



411 Seventh Avenue
16th Floor
Pittsburgh, PA 15219

Tel 412-393-1541
Fax 412-393-1418
gjack@duqlight.com

Gary A. Jack
Assistant General Counsel

November 23, 2011

VIA OVERNIGHT MAIL

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

**Re: Investigation of Pennsylvania's Retail Electricity Market:
Comments of Duquesne Light Company on En Banc Hearing
Docket No: I-2011-2237952**

Dear Secretary Chiavetta:

Enclosed for filing are an original and five (5) copies of the Comments of Duquesne Light Company in response to the Pennsylvania Public Utility Commission's En Banc Hearing held on November 10, 2011 in the above-referenced case.

Sincerely yours,

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

Gary A. Jack
Assistant General Counsel

Enclosure

c: Office of Competitive Market Oversight

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Investigation of Pennsylvania’s
Retail Electricity Market**)
)

Docket No. I-2011-2237952

COMMENTS OF DUQUESNE LIGHT COMPANY ON EN BANC HEARING

Duquesne Light Company (“DLC” or the “Company”) submits the following comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) En Banc Hearing held on November 10, 2011, at Docket No. I-2011-2237952, relating to the retail market investigation proceeding. DLC appreciates this opportunity to comment on the five topics that were listed on the Commission’s issued Agenda for the En Banc hearing. DLC can offer a unique and informed perspective on the issues because of its extensive experience with post-transition period default service. DLC completed the transition period for most customers in 2002 and, since that time, has successfully implemented five default service programs and has achieved relatively high levels of customer shopping in its service area as compared to other electric utilities in Pennsylvania and elsewhere in the United States.¹

Specific agenda issues from the En Banc Hearing are addressed below.

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¹ As of October 2011, the overall percentage of retail load (based on billed kWh) that is shopping in DLC’s service area has climbed to 71%. DLC has one of the top ten electric retail access programs in the United States and is currently 9th in the nation in terms of percentage of retail load shopping.

I. COMMENTS

A. Overview

Now that the entire state is in a post-transition period, it is an opportune time for the Commission to review recommendations to improve the competitive market. However, DLC is concerned that, in some instances, recommendations may impose unnecessary costs on default service customers to the extent that future Commission actions could be applied retroactively even after a future default service plan is approved. Most of the Commonwealth has had only limited experience with post-transition period default service. Other Pennsylvania service territories have only recently begun to implement post-transition default service. It is important that the Commission recognize the different stages of retail market development among Pennsylvania EDCs and continue to not preclude experimentation and flexibility, nor prescribe approaches that could jeopardize the accomplishments that have already been achieved, particularly in DLC's market given the current level of shopping.

B. Consumer Education-Statewide Campaign

Since DLC was one of the first EDCs in the state to eliminate its Competitive Transition Charges in 2002 and transition from rate caps to competitive market prices, the Company was in a unique position compared with other Pennsylvania utilities. As part of this process, DLC was one of the first in the state to launch a Consumer Education campaign during the Electric Choice initiative of the late 1990s. DLC's current Consumer Education Plan, implemented in 2008, focuses on shopping and energy conservation. And because of these efforts, 91% of our residential customers know they

have the right to choose their electric supplier, as shown in a recent customer survey. Many have exercised that right with the shopping levels having progressively increased over the years – especially in the past year – as many new EGS marketers enter the DLC service territory. Currently, there are approximately 181,000 DLC customers receiving their generation from the nearly 43 licensed EGSs in our service territory.

Now that all EDCs are in a post-transition period, we believe the Commission should address how consumer education programs should be deployed. First, we believe that all interested parties in this proceeding support continuation of consumer education programs in some form. A second issue is whether consumer education should be expanded, and, if yes, how to do so effectively knowing that customers in different areas of the Commonwealth have varying understandings of choosing an alternative supplier. DLC supports an expansion of consumer education under reasonable terms. The third apparent issue is whether the consumer education programs should remain local EDC programs – as they are today – or whether they should be expanded to also include a statewide program. One of the issues in having both a statewide and a local consumer education program is integration and alignment of messages. It is important to avoid duplication and assure consistency between the two programs. Therefore, it is imperative that EDCs are able to tailor their messages to the differing circumstances of the service territories. Just having a statewide program cannot make those distinctions between service territories. DLC supports a statewide consumer education program, so long as it would be reasonable in scope and cost and is collaborated on by the Commission, the EDCs, and the EGSs.

Regarding publishing potential cost savings for customers, it is our belief that trying to describe specific savings amounts in any statewide educational materials or even local advertising will be misleading to customers. Since customers' savings can vary dramatically based on the EDC's price-to-compare, the supplying EGSs' offerings, and a customer's usage patterns, any representation of savings should be very general to avoid confusing or misleading customers.

We fully support the plan of mailing customers a PAPowerSwitch.com postcard from the Commission as discussed in the Retail Market meetings. We also support a standard agreed-upon letter sent to customers by each EDC about shopping. These materials would be sent out during a one year period, and the costs would be recovered through the EDCs' Consumer Education surcharges. Also, DLC believes these educational materials could be implemented sooner than June 2013 under current default service plans. However, we feel it would be prudent to review the results of these two mailings before issuing any further customer education mailings or continuing this initiative.

C. Accelerated Switching Timeframes

DLC is willing to support meaningful process improvements for accelerating the supplier switching timeframe but believes that the customer confirmation letter and rescind process should not be eliminated. We believe the confirmation letter is an important consumer protection. Currently, 11% of the customers selecting an EGS in DLC's service territory rescind their enrollment within that 10-day confirmation period.

In other words, almost 100 DLC customers every week this year utilized the opportunity to rescind their enrollment within the 10-day confirmation period. Customers made this decision for a variety of reasons. For example, they simply could have changed their mind or may have alleged that they were being switched to an EGS without their authorization. Customers should have the right to confirm a switch prior to the transfer of service, and that customer protection should be preserved. It is reasonable to expect higher levels of customer dissatisfaction if 11% of DLC's customers electing an EGS who are notified and currently rescind their enrollment are unable to do so due to the total elimination of the 10-day confirmation period. DLC is concerned that shortening the time period for confirmation letters that are sent to the customer through the U.S. mail will result in the customer not receiving the letter until one to three days later and will provide the customer with only a short period of time left to act to rescind.

D. Customer Referral Program

The third subject of investigation addressed at the en banc hearing was a customer referral program. Various stakeholders within the Investigation have been looking into designing a customer referral program. Those programs can vary extensively in form and structure, and the details are critical.

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

- DLC agreed to provide customers with access to the OCA residential shopping guide via a direct link to the OCA's website.
- DLC agreed to provide customers with access to the Commission's new comprehensive website, once it exists, via a direct link.
- DLC agreed to circulate information on Customer Choice on a semi-annual basis, including promoting, via bill inserts/Service Line, the links on its website and any telephonic means for a customer to solicit information about customer choice and retail offers.
- DLC agreed that in the new customer packet and any other materials relating to new service, DLC would advise new customers upon service initiation of the opportunity to obtain supply from an EGS.²
- DLC also agreed to a collaborative to develop a process to inform customers of retail offers posted on the above-referenced web sites when customers contact the DLC customer service center or when customers initiate new service or move service to a new location.
- DLC also agreed to circulate information on the competition enhancement programs and posted retail offers on at least a semi-annual basis.³

Now that this Retail Market Investigation is underway, DLC believes it makes sense to review these retail market initiatives in a manner that allows careful review of

² The new customer packet and website area discussing initiation of new service, or transfer of service, will also contain a link to the OCA shopping guide and the new statewide website.

³ Settlement Agreement, Petition of DLC for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013, at 8-10.

the costs, benefits, and customer protections. Critical elements of a successful customer referral program are likely to include: a definite customer benefit, a clear marketing message, ease of administration, minimization of implementation costs, and maximization of customer participation. In addition, the design of a customer referral program should consider a variety of other issues, including:

- ***The customer referral program should not interfere with customer service.*** Customer satisfaction should be paramount so that additional educational efforts are made at the appropriate times and not when customers are calling for issues such as outages, bill payment arrangements, and quality of service issues.
- ***The customer referral program should provide assurances that there are not “bait-and-switch” offers that could result in high rates and customer dissatisfaction with retail choice.*** Adequate customer safeguards need to be in place to make certain that customers are informed and *affirmatively* agree to any changes in rates that are not subject to Commission oversight. The program should guarantee savings to participating customers for a period of time, most likely one year, and probably in the form of a percentage discount off of the default service supply rate (for the same term or period). This will increase enrollment, help ensure that customers are not harmed financially as a result of their participation, and help increase overall customer satisfaction with the program.

- *The process in which a customer is referred to a particular EGS should be simple to implement and simple for customers to understand.*⁴
- *The program design needs to consider potential impacts on the EDC call center.* A customer referral program could impose additional requirements for customer service representatives. It also could result in incremental service time to address customer needs and impact EDC call center metrics and performance levels. An outsourced call center to handle these shopping calls should be considered as a viable alternative for EDCs.
- *It also is important to be mindful that different service territories in Pennsylvania have differing levels of customer understanding of competition and different levels of current shopping.* In New York, the Public Service Commission found in October 2008 that the retail market was sufficiently mature, resulting in a determination that ratepayers should no longer incur incremental costs related to promotional programs, such as customer referral programs.⁵ Rather, the New York Public Service Commission ordered that all incremental costs should be incurred by EGSs.

⁴ There could be antitrust issues to consider with EGSs offering the same prices, services and terms as part of a joint standard offer.

⁵ DLC currently has higher levels of overall customer switching than all of the New York utilities. With respect to residential customers, DLC also has higher levels of customer load shopping than New York utilities with customer referral programs, with the exception of Orange and Rockland (“O&R”). Furthermore, O&R’s residential switching levels have remained in the 30 to 40 percent range for the last nine years, suggesting that even with a customer referral program, a natural limit for migration may have been approached.

DLC is willing to discuss ways in which it can improve upon the customer referral programs already in place or under development. Once the basic design of customer referral programs is identified, the Commission should permit EDCs to customize any basic design in their next default service filings for implementation in each EDC's service area tailored to the retail market conditions in that service area. In this regard, DLC's next default service plan for residential customers will be significantly different than its current plan, as explained in response to the Commission's Tentative Order of October 14, 2011. As mentioned above, DLC already has adopted several customer referral program initiatives that were previously agreed to unanimously by all the parties, including RESA, and approved by the Commission in the Company's last POLR proceeding. Therefore, any new customer referral initiatives that would alter that agreement should be implemented after June 1, 2013 in its service territory and should be part of the consideration of the next POLR proceeding.

E. Retail Opt-In Auction

The fourth subject of investigation addressed at the en banc hearing concerns a retail opt-in auction program. In its Tentative Order dated October 14, 2011, the Commission noted that a number of parties taking part in the Retail Market Investigation, including EGSs, EDCs, and the OCA, have been working to format a proposed retail opt-in auction. In a retail opt-in auction, an EGS bids to provide competitive retail service to a group of residential and/or small commercial customers within a specific EDC territory who have affirmatively decided to have their accounts included in this group. According to the Commission, opt-in auctions represent a creative marketing program that can help

increase customer awareness for shopping opportunities, provide customers with direct benefits via savings and enrollment cash receipts, and instill peace of mind for customers through potential standard offer requirements. The Commission recommends that EDCs incorporate an opt-in auction program in their next default service plan filings.

1. The Format of a Retail Opt-In Auction is Under Development

The Commission has not proposed a specific format for opt-in auctions in the Tentative Order, but recommends that EDCs use, as a starting point for prospective opt-in auctions, the format being discussed by a stakeholder sub-group in this Investigation when it is finalized.⁶ The details of such a program are still being developed and we will consider the outcome of this process upon completion. In the meantime, DLC submits the following comments for consideration.

2. A Retail Opt-In Auction Should Satisfy Several Key Principles

As already mentioned, DLC has already achieved high levels of customer awareness about shopping opportunities in its service area and has relatively high levels of customer shopping as compared to other electric utilities in the country. However, DLC believes that such a program, if designed appropriately, could encourage even more residential and small commercial customers to experience competitive service with an EGS. DLC believes that the Commission should carefully evaluate the costs and benefits of a retail opt-in auction as it proceeds with its investigation and should design an initial retail opt-in auction program that satisfies the following key principles:

⁶ Tentative Order, at 5-6.

- ***The program should target small non-shopping customers .*** The purpose of the program should be to encourage new customers to participate in the competitive market in an effort to further facilitate customers gaining experience obtaining competitive service from EGSs. However, the Commission should carefully consider whether the adoption of an opt-in retail auction program can appropriately discriminate between shopping and non-shopping customers and whether not permitting shopping customers to participate will harm developed retail markets like that in DLC’s service area. Nevertheless, DLC believes that opt-in auctions should be applied universally to customers without discrimination so that all customers – both non-shopping and shopping customers⁷ – could participate.
- ***The program should be designed to avoid imposing unnecessary costs on non-shopping customers in the form of high “risk premiums” on wholesale solicitation bids.*** The Company is concerned that a retail opt-in auction program could materially increase the costs of default service on remaining customers by increasing the switching risks and therefore the supplier bids associated with providing default service in the first place. A retail opt-in auction could potentially increase the likelihood of large and unpredictable swings in default service load. Therefore, DLC encourages the various stakeholders and the Commission to consider the potential impact on wholesale default service supply solicitation results, especially

⁷ Shopping customers would be subject to the terms and conditions of their EGS contracts.

if the scope of the retail opt-in auction is not sufficiently specified prior to a competitive solicitation to obtain default service supply.⁸

- ***The program should not interfere with existing default service supply arrangements to the maximum extent possible.*** For the Commission to change the default service rules dramatically after a supply agreement has already been consummated would be unfair to the supplier(s), impose legal uncertainties, and would likely result in unnecessarily high default service prices due to high bid premiums in future default service supply solicitations.
- ***The program should guarantee savings to participating customers for a period of time such as one year.*** This will increase enrollment, help ensure that customers are not harmed financially as a result of their participation, and help increase overall customer satisfaction with the program.⁹
- ***The program should be structured to allow customers to move freely to alternative EGS offers and to default service without penalties and***

⁸ The Commission should avoid establishing a program that causes unnecessary costs or premiums to be included in default service bid prices that may arise from uncertainty about future events under the Commission's control. Such would have the unfortunate result of increasing prices for customers – both default service customers and customers of EGSs providing fixed discounts off of the Price-to-Compare of the EDC.

⁹ At the end of the offer period, EGSs could have the option to continue its discounted price offer and customers could remain with the EGS at the current pricing arrangement. Alternatively, the EGS could choose to no longer continue its price offer, in which case the customer could choose another EGS, choose to stay with its current EGS under different price terms and conditions, or choose to return to default service, but in no instance or at any time should customers be charged more than the default service rate without their affirmative consent. DLC would prefer a known fixed rate for a period up to, or tied to, the term of the Company's next default service plan.

switching restrictions. Similar to default service, new and returning customers should be treated the same, and customers should be allowed to elect the retail opt-in auction prices at any time consistent with the normal switching protocols of the EDC.¹⁰

- ***The program should be designed to eliminate unnecessary program administration costs.*** To the extent possible, EGS offers, enrollment procedures, and billing should be standardized and consistent with EDC protocols and systems in order to reduce the costs of the retail opt-in auction program.
- ***Cross-subsidization among participating and non-participating EGSs/customers should be avoided.*** The clear beneficiaries of the retail opt-in auction are the winning EGS suppliers and the participating customers who receive the benefit of the discounted price. While it would be possible to design a non-bypassable cost recovery mechanism that would require non-shopping customers on EDC default service and shopping EGS customers to pay for the program, DLC believes the costs of the program should from a cost-causation standpoint be recovered from those who participate and benefit from the program.¹¹ This form of cost

¹⁰ Some EGSs have argued that they can provide default service at lower cost than the procurement methods used by EDCs. The retail opt-in auction program should be designed to test this hypothesis, and to the extent possible, have similar terms and conditions as default service.

¹¹ Costs of the program and the dollars recovered from any associated recovery mechanism should be subject to reconciliation.

recovery also would allow the Commission to more directly test whether the benefits of the program exceed the costs.

- *A one-time program with a prescribed number of customers should be established to test the structure, level of customer interest, and the potential impact of a retail opt-in auction.* Given the limited experience with retail opt-in auctions and the potential impact on non-participating customers – both customers that remain on EDC default service and those that shop with an EGS – DLC believes that the number of customers participating in the program should be capped initially to better assess the associated program benefits, costs, risks, and implementation issues.¹² Customers could enroll on a first-come, first serve basis until it is fully subscribed.

DLC looks forward to working with stakeholders to discuss ways in which a retail opt-in auction can be implemented in a manner that promotes retail competition while not

¹² DLC recognizes that the New York Public Service Commission found in an October 2008 order that auctioning off retail load to EGSs was unwarranted given the levels of shopping in New York and the potential for harm to competitive markets.

“Another strategy mentioned in the Retail Access Policy Statement is the auctioning of blocks of load to ESCOs. This strategy has never been implemented at any New York utility. With markets maturing, transferring load to ESCOs through auctions would undermine our efforts, and the efforts of ESCOs and utilities, to educate customers regarding retail choice and would, consequently, unduly interfere with the operation of those markets...Therefore, until such time as a party can adequately demonstrate that both the market and ratepayers can benefit from the auctioning of blocks of load, that approach will not be pursued.” (PSC. Case 07-M-0458. Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets – Order Determining Future of Retail Access Programs. October 27, 2008, at 14-15.)

imposing unnecessary additional costs on customers. DLC also suggests that for the reasons noted with regard to referral programs and noted above, any retail opt-in auction should be implemented in conjunction with the next default service plan and should reflect the retail market conditions in each EDC's service area.

F. Default Service Plans After June 1, 2013

1. Introduction and Summary of Position

The final subject of investigation addressed at the en banc hearing concerns the terms, structure and provider of default service after June 1, 2013. In its Tentative Order dated October 14, 2011, the Commission provided for comment several recommendations concerning the format and structure for default service plans to be filed by the EDCs to become effective June 1, 2013, for a two year period. DLC filed comments to the Tentative Order supporting the proposal for a two-year plan and providing other suggestions with regard to the recommendations in the Tentative Order. DLC incorporates by reference its comments to the Tentative Order.

While the Commission did not explicitly request testimony on the status of default service beyond June 1, 2015, such as who would be the POLR provider, the Energy Association has addressed this issue in its written and oral comments. DLC agrees with the Energy Association comments. DLC believes that much of the testimony presented by several parties at the en banc hearing supports the EDCs remaining in the default service function. That framework has worked well in the DLC service territory, and DLC sees no reason to change that model given the success of retail competition in its service

territory and the continuing need for customer protections in the form of a stable, reliable, and economic default service.

G. Concluding Remarks

DLC supports the evaluation of the state of retail markets in Pennsylvania. Since the completion of its transition period for most customers in 2002, DLC has been able, with the assistance of the Commission, many market participants, consumer advocates, and other interested parties, to make significant improvements in customer access to the retail market while at the same time maintaining fair and reasonable rates for default service customers. DLC has continued to modify its default service model over time and found ways to advance competition as the service requirements and markets for the different customer classes have evolved. As a result, DLC has achieved relatively high levels of customer shopping in its service area as compared to other electric utilities in Pennsylvania and elsewhere in the United States. The Company looks forward to working with stakeholders to continue its efforts to promote retail competition in a manner that balances the interests of customers, EGSs, and EDC stakeholders.

Respectfully Submitted,

Duquesne Light Company

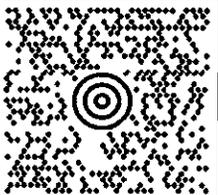
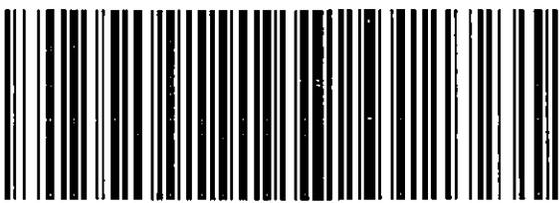
November 23, 2011

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