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November 3, 2011

VIA OVERNIGHT MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Investigation of Pennsylvania's Retail Electricity Market:
Recommended Directives on Upcoming Default Service Plans
Docket No: I-2011-2237952**

Dear Secretary Chiavetta:

Enclosed for filing are an original and five (5) copies of the Comments of Duquesne Light Company to the Tentative Order entered October 14, 2011 in the above-referenced case.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. Jack', written over a horizontal line.

Gary A. Jack
Assistant General Counsel

Enclosure

c: Office of Competitive Market Oversight

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**Investigation of Pennsylvania's)
Retail Electricity Market:)
Recommended Directives on) Docket No. I-2011-2237952
Upcoming Default Service Plans)**

COMMENTS OF DUQUESNE LIGHT COMPANY

Duquesne Light Company ("DLC" or the "Company") submits the following comments in response to the Pennsylvania Public Utility Commission's ("Commission") Tentative Order of October 14, 2011, at Docket No. I-2011-2237952, relating to Electric Distribution Companies' ("EDC") future default service plans. DLC appreciates this opportunity to comment on the set of recommendations governing the format and structure of EDCs' upcoming default service plans. DLC can offer a unique and informed perspective on the recommendations because of its extensive experience with post-transition period default service. DLC completed the transition period for most customers in 2002 and, since that time, has successfully implemented four post-transition period default service programs and has achieved relatively high levels of customer shopping in its service area relative to other electric utilities in Pennsylvania and elsewhere in the United States.¹

Specific issues raised in the Tentative Order regarding EDC future default service plans are addressed below.

¹ As of September 2011, the overall percentage of retail load (based on billed kWh) that is shopping in DLC's service area has climbed to 69%. By comparison with other EDCs in the country, DLC is among the top ten retail access programs in the nation in terms of percentage of retail load shopping.

I. COMMENTS

A. Overview

DLC commends the Commission and the Office of Competitive Market Oversight (“OCMO”) on the development of recommendations that address important and difficult issues. DLC agrees with a large portion of the Tentative Order. Now that the entire state is in a post-transition period, it is an opportune time for the Commission to develop recommendations to improve the competitive market. However, DLC is concerned that, in some instances, the recommendations in the Tentative Order may impose unnecessary costs on default service customers to the extent that future and uncertain Commission actions could be applied retroactively even after a future default service plan is approved. Most of the Commonwealth has had only limited experience with post-transition period POLR service. Other Pennsylvania service territories have only recently begun to implement post-transition default service. It is important that the Commission recognize the different stages of retail market development among Pennsylvania EDCs and continue to not preclude experimentation and flexibility, nor prescribe approaches that could jeopardize the accomplishments that have already been achieved.

In addition, timing is important, especially with regard to existing POLR plans and obligations. At the outset, DLC agrees with the statements in the Tentative Order that the recommendations should relate to “future,” “upcoming,” or “proposed” EDC default service plans. This is expressed in the Tentative Order in several places:

Before the Commission is a set of recommendations from the Pennsylvania Public Utility Commission’s (Commission) Office of Competitive Market Oversight (OCMO) related to Electric Distribution Companies’ (EDC) future default service plans. With this Tentative Order, the Commission issues for public comment

these recommendations concerning the format and structure of EDCs' upcoming default service plans.²

This Order represents intermediate recommendations from OCMO as to how EDCs should develop the format and structure of their upcoming default service plans.³

The intermediate recommendations are intended to achieve three goals: (1) to ensure that the upcoming default service plans do not hinder the ability of the Commission to implement changes that will be addressed within the investigation; (2) to advise EDCs and other parties that they will be expected to amend proposed default service plans when possible to incorporate changes which may arise out of the Investigation...⁴(emphasis added)

This is appropriate. The recommendations should apply to future default service plans that have not yet been filed. The Commission should also clarify that once a solicitation is approved by the Commission, it will not expose winning suppliers to substantially new risks. To the extent possible, the Commission should take great care not to affect wholesale bidders' analyses of future default service plans. This would raise costs for not only default service customers but other retail offerings that compare themselves with the default service price. Under Act 129, default service must be provided at least cost over time.⁵ At a minimum, EDCs and the Commission should seek to provide enough specificity for upcoming default service plans that enable suppliers to better understand and assess the potential risks associated with providing default service before they bid.

² Tentative Order, at 1, emphasis added.

³ Tentative Order, at 3, emphasis added.

⁴ Tentative Order, at 3, emphasis added.

⁵ 66 Pa.C.S. § 2807(e) (3.4).

B. Default Service Plan Time Period

In the Tentative Order the Commission concludes that the period for the next default service plan should be two years following the term of the EDC's current default service plan. DLC's current default service plan ends on June 1, 2013. DLC supports the conclusion in the Tentative Order that its next default service plan period should be two years, from June 1, 2013 through May 31, 2015. As explained further in these Comments, DLC will begin to use Requests for Proposals ("RFPs") to acquire default service supply for its residential customers commencing June 1, 2013.

C. Energy Contract Durations

DLC supports the Commission's approach to allow flexibility when EDCs formulate a portfolio of energy contracts that satisfy statutory requirements. DLC also supports the Commission's position that it "will avoid mandating a prescriptive portfolio of contract lengths."⁶ DLC believes that this flexibility in default service contract durations across EDCs and customer classes is necessary. Contract durations used in a particular default service plan should be tailored to the unique circumstances of each EDC and customer class, and take into account the customer benefits of rate stability and the competitive opportunities available in that service area for a particular customer class.

In the Tentative Order, the Commission does recommend that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolio. In addition, the Commission recommends that EDCs consider using already existing long-term contracts from previous or presently effective default service plans to satisfy

⁶ Tentative Order, at 4.

compliance with the long-term contract mandate of 66 Pa. C.S. § 2807(e)(3.2)(iii).⁷ DLC can generally agree to abide with this policy at this time, if adopted by the Commission. Long-term EDC purchase contracts, especially for supply products involving fixed costs that are not “load following” products (e.g., block products), carry with them the risks that customers will be forced to bear any future above-market costs for supply that is not needed to serve default service load. This is especially true if efforts to stimulate customer switching are successful. DLC believes that it would not be prudent to enter into long-term, fixed-price, fixed-quantity commitments at this time since this would impose considerable risks on its customers given the high level of shopping in its service area and the uncertainty regarding future shopping levels resulting from the Retail Market Investigation.

The Commission also recommends that EDCs file plans that “limit or eliminate” the existence of short-term energy contracts extending past the end date of the default service plan time period.⁸ DLC recognizes the Commission’s desire not to inhibit the ability of the Retail Market Investigation stakeholders to recommend, and develop for implementation, changes in the competitive market that can help foster a more dynamic and robust retail electricity environment. DLC believes that this objective should be balanced with the needs of customers for rate stability and to avoid situations where 100 percent of the supply is purchased at one point in time and/or all of the supply requirements for a particular customer class have to be fully replaced for a given delivery period. This may require some degree of flexibility in particular the ability to conduct at

⁷ Tentative Order, at 5. Act 129 requires a prudent mix of spot market purchases, short-term contracts, and long-term purchased contracts. Long-term contracts are defined as more than four and not more than 20 years.

⁸ Tentative Order, at 5.

least two solicitations on different dates prior to the commencement of the default service plan. In the past, the Commission has supported laddering of purchases at different points in time and laddering of overlapping delivery periods in an effort to avoid sudden rate shocks like that experienced in Pike County. DLC believes that the Commission should consider the price stability benefits, if any, for different types of customers. For instance, overlapping the delivery periods of supply products particularly for residential customers could prove valuable to reduce the likelihood of sudden rate shocks. New initiatives should be phased-in in a manner that is the least disruptive to existing and prospective default service suppliers, while at the same time consideration should be given to the customer benefits of rate stability as required in Act 129. This can be accommodated to some degree by providing flexibility to conduct solicitations for default service supply products, with delivery periods extending beyond the filed plan period, on dates that are after the Retail Market Investigation is completed when the rules for the subsequent default service plan have been established. As the Commission notes, proposed default service plans could be amended “when possible” to incorporate changes which may arise out of the Investigation, but the Commission should make clear that it will not significantly alter the obligations of suppliers once a solicitation has been completed, otherwise prospective default service suppliers are likely to add significant risk premiums to their bids into RFPs or decline to bid at all.

D. Retail Opt-In Auction

A number of parties taking part in the Retail Market Investigation, including EGSs, EDCs, and the OCA, have been working to format a proposed retail opt-in auction.

The Commission recommends that EDCs incorporate an opt-in auction program in their next default service plan filings. The Commission has not proposed a specific format for opt-in auctions in the Tentative Order, but recommends that EDCs use, as a starting point for prospective opt-in auctions, the format being discussed by a stakeholder sub-group in this Investigation when it is finalized.⁹

As the Commission notes, the details of such a program have not yet been finalized. DLC believes that such a program, if designed appropriately, would increase customer shopping. However, the Company is also concerned that such a program could materially increase the costs of default service on remaining customers by increasing the switching risks and therefore the supplier bids associated with providing default service in the first place. A retail opt-in auction could potentially increase the likelihood of large and unpredictable swings in default service load. Therefore, DLC encourages the various stakeholders and the Commission to consider the potential impact on wholesale default service supply solicitation results, especially if the scope of the retail opt-in auction is not sufficiently specified prior to a competitive solicitation to obtain default service supply. Additionally, the Commission should avoid establishing a program that causes unnecessary costs or premiums to be included in default service bid prices that may arise from uncertainty about future events under the Commission's control. Such would have the unfortunate result of increasing prices for customers – both default service customers and customers of EGSs providing fixed discounts off of the Price-to-Compare of the EDC. Given this, a pilot program with a limited number of customers could be used to test the structure, level of customer interest, and the potential impact of a retail opt-in

⁹ Tentative Order, at 5-6.

auction. DLC looks forward to working with stakeholders to discuss ways in which a retail opt-in auction can be implemented in a manner that promotes retail competition while not imposing unnecessary additional costs on customers.

E. Referral Program

The Commission believes that referral programs represent a viable means to educate customers about the retail electric market and may allow customers to achieve savings on their bill. As the Commission recognizes, these programs can vary in form and structure. Various stakeholders within the Investigation have been, or plan to be, looking into designing a referral program proposal, and DLC supports the Commission's position not to propose a specific format for referral programs within the Tentative Order.

DLC has demonstrated in the past a willingness to consider innovative approaches to support a retail competitive market as part of prior default service settlements. In its POLR V Settlement, DLC agreed to a number of initiatives to facilitate customer shopping and to educate customers about retail choice, including the following customer referral mechanisms:

- DLC agreed to provide customers with access to the OCA residential shopping guide via a direct link to the OCA's website.
- DLC agreed to provide customers with access to the Commission's new comprehensive website, once it exists, via a direct link.
- DLC agreed to circulate information on Customer Choice on a semi-annual basis, including promoting, via bill inserts/Service Line, the links

on its website and any telephonic means for a customer to solicit information about customer choice and retail offers.

- DLC agreed that in the new customer packet and any other materials relating to new service, DLC would advise new customers upon service initiation of the opportunity to obtain supply from an EGS.¹⁰
- DLC also agreed to a collaborative to develop a process to inform customers of retail offers posted on the above-referenced web sites when customers contact the DLC customer service center or when customers initiate new service or move service to a new location.
- DLC also agreed to circulate information on the competition enhancement programs and posted retail offers on at least a semi-annual basis.¹¹

Now that this Retail Market Investigation is underway, DLC believes it makes sense to review these retail market initiatives in a manner that allows careful review of the costs, benefits and customer protections. It is important to be mindful that different service territories in Pennsylvania have differing levels of customer understanding of competition and different levels of current shopping. It is also important that customer satisfaction should be paramount so that additional educational efforts are made at the appropriate times and not when customers are calling for issues such as outages, bill payment arrangements, and quality of service issues. Other important issues are assurance that there are not “bait-and-switch” offers as part of customer referral, adequate

¹⁰ The new customer packet and website area discussing initiation of new service, or transfer of service, will also contain a link to the OCA shopping guide and the new statewide website.

¹¹ Settlement Agreement, Petition of DLC for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013, at 8-10.

safeguards to customers, and whether there are antitrust concerns with EGSs agreeing to offer the same prices, services and terms as part of a joint standard offer. The stakeholder process also should consider other issues, such as any additional requirements for customer service representatives, the additional service time to address customer needs, the associated costs of the proposed customer referral program, as well as who would pay for those new costs, and whether a referral program with an EGS standard offer should be done at the same time as any Opt-In Retail Auction. DLC looks forward to working with stakeholders to discuss ways in which it can improve upon the customer referral programs already in place or under development.

F. Time of Use Rates

DLC agrees with the concept of keeping default service product offerings as simple as possible. It is DLC's opinion that EDCs generally should seek to provide standard default service for each customer class without offering multiple product options for any one customer class unless the circumstances dictate. However, as noted in the Tentative Order, present law clearly mandates that default service providers establish and provide time-of-use rates to customers with smart meters. DLC agrees with the Commission's observation that this requirement has presented challenges for EDCs and believes it would make sense for DLC to begin the process of exploring the feasibility of contracting or bidding out with an EGS or EGSs to help satisfy this statutory requirement.

G. Default Service Rate Adjustment Structure – Residential and Small Commercial

The Commission notes that a majority of EDCs adjust residential and small commercial default service rates, including energy costs and reconciliations, on a quarterly basis. However, the Commission is interested in weighing the benefits of semi-annual (i.e., six-month) energy rate adjustments and/or six-month reconciliation adjustments.¹²

Unlike other EDCs in Pennsylvania, DLC currently offers residential default service customers fixed rates for a 29-month period. This rate was proposed to be a fixed, non-reconcilable, rate that provides residential customers with the benefit of price stability. Small commercial and industrial customers in DLC's service area are offered a fixed annual rate (i.e., their rates currently change once per year).

DLC believes that default service rates for residential and small commercial and industrial customers should provide some level of rate stability. In addition, rates should be simple, easy to understand, and facilitate comparison of power prices and shopping decisions. Accordingly, DLC supports the Commission's effort to increase rate certainty for residential and small commercial and industrial customers in the Tentative Order by recommending a change from the quarterly rate adjustments that most EDCs currently employ to semi-annual rate adjustments. However, DLC recommends that the period be expressed as no shorter than six months to provide flexibility for an EDC to propose a longer period for a class or classes of customers where doing so is in the interest of the

¹² Tentative Order, at 7.

class and supports the continued development of retail markets and aligns with the rate certainty intentions of Act 129.

Over time, DLC has shortened the duration of the fixed-rate period for small commercial and industrial customers and has transitioned more gradually to shorter-term fixed rates for residential customers. In its upcoming POLR VI plan, DLC anticipates altering the default service 29-month fixed-rate structure for residential customers to shorten the fixed rate period and to rely on fixed-price full requirements solicitations obtained in the competitive market. However, DLC continues to believe that reasonable rate certainty in default service rates is important for small customers. Furthermore, it has been DLC's experience that fixed default service rates for extended periods can advance retail competition, especially for smaller customers, as a simple fixed default service rate allows EGSs to offer savings relative to a known default service rate, and to clearly show a prospective customer what the savings will be.¹³ The particular frequency of the rate changes that DLC proposes for residential and small commercial and industrial customers in the upcoming default service plan will depend on the procurement schedule and the duration of the supply products to be obtained, and has not yet been determined.

With respect to the timing of future rate reconciliations, to the extent that an EDC relies on full requirements solicitations and the prices are known when the default service rates are established, DLC does not envision a problem of EDCs moving from a quarterly to a semi-annual, or in some instances, even an annual reconciliation process. However, the longer the time period between reconciliations, the greater the potential to accrue

¹³ While some parties may argue that exposing residential customers to hourly or other short-term price signals will further promote retail competition, DLC believes that this would not be good public policy.

substantial over- or under-collection balances (i.e., customer credits or cost recovery deferrals). This is especially true if spot purchases are included in the portfolio mix for a customer class and the EDC must forecast spot market purchases in advance of establishing a default service rate and then later reconcile that forecast with actual spot market purchase costs. Therefore, DLC contends that the appropriate reconciliation period will depend on the products to be included in the portfolio serving a particular customer class.

H. Hourly-Priced Default Service for Medium Commercial and Industrial Customers

The Commission states that:

Currently, a significant level of electric shopping occurs for medium sized commercial and industrial customers, generally those customers with demand greater than 100 kW. This robust level of shopping by medium commercial and industrial customers may result in a higher risk premium being priced into default service, which would be passed onto small commercial and industrial customers. The Commission believes it may be beneficial to expand hourly-priced default service to medium commercial and industrial customers. Hourly-price default service is already offered to large commercial and industrial customers. Expanding this service to medium commercial and industrial customers may help to mitigate any cross subsidies explained above and may facilitate more competitive offerings from EGSs by encouraging competitive market entry.¹⁴

DLC agrees with the Commission that there is a significant level of electric shopping for medium-sized commercial and industrial customers. DLC currently has 62% of the medium commercial and industrial retail load (defined as customers with demand \geq 25 kW and $<$ 300 kW) shopping in its service area. Supply procurement for these medium-sized customers is obtained separately from small commercial and

¹⁴ Tentative Order, at 8.

industrial customers (< 25 kW), so that the migration risk premium associated with medium-size customers is not passed onto smaller-sized customers.

Furthermore, DLC was one of the first utilities in the nation to offer hourly pricing to all customers greater than 300 kW, and currently has one of the lowest kW thresholds for hourly price service in the United States and the lowest kW threshold for hourly price service in Pennsylvania. Therefore, exposing even smaller customers (<300 Kw) to hourly prices in DLC's service area must be weighed against the incremental costs and benefits of such a plan, taking into account the timing of smart meter installations,¹⁵ the level of shopping that already exists within this customer segment, as well as other factors (e.g., incremental operating costs and the benefits of price stability for these customers). At this point in time, DLC does not believe that hourly priced service should be the required default service procurement for its medium commercial and industrial customers (≥ 25 kW to <300 kW). Moreover, rather than any state-wide mandate, DLC believes that the Commission should continue to evaluate this in individual utility default service cases taking into account the individual circumstances in that territory.

Future Issues Identified Within the Investigation

In the Tentative Order, the Commission notes as follows:

¹⁵ DLC questions whether it would be economic to install interim meter and communication infrastructure prior to the planned smart meter installations and how such costs could be recovered when so much of the retail load in the medium commercial and industrial class is shopping already.

To the extent that such issues will not substantially affect wholesale bidders' analyses of future default service plans, the Commission wishes to remind EDCs that any issues addressed and resolved in the Investigation may be recommended or directed for incorporation within pending or approved default service plans.¹⁶

DLC interprets this statement to apply to its default service plan to become effective June 1, 2013. DLC concurs that consideration of any changes to default service or the competitive retail market must account for the potential effects on wholesale supply bid prices. In addition, any change to default service rules that are adopted after any procurement should be limited to prospective bids. Without such protection, wholesale bidders would be exposed to the risk of significant regulatory uncertainty, and wholesale bidders would be likely to add significant risk premiums to their bids into RFPs or decline to bid at all. Likewise, any change to default service supply contract terms should be limited to contracts applicable in future solicitations. In sum, all participants in the market should have reasonable certainty of how the market will operate for the default service period prior to making service commitments.

If the intent is to consider reopening existing POLR plans to incorporate outcomes of this Investigation, Duquesne Light would caution that many of the existing POLR plans are the result of carefully crafted Settlement Agreements that balanced numerous varying positions from multiple parties. If all the parties to that existing POLR plan proceeding agree to implement a change as part of the existing POLR plan, then, in Duquesne's view, that change could be implemented as part of the existing plan. But if there is not full agreement to adopt the change in the current POLR plan, the change should not be adopted otherwise litigation on these plans will likely ensue. There could

¹⁶ Tentative Order, at 8.

be many valid reasons why a change not affecting wholesale suppliers should not be implemented in a current plan such as timing, adverse harm, costs, and finality.

Tentative Order Process

DLC raises the legal concern with the Commission of potentially imposing regulatory obligations through a Tentative Order process. Under legal requirements, the Commission can only impose legal requirements on its regulated entities through rule making or adjudicated proceedings.¹⁷ If the purpose of the Tentative Order is merely to make recommendations and not binding commitments, (which we believe is the intent of the Commission), then DLC has no objection to the Tentative Order process. If the purpose is to create actual binding regulatory requirements upon EDCs without going through an adjudication or a rule-making, then the Commission should reevaluate its process, from a legal and policy perspective, before proceeding any further.

Closing Remarks

DLC supports the evaluation of the state of retail markets in Pennsylvania. Since the completion of its transition period for most customers in 2002, DLC has been able, with the assistance of the Commission, many market participants, consumer advocates, and other interested parties, to make significant improvements in customer access to the retail market while at the same time maintaining fair and reasonable rates for default

¹⁷ *Pennsylvania Human Relations Commission v. Norristown Area School District*, 344 A.2d 671 (Pa. 1977).

service customers. DLC has continued to modify its default service model over time and found ways to advance competition as the service requirements and markets for the different customer classes have evolved. As a result, DLC has achieved relatively high levels of customer shopping in its service area relative to other electric utilities in Pennsylvania and elsewhere in the United States. The Company looks forward to working with stakeholders to continue its efforts to promote retail competition in a manner that balances the interests of customers, EGSs, and EDC stakeholders.

Respectfully Submitted,

Duquesne Light Company

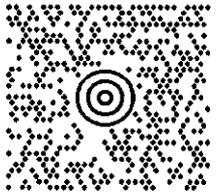
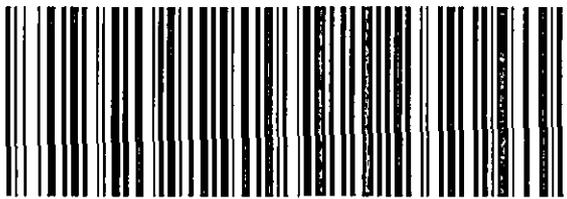
November 3, 2011

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