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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held March 14, 2013 |
| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice ChairmanWayne E. GardnerJames H. CawleyPamela A. Witmer |
| Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase II Plan | M-2012-2334399  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of Duquesne Light Company (Duquesne or the Company) for Approval of its Energy Efficiency and Conservation Phase II Plan (Petition), filed on November 15, 2012. As discussed, *infra*, on February 7, 2013, Duquesne submitted a revised Phase II Energy Efficiency & Conservation Plan (Revised Plan). In accordance with the Commission’s Order in *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered August 3, 2012) (*Phase II Implementation Order*), Administrative Law Judge (ALJ) Dennis J. Buckley certified the record in this proceeding to the Commission on February 14, 2013. For the reasons fully delineated herein, we shall grant Duquesne’s Petition and approve the Revised Plan.

# I. Background

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth’s largest electric distribution companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission’s EE&C Program and of the EDCs’ approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs. In accordance with that directive, the Commission issued a Secretarial Letter on March 1, 2012, at Docket No. M-2012-2289411 seeking comments on several issues related to the design and implementation of any future phase of the EE&C Program, and whether additional incremental consumption and peak demand reduction targets would be adopted. On May 10, 2012, in response to the comments received pursuant to the Secretarial Letter, the Commission issued a Tentative Implementation Order (*Phase II* *Tentative Implementation Order*) to begin the process of evaluating the costs and benefits of the initial EE&C Program and the possible establishment of new reduction targets. In the *Phase II* *Tentative Implementation Order*, the Commission found that the benefits of a Phase II Act 129 Program would exceed the costs. Therefore, the Commission proposed the adoption of additional required incremental reductions in consumption for another program term and sought additional comments on its specific proposals.

Subsequently, in response to the comments filed pursuant to the *Phase II* *Tentative Implementation Order*, on August 3, 2012, the Commission issued the *Phase II Implementation Order*, which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet), and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EDCs’ EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets as set forth in Table 1 in Section A.2.c.1 of that Order. The targets varied from a high of 2.9% for PECO Energy Company (PECO) to a low of 1.6% for West Penn Power Company. *Phase II Implementation Order* at 24. The *Phase II Implementation Order* provided that these targets would become final for any covered EDC that did not petition the Commission for an evidentiary hearing by August 20, 2012. *Id.* at 30-32.

On August 20, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy) filed Petitions for Reconsideration and Clarification of the *Phase II Implementation Order.* Also, on August 20, 2012, PPL Electric Utilities Corporation (PPL) filed a Petition for Reconsideration of the *Phase II Implementation Order*. On August 30, 2012, the Commission granted the Petitions filed by FirstEnergy and PPL pending further review of, and consideration on, the merits. The Office of Consumer Advocate (OCA) filed separate Answers to the FirstEnergy and PPL Petitions on August 30, 2012, and on the same date, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Response to PPL’s Petition.

On September 4, 2012, PECO filed a Motion for Leave to File a Petition for Reconsideration and a Petition for Reconsideration of the *Phase II Implementation Order.* On September 13, 2012, the Commission adopted an Order granting PECO’s Motion for Leave to File a Petition for Reconsideration. On September 19, 2012, the Clean Air Council and the Sierra Club (CAC/SC) filed an Answer to PECO’s Petition for Reconsideration.

By Reconsideration Order entered September 27, 2012, at Docket Nos.
M-2012-2289411 and M-2008-2069887 (*Phase II Reconsideration Order*), the Commission denied the Petitions for Reconsideration and Clarification filed by FirstEnergy and the Petitions for Reconsideration filed by PPL and PECO.

# II. Procedural History

In the *Phase II Implementation Order,* we adopted an EE&C plan approval process which included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as posting of each proposed plan on the Commission’s website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed in November, 2012 was to be assigned to an ALJ for an evidentiary hearing within sixty-five days after the plan was filed, after which, the parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission will then approve or reject all or part of a plan at public meeting within 120 days of the plan filing. *Phase II Implementation Order* at 61 and 62.

In the *Phase II Implementation Order,* the Commission reaffirmed that EDCs were to file their Phase II EE&C plans by November 1, 2012. *Phase II Implementation Order* at 63. On November 1, 2012, the Commission issued a Secretarial Letter notifying

EDCs that it would accept Phase II EE&C plans on either November 1, 2012, or November 15, 2012, due to the impact of Hurricane Sandy and the need for EDC personnel to focus on storm response duties.

On November 15, 2012, Duquesne filed a Petition for Approval of the Company's Phase II Energy Efficiency and Conservation Plan (Phase II Plan or Plan). On December 1, 2012, a notice of Duquesne’s November 15, 2012, filing was published in the *Pennsylvania Bulletin,* which provided that comments on the Phase II EE&C Plan were due on December 21, 2012.

On December 5, 2012, the Office of Small Business Advocate (OSBA) filed a Notice of Intent to participate in this proceeding and a Public Statement. On December 6, 2012, CAUSE-PA and the Community Action Association of Pennsylvania (CAAP) each filed a Petition to Intervene in this case. On December 6, 2012, the OCA filed a Notice of Intent to participate in this proceeding and a Public Statement. On December 7, 2012, Citizen Power (Citizen) and the Duquesne Industrial Intervenors (DII) each filed a Petition to Intervene in this case. On December 21, 2012, Comverge, Inc. (Comverge) filed a Petition to Intervene, which was granted by the ALJ in a prehearing order issued on January 14, 2013.[[1]](#footnote-2)

On January 18, 2013, an evidentiary hearing was held in Harrisburg, Pennsylvania. The hearing was attended by Duquesne, the OCA, the OSBA, DII, CAAP, CAUSE-PA, Citizen, and Comverge. Also on January 18, 2013, the ALJ issued a post-hearing order setting January 28, 2013, as the date for filing of a Partial Settlement Agreement and supporting statements. On January 28, 2013, a Joint Petition for Partial Settlement (Settlement) and related Appendices containing supporting statements was filed by Duquesne, the OCA, CAUSE-PA, CAAP, Citizen and Comverge (collectively, the Joint Petitioners). Main Briefs were filed on January 28, 2013, by Duquesne and DII. Reply Briefs were filed on February 7, 2013, by Duquesne, DII, the OCA, the OSBA and Citizen.

 On February 7, 2013, Duquesne filed its Reply Comments and its Revised Plan. By Order Certifying the Record dated February 14, 2013, ALJ Buckley provided a history of the investigation into Duquesne’s Phase II Plan; delineated the transcripts, statements, exhibits and briefs admitted into the record; and certified the record to the Commission for consideration and disposition.

**III. Description of the Plan**

The *Phase II Implementation Order* established a Phase II consumption reduction target for Duquesne of 2.0% of its expected load as forecasted by the Commission for the period of June 1, 2009 through May 31, 2010, or 276,722 MWh, over a three-year period from June 1, 2013 through May 31, 2016. *Phase II Implementation Order* at 24.In its Petition, Duquesne explains that it selected nineteen energy efficiency programs for its Phase II Plan that are tailored for its residential, commercial and industrial customers and that will reduce annual energy consumption by 332,066 MWh.[[2]](#footnote-3) Duquesne states that, of these nineteen programs, four are newly created programs that were added based on the Company’s analysis and experiences in Phase I of the EE&C Program. In its Petition, Duquesne provided the following summary of its nineteen programs:

**Residential Energy Efficiency Rebate Program.** This program encouragescustomers to make an energy efficient choice when purchasing and installing household appliances and equipment by offering educational materials on energy efficiency options and rebate incentives. Program educational materials and rebates are provided in conjunction with the Duquesne on-line home energy audit.

**Residential/Schools Energy Pledge Program.** This program is a primary school based program whereby students learn about energy efficiency and conservation and their families adopt EE&C measures students learn about at school. Through this program, students learn about energy efficiency, participate in a school fundraising drive and help their families to implement energy-saving measures at home.

**Residential Appliance Recycling Program.** This program encourages residential customers to turn in their older refrigerators and freezers to be recycled. This program encourages participation by providing a $35 check for the removal of the old appliance.

**Residential Home Energy Reporting Program.** This program sends, via direct mail, home energy use reports that compare recipient customer’s energy use to the use of 100 customers with similar home type and size. This program provides for comparison purposes the last two months of energy consumption by: (1) the most efficient twenty percent of the peer group; (2) the recipient, and (3) the entire peer group. The reports generate verifiable savings ranging from 1.5 to 3.5 percent of total home energy use.

**Residential Whole House Retrofit Program.** This program provides resources to residential customers to obtain a comprehensive residential home energy audit, installation of a Residential Home Audit Conservation Kit and rebates for a range of eligible measures. Residential customers with an income above 150 percent of the federal poverty income guidelines are provided up to a $250 home energy audit credit toward approved audit services, which typically cost between $500 and $700. Also, these customers are provided direct installation measures at no cost. Low income customers at or below 150 percent of the federal poverty income guidelines are provided home energy audits and direct installation measures at no cost.

**Residential Low Income Energy Efficiency Program.** This program is an income qualified program providing services designed to assist low-income households to conserve energy and reduce electricity costs. This program relies on several contributing programs to achieve projected savings impacts and program cost-effectiveness. The Company intends to achieve 4.5 percent of its energy consumption reduction savings from this program.

**Commercial Sector Umbrella Program.** This program provides incentives to commercial customers to offset the higher cost of high-efficiency equipment. This program also establishes the terms, conditions and incentive levels for all Sub-Programs. The Sub-Programs are structured to provide specialized services to customers consuming 92 percent of the sector energy use. This program provides access to energy efficiency incentives by customers not served by the Sub-Programs.

**Commercial Sector Sub-Program: Office Building Program.** This program helps commercial customers to assess the potential for energy efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Commercial Sector Sub-Program: Health Care Segment Program.** This program establishes a permanent framework for a long-term energy management program for medical office buildings and acute care facilities. It involves a retrofit incentive program tailored to individual system administrator needs.

**Commercial Sector Sub-Program: Retail Stores Program.** This program helps commercial customers to assess the potential for energy-efficiency project implementation, cost and energy savings, and for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Commercial Sector Upstream Lighting Program.** This program will provide incentives for efficient lighting products directly to technology manufacturer distributors to offset the higher cost, and thereby drive uptake of, the most efficient lighting equipment options.

**Commercial Sector Sub-Program: Small Commercial Direct Install Program.** This program provides no-cost energy efficient equipment retrofits to small business customers to produce cost-effective, long-term peak demand and energy savings. This program will be delivered in a staged delivery approach to provide program services in specific geographic areas at different time periods. The Company will deploy selected lighting measures to include screw-in CFLs, LED reflector lamps and exit signs, third generation T8 lamps and ballasts and T5HO high bay lighting.

**Industrial Sector Umbrella Program.** This program provides for the payment of incentives to offset the higher cost of high-efficiency equipment. It also establishes the terms, conditions and incentive levels for all Sub-Programs which are structured to provide specialized services to customers consuming 92 percent of the sector energy use. This program provides access to energy efficiency incentives by customers not served by the Sub-Programs.

**Industrial Sector Sub-Program: Primary Metals Segment Program.** This program helps industrial customers to assess the potential for energy-efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Industrial Sector Sub-Program: Chemical Products Segment Program.** This program helps industrial customers to assess the potential for energy-efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Industrial Sector Sub-Program: Mixed Segments Program.** This program is delivered by a single contractor that provides program outreach and energy audits to multiple industrial segments. This program will help smaller manufacturing entities to assess the potential for energy-efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Governmental/Non-Profit Sector Sub-Program: Education Segment Program.** This program helps colleges and primary schools to assess the potential for energy-efficiency project implementation, cost and energy savings, and for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training and technical assistance.

**Governmental/Non-Profit Sector Multifamily Housing Retrofit Program:** This program is a new program that will be implemented by a CSP following an RFP progress. Through this program, commercial customers will be paired with a Multifamily Market Manager for the purpose of identifying and obtaining energy efficiencies services such as audits, technical assistance for measure level project review and bundling, property aggregation, contractor negotiation and equipment bulk purchasing. The Multifamily Market Manager will integrate funding sources to include program and agency co-funding, performance contracting, grant funding and available financing options. Services also include processing rebate applications and other funding source documentary requirements as well as applicable project TRC screening.

**Public Agency Partnership Program.** This program establishes partnerships between Duquesne and selected local governmental agencies through the execution of a Memorandum of Understanding (MOU). The MOU establishes working groups comprised of Duquesne and agency representatives that identify project areas within agency departments (and jurisdictional agencies). The working groups define project scopes of service and establish project agreements to co-fund agreed to projects.

Duquesne St. No. 1 at 10-19. The Revised Plan reflects the provisions of the Settlement, which are described *infra.*

**IV. Discussion**

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is 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); *see also*, *generally*, *University of Pennsylvania v.*

*Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. Legal Standards**

As the proponent of a rule or order, the Company has the burden of proof in this proceeding in accordance with Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Se-Ling Hosiery, Inc. 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).

Because the Joint Petitioners have reached a settlement on many of the issues and claims that arose in this proceeding, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*.

**B. Joint Petition for Partial Settlement**

 **1. Introduction**

As stated above, on January 28, 2013, the Joint Petitioners filed the Settlement. The Joint Petitioners state that the Settlement has been agreed to, or is not opposed by, all active Parties in this proceeding, noting that the OSBA and DII have indicated that they do not oppose the Settlement. According to the Joint Petitioners, the Settlement represents a mutually acceptable compromise resolving all the issues raised by the Parties in this proceeding, with the exception of the issues raised by DII. Settlement at 1. The Settlement provides for the approval of Duquesne’s Phase II EE&C Plan with certain clarifications and modifications to specific energy efficiency programs, including requirements that the Company refer participating low-income customers to its universal service programs, and that the Company provide the opportunity for combined heat and power projects to receive custom measure rebates. In addition, the Settlement provides that the Company will meet with stakeholders to discuss increasing energy efficiency savings from non-lighting measures for the general residential sector.

## 2. Terms and Conditions of the Partial Settlement

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, and six appendices. Appendices A through F to the Settlement are the Statements of Duquesne, the OCA, CAUSE-PA, CAAP, Citizen and Comverge in Support of Joint Petition for Partial Settlement.

The essential terms and conditions of the Settlement are set forth in

Section III, as follows:

15. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all but the previously identified issues raised by DII, is in the public interest. The Joint Petitioners respectfully request that the Duquesne Light’s Phase II EE&C Plan, including the Company’s proposed pro forma Energy Efficiency and Conservation and Demand Response Surcharge, be approved subject to the terms and conditions of this Settlement specified below:

## A. Low-income Programs and Participation

16. Duquesne Light’s Low Income Energy Efficiency Program (“LIEEP”) includes five programs: Residential Energy Efficiency Program (“REEP”), Whole House Audit Retrofit, Residential Appliance Recycling Program (“RARP”), School Energy Pledge Program (“SEP”) and Residential Home Energy Reporting Program (“HER”). Residential and low income customers (total household income at or below 150% of the federal poverty level) are eligible for the same measures under the REEP, RARP, SEP and HER programs.

17. Duquesne Light will track the number of low-income participants in the REEP, RARP, SEP, and HER programs, as well as other general residential programs not targeted specifically to low-income households, through its Program Management and Reporting Systems (“PMRS”) and will count savings from low-income participants in these programs for those confirmed low-income customers who have participated in these programs. For Duquesne Light’s up-stream buy down program, Duquesne Light will track low-income participation via a survey method approved by the Statewide Evaluator.

18. Duquesne Light will refer confirmed low-income customers who participate in any of its general residential programs to its Act 129 low-income programs (specifically the Whole House Retrofit Program), its Universal Service programs, and the Low-Income Home Energy Assistance Program (“LIHEAP”).

19. Duquesne Light will offer and market specialized measures for qualified low income customers (at or below 150% of the federal poverty level) whose primary heating or water heating sources are electric under its Whole House Retrofit Program. Specifically, qualified low income customers may receive, free of charge, one or more of the following measures, based upon the audit results:

1. Comprehensive Energy Audit
2. Direct Install measures:
3. CFLs 13W
4. Faucet Aerators
5. Showerhead
6. Smart Strip
7. Night Light
8. Refrigerator Replacement
9. Water Heater Pipe Wrap
10. Water Heater Tank Wrap
11. Attic, wall, and floor insulation
12. Blower door testing and air sealing
13. Sealing attic bypasses
14. Crawl space and heater insulation
15. Electric heating equipment repair and replacement
16. Duct insulation and repair
17. Caulking and weather stripping
18. Heat pump hot water heaters

20. A trained energy efficiency contractor will conduct an audit to determine efficiency potential and recommend measures. A variety of cost effective direct install measures, including but not limited to the foregoing, may be provided based on the results of the audit.

21. Duquesne Light will leverage Act 129 program by referring customers to existing universal service programs and low-income usage reduction program (“LIURP”) resources and coordinating with natural gas distribution companies (“NGDC”) and community based organizations (“CBOs”) to provide low income services. Duquesne Light will facilitate this coordination by inviting representatives from the NGDCs with overlapping service territories to its Act 129 Stakeholder meetings and will place the issue of Duquesne Light/NGDC coordination on the agenda of those meetings.

## B. EE&C PLAN IMPLEMENTATION ISSUES

22. Duquesne Light commits to hosting at least 2 stakeholder meeting[s] per year to review plan progress with interested stakeholders. If Duquesne Light proposes significant changes to its EE&C Plan during the course of Phase II, the Company will convene additional stakeholder meetings to discuss those changes.

23. Duquesne Light will also work with NGDCs to provide joint rebates when the NGDC provides rebates to customers above 150% of the federal poverty level and to provide inter-utility audits to customers whose total household income is above 150% of the federal poverty level when available.

24. Within 60 days of the approval of the Company’s EE&C Plan, the Company will meet in a collaborative with interested stakeholders to discuss recommendations to obtain greater residential sector savings from non-lighting measures. The Company will discuss with interested stakeholders a reallocation of residential customer expenditures to measures identified in the REEP and Whole House Audit Retrofit Programs, including, but not limited to, appliances, electronics, and where appropriate, water heating and space conditioning measures. Any agreed-upon changes to programs will be requested through the Commission’s “Minor Changes” process, if necessary.

## C. PROPOSED IMPROVEMENTS TO EE&C PLAN

25. The Company will make available to customers in the Whole House Audit Program a single application for multiple measures installed as a result of a comprehensive audit.

26. The Company will continue to monitor the new home construction market and the opportunity for introducing a residential new home program during Phase II. The Company will report on this issue at its stakeholder meetings.

27. Duquesne Light will evaluate requests for custom measure rebates on the case-by-case basis to determine cost effectiveness and energy savings potential. Measures, including combined heat and power (“CHP”) projects, may be approved if found to be cost effective as indicated by the Total Resource Cost (“TRC”) score above 1.0, as calculated in accordance with the Technical Reference Manual ("TRM") standards.

# IV. RESERVED ISSUE FOR LITIGATION

28. The issues reserved for litigation relate to matter identified by DII, including to Duquesne Light’s acquisition costs and cost allocation for the Large C&I customer sector.

# V. SETTLEMENT IS IN THE PUBLIC INTEREST

29. This Settlement was achieved by the Joint Petitioners after an investigation of Duquesne Light’s proposed Phase II EE&C Plan, including informal and formal discovery and the submission of direct testimony by a number of the Joint Petitioners and the Company’s rebuttal testimony were admitted into the record at the evidentiary hearing.

30. Acceptance of the Settlement will avoid further administrative and possibly appellate proceedings regarding the issues resolved by this agreement thereby avoiding substantial cost to the Joint Petitioners and Duquesne Light’s customers.

31. Duquesne Light, OCA, CAUSE-PA, CAAP, Citizen Power and Comverge 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.

32. Joint Petitioners have submitted, along with this Settlement Petition, 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. The Joint Petitioners’ Statements in Support are attached hereto as Appendices “A” through “F”.

# VI. CONDITIONS OF SETTLEMENT

33. This Settlement is conditioned upon the Commission’s approval of the terms and conditions contained herein 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.

34. If the Commission does not approve the Settlement, the Joint Petitionersreserve 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.

35. 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.

36. 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.

37. It is understood and agreed among the Joint Petitioners that 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.

38. This Settlement is being presented only in the context of these proceedings in an effort to resolve the proceedings 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 the position any of 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.

39. If the Commission adopts the Settlement without modification, the Joint Petitioners waive their individual rights to file Exceptions with regard to the Settlement. Joint Petitioners retain their rights to file briefs, exceptions and replies with respect to the reserved issue for litigation.

Settlement ¶¶ 15-39 at 6-12.

On the basis of these and other provisions of the Settlement, the Joint Petitioners request that the Commission: (a) approve the Settlement, including all terms and conditions thereof, without modification; (b) permit Duquesne to implement its proposed Phase II EE&C Plan, as modified by the Settlement; and (c) enter an Order consistent with the Settlement.

## 3. Disposition of the Partial Settlement

The Joint Petitioners assert that, consistent with the requirements set forth in Act 129 and the Commission’s *Phase II Implementation Order*, Duquesne’s Phase II Plan: (a) includes measures to achieve or exceed the required reductions; (b) complies with the designated expenditure cap of 2% of 2006 annual revenues for each year of the three-year plan; (c) achieves a total cumulative energy reduction of at least 276,722 MWh by May 31, 2016, with at least 25% of the savings achieved in each of the three program years; (d) achieves a minimum of 10% of all consumption reduction requirements from units of federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities (GNI); (e) achieves a minimum of 4.5% of the total required reductions from the low-income customer sector by May 31, 2016; (f) includes a proportionate number of energy efficiency measures for low income households; (g) offers at least one energy efficiency program for each customer sector and at least one comprehensive measure for the residential and small commercial rate classes; (h) includes an approved contract(s) with one or more conservation service providers (CSPs); (i) includes a Phase II reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307; (j) demonstrates that the Phase II Plan is cost-effective based on the Commission’s Total Resource Cost (TRC) Test; and (k) includes at least one comprehensive measure for residential and small commercial rate classes. Settlement at 3-4.

The proposed Settlement is conditioned upon Commission approval of its terms and conditions without modification. In the event that the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement within five days and proceed to litigation. In that event, the Settlement automatically shall be void. The Settlement is made without any admissions against, or prejudice to, any position that any Joint Petitioner may adopt in any future litigation. In addition, the Joint Petitioners have agreed that the terms of the Settlement may not be cited as precedent in any future proceeding, and that the Commission’s approval of the Settlement shall not be construed to represent approval of any Joint Petitioner’s position on any issue, except as required to implement the terms of the Settlement in this and future proceedings involving Duquesne. The Joint Petitioners agree that the Settlement is a compromise, and does not necessarily represent the position that a Joint Petitioner would advance in a litigated proceeding. *Id*. at 10-11.

As stated above, the Commission is required to review proposed settlements to determine if they are in the public interest. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of Duquesne, and its customers, and reflects a carefully balanced compromise of the interests of all of the Joint Petitioners. *Id*. at 6. The Joint Petitioners further assert that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to Duquesne’s customers. *Id*. at 10.

Each of the six Joint Petitioners prepared a statement in support of the Settlement (Statements). The Statements, which are appended to the Joint Petition as Appendices A through F, are summarized briefly below.

Duquesne submits that, given the diverse interests of the Joint Petitioners, the fact that they have resolved their differences provides strong evidence that the proposed Settlement is in the public interest. Duquesne asserts that its proposed Phase II Plan was thoroughly reviewed by the Joint Petitioners, who engaged in formal and informal discovery, and participated in a number of settlement discussions that ultimately led to the proposed Settlement. The Settlement represents a carefully balanced compromise among the Joint Petitioners, who believe that its approval is in the public interest. Duquesne Statement at 1-2.

Duquesne submits that its proposed Phase II Plan complies with the Commission’s *Phase II Implementation Order*, including the expenditure cap of $58.65 million, the allocation of costs to the customer class that receives the benefits of the EE&C measures, and the requirement that the portfolio be cost-effective based on the Commission’s TRC Test. The TRC Test was adopted by the Commission at Docket No. M‑2009‑2108601 on June 23, 2009, and subsequently was modified on August 2, 2011, and August 30, 2012. *Id*. at 4, 9. Duquesne avers that the overall benefit/cost ratio of its proposed Plan is 1.8, and that its Plan therefore is cost-effective as a whole. *Id*. at 9. Duquesne states that the projected cost of its three-year Phase II Plan is $58,637,392, exclusive of Duquesne’s share of the costs of the Statewide Evaluator (SWE). *Id*. at 8.

With regard to Duquesne’s proposed allocation of the costs of its Phase II Plan, Duquesne states that no other Party provided testimony on this issue. Duquesne notes that DII conducted limited cross-examination of one of Duquesne’s witnesses at the evidentiary hearing, but as of the date of the filing of the proposed Settlement (January 28, 2013), it was unclear what issues DII may raise in its Main Brief. Duquesne states that it will respond in its Reply Brief to any issues raised by DII, but reserves the right to object to issues raised for the first time by DII in its brief. *Id*. at 9-10.

With regard to its proposed cost recovery mechanism, Duquesne is proposing to continue using the same cost recovery mechanism that it used in its Phase I EE&C Plan. Consistent with the Commission’s *Phase II Implementation Order*, the mechanism will account for and reconcile Phase I and Phase II expenses separately. Duquesne’s proposed Residential and Small and Medium Commercial and Industrial (C&I) recovery mechanisms are designed to recover costs on a cents per kilowatt-hour (kWh) basis with annual reconciliations. Costs will be recovered from Large C&I customers through a combination of a fixed monthly surcharge and a demand-based surcharge with an annual reconciliation. The charges for Residential customers will be included in the overall kWh distribution rate. All C&I customers will have a separate line item on their bills delineating the costs of the Phase II Plan. *Id.* at 10-12. Duquesne’s proposed cost recovery mechanism is set forth in a pro-forma tariff supplement to Tariff-Electric Pa. PUC No. 24 that is included in Section 15 of the proposed Phase II Plan.

Duquesne submits that, because no Party has opposed the provisions in its proposed Phase II Plan pertaining to its CSPs; its Quality Assurance/Quality Control process and standards; its Program Management and Reporting System; and its Evaluation, Measurement and Verification Plan; these provisions should be approved. *Id*. at 12-15.

With regard to the specific terms of the proposed Settlement, Duquesne states that, in response to CAAP’s concerns, Duquesne created distinct features of its five residential programs to ensure the participation of low-income customers. Specifically, the services available under all five programs will be provided at no cost to residential customers with household incomes at or below 150% of the federal poverty level. Duquesne’s Phase II Plan includes one new residential program, the Whole House Retrofit Program, which includes a home audit and installation of measures that will be provided at no cost to low-income customers. In addition, under the Settlement, Duquesne has agreed to continue its Phase I practice of referring low-income customers who participate in any of its general residential programs to: (1) its Phase II residential programs, specifically the Whole House Retrofit Program; (2) its Universal Service programs; and (3) the Low-Income Home Energy Assistance Program (LIHEAP). *Id*. at 15-17.

Duquesne explains that, in response to the OCA’s concerns, the Company clarified that its Whole House Retrofit Program includes the installation of four compact florescent light bulbs (CFLs), a refrigerator replacement, and for homes with electric water heating, a low flow showerhead, water heater pipe wrap and a water heater tank wrap. In addition, if additional cost-effective measures are identified during an audit, a greater number of measures will be installed. Under the Settlement, Duquesne agreed that low-income customers will be able to receive identified measures at no charge. *Id*. at 18. In response to concerns raised by CAUSE-PA, Duquesne states that it will continue its current practice of partnering with natural gas distribution companies (NGDCs) on low-income usage reduction programs (LIURP) by implementing an integrated approach to low-income programs and by offering joint rebates with the NGDCs. *Id*. at 19.

With regard to Phase II Plan implementation, Duquesne states that it has committed to hosting at least two stakeholder meetings per year to review the Plan’s progress, and has committed to convene additional stakeholder meetings if Duquesne proposes significant changes to its approved Phase II Plan. Finally, Duquesne has agreed to convene a stakeholder meeting within sixty days of the approval of its Phase II Plan to discuss recommendations to obtain greater residential sector savings from non-lighting measures. *Id*. at 20.

With regard to the concerns raised by Comverge pertaining to CHP projects, Duquesne agreed to continue its Phase I practice of evaluating requests for custom measure rebates. Custom measures, including CHP projects, may be approved for rebates if it is determined that they are cost-effective. *Id*. at 22.

In conclusion, Duquesne submits that the proposed Settlement is just, reasonable and in the public interest, and should be approved without modification. *Id* at 23.

In its Statement, the OCA submits that, through the proposed Program Management and Reporting System, the Settlement addresses the OCA’s concerns regarding the ability of Duquesne to document and demonstrate the participation of low-income customers. According to the OCA, this provision will help avoid the double-counting of savings for low-income and general residential programs. OCA Statement at 4-5.

The OCA explains that, under Duquesne’s initial Phase II Plan proposal for the new Whole House Retrofit Program, Duquesne proposed to offer the following direct install measures to low-income customers free-of-charge: refrigerators, CFLs, faucet aerators, low-flow showerheads, smart strips, night lights, water heater pipe wrap, water heater tank wrap and other measures where applicable. Under the Settlement, Duquesne has agreed to add the following direct install measures, at no charge, for low-income customers: attic insulation, wall insulation, floor insulation, blower door testing and associated air sealing, sealing of attic bypasses, crawl space and heater insulation, electric heating equipment repair and replacement, duct insulation and repair, caulking and weather stripping, and heat pump hot water heaters. The OCA states that the addition of these measures helps meet the OCA’s concerns that, as proposed, Duquesne’s Whole House Retrofit Program did not provide enough measures at no cost to low-income customers. *Id*. at 5.

The OCA supports the provisions in the Settlement that (1) provide that Duquesne will refer low-income customers to the new Whole House Retrofit Program, universal service programs, LIURP and LIHEAP; and (2) provide that Duquesne will coordinate with community-based organizations and NGDCs to provide services to low-income customers. The OCA asserts that these provisions will result in more spending on low-income customers, who are disproportionately affected by energy costs. *Id*. at 6. Finally, the OCA supports the provisions in the Settlement that (1) provide for a collaborative within sixty days after Duquesne’s Plan is approved to discuss reallocating residential program expenditures to additional non-lighting measures; (2) require two stakeholder meetings per year; (3) provide for coordination with NGDCs on joint rebates and inter-utility audits for residential customers with incomes above 150% of the federal poverty level; (4) provide for a single application for multiple measures under the Whole House Retrofit Program; and (5) require Duquesne to monitor the new home construction market to determine whether a residential new home program would be feasible. *Id*. at 6-8. The OCA submits that the proposed Settlement is a fair and reasonable resolution of the issues that arose in this proceeding, and that the proposed Settlement is in the public interest and should be approved.

In its Statement, CAUSE-PA similarly submits that the proposed Settlement is in the public interest and should be approved. CAUSE-PA Statement at 1. CAUSE-PA states that the Settlement is fair and reasonable, and avoids the necessity for an uncertain outcome inherent in further litigation and potential appeals. *Id*. at 2, 7.

In particular, CAUSE-PA supports the term of the Settlement that requires Duquesne to track low-income participation in the Phase II Plan’s programs. CAUSE-PA submits that this provision is essential to knowing how the 4.5% savings target from the low-income sector is achieved, since the low-income carve-out is intended to ensure that low-income households can access no-cost programs. *Id*. at 3. CAUSE-PA also submits that Duquesne’s commitment to refer low-income customers who participate in any of its general residential programs to the Act 129 programs, its universal service programs, and LIHEAP is crucial. CAUSE-PA states that Duquesne’s commitment to ensure that its low-income customers are aware of available resources will mitigate some of the hardships facing low-income families. *Id*. at 4. CAUSE-PA supports the Settlement provisions under which various measures will be made available at no charge to low-income customers with primary electric heating or water heating sources under the Whole House Retrofit Program. CAUSE-PA states that these direct install measures, over half of which were proposed by its witness, are an essential means of providing weatherization savings to low-income customers. *Id*. at 5. CAUSE-PA also supports the Settlement provisions that require Duquesne to coordinate its programs with NGDCs, and Duquesne’s commitment to a robust stakeholder process. *Id*. at 6.

In its Statement, CAAP states that, under the Settlement, Duquesne has agreed to target low-income customers for energy savings measures, to increase the number of measures offered to low-income customers, and to refer low-income customers to its Act 129 and universal service low-income programs. CAAP believes that these Settlement provisions will provide a substantial benefit to low-income customers by reducing their utility costs, and will benefit the public generally by promoting conservation. For these reasons, CAAP requests that the Settlement be approved. CAAP Statement at 2.

In its Statement, Citizen submits that the terms of the Settlement that are related to low-income program and participation significantly improve Duquesne’s proposed Phase II Plan. Citizen Statement at 3. Citizen also supports the Settlement terms pertaining to required stakeholder meetings and to monitoring the new home construction market. *Id*. at 4. Citizen submits that the Settlement is in the public interest and should be approved by the Commission. *Id*. at 5.

In its Statement, Comverge states that the Settlement addresses its concerns by including cost-effective CHP projects in Duquesne’s Phase II Plan. By setting a reasonable TRC threshold of 1.0, the Settlement provides that CHP projects will be eligible for funding in a manner that is equivalent to other measures under the Plan. Comverge submits that these changes will allow more CHP projects to be developed in Duquesne’s service territory, and that the Settlement terms are similar to other pending EDC Phase II Plans and/or settlements. Comverge submits that the Settlement is a reasonable resolution of its concerns and should be approved. Comverge Statement at 3.

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the proposed Settlement. The Settlement provides for certain modifications to the Phase II Plan initially proposed by Duquesne, and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding, with the exception of the issues raised by DII, which are discussed, *infra*. Based on our review of the record, we conclude that the proposed Settlement is in the public interest, and shall approve it without modification.

Our conclusion is based on several considerations. First, the proposed Settlement is consistent with the requirements set forth in our *Phase II Implementation Order*. As noted above, the Joint Petitioners assert that, consistent with the requirements set forth in Act 129 and the Commission’s *Phase II Implementation Order*, Duquesne’s Phase II Plan: (a) includes measures to achieve or exceed the required reductions;
(b) complies with the designated expenditure cap of 2% of 2006 annual revenues for each year of the three-year plan; (c) achieves a total cumulative energy reduction of at least 276,722 MWh by May 31, 2016, with at least 25% of the savings achieved in each of the three program years; (d) achieves a minimum of 10% of all consumption reduction requirements from units of federal, state and local governments; (e) achieves a minimum of 4.5% of the total required reductions from the low-income customer sector by May 31, 2016; (f) includes a proportionate number of energy efficiency measures for low income households; (g) offers at least one energy efficiency program for each customer sector and at least one comprehensive measure for the residential and small commercial rate classes; (h) includes an approved contract(s) with one or more CSPs; and
(i) demonstrates that the Phase II Plan is cost-effective based on the Commission’s TRC Test. Settlement at 3‑4.

With regard to the proposed Phase II reconcilable adjustment clause mechanism that Duquesne has proposed, we conclude that some revisions to the proposed tariff language are necessary to clarify that the Phase II cost recovery mechanism will be separate from the Phase I mechanism. This issue is discussed in more detail, *infra*. Because the changes to the proposed tariff language are in the nature of clarifying changes, and do not impact the substance of the proposed Settlement, this issue does not affect our conclusion that the proposed Settlement complies in all material respects with the requirements of the *Phase II Implementation Order*.

We agree with Joint Petitioners that the proposed Settlement represents a reasonable compromise and resolution of the issues that the Joint Petitioners raised in this proceeding. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of Duquesne and its customers, and reflects a carefully balanced compromise of the interests of all of the Joint Petitioners. *Id*. at 6. The Joint Petitioners further assert, and we agree, that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to Duquesne’s customers by lending certainty to the outcome of this proceeding. *Id*. at 10.

Noting that the Settlement provides that it may not be cited as precedent in any future proceeding, and that the Commission’s approval of the Settlement shall not be construed to represent approval of any Joint Petitioner’s position on any issue, we shall not expound further upon the merits of the specific terms of the proposed Settlement. The proposed Settlement appears reasonable, and Duquesne’s modified Phase II Plan conforms to the Commission’s requirements. Therefore, consistent with our policy of encouraging settlements, we conclude that the proposed Settlement is in the public interest and should be approved.

# C. Litigated Issues

**1. Allocation of Phase II Plan Costs**

 **a. Positions of the Parties**

DII states that Duquesne has failed to appropriately allocate Phase II Plan costs among the individual customer classes. According to DII, individual customer classes neither should receive a disproportionate share of Plan benefits nor bear a disproportionate burden of the costs in relation to the overall Plan. DII avers that Duquesne's proposed cost allocation does not reflect an appropriate parity between the overall revenues received by Duquesne from a customer class and the Phase II Plan budget allocated to the same customer class, particularly with respect to Large C&I customers. Accordingly, DII asserts that Duquesne's proposed Phase II Plan must be modified to reflect a more equitable allocation of Phase II costs. DII M.B. at 5-6.

 DII notes that Duquesne's Phase II Plan proposes to allocate significantly more costs to the Large C&I customer class than is justified by the Large C&I contribution towards Duquesne's annual revenue. While Large C&I customers generate slightly over fourteen percent of Duquesne's revenue, Duquesne proposes to allocate approximately thirty-six percent of its Phase II Plan costs to the Large C&I customer class.  *See* Phase II Plan at 145. According to DII, this proposed cost allocation results in Large C&I customers being responsible for approximately twenty-two percent more costs under the Phase II Plan than their percentage of revenue. *Id.* at 8.

 For comparative purposes, DII points out that the residential class is allocated approximately forty-five percent of the Phase II Plan costs, while contributing fifty-nine percent of Duquesne's revenue. DII notes that residential customers, therefore, are assigned about fourteen percent less costs under the Plan than their share of revenue. In addition, DII explains that the Small C&I class is allocated eight and a half percent of Phase II Plan costs, but contributes nearly seventeen percent of Duquesne's revenue. According to DII, this substantial disparity between revenue and costs clearly fails to reflect any parity between EE&C costs and revenue contribution, while also saddling Large C&I customers with an inequitable portion of Duquesne's overall Phase II Plan costs. *Id.*

 In its Reply Brief, Duquesne first states that, prior to the filing of its Main Brief, DII did not identify its issues or request the proposed modifications set forth in its Main Brief. The Company notes that DII did not serve any testimony in this proceeding and conducted only limited cross-examination of a single Duquesne witness. According to Duquesne, DII’s failure to do so deprived the Company and the other Parties to this proceeding of the opportunity to review and evaluate DII’s issues and proposals. Therefore, Duquesne opines that DII’s proposals are untimely and should be summarily rejected. Duquesne R.B. at 1-2.

Duquesne next argues that, to the extent the Commission opts to consider DII’s proposals, those proposals ignore Commission precedent and are not supported by the record in this proceeding. While DII requests that the Company’s Phase II Plan costs be reallocated based solely upon the percentage of the Company’s distribution revenues generated by the Large C&I customer class, Duquesne states that the Commission has specifically determined that it will not require a proportionate allocation of programs based on a single factor, such as customer class revenue. According to Duquesne, its Large C&I customer class uses approximately forty-five percent of the electricity distributed by the Company. In order to achieve its mandated consumption reduction target, Duquesne has proposed to achieve forty-six percent of its Phase II Plan savings from the Large C&I class. Duquesne avers that allocating Plan costs and associated savings impacts, based solely on customer class revenue, would ignore the individual customer class usage and jeopardize the Company’s ability to achieve its Act 129 consumption reduction target. *Id.* at 2.

In its Reply Brief, the OCA states that Act 129 does not impose a requirement for a proportional allocation of EE&C plan costs among customer classes. The OCA claims that in its *Phase II Implementation Order*, the Commission clearly stated that it would not require a proportionate distribution of EE&C measures (and therefore costs) among customer classes. Thus, according to the OCA, DII is in error in seeking to introduce proportionality between class EE&C cost responsibility and class revenue contribution. Furthermore, the OCA avers that, even if proportionality were a requirement of Act 129, usage would be the proper basis for allocating costs, since the Act’s focus is on usage reduction, not reduction in revenue. OCA R.B. at 3.

The OCA explains that Act 129 requires two things with respect to the distribution of EE&C programs: (1) that the Commission put in place standards to ensure that each EE&C plan includes a variety of energy efficiency and conservation measures and provides the measures equitably to all classes of customers, 66 Pa. C.S. § 2806.1(a)(5); and (2) that an EE&C plan must be cost effective under the Commission’s TRC test and must provide a diverse cross section of alternatives for customers of all rate classes, 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The OCA notes that in its *Phase II Implementation Order*, interpreting the requirement that it is to ensure that a variety of measures are applied equitably to all customer classes, the Commission said the following:

The Commission believes the EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to a benefited class (discussed in Section K of this Implementation Order) will ensure that offerings are not skewed toward or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. *It is entirely possible that the most cost-effective energy efficiency programs may not come proportionally from each customer class*.

The Commission believes that all classes of customers will benefit from a general approach because it has the best potential to impact future energy prices. *The Commission will not require a proportionate distribution of measures among customer classes*. However, the Commission directs that each customer class be offered at least one energy efficiency program. *The Commission believes that, as with Phase I, the initial mix and proportion of energy efficiency programs should be determined by the EDCs, subject to Commission approval. The Commission expects the EDCs to provide a reasonable mix of energy efficiency programs for all customers*.

*Phase II Implementation Order* at 87-88 (emphasis added). *Id.* at 4-5.

According to the OCA, it is clear from these statements, which interpret the requirements of Act 129, that there is no requirement for the type of proportionality of EE&C measures or costs among customer classes that DII advocates. The OCA further notes that Act 129 and the Commission’s *Phase II Implementation Order* also point to the importance of usage, not revenues. The OCA opines that the very purpose of the energy efficiency and conservation provisions of Act 129 is to reduce electricity usage; it does not focus on revenues. The OCA claims that if, for the sake of argument, Act 129 contained a proportionality requirement, the proper basis for applying such a requirement would be on usage, not revenue. Using that criterion, the OCA maintains that Duquesne’s Phase II Plan would not be found wanting. Based on information found in the Plan, the OCA notes that the Large C&I customers are responsible for nearly forty-five percent of the overall consumption in the 2009-2010 forecast adopted by the Commission as the baseline for establishing Phase II reduction targets. *See* Plan at 120-121, Appendix A. According to the OCA, the Large C&I customers are being asked to bear almost forty-six percent of the costs of the Phase II Plan. *See* Plan at 145, Appendix D. Therefore, the OCA states that, unlike the discrepancy between revenues and costs cited by DII, there is extremely close alignment between usage and costs under the Phase II Plan for these customers. OCA R.B. at 5.

In its Reply Brief, the OSBA first notes that it has no objection to Duquesne’s proposed Phase II Plan filing as modified by the Settlement. The OSBA states that DII did not offer any testimony on the record in this proceeding and filed its proposal for the first time in its Main Brief. The OSBA avers that, since the Company’s proposal represents a complex balance of programs involving all rate classes, DII essentially is requesting that Duquesne “go back and try again.” Since DII did not file testimony and did not offer any specific criteria for a more equitable allocation in its Main Brief, the OSBA assumes that DII would oppose any such revised plan submitted by the Company. OSBA R.B. at 3-4.

The OSBA states that DII offers no specific complaints regarding Duquesne’s Plan. The OSBA avers that DII does not identify any specific program targeted at Large C&I customers which it believes should be eliminated or reduced, nor does it identify any specific rates of other rate classes that should be increased in order to offset the proposed reduction for Large C&I customers. According to the OSBA, DII does not identify any particular assumptions made by the Company which demonstrate a bias to over-assigning costs to Large C&I customers. In light of the lack of any credible record evidence, the OSBA submits that DII’s request should be summarily rejected. *Id.* at 4-5.

Notwithstanding this position, the OSBA states that, if the Commission requires additional reasons for rejecting DII’s proposal, based on DII’s own brief, there is no evidence that the proposed energy savings measures for the Large C&I customers are any more expensive than the energy savings measures for the other classes. The OSBA points out that, as shown in Attachment A to DII’s Brief, the average cost per kWh saved is 14.8 cents for Large Commercial customers and 17.9 cents for Large Industrial customers, compared to an overall Plan average of 17.6 cents per kWh saved. By contrast, the cost per kWh saved for Small C&I customers is 32.7 cents. Thus, according to the OSBA, if there is any bias in the Plan to assigning unreasonably expensive measures to particular classes, that bias harms the Small C&I rate class group. Re-assigning programs and program costs to Small C&I customers as advocated by DII would simply exacerbate this problem. *Id.* at 5.

Additionally, the OSBA submits that DII’s comparison of program costs to total revenues is irrelevant. As an “energy efficiency and conservation” plan, the OSBA avers that Duquesne’s proposed Plan therefore is focused on reducing electric energy and peak demands. As a result, the OSBA maintains that the relevant comparison is between the percentage of the Plan budget assigned to Large C&I customers and the percentage of energy(kWh) consumed by the Large C&I customers. According to the OSBA, when a logical comparison is made, it is not surprising that Large C&I customers are assigned forty-one percent of the energy conservation costs when they are responsible for thirty-eight percent of the energy consumption. Thus, the OSBA explains that there is no reason to conclude that Duquesne’s Plan is unduly biased against Large C&I customers. *Id.* at 5-7.

In its reply to DII’s proposal, Citizen states that DII does not explain why it believes that annual revenue numbers are an appropriate metric to determine how to distribute programs or the corresponding program costs among the customer classes. Citizen notes that the amount of savings required to meet the EE&C benchmarks is based upon the kWh usage of each customer class. Therefore, Citizen opines that an equitable distribution of both EE&C programs and costs should approximate each sector’s usage. According to Citizen, the Commission has further clarified that an equitable distribution does not require proportionality, and that the EE&C plans should be flexible in order to meet other goals such as achieving the most energy savings per expenditure.[[3]](#footnote-4) Citizen avers that the argument that the residential class has not been allocated sufficient costs under Duquesne’s proposed Plan should be rejected. Citizen M.B. at 2-3.

 **b. Disposition**

While we are sympathetic to the concerns expressed by the Parties as to the untimeliness of DII’s proposals within its Main Brief, we will address the DII issues on their merits. That being said, we do not agree with DII’s position that the allocation of Plan costs to a customer class should be based on the revenues received from that customer class, or that Duquesne is proposing to allocate an unreasonable share of the costs in this proceeding to Large C&I customers. As we stated in the *Phase II Implementation Order*, EDCs should develop EE&C plans to achieve the most energy savings per expenditure. We also acknowledged that, as a result, it is entirely possible that the most cost-effective energy efficiency programs may not come proportionally from each customer class. We are in agreement with Duquesne, the OCA, the OSBA and Citizen that the intent of Act 129 is to encourage and assist customers in reducing their energy usage. We also agree that, if proportionality were a requirement of Act 129 (which it is not), usage rather than revenues would be the more appropriate factor to consider in the development of EE&C program measures.

We find that the mix of programs proposed by Duquesne provides a diverse cross-section of alternatives for customers of all rate classes. Of the nineteen programs proposed to be included in the Phase II Plan, six are available to the residential class, six are available to the commercial class and four are available to the industrial class. Additionally, Duquesne has proposed three specific programs for the governmental/non-profit sector, as well as specific programs tailored to low-income customers. Therefore, we find that Duquesne’s proposed allocation of its Phase II Plan programs and costs is reasonable and comports with Act 129 and our *Phase II Implementation Order.* Accordingly, we approve Duquesne’s proposed allocation and reject DII’s requested modification.

**2. Proposed Acquisition Costs**

 **a. Positions of the Parties**

Duquesne’s allowable acquisition costs were determined by the SWE as required by the Commission. Duquesne’s individual acquisition cost was stated by the SWE as being $211.90 per MWh. *Phase II Implementation Order* at 24.

DII claims that Duquesne's proposed acquisition cost levels are significantly lower than and inconsistent with the *Phase II Implementation Order*. DII notes that the Company’s proposed acquisition cost levels in its Phase II Plan are significantly lower than the level approved by the Commission. According to DII, this disparity between acquisition cost levels may be an indication that Duquesne has over-relied on certain low-cost measures in contravention of the Commission's *Phase II Implementation* *Order*, which requires a balanced approach among customer classes. DII avers that Duquesne's Plan should be rebalanced to promote a more equitable distribution of EE&C measures and costs among customer classes, and should adopt acquisition cost levels that correspond to the *Phase II Implementation Order*. DII M.B. at 6, 9.

 DII states that, with respect to Duquesne, the Commission’s *Phase II Implementation Order* determined that Phase II acquisition costs should equal $211.90 per MWh. However, DII avers that Duquesne’s proposed Phase II Plan includes an average acquisition cost of $176.10. In addition, DII notes that Large C&I measures have proposed acquisition cost levels of only $147.60 and $178.80, respectively. For comparative purposes, DII states that the average acquisition cost is $173.00 for the Residential class and $327.10 for the Small C&I class. According to DII, Duquesne appears to be over-relying on inexpensive EE&C measures, particularly for Large C&I customers, that the SWE did not account for when calculating the Company's higher acquisition cost level. DII opines that, to remedy this departure from the Commission's *Phase II Implementation Order*, Duquesne should increase the scale of EE&C measures that apply to the Residential and Small C&I classes. *Id.* at 9-10.

 DII points out that low acquisition cost levels are not inherently problematic if Duquesne is able to meet its Phase II compliance targets while equitably assigning measures and costs to customers. However, DII asserts that Duquesne is proposing lower acquisition costs as well as an overreliance on Large C&I customers for participating in and funding of its Phase II measures. Because such an overreliance exists, DII opines that Duquesne should modify its proposed Phase II Plan to reduce this overreliance, and while doing so, increase its total acquisition cost level consistent with the *Phase II* *Implementation Order*, in order to provide an equitable allocation of Phase II EE&C measures and costs among customer classes. *Id.* at 10-11.

In reply, Duquesne states that DII fails to understand that the Company’s Phase II acquisition cost was set forth in the Commission’s *Phase II Implementation Order* and reflects the Company’s Phase II budget of approximately $58.6 million divided by its consumption reduction target of 276,722 MWh. Duquesne explains that the $211.90 amount does not represent the appropriate acquisition cost level for the Company’s Phase II Plan. According to Duquesne, adopting DII’s proposal would result in directing the Company to develop a plan based upon an acquisition cost rather than designing a plan to achieve the Company’s Phase II Act 129 consumption target in the most cost-effective manner. Duquesne opines that this would not be an efficient or cost-effective use of customer-supplied funds. Duquesne M.B. at 3.

Duquesne also states that DII presented no evidence or testimony analyzing Duquesne’s projected acquisition costs in its Phase II Plan to support a means to achieve its stated goal. Further, Duquesne avers that DII has not made a specific recommendation as to how the Company should rebalance its Phase II Plan to achieve an increase in its Phase II acquisition cost level. Absent such evidence, Duquesne asserts that it is not possible to determine the potential impact that DII’s proposal would have on Duquesne’s other customers or the Company’s ability to achieve its Phase II Act 129 consumption reduction targets. *Id.* at 10-12.

 **b. Disposition**

Addressing DII’s position on the merits, we find that Duquesne is correct that the Company’s Phase II acquisition cost as set forth in the Commission’s *Phase II Implementation Order* simply reflects the Company’s Phase II budget of approximately $58.6 million divided by its consumption reduction target of 276,722 MWh. The $211.90 amount does not reflect the goal of what the appropriate acquisition cost level for Duquesne’s Phase II Plan should be, but is more representative of the maximum cost per MWh limit for Duquesne’s actual EE&C Plan within its statutory budget. As we stated in our *Phase II Implementation Order* at 87*,* EDCs should develop plans to achieve the most energy savings per expenditure. Adoption of DII’s proposal on this issue would result in directing the Company to develop a plan based upon an acquisition cost, rather than designing a plan to achieve the Company’s Phase II consumption reduction target in the most cost effective manner. Accordingly, we reject the recommendation of DII and conclude that Duquesne’s proposed Phase II acquisition cost levels are reasonable.

**3. Non-Incentive Costs**

 **a. Positions of the Parties**

According to DII, the Commission should consider whether Duquesne’s proposed Phase II Plan costs are reasonably and directly related to the Company's proposed Phase II Plan measures. DII avers that a large percentage of Duquesne's proposed Phase II costs are allocated for non-incentive purposes, such as compensation to external CSPs. DII opines that, because the purpose of Act 129 is to ensure that customers, and not the Company and/or CSPs, receive the maximum benefits from Act 129 energy and conservation programs, the Commission should consider whether additional modifications are required to Duquesne's Plan to increase the overall dollars flowing to incentive costs. DII M.B. at 6, 11.

DII states that, although administrative costs are an obvious necessity in implementing Act 129, the Company's proposed Phase II administrative costs (*i.e.*, non-incentive costs) are greater than the "direct costs" of programs benefitting customers (*i.e.*, incentive costs). DII asserts that, because Duquesne's proposed ratio of incentive to non-incentive costs is skewed in favor of those benefitting from non-incentive costs, such as CSPs, further evaluation of Duquesne's Plan should occur in an attempt to reduce Duquesne's non-incentive costs so that Duquesne’s Phase II Plan achieves the maximum benefits for Duquesne’s customers. According to DII, although the Commission has adopted the TRC Test as the cost-benefit metric for EE&C Plans, the TRC Test may not accurately reflect the Act's goal of achieving maximum energy and conservation benefits. Therefore, DII opines that the Commission should consider the ratio of customer incentive expenses to administrative expenses to ensure that the majority of Act 129 "incentives" flow to customers. *Id.* at 12.

DII asserts that, under the Phase II Plan, Duquesne divides its costs per customer class on an incentive versus portfolio or program administration basis. DII explains that incentive costs are costs directly paid to customers that assist Duquesne in achieving its energy savings target. Non-incentive costs, by contrast, are those costs that are not directly paid to customers. DII notes that, in Duquesne's Phase II Plan, non-incentive costs comprise a significant percentage of Duquesne's program expenditures. Specifically, DII states that Duquesne’s projected non-incentive costs would total $30,329,842, compared to $28,163,550 for incentive costs. According to DII, the Commission should seek additional detail on the proposed non-incentive expenditures to adequately conduct the cost-benefit analysis envisioned by Act 129, and possibly seek a reduction in Duquesne's non-incentive costs to allow for greater benefits to flow to Duquesne’s customers. *Id.* at 12-13.

In reply, Duquesne first notes that DII has not requested that the Commission make any specific modification to the Company’s Phase II Plan and has not presented any evidence that the ratio of incentive to non-incentive costs set forth in the Company’s Phase II Plan is improper. In addition, Duquesne notes that DII did not offer an alternative to the ratios presented in the Phase II Plan. Duquesne R.B. at 3, 12.

Next, Duquesne states that its Phase II Plan administrative budget includes planning, market research, sales and marketing communications, engineering, data management, contracting, and evaluation. *See*, Plan at Section 4.2.3. Further, the Company states that its administrative budgets are tabulated based on non-customer incentive costs, including portfolio (common) costs and direct implementation costs. Duquesne R.B at 13. To establish its Phase II administrative costs, Duquesne estimated its common costs as ten percent of total administrative costs based on its Phase I Plan Program Year 2-3 records. In addition, the Company avers that its proposed direct costs include implementation costs such as labor, material, travel, insurance, etc., and are paid to implementation contractors. *Id.*

Furthermore, the Company anticipates Plan administrative costs of $30.3 million, or approximately fifty-two percent of the authorized budget. According to Duquesne, review of these “administrative” costs shows nearly $7.8 million are material and labor costs to provide energy efficient measures at no cost to hard-to-reach residential and small commercial markets through the implementation of “comprehensive” programs, such as the whole house audits/retrofit and the small commercial direct install programs. Duquesne notes that further review of projected administrative budgets shows that its “portfolio” or common management costs to implement the Plan are approximately $3 million, or approximately five percent of the Plan budget. *See* Table 6A. According to Duquesne, the remaining $19.5 million of administrative costs, or approximately thirty-three percent of the authorized budget, are for CSP performance payment fees and other direct program implementation costs. Therefore, Duquesne opines that DII’s stated concern about the level of Plan costs being paid to the Company’s CSPs is unjustified. Duquesne states that the Company’s CSPs are projected to receive approximately $19.5 million of the Company’s Phase II Plan budget, compared to the projected $28 million in customer incentives. *Id.* at 13-14.

**b. Disposition**

While the judicious and effective use of customer-provided funds is a paramount concern, we do not find DII’s undeveloped challenge of Duquesne’s Phase II Plan based on the overall ratio of the total incentive and non-incentive costs to be convincing. In its reply, the Company has provided the specific cost breakdown of its projected administrative costs, which we accept as reasonable. DII has failed to recommend a specific modification to the Company’s Phase II Plan and has not presented any evidence that the ratio of incentive to non-incentive costs set forth in the Company’s Phase II Plan is improper. Also, DII did not offer an alternative to the ratio proposed by the Company. Absent evidence developed in the record of this proceeding to challenge the specific estimates proposed by Duquesne, we reject DII’s assertions on this issue.

**4. Ability to Bid Savings into PJM Markets**

 **a. Positions of the Parties**

DII explains that, in the *Phase II Implementation Order*, the Commission authorized EDCs to bid savings from energy efficiency measures into the wholesale markets administered by the PJM Interconnection, LLC (PJM) to create additional revenues for eligible customer classes. During Phase II, DII notes that Duquesne is opting to not bid any savings from Phase II measures into PJM markets. Therefore, DII states that, in order to minimize EE&C costs, the Commission should permit Large C&I customers to bid their own energy efficiency savings from Phase II measures into PJM markets. According to DII, although Duquesne is opting not to bid any Phase II savings into PJM, explicitly authorizing PJM participation by customers could encourage increased revenues and Phase II participation for Large C&I customers. DII M.B. at 6-7, 13.

DII notes that Duquesne's rationale for not bidding customers' energy efficiency savings into PJM markets is "that the administrative effort and costs associated with bidding energy efficiency measures into PJM, does not justify undertaking this effort." *See* Duquesne St. No. 1-R at 21-22. DII avers that, as a result of this rejection of PJM bidding on behalf of customers, there is potential PJM revenue available to customers that have the ability to bid in their own savings, such as Large C&I customers. With respect to Large C&I customers bidding these savings individually, however, DII notes that the Company has not concluded whether or not it would support such a practice. Tr. at 37; DII M.B. at 14.

DII points out that, because Duquesne is choosing not to bid any Phase II energy efficiency savings into PJM markets, there could be significant lost revenues to customers. DII opines that, to minimize this loss, the Commission should explicitly authorize those customers with the capability, specifically Large C&I customers, to bid their savings into PJM markets. According to DII, the cost savings available as a result of PJM participation could be enough to incentivize a Large C&I customer's participation in a particular EE&C measure where the customer otherwise would not participate. *Id.* at 14-15.

In reply, Duquesne first states that DII failed to raise this issue prior to filing its Main Brief and therefore its argument should be rejected. Furthermore, Duquesne avers that in the *Phase II Implementation Order*, the Commission determined that EDCs could elect, but were not required, to bid savings from energy efficiency measures into PJM. Duquesne notes that it is unclear what DII seeks the Commission to do in this proceeding relative to this issue. According to Duquesne, it is not proper for DII to reargue the Commission’s decision not to mandate that EDCs bid energy efficiency savings into PJM. Further, to the extent that DII seeks to have Duquesne assist its members in bidding in their individual savings, the Company states that DII has presented no evidence relative to the impact such assistance would have on Duquesne or its Phase II Plan. Duquesne opines that, because PJM is not under the jurisdiction of the Commission, there is no basis for DII to request that the Commission explicitly authorize the bidding of their individual energy efficiency savings into PJM’s capacity markets. Duquesne R.B. at 3-4.

Duquesne states that both the Company and Large C&I customers cannot bid the same savings into the capacity markets. Duquesne avers that, as the Commission already has determined that the Company may bid savings into the PJM markets at its discretion, DII’s request is improper. In deciding this matter, Duquesne refers to the following statement by the Commission:

The Commission will not require the EDCs to bid energy efficiency into PJM’s capacity markets. However, an EDC may choose to do so. *The Commission will not convene a working group at this time to discuss the bidding of energy efficiency resources into PJM, but suggests that interested stakeholders raise the possibility of a working group during the EDC’s stakeholder meetings*. As the bidding of energy efficiency resources into PJM’s capacity markets will not be a requirement imposed upon EDCs, the Commission will not provide specific guidelines on the EDCs on how to do such bidding.

*Phase II Implementation Order* at 110 (emphasis added). Therefore, according to Duquesne, it is clear that Duquesne is not required to bid energy efficiency savings into PJM’s capacity markets. Moreover, Duquesne reiterates that the Commission’s *Phase II Implementation Order* encouraged interested stakeholders to raise this issue in the context of an EDC’s stakeholder meetings. Should DII wish to pursue this matter, Duquesne opines that DII should adhere to the Commission’s directive and raise this issue directly with Duquesne or in the context of a Phase II stakeholder meeting. Duquesne R.B. at 14-15.

Duquesne claims that, for the first time in this proceeding, DII states in its Main Brief, that Large C&I customers “may have the resources” to bid in their energy savings and that such customers “may be more likely to participate in Phase II measures.” According to Duquesne, these statements by DII do not constitute facts. Duquesne opines that DII has failed to provide any evidence relative to: (1) the number of Large C&I customers that want to bid their energy savings into PJM; (2) the ability of Large C&I customers to bid their own savings into PJM; and (3) the potential impact on Duquesne’s Plan to accommodate customer bidding of energy savings into PJM. As a result, Duquesne is not able to discern from DII’s request what, if anything, would be required from the Company. *Id.* at 15-16.

Finally, Duquesne states that the issue of whether Large C&I customers may bid their energy savings into the PJM capacity markets is between those customers and PJM. According to Duquesne, the Commission’s jurisdiction does not extend to whether Large C&I customers may participate in PJM auctions. Duquesne explains that customer participation and eligibility for participation in PJM’s capacity markets is governed by an extensive set of rules promulgated by PJM. Therefore, according to Duquesne, if nothing is required from the Company, then DII’s request is irrelevant to the approval of Duquesne’s Phase II Plan. Duquesne avers that this is a matter between those customers seeking to participate in capacity auctions and PJM, and is an issue not within the Commission’s jurisdiction or the subject of this proceeding. *Id.* at 16.

In its Reply Brief, Citizen states that it agrees with the approach proposed by DII. Citizen claims that allowing Large C&I customers to bid eligible EE&C savings into the PJM markets would reduce their cost of participating in Duquesne’s programs. In addition, Citizen opines that the inclusion of these assets in the PJM auctions has the potential to push down PJM’s capacity prices, which are paid by all customer classes. However, Citizen notes that it supports this recommendation only for Phase II. Although it does not impact this current proceeding, Citizen believes that the question of ownership of energy efficiency and peak demand savings of the Large C&I customers participating in Duquesne’s EE&C programs beyond Phase II should be re-evaluated in Phase III. Citizen R.B. at 3.

 **b. Disposition**

 We are not convinced by the undeveloped request of DII that we should permit Large C&I customers to bid their energy efficiency measures into the wholesale markets of PJM. Consistent with our pronouncement on this issue within our *Phase II Implementation Order,* we will defer to the discretion of the EDC whether it chooses to pursue this course and reiterate that DII, if interested, should raise this issue during the EDC’s stakeholder meetings or during applicable PJM proceedings. Accordingly, we reject the proposal of DII on this issue.

**D. Cost Recovery Issue – Proposed Tariff**

In our *Phase II Implementation Order,* with regard to the proper cost recovery tariff mechanism to be utilized by EDCs, we stated the following:

Therefore, the Commission directs each subject EDC to develop a Phase II reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. §1307 and include this mechanism in its Phase II EE&C Plan. The Phase II cost recovery mechanism is to be a separate cost recovery mechanism from that used for Phase I. Such a mechanism shall be designed to recover, on a full and current basis, without interest, from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class.

\* \* \*

The mechanism shall be set forth in the EDC’s tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class.

*Phase II Implementation Order* at 118.

Our review of Duquesne’s Exhibit WVP-1, which contains proposed Supplement No. XX To Electric – Pa.P.U.C. No. 24, reveals that Duquesne’s proposed reconciliation mechanism does not appear to comply entirely with the Commission directive that Phase I and Phase II cost recovery mechanisms be completely separate. Therefore, we shall reject Duquesne’s proposed tariff supplement, and instead shall direct Duquesne to consult with the Commission’s Bureau of Audits within thirty days of the entry of this Opinion and Order to develop a revised tariff supplement that complies with the *Phase II Implementation Order.*  After consultation with the Bureau of Audits, Duquesne Light Company shall submit a revised tariff supplement within sixty days of the entry of this Opinion and Order.

**E. Implementation Issue**

Duquesne’s Program Management and Implementation Strategies are contained in Section 4 of its Revised Plan. The Parties raised no implementation issues which are not addressed in the Settlement. However, we believe it would be beneficial for Duquesne to set reasonable deadlines for the submission of all incentive applications following the in-service date of a measure during Phase II, and any future phases of the EE&C Program. Therefore, we shall direct Duquesne to establish reasonable deadlines as part of its Phase II incentive application process, if it has not already done so.

**V. Conclusion**

For the reasons set forth, *supra*, we will grant Duquesne’s Petition, approve the Petition for Partial Settlement, and approve Duquesne’s Revised Plan, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase II Plan is granted, consistent with this Opinion and Order.
2. That Duquesne Light Company is permitted to implement its revised Energy Efficiency and Conservation Phase II Plan, as filed on February 7, 2013, consistent with this Opinion and Order.
3. That the Joint Petition for Partial Settlement filed on January 28, 2013 is approved.
4. That the proposed Electric Service Tariff submitted as Duquesne Exhibit WVP-1 is rejected. Duquesne Light Company shall, after consultation with the Commission’s Bureau of Audits, submit a revised tariff supplement within sixty days of the entry of this Opinion and Order.

5. That Duquesne Light Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation and Demand Response Surcharge Tariff Rider consistent with the modifications directed in this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Energy Efficiency and Conservation and Demand Response Surcharge Rider, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Energy Efficiency and Conservation and Demand Response Surcharge Rider at a public meeting within sixty days of the date of the filing of the revised rider.

6. That within sixty days of the entry date of this Opinion and Order, Duquesne Light Company shall establish maximum time periods for the submission of incentive applications for conservation service measures following the in-service date of a measure. These deadlines shall be established as part of Duquesne Light Company’s application process for incentives under its Phase II Energy Efficiency and Conservation Plan.

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



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 14, 2013

ORDER ENTERED: March 14, 2013

1. Also on December 21, 2012, comments were filed by the OCA, DII, ACTION-Housing Pittsburgh, ReEnergize Pittsburgh Coalition and Comverge. On January 9, 2013, ALJ Buckley issued a Fourth Prehearing Order explaining that “comments” have no place in the evidentiary record, and concluding that he would include “comments” in the certified record only if they were introduced at the hearing by a party to the proceeding with an authenticating witness made available for cross-examination. [↑](#footnote-ref-2)
2. Duquesne’s total projected Phase II energy savings objective is 20% above the mandated reduction to provide for 80% measurement realization. [↑](#footnote-ref-3)
3. Citizen R.B at 3 (citing *Phase II Implementation Order* at 87). [↑](#footnote-ref-4)