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Via e-filing

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street, 2nd Floor North
Harrisburg, PA 17105-3265

Re: Docket No. P-2020-3019522, Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2021 Through May 31, 2025

Secretary Chiavetta:

On behalf of the Natural Resources Defense Council, please find enclosed a **Reply Brief of the Natural Resources Defense Counsel** in the above-referenced proceeding. Parties are being served as indicated in the certificate of service appended to the Brief. Please contact me if you have any questions.

Thank you very much.

Sincerely,

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cc: Per certificate of service
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Hon. Mark A. Hoyer (via email, together with word version)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
Approval of Default Service Plan for the : Docket No. P-2020-3019522
Period June 1, 2021 Through May 31, 2025 :
:

**REPLY BRIEF OF THE
NATURAL RESOURCES DEFENSE COUNCIL**

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STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

The Natural Resources Defense Council (NRDC) incorporates, by reference, the Statement of the Case contained in its Main Brief of September 30, 2020.¹ On September 30, 2020, Main Briefs were filed by NRDC, Duquesne Light Company (the “Company” or “DLC”), the Coalition for Affordable Utility and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Office of the Consumer Advocate (“OCA”), MAREC Action (MAREC), Calpine Retail Holdings, LLC (“Calpine”), and by Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., ENGIE Resources LLC, WGL Energy Services, Inc. and Direct Energy Services, LLC (together, “EGS Parties”). Additionally, letters were filed by the Bureau of Investigation and Enforcement (“I&E”) and the Office of the Small Business Advocate (“OSBA”) indicating they would not file main briefs, but reserved the right to file reply briefs.

On October 6, 2020 the Hon. Mark A. Hoyer entered a First Interim Order Addressing Two Joint Stipulations. The Order concerned two Joint Stipulations filed with the Commission on September 30, 2020, which the Order summarized as follows:

On September 30, 2020, the Joint Stipulation among Duquesne Light Company (Duquesne Light), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Office of Consumer Advocate (OCA) was filed with the Commission’s Secretary and electronically served on the parties. Duquesne Light, CAUSE-PA and OCA agreed to the implementation of the Company’s Standard Offer Program as proposed by the Company at Paragraphs 60-66 of the Petition of Duquesne Light Company for Approval of Default Service Plan For The Period June 1, 2021 Through May 31, 2025 (Petition), with five modifications set forth in subparagraphs a-e of the Joint Stipulation. Additionally, Duquesne Light, CAUSE-PA and OCA agreed to the withdrawal of the Company’s proposal regarding Customer Assistance Program (CAP) Shopping, as proposed by the Company at Paragraphs 68-72 of the Petition. Duquesne Light, CAUSE-PA and OCA further agreed that within 6

¹ NRDC Main Br., 1-8.

months of a final, unappealable order implementing CAP Shopping in PPL Electric service territory, Duquesne Light will make a filing with the Commission regarding CAP shopping that is consistent with Duquesne Light's CAP design, and which is informed by all available information and data.

A second stipulation, the Joint Stipulation of Duquesne Light Company, Natural Resources Defense Council (NRDC), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Office of Consumer Advocate and the Office of Small Business Advocate (OSBA) was also filed on September 30, 2020. Duquesne Light, NRDC, CAUSE-PA, OCA and OSBA agreed to the implementation of the Company's Electric Vehicle Time of Use (EV-TOU) Pilot Program as proposed by the Company at Paragraphs 47-53 of the Petition with five modifications set forth in subparagraphs a-e of the second Joint Stipulation.²

Noting that no party filed objections by the deadline to do so, the Interim Order admitted both Joint Stipulations into the evidentiary record.³

NRDC files the instant Reply Brief to address the EGS Parties' request that the Commission reject the Company's proposal for an Electric Vehicle Time of Use ("EV-TOU") pilot program. EGS Parties assert that "Duquesne's request for approval of an EV-TOU rate should be rejected pending Duquesne holding a working group to discuss with stakeholders actual evidence of need for the rate offering and a plan to implement it that does not necessarily require the use of a default service rate offering."⁴ However, the EGS Parties' arguments are based on a misconstruction of the Commission's previous guidance on EV-TOU rates, are flatly contradicted by the evidentiary record, and are in contravention of the plain statutory commands of Act 129. Accordingly, the EGS Parties' arguments should be rejected, and the Commission should approve the Company's EV-TOU proposal, as modified by the Joint Stipulation entered into by the Company, NRDC, OCA, CAUSE-PA, and OSBA.

² First Interim Order Addressing Two Joint Stipulations (Oct. 6, 2020), 1-2.

³ *Id.* at 2.

⁴ EGS Parties' Main Br., 8.

REPLY ARGUMENT

I. The EGS Parties’ request to table the implementation of the EV-TOU program is unsupported by the record and belied by Act 129’s rate design requirements.

EGS Parties initially argue that the Commission’s January 23, 2020 Secretarial Letter, which closed the Commission’s *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*⁵ did not contemplate that Electric Distribution Companies (“EDCs”) would offer EV-TOU rates as a default service product.⁶ Rather, the EGS parties contend that the Secretarial Letter merely intended to say “that there needs to be a determination if the lack of a TOU rate for EV charging is presenting a barrier to EV adoption.”⁷ Accordingly, EGS Parties argue that DLC’s request to implement an EV-TOU rate as a default service offering is premature and should be tabled.⁸

As previously noted in NRDC’s Main Brief, the EGS Parties’ characterization of the Secretarial Letter ignores the circumstances that prompted it.⁹ Specifically, the Commission launched the Investigation in order to determine how widespread smart meter deployment “can be utilized to design *default service rates* in a way that better aligns with associated wholesale cost allocation with retail cost allocation.”¹⁰ With respect to rate design, the Commission posed to stakeholders the question of whether “*default service rates* [should] evolve to include time of use (TOU) structures,” in light of the “growth in [advanced] metering and settlement

⁵ Docket No. M-2019-3007101.

⁶ EGS Parties’ Main Br., 7.

⁷ *Id.* at 7-8.

⁸ *Id.*

⁹ NRDC’s Main Br., 17-18.

¹⁰ Docket No. M-2019-3007101 (Order entered Feb. 26, 2019) 1-2 (emphasis added).

technologies[.]”¹¹ The Secretarial Letter explicitly concludes that an appropriate forum for exploring EV-TOU rate offerings would be “the upcoming DSP proceedings[.]”¹² Accordingly, the notion that the Secretarial Letter did not contemplate TOU offerings from default service providers is mistaken.

Even accepting the EGS Parties’ contention that the Commission did not intend for DSPs to offer EV-TOU rates, but rather to simply engage in extended deliberation on the topic, the EGS Parties’ contention that the Company did not consult stakeholders is flatly contradicted by the record.¹³ Notably, this argument fails to address in any way the testimony offered by Katherine Scholl:

[C]ontrary to Mr. Kallaher’s suggestions, the Company did engage with EGSs about its proposed EV-TOU Pilot program prior to filing... For example, consistent with the parties’ settlement in the Company’ 2018 base rate proceeding (Docket No. R-2018-3000124), during DSP VIII, the Company recently held two collaborative stakeholder meetings to discuss its TOU pilot and plan rates on April 23, 2019 and June 20, 2019. Despite the fact that EGSs, including Mr. Kallaher’s employer Direct Energy, were invited to participate, only one EGS attended. That EGS was not an active participant and did not provide any TOU suggestions or proposals for consideration in DSP IX as requested by the Company. The Company has provided ample opportunity for EGSs to engage on this topic.¹⁴

Similarly, the EGS Parties’ argument that there is no relationship between EV adoption and the availability of TOU rates simply ignores the substantial testimony and evidence presented to the contrary.¹⁵ For instance, in her rebuttal testimony, NRDC witness Kathleen Harris noted that the most-cited reason that EV drivers give for choosing electric vehicles is “[s]aving money on fuel

¹¹ *Id.* at 5-6 (emphasis added).

¹² Docket No. M-2019-3007101 (Order entered Jan. 23, 2020) (6-7).

¹³ *See* EGS Parties’ Main Br., 7 (“Duquesne did not reach out to stakeholders, and it presented only scant evidence of lack of a TOU rate as a barrier to EV adoption. In short, Duquesne did not address the need for a TOU EV rate, rather it too an ‘if we offer it, they will adopt it’ mentality[.]”)

¹⁴ DLC Stmtnt 5R, 20:16-22, 21:1-16.

¹⁵ *See* EGS Parties’ Main Br., 7.

costs[.]”¹⁶ Accordingly, TOU rates “motivate additional EV purchases.”¹⁷ Katherine Scholl’s Direct Testimony on behalf of the Company similarly notes that an “EV-TOU rate is another mechanism to encourage EV adoption by helping to lower the total cost of ownership for EV drivers[.]”¹⁸ The EGS’ parties request to ignore this testimony should be rejected.

EGS Parties’ final argument against the implementation of the proposed EV-TOU rate is a policy objection to “competitive” forms of default service:

As a matter of policy, the EGS Parties are not supportive of utilities using default service to provide what are essentially competitive offerings, particularly offerings with the subsidized default service rate as the core. That rate is not reflective of the cost of providing default service and to base an ostensibly competitive rate on the default service rate simply perverts the intention of having a competitive market in the first place. Suppliers will find it extremely difficult to offer rates that compete with the subsidized default rate and the competitive aspect of the market will lose another battle.¹⁹

This argument fails for two reasons. First, the EGS’ parties’ bare assertion that the EV-TOU rate “is not reflective of the cost of providing default service” does not attempt in any manner to engage with the Company’s substantial testimony and evidence explaining how its supply rate factors were derived.²⁰ Second, whatever the merits of the EGS Parties’ policy arguments as a general matter, they are at odds with the plain commands of Act 129. To wit, 66 Pa. C.S. § 6807(f)(5) requires that “a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans[,]” and that the “default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided

¹⁶ NRDC Stmt. 2, 5-6.

¹⁷ *Id.* at 6:4-5.

¹⁸ DLC Stmt. 5, 21-22.

¹⁹ EGS Parties’ Main Br., 8.

²⁰ DLC Stmt. 4 (Dir. Test. Of David Ogden), 18-19 (“capacity prices per MWh were determined based on the results of the 2012-2022 PJM capacity auction, and on historical customer class capacity obligations and loads. Hourly weighted locational marginal prices (‘LMPs’) for energy were calculated based on hourly price market price and load data from 2016 through 2019. Rate factors were derived by adding capacity prices and LMPs per MWh for each given time period, and expressing these values relative to the load-weighted average sum of capacity prices and LMPs per MWh across all hours.”); *See also* Ex. DBO-4.

with smart meter technology[.]” Commission precedent makes clear that a default service provider “*must* submit one or more TOU rates and real-time price plans to the Commission in their default service plans,” and that a default service provider “*is required to offer a TOU rate option* to its default service customers.”²¹ The Commonwealth Court has further clarified that the default service provider itself must provide these TOU rates to smart-metered customers, and that a DSP may not fulfill its obligations under Section 6907(f)(5) by designating an EGS to fulfill that role.²² Notably, the EGS’ Parties brief lacks any reference to Section 6907(f)(5).²³ Because the EGS parties objection to TOU rates as a default service offering would be more properly lodged with the General Assembly, the Commission should reject its argument to table to the Company’s proposed EV-TOU offering.

CONCLUSION

For the foregoing reasons, and for all of the reasons previously articulated in NRDC’s Main Brief, it is respectfully submitted that the Commission should approve the implementation of the Company’s EV-TOU rate, subject to the modifications provided for in the Joint Stipulation of September 30, 2020, between the Company, NRDC, CAUSE-PA, OCA, and OSBA.

Respectfully submitted this 13th day of October, 2020.

/s/ Andrew J. Karas
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²¹ *Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (P-2012-2302074), 316 P.U.R. 4th 167, 2014 Pa. PUC LEXIS 690, *9-10 (September 11, 2014) (emphasis added).

²² *Dauphin County Indus. Dev. Authority v. Pennsylvania Pub. Util. Comm’n.*, 123, A.3d 1124, 1130-1136 (Pa. Cmwlth. 2015).

²³ *See* EGS Parties’ Br. 7-8.

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I hereby certify that this day I served a copy of the foregoing *Reply Brief of the Natural Resources Defense Counsel* upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §§ 1.54:

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