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VIA OVERNIGHT MAIL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. M-00051865

Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)
Docket No. L-00040169

Dear Secretary McNulty:

Enclosed for filing are one original and fourteen copies of the Reply Comments of Duquesne Light Company in the above-referenced cases. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Gary A. Jack

Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act of 2004	: :	Docket No. M-00051865
Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)	: : : : :	Docket No. L-00040169

Reply Comments of Duquesne Light Company

Pursuant to the Public Utility Commission's ("PUC" or "Commission") November 18, 2005 Order that re-opened the public comment period for the Commission's proposed Default Service Regulations and the February 8, 2006 Secretarial letter requesting comments on alternative energy and the Federal Energy Policy Act of 2005 issues, Duquesne Light Company ("Duquesne") submits the following Reply Comments in response to the comments of other parties filed on March 8, 2006. In these Reply Comments Duquesne will not respond to all individual arguments of the parties, but will address general issues raised by the parties.

Duquesne's reply comments are focused on three main topics. First, Duquesne urges the Commission not to impose regulations on a piecemeal basis. Second, if regulations are adopted now, while they may provide guidance they should not be made effective until 2011 when all Pennsylvania utilities complete their transition periods.[1] This would provide ample time to those desiring guidance but not restrict or unduly compromise those companies, who have transitioned from CTC and rate caps, from providing creative solutions. Third, in both Default Service and Alternative Energy Portfolio Standards (AEPS) regulations, Duquesne urges the Commission to provide flexibility with respect to alternatives for a) supply procurement, b) methods used to establish rates at prevailing market prices, and c) cost reconciliation approaches, as wholesale and retail markets continue to evolve. Each of these areas is discussed further below.

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[1] If, however, the Commission decides to make the default service regulations effective at some earlier date, then Duquesne urges the Commission to state that interim plans filed prior to the effective date of final regulations will not be subject to the regulations.

I. If Default Service Regulations Are Adopted Now They Should Not Be Made Effective Until 2011

Some of the parties urge the Commission to adopt regulations as soon as possible in order to provide greater certainty for planning purposes, while others support delaying the implementation of the rules to allow the Commission time to observe and learn from default service models elsewhere as they continue to develop[2]. Duquesne understands the need for advance planning, but notes the transition periods of the major EDCs, other than Duquesne, will not expire until 2010 and 2011. Duquesne is extremely concerned that until the transition period has ended for all EDCs, the market for acquiring default service energy may not be fully functional or will have changed, perhaps dramatically. This could severely hamper those companies, like Duquesne, who could provide creative solutions that result in outcomes that can be good for customers, good for the industry and could provide insight into the future regulatory process.

Between now and 2011, we can expect significant developments in wholesale and retail markets as well as in the way default service is provided. The Commission should allow time to monitor those developments both within Pennsylvania and in other states before requiring EDCs to adhere to a specific methodology prior to implementation of default service regulations in 2011. This also will allow default service and alternative energy markets to develop further in the interim.

For these reasons, Duquesne recommends that the Commission provide that the default service regulations will not become effective until all of the major EDCs have completed their transition periods. Prior to that date, EDCs should be permitted to present interim default service plans ("Interim Plans") and that each Interim Plan will stand on its own and tailored for the conditions and current status of the markets and the EDC's individual service territories. [3]

II. Default Service and AEPS Regulations Require Flexible Rules That Can Be Applied as Markets Change and EDC Situations Vary

Flexibility to react to changing circumstances has proven critical to establishing successful default service plans for Duquesne's customers. A "one size fits all" approach would fail to reflect important differences among EDCs and would severely limit the ability of EDCs to develop and propose creative

[2] No Delay (OCA, OSBA, DTE, PECO, PPL & First Energy; Delay (UGI, Reliant–sm. customers, Direct Energy & Duquesne)
[3] Duquesne is also concerned that its planning process and proposal for default service effective on and after January 1, 2008, will be occurring at the same time as these rulemakings.

alternatives for obtaining default service supply, which could benefit customers, competition and the Commonwealth.[4]

A. Default Suppliers Should Be Allowed Discretion in How They Procure Supplies

While several parties support in their comments a competitive solicitation approach, others request greater flexibility and more discretion over how utilities may obtain their default service and AEPS supply resources.[5] Adopting a strict model for procuring default service supply and determining default service prices is not the way to go at this time. This has been proven several times by the recent experiences of Pike County Light & Power[6] where default service prices have risen 129%, through large rate increases resulting from similar bid processes in neighboring states, and by the lack of any bidders in Duquesne's most recent competitive solicitation further discussed below, and should not be the only alternative.

Duquesne has demonstrated in three post-transition plans that POLR supplies can be obtained at reasonable prices and default service rates for customers can be developed that are reasonably stable. Ignoring other available methods for discerning the prices that prevail in a given market exposes the Commission and the Commonwealth's consumers to a process that may produce significant price increases for customers. Duquesne believes that default service providers should be given managerial discretion to choose to manage supply procurement both for AEPS and other default service supply resources. Duquesne has already proven that retail rates can be established at prevailing market rates using alternative methods while providing customers with stable rates and continuing to promote retail competition. Therefore, Duquesne desires to preserve the ability to propose to this Commission for approval differing procurement methods and strategy.

B. The "Prevailing Market Price" Standard Does Not Prevent EDCs From Entering Into Long-Term Supply Contracts Or Prevent EDC's From Offering Longer-Term Market Price Products.

"Prevailing market prices" should remain flexible to allow use of both short and long-term market prices. The statutory provision that default service energy be acquired at "prevailing market prices" should not be interpreted to limit default prices to short-term prices established by competitive solicitations. For example, prevailing market prices may be established through benchmarking to other

[4] The Commission also acknowledged the importance of ensuring that "regulations promulgated now be flexible enough to accommodate markets as they continue to evolve. . . . Consequently, the Commission seeks to avoid overly prescriptive language that may infringe on both its and all other interested parties' ability to manage the default service obligations." Default Rulemaking at 6. Further, the proposed rules provide that "each default service provider should have the option of proposing a default service implementation plan best suited to its service territory." Default Rulemaking at 10.

[5] Competitive solution (OSBA, PECO & Constellation); Flexibility (EAPA, Duquesne, PPL, IEPCA, OCA & Reliant)

[6] PA PUC Docket No. P-00052168.

prices in the region, through a market price index formula, or through other means. Indeed, in Duquesne's POLR III proceeding, the Commission explicitly recognized that "a competitive procurement process is not the exclusive method to arrive at a prevailing market price." Reconsideration Order at 26 (emphasis added).

Adopting an interpretation of prevailing market prices that reflects longer-term market prices and contracts is in the interest of customers to provide stability of rates, and will avoid some of the problems experienced in other deregulated markets, where customers were exposed to significant rate volatility with little benefit. Long-term contracts should remain an option, and should be neither prohibited nor required in the regulations. Requirements that rely solely on short-term contracts could result in highly volatile prices, may not be in the interest of all customers, and should not be required by the prevailing market price standard.

C. EDCs Should be Allowed to Propose Alternative Methods to Reconcile AEPS, Default Service Costs

With respect to cost recovery, Duquesne notes that some parties propose full reconciliation of generation supply charges while others seek to reconcile their alternative energy requirements and still others may be willing to manage the risk of all energy supplies, including alternative energy supplies, through non-reconciled default service rates[7]. Duquesne believes that alternative recovery mechanisms may be desirable, and even necessary, depending on how the EDC chooses to obtain supply. The Commission should allow EDCs to design cost recovery mechanisms that are best suited to their supply arrangements as well as the EDC's willingness to assume and manage risks on behalf of their customers. Flexibility is necessary to allow EDCs to design cost recovery mechanisms that are best suited to their supply arrangements. If they so choose, EDCs should have the flexibility to waive the use of an automatic adjustment clause for some period of time in their default service implementation plan.

D. Recent Events Highlight the Need for Additional Flexibility in the Proposed Regulations

In Pennsylvania, Duquesne did not receive any bids from wholesale suppliers in its competitive supply procurement process completed on March 20, 2006[8], even though Duquesne completed a similar RFP process in October 2004 for essentially the same fixed price product. Additionally, the Commission is investigating the outcome of Pike County's competitive procurement process and is currently reviewing an alternative retail aggregation program.[9]

[7] Reconciliation (OCA, OSBA, PECO, & PPL); Manage Risk (UGI, Duquesne Light)
[8] RFP Compliance Filing of Duquesne Light Company, March 21, 2006, Docket No. P-00032071.
[9] Petition of Direct Energy Services LLC for Emergency Order to Approve a Retail Aggregation Bidding Program for customers of Pike County Power & Light, PA PUC, Docket No. P-00062205.

Ohio's auction manager reported that no initial applications were received from potential bidders, and the bidding process would not continue in First Energy's service territory. [10] In addition, Green Mountain Energy, a supplier for the Northeast Ohio Public Energy Council (NOPEC) terminated its wholesale supply contract a year early due to an "adverse regulatory development".[11]

In Maryland, the results from a March 7, 2006 RFP have raised concerns. PEPCO's residential customers will face an increase of 39% for a typical bill, for Delmarva Power & Light a 35% annual increase, and for Baltimore Gas & Electric, 72%.[12] State politicians, the PSC, and utilities are considering deferral mechanisms to phase-in customer rate increases over time.[13]

In Delaware the PSC released a report recommending to phase in energy cost-increases and take long term steps to ensure stabilized prices and supply. The PSC estimates that deregulation led to higher rate increases than would have occurred under traditional regulation. [14] Standard Offer Service (SOS) in Delmarva Power & Light's territory results show proposed rates for residential customers will impact the total annual bill by about 59% on average.[15]

In New Jersey Board of Public Utilities announced that it is reconsidering the auction process and whether any changes are necessary.[16]

These market events of the past month emphasize the need to maintain flexibility in the default service and AEPS regulations. Wholesale and retail competitive market development is an evolving and unpredictable process. Our experience to date suggests that markets rarely develop in the precise manner envisioned by regulatory authorities.

III. Conclusion

Duquesne Light appreciates this opportunity to participate in the development of default service and AEPS regulations. In summary, the Commission should revise its proposed default service regulations to adopt greater flexibility in supply procurement and in allowing alternative methodologies to establish supply and rates at prevailing market prices. This greater flexibility is particularly important in an

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[10] Previous concerns by the Ohio PUC that limited number of suppliers & low market activity were an indication that a shift to market-based rates in 2006 would not be in the best interest of customers. The PUCO worked with utilities to develop rate stabilization plans (RSPs) including a second auction scheduled for March (which did not produce any potential bidders). OH PUC Website. http://www.puco.ohio.gov/PUCO/Consumer/information.cfm?doc_id=1449
[11] Restructuring Today, March 23, 2006.
[12] MD PSC Website. http://www.psc.state.md.us/psc/aboutus/Press/SOS2006.pdf
[13] MD PSC Website. http://www.psc.state.md.us/psc/aboutus/Press/MitigationPlanBGE_03062006.pdf
[14] DE PSC Website. http://www.state.de.us/governor/publications/Governors_Energy_Report.pdf
[15] DPL Website. http://www.delmarva.com/home/choice/de/bgs/
[16] March 16, 2006 Press Release "NJBPU to Review Basic Generation Service Auction: Study will determine direction for the 2007 electricity procurement process" directing staff to open a proceeding to address whether changes should be made in the procurement of Basic Generation Service (BGS) for the period starting June 1, 2007.

evolving market. Furthermore, the Commission should provide that any default service regulations will not become effective until after all major EDCs have completed their transition periods. Until then, EDCs should be permitted to present Interim Plans offering other possible proposals that are not subject to the default service regulations and that should remain in effect until the beginning of the PJM planning year immediately following the effective date of the regulations (June 1, 2011). .

Respectfully submitted,

Frederick J. Eichenmiller
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Duquesne Light Company

April 7, 2006