**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held February 11, 2010

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman

 Kim Pizzingrilli

 Wayne E. Gardner

 Robert F. Powelson

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| Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan | Docket Nos. M-2009-2093217  |

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In the *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Plan*, *Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan,* Docket No. M-2009-2093217 (Order entered October 28, 2009) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission) approved in part and rejected in part the Energy Efficiency and Conservation Plan (Plan) filed by Duquesne Light Company (Duquesne or Company) pursuant to Act 129 of 2008 (Act 129 or the Act). The Commission required Duquesne to submit a revised Plan within sixty days. Now before the Commission for consideration and disposition is Duquesne’s revised Energy Efficiency and Conservation Plan (Revised Plan) filed by Duquesne on December 24, 2009. For the reasons set forth herein, we will approve Duquesne’s Revised Plan as filed.

**II. Procedural History**

 A detailed history of this proceeding, together with that of our various other Act 129 proceedings, was set forth in the *October 2009 Order*. Consequently, this section summarizes the procedural history pertinent to the matter now before us.

Duquesne filed its Plan on June 30, 2009. The Plan was referred to Administrative Law Judge (ALJ) Fred R. Nene, who held Public Input hearings in Pittsburgh, Pennsylvania on August 5, 2009. ALJ Nene also held evidentiary hearings on August 19, 2009.

The Parties to this proceeding are: the Office of Consumer Advocate (OCA), the Office of Trial Staff, the Office of Small Business Advocate (OSBA), the Department of Environmental Protection, Duquesne Industrial Intervenors (DII), Equitable Gas Company, ClearChoice Energy, Columbia Gas of Pennsylvania, Inc., Direct Energy Business, LLC, the Pennsylvania Association of Community Organizations for Reform Now, Field Diagnostic Services, Inc., The Peoples Natural Gas Company d/b/a Dominion Peoples, EnerNOC, Inc., Constellation New Energy, Inc., the National Association of Energy Service Companies, The E Cubed Company, LLC, Envinity, Keystone Energy Efficiency Alliance, and Pa. Home Energy.

On September 2, 2009, ALJ Nene certified the record to the Commission for consideration and disposition.

As stated previously, the *October 2009 Order* approved in part and rejected in part Duquesne’s Plan. *Inter alia*, the *October 2009 Order* directed Duquesne to file a revised Plan within sixty days. On November 12, 2009, the OSBA filed a Petition for Reconsideration (Petition) of the *October 2009 Order.* By Opinion and Order entered November 19, 2009, the Commission granted reconsideration pending review of, and consideration on, the merits. Duquesne filed an Answer on November 23, 2009, and the Commission denied in part and granted in part the Petition by Opinion and Order entered on December 23, 2009 (*December 2009 Order)*. Specifically, the Commission denied the OSBA’s request that Duquesne be required to recognize Lighting customers served under Tariff Schedules SE, SM and SH as a separate class or classes for purpose of cost-recovery. *December 2009 Order* at 5. The Commission did, however, grant the OSBA’s request that Duquesne be required to file a red-lined version of its revised plan. *December 2009 Order* at 6.

Duquesne filed a Revised Plan on December 24, 2009, including a red-lined version to show all changes that Duquesne made to its original Plan. Comments were filed by the OCA on January 8, 2010. Duquesne filed Reply Comments on January 19, 2010.

# III. Description of the Revised Plan

Duquesne’s Plan was described in detail in the *October 2009 Order.* As a result, the Plan will not be described in detail here.

The Revised Plan proposes numerous changes in response to the *October 2009 Order*. Following is a list of changes contained in the Revised Plan:

* Duquesne will track instances in which low-income customers participate in all residential programs that are not specifically directed toward low-income customers, and will include such collected information in Duquesne’s annual report to the Commission;
* Duquesne will monitor, where possible, and coordinate its planned whole house energy audits, especially in regard to its Low Income Energy Efficiency Program (LIEEP), with any statewide whole house programs that would benefit its customers;
* Duquesne’s Plan will include high efficiency furnace fans;
* Duquesne will consider bidding the longer term energy efficiency programs into future Base Residual Auctions for delivery years 2012-2013;
* Duquesne’s Plan modifies its Large and Small Commercial and Industrial (C&I) billings to show the surcharge as a separate line item;
* Duquesne will not impose interest on over or under collections for the surcharge;
* Duquesne will adopt the use of the Peak Load Contribution (PLC) demand measure in the application of its cost recovery mechanism for Large C&I customers[[1]](#footnote-1);
* Duquesne will not shift program funds within a customer class or between customer classes without prior Commission approval;
* Duquesne will file annual reconciliations on all surcharge groups;
* Duquesne through its request for proposals (RFP) and competitive bid process when soliciting for a Conservation Service Provider (CSP), will ensure that customers can choose to participate or not;
* Duquesne represents that its marketing materials will be competitively neutral with regard to the customer’s choice of CSP for the demand response program and understands that these marketing procedures will be subject to periodic Commission review;
* Duquesne will track appropriate data, in coordination with the Statewide Evaluator, including at least (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available;
* Duquesne will plan to meet with stakeholders as needed, but no less than semi-annually, until May 31, 2013, unless otherwise ordered by the Commission;
* Duquesne removed the Solar Photovoltaic Incentives program from its Plan;
* In the original Plan, Duquesne filed a “placeholder” for the Commission approved consumption forecast for the period June 1, 2009, through May 31, 2010 and inadvertently neglected to put the forecast in the “placeholder” pages of the Plan. This forecast has been placed in the “placeholder” in the Revised Plan.

Cover letter to Revised Plan at 1-8.

# IV. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Act 129 Conservation and Demand Reduction Requirements

1. **Low Income Program Requirements**

Act 129 provides:

The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa. C.S. § 2806.1(b)(1)(i)(G).

#### *October 2009 Order*

In the *October 2009 Order*, we noted that Duquesne had 1 of 18 programs, or 5.5% that are targeted towards low-income customers. Further, we found that the Company’s Plan included a “number of measures” that were proportionate to the low-income households’ share of total energy usage at that time.

We also directed Duquesne to track instances in which low-income customers participate in residential and other programs that are not specifically directed toward low-income customers and to include the information collected in Duquesne’s annual report to the Commission. *October 2009 Order* at 27.

#### Positions of the Parties

Duquesne’s Revised Plan states that it will track instances in which low-income customers participate in all residential programs that are not specifically directed toward low-income customers, and will include such collected information in Duquesne’s annual report to the Commission. Revised Plan at 10.

In addition, Duquesne has indicated that it plans to participate in the statewide working group charged with developing implementation standards for deploying proportional energy efficiency and conservation measures to low-income customers. Revised Plan cover letter at 2.

No parties filed comments with regards to Duquesne’s Low-Income Program Requirements.

#### c. Disposition

####  The information presented in our investigations of Duquesne’s Plan and the EE&C Plans filed by the other EDCs did not yield sufficient information to determine compliance with 66 Pa. C.S. § 2806.1(b)(1)(i)(G). To ensure that we are using reasonably accurate data and that Duquesne and the other EDCs will be able to meet the requirement for low-income customers, the Commission convened a working group that is charged with developing implementation standards for deploying proportional energy efficiency and conservation measures to low-income customers. The working group is to be composed of representatives from EDCs, consumer advocates, community-based organizations and other interested parties. Specifically, the working group is charged with identifying the standardized data to be used to determine the proper proportion for low-income households. If necessary, the working group may address other matters that require clarification before the annual reconciliation process. The group is to provide its recommendations to the Commission no later than February 16, 2010. *October 2009 Order* at 25-27 and Ordering Paragraphs Nos. 4-5 at 102. We note that the first meeting of the Working Group was held on January 6, 2010, and various stakeholders, including representatives of the EDCs, participated in the meeting.

 We find that Duquesne has revised this portion of its Plan in compliance with our directives in the *October 2009 Order*.

### 2. Issues Relating to Individual Conservation and Demand Reduction Programs

#### Residential

1. **Statewide Whole House Approach**

###### *October 2009 Order*

In our *October 2009 Order,* we agreed with Duquesne that requiring it to implement a statewide whole house approach may not be as cost effective in its service territory as other EE&C programs and therefore, we did not require Duquesne to implement statewide whole house programs at this time. However, we did, in the *October 2009 Order,* encourage Duquesne to monitor and, where possible, coordinate its planned whole house energy audits, especially in regard to LIEEP, with any statewide whole house programs that would benefit its customers. *October 2009 Order* at 33.

###### Positions of the Parties

In the Revised Plan, Duquesne indicates it will monitor and, where possible, coordinate its whole house energy audits, especially in regard to LIEEP, with any statewide whole house programs that would benefit its customers. Revised Plan at 45.

No Parties filed comments with regard to Duquesne’s statewide whole house approach.

###### (C) Disposition

With regard to the Statewide Whole House Approach, we find that Duquesne has revised this portion of its Plan in compliance with our directives in the *October 2009 Order*.

### 3. Proposals for Improvement of EDC Plan

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6).

#### a. Residential

##### (1) Use of Residential Furnace Fans

###### *October 2009 Order*

In Duquesne’s first Residential Energy Efficiency Program, it did not include residential furnace fans because of what it later learned to be an error in its total resource cost (TRC) calculations on furnace fans. The OCA pointed out the benefits of such fans and Duquesne agreed that it should modify its Plan to include them. As such, we agreed that Duquesne should modify its Plan to include residential high efficiency furnace fans. *October 2009 Order* at 42.

###### (B) Positions of the Parties

 Duquesne modified its Plan to include high efficiency furnace fans. Revised Plan at 15, 24.

The OCA filed Comments with regard to the inclusion of high efficiency furnace fans in Duquesne’s Revised Plan. The OCA requests clarification dealing with Figure 5 on page 15 of Duquesne’s Revised Plan. The OCA points out that Figure 5 in the Revised Plan shows the full display of projected Residential Energy Efficiency Program (REEP) savings. The OCA submits that a comparison of Figure 5 in Duquesne’s originally filed Plan with Figure 5 in the Revised Plan reveals changes in Annual Program Savings and the number of homes affected for most of the measures listed. The OCA submits that while Duquesne reflected the addition of the furnace fan measures by way of a red-line, it did not red-line the myriad of other changes to Figure 5. The OCA requests that Duquesne be required to present a revised red-lined copy of Figure 5 to incorporate all changes. OCA Comments at 3.

Duquesne, in its Reply Comments, submitted that while the budget dollars needed for the furnace fan came primarily from the outdoor lighting program, there was a pro rata share of dollars taken from all other REEP programs. Consequently, Duquesne submits a revised Figure 5 that shows the annual program savings and number of homes affected for each measure that changed as a result of adding furnace fans to the Plan. In addition, Duquesne included a Table 6A showing the new budget for REEP. Reply Comments at 4.

###### (C) Disposition

We find that Duquesne has complied with our directive in the *October 2009* Order to include high efficiency furnace fans in its Residential Energy Efficiency Program. With regard to the revised Figure 5 filed by Duquesne to address the OCA concerns, we shall provide the OCA and other Parties with an opportunity to file comments as to whether Duquesne’s revised Figure 5 satisfies their concerns.

## B. Cost Issues

### 1. Cost Allocation Issues

With regard to cost allocation, the Commission’s EE&C Program is required to “ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.” 66 Pa. C.S. § 2806.1(a)(11).

1. **Bid Demand Response Measures into PJM Auction**

#### *October 2009 Order*

In our *October 2009 Order,* we agreed with the OCA’s recommendation that Duquesne should be required to bid its qualifying energy efficiency and demand response resources into PJM Reliability Pricing Model (RPM) auction. However, we noted that although we will not require Duquesne to participate in the RPM program base residual auctions (BRAs) since auctions for delivery years through 2012-2013 have been concluded, we directed Duquesne to bid into any incremental RPM auctions where it is prudent to do so and to consider bidding its longer term energy efficiency programs into future BRAs. *October 2009 Order* at 56.

#### (2) Positions of the Parties

Duquesne indicates in its Revised Plan that it will consider whether it may be able to avail itself of PJM’s RPM program. Revised Plan at 5.

No parties filed comments regarding the issue of Duquesne bidding its qualifying energy efficiency and demand response resources in the PJM RPM auction.

#### (3) Disposition

We find that Duquesne has complied with our directive in the *October 2009* Order that directs Duquesne to bid into any incremental RPM auctions where it is prudent to do so and to consider bidding its longer term energy efficiency programs into future BRAs.

### 2. Cost Recovery Issues

Act 129 provides that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). The Act also states:

The plan shall include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

66 Pa. C.S. § 2806.1(b)(1)(i)(H).

#### Separate Line Item on Customer’s Bill

#### *October 2009 Order*

Duquesne proposed five separate surcharges, which were proposed to be add-ons to its current distribution rates, to recover its budgeted EE&C costs. The five proposed surcharges were (1) residential; (2) small and medium commercial; (3) small and medium industrial with metered demand up to 300 kW; (4) large commercial with metered demand over 300 kW; and (5) large industrial with metered demand over 300 kW. In our *October 2009 Order,* we directed Duquesne to amend its Plan so that its large and small C&I surcharge is not included in distribution rates but presented as a separate line item on C&I customers’ bills. *October 2009 Order* at 60.

#### (2) Positions of the Parties

Duquesne has modified its large and small C&I billings to show this surcharge as a separate line item. Revised Plan at 11.

No Parties filed comments regarding the issue of whether or not Duquesne’s large and small C&I surcharge should be included in distribution rates or as a separate line item on C&I customers’ bills.

#### (3) Disposition

We find that Duquesne has complied with our directive in our *October 2009 Order* requiring that Duquesne amend its Plan so that its large and small C&I surcharge is not included in distribution rates but presented as a separate line item on C&I customers’ bills.

1. **Interest on Over/Under Collections**

#### (1) *October 2009 Order*

 In its original Plan, Duquesne proposed an interest rate of 6%, applicable to both over and under collected program costs. In our *October 2009 Order,* we concluded that over or under collections are not subject to interest. *October 2009 Order* at 62.

#### (2) Positions of the Parties

On November 9, 2009 Duquesne filed a tariff modification referencing zero interest applicable to over and under collections. The tariff modification was approved by Secretarial Letter issued on November 24, 2009, at Docket No. M-2009-2093217. In addition, Duquesne’s Revised Plan states that it will not impose any interest on over or under collections. Revised Plan at 118.

No Parties filed comments regarding the issue of interest on over or under collections.

#### (3) Disposition

We find that Duquesne has complied with our directive in our *October 2009 Order* requiring that Duquesne amend its Plan to indicate that no interest shall be imposed on program cost over or under collections.

1. **Measurement of Large C&I Demand**

#### (1) *October 2009 Order*

The variable demand based portion of Duquesne’s Large C&I surcharge is calculated using the EE&C incentive cost budget and the forecast of distribution related billing demand in excess of the first block of billing demand in each tariff rate schedule. In our *October 2009 Order*, we found that using the PLC to determine responsibility for a kW based surcharge would encourage all Large C&I customers to engage in efficiency and demand control measures during the five PJM peaks, which would further the demand reduction goals of Act 129. Therefore, we directed Duquesne to adopt the use of the PLC demand measure in the application of its cost recovery mechanism for Large C&I customers, and to modify its tariff accordingly. *October 2009 Order* at 65.

Subsequently, this issue was the subject of our Order on Reconsideration (Order entered February 2, 2010). In that Order, we recognized, after reviewing certain customer data and other inform**a**tion submitted with Duquesne’s November 9, 2009 Compliance Filing, that the alteration of the originally proposed rate design for Large C&I customers created unintended consequences. Stated simply, the revision to adopt the PLC demand measure in the application of Duquesne’s cost recovery mechanism for Large C&I customers has resulted in substantial increases in the allocation of administrative costs to its largest customers, *i.e.*, Rate Schedules HVPS, L-Industrial and L-Commercial. Accordingly, we expressed our preference, subject to notice and comment by the Parties, for Duquesne to revise its Plan and tariff to restore the customer charge components of the Large Commercial and Large Industrial cost recovery mechanisms for the recovery of the administrative costs of the programs as contained in Duquesne’s original Plan. Order entered February 2, 2010.

#### (2) Positions of the Parties

On November 9, 2009, Duquesne filed a modified tariff that adopted the use of the PLC demand measure in the application of its cost recovery mechanism for Large C&I customers. The tariff was approved by Secretarial Letter dated November 24, 2009. This modification was also reflected in Duquesne’s Revised Plan. Revised Plan at 118-119.

No Parties filed comments with regard to the use of the PLC demand measure in the application of its cost recovery mechanism for Large C&I customers.

#### (3) Disposition

Our Opinion and Order issued February 2, 2010, containing our preliminary opinion regarding the resolution of this issue, has established a separate review process and a comment period that has not yet concluded. Accordingly, this issue will be further addressed consistent with that Order.

1. **Inter/Intra Program Cost Shifting**

#### (1) *October 2009 Order*

 In our *October 2009 Order*, we concluded that an EDC cannot shift funds within a customer class, or between customer classes without prior Commission approval. *October 2009 Order* at 73.

#### Positions of the Parties

In its Revised Plan, Duquesne added language stating that if it finds that shifting of funds between programs or customer classes would be beneficial to the program, Duquesne will file a petition with the Commission requesting such a modification. Revised Plan at 10.

No Parties filed comments with regards to program cost shifting.

#### (3) Disposition

We find that Duquesne has complied with our directive in our *October 2009 Order* in which we stated that an EDC cannot shift funds within a customer class, or between customer classes without prior Commission approval.

 **e. Frequency of Cost Recovery Reconciliation**

#####

#### *October 2009 Order*

Duquesne proposed in its Plan to reconcile the Small and Medium C&I surcharges on an annual basis, and proposed a one-time reconciliation for Residential and Large C&I surcharges. In our *October 2009 Order,* we agreed with the OSBA that annual reconciliations are necessary for all surcharge groups, since variations could expose one or more customer groups to significant rate increases (or decreases) when the reconciliation for customer groups is done at the conclusion of the EE&C plan. Therefore, we required Duquesne to file revised tariffs that required the submission of annual reconciliation filings for all surcharge groups. *October 2009 Order* at 76.

#### Positions of the Parties

Duquesne modified its Revised Plan to indicate that all surcharge groups will be reconciled on an annual basis. *October 2009 Order* at 11. Also, a revised tariff indicating that all surcharge groups will be reconciled annually was filed with the Commission on November 9, 2009, and subsequently approved by Secretarial Letter issued on November 24, 2009.

No Parties filed comments regarding the reconciliation of all surcharge groups on an annual basis.

#### Disposition

We find that Duquesne has complied with the directive in our *October 2009 Order* in which we directed Duquesne to reconcile all surcharge groups on an annual basis.

## C. Conservation Service Provider Issues

The Commission’s EE&C Program must include a requirement for the participation of conservation service providers in the implementation of all or part of a Plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission is required to establish procedures requiring EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Commission is also required to establish procedures to review all proposed contracts with conservation service providers prior to the execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Commission has the authority to order the modification of a contract to ensure that Plans meet consumption reduction requirements.

Consequently, each EDC must include in its Plan a contract with one or more conservation service providers selected by competitive bid to implement all or part of the Plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). The *Implementation Order*, at 25*,* noted that, due to the aggressive design and implementation schedule set forth in Act 129, EDCs were not expected to have all bids for and contracts with conservation service providers completed by the July 1, 2009 plan filing. However, the Commission stated that each filed plan was expected to include at least one contract with a conservation service provider. The *Implementation Order* established the criteria that the Commission will use in approving request for proposals (RFP) procedures and standard form contracts for conservation service providers. *Implementation Order* at 25.

### 1. DII’s Request to Use Their Own CSP

##### a. *October 2009 Order*

 In our *October 2009 Order,* we found that Duquesne’s Large C&I curtailable load program, as designed, could be restrictive in that a customer could only participate through Duquesne’s selected CSP(s), and only for facilities not already committed under the PJM Load Response Program (LRP) program. In addition, we found that all CSPs should be given equivalent incentives to participate in the Duquesne program, equivalent access to customer usage data, and equivalent facilities paid for through the EE&C surcharge to implement this program. *October 2009 Order* at 82.

##### b. Positions of the Parties

 Duquesne modified its Plan to address our *October 2009 Order* regarding equivalent incentives to participate by representing that the contracted Conservation Service Provider will provide tools for the customer to use that are in addition to that which the customer currently has in conjunction with the PJM programs. Duquesne, through its RFP and competitive bid process when soliciting for a CSP, modified its Plan to ensure that customers can choose to participate or not, without restriction. Revised Plan at 81-82.

 No Parties filed comments with regards to DII’s request to use their own CSP.

##### c. Disposition

We find that Duquesne has complied with our *October 2009 Order* whereby Duquesne modified its Plan in regard to providing all CSPs equivalent incentives to participate in the Duquesne program.

 **2. Demand Response Program Marketing**

##### a. *October 2009 Order*

 In our *October 2009 Order,* we found that Duquesne must ensure that its marketing materials are competitively neutral with regard to the customer’s choice of CSP for this program. In addition, we found that the demand response program, including marketing procedures, will be subject to periodic review. *October 2009 Order* at 83.

##### b. Positions of the Parties

 Duquesne, in its Revised Plan, represents that its marketing materials will be competitively neutral with regard to the customer’s choice of CSP for the demand response and understands that these marketing procedures will be subject to periodic Commission review. Revised Plan at 82.

 No Parties filed comments with regards to demand response program marketing.

##### c. Disposition

We find that Duquesne has complied with our *October 2009 Order* in regard to ensuring that its marketing materials are competitively neutral with regard to the customer’s choice of CSP for this program.

## D. Implementation and Evaluation Issues

### 1. Implementation Issues

An EDC’s Plan shall state the manner in which the Plan will achieve the requirements of the Commission’s Program and will achieve or exceed the required reductions in consumption under subsections (c) and (d). 66 Pa. C.S.
§ 2806.1(b)(1)(i)(D).

Procedures to ensure compliance with consumption reduction requirements are set forth in the *Implementation Order*. The Commission will assess the program as a whole and the individual EDC’s plan for effectiveness in meeting or exceeding the Act’s mandatory savings through the initial review process. In addition, the Commission will assess the program and individual plan effectiveness during the annual report review process. *Implementation Order* at 27-31.

**a. Fuel Switching/Fuel Substitution Programs**

#### (1) *October 2009 Order*

 In our *October 2009 Order,* we directed Duquesne to track appropriate data, in coordination with the Statewide Evaluator, including at least the following:

(1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available. *October 2009 Order* at 92.

#### (2) Positions of the Parties

 Duquesne has modified its Plan indicating that it will track the appropriate data in coordination with the Statewide Evaluator, including at least the following:

(1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available. Revised Plan at 10.

 No Parties filed comments regarding fuel switching/fuel substitution programs.

#### (3) Disposition

We find that Duquesne has complied with our *October 2009 Order* with regard to fuel switching/fuel substitution programs.

## E. Other Issues

### 1. On-Going Stakeholder Process

#### a. *October 2009 Order*

 In our *October 2009 Order*, we required Duquesne to meet with stakeholders as needed, but no less than semi-annually, until May 31, 2013, unless otherwise ordered by the Commission. In addition, we encouraged Duquesne to be open and responsive to issues of merit that the arties bring to these discussions which may lead to improvements in the efficiency and cost effectiveness of its EE&C Plan. *October 2009 Order* at 99.

#### b. Positions of the Parties

 Duquesne amended its Plan to indicate that it will plan to meet with stakeholders as needed, but no less than semi-annually, until May 31, 2013, unless otherwise ordered by the Commission. Revised Plan at 7. In addition, Duquesne indicates that it will also follow the Commission’s encouragement on being open and responsive to issues of merit that the parties bring to these discussions, by seeking in advance, all current topics from stakeholders to be used at the stakeholder meetings. Revised Plan cover letter at 7.

 No Parties filed comments regarding the on-going stakeholder process.

#### c. Disposition

We find that Duquesne has complied with our *October 2009 Order* in regard to our directive requiring Duquesne to meet with stakeholders as needed, but no less than semi-annually, until May 31, 2013, unless otherwise ordered by the Commission.

1. **Solar Photovoltaic Incentives Program**

Duquesne’s Plan included a Solar Photovoltaic Incentives Program (SPIP) which was considered a pilot program, designed to stimulate the application of systems among residential building types.

#### a. *October 2009 Order*

 In our *October 2009 Order,* we noted that Duquesne’s TRC analysis of the Solar Photovoltaic Incentives Program measure yielded a benefit/cost ratio of only 0.3, thus the ratio of benefits to costs for the program indicated it is not an effective use of ratepayer funds. As a result of the low benefit/cost ratio associated with the SPIP, we directed Duquesne to delete this program from its Plan. However, we encouraged Duquesne to develop and resubmit another renewable resources program that yields a higher benefit/cost ratio. *October 2009 Order* at 101.

#### b. Positions of the Parties

 In Duquesne’s Revised Plan, Duquesne removed the funding associated with the SPIP and included an equal amount in its REEP budgets. Revised Plan at 23, 38-39, 122, 161, 163, 165-168, 173-176, 180, 182, and 188. Duquesne indicates that it will continue to evaluate renewable resource programs that yield higher benefit/cost ratios and determine if and when Duquesne will file for approval of such a program in a future plan. Revised Plan cover letter at 7-8.

The OCA filed comments in regard to Duquesne removing the SPIP from its Plan. Specifically, the OCA points to Figures 4 and 47, appearing on pages 14 and 122, respectively, of the Revised Plan. In those Figures, the OCA points out that Duquesne removes the kilowatt-hour (kWh) savings associated with the SPIP which the Commission ordered eliminated. According to the OCA, the kWh savings shown in figures 4 and 47 as a result of removing the SPIP is larger than subtraction of only the SPIP savings would yield. The OCA submits that Duquesne should be directed to explain the apparent anomalies and should submit corrected versions of the figures if they are in error. OCA Comments at 2-3.

In its Reply comments, Duquesne states that it understands how the OCA would be confused by the numbers in Figures 4 and 47 of the Revised Plan. Duquesne asserts that when it deleted the SPIP from the Plan and added the residential furnace fans as the Commission directed, it could not just use the same exact budget dollars, i.e., do a one-for-one budget dollar exchange. Duquesne points out that furnace fans need more funding than was allocated to the SPIP ($974,594 versus $150,000 per year). As a result, Duquesne reduced some of the funding from other residential programs, primarily the outdoor lighting program. Duquesne notes that rather than allocate funding in a purely proportional manner, Duquesne realized that the projected REEP impacts may be too heavily biased toward outdoor lighting. The result was REEP budgets and total cumulative kWh savings having a larger energy reduction “anomaly” than it would have had from simply deleting the SPIP. Reply Comments at 2-3.

Duquesne submits that another part of the “anomalies” referenced by the OCA involved an increase in the total demand savings as a result of removing the SPIP. Duquesne notes that again, the addition of furnace fans resulted in a shift of the overall measure mix and forecast measure savings in Duquesne’s penetration model. Duquesne states that lower cost measures such as outdoor lighting had to be removed and replaced with more expensive measures (furnace fans) and therefore, demand projections based on that change resulted in increased demand savings because furnace fans operate more during peak periods than outdoor lighting. Reply Comments at 3-4.

Duquesne notes that adding furnace fans in the Revised Plan reduced the penetration of other more cost-effective measures, which caused an overall reduction of projected savings in the residential sector programs. Duquesne points out that demand projections based on lower cost measures (outdoor lighting) being removed and replaced with more expensive measures (furnace fans) resulted in demand savings increasing. Reply Comments at 3-4.

Duquesne submitted a revised Figure 5 showing that annual program savings and number of homes affected for each measure changed as a result of adding furnace fans to the Plan. Reply Comments at 4.

#### c. Disposition

We find that Duquesne has complied with our *October 2009 Order* in regard to our directive requiring Duquesne to remove its Solar Photovoltaic Incentives Program from its Plan. We note that Duquesne has filed revised Figures 4, 5 and 47 and REEP budget shown in Table 6A. We shall provide the OCA and other parties with the opportunity to comment on whether Duquesne’s revisions accurately and adequately explain the resulting change in costs and kilowatt savings associated with the elimination of Duquesne’s SPIP and the addition of furnace fans to its Plan.

1. **Approval of Supplement No. 26**

On November 9, 2009, Duquesne filed Supplement No. 26 to be effective on December 1, 2009. Supplement No. 26 was a Compliance Filing requesting approval of Duquesne’s Energy Efficiency and Conservation and Demand Response (EECDR) Surcharge rates consistent with Our *October 2009 Order.* Our *October 2009 Order* directed Duquesne to submit a Revised Plan that, *inter alia,* makes adjustments to program expenditures and cost allocations. These adjustments, which were still subject to Commission review and approval as part of the Revised Plan, resulted in changes to Duquesne’s surcharge rates implemented by Supplement No. 26.

Duquesne’s assumption that the *October 2009 Order* “allowed” a tariff filing to implement new surcharge rates separate from the Revised Plan is incorrect. Act 129 requires that “The *plan* shall include a proposed cost-recovery mechanism …” (emphasis provided). 66 Pa. C.S. § 2806.1(b)(1)(i)(H). Similarly, our *Implementation Order* provides that the cost recovery mechanism shall be included as part of an EDC’s plan. *Implementation Order* at 10 and 38. Nowhere in the Commission approval process delineated in 66 Pa. C.S. §2806.1(e), the *Implementation Order* or the *October 2009 Order* is provision made for the review and approval of the tariff implementing the EECDR surcharge separate and apart from the Plan review process. Clearly, our review of the EECDR surcharge is interdependent with our review of the program measures and the cost of those measures contained in the Revised Plan.

Supplement No. 26 was inadvertently approved by Secretarial Letter on November 24, 2009, as a routine Compliance Filing. Since we are approving the Revised Plan containing Supplement No. 26 by this Opinion and Order, we will avoid the administrative expense and ratepayer confusion that would result if we were to reverse the November 24, 2009 approval of the tariff that became effective on December 1, 2009. Moreover, since the EECDR surcharge is being recovered through a reconcilable adjustment clause mechanism in accordance with 66 Pa. C.S. § 1307, the premature implementation of Supplement No. 26 will not result in additional revenue being collected from ratepayers over the four-year duration of the Plan.

**V. Conclusion**

For the reasons set forth above, we will approve the Revised Energy Efficiency and Conservation Plan submitted by Duquesne Light Company, consistent with this Opinion and Order. Interested Parties will have ten (10) days to file comments on the revised Figures 4, 5, and 47 and REEP budget shown in Table 6A contained in Duquesne Light Company’s Reply Comments filed January 19, 2010. Reply Comments are due ten (10) days thereafter. If no adverse comments are filed, within ten days from the issuance of this Order, this Order shall become final without any further action by the Commission. Duquesne Light Company is permitted to implement any portion of its Plan that has been approved without modification by this Commission in the *October 2009 Order*, February 2, 2010 Order, or this Opinion and Order; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Revised Energy Efficiency and Conservation Plan filed on December 24, 2009, by Duquesne Light Company is approved consistent with this Opinion and Order.

2. That interested Parties will have ten (10) days to file comments on the revised Figures 4, 5, and 47 and Residential Energy Efficiency Rebate Program budget shown in Table 6 A contained in Duquesne Light Company’s Reply Comments. If any comments are filed, reply comments will be due ten (10) days thereafter. If no adverse comments are filed, within ten (10) days from the issuance of this Opinion and Order, this Opinion and Order shall become final without any further action by the Commission.

3. That Duquesne Light Company is permitted to implement its revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order.

4. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph shall have the full force and effect as if fully contained in this part.

5. That a copy of this Opinion and Order be served on all of the parties of record and on Steven Pincus, Assistant General Counsel for the PJM Interconnection, LLC.



 **BY THE COMMISSION,**

 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: February 11, 2010

ORDER ENTERED: **February 17, 2010**



1. This issue was reconsidered in the Commission’s Order on Reconsideration at Docket No. M-2009-2093217 (Order entered February 2, 2010). Duquesne was directed to restore the original customer charge components as calculated by Duquesne in its original filing, retroactive to December 1, 2009. [↑](#footnote-ref-1)