**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :

for Approval of its Energy Efficiency :

and Conservation and Demand Response Plan : M-2009-2093217

**(Petition for Approval of Modifications to** :

**its Demand Response Programs)** :

**RECOMMENDED DECISION**

Before

John H. Corbett, Jr.

Administrative Law Judge

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I. HISTORY OF THE PROCEEDING

On June 30, 2009, Duquesne Light Company (“Duquesne Light” or the “Company”)[[1]](#footnote-1) filed its Energy Efficiency and Conservation Plan (“EE&C Plan”) with the Pennsylvania Public Utility Commission (“Commission”), pursuant to Act 129 and various related Commission orders, at Docket No. M-2009-2093217. The Commission approved Duquesne Light’s EE&C Plan, with modifications, on October 27, 2009 in Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Docket No. M-2009-2093217 (Order Entered October 27, 2009) (“EE&C Order”).[[2]](#footnote-2) In approving Duquesne Light’s EE&C Plan, the Commission established a process for the Company to follow to request modifications to its approved EE&C Plan.[[3]](#footnote-3)

On May 9, 2011, Duquesne Light filed a Petition for Approval of Changes to its Energy Efficiency and Conservation and Demand Response Plan (“Petition”), requesting certain modifications to its currently effective EE&C Plan which require Commission approval. On May 19, 2011, the Office of Consumer Advocate (“OCA”) and Duquesne Industrial Intervenors (“DII”) filed separate answers to Duquesne Light’s Petition. Duquesne Light responded to these answers on May 25, 2011. On the same date, Comverge, Inc. (“Comverge”) filed a Petition to Intervene. Duquesne Light answered Comverge’s intervention request on June 3, 2011.

By Order entered on June 30, 2011, the Commission referred Duquesne Light’s Petition to the Office of Administrative Law Judge for expedited evidentiary hearings. The Commission also granted Comverge’s Petition to Intervene.

I received this case assignment on July 20, 2011. A prehearing conference was held on July 28, 2011. Attending the prehearing conference were counsel for Duquesne Light, OCA, Office of Small Business Advocate (“OSBA”), DII and Comverge. The parties, *inter alia*, agreed upon a litigation schedule, which was subsequently memorialized in a Third Prehearing Order that was issued on the same day.

These same parties were involved in a number of discussions over the course of this modification proceeding. As a result of those discussions, Duquesne Light, OCA, DII, and Comverge reached a settlement of all issues in this proceeding prior to the date scheduled for an evidentiary hearing. On August 26, 2011, Duquesne Light, OCA, DII, and Comverge (“Joint Petitioners”) filed a Joint Petition for Settlement (the “Settlement”) with supporting statements from each of the Joint Petitioners.[[4]](#footnote-4) This Settlement was served on all parties, including those entities who were parties to the original EE&C Plan proceeding. An Interim Order was issued on August 29, 2011 giving all parties until September 9, 2011 to file objections to the Settlement. No objections have been received.

An evidentiary hearing convened on August 30, 2011. In attendance were counsel for Duquesne Light, OCA, OSBA, DII, and Comverge. Duquesne Light submitted the written direct testimony of three witnesses, which was admitted into the record without objection. No other party offered any testimony or comments. No briefs were filed. This Settlement is now ripe for disposition.

II. TERMS OF THE SETTLEMENT

In its broadest terms, the Settlement provides for, *inter alia*, the implementation of a scaled down demand response (“DR”) Program for Duquesne Light’s Residential and Small/Midsize Commercial and Industrial (“C&I”) customers, an expanded DR Program for the Company’s Large C&I customers, and additional funding for the Company’s Residential and Small/Midsize C&I Energy Efficiency Programs. More specifically, the Joint Petitioners agree to the following:

1. Duquesne Light agrees to withdraw its proposal to eliminate its Air Conditioner Cycling Demand Response Program to its Residential and Small/Midsized C&I customers. However, the Company will modify the scope of these programs by combining and lowering the budget for the Residential and Small/Midsized C&I Air Conditioner Cycling Demand Response Program from the current budget levels of $2,928,071 and $992,200 respectively to a combined $1,100,000. The costs of the program will be split between residential and small/midsized customers for cost recovery purposes based on the number of residential customers and small/midsized customers enrolled in the program. Comverge will serve as the sole conservation service provider (“CSP”) for Duquesne Light’s Residential and Small/Midsized C&I Air Conditioner Cycling Demand Response Programs.
2. Duquesne Light will transfer the difference between the original budgeted amount for its Residential Air Conditioner Cycling Demand Response Programs, and the amount allocated to the Residential rate classes pursuant to paragraph 16 of the Settlement, to the Company’s Residential energy efficiency programs. More specifically, the budgeted funds not used for the Residential demand response program shall be transferred to the Residential energy efficiency programs/measures identified in paragraph 20 of the Settlement. Likewise, Duquesne Light will transfer the difference between the original budgeted amount for its Small/Midsized C&I Air Conditioner Cycling Demand Response Program, and the amount allocated to the Small/Midsized C&I rate classes pursuant to paragraph 16 of the Settlement, to the Company’s Small/Midsized C&I energy efficiency programs. More specifically, the budgeted funds not

used for the Small/Midsized C&I demand response program shall be transferred to the Small/Midsized C&I energy efficiency programs/measures identified in paragraph 21 of the Settlement.

1. Duquesne Light will increase the expected demand reductions for its Curtailable Load Program for Large C&I customers from 10.8 MW to up to 60 MW in order to assist the Company to achieve 113 MW of demand reductions required under Act 129. To achieve the increase in demand reductions, the Company will spend the full amount of the approved budget of $556,000 for the program, now expected to result in 40 MW of demand reduction. In addition, the Company will be permitted to transfer funds currently budgeted for the Company's existing Large C&I energy efficiency programs to its Curtailable Load Program at a level required to achieve up to an additional 20 MW of demand reductions. Relative to the potential additional 20 MW of demand reductions, funds transferred from the Large C&I energy efficiency program/measure will be allocated proportionally to the customer classifications of the Large C&I customers in Duquesne Light’s Large C&I EE&C Plan. The expected cost to achieve these additional demand reductions is approximately $300,000.
2. Duquesne Light agrees that it will accept approximately 20 MW of demand reductions from Large C&I customers or Large C&I customers’ PJM curtailment service providers directly rather than requiring that all demand reductions be administered by Duquesne Light’s Curtailable Load Program CSP, provided that the direct Large C&I customer demand reductions are needed to meet the goals of Duquesne Light’s EE&C Plan and are more cost effective than what Duquesne Light’s Curtailable Load Program CSP can provide.
3. Duquesne Light shall transfer the budgeted funds not used for the Residential DR program to the following Residential Energy Efficiency Programs/Measure(s):
   1. Transfer an amount not to exceed $850,000 from Residential DR to Residential energy efficiency for the following new measure under Residential Energy Efficiency. Duquesne Light will pilot a Behavioral Modification and Education program to

50,000 high use customers. This pilot will reach the highest 20% of users. These customers will receive Home Energy Reports. The Home Energy Reports will engage customers and motivate them to save energy by translating energy information into relevant, actionable insights. Reports are customized for each household based on user profiles. Customers can evaluate their energy consumption in comparison to that of similar homes. The Behavioral Modification and Education program selects similar homes based on factors such as square footage, dwelling type and geographic considerations. Utilizing the behavior science technique of comparing people to their peers has proven to drive action. The selected contractor will build customer profiles by combining utility data with independently sourced demographic and geographic data. These profiles provide the foundation for targeted, relevant energy efficiency recommendations. This individualized information can maximize the likelihood that customers will take action. Additional options can include web portal access for each household, interactive channel that includes email and text messaging.

* 1. Transfer an amount not to exceed $250,000 from Residential DR to Residential Energy Efficiency for the existing Schools Energy Pledge Program. Duquesne Light proposes to transfer an amount not to exceed $250,000 to the schools program. This program has been greatly successful to date. The additional funding would allow additional schools to participate in the program. This program provides a conservation kit for each participating family.
  2. Transfer an amount not to exceed $500,000 from Residential DR to Residential Energy Efficiency Rebate Program, to specifically focus on appliance rebates to build upon the success of the upstream Compact Fluorescent Lamps discount program. Duquesne Light proposes to create in-store awareness of the residential rebate program that will focus on energy efficient appliances and other energy efficient product rebates. The store network will include over 50 retailers within the service territory that sell eligible rebated products. Store personnel will be trained on the rebate programs and eligibility requirements. These promotions will be highly visible and encourage a broad range of customer participation.

Stores will be visited regularly to ensure that trained sales staff is available to answer and promote rebate participation. The cost to implement this awareness will not exceed $500,000.

* 1. For any remaining funds, Duquesne Light will develop proposals for the expenditure of these funds and present these proposals to its stakeholders to solicit input prior to seeking Commission approval to further modify its EE&C Plan.

1. Duquesne Light shall transfer the budgeted funds not used for the Small/Medium DR program equally to the following Small/Medium Energy Efficiency Programs/Measures:
   1. Small/Medium Commercial Umbrella Program.
   2. Small/Medium Industrial Umbrella Program.

* 1. Small/Medium Retail/Restaurant Program.
  2. Small/Medium Education Program.
  3. Small/Medium Mixed Industry Program.

1. The Joint Petitioners suggest this Settlement is in the public interest, because it reduces the administrative burdens on the Commission and avoids any extensive litigation expenditures since it resolves all of the issues in this proceeding without administrative adjudication.
2. The Joint Petitioners are in full agreement and respectfully submit that expeditious Commission adoption of the Settlement is in the best interests of all parties and Duquesne Light’s customers.
3. The Joint Petitioners have submitted, along with this Settlement, their respective Statements in Support setting forth the basis upon which each believes the Settlement to be fair, just and reasonable and therefore in the public interest.
4. This Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of any Order modifying the Settlement.
5. The Joint Petitioners propose this Settlement to settle all issues in the instant proceedings. If the Commission does not approve the Settlement and the proceedings continue to further hearings, the Joint Petitioners reserve their respective rights to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any further litigation in these proceedings.
6. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.
7. The Commission’s approval of the Settlement shall not be construed to represent approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in these and future proceedings involving Duquesne Light.
8. The Joint Petitioners agree the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in these proceedings if they were fully litigated.
9. The Joint Petitioners present this Settlement only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Settlement is the product of compromise between and among the Joint Petitioners. This Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to any position the Joint Petitioners may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.
10. If the presiding Administrative Law Judge adopts the Settlement without modification, the Joint Petitioners waive their individual rights to file exceptions with regard to the Settlement.

III. DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa. Code §5.231. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See*, 52 Pa. Code §69.401. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. Pa. P.U.C. v. CS Water and Sewer Associates, 74 Pa. P.U.C. 767, 771 (1991). In their supporting statements, Duquesne Light, OCA, DII and Comverge conclude, after extensive discovery and discussion, that this Settlement resolves all contested issues in this case, it fairly balances the interests of the

Company and its ratepayers, it is in the public interest, it is consistent with the requirements of Act 129,[[5]](#footnote-5) and it should be approved. The Joint Petitioners declare three reasons why adoption of this Settlement is in the public interest. These reasons include satisfactory termination of this proceeding, avoidance of further litigation and possible appeals, and modification of the Company’s DR Programs that will be consistent with the requirements of Act 129.

A. Duquesne Light’s Position

Duquesne Light submits the Settlement, if approved, will resolve all issues raised by the Joint Petitioners in this proceeding. The Company suggests that given the diverse interests of the Joint Petitioners and the active role they have taken in this proceeding, the fact that they have resolved their respective issues in this proceeding, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest. The Settlement was achieved after a thorough review of Duquesne Light’s proposal in this proceeding. The Joint Petitioners undertook informal discovery and participated in a number of settlement discussions, which ultimately led to the Settlement. In addition, Duquesne Light served direct testimony for inclusion in the record, which supports the Settlement. Duquesne Light posits this Settlement is in the public interest, because it will allow it to reallocate funding for programs under the EE&C Plan to more efficient programs and to assist the Company in meeting its Act 129 obligations.

1. Residential and Small/Midsized C&I Demand Response Program

In its Petition, Duquesne Light proposed to eliminate the DR Programs for Residential and Small/Midsized C&I customers. Under the Settlement, Duquesne Light will continue to offer the program to customers, but at a reduced funding level.

When Duquesne Light filed its original EE&C Plan on June 30, 2009, it projected a total of 199 MW of demand reductions in order to create a buffer over the required goal of 113 MW (Duquesne Light St. 1 at 3). To achieve this target, Duquesne Light projected that approximately 26.2 MW would come from the DR program for Residential and Small/Midsized C&I customers. *Id*. The proposed DR program was a Residential and Small/Midsized C&I air conditioner cycling program. At the time of the original EE&C Plan, the total resource cost (“TRC”) for this program was 1.4. *Id*. at 5. However, Duquesne Light now only expects to achieve 5 MW of peak shaving from Residential and Small/Midsized C&I customers at a cost of $3.9 million for this program, which has dropped the TRC to 0.03 due to the shift in the cost to load reduction ratio. *Id*. at 6. Indeed, since the Company began marketing this DR program in March of 2011, only approximately 1,000 residential customers have expressed an interest in participating. *Id*. at 7. For these reasons, the Company proposed to eliminate this program in its Petition.

Now, rather than eliminate the programs entirely, as a result of discussions with the parties and giving consideration to customers that already have signed on to the program, the Company agrees in the Settlement to maintain the DR Program at a level commensurate with the level of customer interest in these programs (Settlement at ¶16). Specifically, if the Settlement is approved, Duquesne Light will combine and lower the budget levels for the Residential and Small/Midsized C&I DR Program from the current budget levels of $2,928,071 and $992,200, respectively, to a combined $1,100,000 (Duquesne Light St. 2 at 7-8, 11). The $1.1 million funding level was determined by reviewing the cost of equipment, installation, software and hosting, call center, operations, and program management for those customers expressing an interest in participating plus a buffer of about 300 possible future enrollee customers for a total of about 1,500 customers (Duquesne Light St. 1 at 8-9). At these levels, the Company expects to achieve approximately 1 MW of load reduction (Duquesne Light St. 2 at 11).

The costs of the program will be split between Residential and Small/Midsized C&I customers for cost recovery purposes, based on the number of Residential customers and Small/Midsized C&I customers enrolled in the program. Duquesne Light conducted a Request For Proposal (“RFP”), wherein Comverge was identified as the preferred conservation service provider (“CSP”). *Id*. at 8. As provided for in Paragraph 16 of the Settlement, Comverge will be the sole CSP for the Residential and Small/Midsized C&I DR Program, if the Commission approves the Settlement.

The Settlement provides that Duquesne Light will transfer approximately $2,800,000 from the undersubscribed Residential and Small/Midsized C&I DR Program to programs that will more successfully target Residential and Small/Midsized C&I energy consumption. The following three Residential energy-efficiency programs, in particular, will benefit from the Settlement:

1. A pilot Behavioral Modification and Education program targeting 50,000 high use customers will receive an amount not to exceed $850,000. This new program will reach the highest 20% of residential users on Duquesne Light’s system (Duquesne Light Exh. DWD-2).

b. The Schools Energy Pledge Program will receive an amount not to exceed $250,000. This program has been greatly successful to date and the additional funds would allow more schools to participate. *Id*.

c. To build upon the success of the upstream Compact Fluorescent Lamps discount program, an amount not to exceed $500,000 will be used to create in-store awareness of the residential rebate program, with a focus on energy efficient appliances and other energy efficient product rebates. *Id*.

Duquesne Light anticipates the pilot Behavioral Modification and Education program, which is modeled off a successful PPL Electric program, will have a significant impact (Duquesne Light St. 1 at 10). The program will provide customers with customized Home Energy Reports that include individualized comparisons to other similar users, as well as actionable insights (Duquesne Light Exh. DWD-2). The Schools Energy Pledge program and the Company’s Compact Fluorescent Lamps discount program will receive additional funds as part of the Settlement. *Id*. The Company states these two programs have already proven to be

successful in reducing energy consumption. Increased funding will enable additional schools to participate and provide the funding necessary to establish an in-the-store awareness of the Company’s residential rebate program for CFLs. *Id*. For any remaining funds, Duquesne Light will develop proposals for the expenditure of the funds and present such proposals to its stakeholders for input and collaborative decision making. If no clear preference is established, Duquesne Light will move any remaining funds to its residential energy efficiency rebate program. *Id*.

Funds originally allocated to the Small/Midsized C&I DR Program will be directed equally to the following Small/Medium energy efficiency programs: Commercial Umbrella; Industrial Umbrella; Retail/Restaurant; Education; and Mixed Industry (Settlement at ¶21). All existing commercial and industrial energy efficiency program/measures pass the TRC and are cost effective (Duquesne Light Exh. DWD-2). The only energy efficiency program that would not be funded is “Offices,” which does not need additional funding.

The Company believes it is in the public interest to continue to offer the DR Program to its Residential and Small/Midsized C&I customers, particularly to those that have expressed interest. However, the original allocation of funds greatly exceeded the actual customer demand for those programs (Duquesne Light St. 1 at 10-11). By tailoring the programs to meet customer demand, the Settlement strikes the appropriate balance between meeting customer needs and allowing the Company to use funds in an efficient manner, and provides Duquesne Light with a better opportunity to meet its Act 129 obligations. By redirecting funds that would otherwise go unused to programs that will be successful, Duquesne Light opines the Settlement increases the Company’s efficiency, and is therefore in the public interest.

2. Large C&I Curtailable Load Program

The Settlement will allow Duquesne Light to increase the funding available to one of its most cost effective DR programs. As approved in the Company’s original EE&C Plan, the Large C&I Curtailable Load program is a program targeted to approximately 50 participants

ramping up to the summer of 2012 (Duquesne Light St. 1 at 5). Under the program, participating customers would be enrolled in advance of the 2012 summer season with a target load reduction for each facility (Duquesne Light St. 2 at 12). Facilities would be called upon during peak hours to reduce load based on a few hours’ notice. *Id*. Facilities would be paid for performance on the basis of the load reduction for each curtailment event. *Id*. The total budget for this program was $556,656, including incentives. *Id*.

Duquesne Light’s Act 129 target for peak load reduction is 113 MW. Recruiting more capacity from Large C&I customers under the Curtailable Load program, Duquesne Light suggests will provide the Company with a greater chance that the target will be reached. (Duquesne Light St. 2 at 13). However, it appears that an increase in the budget of the Curtailable Load program will be needed to reach the target. *Id*. As explained below, the Company now projects that it will be able to achieve 40 MWs of demand reduction in this class at a cost of approximately $13,916/MW. Through the Settlement, the Company will be able to try to achieve an additional 20 MWs of reductions for a total of up to 60 MW of demand reduction through its Curtailable Load Program. *Id*. at 14.

When Duquesne Light filed its original EE&C Plan on June 30, 2009, it projected a total of 10.8 MW of demand reduction from the Curtailable Load Program, with a TRC value of 4.4 (Duquesne Light St. 1 at 5). In March 2010, Duquesne Light issued an RFP (Duquesne Light St. 2 at 13). In subsequent discussions with the CSP, Duquesne Light learned the CSP was both capable and willing to recruit more MWs of load reduction at an efficient cost. *Id*. As a result of these discussions, the Program is currently expected to result in 40 MW of reduction, with a TRC value of 1.37 (Duquesne Light St. 3 at 4; Duquesne Light Exh. TC-2).

To achieve the 40 MW of demand reduction, the Company will spend the full amount of the approved program budget, $556,000. *Id*. However, it expects approximately 20 MW of demand reduction from the Curtailable Load Program with an additional expenditure of about $300,000 (Duquesne Light St. 2 at 13). Under the Settlement, the Company will

transfer funds currently budgeted for the existing Large C&I energy efficiency programs to its Curtailable Load Program to achieve the additional 20 MW of demand reductions (Settlement at ¶18).

Duquesne Light’s peak load reduction under Act 129 is 113 MW. It believes the additional load reduction that can be obtained from Large C&I customers under the Curtailable Load Program will help it meet its load reduction goal, in a cost effective manner and it may, in fact, be necessary to reach its load reduction target (Duquesne Light St. 2 at 14).

In response to requests of Duquesne Light’s Large C&I customers, the Settlement also provides flexibility to Large C&I customers in how they may participate in the Curtailable Load Program. Under the Settlement, Duquesne Light has agreed to accept some or all of the additional 20 MW of demand reductions from Large C&I customers directly or through the customer CSPs, rather than requiring that all demand reductions be administered through Duquesne Light’s Curtailable Load Program CSP (Settlement at ¶19). However, Duquesne Light will only accept those direct Large C&I customer demand reductions, if the reductions are needed to meet the goals of Duquesne Light’s EE&C Plan and are more cost effective than those that can be obtained by Duquesne Light’s Curtailable Load program CSP. *Id*.

Duquesne Light posits expanding the Large Curtailable Load Program presents the Company with an opportunity to significantly increase its demand reductions with only a modest allocation of funds (Duquesne Light St. 2 at 14). Although demand reductions have been more difficult to achieve than the Company originally expected, with the modifications agreed to as part of this Settlement, Duquesne Light now expects to achieve overall demand reductions of approximately 120 MW (energy efficiency demand reductions of 59 MW and demand response reductions of 61 MW). These results further Duquesne Light’s EE&C Plan and the Company’s ability to meet its 113 MW goal for the summer of 2012. *Id*. at 14-15.

For these reasons, Duquesne Light urges approval of the Settlement as in the public interest.

B. OCA’s Position

1. Background

OCA notes Act 129 of 2008 mandated the Commonwealth’s major electric distribution companies (“EDCs”) to reach certain energy consumption and peak demand reduction targets by milestone dates in 2011 and 2013. Under the Act, EDCs are required to reduce electricity consumption by 1% as of May 31, 2011 and by 3% as of May 31, 2013. Also as of May 31, 2013, EDCs must reduce their annual peak system demand by 4.5% over the top 100 summer hours. Pursuant to the requirements of Act 129, Duquesne Light filed its original EE&C Plan with the Commission on June 30, 2009. As part of its effort to meet the peak demand reduction targets specified in the Act, Duquesne Light included within its EE&C Plan three DR programs, one designed for Residential customers, one for Small/Midsized C&I customers and one for Large C&I customers. The DR programs designed for Residential and Small/Midsized C&I customers were air-conditioning cycling programs (“A/C cycling”) and the program aimed at Large C&I customers was a curtailable load program.

On May 9, 2011, Duquesne Light filed a Petition with the Commission seeking to modify the DR component of its EE&C Plan. In particular, Duquesne Light proposed to eliminate the Residential and Small/Midsized C&I A/C cycling programs, because the Company had determined them to be not cost-effective. Instead, Duquesne Light proposed to shift the funds that would have been spent on the residential A/C cycling program ($2,928,070) to other existing residential energy efficiency programs. Duquesne Light did not identify the specific energy efficiency programs that would be funded. Instead it indicated that after an analysis of energy efficiency program performances, it would develop a proposed use of funds and seek Commission approval of its proposal.

As to the funds that Duquesne Light would have spent on the Small/Midsized C&I A/C cycling program, the Company proposed to shift these funds to the Large C&I load curtailment program, which the Company maintains has been shown to achieve very cost effective demand reductions.

As support for its proposal, Duquesne Light stated that the cost effectiveness of the A/C cycling programs had deteriorated significantly, since the Company first proposed them in 2009. It originally expected these programs to produce a demand reduction of 26.3 MW at a cost of approximately $150,000 per MW. Its latest estimates are that the programs will produce only 5 MW of demand reduction at a cost of about $780,000 per MW. As reasons for this deterioration in results, Duquesne Light cited implementation delays due to uncertainties about measurement and verification protocols, as well as reductions in the value of capacity and energy in the wholesale electric markets.

By contrast, Duquesne Light originally projected that its Large C&I load curtailment program would achieve 10.8 MW of demand reduction at a cost of approximately $51,550 per MW. It now estimates this program will achieve 40 MWs of demand reduction for the same investment, meaning that each MW of reduction can be achieved for roughly $14,000 per MW. In addition, Duquesne Light maintained that by shifting the funds budgeted for the Small/Midsized C&I A/C cycling program to the Large C&I load curtailment program, it could attain additional reductions of at least 20 MW by way of the Large C&I program. To accomplish this, Duquesne Light estimated that it may have to spend only $300,000 of the amount transferred from the Small/Midsized C&I program.

On May 19, 2011, the OCA answered Duquesne Light’s Petition. In its answer, the OCA indicated that while it would not oppose Duquesne Light’s proposed modifications, it continued to support residential load control programs as a long-term means of bringing about lower electric generation prices and greater reliability. The OCA further noted that if the residential A/C cycling program was implemented, the benefits of the program could extend well beyond the initial 2013 compliance date and that, over the course of time, the economics of the program could change.

The OCA also recommended that any reallocation of the money for the residential load control program to energy efficiency programs should be carried out in consultation with interested stakeholders.

2. The Settlement

Under the terms of the Settlement, the OCA notes Duquesne Light will withdraw its proposal to eliminate the Residential and Small C&I A/C cycling programs. However, these programs will go forward on a much smaller scale than originally proposed in Duquesne Light’s EE&C Plan. The A/C cycling programs, which originally had a combined budget of $3.92 million, will be reduced to a budget of $1.1 million. The amount spent on each program will depend on the number of Residential customers and the number of Small/Midsized C&I customers that ultimately enroll in the respective programs.

The difference between the amount originally budgeted for the residential A/C cycling program ($2.928 million) and the amount actually spent will be transferred to the following residential energy efficiency programs:

1. Up to $850,000 will be used for a new residential energy efficiency program designed to reach customers with the highest 20% of use. This will be a Behavioral Modification and Education program. Participants will receive a customized Home Energy Report. They will be able to evaluate their energy consumption in comparison to the consumption in similar homes based on such factors as square footage, dwelling type and geography. By comparing participants to their peers, it is believed that participants will be impelled to take action to reduce consumption.

b. Up to $250,000 will be transferred to the existing Schools Energy Pledge Program. This funding will allow additional schools to participate in the program.

c. Up to $500,000 will be transferred to the existing Residential Energy Efficiency Rebate Program. The funds will be used to strengthen in-store awareness of the availability of rebates for energy efficient appliances. A network of 50 retailers that sell the eligible products will have their personnel trained to better promote the rebate program.

(Duquesne Light Exh. DWD-2).

With regard to the expenditure of any funds remaining from the Residential A/C cycling program, Duquesne will develop proposals in consultation with stakeholders prior to seeking Commission approval of any further modifications to the Company’s EE&C Plan.

Any difference between the amounts originally budgeted for the Small/Midsized C&I A/C cycling program and the amounts actually spent will be similarly transferred to existing energy efficiency programs for such customers.

The Settlement preserves Duquesne Light’s proposal to increase the demand reductions from its Large C&I curtailable load program from 10.8 MW to 60 MW. As noted above, the increase from 10.8 MW to 40 MW is expected to be achieved through existing funding for the program. Under the Settlement, however, the additional 20 MW of reductions will be funded not from the transfer of funding from the Small/Midsized C&I A/C cycling program, but rather from the transfer of dollars from existing energy efficiency programs for Large C&I customers.

3. The Interest of Residential Customers

As noted in its answer to Duquesne’s Petition, while the OCA recognized that cost-effectiveness concerns might make it necessary to limit the direct load control program for residential customers at this time, the OCA expressed continued support for such programs as a means of meeting the demand reduction requirements of Act 129 and as a long-term means of achieving lower generation prices and greater system reliability. Further, the OCA expressed the view that while the economics of such a program may not now be favorable in Duquesne Light’s territory, circumstances could change over time to make it cost-effective.

The OCA believes the Settlement is in accord with its views. It maintains a direct load control program for residential customers, but reduces the originally proposed size of the program in recognition of the current reduced cost-effectiveness of the program.

The OCA opines the transfer of the remaining residential direct load control program funding to other residential energy efficiency programs is also in the interest of customers. The money is being transferred to two of the Company’s most successful residential energy efficiency programs – the Residential Energy Efficiency Rebate Program and the Schools Energy Pledge Program – allowing further expansion of those programs. Money will also be used to fund a new Behavioral Modification and Education program, which has met with success as part of the Energy Efficiency and Conservation Plans of other Pennsylvania EDCs.

The Settlement also provides that the disposition of any residential load control program funds that have not been earmarked for specific programs will be carried out in consultation with stakeholders, a recommendation the OCA made in its answer to Duquesne Light’s Petition.

For all of these reasons, the OCA submits the Settlement is in the interest of residential customers.

C. DII’s Position

The DII note the Commission has a strong policy favoring settlements. As set forth in its regulations, “[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation.” 52 Pa. Code §69.391; *see also*, 52 Pa. Code §5.231. Consistent with the Commission’s Policy, the Joint Petitioners engaged in several negotiations to resolve the issues raised by various parties. These ongoing discussions produced the foregoing Settlement. The Joint Petitioners agree approval of the proposed Settlement is overwhelmingly in the best interest of the parties involved.

The DII submit the Settlement is in the public interest for the following reasons:

a. As a result of the Settlement, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated.

b. Uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided as a result of the Settlement.

c. The Settlement reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding. Similarly, the Settlement is presented without prejudice to any position any party may advance in future proceedings involving the Company.

In addition, the Settlement specifically satisfies the concerns of the DII by providing that Duquesne Light will accept approximately 20 MW of demand reductions from Large C&I customers or Large C&I customers’ PJM curtailment service providers (“CSPs”) directly, rather than requiring that all demand reductions be administered by Duquesne Light’s curtailable load program CSP, provided that such Large C&I customer demand reductions are needed to meet the goals of the EE&C Plan and are more cost effective than what the Company’s curtailable load program CSP can provide (Settlement at ¶17).

The Settlement also satisfies the concerns of the DII by providing for a lower cost responsibility for Large C&I customers compared to the original Petition, and by removing the Petition’s proposal to shift cost responsibility from other classes to Large C&I customers. Specifically, the Petition proposed increasing the cost responsibility of Large C&I customers by shifting $892,000 of funds from the Small/Midsized C&I DR A/C cycling program to the Large C&I DR program, in order to achieve an additional 20 MW of Large C&I demand reductions (Petition at 6). Rather than shifting cost responsibility from other classes to Large C&I customers, the Settlement provides that funds for the additional 20 MW of demand reductions will be shifted from Large C&I energy efficiency programs (Settlement at ¶18).

For these reasons, DII urge the Commission to approve the Settlement as in the public interest.

D. Comverge’s Position

Comverge[[6]](#footnote-6) submits the terms of the Settlement are in the public interest and represent a fair, just, reasonable and equitable balance of the interests of Duquesne Light and its customers. Initially, Comverge observes the Settlement enhances Duquesne Light’s EE&C Plan by ensuring that previously spent dollars are not stranded and by tailoring the dollars spent to the level of interest already demonstrated by the Company’s customers. Further, Comverge supplies the following reasons for finding the Settlement to be in the public interest:

a. The Settlement ensures that Duquesne Light’s DR programs will be funded at a level that is consistent with the interest demonstrated by its customers.

b. As a result of this Settlement, all customers, who have previously expressed an interest in pursuing a demand response option and were promised compensation for their participation in the program, will be able to participate in the program and receive the compensation for which they registered.

c. The Settlement discontinues expensive and unnecessary litigation and administrative burden.

Comverge suggests the Settlement addresses and adjusts all substantial issues that are the subject of dispute. Comverge opines it appears unlikely that full litigation of these matters would result in it obtaining a superior outcome. Comverge supports the Settlement, because it believes it to be in the public interest. However, in the event this matter proceeds to full litigation, Comverge is prepared to take litigation positions that may differ from the terms of the proposed Settlement.

For these reasons, Comverge urges approval of the Settlement.

E. Recommendation

Upon due consideration of the terms and conditions of the Settlement, including the supporting statements of the parties, this Settlement constitutes a fair, just and reasonable resolution of this proceeding. Therefore, the Settlement is in the public interest and should be approved.

IV. 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. The Joint Petition for Settlement that Duquesne Light Company, the Office of Consumer Advocate, Duquesne Industrial Intervenors, and Comverge, Inc. have submitted in this proceeding complies with the requirements of Act 129, 66 Pa. C.S. §§2806.1 and 2806.2.
3. The Commission should approve the Joint Petition for Settlement that Duquesne Light Company, the Office of Consumer Advocate, Duquesne Industrial Intervenors, and Comverge, Inc. have submitted in this proceeding as in the public interest.

V. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement that Duquesne Light Company, the Office of Consumer Advocate, Duquesne Industrial Intervenors, and Comverge, Inc. have submitted on August 26, 2011 at Docket No. M-2009-2093217 is hereby approved.
2. That the Petition of Duquesne Light Company for Approval of Changes to its Energy Efficiency and Conservation and Demand Response Plan filed on May 9, 2011 at Docket No. M-2009-2093217 is moot and, therefore, is denied.
3. That Duquesne Light Company is permitted to implement its Energy Efficiency and Conservation and Demand Response Plan, as modified by the terms and conditions set forth in the Joint Petition for Settlement filed on August 26, 2011, consistent with this Recommended Decision.
4. That any directive, requirement, disposition or the like contained in the body of this Recommended Decision that is not the subject of an individual Ordering Paragraph shall have the full force and effect as if fully contained in this part.

Date: September 14, 2011

John H. Corbett, Jr.

Administrative Law Judge

1. Duquesne Light is a public utility and an electric distribution company (“EDC”) as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§102, 2803. Duquesne Light furnishes electric distribution and provider of last resort (“POLR”) electric supply services to approximately 579,000 customers throughout its certificated service territory, which includes all or portions of the City of Pittsburgh and Allegheny and Beaver Counties, Pennsylvania. [↑](#footnote-ref-1)
2. The EE&C Plan was further revised by Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2009-2093217 (Order Entered January 28, 2011). [↑](#footnote-ref-2)
3. Duquesne Light’s EE&C Plan includes a broad portfolio of energy efficiency, conservation practices and peak load reductions, and energy education initiatives. Duquesne Light’s portfolio of programs is designed to provide customer benefits and to meet the energy saving and peak load reduction goals set forth in Act 129. The EE&C Plan includes a range of energy efficiency and demand response programs that include every customer segment in Duquesne Light’s service territory. These programs are the key components of a comprehensive electric energy efficiency initiative designed to achieve the 422,565 megawatt hours (“MWh”) of reduced energy consumption and 113 megawatts (“MW”) of peak demand reductions required by Act 129. [↑](#footnote-ref-3)
4. The OSBA has indicated that it does not object to the Settlement. *See*, Settlement at 4, n. 3. [↑](#footnote-ref-4)
5. On October 15, 2008, Governor Rendell signed House Bill No. 2200, subsequently identified as Act No. 129. Act 129 created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§2806.1 and 2806.2. [↑](#footnote-ref-5)
6. Comverge is a demand response provider providing direct load control devices and services through PECO and PPL Act 129 programs. In addition, Comverge provides demand response aggregation of megawatts in the PJM open market. Moreover, Comverge, through its wholly-owned subsidiary, Enerwise Global Technologies, is a registered Curtailment Service Provider in the PJM market (Settlement, Appendix D at 1, n. 1). [↑](#footnote-ref-6)