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November 23, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2021 through May 31, 2025, Docket No. P-2020-3019522; **EXCEPTIONS OF 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 TO RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE MARK A. HOYER**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Exceptions of Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Corp., ENGIE Resources LLC., WGL Energy Services, Inc., and Direct Energy Services, LLC (“EGS Parties”) to Recommended Decision of Administrative Law Judge Mark A. Hoyer in the above-captioned matter. Copies of the Exceptions have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for EGS Parties

TSS/jld

Enclosures

cc: Administrative Law Judge Mark A. Hoyer (via electronic mail)
Office of Special Assistants (via email – ra-OSA@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL ONLY

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DATED: November 23, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS
OF 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 TO RECOMMENDED DECISION**

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I. INTRODUCTION

As a general matter, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services, LLC (“EGS Parties”) did not oppose the bulk of Duquesne Light Company’s (“Duquesne” or the “Company”) Default Service Plan (“DSP”). Instead, the EGS Parties addressed only those subjects which, in their judgement as competitors in the marketplace, would harm competition or alternatively, would create structures that would make competition more challenging in the future. The primary competitor in this instance is the Company. Lest one suggest that Duquesne does not compete, one need look no further than Duquesne’s proposals in this case for clear evidence to the contrary. It has made several such proposals; from a becoming a promoter of the solar energy market to early attempts to corner the market for electric vehicle (“EV”) refueling. Duquesne also seeks to use its position as the monopoly provider of billing services to provide an advantage to default service customers, not available to those who shop. The advantage is reconciled recovery of Network Integrated Transmission Service (“NITS”) charges that is not permitted of EGSs, but yet which directly benefits default service customers. The Recommended Decision (“RD”) errs by adopting the positions and reasoning of the Company in proposing these anti-competitor programs without fairly considering the arguments of the opposing parties.

II. ARGUMENT

A. **Exception No. 1 – The RD Erred in Approving Duquesne’s Electric Vehicle Time of Use Rate Proposal (RD pp. 36-42).**

The EV-TOU program is not “required” of the Company. While there is a statutory requirement to provide time of use (“TOU”) rates, there is no mandate to provide a rate tailored to electric vehicles. The Company chose on its own to provide and promote a rate that will clearly compete in the marketplace and which will clearly either keep competitors out of the market or

unfairly compete against them with utility brand. This is not an instance of a utility trying to meet a need that the public is asking to be met, and no supplier is providing; rather this is Duquesne attempting to create and own a nascent market. The EGS Parties oppose utilities providing competitive services that are not default service.¹ The Default Service Rate Schedule “may” include demand side management rates only when the Commission “mandates” such rates pursuant to the *Alternative Energy Portfolio Standards Act*² and that has not happened here. The EGS Parties Main and Reply Briefs and Testimony³ in this case detail the harm that will result in the market from adopting the Duquesne proposal, and for those reasons the RD erred by approving the Company’s proposal. There simply is no “need” for the rate, suppliers are the logical entities to provide such rates if a need ever arises that will make the rate profitable, and in the meantime, if the Commission were to adopt the RD’s approval of the Company providing the rate, it will ensure that no competitor will be able to enter the market. This is the first example of Duquesne acting like a competitor in the energy market rather than the supplier of last resort. The RD fails to recognize this probable erosion of the market and is therefore in error.

B. Exception No. 2 – The RD Errs by Failing to Approve the EGS Parties’ Proposal on the Billing of NITS Charges. (RD. pp. 30-36; Findings of Fact 3,4 and 5).

The EGS Parties proposed in this case that Duquesne be required to implement a non-bypassable (with some exceptions) recovery mechanism that would recover the cost of NITS from

¹ Recall that the Commission’s own Regulations limit default service to a single rate offering. 52 Pa. Code § 54.187(c).

² 73 P.S. § 1648.1 *et seq.*

³ EGS Parties’ Main Brief, pp. 6-8, Proposed Findings of Fact, Nos. 6-8; EGS Parties’ Reply Brief, pp. 8-9; EGS Parties’ St. No. 1, 19:1-33; EGS Parties’ St. No. 1, 20:1-21:5; EGS Parties’ St. No. 1, 21:9-16; EGS Parties St. No. 1, 21:19-22:14.

all customers on an equivalent basis.⁴ The EGS Parties argue that the record is clear that Duquesne does not presently collect these charges from all customers on an equivalent basis. Rather, it collects NITS from default service customers through a reconciled charge that levelizes the recovery over time thus minimizing the rate shock that can be associated with the volatile and increasing costs of NITS. EGSs, on the other hand, have little choice but to bill customers for the full amount of any increase on an immediate basis. This disparity causes harm⁵ and is unwarranted discrimination.

The RD accepts Duquesne's arguments that it is not "discriminating" because the EGS Parties "can collect NITS charges on the same basis as they do". Duquesne's assertion and the RD's adoption if it, is incorrect. Duquesne's argument overlooks the very salient fact that it provides a billing service for the NITS charges and that it does have an obligation under the Public Utility Code to bill for those charges.⁶ Clearly, NITS charges are charges for "electric service".⁷ The fact that these charges are imposed by the PJM is of no moment. PJM charged for transmission before choice and continues to charge for transmission now. These arguments are simply wrong and the RD's unwavering acceptance of them is likewise in error.

Duquesne also argues that suppliers have the ability to charge customers for NITS on a dollar-for-dollar basis, and therefore there is no discrimination. This argument is similarly and patently false. The Commission's own Order does not allow a fixed rate to change to adapt to

⁴ EGS Parties Main Brief, pp. 11-15; EGS Parties Reply Brief, pp. 5-8; EGS Parties' St. No. 1, 31:1-6; EGS Parties St. No. 1, 31:12-21; EGS Parties' St. No. 1, 26:23-27:3; EGS St. No. 1, 26:15-22.

⁵ EGS Parties' St. No. 1, 26:23-27:3.

⁶ 66 Pa.C.S. § 2807(c).

⁷ 52 Pa. Code § 54.4(b).

varying transmission charges.⁸ That means the most commonly used rate structure, i.e., a fixed rate, would not be able to recover NITS charges without re-negotiating the contract for each change, which is not practical. Duquesne's arguments that were accepted by the RD are simply a smokescreen to prevent the illumination of the fact that it discriminates against suppliers in how it bills for NITS so that it can maintain a competitive advantage over suppliers. The RD accepted the Companies' flawed logic and in doing so erred and should be reversed.

C. Exception No. 3 – The RD's Approval of Duquesne's Proposed Solar Power Purchase Agreement ("Solar PPA") was in Error. (RD pp. 42-51).

In their testimony, the EGS Parties detailed the harm that would result from the approval of the proposed solar power purchase agreement ("Solar PPA") between Duquesne and its future, unknown collaborator.⁹ The EGS Parties have serious concerns that a utility ratepayer funded, long-term contract supported solar project will crowd-out competitive projects in the marketplace and put suppliers at a disadvantage for capital and eventually in the market for such projects. The EGS Parties also contend that ratepayer funding creates a lower risk profile for investors that drives such decisions, and this type of project also is a direct assault on current efforts to enact Community Solar initiatives that provide ownership opportunities in solar projects for even very small investors. The fact is that Community Solar democratizes energy production, while Duquesne's proposed move here will provide fodder for those who say we do not need that; the utility already provides it. In short, there is no legal basis on which to approve the proposed Solar PPA Project, and there are multiple policy reasons to reject it.¹⁰

⁸ Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause; Docket No. M-2013-2362961(Order Entered November 14, 2013)("Fixed Means Fixed Order").

⁹ EGS Parties' MB at 5-7; EGS St. No. 1 pp. 22-24.

¹⁰ EGS Parties St. No. 1, 22:19-23:3; EGS Parties' St. No. 1, 24:15-25:11; EGS Parties' St. No. 1, 23:6-23:21; EGS Parties' St. No. 1, 24:1-12; EGS Parties' St. No. 1, 24:15-25:11.

Perhaps the most serious concern is that the Solar PPA would put Duquesne into the business of buying and selling electricity – on behalf of – default service customers. In particular, the plan to sell the energy into the wholesale market as a means of “offsetting” default service costs, goes well beyond what is authorized in Section 28079(e)3.1, *et seq.* As discussed by Mr. Kallaher, if Duquesne wanted to invest shareholder money into adventures in solar energy production and procurement, and to sell AECs, and even energy, apart from the default service procurement, that could be permitted. 66 Pa.C.S. § 2807(e)(3.5). But there is nothing in the Code that would allow a default service provider to engage in a purchase and subsequent sale into the wholesale electricity market, at unknown terms and conditions, where the ratepayers are ultimately on the hook for any losses. 66 Pa.C.S. § 2801, *et seq.* It is difficult to understand how the RD glossed over the requirement that such a contract will be “least cost over time” when it does not even have a contract.¹¹

Simply stated, if Duquesne desires to purchase Solar AECs via a long-term contract to satisfy its AEPs needs, that is clearly allowed. But putting its customers at risk for its purchase and re-sale of energy “on their behalf” over that same long period, puts customers at risk and should not be permitted.

D. Exception No. 4 – The RD Erred in Not Enforcing the Rights of Customer Assistance Program (“CAP”) customers to shop for Electricity. (RD pp. 55-59).

One of the fundamental changes imposed by the *Electricity Generation Customer Choice and Competition Act (Act)*, was that all customers gained the right to shop for electricity.¹² In the Duquesne service territory, CAP customers presently are not permitted to shop for electricity,

¹¹ EGS Parties’ St. No. 1, 24:15-25:11

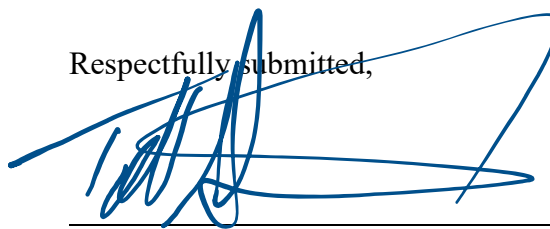
¹² 66 Pa.C.S. § 2806(a).

despite the Commission's stated preference that they be permitted to do so.¹³ In this case the Company proposed that CAP customers would regain the right to shop through a program similar to that employed by other utilities. However, in response to legally deficient arguments raised by CAUSE PA, Duquesne waived and agreed to postpone the implementation of CAP Shopping until after a decision in PPL's DSP, where CAUSE PA raised similar arguments. The RD adopted this position. The issue was briefed in this matter and could have been decided and thus should not have been deferred. In postponing the inevitable, the RD erred.

III. CONCLUSION

For the reasons stated herein and in the Main and Reply Briefs of the EGS Parties, as referenced herein, the EGS Parties submit that the RD committed a number of errors that require correction by the Commission and hereby request that it do so.

Respectfully submitted,



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DATED: November 23, 2020

¹³ See *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019. See also, *Investigation into Default Service and PJM Interconnection, LLC, Settlement Reforms*; Docket No. M-2019-3007101, Issued January 23, 2020.