

October 13, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

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

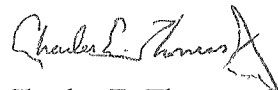
Dear Secretary Chiavetta:

Attached for filing in accordance with Deputy Chief Administrative Law Judge Hoyer's Prehearing Conference Order is MAREC Action's Reply Brief in the above matter. A copy of MAREC Action's Reply Brief is being served on Judge Hoyer and the parties listed on the attached Certificate of Service.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By


Charles E. Thomas, Jr.

Enclosure

cc: Bruce H. Burcat, Esquire
Elizabeth A. Stanton, Ph.D.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**REPLY BRIEF OF
MAREC ACTION**

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DATED: October 13, 2020

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Statutes, Regulations, Texts, Codes

66 Pa. C.S. § 2801, *et seq.* 1

I. INTRODUCTION

MAREC Action is an intervenor in this matter and filed a Main Brief on September 30, 2020. MAREC Action's intervention is confined to the issue of long-term renewable energy contracts and that will be true of this Reply Brief.

MAREC Action and its witness, Elizabeth A. Stanton, PhD, were specifically referenced only in the Main Brief of Duquesne Light Company ("Duquesne"). Long-term renewable energy contracts, but not MAREC Action specifically, were also addressed in the Main Briefs of the EGS parties and the OCA. We will begin with the contentions of the EGS parties.

II. THE EGS PARTIES

Only the EGS parties would appear to be totally opposed to long-term renewable energy contracts being included in Duquesne's Default Service Plan ("DSP") with the EGS parties going so far as to assert that Duquesne's proposal to enter into a long-term utility scale solar project ("Solar Project Plan") is not authorized by the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.*, and that there is nothing in the Public Utility Code that would allow a default service provider to engage in a purchase and subsequent sale into the wholesale electricity market.¹ MAREC Action has read the statute and finds nothing in the Public Utility Code that would prohibit as a fundamental matter what is being proposed by both Duquesne and MAREC Action without opposition from the OCA.

Indeed, in its Secretarial Letter regarding its *Investigation Into Default Service and PJM Interconnection LLC Settlement and Reform*, Docket No. M-2019-3007101, the Commission referenced MAREC Action's comments on long-term contracts for renewables, agreed on the

¹ EGS Parties Main Brief, p. 5.

importance of this issue, and requested EDCs to address this procurement mechanism in their DSP proposals. The Commission's request was quite clear:

Concerning procurement and long-term contracts, the Commission agrees that long-term contracts need to be carefully considered and that we need to consider this topic further in upcoming DSP proceedings. We request that the EDCs include in their filings evidence showing how its DSP proposal complies with the prudent mix requirements of the Public Utility Code [Act 129] and case law.²

There is no basis for the EGS parties' assertions that Duquesne's Solar Project Plan is not authorized under the Code. The public interest and what is best for the customer must be the goal, not what will generate profit opportunities for electric generation suppliers. If anyone will be "on the hook" as alleged by the EGS parties, it will be the ratepayers who will not only pay higher rates, but will be exposed to the risk of long-term natural resources depletion. There is a need for long-term solar and wind projects and they will not be met by the inaction proposed by the EGS parties. It is time to face the realities of the 21st century. We will address other contentions by the EGS Parties under the OCA and Duquesne headings below.

III. THE OCA

The OCA addressed Solar PPAs on pages 3 through 9 of its Main Brief, focusing on Duquesne's proposals and concerns expressed by the EGS parties. OCA Witness Ogur explained that long-term contracts do not represent an obstacle to transferring to a new service provider and that claims of risk to customers from locking in a long-term price are spurious and that the very small size of Duquesne's solar PPA proposal (7 MW) makes it impossible for it to result in other potential dangers to renewables development suggested by EGS witness. Kallaher.

² Pennsylvania Public Utility Commission ("PUC" or "Commission") Docket No. M-2019-3007101. January 23, 2020. *Secretarial Letter regarding the Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms* ("Secretarial Letter"). Available at: http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=M-2019-3007101 p. 8.

This is another reason why the size of Duquesne’s solar proposal should be expanded. OCA witness Ogur also called into question whether these purported dangers would be realized with respect to even larger scale long-term contracts for renewables and explained the benefits of long-term PPAs, including their provision of a valuable hedge against future unexpected price increases during the life of the contract. Quite significantly, MAREC Action witness Stanton listed in her direct testimony a number of instances where much larger scale PPAs have been utilized and she addressed the substantial benefits of such deployment.³

Interestingly, EGS parties’ witness Kallaher concluded his testimony by explaining that he did not “outright oppose” Duquesne’s solar PPA proposal. This is all the more reason not to put the project on hold as suggested by Mr. Kallaher. Instead, it provides support for a much larger project.

Regarding Mr. Kallaher’s concern that it would hinder the opportunity for the Commission to select an alternative default service provider in the future, Dr. Ogur testified:

[A]ny contractual obligations incurred by DLC by entering into contracts that extend beyond the end date of DSP IX can be transferred to a new default service provider if one were to be approved. In addition, Pennsylvania electric distribution companies (“EDCs”) as default service providers routinely enter into FPCR power supply contracts (which are approved by the Commission) that extend beyond the end date of the default service plan period to avoid a “hard stop” on supply at the end of the period. Failure to enter into such “overhanging” contracts unnecessarily exposes residential customers to price shock risk at the start of a new default service plan period.⁴

MAREC Action supports Dr. Ogur’s testimony on these points.

Mr. Kallaher’s concern that default service customers could end up paying for contracts that become uneconomic over time ignores that:

³ MAREC Action St. No. 1.

⁴ OCA Main Brief, p. 8.

[I]t is just as possible that the contracts turn out to be below market over the course of the delivery period.⁵

At the risk of being repetitive, we emphasize again that such a contract also provides a hedge as explained by Dr. Ogur:

... long-term solar PPAs for energy and AECs, and possibly for capacity and ancillary services attributes as well, operate as a hedge against large price increases during the term of the contract, not necessarily as a means to secure the lowest possible price at any particular time. In fact, the Commission supports this view by giving EDCs the flexibility to include long-term products in their default service product portfolios.⁶

With respect to EGS parties witness Kallaher's concern that a Duquesne Solar PPA may hamper the development of the solar industry in Pennsylvania or that it may decrease the likelihood of community solar legislation being passed in the General Assembly, Dr. Ogur's testimony is insightful:

[I]t is unreasonable to expect DLC's long-term solar PPA for 7 megawatts or less to have any negative impact on the long-term solar contracting market in Pennsylvania. There are 269 solar projects in Pennsylvania in the PJM generation interconnection queue (as of August 13, 2020), representing more than 9,000 megawatts (with a status of active, under construction, or engineering and procurement). The capacity sought by DLC is barely a drop in the bucket relative to the overall size of the solar projects in Pennsylvania waiting in PJM's generation interconnection queue. Similarly, it is hard to imagine how a 7-MW utility-scale solar PPA that DLC may execute would hinder the passage of a bill in the Pennsylvania legislature that supports community solar projects. In fact, long-term contracts for bundled energy and AECs are generally seen to support renewable energy project development, not to impede it.⁷

Everything considered, a larger project would seem to be the better course.

Consistent with Dr. Ogur's testimony, the OCA does not support Mr. Kallaher's recommendation to put the Solar PPA proposal on hold. On the contrary, there is no reason why this proposal should not be approved by the Commission and enlarged. MAREC Action sees no

⁵ *Id.*

⁶ OCA Main Brief, p. 8.

⁷ OCA Main Brief, pp. 8-9.

reason why the conclusion it has proposed should not be adopted by the Commission and the project expanded beyond 7 MW.

MAREC Action respectfully submits the foregoing further demonstrates that the resolution recommended by MAREC Action in its Main Brief is in the public interest and should be adopted for this proceeding.

IV. DUQUESNE

We briefly turn now to Duquesne's Solar PPA proposal which is addressed on pages 23-35 of Duquesne's Main Brief. But for its smaller size and the fact that we believe for competitive purposes, a solicitation should be open to wind and solar projects, Duquesne's and MAREC Action's proposals are not that different.

Duquesne's proposal was well summarized on pages 24-25 of its Main Brief and for ease of reference, we will repeat that summary here with the understanding that MAREC Action's position, but for some different number, is very similar to Duquesne's position:

In this proceeding, Duquesne ... is requesting pre-approval from the Commission to seek to enter into a long-term solar PPA in order to support a utility-scale solar project of up to 7MW in Pennsylvania ... The Company intends to purchase the alternative energy credits ("AECs") from this facility in order to meet its Alternative Energy Portfolio Standards ("AEPS") requirements. The Company also intends to acquire the energy from this facility and will sell this energy back into the PJM market on a real-time basis and credit these revenues back to default service customers...

The purposes of this long-term (more than 4 but less than 20 years) solar PPA are to support the further development of solar energy in Pennsylvania, preferably in Duquesne Light's service area, and gain more information about the solar generation market in Duquesne Light's service area, while doing so in a quantity that mitigates risks associated with the long-term commitment. Duquesne Light intends to conduct a competitive solicitation for the PPA sometime during the DSP IX period. Duquesne Light will report the results of the solar PPA to the Commission for final approval before entering into the PPA...

Duquesne Light is proposing to enter into the long-term solar PPA, which is one of the types of contracts that can be used to achieve the prudent mix

requirements of Act 129. Section 2807(e)(3.2) of Act 129 requires default service providers to enter into a prudent mix of contracts, such as spot market purchases, short-term contracts and long-term contracts. 66 Pa. C.S. § 2807(e)(3.2). The statute further defines long-term contracts more than four but not more than 20 years. 66 Pa. C.S. § 2807(e)(3.2)(iii). The prudent mix of contracts shall be designed to ensure adequate and reliable service at the least cost to customers over time.⁸

In its Main Brief, Duquesne acknowledged that Chairman Dutrieuille and Vice Chairman Sweet had encouraged default service providers to acquire long-term products with the Chairman having criticized other default service plans for not including new long-term contracts.

With respect to the positions of the other parties concerning solar PPAs, MAREC Action believes that the position of the EGS parties is not in the public interest. Quite simply, as Duquesne asserts at the top of page 29 of its Main Brief, if the Commission determines that the PPA is not in the public interest at the time, it can deny the PPA in this proceeding. The potential for legislative action concerning solar developments is not a reason to deny the solar (or a wind) PPA. Importantly, current law calling for a ‘prudent mix of contracts’ more than permits long-term contracts. Similarly, the EGS parties’ concerns about long-term contracts preventing another service provider from assuming the default service role are short-sighted. As explained in its Main Brief, Duquesne is not proposing to stop serving as the default service provider. Moreover, Act 129 provides for long-term contracts of up to 20 years. Any long-term contract would thus likely avoid this issue and lessen any concern about the contract becoming uneconomic in the long-term. In the unlikely event that Duquesne would no longer be the default service provider, any long-term contractual obligations could be addressed by the Commission at that time.

⁸ Duquesne Main Brief, pp. 24-25.

MAREC Action agrees with Duquesne that the EGS parties present no valid reason for delaying the solar PPA. Their opposition to the solar PPA is contrary to Act 129 and the Chairman's guidance regarding long-term contracts. Duquesne witness Davis' description of the solar PPA program as a "manageably sized" accounting for less than 55% of the Company's projected solar AEC requirements does not mean that it should not be larger or that a larger program could not be managed.

Contrary to Duquesne witness Fisher's assertion, Dr. Stanton's request for Duquesne to perform an all resource RFP followed by Integrated Resource Modeling is reasonable and sufficiently detailed for this stage of the proceeding. Also, it is not that overly complicated. It is something which needs to be undertaken with a serious commitment, keeping in mind that it is a several year application.

MAREC Action recommends that Duquesne should enter into a higher quantity of and larger sized long-term renewable contracts than Duquesne is proposing and once again should conduct an all-resource RFP followed by the previously discussed Integrated Resource Modeling to determine the least cost mix of resources.

The quantity of supply under the solar PPA should be increased and expanded. Duquesne's proposed solar PPA for up to 7 MW is unreasonably low given the size of Duquesne's default service load.

Contrary to Duquesne's assertion, MAREC Action's long-term solar PPA also meets the prudent mix standards of Act 129, especially if the 7 MW were increased. It is Duquesne which has not demonstrated that its long-term solar PPA meets the prudent mix standards. More long-term contracts are needed.

In closing, the fact that MAREC Action and the EGS parties have taken “dramatically opposed positions” with respect to default service supply product mix does not mean that Duquesne’s position is the correct one or that Duquesne has met the requirements of Act 129.

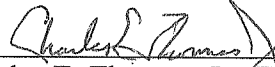
V. CONCLUSION

In its Main Brief, MAREC Action stated it believed that the best path forward for Duquesne to achieve a prudent mix of renewables at the lowest cost to customers is to establish a stakeholder working group and to require Duquesne to work with stakeholders to design a prudent mix that allows consumers to receive the benefit of long-term contracts for renewables, This remains MAREC Action’s position. We believe it will protect ratepayers against the concerns set forth on pages 5 and 6 of the EGS parties’ Main Brief. To characterize MAREC Action’s proposal as “adventures in solar energy production”⁹ is unfair and ignores the Commission’s ability to regulate in the public interest.

⁹ EGS Parties Main Brief, p. 5.

WHEREFORE, MAREC Action's recommendations should be adopted and made part of any final order in this proceeding.

Respectfully submitted,



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DATED: October 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of October, 2020, served a true and correct copy of the foregoing Reply Brief of MAREC Action, upon the persons listed below which MAREC Action believes are participating in the proceeding:

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