BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company	:	P-2016-2543140
for Approval of a Default Service Plan	:	
for the Period June 1, 2016 to May 31, 2021	:	

RECOMMENDED DECISION

Before
Conrad A. Johnson
Administrative Law Judge

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I. HISTORY OF THE PROCEEDING

A. The Filings

On May 2, 2016, Duquesne Light Company (Duquesne Light or Company) filed a Petition, including written testimony, with the Pennsylvania Public Utility Commission (Commission) at Docket No. P-2016-2543140 for approval of its eighth default service plan (Default Service Plan, Plan or DSP VIII) for the period June 1, 2017 through May 31, 2021, as well as approval of the Company's (1) Time-of-Use (TOU) Program, (2) Standard Offer Program (SOP), (3) Customer Assistance Program (CAP) including a Shopping Program with customer protections, and (4) other approvals required for the implementation of the DSP VIII.

Under the DSP VIII, 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, and (4) Large C&I customers. 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 proposes to continue to supply Medium C&I default service customers through fixed-price full requirements contracts with three month terms. Duquesne Light proposes to continue to procure supplies for Large C&I default service customers through the day-ahead PJM[1] energy market prices. Duquesne Light proposes several changes to Large C&I default service for Hourly Priced Service (HPS) customers. Duquesne Light proposes to simplify the structure and administration for HPS customers, to conduct a Request for Proposals (RFP) to supply HPS customers, and to decrease the threshold for HPS from ≥ (greater than or equal to) 300 kW to ≥ 200 kW beginning on June 1, 2019.

The Petition was assigned to me as the presiding Administrative Law Judge (ALJ) for investigation and the scheduling of hearings. By Notice dated May 11, 2016, the Parties were informed a Prehearing Conference was scheduled for June 10, 2016, at 10:00 a.m. before me in the Commission's Pittsburgh Hearing Room.

[1] The Pennsylvania New Jersey Maryland Interconnection LLC, a mid-Atlantic regional electric power pool.

Notice of Duquesne Light's Default Service Plan Petition was duly published in the *Pennsylvania Bulletin*, informing the public that formal protests, petitions to intervene and answers must be filed in accordance with Title 52 of the Pennsylvania Code, on or before June 6, 2016. See 46 Pa.B. 2645 (May 21, 2016). The Notice also set forth the date, time and place of the Prehearing Conference.

On May 23, 2016, I issued a Prehearing Conference Order concerning regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, and I directed the Parties to submit their respective Prehearing Memorandums by June 8, 2016. The Prehearing Order also informed the Parties that failure of a party to participate in the Prehearing Conference would result in dismissal of its case, petition to intervene or protest.

On May 23, 2016, NextEra Energy Power Marketing, LLC (NextEra) filed a Petition to Intervene and Prehearing Memorandum.

On May 31, 2016, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at Pennsylvania Utility Law Project, filed a Petition to Intervene. On June 8, 2016, CAUSE-PA filed its Prehearing Memorandum.

On June 6, 2016, Noble Americas Energy Solution LLC (Noble) filed its Petition to Intervene. On June 8, 2016, Noble filed its Prehearing Memorandum.

On June 6, 2016, the Commission's Bureau of Investigation and Enforcement (I&E) filed its Notice of Appearance. On June 8, 2016, I&E filed its Prehearing Memorandum.

On June 6, 2016, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention, Answer, Public Statement, and Verification. On June 8, 2016, the OSBA filed its Prehearing Memorandum.

On June 6, 2016, the Office of Consumer Advocate (OCA) filed its Answer, Notice of Intervention and Public Statement. On June 8, 2016, the OCA filed its Prehearing Memorandum.

On June 6, 2016, Exelon Generation Company, LLC (Ex-Gen) filed its Notice of Appearance, Petition for Intervention, Prehearing Memorandum, and Verification.

On June 6, 2016, Retail Energy Supply Association (RESA) filed its Notice of Appearance, Petition to Intervene, Prehearing Memorandum and Motion for Admission *Pro Hac Vice* of Brian R. Greene together with a proposed Order and Verification Statement for Brian R. Greene.

B. Prehearing Conference, Parties and Evidentiary Hearing

The Prehearing Conference proceeded as scheduled. Respective counsel for Duquesne Light, I&E, OCA, OSBA, NextEra, CAUSE-PA, Noble, Ex-Gen and RESA participated in the Prehearing Conference. There being no objection, Petitions to Intervene in this proceeding filed respectively by NextEra, CAUSE-PA, Noble, Ex-Gen and RESA were granted. There also being no objection, the Motion for Admission *Pro Hac Vice* of Brian R. Greene and Verification, filed by Collee P. Kartychak, Esquire, as counsel for intervenor RESA, was granted. Accordingly, Brian R. Greene, Esquire, was admitted to practice *pro hac vice*, in this proceeding, and he was permitted to appear and participate as counsel on behalf of RESA in this action.

During the conference the litigation schedule was established. Under the litigation schedule the evidentiary hearing was set to commence on August 30, 2016. Thereafter the submission of briefs was to conclude by October 7, 2016, or in the event of a settlement, the settlement petition was to be filed by that date.

On June 24, 2016, I issued a Prehearing Order identifying Duquesne Light, I&E, OCA, OSBA, NextEra, CAUSE-PA, Noble, Ex-Gen and RESA as the active Parties to this proceeding and confirming the litigation schedule.

On August 30, 2016, the evidentiary hearing was held in this proceeding during which all Parties waived cross-examination and stipulated to the admission of their respective and previously served written testimony and exhibits. See Transcript at 34-36.

C. Suspension and Amendment of Litigation Schedule

On September 20, 2016, at the request of the Parties, I conducted a telephone conference to discuss the briefing schedule set forth in the Prehearing Order issued in this case on June 24, 2016. During the conference the briefing schedule was suspended and amended, pending the submission of a Non-Unanimous Settlement Petition (Petition). Under the amended procedural schedule, the Parties were permitted to submit the Petition on September 23, 2016, and on the same date any Party opposing the Petition was permitted to file a letter outlining its opposition to the Petition, specifically indicating the objected to provisions of the Petition.

The amended procedural schedule also allowed the Parties to file their respective Statements in Support or Statements in Opposition to the Petition on September 29, 2016 and to file Replies to the Statements in Support or Statements in Opposition on October 7, 2016.

D. Non-Unanimous Settlement Petition, Objections and the Record

On September 21, 2016, the transcript of the evidentiary hearing held on August 30, 2016, was filed with the Commission's Secretary's Bureau and received by me on September 26, 2016.

On September 23, 2016, Joint Petitioners, Duquesne Light, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen, filed a Joint Petition for Approval of Non-Unanimous Se

ttlement (Settlement). On the same date, Noble filed a letter specifically opposing Paragraph 22 of the Settlement pertaining to DLC's uncollectible expenses component of its Purchase of Receivables.

On September 29, 2016, the Joint Petitioners, DLC, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen filed their respective Statements in Support of the Settlement. On the same date, I&E filed a letter stating that although it did not join in the Settlement, I&E did not oppose its terms and conditions. Also on September 29, 2016, Noble filed its Objections and Statement in Opposition to the Settlement (Noble's Objections).

On October 7, 2016, Duquesne Light filed a Reply to Nobles' Objections; RESA filed a Reply in Support of the Settlement; and OSBA filed a letter stating it would not be filing a Reply Brief. On the same date, Noble filed a letter stating it would not be filing a formal reply to any of the Statements filed in support of the Settlement and reiterated its opposition to Paragraph 22 of the Settlement.

By Interim Order dated October 13, 2016, the following documents were admitted into the record:

(a) The Joint Petition for Approval of Non-Unanimous Settlement (Settlement) filed on September 23, 2016, by Joint Petitioners, Duquesne Light Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Retail Energy Supply Association and the Exelon Generation Company, LLC.

(b) The September 23, 2016 letter of Noble America Energy Solutions LLC (Noble) specifically opposing Paragraph 22 of the Settlement pertaining to Duquesne Light's uncollectible expenses component of its Purchase of Receivables.

(c) The September 29, 2016 Statements in Support of the Settlement respectively filed by Duquesne Light, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen.

(d) The September 29, 2016 letter of I&E stating it did not oppose the terms and conditions of the Settlement.

(e) The September 29, 2016 Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement (Noble's Objections) filed by Noble.

(f) The October 7, 2016 Reply to Noble Americas Energy Solutions LLC's Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement filed by DLC.

(g) The October 7, 2016 Reply in Support of Joint Petition for Settlement filed by RESA.

(h) The October 7, 2016 letter, filed by Noble, stating it would not be filing a formal reply to any of the Statements filed in support of the Settlement and reiterating its opposition to Paragraph 22 of the Settlement.

The record closed with the entry of the Interim Order on October 13, 2016. This case in now procedurally ready for ruling. The record includes the filings, transcript and above listed documents.

II. TERMS OF THE NON-UNANIMOUS SETTLEMENT

The eight-page Settlement includes thirty-two numbered paragraphs, request for relief and four attached Appendices. Appendix A is the Retail Tariff, which includes the reduction in distributions rates required by the unbundling provision of the Settlement. Appendix B is the Supplier Tariff. Appendix C sets forth the amount of costs to be unbundled as wells as the calculations for determining the reduction to distributions rates. Appendix D sets forth the calculation of adjustment to the retail market enhancement surcharge (RMES) for the purchase of receivables uncollectible discount. The principal terms of the Settlement, Paragraphs 15 through 27, state as follows:

A. PROCUREMENT

15. Duquesne Light's Residential[2] and Small Commercial & Industrial (C&I)[3] procurement plans will be approved.

16. Semi-annual reconciliations will continue for Residential and Small C&I customers.

17. Duquesne Light's Medium C&I[4] procurement plan will be approved.

18. Duquesne Light's Large C&I[5] procurement program will be approved.

19. Descending Clock Auctions may be used.

B. UNBUNDLING

20. To the extent not already unbundled, Duquesne Light will unbundle the costs set forth in Exhibit DBO-3-R effective June 1, 2017.

21. Default service rates will be increased in order to recover unbundled costs, which will increase the PTC. In order to recover unbundled costs, the Company will increase the default service rates of the residential, small and medium procurement groups using the allocated dollar amounts and the forecast default service MWh in DBO-3-R as also reflected in Appendix C hereto. The Company will also increase the proposed fixed retail administrative charge in Rider No. 9 for the large procurement group using the same allocated dollar amounts and the forecasted default service MWh. The unbundled expenses will be fixed and reconciled only for differences between projected and actual consumption. The Company will reduce current base distribution rates effective June 1, 2017 for residential, small, medium and large rate classes utilizing the allocation methodology employed in the Company's 2013 base rate proceeding at Docket No. R-2013-2372129.

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[2] The Residential procurement group includes both Residential and Lighting customers.

[3] The Small C&I procurement group includes non-residential customers with less than 25 kW of monthly metered demand.

[4] The Medium C&I procurement group includes customers with monthly metered demands equal to or greater than 25 kW and less than 300 kW.

[5] The Large C&I procurement group includes customers with monthly metered demands equal to or greater than 300 kW.

22. Effective June 1, 2017, the Company will eliminate the uncollectible accounts component of the POR discounts for EGSs. Calendar year 2015 POR discount expense of $797,900 POR uncollectible expense will be moved to the Company's Rider 1 RMES for recovery until the next base rate proceeding. The amount of $797,000 will be fixed. Recovery of other uncollectible expenses will remain in base rates. The component of the POR discount for administrative costs (0.1%) will continue.

23. All Parties reserve the right to propose changes to the amounts and procedures for unbundling costs and to propose changes to the discount for purchases of receivables under the POR Program in future base rate proceeding(s) filed by Duquesne Light.

C. CAP SHOPPING

24. CAP shopping shall be postponed until June 1, 2021, the commencement of DSP IX.

25. Duquesne Light will conduct a CAP shopping collaborative with parties in the fall of 2018 and file for approval of a CAP shopping program within its DSP IX filing to become effective June 1, 2021, provided that other EDCs CAP shopping programs have been approved by the Commission and have been successfully implemented.

D. STANDARD OFFER PROGRAM

26. Duquesne Light agrees to revise the Standard Offer Program ("SOP") scripts in the following manner:

"I see you are eligible for the voluntary Standard Offer program. Duquesne Light is responsible for delivering your electricity. The actual generation of the electricity you receive can be provided by Duquesne Light or a participating supplier of your choice. The Standard Offer program offers a fixed price of [SOP Rate] cents/kWh for one year provided by an Electric Generation Supplier. The fixed Standard Offer Program price provides a 7% discount off of today's Price to Compare which is [PTC Rate] cents/kWh. Duquesne Light's Price to Compare changes on June 1st and December 1st each year. The Standard Offer price will not change during the 12 monthly bills, but the Price to Compare could be higher or lower than the Standard Offer program during this period when it changes. If you are interested in the Standard Offer Program, I will transfer you to a supplier who is participating for more information. Customers who enroll are free to leave the Standard Offer Program at any time during the 12 months and return to Duquesne Light's default service or another EGS with no termination/cancellation fee imposed."

27. Duquesne Light will train all of its customer service representatives on the required disclosures related to the Customer Referral Program and conduct a periodic review of representative call recordings concerning the Customer Referral Program to ensure that the representatives are providing the required disclosures.

III. FINDINGS OF FACT

1. Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, certificated by the Commission to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania.

2. Duquesne Light is also an electric distribution company (EDC) and a default service provider (DSP) as defined under Section 2803 of the Public Utility Code. 66 Pa.C.S. § 2803.

3. Duquesne Light provides electric distribution service to approximately 590,000 customers and is currently the DSP for approximately 380,000 of those customers.

4. On May 2, 2016, Duquesne Light filed its Petition for Approval of Default Service Plan for the Period June 1, 2017 Through May 31, 2021 (Petition).

5. I&E serves as the Commission's prosecutorial bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge.

6. OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. Section 309-2.

7. OSBA is authorized and directed to represent the interest of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41-399.50.

8. I&E filed a Notice of Appearance in the proceeding. In addition, OCA and OSBA filed Notices of Intervention and Answers to the Petition.

9. CAUSE-PA, Ex-Gen, NextEra, Noble and RESA filed Petitions to Intervene, which were granted during the course of this proceeding.

10. An evidentiary hearing was held on August 30, 2016. All parties waived cross-examination.

11. During the evidentiary hearing, the parties stipulated to the admission of the previously served testimony and exhibits.

12. On September 23, 2016, Joint Petitioners, Duquesne Light, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen, filed a Joint Petition for Approval of Non-Unanimous Settlement (Settlement).

13. On the same date, Noble filed a letter specifically opposing Paragraph 22 of the Settlement pertaining to Duquesne Light's uncollectible expenses component of its Purchase of Receivables (POR).

14. On September 29, 2016, the Joint Petitioners, Duquesne Light, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen, filed their respective Statements in Support of the Settlement.

15. On September 29, 2016, I&E filed a letter stating that although it did not join in the Settlement, I&E did not oppose its terms and conditions.

16. On September 29, 2016, Noble filed its Objections and Statement in Opposition to the Settlement (Noble's Objections).

17. On October 7, 2016, Duquesne Light filed a Reply to Nobles' Objections.

18. On October 7, 2016, RESA filed a Reply in Support of the Settlement.

19. On October 7, 2016, Noble filed a letter stating it would not be filing a formal reply to any of the Statements filed in support of the Settlement and reiterated its opposition to Paragraph 22 of the Settlement.

20. NextEra did not submit a written response to the Settlement.

IV. DISCUSSION

A. Applicable Legal Standards

1. Commission Policy on Settlements

The Commission encourages parties in contested on-the-record proceedings to settle cases. See 52 Pa.Code § 5.231. 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 imposes.

By definition, a "settlement" reflects a compromise of the parties' positions and arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa.

P.U.C. 767, 771 (1991); *Pa. Pub. Util. Comm'n v.York Water Co.*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004).

2. Burden of Proof

"Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission bears the burden of proof." *Joint Application of Equitable Resources, Inc., and the Peoples Natural Gas Company, d/b/a/Dominion Peoples,* Docket No. A-122250F5000, 2007 Pa. PUC LEXIS 32, *7 (Opinion and Order entered April 13, 2007, at 7). In this proceeding, the Joint Petitioners are seeking Commission approval of their non-unanimous settlement. Accordingly, the Joint Petitioners bear the burden of proof.

> The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 854 (1954); *Samuel J. Lansberry, Inc. v. Pa. PUC,* 578 A.2d 600 (Pa. Cmwlth. 1990); and *Feinstein v. Philadelphia Suburban Water Company,* 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.*

Joint Application of Equitable Resources, Inc., 2007 Pa. PUC LEXIS 32, at *8. Therefore, the Joint Petitioners must establish that the proposed settlement is in the public interest.

3. Default Service Plans

The Electricity Generation Customer Choice and Competition Act[6] (Act 138) requires that default service providers acquire electric energy through a "prudent mix" of resources designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes, including auctions, requests for proposals and/or bilateral agreements. 66 Pa.C.S.A. §§ 2807(e)(3.1) and

[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.A. §§ 2801 *et seq.*

(3.4). Act 138 also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S.A. § 2802(3). 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." 66 Pa.C.S.A. § 2802(5). See *Green Mountain Energy Company v. Pa. Pub. Util. Comm'n,* 812 A.2d 740, 742 (Pa.Cmwlth. 2002).

In response, the Commission enacted default service regulations in 2007 at 52 Pa.Code Sections 54.181 to 54.189, and issued a policy statement at 52 Pa.Code Sections 69.1802 to 69.1817, to address default service plans. The regulations were amended to incorporate the Act 129[7] amendments into Act 138.[8]

B. Statements of the Joint Petitioners in Support of the Settlement

For the Commission's consideration the Joint Petitioners submitted separate Statements in Support of the Settlement. In their supporting statements, Duquesne Light, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen, conclude, after extensive discovery and discussion, this Settlement is in the interests of Duquesne Light and its customers, and is otherwise in the public interest.

The Joint Petitioners explain they have agreed to a settlement of all issues in the above-captioned proceeding and the Settlement was achieved only after an extensive investigation of Duquesne Light's filing, including extensive informal and formal discovery and the service of written direct testimony (including accompanying exhibits) by the various parties. In addition to informal discovery, Duquesne Light responded to numerous formal discovery requests (many of which had multiple subparts). Various parties served testimony and accompanying exhibits supporting their respective positions, which testimony and exhibits were subsequently admitted into the record at the evidentiary hearing held on August 30, 2016.

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[7] Act 129 of 2008 (Act 129), codified at 66 Pa.C.S.A. §§ 2801 *et seq*.

[8] *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).

The Joint Petitioners further indicate they have participated in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement. The Joint Petitioners note that they, as well as their experts and counsel, have considerable experience in rate proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the settled issues. Acceptance of the Settlement further avoids the necessity and costs of further administrative and potential appellate proceedings.

For these reasons and the reasons set forth below, the Joint Petitioners assert the Settlement is just and reasonable and Duquesne Light's DSP VIII filing, as modified by the Settlement, should be approved.

However, it is important to note that the terms and conditions of the Settlement are either agreed upon, unopposed or no position was expressed with the exception of one provision, which is later discussed.[9] Accordingly, the positions of the Joint Petitioners on the various issues are summarized below.

C. Procurement Issues

1. Residential and Small C&I Procurement Issues

a. Duquesne Light's Position

Under Duquesne Light's DSP VIII, the Company acquires default supplies for Residential and Small C&I customers through laddered one-year, fixed-price contracts. DLC Exh. No. 1, pp.3-4 and Statement in Support (St. Sup.) at 4. These contracts require a wholesale supplier to provide energy, capacity, ancillary service and any other products or services necessary to serve a specified percentage of default service load 24 hours per day for the term of the contract. Under the Settlement, Duquesne's DSP VIII will transition to a prudent mix of

[9] As previously mentioned in the procedural history, Noble opposes the Settlement, particularly Paragraph 22 of the Settlement.

50% laddered one-year full-requirements supply contracts and 50% laddered two-year full-requirements contracts. Duquesne Light St. No. 2, p. 7 and St. Sup. at 4. Duquesne Light submits that this mix of contracts will provide Residential and C&I customers with greater rate stability, thereby reducing the likelihood of significant default supply rate changes due to adverse market conditions. Duquesne Light adds that OCA and OSBA supported this provision of the Settlement. DLC St. Sup. At 4.

b. OCA's Position

OCA suggests that Duquesne Light's default service procurement plan for residential and small commercial and industrial customers is in the public interest because it promotes price stability based upon the testimony of its witness, Dr. Steven Estomin. OCA St. No. 1 at 8 and St. Sup. at 5. Dr. Estomin testified, "My assessment is that the products that Duquesne is proposing to use to meet its residential Default Service obligations provide a reasonable balance between price stability, market responsiveness, and Act 129 directives." OCA Statement No. 1 at 8. OCA argues that Dr. Estomin's testimony comports with the position taken by Duquesne Light's witness, John Peoples. OCA St. Sup. At 5. OCA adds that Dr. Estomin supports Duquesne Light's proposed use of "overhanging contracts." OCA Statement No. 1 at 9-10.

Dr. Estomin explained the benefit of "overhanging contracts" as follows:

> "Overhanging" contracts are used to avoid the problem of a "hard stop," which occurs when 100 percent of a new portfolio needs to be procured at the beginning of the subsequent Default Service Plan period because all of the power purchase agreements expire at the conclusion of the prior Default Service Plan period. The potential price shock of a new set of prices being put into effect at the beginning of the subsequent plan period is reduced by Duquesne's proposal to procure power contracts in what I would term a "steady state" schedule.
>
> OCA Statement No. 1 at 9.

OCA St. Sup. at 5-6.

c. OSBA's Position

OSBA submits that price stability is an important element of a default service procurement plan. OSBA St. Sup at 3. OSBA's position relies upon the testimony of its witness, Brian Kalcic, who is an economist and consultant in the field of public utility regulation. OSBA Statement No. 1-R.

> As Mr. Kalcic testified on rebuttal with respect to Small C&I procurement, Duquesne is proposing to place greater emphasis on price stability in this proceeding than it has in its recent default service proceedings. The OSBA welcomes the Company's greater emphasis on price stability and supports the Company's proposed Small C&I procurement plan.

OSBA St. Sup. at 3. OSBA adds that "[w]hen the Act 129 of 2008 was implemented, it revised Section 2807 of the Public Utility Code to require a default service provider to procure default service supply using a prudent mix of contracts designed to produce 'the least cost to consumers over time.'" 66 Pa.C.S. § 2807. OSBA St. Sup. at 4.

d. CAUSE-PA's Position

CAUSE-PA is an unincorporated association of low-income individuals advocating to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. Petition to Intervene of CAUSE-PA ¶ 8. CAUSE-PA submits that it specifically intervened in this proceeding to address Duquesne Light's proposal to allow its low-income customers participating in its Customer Assistance Program (CAP) to switch to an electric generation supplier (EGS) for their generation service and retain their CAP benefits. CAUSE-PA's St. Sup. 1. Accordingly, CAUSE-PA's supporting statement focuses on the CAP Shopping provisions of the Settlement ¶¶ 24-25, which are discussed later.

However, in support of the Settlement, CAUSE-PA urges the following:

> In CAUSE-PA's view, the Settlement is in the public interest in that it addresses issues of concern affecting Duquesne's low-income customers, balances the various interests of the parties, and resolves the contested issues fairly. If approved, the Settlement will reduce the

> possibility of further litigation and appeals along with their attendant costs.

CAUSE-PA St. Sup. at 2.

e. RESA's Position

RESA is a non-profit organization and trade association of retail energy suppliers who advance the concept "that robust and sustainable competitive retail energy markets deliver more efficient, customer-oriented outcomes than regulated utility structures." RESA's St. Sup. at 1. Over the course of the litigation, RESA challenged certain provisions of the Settlement. Thus RESA notes that the Settlement is compromise of the divergent positions of the Joint Petitioners.

Id. at 3-4.

> RESA opposed Duquesne's proposal to transition from laddered, one-year, wholesale full-requirements supply contracts to 50% laddered one-year full-requirements contracts and 50% laddered two-year full-requirements contracts to procure the supply for Residential and Small C&I default service customers. [Footnote Omitted] Instead, RESA recommended continuation of the status quo, which was adopted for the current default service plan period, DSP-VII, and which consists of 100% laddered one-year full-requirements contracts to procure Residential and Small C&I default service supply. [Footnote Omitted]
>
> RESA explained in testimony that Duquesne (and others) had supported the current procurement structure as consistent with Pennsylvania law, and that there had been no changes in the law or facts to warrant a change to the procurement structure, including the move towards two-year contracts. In RESA's view, the current procurement structure resulted in stable default service rates for Residential and Small C&I customers, and the testimony did not support Duquesne's argument that the inclusion of two-year contracts was necessary to prevent "significant" rate changes. [Footnote Omitted] RESA also explained that injecting longer-term supply contracts into the default service portfolio would result in less market-reflective default service rates, a step in the wrong direction for the development of the competitive retail supply market in the Duquesne service territory. [Footnote Omitted]

> While RESA did not agree with Duquesne's procurement structure proposal for Residential and Small C&I default service customers or the arguments Duquesne presented in support of its proposal, RESA was able to compromise on this issue as a part of the overall Settlement.

Id.

f. Ex-Gen's Position

Ex-Gen is a buyer and seller of wholesale electricity and capacity providing energy and other services to wholesale customers, such as distribution utilities, co-ops, municipalities, power marketing utilities and other large load serving entities. Petition to Intervene of Ex-Gen ¶5. In its succinct supporting statement Ex-Gen does not specifically address the individual terms and conditions of Settlement. Rather Ex-Gen maintains that its interests have generally been unique as comparted to those of the other intervenors. While Ex-Gen did not file any testimony it participated in discovery seeking clarification of Duquesne Light's definition of the delivery point of electricity under the Supplier Master Agreement (SMA). DLC Exhibit JP-3 at 6. As a result, Duquesne Light agreed to add a Pnode Identifier and delivery point information to the SMA.[10] Ex-Gen St. Sup. at 2. Ex-Gen acknowledges that the Settlement represents the give-and-take that occurs between diverse parties agreeing on a broad set of issues and represents a fair outcome of the proceeding. Ex-Gen concludes that the Settlement is in the public interest and requests its approval without modification. *Id.* Ex-Gen did not specifically address any of the remaining terms and conditions of the Settlement.

2. Reconciliation Issues

a. Duquesne Light's Position

Duquesne Light submits that under the Settlement there will be no change to its existing reconciliation methodology. DLC St. Sup. at 8. Currently Duquesne Light's default service rates are reconciled on a six-month basis. DLC St. 4 at 23. Duquesne Light notes that during settlement discussions OCA requested that over or under collections be refunded or recovers over a twelve-month period. DLC St. Sup at 8. Relying upon the testimony of

10 Pnode (price node) is the cost of serving the next megawatt (MW) load at a given location (node).

Manager of Rates and Tariff Services David B. Ogden, Duquesne Light argued that it was unnecessary to change its existing reconciliation methodology. According to Duquesne Light "there was not a significant chance of experiencing significant over or under collections because the Company acquires default supplies through fixed price full-requirements contracts that require suppliers to meet customer demands at the fixed price. *Id.* Thus Duquesne Light asserted that continuing its current reconciliation methodology was reasonable, and the Company noted that this provision of the Settlement was not opposed by any party. *Id.*

b. Other Joint Petitioners' Positions

The other Joint Petitioners, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen did not specifically comment on this provision of the Settlement in their respective supporting statements.

3. Medium C&I Procurement Plan Issues

a. Duquesne Light's Position

Presently Duquesne Light customers with monthly metered demands equal to or greater than 25 kW and less than 300 kW are classified as Medium C&I customers. DLC St. Sup. at 8. "Duquesne Light provides default supplies to these customers by obtaining three-month, non-laddered, full requirements contracts from third-party suppliers through a competitive procurement process." *Id.* Duquesne Light states, "No party in this proceeding challenged the Company's proposal to acquire default supplies for customers that continue to remain in the Medium C&I procurement group through three-month full-requirements contracts." *Id.* Under the Settlement, the DSP VIII Plan will reduce the upper end of the 300 kW limit for this group to less than 200 kW beginning on June 1, 2019. *Id.* 8-9. As a result, all customers at 200 kW and above would be required to take hourly price supply (HPS) service, Duquesne Light submits. Duquesne Light reasons that reducing the 300 kW limit to less than 200 kW ensures that all necessary customers have smart meters and promotes the success of obtaining HPS from a competitive supplier. *Id.* at 9.

Duquesne notes that RESA advanced a different plan for Medium C&I customers, as follows:

> In testimony, RESA argued that Duquesne Light should lower the HPS threshold between the Medium C&I and Large C&I procurement classes from 300 kW to 200 kW on June 1, 2018 and further lower the HPS threshold to 100 kW on June 1, 2019. (RESA St. No. 1, pp. 22-23.) In support of its position, RESA argued that many of the customers over 100 kW are shopping and that they are sophisticated enough to take HPS service. (RESA St. No. 1, p. 23.) RESA also stated that the Commission expressed its support in the *End State Order*[1] that HPS service be offered to customers over 100 kW who have interval meters. (RESA St. No. 1-S, p. 27.)
>
> [1] *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Order entered February 15, 2013.

Id. During the settlement process, Duquesne Light disagreed with RESA's position and relied upon the testimony of John Peoples, the Company's Manager of Energy Supply.

Witness Peoples testified that not all C&I customers with peak demands greater than or equal to 200 kW will have the smart meters and the necessary communication equipment in place to receive HPS by June 1, 2018. DLC St. No. 2-R at 11 and St. Sup at 9. Thus according to Duquesne Light, RESA's proposal to accelerate the effective date for lowering the HPS limit to 200 kW on June 1, 2018 was not feasible. *Id.* at 9.

As additional rationale for lowering the HPS limit to 200 kW effective June 1, 2019, Duquesne Light asserted (1) the effective date would permit the Company time to "evaluate the potential impacts of its new HPS competitive supply before expanding the HPS customer class" in terms of overall administrative cost; (2) the June 1, 2019 timeframe would provide affected customers sufficient notice and time to consider their supply options; and (3) there would be "sufficient time to conduct coordination efforts with both customers and EGSs [electric generation suppliers], to address issues such as rate changes, billing modification, meter requirements and communication. (Duquesnt Light St. No. 2-R, p. 12.)" *Id.* at 9-10.

Duquesne Light also addressed RESA's suggestion that the HPS threshold should be further lowered to 100 kW because many customers over this threshold are shopping and they are sophisticated enough to take HPS service. According to Duquesne Light, the level of switching for this class of customers has remained the same over the past two years, even though the default service products have gone from six month contracts to three month contracts. *Id.* at 11. Duquesne Light asserts that some customers between 100 kW and 200 kW may elect to remain on default service because of rate stability. *Id.* Furthermore, RESA's suggestion is problematic in terms of metering and administrative issues. Duquesne Light notes that the Company is still in the process of installing smart meters which will not be in place by June 1, 2019 for all C&I customers with the communication equipment necessary to offer HPS. *Id.* The communication equipment must be in place in order to coordinate "customer communications, rate changes, meter requirements, and billing modifications," Duquesne Light maintains. *Id.* Duquesne Light was also concerned that lowering the HPS threshold to 100 kW would significantly reduce the size of the Medium C&I class load, which may not be sufficient to obtain competitive bids. *Id.* at 12.

> As further explained by Mr. Peoples, if RESA's proposal to lower the Medium C&I threshold to 100 kW is adopted, all remaining customers between 25 kW to 100 kW would need to be moved to the Small C&I class to ensure competitive default supply bids for these customers. (Duquesne Light St. No. 2-R, pp. 15-16.) This would require C&I customers between 25 kW and 100 kW to move from 3 month default supply contracts to longer term contracts to ensure continued rate stability for the Small C&I customers under 25 kW.

Id.

While submitting a lengthy explanation of its position on the Company's Medium C&I default service procurement plan, Duquesne Light urges that no party opposes this Settlement provision and concludes that this Settlement provision is reasonable and in the public interest based upon the reasons set forth in its thorough explanation. *Id.*

b. OCA's, OSBA's and CAUSE-PA's Positions

In its Statement in Support of the Settlement, OCA did not specifically comment on Duquesne Light's proposed Medium C&I default service procurement plan. In turn, OSBA only commented, "Default service rates for Medium C&I customers with a monthly metered demand of equal to or greater than 25 kW and less than 300 kW will be based on the result of competitive procurements with three-month supply contracts and no laddering." OSBA St. Sup. at 3. Similar to OCA, CAUSE-PA did not specifically comment on this provision of the Settlement.

c. RESA's Position on Medium and Large C&I Plan Issues

As already noted in Duquesne Light's position above, RESA suggested two changes to the Company's proposed default service plan for Medium and Large C&I customers. RESA submits that its "recommendations would result in more market-reflective default service prices for a greater number of Duquesne's current Medium and Large C&I default service customers." RESA's St. Sup. at 5. Citing *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Opinion and Order entered February 15, 2013), RESA asserts that its suggestions or "proposals are consistent with the Commission's prior order expressing support for a threshold of 100 kW for purposes of determining medium and large C&I customers, so long as the customers had interval meters." *Id.*

First, RESA contends that reducing the 300 kW limit or threshold in two stages, a 200 kW limit by June 1, 2018 and then a 100 kW limit by June 1, 2019, is preferable because the data demonstrates that 78% of Duquesne Light's customers in the usage range between 200 kW and less than 300 kW are already taking their electricity from one of 66 active EGSs. This establishes that these customers are sophisticated and able to shop for their electricity. RESA St. 1 at 22. RESA asserts that the June 1, 2019 effective date for the 100 kW limit provides sufficient time for the Company to deploy smart meters and associated equipment as well as to evaluate the impact of HPS on these customers. *Id.* at 23 and RESA St. Sup. at 5-6.

Second, RESA notes that under the Settlement, Duquesne Light proposes to charge HPS customers 100% of their actual hourly usage using the day-ahead hourly energy prices. RESA St. Sup at 6. RESA asserts that Duquesne Light should either continue its current HPS service pricing mechanism for Large C&I customers or charge real-time hourly prices similar to PPL and the FirstEnergy electric distribution companies (EDCs). RESA St. No. 1 at 24 and St. Sup. at 6. RESA maintains that real-time pricing in the HPS structure results in more market-reflective pricing, thereby "permitting customers to modify their usage in response to hourly price signals to a greater extent than they can if their price does not reflect real-time pricing." RESA St. Sup. at 6.

Although RESA challenged Duquesne Light on its default service plan for Medium and Large C&I customers, RESA concludes it was able to compromise these issues in the context of the overall Settlement. RESA St. Sup. at 6. Accordingly, RESA supports the Medium and Large C&I Plan provisions of the Settlement. *Id.*

4. Large C&I Procurement Plan Issues

a. Duquesne Light's Position

For Large C&I customers, Duquesne Light proposes provide HPS (hourly price service) to these customers at the day-ahead price. DLC St. Sup. at 14. This proposal is a modification of the Company's current practice, which its witness, Mr. Peoples detailed as follows:

> Under the Company's current practice, the Company is required to provide an hourly load forecast for each and every HPS customer by 8:00 am each business day. Each HPS customer then has the option to modify that schedule each day prior to 10:00 am. Energy in a day-ahead schedule, subject to modification by each customer, is purchased in the day-ahead energy market with differences between the scheduled load and actual customer consumption settled in the real-time market. These purchases in the day-ahead and/or real-time energy markets are tracked and reconciled on a customer-by-customer basis.

(Duquesne Light St. No. 2-R, p. 6.); St. Sup at 13.

Duquesne Light argues that the Company's current default service approach for Large C&I customers is cumbersome. *Id.* According to Duquesne Light, the Company provides HPS default service to approximately 90 customers.

> When the HPS threshold is lowered to 200 kW, the number of HPS customers is projected to increase by 108, to 198, based upon current shopping levels. (Duquesne Light St. No. 2-R, p. 6.) The reconciliation process for HPS customers is manually intensive and administratively complex. The Company's administrative burden would substantially increase when the HPS threshold is lowered to 200 kW if the Company were required to maintain the same procurement approach.

Id.

Duquesne Light posits that its default service plan for Large C&I customers will reduce the Company's administrative burden and allow HPS customers to receive all service at the day-ahead price. Duquesne Light St. Sup. at 14. In further support of its position, Duquesne Light proposes to conduct competitive solicitation for wholesaler suppliers to provide HPS service to Large C&I customers at day-ahead hourly energy prices. *Id.* Duquesne Light reasons that providing all HPS service at the day-ahead price will reduce uncertainty for customers concerning what process they will be charged for supply because they will know the process to be charged one day in advance for using electricity. *Id.*

Relying on the testimony of Mr. Peoples, Duquesne Light submits the following:

> Adopting Duquesne Light's proposed approach will (a) eliminate the need to submit day-ahead hourly load forecasts for each HPS customer, (b) eliminate the need to be prepared to receive modifications to those day-ahead hourly load forecasts from each HPS customer, (c) eliminate the need to reconcile the difference between the day-ahead hourly load forecast and actual hourly customer usage at real-time prices for each HPS customer, and (d) eliminate the need to bill those reconciled amounts to each HPS customer.

(Duquesne Light St. No. 2-R, p. 7.); St. Sup at 14. Accordingly, Duquesne Light concludes this section of its supporting statement and argues, "The Company's Large C&I procurement plan is

in the public interest and should be approved because it gives Large C&I customers the benefits of the day-ahead market and reduced Duquesne Light's administrative burden. St. Sup. at 14.

b. OCA's, OSBA's, CAUSE-PA's and RESA's Positions

In their respective Statement in Support of the Settlement, OCA, OSBA and CAUSE-PA did not specifically comment on Duquesne Light's proposed Large C&I default service procurement plan. RESA's position on the Settlement terms for Large C&I customers, having already been discussed above, does not require further discussion here.

5. Descending Clock Auction Provision

There was no opposition from any Joint Petitioner to the Settlement provisions pertaining to the descending clock auction. Here, Duquesne Light suggests that employing the descending clock auction to procure default supplies for customers is in the public interest and preferable as opposed to its current request for proposal process is preferable. In support of this change, Duquesne Light submits the following reasons.

> The Company believes that the descending-price clock auction procurement process will encourage suppliers to bid prices that reflect their lowest price costs, due to the transparency that occurs during the auction process. With the simultaneous bidding on products that are related in value, bidders are able to switch their bid quantities across products and procurement classes and bid simultaneously on substitutable and/or complementary products in response to changes in pricing. Providing information to bidders who face uncertainty helps them bid more confidently, and using an open auction format is designed to promote the selection of the most efficient provider. Conversely, a sealed-bid RFP process doesn't ensure supply is procured at the lowest cost from a supplier, since the offers are submitted with some guess work that occurs by wholesale suppliers on other RFP bids.

Duquesne Light St. No. 2-R, pp. 16-17; St. Sup. at 15.

D. Unbundling Provisions

1. Timing of Unbundling

a. Duquesne Light's Position

Duquesne Light, in effect, asserts that RESA was the primary challenger to the Company's proposed unbundling provisions. RESA's challenge stemmed from the settlement reached in the Company's DSP VII proceeding. *Petition of Duquesne Light Company for Approval of a Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2418242 (Opinion and Order entered January 15, 2015). In DSP VII, Duquesne Light agreed, in relevant part, to the following:

> **Unbundling of Default Service Costs**
>
> 13. In the earlier of its next general rate increase filing or its Default Service Plan filing for the period commencing June 1, 2017, Duquesne Light will propose to unbundle from base rates costs associated with the provision of default service, including default service proceeding and procurement costs, and cash working capital with regard to default service procurements. Duquesne Light will simultaneously propose a mechanism for recovery of such costs from default service customers. All parties reserve the right to comment on and oppose such proposal.

Id. at 17. Relying on this provision of the DSP VII settlement, RESA argued that Duquesne Light was required to unbundle costs effective June 1, 2017. RESA St. No.1 at 7; DLC St. Sup at 17.

During the settlement process, Duquesne Light disagreed with RESA's positon. Duquesne Light claimed that the DSP VII settlement only requires the company to make a proposal regarding unbundling in the DSP VIII proceedings. *Id.* "The Company proposed to defer unbundling until the Company's next base distribution rate case or June 1, 2020, whichever is earlier." *Id.* Duquesne Light notes that OCA agreed with its positon.

The OCA's witness, Dr. Estomin, stated as follows:

> The settlement provision calls for the development of a proposal for the unbundling of Default Service costs from base distribution rates. The settlement provision does not specify the time of implementation of the new rates and implementation of new rates following the conclusion of the next general distribution rate case is not an unreasonable proposal.

(OCA St. No. 1-R, p. 3.)

DLC St. Sup at 17.

Duquesne Light submits that unbundling default service costs in a base rate proceeding is preferable than outside of a base rate proceeding. In support of this position, Duquesne Light proffers the following:

> All costs and revenues are subject to review in a base rate proceeding. Unbundling costs in a base rate proceeding ensures that there is no under-recovery of previously approved costs in base rates and allows more accurate allocation of costs, not only between default service and shopping customers but also between customer classes. (Duquesne Light St. No. 4-R, pp. 5-6.)

DLC St. Sup at 17.

However, in order to achieve settlement, Duquesne Light compromised and agreed to the timing of unbundling. Default service costs will be unbundled as set forth in the Company's Exhibit DBO-3-R effective June 1, 2017. *Id.*

b. Other Joint Petitioners' Positions

The other Joint Petitioners, OCA, OSBA, CAUSE-PA, RESA and Ex-Gen did not oppose the June 1, 2017 effective date for unbundling default service costs.

2. Types of Costs and Level of Costs to Be Unbundled

a. Duquesne Light's Position

The Settlement provides that Duquesne Light will unbundle from distribution rates (1) filing preparation and approval process costs for default service proceedings, including costs for consulting services and outside counsel to help prepare filings and obtain approval of filings, and (2) working capital costs for default service supply, which are the costs for the lag in time between when Duquesne Light pays its default service supply expenses and when it recovers its revenues. DLC St. Sup. at 18. Duquesne Light notes that RFP process and evaluation costs, Time-of-Use (TOU) costs and Large C&I administrative costs are already unbundled from distributions rates. *Id.* Duquesne Light asserts that the unbundling cost provision of the Settlement "gives the Company the highest unbundled unit rate in the Commonwealth. (Duquesne Light St. No. 3-R, p.23)." DLC St. Sup. at 25. The proposed unbundled costs combined with the costs that have already been unbundled totals approximately $2.1 million dollars per year, Duquesne Light submits. *Id.*

Duquesne Light's position disputed RESA's argument that other costs should be unbundled from distribution rates, thereby resulting in a higher level of unbundled costs. *Id.* Duquesne Light summarized RESA's argument:

> In its testimony, RESA argued that the Company has understated the level of costs that should be unbundled from distribution rates. RESA generally argued that call center, information technology ("IT") costs, overhead, uncollectible expense and various other costs should be unbundled from distribution rates. (RESA St. No. 1, p. 9.) RESA then reviewed certain cost categories from Duquesne Light's FERC Form 1, including Customer Accounts Expense, Customer Service and Informational Expense and Administrative and General Expense. RESA summed these cost categories to reach a total of approximately $80 million, applied an allocation factor of 40.12% which is based upon the percentage of default service customers compared to the total number of distribution customers plus default service customers, and

> argued that Duquesne Light should unbundle approximately $32 million in additional costs from base rates, for a total of approximately $34 million. (RESA St. No. 1, p. 16.)

DLC St. Sup. at 18-19.

In refuting RESA's argument, Duquesne Light contends as follows:

> Many of the costs that RESA alleged should be unbundled are not even in distributions rates. *Id.* at 19.
>
> Approximately, $41 million of RESA'S $80 million total comes from FERC Account 908 [Customer Assistance Expenses]. As explained by Mr. Odgen, the $41 million referenced by RESA is not included in base rates but is collected through four separate riders: (1) Rider No. 3 – the Retail Market Enhancement Surcharge ("RMES"), (2) Rider No. 5 – the Universal Service Charge ("USC"), (3) Rider No. 15A – the Phase III Energy Efficiency and Conservation Surcharge ("Phase III EE&C Surcharge"), and (4) Rider No. 20 – the Smart Meter Charge ("SMC"). (Duquesne Light Exh. No. DBO-1R, p. 2.)
>
> The RMES recovers the Company's costs to enhance the competitive market in Pennsylvania. Rider No. 5 – the USC recovers the Company's costs to provide low-income services to customers. Rider No. 15-A – the Phase III EE&C Surcharge recovers the Company's costs to implement its Phase III energy efficiency plan. Rider No. 20 – the SMC recovers the Company's smart meter costs. The costs recovered in these Riders are not in base rates, are not related to default service and clearly should be recovered from all customers. RESA's argument to include a portion of these costs in default service rates has no merit. *Id.*
>
> Approximately $13 million of RESA's $80 million total is for uncollectible accounts expense; however, the Company does not even have $13 million in base rates for uncollectible costs. *Id.* at 20.
>
> Approximately $1.6 million of RESA's $80 million unbundling base amount is for litigation expenses for Duquesne Light's rate case and default service filings; however, the Company has already proposed to include the default service portions of this amount in its unbundling proposal. *Id.* at 21.

> RESA includes customer case mailing, rent, utilities, operations, information technology and corporate communications costs in the $1.6 million; however, none of these costs are related to default service. The Company must provide these functions for all customers, in addition to providing customer care service for EGSs, including bill ready billing, rate ready billing, off-cycle switching and other service. *Id.*
>
> RESA's proposal requires unbundling costs at $7.47 per MWh; however this is 16 times higher than Duquesne Light's proposed $0.46 per MWh and significantly higher in comparison to other EDCs (electric distribution company).[11] *Id.* at 21-22.
>
> RESA's proposal allocates costs from the Company's FERC Form 1 filing based upon the number of default service customers as compared to the total number of distribution customers plus default service customers, resulting in a factor of 40.12%; however, this allocation method is faulty. First the FERC Form 1 filing cost should not be used. Second, if an allocation methodology is to be used, it should be based upon load, not customers. *Id.* at 23.
>
> "[I]f RESA's allocation factor of 40.12% is approved, which the Company disagreed with, the allocation factor should be 28.75%. (Duquesne Light St. No. 4-R, p.11.)" DLC St. Sup. at 23.
>
> RESA's reliance upon the Commission's policy at 52 Pa.Code § 69.1808 is misplaced because, other than uncollectible expense, RESA did not identify any specific cost that is listed in this policy section. Additionally, "[m]ost of the costs listed in Section 69.1808 have already been unbundled or are proposed to be unbundled." *Id.* at 24-25.

The Company ultimately notes that the Settlement adopted its proposal with respect to the types and level of costs to be unbundled. *Id.* at 25. Additionally, the Company states, "While Duquesne Light would have preferred to unbundle these costs in a base rate proceeding, the Company believes that the unbundling provisions agreed to by the Joint Petitioners are reasonable in the context of the overall Settlement." *Id.*

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[11] The unbundled costs (not including uncollectible costs) per MWh for other EDCs are as follows: PECO - $0.38; Penelec - $0.18; MetEd - $0.18; PPL - $0.09; and PennPower - $0.09. DCL St. No. 3-R at 23 and St. Sup. at 22.

Lastly, Duquesne Light explained its position on the uncollectible account component of the purchase of receivables (POR) for EGSs as follows:

> Duquesne Light did not believe that it was appropriate to unbundle uncollectible expenses in this proceeding and that if uncollectible expenses were unbundled, the uncollectible component of the POR discount would need to be increased to match the percentage of uncollectible costs being unbundled. (Duquesne Light St. No. 3-R, pp. 27-28.) As an alternative to unbundling uncollectible costs and increasing the POR discount, Duquesne Light testified it would be willing to eliminate the current portion of the EGS discount related to EGS uncollectible costs if it was permitted to include these costs in its non-bypassable RMES [Retail Market Enhancement Surcharge]. (Duquesne Light St. No. 3-R, pp. 32-33.) This would allow Duquesne Light to recover uncollectible accounts expense for both POR shopping and non-shopping customers. This is consistent with how both PECO and the FirstEnergy EDCs recover uncollectible expenses. As explained by Mr. Fisher, PECO recovers default service and EGS POR related uncollectible costs through distribution rates. (Duquesne Light St. No. 3-R, p. 31.) The FirstEnergy EDCs have a non-bypassable rider that recovers uncollectible accounts expense associated with the provision of default service and on behalf of EGSs through POR programs. (Duquesne Light St. No. 3-R, p. 31.)
>
> In testimony, RESA generally agreed with the Company's alternative to eliminate the uncollectible POR discount rate and collect these costs through a non-bypassable charge. (RESA St. No. 1-S, p. 9.) The Settlement adopts the Company's alternate proposal to eliminate the uncollectable accounts expense component of the POR discount and recovers these costs through the RMES until the Company's next base rate proceeding. (Settlement ¶ 22.) The Company notes that the amount of discounts expense to be recovered through the RMES will be fixed at $797,000.

Id. at 26.

b. <u>OCA's Position</u>

OCA submits that the costs to be unbundled by Duquesne Light under the Settlement include "external legal and consulting services to prepare and obtain approval of the default service plans and cash working capital costs." OCA St. Sup. at 6.

> Additionally the Settlement provides that the Company will eliminate the uncollectible accounts component of the POR discount for EGSs, effective June 1, 2017, and recover a fixed uncollectible expense amount of $797, 900 in the Company non-bypassable Rider 1 RMES until the next base rate proceeding. Settlement at ¶ 22.

Id. OCA notes that under Paragraph 22 of the Settlement, the parties reserved the right to propose changes to the amounts and procedure for unbundling costs and to propose changes to the discount for the PORs in future base rate proceedings filed by the Company. *Id.*

OCA submits that the unbundling Settlement provisions and the POR program are a reasonable compromise of the various positions taken by RESA, Duquesne Light and OCA and consistent with the outcomes in recent DSP proceedings filed by other EDCs. OCA concludes that the Settlement is within the range of the likely outcomes in the event of full litigation of this case. Therefore, the Settlement is reasonable, in the public interest, and should be adopted, according to OCA. *Id.*

c. OSBA's Position

Similar to Duquesne Light, OSBA disagreed with RESA's position on unbundling certain costs. OSBA took issue with RESA's claim "that the Company's proposal failed to unbundle a number of costs which should be included resulting in shopping customers subsidizing default service. (RESA State No. 1)." *Id.* at 4. OSBA essentially asserts that RESA misinterpreted Section 69.1801(a) in recommending the allocation of "$32.3 million worth of costs to default services based on a ratio of (i) the number of default service customers to (ii) the total number of the Company's distribution service customers plus the total default service customers or 40.12%." *Id.* at. 5. Relying on the testimony of its witness, Mr. Kalcic, OSBA submits the following:

> Section 69.1808(a) of the Commission's Regulations provides that default service rates, or the price to compare ("PTC"), should reflect all generation, transmission or *other related costs* of default service. Among its list of other related costs, Section 69.1808(a) includes administrative costs, such as billing collection, education,

> regulatory, litigation, tariff filings, working capital, information system and associated administration and general expenses, to the extent such costs are *related to default service*. The fact that Duquesne incurs such costs, as a result of providing the related services to both default service customers and shopping customers, does not imply that 40.12% of such costs are related to the provision of default service, or the default service function.
>
> Default service costs are properly defined as those costs that an electric distribution company would not incur, but for the provision of default service. Since Duquesne would not save (avoid) $32.3 million of expenses if all of its customers were to switch to alternative suppliers, it would not be appropriate to include such costs in the PTC. [Footnote omitted]

Id. Thus OSBA asserts "the Settlement rejects RESA's recommendation unbundling costs and accepts Duquesne's filed proposal." *Id.*

d. RESA's Position

Ultimately, RESA supported the unbundling provisions as a compromise, but submitted the following statement:

> RESA identified in testimony over $34 million in costs that Duquesne incurs in providing default service but which Duquesne currently recovers through regulated distribution rates. [Footnote omitted] As a result, RESA testified that Duquesne had not properly unbundled its default service related costs as required by Pennsylvania law and the general ratemaking principle of cost-causation and avoiding subsidized rates. [Footnote omitted] Under the Settlement, Duquesne has identified $2 million of costs to unbundle and has testified that this would be above the current level of unbundling of other Pennsylvania EDCs. [Footnote omitted] Duquesne has also agreed to unbundle these identified costs by June 2017 as opposed to a later date. [Footnote omitted] As discussed below, the timing of the unbundling under the Settlement is consistent with RESA's testimony and the amount of unbundling is an important initial step towards a further unbundling in future years. To that end, the Settling Parties reserved the right to "propose changes to the amounts and procedures" for

> unbundling costs and modifying the discount for POR in future proceedings. [Footnote omitted]

Id. at 7.

e. CAUSE-PA's and Ex-Gen's Positions

CAUSE-PA and Ex-Gen did not specifically comment on the unbundling provisions of the Settlement in their respective supporting statements.

E. CAP Customer Shopping

1. Duquesne Light's Position

Relying on the testimony of the Director of Customer Engagement, Marcie Morrison, Duquesne Light submits it is not able to implement a CAP[12] customer shopping for default service at this time. Duquesne Light explained its inability presently to implement CAP customer shopping as follows:

> The Company initially designed its FOCUS IT billing system to allow CAP shopping. However, implementation was put on hold pending litigation regarding PECO's CAP shopping plan. (Duquesne Light St. No. 5-SR, p. 2.) Thereafter, the Company made significant changes to its FOCUS system to address business needs and regulatory requirements. These changes disrupted the FOCUS system's ability to implement CAP customer shopping.
>
> As also explained by Ms. Morrison, the primary constraints associated with implementing CAP customer shopping are billing issues. Ms. Morrison explained,
>
> > The Company would have to design, build and test a CAP shopping solution prior to implementation based on the existing system configuration. The Company would need to evaluate whether it could allow CAP customers to shop

[12] A customer assistance program is defined as a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation . . . in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program. 66 Pa.C.S. § 1403.

> with Bill Ready EGSs. This presents many issues that would have to be examined in detail. Other billing issues include, but are not limited to, arrearage forgiveness, how to calculate bills if a CAP customer switches EGSs one or more times during a month and how to treat LIHEAP payments. There are also other issues regarding how to implement necessary CAP customer protections.
>
> (Duquesne Light St. No. 5-SR, pp. 3-4.)

DLC St. Sup. at 27.

Additionally, Duquesne Light questioned whether CAP shopping programs would be successful in terms of whether EGSs would make offers to CAP customers, if the Commission provides price or other protections for CAP customers. *Id.* at 28. Thus, Duquesne Light did not consider it prudent to spend resources and time implementing IT changes necessary for CAP shopping if other EDCs' CAP shopping programs were not ultimately successful. *Id.* Accordingly, Duquesne Light proposed to hold a collaborative in the fall of 2018 to review other EDC's CAP shopping programs and to implement CAP shopping DSP IX, or June 1, 2021, if the other ECS's CAP shopping programs are successful." *Id.*

Duquesne Light concludes that the CAP shopping settlement provisions are in the public interest. The Company and the parties will now have sufficient time to review the success of other EDC's programs before spending the time and resources necessary to design, build and test a CAP shopping solicitation, according to Duquesne Light. *Id.*

2. OCA's Position

OCA is in agreement with Duquesne Light's proposal to conduct a CAP shopping collaborative with the parties in the fall of 2018 and to file for approval of a CAP shopping program to become effective June 1, 2021, conditioned upon the Commission having approved other electric distribution company CAP shopping programs, which proved successful. OCA St. Sup. at 7. Thus, OCA urges that this Settlement provision is in the public interest.

However, OCA also noted the following:

> While this collaborative approach is reasonable, it will be important to develop a CAP shopping program that is designed to ensure that these low-income customers do not suffer higher and unaffordable bills or that other ratepayers are not required to pay higher costs to support this program.

Id.

3. CAUSE-PA's Position

CAUSE-PA submits that CAP customers must be protected under any CAP shopping program that Duquesne Light develops. CAUSE-PA St. Sup. at 3. CAUSE-PA contends CAP customers must be prevented from paying more than the price to compare. *Id.* Additionally, any risk of termination resulting from higher prices for electric service must be mitigated. *Id.*

> Without these core protections, economically fragile CAP customers face an unreasonable risk of losing service. Furthermore, these conditions are necessary to meet the requirements of the Electricity Generation Customer Choice and Competition Act ("Choice Act") which mandates that the Commission is obligated to "continue the protections, policies and services that now assist customers who are low-income to afford electric service" in the competitive environment. [Footnote omitted] Specifically, direct access by low-income retail customers to the competitive generation market must be conditioned upon ensuring that that the affordability of electric service to economically vulnerable citizens is not diminished.

Id.

CAUSE-PA considered it significant that CAP shopping was being postponed under Paragraph 24 of the Settlement. *Id.* According to CAUSE-PA, postponement of CAP shopping was significant for two reasons (1) "nearly all of the more than 35,000 CAP customers have no experience in the competitive electric market," and (2) data from other utility service territories currently allowing CAP customer shopping demonstrates that CAP customers have

been significantly harmed by their participation in the competitive electric generation market.[13]

Id. at 3-4.

> Because of this data, CAUSE-PA recommended that the issue of CAP shopping be dealt with in a manner that ensured that CAP customers don't pay more than the price to compare. Although CAUSE-PA proposed a specific mechanism for doing so in this proceeding, delaying the implementation of CAP shopping until June 2021 accomplishes these same core ends, at least for the time being, and is a reasonable step given the implementation issues raised by Duquesne Light in their surrebuttal testimony.

Id. at 5.

> CAUSE-PA adds the following:
>
> Paragraph 24 of the Settlement Agreement provides these protections by temporarily delaying CAP shopping while Duquesne's IT concerns can be address, as well as the settling of statewide policy concerning CAP shopping. Because of the significant potential for harm to CAP customers and other ratepayers from unrestricted CAP shopping, this provision, and the settlement as a whole, is in the public interest.
>
> It is also significant that the delay is not permanent. In Paragraph 25, Duquesne commits to holding a CAP shopping collaborative in the fall of 2018, and commits to filing for approval of a CAP shopping program within its DSP IX filing, provided that other EDCs' CAP shopping programs have been approved by the Commission and have been successfully implemented. This process is in the public interest.

Id. at 6.

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13 See CAUSE-PA St. No. 1 at 15-18.

4. RESA's Position

RESA offers the following on CAP customer shopping:

> Postponing CAP shopping as set forth in the Settlement will also allow time for implementation of other EDCs' CAP shopping programs, following Commission approval [Footnote omitted] RESA generally supports a CAP shopping plan that includes consideration of implementation costs, timing, and customer education.
>
> Moreover, while RESA supports CAP shopping and believes that CAP customers should have immediate access to the myriad benefits and options that the competitive marketplace can provide, RESA was willing to compromise on this issue at this time. RESA remains concerned, however, about Duquesne's initial proposed restrictions on the types of offers that an EGS may provide to low-income customers based solely on their enrollment in a utility's CAP. [Footnote omitted] However, the details of a CAP shopping program in the Duquesne service territory should be addressed in the collaborative called for in the Settlement and, as necessary, in Duquesne's DSP IX proceeding. By that time, the Commission will have considered and ruled upon similar CAP-related issues being litigated in DSP proceedings for other EDCs, which will provide guidance as Duquesne develops and implements its CAP shopping program.

RESA St. Sup. at 9.

5. OSBA's and Ex-Gen's Positions

OSBA and Ex-Gen did not specifically comment on the CAP customer shopping provision of the Settlement in their respective supporting statements.

F. Standard Offer Program

1. Duquesne Light's Position

Duquesne Light maintains that in response to OCA's requests the Company (a) made revisions to its Standard Offer Program (SOP) script, (b) agreed to train its customer

service representatives (CSRs) to provide revised and updated disclosures to customers concerning the SOP and (c) agreed to conduct reviews of calls to ensure that CSRs are providing the required disclosures. DLC St. Sup. at 28. The Company asserts that these Settlement provisions reflect a reasonable compromise of the parties' positions.

2. OCA's Position

In support of the SOP settlement provision, OCA maintains the following:

> In its filing, Duquesne Light proposed to continue its current SOP. [Citation omitted] Currently, the Company does not use a third party vendor for SOP enrollment. [Citation omitted] The customer acquisition fee is paid for by participating EGSs and is currently $10.28 per enrollment. [Citation omitted]
>
> The Settlement allows for the continuation of the SOP, but makes certain modifications to Duquesne Light's Standard Offer Program (SOP) scripts, requires the Company to train its customer service representatives on the required SOP disclosures, and conduct a periodic review of call recordings to ensure that the representatives are providing the required disclosures. [Citation omitted]
>
> The OCA submits that the continuation of the SOP with the modifications outlined in the Settlement is in the public interest and the interest of Pennsylvania's ratepayers. Ms. Alexander explained in her Direct Testimony that Duquesne Light's SOP has been cost effective and that the Company charges a significantly lower enrollment fee than other Pennsylvania Electric Distribution Companies (EDCs). OCA Statement No. 2 at 8-9. Additionally, Ms. Alexander testified that the Company's method of implementing the SOP by referring interested customers directly to an EGS (as opposed to utilizing a third party vendor) is a reasonable and low cost method to implement this program. *Id*. at 5. The Settlement does not modify Duquesne Light's customer acquisition fee or establish the use of a third party vendor for customer enrollment. As such, the OCA submits that the Settlement is in the public interest.
>
> The OCA submits that the modifications to the SOP script are also in the public interest, as the new script language provides more detail regarding how the SOP fixed price offer will compare to the Price to Compare during the 12-month enrollment period. Additionally, the requirements of the Company to train customer service representatives

> on required disclosures and conduct a period review of call recordings will help to ensure that the Company's customer service representatives are providing the required disclosures to its customers.

OCA St. Sup. at 7-8.

3. RESA's Position

RESA notes it did have some disagreement with OCA concerning the SOP and it did identify two issues regarding the SOP that should be addressed in the future, RESA agreed that Duquesne Light's current SOP should continue. RESA St. Sup at 8-9.

> Specifically, RESA witness White noted that (1) "the SOP has not resulted in a majority of Duquesne customers participating in the competitive market (currently 68% of residential customers in Duquesne's service territory are not shopping)[sic]"; and (2) the SOP emphasizes price as the determining factor in a shopping decisions, without educating customers about the other value added products and services that the competitive market can make available to them. [Footnote omitted]. Nevertheless, the current SOP provides an important and valuable function for Duquesne customers and the competitive marketplace. Therefore, RESA supports continuation of the current SOP into DSP VIII as set forth in the Settlement.

Id. at 10.

4. OSBA'S CAUSE-PA's and Ex-Gen's Positions

OSBA, CAUSE-PA and Ex-Gen did not specifically comment on the SOP provisions of the Settlement in their respective supporting statements.

V. NOBLE'S OBJECTIONS TO THE SETTLEMENT AND DUQUESNE LIGHT'S AND RESA'S REPLIES

A. Noble's Objections and Statement in Opposition

Noble opposes the Settlement and specifically objects to Paragraph 22 of the Settlement (Paragraph 22) which, effective June 1, 2017, eliminates the Company's

uncollectible accounts component of the Purchase of Receivable (POR) discounts for EGSs. Noble's Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement (Nobles Obj. and St. Op.) at 3. Noble asserts the following:

> If approved, this provision would allow Duquesne Light to remove the uncollectible expense component of Duquesne Light's Purchase of Receivables ("POR") discount for open market, competitive EGSs that elect to participate in the POR program and, instead, would allow Duquesne Light to collect such amounts through its Rider No. 1 Retail Market Enhancement Surcharge ("RMES") - a non-bypassable delivery service surcharge - which is recoverable from all customers regardless of their chosen EGS and irrespective of the billing mechanism employed by that EGS.

Id.

Noble posits that the Commission should not approve the Settlement because it fails on both procedural and substantive grounds as it relates to Paragraph 22. Specifically, Noble asserts that Paragraph 22 "(1) consists of an inappropriately raised proposal in the context of this proceeding; (2) is unjust, unreasonable, and otherwise contrary to public interest; and (3) ignores the anticompetitive and discriminatory impact the implementation of such a provision would have on the competitive retail market in violation of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (the "Competition Act")." *Id.* 4.

In support of its objections, Nobles contends as follows:

> In its petition for approval of DSP VIII, Duquesne Light proposed to continue its existing POR plan for Residential, Small Commercial and Industrial ("C&I"), and Medium C&I customers, under which Duquesne Light "purchases the account receivables, without recourse, associated with EGS sales of retail electric commodity service to Residential, Small C&I, and Medium C&I customers ... at a small discount and then reimburses EGSs for their customer billings regardless of whether it receives payment from customers." [Footnote omitted] Duquesne Light did not propose any modifications to its existing POR program, especially with respect to the treatment of costs associated with the POR discount. As Duquesne Light witness Ogden testified, "The POR program continues to work successfully and there is no reason to change the structure of the program in this proceeding." [Footnote omitted]

> Although RESA witness White briefly addressed the unbundling of uncollectible expense costs in his direct testimony, [Footnote omitted] RESA's direct and rebuttal testimony neither proposed the elimination of the uncollectible expense component from the POR discount, nor addressed the recovery of those expenses from all customers through a non-bypassable surcharge mechanism.

Id. at 5.

Noble maintains that Duquesne Light did not propose any modification to its POR program until the rebuttal stage of the proceedings through the Company's witness, Mr. Fisher. *Id.* 5-6. Noble asserts that during rebuttal "witness Fisher suggested that Duquesne Light might be willing to eliminate the current portion of the EGS discount related to the incremental EGS uncollectible costs if it were permitted to include the current recovery of POR related uncollectible costs in its non-bypassable RMES" *Id.* According to Noble, Paragraph 22 is "nothing more than a limited compromise between Duquesne Light and RESA" concerning the unbundling of the uncollectible accounts. *Id.* at 7. Thus, Noble argues that under Sections 5.243(e)(2) and (3) of the Commission Regulations, 52 Pa.Code § 5.243(e)(2) and (3) (prohibiting a party from introducing evidence during the rebuttal phase of a formal proceeding that should have been included in that party's direct testimony or which substantially varies from that party's direct testimony), the Settlement should be rejected by the Commission. Nobles Obj. and St. Op. at 6-8.

Noble also insists that it is unduly prejudiced by the uncollectible accounts provisions of the Settlement. Noble submits "it no longer has the opportunity to brief the issue or timely respond to Duquesne Light's rebuttal or RESA's surrebuttal testimony with its own testimony and/or proposal consistent with the Commission's regulations governing the presentation of the evidence. *Id.* at 7.

In its second objection, Noble claims Paragraph 22 is unjust, unreasonable and contrary to the public interest because it does not meet the basic principles of cost causation. *Id.* at 8. "As RESA witness White explained in his direct testimony, the principle of cost causation is the 'concept that **<u>those who benefit</u>** from a utility-provided service **<u>should pay</u>** the utility's

costs of providing that service.'" [Footnote omitted] *Id.* According to Noble, Paragraph 22 "completely disregards cost causation principles, by eliminating the uncollectible component of the POR discount and unfairly shifting recovery of those costs to Duquesne Light's Rider No. 1 RMES [retail market enhancement surcharge]." In explaining its objection, Noble asserts the following:

> The RMES is a non-bypassable recovery mechanism charged to all customers without regard to a particular customer's chosen EGS and irrespective of the billing mechanism employed by that EGS. [Footnote omitted] The proposal, if implemented, will unfairly allocate costs among customers, so that customers who have selected suppliers that do not participate in the POR program will be responsible for paying for participating EGSs' uncollectible costs. Participating EGSs, on the other hand, will continue to enjoy the benefits of the 'POR program - namely, the avoidance of their collection costs and risks - without having to pay for it. As such, Paragraph 22 violates the fundamental principles of cost causation and, as a matter of law, is unjust, unreasonable, discriminatory, and otherwise contrary to the public interest.

Id. at 9.

Thirdly, Noble objects that Paragraph 22 is not in the public interest because it has an anti-competitive and discriminatory impact on the retail electric market, in violation of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S §§ 2801-2812. *Id*. at 9. Noble urges that the modified POR discount "will unfairly subsidize participating EGS to the detriment of non-participating EGSs, like Noble." *Id.* at 9. In support of this objection, Noble alleges the following:

> Noble has built its own state of the art billing systems and uses dual billing exclusively for its Pennsylvania customers, [Footnote omitted] so it does not participate in the POR program. As a result, Noble is responsible for and covers its own uncollectibles with no burden to the ratepayer, properly placing the risk of collection squarely on the shoulders of Noble's shareholders.
>
> Indeed, any EGS providing products and services at the retail level must manage costs and hedge risks, including those related to

> uncollectibles. These are ordinary business activities that are the responsibility of the EGS, not the customer. EGSs opting to avoid uncollectible costs and receivables risk exposure pay for that benefit through the POR discount. However, by eliminating that component from the POR discount and passing through the costs to all customers via Duquesne Light's Rider No.1 RMES, participating EGSs will escape any and all responsibility for their uncollectibles because those costs and risks will now be subsidized on the backs of Duquesne Light ratepayers. The additional subsidies will go straight to the bottom lines of those participating EGSs, which can then be used to directly compete with Noble and other non-participating EGSs for customers in the competitive retail market within Duquesne Light's service territory. As such, implementation of the POR proposal would be discriminatory and unjust, signaling a competitive disadvantage to those suppliers declining to participate in the POR program and a discriminatory preference towards participating EGSs.

Id. at 10-11.

For all of the above reasons, Noble urges the Commission to reject the Settlement or at minimum to strike Paragraph 22 from the Settlement. *Id.* at 11-12.

1. Duquesne Light's Reply to Noble's Objections

Duquesne Light argues that Noble's objections should be denied for the following reasons:

> 1. The proposal to eliminate the uncollectible expense component of the POR discount relates to the core issues of unbundling default service costs that the Company addressed in its direct testimony.
>
> 2. If Noble thought that the Company's rebuttal testimony contained any improperly presented proposal, Noble should have objected before the testimony was admitted into the record.
>
> 3. The elimination of the uncollectible expense component of the POR discount is also reasonable and in the public interest.
>
> 4. There is no evidence in the record to support Noble's claims that elimination of the uncollectible accounts expense component of the POR discount will be anti-competitive and discriminatory.

Duquesne Light's Reply to Noble's Objections and Statement in Opposition to the Settlement (DLC Reply) at 2.

In its Reply, the Company disputes Noble's claim that the uncollectible expense costs were raised for the very first time in its rebuttal testimony. Duquesne Light asserts, "the proposal to eliminate the POR discount for uncollectible expense is directly related to the unbundling issues that were present in both Duquesne Light's and RESA's Direct Testimony." *Id*. Duquesne Light argues that in Direct Testimony, witness Ogden, Manager of Rates and Tariffs, described the Company's unbundling proposal. DLC St. No. 4 at 12-18 and Reply at 3. The Company admits that it did not initially propose to unbundle uncollectible accounts expense. DLC Reply at 3-4. However, RESA in response to the Company's unbundling proposal, in Direct Testimony, argued additional costs, approximately $5.2 million in uncollectible costs should be unbundled. RESA Exhibit MW-5.

> As an alternative to RESA's unbundling proposal, Duquesne Light explained that it would be willing to eliminate the POR discount for uncollectible expenses and recover these costs in the RMES. (Duquesne Light St. No. 3-R, pp. 32-33) Duquesne Light currently recovers its uncollectible expenses for non-shopping customers from all customers in distribution rates and recovers approximately $797,000 in uncollectible expense for shop customers through the POR discount charges to EGSs and reflected in bills by EGSs to their customers. This results in EGS customers paying twice for uncollectible expense – once in base rates and once in EGS charges.
>
> It was reasonable and appropriate for Duquesne Light to make its alternative proposal to eliminate the POR discount for uncollectible expense rebuttal testimony. This alternative proposal was made in response to RESA's proposal to unbundle all uncollectible expense from base rates.

DCL Reply at 4.

In support of its Reply, Duquesne Light asserts, "It is common practice for parties to make alternative or counter-proposal in rebuttal testimony in response to proposal made by other parties. *See, e.g. Pa. Pub. Util. Comm'n v. Western Utilities, Inc.*, 1998 PUC LEXIS 145 *23, Order entered January 28, 1998." *Id.*

Next, Duquesne Light argues that Noble has waived any objection to Duquesne Light's counter-proposal on the POR discount for uncollectible expense. Duquesne Light submits that Noble could have filed surrebuttal to its rebuttal testimony, but failed to do so. Additionally, Noble could have objected to the admission of Duquesne Light's rebuttal testimony into the record during the August 30, 2016 evidentiary hearing, but Noble made no objection. It is now too late for Noble to object to Duquesne Light's rebuttal testimony, Duquesne Light submits. *Id* at 6.

In support of its waiver argument, Duquesne Light cites *Allegheny Center Associates v. Pa. Pub. Util. Comm'n,* 131 Pa.Cmwlth. 352, 359, 570 A. 3d 149, 153 (Pa.Cmwlth.1990) for the following principle:

> While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged. (Citation omitted) Petitioners thus cannot now challenge what on its face is an appropriate operating expense claim where they failed to produce any contrary evidence or argument in the underlying proceeding.

Id. at 7.

Next Duquesne Light argues that its proposed methodology for recovering uncollectible expenses for supply costs is reasonable. It will be consistent with the method used by other EDCs approved by the Commission. Duquesne Light asserts as follows:

> PECO recovers supply-related uncollectible expenses in distribution rates. [Reference omitted] The First Energy EDCs recover supply-related uncollectible expenses through a separate, non-bypassable rider that applies to all customers. [Reference omitted]. PPL Electric Utilities Corporation ("PPL Electric") on the hand collects supply-related uncollectible expenses for default service customers through a Merchant Function Charge ("MFC") which is applied as a percentage charges to the Price to Compare (:PTC"). In turn, the same MFC percentage is then applied as a discount to PPL Electric's POR program to recover supply-related uncollectible expenses from EGSs. [Reference omitted] The key component of the uncollectible expense recover mechanism for these EDCs is that all customers pay the same

> average percentage of supplier costs for uncollectible expenses. This is reasonable because EDCs can only recover uncollectible expenses from customers that are not in default. Uncollectible expenses must be recovered from all customers.

Id. at 8-9.

Lastly, Duquesne Light contends that Noble did not present any evidence to support its claim that the provisions of Paragraph 22 are anti-competitive and discriminatory. *Id.* at 9. According to Duquesne Light, Noble claims (1) it has built its own billing system and does not participate in the POR program; (2) it is responsible for its own uncollectible expense; and (3) eliminating the uncollectible expense component of the POR will subsidize POR EGSs to the detriment of Noble. *Id.* 10-11. Duquesne Light notes that, in part, Noble references its Petition to Intervene to support its claims; however, the intervention petition was not admitted into evidence. *Id.* at 11. Accordingly, Duquesne Light insists that there is no evidence in the record to establish Noble's claims. Therefore, the Company argues that Noble's objections should be dismissed.

2. RESA's Reply to Noble's Objections

In reply to Noble's Objections, RESA argues that the reasons proffered by Noble for the Commission to reject the Settlement are without merit. First, contrary to Noble's argument, RESA submits the proposal to modify the POR program, as detailed in Paragraph 22 was properly raised in both RESA's and Duquesne Light's direct testimonies. Noble notes as follows:

> Issues relating to unbundling of costs, including uncollectible costs, from distribution rates were central to this proceeding. Duquesne addressed unbundling issues in its application and direct testimony in accordance with the settlement agreement from its last default service proceeding. [Footnote omitted] RESA, in its direct testimony, took exception to the timing of the Duquesne's proposed unbundling, and also provided testimony explaining Pennsylvania's policy favoring unbundling and identifying the cost items to be unbundled. RESA also proposed an allocation methodology that would have allocated approximately $35 million, which included uncollectible costs, in

> unbundled costs to default service. [Footnote omitted] Thus, in direct testimony, RESA proposed to unbundle a portion of uncollectible costs from base rates and recover those unbundled uncollectible costs through default service rates. [footnote omitted]

RESA's Reply to Noble's Objections and Statement in Opposition to the Settlement (RESA's Reply) at 3-4.

Thus, RESA argues that when Duquesne Light responded to RESA's proposal in rebuttal testimony, that is, the Company would be willing to eliminate the current portion of the EGSs' discount rate related to EGS uncollectible costs, effective June 1, 2017, if it was permitted to include those costs in the RMES, the proposal was not being raised for the very first time. Rather Duquesne Light's response was directly related to the unbundling issues initially raised in its direct testimony, according to RESA. *Id.*

Second, similar to Duquesne Light, RESA argues there is no evidence to support Noble's substantive arguments, including the following:

> The Settlement "completely disregards cost causation principles, by eliminating the uncollectible component of the POR discount and unfairly shifting recovery of those costs to Duquesne Light's Rider No.1 RMES." [Footnote omitted]
>
> "The modifications proposed to Duquesne Light's POR discount, if permitted to go into effect as proposed, will unfairly subsidize participating EGSs to the detriment of nonparticipating EGSs, like Noble." [Footnote omitted]
>
> "Noble has built its own state of the art billing systems and uses dual billing exclusively for its Pennsylvania customers, so it does not participate in the POR program. As a result, Noble is responsible for and covers its own uncollectibles with no burden to the ratepayer, properly placing the risk of collection squarely on the shoulders of Noble's shareholders." [Footnote omitted]
>
> The Settlement results in "additional subsidies" that "will go straight to the bottom lines of those participating EGSs, which can then be used to directly compete with Noble and other non-

> participating EGSs for customers in the competitive retail market within Duquesne Light's service territory. [Footnote omitted]
>
> The "Settlement will directly and materially interfere with the ability of nonparticipating suppliers, including Noble, from offering competitively-priced retail market products and services and further innovations to shopping customers." [Footnote omitted]
>
> Eliminating the uncollectible portion of the POR discount will discourage EGSs "from seeking the means to manage their costs more effectively." [Footnote omitted]

RESA asserts that virtually all of the above facts relied upon by Noble to support its objections are not in the record. Accordingly, the objection cannot be sustained.

VI. ANALYSIS AND RECOMMENDATION ON NOBLE'S OBJECTIONS

Both Noble and Duquesne Light cite *Pa. Pub. Util. Comm'n v. UGI Utilities, Inc.*, 82 Pa. PUC 488; 1994 PA. PUC. LEXIS 137, *130-33 (Opinion and Order entered July 27, 1994 (*UGI Utilities*) to support their respective positions. Noble relies on *UGI Utilities* for the proposition that a party is prohibited from introducing evidence during the rebuttal phase of a formal proceeding that should have been included in that party's direct testimony. Nobles Obj. and St. Op. at 6. In *UGI Utilities* the Commission upheld the ALJ's ruling that the utility was prohibited from including an expense claim in its operating costs that was untimely raised in the rebuttal stage of the proceeding. *UGI Utilities* at 530-531. Also relying upon *UGI Utilities*, Duquesne Light argues that the Commission upheld the ALJ's ruling dismissing OCA's challenge to the reasonableness of the utilities' organizational costs, which was belatedly raised during the briefing stage of the proceeding. *Id.* at 527. While both arguments are correct, resolution of the competing arguments is found in *Pa. Pub. Util. Comm'n v. Western Utilities, Inc.*, Docket No. R-00963856 (Opinion and Order entered January 28, 1992), 1998 Pa. PUC LEXIS 145 (*Western Utilities*).

In *Western Utilities*, the Commission granted the utility's exception that the ALJ had improperly excluded rebuttal testimony on the rate of return that was in response to the direct testimony of the statutory parties, even though the utility in its direct testimony had only made an unsupported statement about its rate of return.

> As pointed out by WUI [*Western Utilities*], presentation of this rebuttal evidence is proper under the requirements of Standard Pennsylvania Practice 2d, Section 48.25, regarding a party's right to submit rebuttal testimony with respect to evidence submitted by an adverse party in opposition to the first party's initial presentation of evidence.

Id. at 23.

Applying the Commission's ruling in *Western Utilities* to the instant case, it is clear that Duquesne Light's rebuttal testimony proposing to eliminate the uncollectible accounts component of the POR discounts for EGSs and to move this component to a RMES rider was in response to RESA's direct testimony. Therefore, the proposal that resulted in Paragraph 22 of the Settlement does not violate Sections 5.243(e)(2) and (3) of the Commission Regulations, 52 Pa.Code § 5.243(e)(2) and (3).

Additionally, Duquesne Light and RESA are correct in arguing that the record lacks any support for Noble's objections. On June 6, 2016, Noble filed its Petition to Intervene, which was granted during the Prehearing Conference convened on June 10, 2016. The Prehearing Order issued on June 24, 2016, confirmed the litigation schedule under which written testimony was to be submitted. However, Noble elected not to submit any written testimony. Without substantive evidence, Noble cannot prevail on its contention that Paragraph 22 is anti-competitive and discriminatory. Without any substantive evidence, Noble's argument, i.e., that Paragraph 22 contravenes the public interest is reduced to mere opinion.

Additionally, on August 11, 2016, Duquesne Light filed its rebuttal testimony. On August 30, 2016, an in-person evidentiary hearing convened, during which the various parties submitted written testimony and exhibits. Noble was present at the evidentiary hearing

but made no objection to the admission of Duquesne Light's rebuttal testimony. Tr. 43-45. Before the evidentiary hearing closed, I specifically asked, "Is there anything I haven't covered that counsel feels is particularly glaring that you'd like to bring to my attention ..." Tr. 105. However, Noble made no mention of its objection to Duquesne Light's proposed modification to its POR program in rebuttal testimony. As the history of this proceeding demonstrates, Noble has had ample opportunity to present evidence in opposition to Duquesne Light's DSP VII or to timely object to the plan, but has failed to do so. Accordingly Noble should not be heard to raise its objections at this late date. UGI Utilities at 527.

Based upon the above analysis, I will recommend in the ordering paragraphs below that Noble's objections be denied.

VII. ANALYSIS AND RECOMMENDATION ON THE SETTLEMENT

Commission policy promotes settlements, 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. Default service plan cases may become complex and expensive to litigate. The cost of such litigation at a reasonable level is an operating expense recoverable in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. Those are the reasons for the Commission's long-standing Commission policy encouraging settlements.

In reviewing a non-unanimous settlement, the Commission applies the same standards as those for adjudicating a fully contested case. *Joint Application of Equitable Resources, Inc., and the Peoples Natural Gas Company, d/b/a Dominion Peoples*, 2007 Pa. PUC LEXIS 32, *12, citing *Pa. Pub. Util. Comm'n v. PECO Energy Company*, Docket Nos.

R-00973953 and P-00971265, 1997 Pa. PUC LEXIS 51, *17-*18 (Order entered December 23, 1997). Thus, there must be substantial evidence to establish that the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.,* Docket No. R-00049165, (Commission Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

Based upon my review of the Settlement, I find as a whole the Settlement is beneficial to Duquesne Light's customers. The procurement plans for Residential and Small C&I customers will transition to 50% product mix of 50% laddered one-year and two-year supply contracts. This will provide these customers with greater rate stability. Duquesne Light will continue with its existing six-month reconciliation methodology, as no evidence was presented to warrant a change from this methodology. Procurement plans for Medium C&I customers will reduce the upper end of the 300 kW limit for this group to less than 200 kW beginning on June 1, 2019. Reducing the kW limit ensures that all necessary customers have smart meters and promotes the success of obtaining hourly price supply (HPS) from a competitive supplier. Additionally lowering the HPS limit to 200 kW effective June 1, 2019 allows Duquesne Light time to evaluate its new HPS competitive supply before expanding the HPS customer class. Duquesne Light's modification of its default service plan for Large C&I customers will reduce the Company's administrative burden and allow HPS customers to receive all service at the day-ahead price. Theoretically, the descending-price clock auction procurement process will encourage suppliers to bid prices that reflect their lowest price costs, due to transparency that occurs during the auction process.

Concerning the unbundling of default service costs in a base rate proceeding, this is preferable to unbundling outside of a base rate case, because all costs and revenues are subject to review in a base rate proceeding. The Settlement is a reasonable compromise of the types and amounts of costs to be unbundled. The Settlement provides that Duquesne Light will eliminate the uncollectible accounts component of the POR discount for EGS, effective June 1, 2017, and recover a fixed uncollectible expense amount through a non-bypassable RMES rider, until the next base rate proceeding. However, Joint Petitioners reserved the right to propose changes to

this Settlement provision in a future base rate proceeding. Notably, only one party objected to this provision of the Settlement.

Additionally, CAP shopping is being delayed until June 1, 2021. This will provide time for Duquesne Light to conduct a collaborative with the parties to assess the success of CAP shopping provided by other EDCs and to determine whether CAP shopping actually benefits low income customers.

Lastly, Duquesne Light's agreement to revise its Standard Offer Program (SOP) script to train its customer service representatives on the revisions will benefit customers in providing them more detailed disclosures on the SOP.

Accordingly, upon due consideration of the terms and conditions of the Joint Petition for Approval of Non-Unanimous Settlement and the Supporting Statements of the Joint Petitioners, I find that the Settlement constitutes a fair, just and reasonable resolution of this proceeding for the reasons the Joint Petitioners identify as noted above. Therefore, the Settlement is in the public interest and should be approved.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 501, et seq.

2. All of the rates that Duquesne Light Company charges must be just and reasonable. 66 Pa.C.S. § 1301.

3. Duquesne Light Company, as the Petitioner, has the burden of proof with respect to its proposals in this proceeding. 66 Pa.C.S. § 332(a).

4. The burden of proof means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

5. A party making a proposal not included in Duquesne Light Company's case bears the burden of proof as to its proposal. *Pa. Pub. Util. Comm'n v. Metropolitan Edison Company, et al*., Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007); *Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at 2, 19-20 (February 25, 2010).

6. Duquesne Light Company's default service obligations as an Electric Distribution Company are set forth in Act 129 of 2008, Oct. 15, P.L. 1592, No. 129 (Act 129), codified in Chapter 28 of the Public Utility Code, 66 Pa.C.S. Ch. 28.

7. Duquesne Light Company is obligated to provide electric generation supply service to customers who do not choose an Electric Generation Supplier and to customers who contract with an Electric Generation Supplier for supply service if the chosen Electric Generation Supplier does not provide the service. 66 Pa.C.S. § 2807(e)(3.1).

8. Duquesne Light Company is obligated to procure power "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).

9. The prudent mix of contracts entered into by Duquesne Light Company must be designed to ensure adequate and reliable service, and the least cost to customers over time. 66 Pa.C.S. § 2807(3)(3.4).

10. Duquesne Light Company's default service plan must take into account one of the stated objectives of Act 129, which is whether there are any benefits of price stability over time, and then to ensure the default service plan provides "adequate and reliable service" at the "least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.4).

11. The Electricity Generation Customer Choice and Competition Act[14] (Act 138) does not specify a specific default service rate design methodology in its requirement that default service providers acquire electric energy through a "prudent mix" of resources designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes, including auctions, requests for proposals and/or bilateral agreements. 66 Pa.C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

12. Duquesne Light Company's procurement plan meets all of the statutory requirements. All default service supplies are procured through competitive procurement processes and no generation supply was withheld from the market in a manner that violates federal law. 66 Pa.C.S.A. § 2807(e)(3.7).

13. Duquesne Light Company has not withheld from the market any generation supply in a manner that violates federal law. 66 Pa.C.S. § 2807(e)(3.7)(iii).

14. The Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017 to May 31, 2021 filed at Docket No. P-2016-2543140, as modified by the Joint Petition for Approval of Non-Unanimous Settlement is in the public interest.

[14] *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.A. §§ 2801 *et seq*.

IX. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Non-Unanimous Settlement filed on September 23, 2016 at Docket No. P-2016-2543140 by Duquesne Light Company, Office of Consumer Advocate, Office of Small Business Advocate, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Retail Energy Supply Association and Exelon Generation Company is approved in its entirety without modification.

2. That Duquesne Light Company is authorized to file at Docket No. P-2016-2543140 a tariff supplement, containing the terms and conditions of the Company's Default Service Plan for the Period June 1, 2017 to May 31, 2021, to become effective on at least one day's notice of the final Commission order approving the Non-Unanimous Settlement and consistent with the terms and conditions of the Non-Unanimous Settlement.

3. That Noble Americas Energy Solutions LLC's Objections to the Joint Petition for Approval of Non-Unanimous Settlement are denied.

4. That, upon Final Order by the Commission, the Commission's Secretary shall mark Docket No. P-2016-2543140 closed.

Date: November 8, 2016

/s/
Conrad A. Johnson
Administrative Law Judge