motion for Admission *Pro Hac Vice* of James H. Laskey.

On June 3, 2020, StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania (collectively, StateWise) filed a Petition to Intervene and Motions for Admission *Pro Hac Vice* of Thomas F. Pucher and Kevin C. Blake.

On June 5, 2020, the following entities filed Petitions to Intervene: MAREC Action (MAREC); ChargePoint, Inc.; the Natural Resources Defense Council (NRDC); and Solar United Neighbors of Pennsylvania (SUN-PA). NRDC also filed an Answer on June 5, 2020.

On June 8, 2020, Calpine and CAUSE-PA each filed a Prehearing Memorandum.

On June 9, 2020, the Company filed an Answer to the Petition to Intervene of SUN-PA. Also, on June 9, 2020, the Commission's Bureau of Investigation & Enforcement (I&E) filed a Notice of Appearance and Prehearing Memorandum.

A prehearing conference was held on June 12, 2020. Duquesne Light, I&E, OCA, OSBA, CAUSE-PA, Calpine, EGS Parties, StateWise, MAREC, ChargePoint, Inc., and NRDC were represented at the conference. SUN-PA was not represented at the conference.

On June 23, 2020, a Prehearing Order was issued which, among other things, established a litigation schedule and discovery rules for the proceeding.

On July 7, 2020, an Initial Decision was issued denying the Petition to Intervene filed by SUN-PA. Duquesne Light filed a letter indicating that it was not filing exceptions to the Initial Decision on July 27, 2020. The Initial Decision became final without further Commission action by operation of law on August 28, 2020.

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

On August 12, 2020, a hearing notice was issued scheduling a hearing for September 9, 2020.

The parties undertook discovery and served written direct, rebuttal and surrebuttal testimony. The evidentiary hearing convened on September 9, 2020. NRDC offered the oral rejoinder testimony of Kathleen Harris. Also admitted at the hearing was the Joint Stipulation of CAUSE-PA and Duquesne Light, which contained updated pricing data for June and July 2020. Although the parties had not achieved an agreement on all the issues raised in the proceeding, all parties agreed to waive the cross-examination of witnesses. Any argument necessary on unresolved claims would rely solely on the written testimony, exhibits and the stipulation admitted into the record. Accordingly, the written testimony and exhibits of Duquesne Light, OCA, OSBA, NRDC, EGS Parties, CAUSE-PA, Calpine, and MAREC Action were admitted into the record.

Main briefs were filed by Duquesne Light, OCA, CAUSE-PA, EGS Parties, NRDC, Calpine and MAREC Action on September 30, 2020.

On September 30, 2020, the Joint Stipulation among Duquesne Light Company, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and the Office of Consumer Advocate was filed with the Commission's Secretary and electronically served on the parties. Duquesne Light, CAUSE-PA and OCA agreed to the implementation of the Company's Standard Offer Program 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. Additionally, Duquesne Light, CAUSE-PA and OCA agreed to the withdrawal of the Company's proposal regarding CAP Shopping, as proposed by the Company at Paragraphs 68-72 of the Default Service Plan. Duquesne Light, CAUSE-PA and OCA further agreed that within 6 months of a final, unappealable order implementing CAP Shopping in PPL Electric Utilities Corporation (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.

A second stipulation, the Joint Stipulation of Duquesne Light Company, Natural Resources Defense Council, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Office of Consumer Advocate and the Office of Small Business Advocate, was also filed on September 30, 2020. Duquesne Light, NRDC, CAUSE-PA, OCA and OSBA agreed to the implementation of the Company's Electric Vehicle Time of Use (EV-TOU) Pilot Program as proposed by the Company at Paragraphs 47-53 of the Default Service Plan with five modifications set forth in subparagraphs a-e of the second Joint Stipulation.

On October 1, 2020, the undersigned sent an e-mail to the representatives of the parties and intervenors directing them to file electronically any objections to these stipulations with the Commission's Secretary's Bureau by 4:00 p.m., Friday, October 2, 2020. No objections were filed.

On October 6, 2020, a First Interim Order was issued admitting the two joint stipulations filed on September 30, 2020 into evidence and directing the parties to address the two joint stipulations in their respective reply briefs.

On October 13, 2020, reply briefs were filed. Additionally, a Joint Petition for Approval of Unopposed Partial Settlement (Partial Settlement) was filed along with statements in support from Duquesne Light, OCA, OSBA, CAUSE-PA and NRDC. The record closed on October 13, 2020.

III. LEGAL STANDARDS

Duquesne Light has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.¹ Duquesne Light must establish its case by a preponderance of the evidence.² To meet its burden of proof, Duquesne Light must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.³

In this case, Duquesne Light requests that the Commission approve its Default Service Plan as modified by the Petition and joint stipulations entered into the record. Duquesne Light must prove that its proposed default service provider program is just and reasonable. Any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.⁴ Where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better serve customers.⁵

The Competition Act⁶ requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these

¹ 66 Pa.C.S. § 332(a).

² *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992)

³ *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁴ *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa.Cmwlth. 1981).

⁵ *Joint Petition of Metro. Edison Co. and Pa. Elec. Co. for Approval of Their Default Service Programs*, Docket No. P-2009-2093053 and P-2009-2093054 at 19 (Opinion and Order entered November 6, 2009).

⁶ Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa.C.S. § 2801, *et seq.*

results through competitive processes that include auctions, requests for proposals and/or bilateral agreements.⁷ The Competition Act does not, however, require a specific default service rate design methodology.⁸

The Competition Act also mandates that customers have direct access to a competitive retail generation market.⁹ This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”¹⁰ Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.¹¹

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations,¹² and a policy statement,¹³ addressing default service plans. The regulations first became effective in 2007 and have been amended to incorporate the Act 129 amendments to the Competition Act.¹⁴

IV. FINDINGS OF FACT

1. In its Default Service Plan, Duquesne Light has grouped its default service customers into four primary customer classes, which are the same customer class groupings used

⁷ 66 Pa.C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

⁸ *Id.*

⁹ 66 Pa.C.S. § 2802(3).

¹⁰ 66 Pa.C.S. § 2802(5). *See Green Mountain Energy Co. v. Pa. Pub. Util. Comm’n*, 812 A.2d 740, 742 (Pa.Cmwlth. 2002).

¹¹ 66 Pa.C.S. § 2802(5).

¹² 52 Pa.Code §§ 54.181 to 54.189.

¹³ 52 Pa.Code §§ 69.1802 to 69.1817.

¹⁴ *See* Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) (Act 129 Final Rulemaking Order).

in its currently effective default service plan: Residential & Lighting,¹⁵ Small Commercial & Industrial (Small C&I),¹⁶ Medium Commercial & Industrial <200kW (Medium C&I <200kW),¹⁷ and HPS-Eligible.¹⁸

EGS (Electric Generation Supplier) Payment of Network Integration Transmission Services (NITS) Charges

2. NITS costs are billed by PJM Interconnection LLC (PJM) on every Load Serving Entity (LSE), including Calpine and the EGS Parties which are a subset of market participants, pursuant to tariffs that are filed with the Federal Energy Regulatory Commission (FERC). These rates are subject to annual adjustment according to a formula. There is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates (Calpine St. No. 1, p. 3).

3. Including NITS in the Transmission Service Charge (TSC) ensures that the transmission component of the rate was unbundled and portable. Customers switching to an EGS would also purchase their transmission requirements from the EGS. Modifying the TSC such that it is non-bypassable would reduce the scope of products subject to meaningful competition and customer choice (Duquesne Light St. 4-R at 22:9-24:7).

4. Duquesne Light has continued with the same methodology to recover transmission costs for default service since customer choice began. As transmission cost line items have changed over time, the Company has relied upon Commission and FERC for

¹⁵ Residential customers are those served under rate schedules RS, RH and RA. Lighting customers are those served under rate schedules AL, SE, SM, SH, and PAL.

¹⁶ Small C&I customers are those with average monthly metered demands less than 25 kW served under rate schedules GS/GM, GMH and UMS.

¹⁷ Medium C&I <200kW customers are those served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 25 kW but less than 200kW.

¹⁸ HPS-Eligible customers are those who are eligible for Rider No. 9 — Day-Ahead HPS. They include Medium C&I >200kW customers (customers served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 200 kW) and Large C&I customers (customers served under rate schedules GL, GLH, L, and HVPS).

guidance to define what transmission-related costs are and what should be recovered from default service customers through the TSC. Changing the content and structure of the TSC to a non-bypassable charge will change the fundamental composition of the PTC (Duquesne Light St. 4-R at 22:9-24:7).

5. Current shopping customers are paying their EGS for applicable transmission charges through the rates charged by their EGS. Implementing a non-bypassable charge could cause shopping customers to pay twice for transmission service for the remainder of their EGS contracts (Duquesne Light St. 4-R at 22:9-24:7).

6. Allocating all of the transmission charges into a pass-through, non-bypassable charge for all customers would limit the breadth of options available to customers and EGS service offerings in the competitive market (Duquesne Light St. 4-R at 22:9-24:7).

7. The competitive market in Pennsylvania established generation and transmission charges to be included in the PTC (Duquesne Light St. 4-R, at 22:9-24:7).

EV-TOU Pilot Program

8. 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. In order to be eligible for EV-TOU Rate, the customer would be required to 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, p. 19).¹⁹

9. The EV-TOU Rate has the potential to benefit EV customers by lowering the cost of owning and operating an EV (Duquesne Light St. 5, pp. 20-22).

10. The EV-TOU Rate has the potential to benefit Duquesne Light's customers by increasing usage of the Company's existing electric grid during non-peak periods,

¹⁹ CAP customers are not eligible for the EV-TOU Rate. Duquesne Light St. 5, p. 23.

thereby producing increased revenues to offset existing grid costs and reducing the need to build new facilities to serve EV load (Duquesne Light St. 5, pp. 20-22).

11. The EV-TOU Rate has the potential to benefit the general public by reducing greenhouse gas (GHG) emissions (Duquesne Light St. 5, p. 21).

12. Duquesne Light proposes that customers electing the EV-TOU rate will receive TOU service for the entire usage served via the existing smart meter. This will reduce the costs of electric, EV-TOU service to the customer since a separate meter installation will not be required (Duquesne Light St. 5, p. 22).

13. Duquesne Light will continue to monitor technology changes that may offer solutions to separate metering of EV usage (Duquesne Light St. 5, p. 22).

14. Because the EV-TOU Rate will include total premises usage in order to avoid the cost to the customer of separate metering, Duquesne Light will provide online tools and assistance to customers in evaluating the effects of electing whole-premises TOU service (Duquesne Light St. 5, p. 27).

15. The EV-TOU Rate supply will be provided by the Default Service wholesale suppliers, who will continue to receive this 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 (Duquesne Light St. 4, pp. 19-20).

16. 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 (Duquesne Light St. 4, pp. 17-19, Exhibit No. DBO-3; Duquesne Light St. 4-R, pp. 3-4).

17. The EV-TOU time periods encourage EV charging overnight when demand is low and costs are lower and discourage charging during peak periods when market costs of electricity are higher. The same Off-Peak Period of 11:00 PM through 6:00 AM every day of the week is simple for customers to understand (Duquesne Light St. 4, p. 17).

18. Duquesne Light's EV-TOU Rate pilot 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 (Duquesne Light St. No. 5-R, pp. 22-23; Duquesne Light St. 2-, pp. 6-7).

19. The revenues and costs associated with the EV-TOU Rate Pilot will be allocated by class (Duquesne Light St. 5-R, pp. 35-37).

Solar PPA

20. Duquesne Light proposed to enter into a long-term contract to support a utility-scale solar project (up to 7 MW). The alternative energy credits (AEC) associated with this project would be used to help satisfy the solar requirements of serving all default service customers at some point during the DSP IX period and beyond (Duquesne Light St. 1, p. 10).

21. Duquesne Light Company is requesting pre-approval from the Commission to seek to enter into a long-term solar PPA in order to support a utility-scale solar project of up to 7MW in Pennsylvania (Duquesne Light St. 1, p. 13).

22. Duquesne Light will rely on an auction, request for proposal (RFP), or bilateral agreement with certain conditions to enter a long-term contract to support a utility-scale solar project (up to 7 MW) (Duquesne Light St. 1, p. 14).

23. Duquesne Light will conduct a competitive solicitation for the PPA. The results of the competitive solicitation would be reported to the Commission consistent with the

process used for the Company's other default service supply auctions (Duquesne Light St. 1, p. 14).

24. To ensure that the least cost PPA is obtained, the Company proposes to hold a competitive RFP to be conducted by its independent default service auction manager (Duquesne Light St. 1-R, pp. 4-5).

25. Duquesne Light plans to purchase the associated energy provided by the solar facility, because the Company wants to provide greater opportunity for cost-effective financing for developers of utility-scale solar projects and believes purchasing the energy may accomplish this goal (Duquesne Light St. 1, p. 15).

26. Duquesne Light proposes to sell the energy into the PJM market on a real-time basis to monetize the energy of the solar PPA. The Company plans to accrue these revenues and reconcile them back to its default service customers at the same weighting as each customer class's solar AEC obligation share. The necessary language to credit these solar PPA revenues already exists as a placeholder within Duquesne Light's current Retail Tariff (Duquesne Light St. 1, p. 15).

27. Duquesne Light plans to assess the potential of purchasing the associated capacity and ancillary services as part of the competitive solicitation process (Duquesne Light St. 1, p. 15).

28. If Duquesne Light enters a long-term PPA for AECs, Duquesne Light will continue to require each wholesale supplier to transfer AECs to Duquesne Light corresponding to the AEPS obligations associated with the amount of default service load served by that supplier. Any AECs allocated to a wholesale supplier will be credited to that supplier's AEPS obligation (Duquesne Light St. 1, p. 16).

29. The Commission approved a process for Duquesne Light to enter into a PPA with a solar developer in Duquesne Light's service territory to serve a portion of the

Company's default service load, subject to Commission approval, as part of the Company's DSP VIII, and the Company conducted solicitation for prospective solar developers; however, the Company ultimately did not enter into a PPA under that program. A preliminary market survey indicated that there were significant challenges for a solar developer to match the Company's desire to procure only the AECs with another entity willing to enter into a contract for the remaining attributes for the same contract term (Duquesne Light St. 1, p. 16).

30. The Company's Solar PPA proposal includes the energy and AEC, and potentially all other attributes, of the solar facility. This addresses the difficulty of matching an AEC offtake agreement with another offtake agreement for the energy attribute. In addition, it potentially mitigates any risk premium the developer would have to price into a contract due to tenor or credit risk of the second entity (Duquesne Light St. 1, p. 17).

31. Solar providers will have to bid for the opportunity to enter into the solar PPA in a competitive market (Duquesne Light St. 1, p. 14).

32. From a risk management perspective, adding measured volumes of long-term contracts can provide the opportunity to gain more information about the solar generation market in Duquesne Light's service area, support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area, while being sized to mitigate risks associated with the long-term commitment (Duquesne Light St. 1-R, p. 2).

33. Duquesne Light does not intend to subject itself to FERC's proposed Minimum Offer Price Rule (MOPR) and it would not seek to enter into the Solar PPA if it violated the MOPR (Duquesne Light St. 1-RJ, p. 2).

SOP

34. Duquesne Light's current 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 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 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, p. 3).

35. 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, p. 4).

36. Duquesne Light proposed to outsource administration of the SOP to a third-party vendor in this Default Service Plan (Duquesne Light St. 1, p. 5).

37. Duquesne Light's SOP enrollment numbers have lagged behind other EDCs (Duquesne Light St. 1, p. 8).

38. Duquesne Light has entered into a stipulation with OCA and CAUSE-PA regarding the SOP, which resolves all issues among those parties as to the SOP (SOP Stipulation).

39. The SOP Stipulation adopts Duquesne Light's proposal to outsource administration of the SOP to a third-party vendor (SOP Stipulation).

40. The SOP Stipulation also addresses customer protection concerns raised by 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 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 (SOP Stipulation).

CAP

41. On September 30, 2020, Duquesne Light filed a Stipulation with OCA and CAUSE-PA regarding an agreement between these parties regarding the Company's CAP shopping proposal.

42. Under the CAP Shopping Stipulation, Duquesne Light is withdrawing its proposed CAP shopping proposal pending the Commission's decision in PPL Electric's ongoing default service proceeding at Docket No. P-2020-3019356. In that proceeding, PPL Electric is 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. *See* PPL Electric Main Brief at Docket No. P-2020-3019356.

43. In the event that the Commission orders PPL Electric to continue its CAP shopping program, Duquesne Light will make a separate filing with the Commission regarding CAP shopping (CAP Shopping Stipulation).

44. Implementing CAP shopping would require modifications to the Duquesne Light's billing system at a cost of approximately \$160,000. In the withdrawn CAP Shopping proposal, 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.

V. DISCUSSION

A. Joint Petition for Approval of Unopposed Partial Settlement

1. **Description and Terms**

Duquesne Light, OCA, OSBA, CAUSE-PA and NRDC (Joint Petitioners),²⁰ filed a Joint Petition for Approval of Unopposed Partial Settlement (Partial Settlement or Settlement) and requested approval of Duquesne Light's Petition for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025 (Petition) subject to the terms and conditions of the Partial Settlement.²¹

The Partial Settlement sets forth the agreement in principle reached between Duquesne Light and the other Joint Petitioners with respect to many of the issues raised. The Partial Settlement specifically sets forth the Joint Petitioners' agreement that Duquesne Light's Petition should be approved as follows: (1) the four-year Program Term will be approved as set forth in paragraph Nos. 5-6 of the Petition; (2) the Procurement Plans and Rates will be approved as set forth in paragraph Nos. 7-46 of the Petition, except that, with respect to the FERC Docket No. EL-18-178, MOPR, Duquesne Light will expand the role of its Market Monitor; (3) the Purchase of Receivables Program will be approved as set forth in paragraph No. 67 of the Petition; (4) the Recovery of Net-Metered Excess Generation Costs will be approved as set forth in paragraph Nos. 73-76 of the Petition; (5) Duquesne Light will consider the recommendations of CAUSE-PA's witness Mr. Geller in CAUSE-PA St. 1, page 53, lines 13-21 and page 59, lines 15-21 regarding the Company's ongoing bill redesign initiatives; (6) 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); (7) Duquesne Light will revise Rule 12.1.6 of its

²⁰ In addition to the Joint Petitioners, I&E; Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services, LLC (collectively, the EGS Parties); Calpine; StateWise; MAREC; and ChargePoint have indicated that they do not oppose the Partial Settlement.

²¹ Partial Settlement, p. 1.

Supplier Coordination Tariff regarding bill-ready billing; and (8) Duquesne Light will revise Rule 12.1.7 of its Supplier Coordination Tariff, as described in Duquesne Light St. 5-R regarding EGS non-basic service charges.²²

The Partial Settlement does not, however, address the following five issues, which were reserved for litigation by the Parties and the subject of the Parties' briefs: (1) EGS payment of NITS charges; (2) EV-TOU Pilot Program issues; (3) Solar PPA issues; (4) SOP issues; and (5) CAP shopping issues.²³

Accompanying the Partial Settlement were Statements in Support provided by Duquesne Light, OCA, OSBA, CAUSE-PA and NRDC. These Statements in Support were included, respectively, as Appendices D through H to the Partial Settlement.

The Joint Petitioners agreed that Duquesne Light's Petition should be approved, subject to the terms and conditions set forth in the Partial Settlement regarding the following issues: (1) the Program Term; (2) Procurement Plans and Rates; (3) Purchase of Receivables; (4) Recovery of Net-Metered Excess Generation Costs; (5) Bill Redesign; (6) Bill Presentment of Residential Bill-Ready EGS Charges; and (7) Non-Basic Service Charges in Residential Bill-Ready EGS Charges.

Partial Settlement terms taken verbatim from the Partial Settlement are set forth in the Appendix to this Recommended Decision.

2. The Program Term

The Partial Settlement provides that 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, 2025.²⁴

²² Partial Settlement, pp. 1-2.

²³ Partial Settlement, pp. 2-3.

²⁴ Partial Settlement ¶ 37.

Duquesne Light’s Petition initially proposed this program term.²⁵ Duquesne Light further explained that a four-year Program Term is the same length of term of Duquesne Light’s current DSP VIII program and that the current default service programs for all of the other the major electric distribution companies are for a four year period.²⁶ In addition, the four-year term saves litigation time and cost for Duquesne Light, other parties that participate in DSP proceedings and the Commission, as compared to prior default service plans with two-year term periods.²⁷ Furthermore, none of the parties contested the Program Term for DSP IX.

In its Statement in Support, Duquesne Light claims that for these reasons the Program Term for DSP IX set forth in the Partial Settlement should be approved.²⁸ None of the other parties to the Partial Settlement addressed the program term in their respective Statements in Support.

3. Procurement Plans and Rates

The Partial Settlement provides for the approval of the procurement plans identified in paragraph numbers 7-11 and 13-46 of the Petition, without modification. The Partial Settlement further provides for approval of the Competitive Procurement Guidelines proposed by the Company in paragraph numbers 34-37 of the Petition.²⁹

In its Statement in Support, Duquesne Light asserts that it fully supported each of the four (4) separate supply plans proposed as a part of DSP IX and the associated Competitive Procurement Guidelines. According to Duquesne Light, the plans were tailored to meet the specific needs of major customer groups—i.e., (1) Residential and Lighting, (2) Small C&I, (3) Medium C&I <200kW, and (4) HPS-Eligible—in the Petition and its associated direct

²⁵ Petition ¶¶ 5-6.

²⁶ Petition ¶ 5.

²⁷ Petition ¶ 36.

²⁸ Partial Settlement ¶ 37; Duquesne Light St. in Support, p. 5.

²⁹ Duquesne Light St. in Support, pp. 5-6.

testimony.³⁰ Duquesne Light further explained that tailoring separate default service supply portfolios for each class is consistent with Commission guidance regarding the “prudent mix” standard under Act 129 and provide other benefits to customers.³¹

More specifically, 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 contracts with twelve-month and twenty-four-month, overlapping delivery periods. The contracts will be procured within three months before the commencement of their delivery periods. Default supply for Residential and Lighting customers will be obtained through competitive auctions, with winning bidders selected on the basis of lowest price.³²

Duquesne Light claims it further demonstrated that default service supply for Residential and Lighting customers will be split into 48 equal tranches, each representing approximately 2.08333% of the total Residential and Lighting class default service load each hour. No supply portfolio changes to the Residential and Lighting class procurement plan were proposed in DSP IX as compared to DSP VIII. As such, according to Duquesne Light, the procurement plan for Residential and Lighting customers continues to include “overhang” products, which accounts for the Company’s modification of its DSP VIII procurement schedule with regard to the 2022/2023 PJM planning year, and continues the same supplier load cap approved by the Commission in DSP VIII.³³

With respect to Small C&I customers, Duquesne Light asserts that it demonstrated that Small C&I customers will continue to be offered default service supply rates that adjust every six months based on fixed-price full requirements contracts with twelve-month and twenty-four-month, overlapping delivery periods. The contracts will be procured within

³⁰ See Petition ¶¶ 7-11, 13-46; *see also* Duquesne Light St. 1, pp. 9-10 (summarizing each of the supply plans).

³¹ Duquesne Light St. in Support, p. 6.

³² Duquesne Light St. 1, p. 10; Duquesne Light St. in Support, p. 7.

³³ Duquesne Light St. 2, pp. 8-11; Duquesne Light St. in Support, p. 7.

three months before the commencement of their periods. Default service supply for the Small C&I customers will be obtained through competitive auctions, with winning bidders selected on the basis of lowest price.³⁴

Duquesne Light further explained that Small C&I default service supply will be split into eight tranches consisting of twelve-month and twenty-four-month products, each representing 12.5% of the total Small C&I default service load in each hour. These products' delivery periods will overlap on a semiannual basis. No supply portfolio changes to the Small C&I class procurement plan were proposed in DSP IX as compared to DSP VIII. As such, the procurement plan for Small C&I customers continues to include "overhang" products, which accounts for the Company's modification of its DSP VIII procurement schedule with regard to the 2022/2023 PJM planning year, and continues the same supplier load cap approved by the Commission in DSP VIII.³⁵

Regarding Medium C&I <200kW customers, according to Duquesne Light, these customers will continue to be offered default service supply rates that adjust quarterly based on fixed-price full requirements contracts with three-month, non-overlapping delivery periods. The contracts will be procured within three months before the commencement of their delivery periods. Default service supply for Medium C&I <200kW customers will be obtained through competitive auctions, with winning bidders selected on the basis of lowest price.³⁶

Duquesne Light further explained that Medium C&I <200kW customers will continue to be composed entirely of three-month products, with 100% of the supply replaced every three months. Supply for this class will continue to be split into four equal tranches of 25% of the total Medium C&I <200kW default service load in each hour. As such, default service rates for this class will continue to change quarterly (i.e., on June 1, September 1, December 1, and March 1). No supply portfolio changes to the Medium C&I <200kW class

³⁴ Duquesne Light St. 1, pp. 9-10; Duquesne Light St. in Support, pp. 7-8.

³⁵ Duquesne Light St. 2, pp. 8-11; Duquesne Light St. in Support, p. 8.

³⁶ Duquesne Light St. 1, p. 9; Duquesne Light St. in Support, p. 8.

procurement plan were proposed in DSP IX as compared to DSP VIII. As such, the procurement plan will continue to not include supplier load caps, consistent with the practice approved by the Commission in DSP VIII.³⁷

For HPS-Eligible customers, which consists of Large C&I customers and Medium C&I $\geq 200\text{kW}$ customers, Duquesne Light plans to continue to offer default service supply rates that are based on hourly spot market energy prices. According to Duquesne Light, customers will continue to be charged a pass through of PJM capacity and ancillary services costs as well as the administrative costs of providing hourly price service (HPS). The Company further proposed to continue to procure the supply for this service through a competitive auction process.³⁸ Duquesne Light further explained that it was maintaining the DSP VIII procurement plan for the HPS-Eligible service product. As such, the procurement plan will continue to not include supplier load caps, consistent with the practice approved by the Commission in DSP VIII.³⁹

With respect to each of the procurement plans proposed by the Company, Duquesne Light further explained that it would continue to hire an independent Market Monitor to ensure the bid process is fair, and that all information is provided to bidders in a non-discriminatory fashion. According to Duquesne Light, this Market Monitor will continue to assist in the auction process for all classes in DSP IX.⁴⁰

A concern was raised in this proceeding regarding the FERC Docket No. EL-18-178, MOPR. OCA requested that the Company 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 requirements for an exemption from the definition of state subsidy under the MOPR.⁴¹ Although

³⁷ Duquesne Light St. 2, pp. 12-13; Duquesne Light St. in Support, pp. 8-9.

³⁸ Duquesne Light St. 1, p. 9; Duquesne Light St. in Support, p. 9.

³⁹ Duquesne Light St. 2, p. 13; Duquesne Light St. in Support, p. 9.

⁴⁰ Duquesne Light St. 2, p. 14; Duquesne Light St. in Support, p. 9.

⁴¹ OCA St. 1, p. 11.

Duquesne Light believed that its procurement process complied with the MOPR, the Company proposed to expand the role of its Market Monitor. Beginning with the Company's September 2020 Default Service Supply procurement and extending through DSP IX, Duquesne Light proposed to have its Market Monitor certify that the solicitation was conducted through a resource-neutral, non-discriminatory and competitive bidding process.⁴²

Consistent with this proposal, Duquesne Light agreed under the Partial Settlement 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 addresses the concerns raised by the OCA and will help ensure that Duquesne Light's default service supply solicitation process continues to be resource-neutral, non-discriminatory and competitive.⁴³

Moreover, Duquesne Light established a contingency plan to obtain supply for each of the classes if the Company receives bids for less than all tranches, the Commission does not approve the results for all tranches, or a supplier defaults. In any such event, the Company will provide the balance of the default supply through PJM spot market purchases and submit to the Commission an emergency plan to handle any default service shortfall within fifteen (15) days of a triggering event. The Company further explained that all costs associated with implementing the contingency plan will be included in the Default Service Support (DSS) Rider.⁴⁴

Finally, Duquesne Light witness Mr. Peoples explained the Supply Master Agreement (SMA) proposed by the Company. Although the Company proposed to continue to use the SMA template developed by the Procurement Collaboration Working Group, it proposed three categories of modifications. Duquesne Light explained these modifications captured PJM

⁴² Duquesne Light St. 2-R, pp. 4-5; Duquesne Light St. in Support, p. 10; OCA St. in Support, pp. 4-5.

⁴³ Duquesne Light St. in Support, p. 10.

⁴⁴ Duquesne Light St. 2, p. 15; Duquesne Light St. in Support, pp. 10-11.

nomenclature changes, expanded assignment provisions, and made housekeeping changes for clarity.⁴⁵

None of the parties opposed Duquesne Light's procurement plans and competitive procurement guidelines. As such, Duquesne Light asserts that the Partial Settlement finds, consistent with paragraph numbers 38-44 of the Petition, that Duquesne Light's 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 per Section 2807(e)(3.7).⁴⁶ In addition, consistent with Duquesne Light's unrebutted testimony (*see* Duquesne Light St. 2 at 18), 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. As such, Duquesne Light submits that these provisions of the Partial Settlement are reasonable, in the public interest, and should be approved without modification.

The Partial Settlement further provides for the approval of 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, without modification. Duquesne Light witness Mr. Ogden more fully explained the basis for calculating each class's rates and provided illustrative exhibits that demonstrated the derivation of the rate for each class and the rate factors used to derive those rates. (*See* Duquesne Light St. 4 at 6-13). In testimony, OCA argued that the Company should revise its reconciliation mechanism to be a 6-month reconciliation mechanism with cost recovery over a 12-month period as opposed to a 6-month reconciliation mechanism with a cost recovery over a 6-month period in order to provide additional rate stability. OCA St. No. 1, p. 17. In Rebuttal, Company witness Mr. Ogden explained that

⁴⁵ Duquesne Light St. 2, pp. 19-20; Duquesne Light Exhibit JP-3; Duquesne Light St. in Support, p. 11.

⁴⁶ Duquesne Light witness Mr. Fisher provided further testimony explaining in detail that (1) the basic model used by the Company is appropriately tailored to provide price stability benefits to customers while supporting the competitive market, and (2) the DSP IX Plan satisfies the requirements of Act 129. (*See generally* Duquesne Light St. 3).

because the Company acquires default supplies through full-requirements contracts, there is very little variability in the over/under collection component of default service rates and changing from a 6-month cost recovery period to a 12-month cost recovery period would not have a meaningful impact on the PTC.⁴⁷ The Partial Settlement adopts the Company position on this issue.⁴⁸ According to Duquesne Light, these provisions of the Partial Settlement are reasonable, in the public interest and should be approved without modification.

The Partial Settlement also provides that the continuation of the Company's proposal 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. Mr. Ogden supported Duquesne Light's proposal to continue to include only the implementation and ongoing annual costs in the price billed to these customers.⁴⁹ None of the parties challenged the Company's proposal. According to Duquesne Light, this provision of the Partial Settlement is reasonable, in the public interest and should be approved without modification.⁵⁰

4. Purchase of Receivables (POR)

Duquesne Light proposed to continue its POR program for Residential, Small C&I, and Medium C&I customers set forth in paragraph 67 of the Petition. None of the parties contested Duquesne Light's proposal to continue its POR program. Duquesne Light explained that it currently engages in activities that support retail competition, including the administration of a POR program. It explained that, under the POR program, Duquesne Light agrees to purchase the accounts receivable, without recourse, associated with EGS sales of retail electric commodity services to Residential, Small C&I and Medium C&I customers within Duquesne Light's service territory. The POR program proposed in DSP IX continues the Company's

⁴⁷ Duquesne Light St. No. 4-R, p. 10.

⁴⁸ Duquesne Light St. in Support, p. 12; OCA St. in Support, p. 6.

⁴⁹ Duquesne Light St. 4, p. 13.

⁵⁰ Duquesne Light St. in Support, pp. 12-13.

current program. As such, Duquesne Light asserts that it has shown that this provision of the Partial Settlement is reasonable and in the public interest.⁵¹

5. Recovery of Net-Metered Excess Generation Costs

None of the parties contested Duquesne Light's proposal for the recovery of net-metered excess generation costs. Duquesne Light's proposal is set forth in paragraphs 73-76 of the Petition. In addition to the recovery of net-metered excess generation costs, the proposal also states that 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. Duquesne Light explained that, effective with DSP IX, it is proposing to recover the cash-out payment for net-metering customers. More specifically, it proposed to recoup the customer class compensation (i.e., excess kilowatt hours multiplied by the Company's PTC on May 31) as an expense in the respective default service class over/under collection calculation.⁵²

6. Bill Redesign

CAUSE-PA made several recommendations regarding Duquesne Light's bill design.⁵³ The Partial Settlement states that Duquesne Light will consider these recommendations as a part of Duquesne Light's ongoing bill redesign initiatives. Duquesne Light explained in its rebuttal testimony that it was already in the process of redesigning its bill, with a targeted implementation date of November 23, 2020.⁵⁴ The bill redesign is intended to simplify the presentation of billing information and to enable next-generation bill messaging and targeting that is not currently available. As a part of the redesign the Company explained that new bills will clearly display the PTC to facilitate "at-a-glance" customer comparison of the PTC to an EGS's rates. Duquesne Light contended that certain of the recommendations advanced by

⁵¹ Duquesne Light St. 4, p. 25; Duquesne Light St. in Support, p. 13.

⁵² Duquesne Light St. 4, pp. 27-28; Duquesne Light St. in Support, pp. 13-14.

⁵³ See CAUSE-PA St. 1 at 53:12-21, 59:15-21.

⁵⁴ Duquesne Light St. 5-R at 37.

CAUSE-PA may be incompatible with the specific billing type (i.e., bill-ready vs. rate-ready) or that the Company's existing tariff already addressed CAUSE-PA's concerns.⁵⁵

In an effort to resolve certain issues in this proceeding and reach a compromise, Duquesne Light agreed in the Partial Settlement to consider CAUSE-PA's recommendations as a part of its ongoing bill redesign initiatives. This provision reflects a reasonable compromise of competing positions, and ultimately allows for the Company to consider and implement billing design changes that benefit customers.⁵⁶

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

The Partial Settlement provides that 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). It also provides for a revision to Rule 12.1.6 of Duquesne Light's Supplier Coordination Tariff, which is reflected in the bolded and underlined language below:

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.^[57]

⁵⁵ See Duquesne Light St. 5-R at 37-41; Duquesne Light St. in Support, pp. 14-15.

⁵⁶ Duquesne Light St. in Support, p. 15.

⁵⁷ Partial Settlement, ¶¶ 49-50 (emphasis in original).

Both OCA and CAUSE-PA raised concerns pertaining to bill-ready billing. Specifically, OCA and CAUSE-PA asserted that customers need to be able to compare their current supply price with the price-to-compare, regardless of whether the customer's supplier delivers bill-ready or rate-ready charges to the Company.⁵⁸ Although Rule 12.1.1 of the Company's Supplier Coordination Tariff already requires EGSs using consolidated billing to employ pricing plans based on fixed and variable charges similar to those that the Company employs for billing distribution service and default service, the Company proposed to clarify its tariff further to ensure these pricing plans are clearly represented on customers' bills. The proposed revision adds the language bolded and underlined above to Rule 12.1.6 of the Company's Supplier Coordination tariff. Duquesne Light explained that this proposal maintains EGS flexibility to offer innovative pricing structures through bill-ready billing, while ensuring that the pricing structures are clearly communicated to customers.⁵⁹

8. Non-Basic Service Charges in Residential Bill-Ready EGS Charges

The Partial Settlement adopts the following revision to Rule 12.1.7 of Duquesne Light's Supplier Coordination Tariff, which is reflected in the bolded and underlined language below:

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**

⁵⁸ OCA St. 2p at 5:11-14; CAUSE-PA St. 1 at 53:13-17.

⁵⁹ Duquesne Light St. 5-SR, pp. 7-8; Duquesne Light St. in Support, p. 16.

electric supply to residential customers billed through consolidated billing with the Company.^[60]

CAUSE-PA raised certain concerns regarding non-basic charges that may be billed by a bill-ready EGS.⁶¹ Although the Company is not privy to contracts between customers and EGSs, Duquesne Light explained that its tariff already prohibits the inclusion of non-basic charges in consolidated EGS bills to residential customers. Nevertheless, the Company proposed to modify Rule 12.1.7 of its Supplier Coordination tariff as a “backstop” to further enhance the enforceability of this requirement. The Company further explained that this revision is consistent with the requirements found in the supplier coordination tariffs of the FirstEnergy Companies and PECO.⁶²

9. Recommendation

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁶³ Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission

⁶⁰ Partial Settlement ¶¶ 51-52.

⁶¹ CAUSE-PA St. 1, p. 55.

⁶² Duquesne Light St. 5-R, pp. 39-41; *see also* Duquesne Light Exhibits DBO-3R and DBO-4R; Duquesne Light St. in Support, pp. 17-18.

⁶³ *See* 52 Pa.Code § 5.231.

consideration is whether the agreement reached suits the public interest.⁶⁴ In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Partial Settlement resolves contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

In reviewing the settlement terms and the accompanying statements in support, the Partial Settlement provides sufficient information to support the conclusion the settlement terms are in the public interest. I agree with the signatory parties that the settlement terms described above are both reasonable and in the public interest. The Commission should approve these provisions of the Partial Settlement without modification.

Also, of note, the settlement finds support from a broad range of parties with diverse interests. Each party represents a variety of interests. The Companies advocate on behalf of their corporate interests and shareholders. The Office of Consumer Advocate is tasked with advocacy on behalf of consumers in matters before the Commission.⁶⁵ The Office of Small Business Advocate represents the interests of the Commonwealth's small businesses.⁶⁶ RESA represents the interests of its member EGSs, the Industrials represent their large industrial members. Each of these advocates maintain that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the Settlements are in the public interest. These parties in a collaborative effort have reached agreement on a broad array of issues, demonstrating that the Settlements are in the public interest and should be approved. None of the parties representing other interests object to the terms of the Joint Petition.

⁶⁴ *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). See also *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985).

⁶⁵ Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 309-4.

⁶⁶ Section 399.45 of the Small Business Advocate Act, Act of December 21, 1988, P.L. 1871, 73 P.S. § 399.45.

Resolution of these issues by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in expense and the conservation of resources made possible by adoption of the proposed settlement in lieu of litigation.

For all of the foregoing reasons, I find the settlements embodied in the Partial Settlement are both just and reasonable and their approval is in the public interest. I recommend the Commission approve the Partial Settlement without modification.

B. Contested and Litigated Issues and Recommendations

In this section, the five (5) contested and litigated issues will be addressed under separate headings with a recommendation following discussion of each issue.

1. EGS Payment of NITS Charges

The EGS Parties propose that Duquesne Light be required to implement a non-by-passable charge to recover NITS charges from all customers. The EGS Parties assert that Duquesne Light does not collect NITS charges from default service customers in the same manner as shopping customers are required to pay. The EGS Parties further contend that this differential treatment imposes more risk on shopping customers and their suppliers and can cause the rates charged to these customers to be higher than would be necessary if they were afforded the same billing treatment. According to the EGS Parties, NITS are a non-market based charge that all customers pay that is calculated the same way for all customers, the only difference is that for shopping customers the bill goes to the supplier and for non-shopping (default service customers) the bill goes to Duquesne Light. The EGS Parties contend that this arrangement is basic discrimination that is prohibited by the Public Utility Code, 66 Pa.C.S. §§ 1502 and 2804(6).⁶⁷

⁶⁷ EGS Parties R.B., p. 6.

According to the EGS Parties, the Commission recently held that billing service is public utility service and that these anti-discrimination provisions are enforceable against utilities that provide an advantage to one party over another when providing billing service. The EGS Parties contend that Duquesne Light must be required to end the discrimination and provide the same billing services for suppliers and their customers that it does for its default service customers and bill shopping customers for NITS.⁶⁸

The actual NITS charge is not based on whether a customer shops. The EGS Parties claim they are aiming to reduce the risk to shopping customers of the volatile and sudden imposition of the charges that PJM appears to be imposing in more recent years. The EGS Parties contend that customer responsibility for these charges via their supply charge on their consolidated bill, which are almost impossible to predict or influence means customers are likely to pay a higher rate than would otherwise be needed, to account for the fact that suppliers cannot continually absorb shortfalls that come from NITS rate adjustments and so they need to protect themselves in the contract, while Duquesne Light has the luxury of reconciled rates that allow it to recover dollar for dollar what the customer owes, over time.⁶⁹

The EGS Parties assert that requiring Duquesne Light to collect NITS ends the discrimination in its billing practice, it also makes shopping easier for customers, particularly larger customers. According to the EGS Parties, the Commission's "fixed means fixed" rule makes it impossible for suppliers offering longer term fixed price contracts to residential customers – because the risk of NITS changes would need to be passed on to customers in the form of higher prices. If NITS were not a supplier charge, but billed as the pass-through item that they are, residential customers would see longer term fixed price offers and commercial customers would find it easier to shop, not needing to determine which contracts included pass-through for NITS and which did not, and to try to weigh the risks and possible benefits of each. While it may be true, as other parties may suggest, that very large customers may wish to contractually assign the risk of NITS changes, there is no reason those customers could be not

⁶⁸ EGS Parties R.B., p. 6.

⁶⁹ EGS Parties R.B., p. 7.

allowed to continue to be responsible for paying their NITS charges through their supplier, if they knowingly accepted that option and such an option was found to be appropriate.⁷⁰

Both Duquesne Light and Calpine, a supplier, opposed the EGS Parties proposal that Duquesne Light be required to implement a non-bypassable charge to recover NITS charges from all customers. The EGS Parties proposal regarding this issue has been considered and rejected by the Commission in prior Duquesne Light DSP proceedings. Both Duquesne Light and Calpine point this out in briefs.⁷¹

In *Petition of Duquesne Light Co. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* at Docket No. P-2012-2301664 (Opinion and Order dated January 25, 2013), pp. 221-22, the Commission stated as follows:

We believe that Duquesne's position that EGSs should continue to recover transmission and transmission-related costs, such as PJM's RTEP costs, NITS costs, expansion costs, generation deactivation costs and ELR costs, from their own customers is reasonable and should be approved. We agree with Duquesne that it appropriately recovers these costs only from default service customers, and that EGSs should recover these costs from their customers. We believe that this cost recovery process is consistent with the Commonwealth's continued migration to a more competitive retail market and that RESA's proposal would be a step backward because it would result in the rebundling of transmission costs with distribution rates.^[72]

Likewise, in *Petition of Duquesne Light Co. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242 (Opinion and Order dated January 15, 2015), pp. 45-46 and 52-53, the Commission stated:

⁷⁰ EGS Parties R.B., pp. 7-8.

⁷¹ Calpine R.B., pp. 2-3; Duquesne Light M.B., pp. 12-13.

⁷² Duquesne Light M.B., pp. 12-13

[T]he evidence presented by RESA and Exelon Gen is insufficient to cause the Commission to alter our decision within Duquesne's DSP VI proceeding that the costs in question should not be collected through a non-bypassable recovery mechanism as proposed by these two Parties or that Duquesne should assume the cost responsibility for all of these charges on behalf of both the wholesale and default service suppliers and EGSs.^{73]}

In its main brief, Duquesne Light highlighted the testimony of its witness David B. Ogden addressing the EGS Parties proposal.

First, as noted above, this topic was litigated twice before as part of the Company's DSP VI and DSP VII proceedings. Both times, the Commission agreed with the Company's position regarding recovery for transmission related costs, and Mr. Kallaher presents no reasons to deviate from this precedent.

Second, including NITS in the TSC ensures that the transmission component of the rate was unbundled and "portable." Customers switching to an EGS would also purchase their transmission requirements from the EGS. Modifying the TSC such that it is non-bypassable would reduce the scope of products subject to meaningful competition and customer choice.

Third, the Company has continued with the same methodology to recover transmission costs for default service since customer choice began. As transmission cost line items have changed over time, the Company has relied upon Commission and/or FERC for guidance to define what transmission-related costs are and what should be recovered from default service customers through the TSC. Changing the content and structure of the TSC to a non-bypassable charge will change the fundamental composition of the PTC. This change could create customer confusion.

Fourth, changing the content and structure of the TSC could have a negative impact on current shopping customers. Current shopping customers are paying their EGS for applicable transmission charges through the rates charged by their EGS. Implementing a non-bypassable charge could cause shopping customers to pay twice for transmission service for the remainder of their EGS contracts.

⁷³ Duquesne Light M.B., p. 13.

Fifth, EGSs should be able to address their concerns in the pricing offerings they make available to customers. For example, some EGSs could offer to fix only the supply portion of their charges and pass through the transmission charges in question. EGSs also could offer to fix some, but not all charges. Other EGSs may choose to fix both the supply and transmission charges for the benefit of customers. Allocating all of the transmission charges into a pass-through, non-bypassable charge for all customers would limit the breadth of options available to customers and EGS service offerings in the competitive market.

Finally, even if one were to accept Mr. Kallaher's position that these costs are volatile and hard to predict, this alone would not justify making such charges non-bypassable. For instance, some may describe energy and capacity prices as volatile and hard to predict, yet Mr. Kallaher does not suggest that these charges should be non-bypassable. The competitive market in Pennsylvania established generation and transmission charges to be included in the PTC. These costs (including NITS) are incurred by EGSs. Duquesne Light does not believe that it is proper to socialize NITS costs incurred by EGSs to all distribution customers simply because they are (arguably) unpredictable. This is not a proper basis for cost allocation. For all these reasons, I recommend the Commission deny the EGS Parties' proposal for the Company to collect and remit NITS on behalf of all customers through a non-bypassable charge.^[74]

According to Duquesne Light, the EGS Parties' contention that it is discriminatory for the Company to not agree to collect NITS Charges for EGS customers is erroneous. The first flaw in the EGS Parties' argument is that the Company is not discriminating based upon any service it is providing as an electric distribution company under the Public Utility Code. Instead, the Company is charging its default service customers for costs it incurs to obtain interstate transmission in service. The Company has no obligation under the Public Utility Code to charge shopping customers for costs incurred by an EGS to provide service, particularly those that are subject to FERC's jurisdiction.⁷⁵

⁷⁴ Duquesne Light St. 4-R, p. 22 and p. 24; Duquesne Light M.B., pp. 14-15.

⁷⁵ Duquesne Light R.B., pp. 4-5.

The second flaw in the EGS Parties' argument, according to Duquesne Light, is that they can also offer to collect actual NITS Charges from shopping customers on a dollar-for-dollar basis rather than offer fixed price transmission service. Duquesne Light's NITS charge cost recovery mechanism cannot be discriminatory because EGSs can collect NITS Charges from their customers in the same manner as Duquesne Light recovers them – on a dollar-for-dollar basis. EGSs have complete freedom to collect NITS charges from their customers in any manner that the EGS chooses.⁷⁶

As indicated above, Calpine also opposes the EGS Parties proposal here. Calpine points out that NITS charges are still based on each individual Load Serving Entities' (LSE) demands. The better the LSEs can manage their loads, the better they will be able to create efficiencies and compete in the marketplace. According to Calpine, the EGS Parties' position is a tacit admission by a subset of the market that they have difficulty managing their loads, and that they want relief for their own business decisions, choices and what look to be shortcomings.⁷⁷

Calpine claims that the EGS Parties' solution – to excuse EGSs from the obligation to manage their loads, and to treat everyone as if their loads are just like everyone else's – is to remove competition and associated products and services from the marketplace. Calpine asserts that those who are better at managing loads would no longer be able to offer products and services that address NITS exposures. Calpine argues that competitive solutions to handle costs and risks should not be stifled because the EGS Parties - a small subset of suppliers - are facing competitive discipline resulting from the need to perform in a marketplace and face accountability for their own business and operational management decisions. Calpine is of the opinion that there must be market consequences and accountability for lack of performance in a market. Calpine agrees with Duquesne Light that the EGS Parties' solution in effect would be a

⁷⁶ Duquesne Light R.B., p. 5.

⁷⁷ Calpine R.B., pp. 1-2.

rebundling of rates, in contravention of the mandate in the Competition Act that rates be unbundled to encourage competition for shopping customers.⁷⁸

I agree with the arguments of Duquesne Light and Calpine. The EGS Parties proposal that Duquesne Light be required to implement a non-by-passable charge to recover NITS charges from all customers should be rejected. I recommend that the Commission reject this proposal in the ordering paragraphs to follow.

2. EV-TOU Pilot Program

Duquesne Light proposes to establish an optional EV-TOU Rate for Residential, Small Commercial and Industrial (Small C&I) and Medium Commercial and Industrial (Medium C&I) customers with less than 200 kW of demand who use Default Service (Rider 8) supply. To be eligible for EV-TOU Rate, the customer would be required to 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. No. 5, pp. 19.⁷⁹

The Company proposes that customers electing the EV-TOU rate will receive TOU service for the entire usage served via the existing smart meter. According to Duquesne Light, this will reduce the costs of electric, EV-TOU service to the customer since a separate meter installation will not be required. However, the Company plans to continue to monitor technology changes that may offer solutions to separate metering of EV usage. Because 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.⁸⁰

⁷⁸ Duquesne Light M.B., p. 14; *See also* 66 Pa.C.S. § 2802(14) and 66 Pa.C.S. § 2804(3) (requiring rates to be unbundled); Calpine R.B., p. 2.

⁷⁹ CAP customers are not eligible for the EV-TOU Rate. Duquesne Light St. No. 5, p. 23; Duquesne Light M.B., p. 16.

⁸⁰ Duquesne Light St. No. 5, pp. 22, 27; Duquesne Light M.B., pp. 18-19.

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.⁸¹

As explained by Duquesne Light witness David Ogden, 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. Further details are provided by Mr. Ogden in his Direct Testimony.⁸²

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

Mr. Ogden explained that the EV-TOU time periods were chosen 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 11:00 PM through 6:00 AM every day of the week is simple for customers to understand.⁸³

⁸¹ Duquesne Light St. No. 4, pp. 19-20; Duquesne Light M.B., p. 19.

⁸² Duquesne Light St. No. 4, pp. 17-19, Exhibit No. DBO-3; Duquesne Light St. No. 4R, pp. 3-4; Duquesne Light M.B., p. 19.

⁸³ Duquesne Light St. No. 4, p. 17; Duquesne Light M.B., p. 19.

CAUSE-PA, NRDC and OCA raised concerns with Duquesne Light's EV-TOU pilot as filed. CAUSE-PA proposed additional protections for other low-income customers who are not CAP customers and those with medical certificates that choose to enroll in the pilot. CAUSE-PA proposed individualized bill impact analyses for these customers. CAUSE-PA also proposed that a third-party evaluation be conducted of this pilot program which would include assessing demographics of participants and recommended that Duquesne Light create an EV-TOU rate for mass transit.⁸⁴

NRDC supports the implementation of an EV-TOU program and noted the benefits of increasingly wider EV adoption. NRDC nevertheless advocated for several program modifications to the Company's EV-TOU proposal. Specifically, NRDC took the position that approval of the EV-TOU program as a "pilot program" is unnecessary, as the benefits of EV-TOU rate offerings are well-established and present little to no risk to non-participating customers. NRDC emphasized the need for clear price signals to end-use customers in order to achieve the most potential EV load-shifting; for C&I users that make EVSE infrastructure available to third parties, NRDC argued that default arrangement should be pass-through pricing. NRDC recommended that, in addition to providing customers a whole-premises rate, the Company should be required to educate customers on the possibility of separately metering their EV load, and the potential tradeoffs of pursuing either option. NRDC noted this education and outreach would be especially invaluable in the C&I context for customers with fleet charging needs. Finally, NRDC noted that C&I TOU rate design should take into account certain customers (such as those offering Direct Current Fast Charging, or DCFC) who may be less able to shift load to off-peak hours than other C&I customers.⁸⁵

OCA made three recommendations to improve the EV-TOU pilot program:

First, DLC should recalculate TOU rate factors each year based on rolling four-year average LMPs, customer class loads, and PJM capacity prices applicable to the DY, to prevent the rate factors from getting "stale." Second, DLC should clearly state and justify any

⁸⁴ CAUSE-PA St. No. 1, p. 23 and 25; Duquesne Light M.B., p. 23.

⁸⁵ NRDC St. 1, pp. 4-22; NRDC M.B., pp. 5-6.

direct assignment of EV-TOU implementation costs to customer classes, and allocate non-direct assignment costs to customer classes on the basis of customer class default service loads, as measured in total kilowatt-hours (“kWh”). Third, DLC should present a detailed report on the performance of the EV-TOU in four years as part of its petition for the approval of its subsequent default service plan, and propose revisions to the design of the program based on its experience with EV-TOU as well as the experiences of other Pennsylvania utilities, and utilities nationwide with comparable programs. Potential improvements to the program may include redefining the TOU periods, and revising the DLC method used to calculate the supply rate factors.^[86]

Duquesne Light, CAUSE-PA, NRDC, OCA and OSBA joined together and entered into a joint stipulation on September 30, 2020, agreeing to the Company’s proposed EV-TOU pilot with the modifications contained in the joint stipulation. No party objected to the admissibility of the stipulation and it was admitted by Interim Order on October 6, 2020. The modifications to the Company’s EV-TOU pilot agreed to by the stipulating parties are as follows:

- 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

⁸⁶ OCA St. 1, p. 15; OCA M.B., p. 19.

- 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 DLC'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.^[87]

The Joint Stipulation fully resolves the stipulating parties' disputes over the content of the EV-TOU program. Duquesne Light, CAUSE-PA, NRDC, OCA and OSBA have

⁸⁷ Joint Stipulation, pp. 1-2.

reached agreement regarding this issue. The EGS Parties are the only party objecting to Duquesne Light's EV-TOU pilot as modified by the joint stipulation.

The EGS Parties request that implementation of the EV-TOU rate be tabled for either “a working group of interested stakeholders” or “an RFI for proposals from competitive entities...that could be implemented within the scope of Duquesne’s DSP.”⁸⁸ The EGS Parties seek to reserve a potential market for EGSs in the event they decide whether to participate in that market. The Company’s EV-TOU Rate pilot 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.⁸⁹ No EGSs are currently offering a TOU rate.

The provision of TOU service by the Default Supplier is clearly permitted by Act 129 and codified in Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(5). As stated by the Commission in the Secretarial Letter dated January 23, 2020⁹⁰:

The Commenters all agreed that the TOU programs should be voluntary and that Act 129 specifies that an EDC’s TOU Program should be optional for default service customers. Appendix A, p. 6.

The Commission noted 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 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).

⁸⁸ EGS Parties St. 1, pp. 21-22.

⁸⁹ Duquesne Light St. No. 5-R, p. 22-23, and St. No. 2-R, pp. 6-7.

⁹⁰ *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (January 23, 2020).

The Commission has acknowledged that it is the obligation of the Default Service Provider to provide the TOU program. Therefore, there is no basis for an argument that the Company cannot provide EV-TOU service, particularly in the circumstance where there is no other supplier of such service in its market.⁹¹

I agree with the position of the stipulating parties regarding the EV-TOU pilot and recommend that the Commission approve the EV-TOU pilot set forth in the Default Service Plan as modified by the stipulation of Duquesne Light, CAUSE-PA, NRDC, OCA and OSBA. The EV-TOU pilot, as modified by the stipulation, serves the public interest, is consistent with the statutory mandates and policy goals of the Choice Act and the Commission's regulations.

3. Solar PPA Proposal

Duquesne Light is requesting pre-approval from the Commission to seek to enter into a long-term solar PPA in order to support a utility-scale solar project of up to 7MW in Pennsylvania. The Company intends to purchase the alternative energy credits (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 also plans to assess the potential of purchasing the capacity and ancillary services from the facility but has not made a final determination of this issue at this time.⁹²

The purposes of this long-term (more than 4 but less than 20 years) solar PPA are to support the further development of solar energy in Pennsylvania, preferably in Duquesne Light's service area, and gain more information about the solar generation market in Duquesne Light's service area, while doing so in a quantity that mitigates risks associated with the long-term commitment. Duquesne Light intends to conduct a competitive solicitation for the PPA

⁹¹ See also, *Dauphin Cnty. Indus. Dev. Auth. v. Pub. Util. Comm'n*, 123 A.3d 1124 (Pa. Cmwlth. 2015); Duquesne Light M.B., p. 23.

⁹² Duquesne Light St. 1, pp. 13 and 15; Duquesne Light M.B., p. 25.

sometime during the DSP IX period. Duquesne Light will report the results of the solar PPA to the Commission for final approval before entering into the PPA.⁹³

Duquesne Light is proposing to enter into a long-term Solar PPA, which is one of the types of contracts that can be used to achieve the prudent mix requirements of Act 129. Section 2807(e)(3.2) of Act 129 requires default service providers to enter into a prudent mix of contracts, such as spot market purchases, short-term contracts and long-term contracts.⁹⁴ The statute further defines long-term contracts more than four but not more than 20 years.⁹⁵ The prudent mix of contracts shall be designed to ensure adequate and reliable service at the least cost to customers over time.⁹⁶

In addition to its conclusion that a long term 7 MW Solar PPA is a necessary part of a prudent mix of supply contracts in this proceeding, Duquesne Light proposed its solar PPA in order to encourage additional solar development in Pennsylvania and hopefully in the Company's service area. The Company believes that a long-term solar contract may provide greater opportunity for cost-effective financing for the developer of a utility-scale solar project. The Company proposed to acquire AECs only as part of its DSP VIII proceeding but determined that a solar developer preferred a contract for all of the attributes of the facility (energy, capacity and ancillary services), not just the AECs. Therefore, the Company 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.⁹⁷

Procuring a 7 MW long-term solar contract is expected to secure slightly more than 50% of the required solar AECs (SAECs) on a long-term basis. The solar contract will also provide energy. Solar facilities produce intermittent energy. The Company proposes to sell this

⁹³ Duquesne Light St. No. 1, p. 14; Duquesne Light M.B., p. 25.

⁹⁴ 66 Pa.C.S. § 2807(e)(3.2).

⁹⁵ 66 Pa.C.S. § 2807(e)(3.2)(iii).

⁹⁶ Duquesne Light M.B., p. 25.

⁹⁷ Duquesne Light St. 1, pp. 13, 16, and 17; Duquesne Light M.B., p. 27.

energy into the market, and credit the sales revenue to the default service reconciliation. According to Duquesne Light, this will avoid interfering with the load following fixed price wholesale contracts that it uses to provide default service energy requirements. This is designed to avoid creating potential increased prices under the wholesale contracts due to uncertainty regarding how much energy the solar facility will produce. The Company will not own the solar generating facility. According to Duquesne Light, it is simply a process to balance supply and demand and obtain for default service customers additional value from the Solar PPA.⁹⁸

Both the EGS Parties and MAREC opposed Duquesne Light's Solar PPA but for different reasons.

The EGS Parties argue 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. No. 1, 24:15-25:11). According to the EGS Parties, such a contract is not authorized by the *Electricity Generation Customer Choice and Competition Act*, 66 Pa.C.S. § 2801, *et seq.* 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 28079(e)3.1, *et seq.*⁹⁹

The EGS Parties also oppose the Solar PPA because Duquesne Light's long-term contract ambitions run the risk of outliving the proposed 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 argue that Duquesne Light has failed to support that there is need for such an arrangement, or how that need might have changed, despite its failure to reach an agreement previously. If the Commission feels compelled to approve some sort of acquisition program for SAECs, the EGS Parties state

⁹⁸ Duquesne Light R.B., p. 11.

⁹⁹ EGS Parties M.B., p. 5.

that they could accept an AEC only acquisition, but there should be no authorization for the purchase (or resale) of energy, capacity or ancillary services.¹⁰⁰

According to the EGS Parties, there are serious concerns 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 eventually in the market for such projects. The EGS Parties assert that ratepayer funding creates a lower risk profile for investors that drives such decisions. The EGS Parties argue that 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. The EGS Parties assert that Community Solar democratizes energy production. Yet, the EGS Parties contend, Duquesne Light's proposed move here will provide fodder for those who say we do not need that; the utility already provides it. In short, the EGS Parties conclude there is no legal basis on which to approve the proposed Solar PPA Project, and there are multiple policy reasons to reject it. The EGS Parties urge that it be rejected.¹⁰¹

According to MAREC, Duquesne Light's description of the solar PPA program as a "manageably sized" accounting 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 recommends that Duquesne Light should enter into a higher quantity of and larger sized long-term renewable contracts than Duquesne Light is proposing.¹⁰²

MAREC asserts that 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.¹⁰³

¹⁰⁰ EGS Parties St. 1, p. 23; EGS Parties M.B., pp. 5-6.

¹⁰¹ EGS Parties St. 1, p. 24; EGS Parties M.B., pp. 6-7.

¹⁰² MAREC R.B., p. 7.

¹⁰³ MAREC St. 1, pp. 8-17.

MAREC explained that long-term renewable contracts benefit consumers by providing the following:

- **Price stability:** Long-term contracts for renewable energy can offer price stability over a multi-year timeframe. Customers are protected from constant rate adjustments during periods when energy and capacity markets are unstable.
- **Incentives to renewable development:** Long-term contracts encourage the development of new renewable generation resources by offering increased price certainty and lower financing costs.
- **Lower renewable energy certificate (REC) prices:** The addition of renewable generators leads to an increase in the availability of RECs. An increase in the supply of RECs helps to lower the price, which in turn reduces the cost of meeting the RPS and benefits ratepayers.
- **Lower energy costs:** 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. Utilities dealing directly with developers in a competitive process are able to pass along cost savings (such as lower financing costs) to customers.
- **Economic development:** In-state development of renewables adds jobs and economic development.
- **Reduced air pollution:** 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.^[104]

At this stage of the proceedings, MAREC now thinks 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 docket to bring a proposal forward to the Commission for its review. Duquesne Light 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.¹⁰⁵

¹⁰⁴ MAREC St. 1, pp. 9-10; MAREC M.B., p. 6.

¹⁰⁵ MAREC M.B., p. 12; MAREC R.B., p. 8.

OCA does not oppose the Company's proposed solar PPA. However, OCA argues that the Company provide a long-term projection of future prices to justify the approval of the actual contract by the Commission.¹⁰⁶ OCA M.B. at 3-7.

For the reasons explained below, I conclude Duquesne Light has justified the solicitation of a 7 MW long-term solar PPA for development in Pennsylvania, preferably in the Company's service territory. Duquesne Light's proposed 7 MW solar PPA provides a prudent amendment to past supply mixes approved by the Commission for the Company.¹⁰⁷ There is no need for a long-term projection of future prices to justify the approval of the actual contract by the Commission, as recommended by OCA. I agree with Duquesne Light that projecting long-term prices is speculative and without purpose in evaluating whether to proceed with a long-term contract. I recommend that the Commission approve this proposal, as part of the DSP IX procurement plan, subject to its actual review of the contract with the selected project sponsor.

Duquesne Light provided explanations of how its DSP meets the 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. 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. 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, which is accordingly memorialized in the Partial Settlement.¹⁰⁸

¹⁰⁶ OCA M.B., pp. 3-7.

¹⁰⁷ Duquesne Light St. Nos. 1, pp. 14-15; 3-R, pp. 13-14.

¹⁰⁸ Duquesne Light St. 3, pp. 10-13, 21-25; Duquesne Light St. 3-R, pp. 30-31; Duquesne Light R.B., pp. 7-8.

MAREC’s proposal is 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.”¹⁰⁹ MAREC’s proposal does not address requirements for Commission approval in its presentation. MAREC’s recommendation is vague and lacks the necessary specificity for it to be actionable or to address issues it may entail. 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, 2021.¹¹⁰ The evidence presented by MAREC in this proceeding does not justify a change in the DSP proposed by Duquesne Light.

MAREC also proposes a collaboration on long-term contracts with a possibility for requesting to reopen this DSP IX proceeding to change the plan. I conclude 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.

The Company is proposing to acquire a long-term contract for about half of its default service solar AEC requirements. The Company is not offering a solar rate or product. Therefore, the issue is only whether a long-term solar PPA is an appropriate component of a prudent mix strategy for default service customers. The only argument the EGS Parties make in this regard is that the price under the PPA may deviate from the market in some future years. I agree with Duquesne Light with respect to this argument. If that were a basis for objecting, then all long-term contracts should be prohibited. However, the Choice Act specifically permits contracts of 4 to 20 years.¹¹¹

¹⁰⁹ MAREC M.B., p. 5.

¹¹⁰ Duquesne Light St. Nos. 3-R, pp. 28-30; 3-RJ, pp. 1-3; Duquesne Light R.B., p. 8.

¹¹¹ 66 Pa. C.S. § 2807(e)(3.2); Duquesne Light R.B., pp. 10-11.

The EGS Parties argue that sale of the energy from the solar facility places the Company back in the generation business. The critical requirement under the AEPS Act is to obtain requisite AECs. Procuring a 7 MW long-term solar contract is expected to secure slightly more than 50% of the required solar AECs (SAECs) on a long-term basis. The Company proposes to sell this energy into the market, and credit the sales revenue to the default service reconciliation.¹¹²

I agree with Duquesne Light that, contrary to the EGS Parties' contention, the sale of this energy does not put the Company in the generation business. The Company will not own the solar generating facility. It is simply a process to balance supply and demand and obtain for default service customers additional value from the solar PPA. 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 exceeds the demands of default service customers. Sales of energy purchased to serve default service load are not prohibited by the Choice Act, as contended by the EGS Parties.¹¹³

In its last DSP proceeding, DSP VIII, Duquesne Light sought a PPA to purchase only SAECs. It found that solar developers were not interested in disaggregating the credits from the energy supply. The proposed solar PPA in this case is designed to resolve that problem and provide long term solar AECs required by the Choice Act for default service customers.¹¹⁴

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 responded that it is not committed to acquiring capacity, and further that it would not enter into a

¹¹² 73 P.S. § 1648.1 *et seq.*; Duquesne Light R.B., p. 11.

¹¹³ *Petition of PECO Energy for Approval of Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered April 16, 2009), pp. 6-7, 9; Duquesne Light R.B., p. 11.

¹¹⁴ Duquesne Light St. No. 1, p.16; Duquesne Light R.B., p. 12.

solar PPA, or acquire or sell capacity, if doing so would invoke such rule as ultimately adopted.¹¹⁵

The EGS Parties also contend 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.¹¹⁶ However, as OCA's procurement witness Dr. Ogur explained, 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.¹¹⁷

The EGS Parties also contend that a 7 MW solar contract could crowd out other solar contracts in the PJM market.¹¹⁸ As OCA's procurement witness Dr. Ogur pointed out, that is highly unlikely with over 269 solar projects in the PJM interconnection queue, representing more than 9,000 MW.¹¹⁹ Moreover, 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.¹²⁰

¹¹⁵ Duquesne Light St. No. 1-RJ, p. 2; Duquesne Light R.B., p. 12.

¹¹⁶ EGS Parties M.B., p. 5.

¹¹⁷ OCA Statement No. 1-R, pp. 8-9; Duquesne Light R.B., pp. 12-13.

¹¹⁸ EGS Parties M.B., p. 6.

¹¹⁹ OCA St. No. 1-R, p. 9.

¹²⁰ Duquesne Light St. No. 1-R, pp. 3-4; Duquesne Light R.B., p. 13.

The EGS Parties also argue that the Solar PPA is a direct assault on efforts to enact Community Solar initiatives.¹²¹ This argument is not supported by any evidence from the EGS Parties.

To summarize, Duquesne Light provided explanations of how its DSP meets the 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. 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. 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, which is accordingly memorialized in the Partial Settlement.¹²² 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.

4. SOP

Duquesne Light's current 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 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

¹²¹ EGS Parties M.B., p. 6.

¹²² Duquesne Light St. 3, pp. 10-13, 21-25; Duquesne Light St. 3-R, pp. 30-31; Duquesne Light R.B., pp. 7-8.

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.¹²³

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 other EDCs outsource administration of their SOPs to third party vendors.¹²⁴

In this proceeding, the Company proposed to outsource administration of the SOP to a third-party vendor. Duquesne Light's SOP enrollment numbers have lagged behind other EDCs and Duquesne Light believes that outsourcing could increase customer participation. Duquesne Light asserts that 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.¹²⁵

Both OCA and CAUSE-PA expressed concerns with the Company's proposal to outsource administration of its SOP but these parties, together with Duquesne Light, entered into a stipulation resolving these concerns on September 30, 2020. This stipulation was made part of the record of this proceeding by interim order dated October 6, 2020. The stipulation is as follows:

- 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

¹²³ Duquesne Light St. No. 1, p. 3; Duquesne Light M.B., p. 35.

¹²⁴ Duquesne Light St. No. 1, p. 4; Duquesne Light M.B., pp. 35-36.

¹²⁵ Duquesne Light St. No. 1, pp. 5, 8-10; Duquesne Light M.B., p. 36.

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.^[126]

The EGS Parties support Duquesne Light's proposal to outsource administration of the SOP. However, the EGS Parties propose automatic enrollment of all new and moving customers in the SOP.¹²⁷

The EGS Parties proposal to automatically enroll new and moving customers in the SOP is contrary to the Choice Act and unfair to new and moving customers. In attempting to justify their proposal, the EGS Parties mischaracterize the Choice Act. They state:

¹²⁶ Duquesne Light M.B., pp. 39-40.

¹²⁷ EGS Parties M.B, pp. 8-9.

The rationale for this recommendation is that the competition act never envisioned that after 25 years that the vast majority of customers could still be receiving default service.^[128]

In fact, there is nothing in the Choice Act that supports this statement. The Act's short title is the Choice and Competition Act. This 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.

Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.^[129]

I agree with Duquesne Light with regard to the EGS Parties' proposal here. The EGS Parties' proposal, if accepted, 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. A customer that does not voluntarily and affirmatively elect service from an EGS should not be forced to accept service from an EGS.¹³⁰

In this proceeding, CAUSE-PA and OCA introduced data from another Pennsylvania utility concerning the prices charged by EGSs to customers that enroll in the SOP and remain with the selected EGS after the 12-month fixed price period of the SOP ends. These

¹²⁸ EGS Parties M.B., p. 9; Duquesne Light R.B., p. 16.

¹²⁹ 66 Pa. C.S.A. § 2807(e)(3.1); Duquesne Light R.B., pp. 16-17.

¹³⁰ Duquesne Light R.B., p. 18.

data demonstrate that EGSs' prices on average rose to levels significantly above the PTC after the 12-month price limit under the SOP enrollment ended.¹³¹

The SOP Stipulation provides for reporting by the Company of the prices paid by customers who remain with an EGS after the 12-month period. The Company shares the concerns of CAUSE-PA and 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.¹³²

Duquesne Light's proposal to outsource administration of its SOP, as modified by the SOP Stipulation of Duquesne Light, OCA and CAUSE-PA, is in the public interest and I recommend that it be approved. The SOP Stipulation terms will yield useful information necessary for smart policy decisions. Importantly, the SOP Stipulation will better protect customers and makes sure they have the information and tools necessary to ensure they make financially smart choices regarding electric supply.

5. CAP Shopping

Duquesne Light's CAP customers currently are not permitted to enroll with EGSs. In recent proceedings, the Commission has encouraged default service providers to implement CAP shopping, with certain protections. In its Proposed Policy Statement Order entered on February 28, 2019 at Docket No. M-2018-3006578, the Commission provided proposed CAP shopping guidelines, which included:

- (1) a CAP shopping product rate at or below the EDC's Price-to-Compare ("PTC") for the duration of the contract;
- (2) a prohibition in the EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and

¹³¹ CAUSE-PA St. No. 1, pp. 29-30; OCA St. No. 2, pp. 4, 17; Duquesne Light R.B., p. 14.

¹³² Duquesne Light R.B., p. 15.

(3) the following options for CAP customers upon expiration of the current contract period: enter into another contract with their existing EGS with the same CAP protections, switch to another supplier offering a contract with the same CAP protections, or return to default service.^[133]

On January 23, 2020, the Commission also suggested in a Secretarial Letter that EDCs consider CAP shopping issues in their upcoming default service proceedings.¹³⁴

Pursuant to the Proposed Policy Statement and the Secretarial Letter, Duquesne Light proposed a CAP shopping program based on those of the FirstEnergy Companies. Docket Nos. P-2017-2637855 *et. al.* (Order entered February 28, 2019). 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 EG’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.

¹³³ Proposed Policy Statement Order, pp. 5, 9-10; Duquesne Light M.B., 41.

¹³⁴ *Re: Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019-3007101; Duquesne Light M.B., p. 41.

(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.

(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.^[135]

Duquesne Light noted that implementing CAP shopping would require modifications to the Company's billing system at a cost of approximately \$160,000. 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.¹³⁶

In addition, in order to avoid the expenditures of unnecessary costs, the Company proposed to only implement the CAP Shopping Program upon receipt of CAP Notice Affidavit from 5 EGSs indicating their interest (not obligation) to market to and enroll CAP customers.¹³⁷

CAUSE-PA opposed the Company's CAP shopping proposal for several reasons. CAUSE-PA argued that customers that are already enrolled with an EGS that want to enroll in CAP may pay more than the PTC until their then-current contract expires, or during a transition period. CAUSE-PA also criticized the Company's plan to educate customers. CAUSE-PA and OCA also recommended that the Company recover some portion of the costs of implementing CAP shopping from EGSs.¹³⁸

¹³⁵ Duquesne Light St. No. 5, p. 14; The other conditions of the CAP shopping program are set forth in the Direct Testimony of Ms. Scholl, Duquesne Light Statement No. 5; Duquesne Light M.B., p. 42.

¹³⁶ Duquesne Light St. No. 5, pp. 18-19; Duquesne Light M.B., pp. 42-43.

¹³⁷ Duquesne Light St. No. 5, p. 19; Duquesne Light M.B., p. 43.

¹³⁸ Duquesne Light M.B., p. 43.

The EGS Parties argued that when a CAP shopping term expires, if the customer makes no affirmative choice, that the customer continues to be served by its existing EGS at program compliant terms. The EGS Parties also argued that the CAP shopping proposal be clarified to allow that CAP customers to participate in the SOP, provided it is a CAP-compliant product.¹³⁹

On September 30, 2020, Duquesne Light filed a Stipulation with OCA and CAUSE-PA regarding an agreement between these parties regarding the Company's CAP shopping proposal. The Stipulation provides with respect to CAP Shopping:

- 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.^[140]

Under the CAP Shopping Stipulation, Duquesne Light is withdrawing its proposed CAP shopping proposal pending the Commission's decision in PPL Electric's ongoing default service proceeding at Docket No. P-2020-3019356. In that proceeding, PPL Electric is 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.¹⁴¹

Given the substantial opposition to CAP shopping by CAUSE-PA and OCA in this proceeding, I agree with the parties to the CAP Shopping Stipulation. It is reasonable to wait for additional clarity from the Commission and/or courts before going forward with CAP shopping. I recommend that the Commission approve the CAP Shopping stipulation and

¹³⁹ EGS Parties St. No. 1, p. 18; Duquesne Light M.B., p. 43.

¹⁴⁰ Duquesne Light M.B., pp. 43-44.

¹⁴¹ See PPL Electric Main Brief at Docket No. P-2020-3019356; Duquesne Light M.B., p. 44.

Duquesne Light's withdrawal of its CAP shopping proposal in the proceeding. The same are in the public interest.

In the event that the Commission orders PPL Electric to continue its CAP shopping program, Duquesne Light should be directed to make a separate filing with the Commission regarding CAP shopping.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 2801 *et seq.*

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332.

3. Any party that offers a proposal that was not included in Duquesne Light's original filing bears the burden of proof for such proposal. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa.Cmwlth. 1981).

4. Where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better service customers. *Joint Petition of Metro. Edison Co. and Pa. Elec. Co. for Approval of Their Default Service Programs*, Docket No. P-2009-2093053 and P-2009-2093054 at 19 (Opinion and Order entered November 6, 2009).

5. The requirements of a default service plan include 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, 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 shall offer a time-of-use program for customers who have smart meter technology. 66 Pa.Code §§ 2807(e), 2708.

6. Duquesne Light's proposed default service procurement, Supply Master Agreement, contingency plans, program term satisfies the requirements of default service programs. 66 Pa.C.S §§ 2801-2812; 52 Pa.Code §§ 54.181-54.189; 69 Pa.Code §§ 69.1802-69.1817.

7. Duquesne Light's proposed rate design conforms to the Commission's regulations. 66 Pa.C.S §§ 2801-2812; 52 Pa.Code §§ 54.181-54.189; 69 Pa.Code §§ 69.1802-69.1817.

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

9. Pursuant to Section 2807(e)(3.4) of the Public Utility Code, Default Service providers are to obtain Default Service supply at the "least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.4).

10. Duquesne Light's DSP IX, as modified by the terms and conditions of the Partial Settlement, includes and/or addresses all of the applicable elements prescribed by Section 2807 of the Public Utility Code, the AEPS Act, the Commission's regulations, and the Commission's policies for a Default Service plan.

11. Act 129 requires that power "shall be procured through competitive procurement processes" (including auctions, requests for proposals and/or competitively procured bilateral agreements procured at no greater than the cost of obtaining generation under comparable terms in the wholesale market), and such procurement must be a "prudent mix" of spot market purchases, short-term contracts and long-term purchases. 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2).

12. It is appropriate for Duquesne Light to recover transmission and transmission-related costs, such as PJM's RTEP costs, NITS costs, expansion costs, generation deactivation costs and ELR costs only from default service customers, and that EGSs should recover these costs from their customers. *See 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* at Docket No. P-2012-2301664 (Opinion and Order dated January 25, 2013), pp. 221-22; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242 (Opinion and Order dated January 15, 2015), pp. 45-46 and 52-53.

13. Duquesne Light has carried its burden of proof to demonstrate that its transmission and transmission-related cost recovery process is consistent with the Commonwealth's continued migration to a more competitive retail market. *See 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* at Docket No. P-2012-2301664 (Opinion and Order dated January 25, 2013), pp. 221-222; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242 (Opinion and Order dated January 15, 2015), pp. 45-46 and 52-53.

14. The Electricity Generation Customer Choice and Competition Act (Choice Act) requires the Commonwealth "continue the protections, policies and services that now assist customers who are low-income to afford electric service" in the competitive environment. The Choice Act mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2801(3); 66 Pa.C.S. § 2802(10).

15. The provision of TOU service by the Default Supplier is permitted by Act 129 and codified in Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(5).

16. 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).

17. Duquesne Light has carried its burden of proof to demonstrate that proposed EV-TOU Rate Pilot is in the public interest and should be approved as revised by the EV-TOU Stipulation filed on September 30, 2020.

18. Duquesne Light has carried its burden of proof to demonstrate the SOP and CAP Shopping Stipulation between the Company, OCA and CAUSE-PA is in the public interest and should be approved.

VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Unopposed Partial Settlement filed on October 13, 2020 is approved without modification.

2. 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 Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation.

3. Duquesne Light Company's Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation, is approved.

4. The EGS Parties network integration transmission service proposal is denied.

5. That the Secretary mark this docket closed.

Date: November 12, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge

APPENDIX

B. DSP IX PROGRAM TERM

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.

C. DSP IX PROCUREMENT PLANS AND RATES

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 <200kW, 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.²

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.

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.³ 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.

² A true and correct copy of the SMA is attached to the Unopposed Partial Settlement as Appendix C.

³ The Joint Petitioners agree that this provision of the Unopposed 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.

D. PURCHASE OF RECEIVABLES (POR)

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.

E. RECOVERY OF NET-METERED EXCESS GENERATION COSTS

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.

F. BILL REDESIGN

47. With respect to the recommendations made by CAUSE-PA witness Mr. 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.

G. BILL PRESENTMENT OF RESIDENTIAL BILL-READY EGS CHARGES

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.

H. NON-BASIC SERVICE CHARGES IN RESIDENTIAL BILL-READY EGS CHARGES

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, pp. 11-15.