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April 19, 2024

***VIA ELECTRONIC FILING***

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

**Re: Petition of Duquesne Light Company For Approval of Default Service Plan For The  
Period June 1, 2025 Through May 31, 2029  
Docket No. P-2024\_\_\_\_\_**

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Dear Secretary Chiavetta:

Enclosed for filing on behalf of Duquesne Light Company (“Duquesne Light” or the “Company”), please find the *Petition of Duquesne Light Company for Approval of Default Service Plan For The Period June 1, 2025 through May 31, 2029* (“Default Service Plan”). To facilitate approval, the Company has filed its direct testimony with the Default Service Plan and respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) assign this matter to the Office of Administrative Law Judge for evidentiary hearings and the issuance of a Recommended Decision.

The filing consists of the following documents:

- Petition
- Duquesne Light Statement No. 1, the Direct Testimony of C. James Davis;
- Duquesne Light Statement No. 2, the Direct Testimony of John A. Peoples, including Exhibits JP-1 through JP-3;
- Duquesne Light Statement No. 3, the Direct Testimony of Scott G. Fisher;
- Duquesne Light Statement No. 4, the Direct Testimony of David B. Ogden, including Exhibits DBO-1 through DBO-8; and

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- Duquesne Light Statement No. 5, the Direct Testimony of Sarah J. Olexsak, including Exhibits SO-1 through SO-3.

Please enter the appearance of the following attorneys on behalf of the Company in this proceeding:

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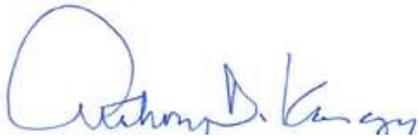
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Please send copies of all documents and communications in this proceeding to the counsel listed above.

As indicated on the attached Certificate of Service, Duquesne Light is serving this Petition of the Bureau of Investigation & Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and PJM Interconnection, LLC. Duquesne Light is also serving all active parties in the Company's last default service proceeding, *Petition of Duquesne Light Company for Approval of Default Service Plan For The Period June 1, 2021 Through May 31, 2025*, at Docket No. P-2020-3019522. Due to the high number of electric generation suppliers ("EGS") in the Company's service territory, EGSs that did not participate in Duquesne Light's last default service proceeding are being served with a copy of this filing letter and the attached Certificate of Service only.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Anthony D. Kanagy

ADK/dmc  
Enclosures

cc: Stephen M. DeFrank, Chairman (*letter and Certificate of Service only*)  
Kimberly M. Barrow, Vice Chair (*letter and Certificate of Service only*)

Rosemary Chiavetta, Secretary  
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Ralph V. Yanora, Commissioner (*letter and Certificate of Service only*)  
John Coleman, Jr., Commissioner (*letter and Certificate of Service only*)  
Kathryn L. Zerfuss, Commissioner (*letter and Certificate of Service only*)  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: April 19, 2024



Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Of Duquesne Light Company** :  
**For Approval Of Default Service Plan** : **Docket No. P-2024-\_\_\_\_\_**  
**For The Period June 1, 2025 Through** :  
**May 31, 2029** :

**PETITION OF DUQUESNE LIGHT COMPANY  
FOR APPROVAL OF A DEFAULT SERVICE PLAN**

Pursuant to 66 Pa. C.S. § 2807(e) and the Pennsylvania Public Utility Commission’s (“Commission”) default service regulations at 52 Pa. Code §§ 54.181-54.189, Duquesne Light Company (“Duquesne Light” or the “Company”) hereby petitions the Commission for approval of its default service plan for the period from June 1, 2025 through May 31, 2029 (“DSP X,” “Default Service Plan,” or “Plan”), including: 1) an Electric Vehicle Time-of-Use Pilot Program (“EV-TOU”), 2) a Green Tariff Pilot, 3) continuation of the Standard Offer Program (“SOP”), (4) continuation of the Solar Purchase Power Plan provisions approved in DSP IX to the extent that the Company is not able to enter into a contract during the remainder of the DSP IX period, and 5) minor amendments to the Company’s Supply Master Agreement (“SMA”).

**A. BACKGROUND**

1. Duquesne Light has implemented nine (9) successful default service programs helping to create one of the most competitive shopping environments in the Commonwealth, while providing default service at rates and terms that meet the requirements of the Public Utility Code. With each successive plan, Duquesne Light has tailored its default service offerings to ensure appropriate levels of price stability for customers at market reflective rates, while supporting the competitive retail electricity market. In its DSP X proposal, Duquesne Light seeks to enhance its current default service program and continue to promote competition for its customers.

2. Chapter 28, Section 2807(e) of the Public Utility Code (Code), 66 Pa. C.S. §

2807(e), provides the statutory requirements for a default service plan. Chapter 28 requires the default service provider to follow a Commission-approved competitive procurement plan that includes auctions, requests for proposals, and/or bilateral agreements, as well as a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. § 2807(e). Additionally, the Commission's default service regulations at 52 Pa. Code §§ 54.181-54.189 which were modified in a *Final Rulemaking Order* entered on October 4, 2011<sup>1</sup> and the *Default Service End-State Order*<sup>2</sup> provide guidance regarding the Commission's requirements for default service plans.

3. The Company's proposed Default Service Plan satisfies these statutory and regulatory requirements through the competitive procurement of electric supply tailored to meet the individual characteristics of each customer class, by creating a transparent, competitive market and at the same time ensuring appropriate consumer protections. The Company's Default Service Plan recognizes that each customer class has different characteristics and different levels of experience with the competitive market. The Plan takes these differences into account and proposes procurement methodologies for each of the major customer groups that reflect these considerations. The Company's Plan also supports Pennsylvania retail markets by continuing the SOP. In developing this Plan, the Company also considered the approaches that have worked in previous default service plans; the current desires and concerns of parties, customers and retail suppliers; and the Commission's rules and policies.

4. The Company's Default Service Plan satisfies the applicable legal requirements by

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<sup>1</sup> *Final Rulemaking Order*, Docket No. L-2009-2095604 (Order entered October 4, 2011).

<sup>2</sup> *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952, Order entered February 15, 2013 ("*Default Service End-State Order*").

providing for the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost over time and consideration of the impact to the environment. A summary of Duquesne Light's Default Service Plan is set forth below, with additional details provided in the testimony and exhibits accompanying this Petition.

**B. PROGRAM TERM**

5. The term lengths of Duquesne Light's current DSP IX program, as well as the current default service programs for all of the other the major electric distribution companies, are for a four-year period.

6. Duquesne Light proposes that the term length of the DSP X Plan also be for a period of four years, from June 1, 2025 through May 31, 2029. The four-year term saves litigation time and cost for Duquesne Light, other parties that participate in DSP proceedings and the Commission, as compared to prior default service plans with two-year term periods.

**C. PROPOSED DEFAULT SERVICE PROCUREMENT PLANS AND RATES**

7. The DSP X Plan largely continues the procurement approaches and rate terms that are currently in effect under DSP IX, with certain modifications to the Medium Commercial & Industrial customers group under 200 kW ("Medium C&I <200kW") designed to reduce rate volatility. The DSP X Plan includes a portfolio of four (4) separate supply plans tailored to meet the specific needs of major customer groups, which are: 1) Residential and Lighting ("Residential & Lighting"), 2) Small Commercial & Industrial ("Small C&I"), 3) Medium C&I <200kW, and 4) Hourly Price Service ("HPS") for Medium C&I customers with monthly metered demand equal to or greater than 200 kW and Large Commercial & Industrial ("Large C&I") customers (collectively ("HPS-Eligible")).

## **Residential and Lighting Customers**

8. Default Service for Residential & Lighting customers will continue to consist of a combination of twelve (12) and twenty-four (24) month fixed-price full requirements (“FPFR”) supply contracts obtained through semi-annual competitive auctions with overlapping, or “laddered,” delivery periods. The full requirements contracts require supplier(s) to provide energy, capacity, ancillary services, and any other services or products necessary to serve a specified percentage of default service load 24 hours a day, for the term of the contract. Because the contract is “load-following,” the amount of energy and other services and products a supplier must provide will vary depending upon Duquesne Light’s actual default service load. The supply contracts that Duquesne Light has proposed for Residential & Lighting customers require the suppliers to satisfy this obligation at the prices that they bid in the respective auctions. The procurement methodology is discussed in more detail in the testimony of Mr. Peoples in Duquesne Light St. No. 2.

9. The Company also proposes to continue to change the default service supply rates for these customers every six months as in DSP IX.

10. The proposed mix of one-year and two-year FPFR products and the semi-annual overlapping of their delivery periods provide Residential & Lighting customers greater price stability than shorter term procurements and rate changes, which is reasonable and appropriate for this customer class. This is discussed in more detail in the testimony of Mr. Fisher in Duquesne Light St. No. 3.

11. Duquesne Light proposes to procure four (4) FPFR supply contracts for the Residential & Lighting class with delivery periods that extend beyond the end of the DSP X period, otherwise known as “overhang” contracts. Overhang contracts are appropriate customer

protections that help avoid the potential price shock that may occur when 100% of supply must be procured at one time or over a short period of time. The Company's last 4 DSPs also included overhanging supply contracts for Residential & Lighting and Small C&I customers.<sup>3</sup> Exhibit JP-1, which is attached to Duquesne Light Statement No. 2, shows the proposed procurement schedule and delivery period for Residential & Lighting customers.

12. In the event that the capacity price is not known at the time of contracting, Duquesne Light will implement a capacity proxy price that will be trued up to the actual price when it is known.

13. Additionally, Duquesne Light proposes to continue semi-annual reconciliation of Residential & Lighting procurement group default service costs and revenues along with semi-annual rate changes. The Company recognizes that the Commission's regulations provide for quarterly rate changes for Residential customers. See 52 Pa. Code § 54.187. However, Duquesne Light does not believe that quarterly rate changes are necessary for Residential & Lighting customers because the Company is proposing to acquire default service supply for these customers in the form of twelve (12) and twenty-four (24) month fixed-price full requirements contracts. Fixed-price full requirements contracts greatly diminish cost over/under-recoveries that are associated with other procurement methods, and therefore do not require more frequent rate resets in order to reconcile costs. The Commission approved semi-annual reconciliation for Duquesne

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<sup>3</sup> See *Petition of Duquesne Light Company for Approval of Revisions to its Approved Default Service Plan VI*, Docket No. P-2012-2301664 (Order entered September 11, 2014) (permitting Duquesne Light to extend contracts that overlap into DSP VII). See also *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2418242 (Order entered January 15, 2015); *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2543140 (Order entered December 22, 2016); *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2021 Through May 31, 2025*, Docket No. P-2020-3019522 (Order entered January 14, 2021) (“*DSP IX Order*”) (approving proposed DSPs that provided for supply contracts that would extend into the subsequent DSP).

Light's Residential & Lighting customers in the DSP VI proceeding. *DSP VI Order*, p. 210. In DSP VII, DSP VIII and DSP IX, semi-annual reconciliation was approved as part of the Settlement Stipulations. Duquesne Light therefore requests a waiver of Section 54.187 to the extent necessary to implement its proposed plan.

14. Supply for the Lighting customers' default service load will continue to be combined with the default service supply for Residential customers. Wholesale suppliers will bid a single price to supply both Residential and Lighting customers' default service load. Separate rates will be developed by Duquesne Light for Residential and Lighting customers to reflect the lower market cost of supplying the applicable Lighting customer classes. The methodology for developing Lighting rates is generally the same as that approved by the Commission in DSP VII, VIII and IX and is described by Mr. Ogden in Duquesne Light St. No. 4.

15. The auctions for Residential & Lighting customers will be conducted by Duquesne Light, with an independent monitor. The Company proposes to maintain the 50% supplier load cap to serve Residential & Lighting (and Small C&I) customers in a given auction equal to 50% of the number of tranches solicited on that auction date, rounded up to the nearest integer number of tranches. See Duquesne Light St. No. 2.

16. In the *Default Service End-State Order*, the Commission directed the establishment of a working group, in part, to develop an industry standard default service SMA for EDCs in Pennsylvania. The Company is proposing to continue to use the SMA template that was developed by the Procurement Collaboration Working Group, with a few updates, for its wholesale power procurements under DSP X. A copy of the SMA is attached to Duquesne Light Statement No. 2, the testimony of Mr. John Peoples, as Exhibit JP-3. The Company is also providing a redline version of the proposed SMA to the current SMA.

### **Small C&I Customers**

17. Default Service for Small C&I customers, which are customers with monthly metered demands less than 25 kW, will be supplied in the same manner as Residential & Lighting customers, which consists of a combination of twelve (12) and twenty-four (24) month full requirements supply contracts obtained through semi-annual competitive auctions with overlapping, or “laddered,” delivery periods. The procurement schedule and delivery periods for Small C&I customers are also provided in Exhibit JP-1, which is attached to Mr. Peoples’ testimony.

18. Similar to its procurement plan for Residential & Lighting customers, Duquesne Light’s procurement plan for Small C&I customers is designed to provide additional rate stability for customers. In the *Petition of Duquesne Light Company for Approval of a Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2418242 (Opinion and Order entered January 15, 2015), the Commission stated at p. 25, “... Duquesne’s proposal should be accepted in order that the Small C&I customer class procurement would be similar to the default service procurement for the Residential class in DSP VII. As Duquesne has explained, these classes exhibit similar characteristics and the proposed default service procurement plans for these classes represent a balancing of the importance of rate stability and market responsive rates for these smaller customers.”

19. Rates for Small C&I customers will be reset twice per year, and Duquesne Light proposes to continue to reconcile costs for these customers on a semi-annual basis. The Commission first approved semi-annual reconciliation for Duquesne Light’s Small C&I customers in the DSP VI proceeding and has continued to approve this in subsequent DSP proceedings. *DSP*

*VI Order*, p. 210.

20. As with Residential & Lighting customers, Duquesne Light recognizes that the Commission's regulations provide for quarterly rate changes for Small C&I customers. 52 Pa. Code § 54.187. However, the Company does not believe that quarterly rate changes will be necessary for Small C&I customers because the Company is proposing to acquire default service supply for these customers in the form of twelve (12) and twenty-four (24) month fixed-price full requirements contracts. As explained above, fixed price full requirements contracts greatly diminish cost over/under- recoveries that are associated with other procurement methods, and therefore do not require more frequent rate resets in order to reconcile costs. Accordingly, there is no need to reset rates quarterly, and Duquesne Light requests a waiver of the regulation to the extent necessary to implement its proposed plan.

21. Small C&I customers include unmetered C&I customers. The load of unmetered accounts will be included in the Small C&I procurements. Default Service rates for unmetered accounts will be the same as the Small C&I Default Service rates.

22. Duquesne Light also will use the SMA template described above and provided as Exhibit JP-3 for its Small C&I procurements.

#### **Medium C&I Default Service Customers Under 200 kW**

23. In Duquesne Light Statement No. 2, Duquesne Light witness John Peoples explains Duquesne Light's proposal to switch from the current approach of soliciting three-month FPF products in quarterly solicitations to a new approach for the Medium C&I <200kW customer class. Under the new approach, all of the default service supply for the Medium C&I <200kW customer class still will be procured in the form of FPF products, but half of the default service supply for the Medium C&I <200kW customer class will be procured in the form of 12-month FPF products

and half will be procured in the form of six-month FPFR products, with 3-month pricing terms.

24. For the half of the supply that is procured in the form of 12-month FPFR products, 50% of that supply (i.e., 25% of the total supply for the customer class) will be procured in each solicitation; therefore, the 12-month FPFR product delivery periods will overlap on a semiannual basis.

25. For the half of the supply that is procured in the form of six-month FPFR products with 3-month pricing terms, 100% of that supply (i.e., 50% of the total supply for the customer class) will be procured in each solicitation; therefore, there will be no overlap of these FPFR supply products across the solicitations.

26. In Duquesne Light St. No. 2, Duquesne Light witness John Peoples explains in detail how the auction process will provide for separate three-month pricing for each six-month FPFR product. The auction will still incorporate a descending-clock price format, and the price that will be used in the auction will reflect pricing for the entire six-month delivery period, but before the auction each bidder will state its price ratio for the two three-month periods of the six-month product, should the bidder be awarded a six-month product. Winning bidders will be paid prices distinguished by the first and second three-month periods, in accordance with their stated price ratios.

27. Duquesne Light is proposing the revised procurement methodology for several reasons. First, this methodology will provide greater price stability for Medium C&I <200kW customers, which is especially important given the higher underlying wholesale market volatility experienced recently. This is explained further in Duquesne Light St. No. 3, the Direct Testimony of Scott G. Fisher.

28. Second, this change in the Medium C&I <200kW procurement strategy is designed

to better encourage greater supplier participation and better ensure successful solicitations. Without the change, in two solicitations each year, only Medium C&I <200kW supply is solicited, and only in the form of very short-term (three-month) products. This may discourage some supplier participation because, all else equal, suppliers may be less likely to be interested in investing time and resources in a solicitation if the amount of supply that they can be awarded is small. In contrast, by instead procuring all of the Medium C&I <200kW supply as a part of larger supply solicitations in which Residential & Lighting and Small C&I supply is also procured, and in which all supply products are for longer terms (six months or longer), greater supplier participation may be encouraged.

29. Rates for Medium C&I customers with demands under 200 kW will continue to be reset quarterly, and Duquesne Light proposes to continue to reconcile costs for these customers on a semi-annual basis.

30. The procurement methodology for Medium C&I customers under 200 kW is appropriately market responsive given the sophistication of this customer class. The default service rates for these customers will continue to change quarterly, on June 1st, September 1st, December 1st, and March 1st.

31. The Company proposes, as initially approved in DSP VII and continued in DSP VIII and DSP IX, to apply no supplier load cap for the Medium C&I <200kW solicitations. Duquesne Light has historically had low participation in some solicitations and believes that imposing load caps would increase the chances of unfilled tranches.

32. In the *Default Service End-State Order*, the Commission proposed that customers with demands of 100 kW or greater that have interval meters only be offered hourly LMP products. *Default Service End-State Order*, p. 31. However, the Commission further acknowledged that

directing an hourly LMP product for Medium C&I customers may raise legal questions about compliance with the Competition Act and that the Commission preferred to pursue legislative amendments that would provide for such authority before mandating an hourly priced product for Medium C&I customers. *Id.* at 45. To date, such changes have not been adopted by the General Assembly. Therefore, the Company is not proposing hourly LMP default service prices for Medium C&I customers under 200 kW.

33. Duquesne Light also will use the SMA template described above and provided as Exhibit JP-3 for its procurements for Medium C&I customers under 200 kW.

### **HPS-Eligible Customers**

34. For Medium C&I customers with monthly metered demand equal to or greater than 200 kW and Large C&I customers, Duquesne Light will continue to offer default service rates based on hourly day-ahead PJM energy market prices. Customers also will be charged a pass through of PJM capacity and ancillary services costs as well as the administrative costs of providing HPS. The procurement methodology is discussed in more detail in the testimony of Mr. Peoples in Duquesne Light St. No. 2.

35. The Company lowered the threshold for HPS eligibility for Medium C&I customers from  $\geq 300$  kW to  $\geq 200$  kW, on June 1, 2019. This relatively recent  $\geq 200$  kW threshold will be preserved in DSP X.

36. In order to acquire default service supply for HPS customers, the Company will conduct a solicitation in March of each year for HPS full requirements supply to be delivered over a twelve-month period from June 1<sup>st</sup> through May 31<sup>st</sup>. Two tranches will be solicited, with each tranche representing 50% of the default service load. The supplier(s) with the lowest fixed price bids will be selected as the winning supplier(s) of the HPS solicitation. In addition to the winning

bid price offered by the supplier, each winning supplier will be paid for its share of the associated energy, capacity, and ancillary service charges billed to HPS customers pursuant to Rider No. 9 in Duquesne Light's Retail Tariff. The winning suppliers' fixed price bids will be designed to compensate suppliers for the associated alternative energy credit costs, the energy balancing costs associated with day-ahead pricing versus final energy costs, and any other third-party supplier administrative costs of providing HPS. There is no change in this process from the process that was approved for the DSP IX plan.

37. Duquesne Light will also continue to rely on an independent third party to monitor and conduct the competitive solicitations, including qualifying bidders, conducting bidder information sessions, receiving and evaluating all bids, determining winning bidders, and reporting to the Commission.

38. As of February 2024, 94% of HPS Eligible load was being served by EGSs.

### **Competitive Procurement Guidelines**

39. Duquesne Light proposes to maintain the 50% supplier load cap to serve Residential & Lighting and Small C&I customers in a given auction equal to 50% of the number of tranches solicited in that auction date, rounded up to the nearest integer number of tranches, and seeks the Commission's approval for this provision as part of this proceeding. The Commission approved a 50% supplier load cap in DSP VII, DSP VIII and DSP IX. Additionally, consistent with DSP VII, DSP VIII and DSP IX, the Company is not proposing a supplier load cap for the Medium C&I <200kW and HPS-Eligible solicitations. The Company believes that supplier load caps for these solicitations are not necessary based on the high levels of customer switching and the need to encourage supplier participation.

40. Duquesne Light will continue to engage an independent third party to assist in

qualifying bidders, conducting bidder information sessions, and, importantly, to receive all bids, rank qualifying bids, and determine winning bids for all four procurement groups. All winning bids will be submitted to the Commission for approval prior to award.

41. Within fifteen calendar days from the closing of each solicitation, Duquesne Light will post the weighted average winning bid price on its website and publish an estimated default service rate calculation model on its website that shows the build-up of the auction results into retail default service rates. As explained in the testimony of Mr. Ogden, Duquesne Light Statement No. 4, the Price-To-Compare (“PTC”) will be posted 60 days in advance of each change in default service rates, with the exception of the application periods beginning June 1 of each year.<sup>4</sup>

42. If for any reason an auction fails to attract a sufficient volume of bids or the Commission does not approve the submitted bids or an accepted supplier defaults, Duquesne Light acknowledges that it has the obligation to procure supply to provide such portion of the default service. Initially, Duquesne Light will allow winning bidders to step up and serve any unfilled tranches. If any tranches still remain unfilled, Duquesne Light proposes to meet this obligation on an interim basis through purchases in the PJM spot market and requests authority to recover all the costs of such purchases and all reasonable administrative costs from the applicable customer classes. Duquesne Light agrees that it will submit to the Commission, within 15 days after any such occurrence resulting in unfilled tranches, a contingency plan to handle any default service shortfall.

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<sup>4</sup> For the application period beginning June 1 of each year, the Company will not know the transmission component of the PTC until May 15. The Company will post the final supply component of the PTC 60 days in advance of June 1 and will post the final PTC including the transmission component by May 15.

### Act 129 Standards

43. The procurement methodologies under the Default Service Plan are based upon the standards set forth by Act 129 that the procurement plan shall be designed to be “the least cost to consumers over time” and shall include a “prudent mix” of contracts. As explained in the testimony of Mr. Fisher, Duquesne Light St. No. 3, Duquesne Light’s proposed competitive solicitations for full requirements default service supply contracts of various terms for Residential & Lighting, Small C&I, Medium C&I customers with demands less than 200 kW, and HPS-Eligible customers represent a “prudent mix” of procurement contracts and will provide default service customers with access to an adequate and reliable supply of generation at least cost over time.

44. Specifically, Act 129 requires that power “shall be procured through competitive procurement processes” (including auctions, requests for proposals and/or competitively procured bilateral agreements procured at no greater than the cost of obtaining generation under comparable terms in the wholesale market), and such procurement must be a “prudent mix” of spot market purchases, short-term contracts and long-term purchase contracts. *Id.* at § 2807(e)(3.1)-(3.2).

45. Duquesne Light's Default Service Plan relies upon a prudent mix of contracts. The supply contracts are explained in detail by Mr. Peoples, Duquesne Light St. No. 2. A summary of the products for each class is as follows:

- For Residential & Lighting and Small C&I customers, Duquesne Light will procure default service supply through overlapping twelve-month and twenty four-month full requirements contracts.
- For Medium C&I customers with demands less than 200 kW, Duquesne Light will procure default service supply through a mix of twelve-month and six-month (with three-month pricing terms) full requirements contracts.
- For HPS-Eligible customers (Medium C&I customers with demands equal to or greater than 200 kW and Large C&I customers), Duquesne Light will conduct an auction for third-party suppliers to supply HPS customers’ actual hourly usage at the day-ahead hourly energy prices.

46. This mix is a prudent mix of contracts. Duquesne Light has attempted to be mindful of both Act 129, the Default Service Regulations, and Commission Policy in proposing the mixture of contracts for its Default Service Plan, and asserts that this Plan includes a prudent mix of contracts given the current levels of, and experience with, switching for each class of customers, and the competitive market enhancements proposed in the Petition.

47. This procurement plan also satisfies the requirement that the Plan be designed to be the “least cost to customers over time.” This is discussed in further detail by Mr. Fisher, Duquesne Light St. No. 3.

48. Act 129 also specifies that the Commission shall make a finding that “neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates federal law.” 66 Pa. C.S. § 2807(e)(3.7). In his direct testimony, Mr. Peoples’ addresses this requirement with respect to Duquesne Light and its affiliates and demonstrates that the standard will be met under the DSP X plan.

49. For all of the reasons set forth above, Duquesne Light’s Default Service Plan meets the standards set forth in Act 129 and enables the Commission to make the necessary findings per Section 2807(e)(3.7). Specifically, Duquesne Light requests that the Commission find its Plan includes prudent steps necessary to negotiate favorable generation supply contracts, and to obtain least cost generation supply contracts on a long-term, short-term and spot market basis. Neither Duquesne Light nor its affiliated interest has withheld or will withhold from the market any generation supply in a manner that violates Federal law.

### **Default Service Procurement Cost Recovery**

50. Duquesne Light will continue to fully recover the costs incurred from supply solicitations for Residential & Lighting, Small C&I, Medium C&I customers with demands less than 200 kW, and HPS-Eligible customers, gross receipts taxes, along with the costs of hiring the independent monitor, through fully reconcilable Section 1307(e) cost recovery mechanisms for each class. 66 Pa. C.S. § 1307(e).

51. Additionally, Duquesne Light will continue to recover its administrative costs for HPS service through a Fixed Retail Administrative Charge (“FRA”). The FRA (expressed in dollars per MWh) included in Rider No. 9 will consist of two components. The first component will be based on the winning bids submitted by third-party suppliers and will compensate the suppliers for their costs associated with alternative energy credits, energy balancing and any other third-party supplier administrative costs of providing HPS. The second component will include the Company’s administrative costs, costs of conducting auctions, and other unbundled costs of preparing the Company’s default service plan filing and working capital costs associated with default service supply.

#### **D. EV-TOU PILOT**

52. In the *January 2020 Secretarial Letter*,<sup>5</sup> the Commission noted that EV usage in the future will increase and that TOU rates in the context of EV expansion need to be further explored. The Commission further stated: “Accordingly, we urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.” *January 2020 Secretarial Letter*, pp. 6 – 7.

53. In response to the *January 2020 Secretarial Letter*, Duquesne Light proposed an

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<sup>5</sup> *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101, January 23, 2020 (*January 2020 Secretarial Letter*”).

EV-TOU Pilot Program in its DSP IX Proceeding. The Commission approved the EV-TOU Pilot Program in the *DSP IX Order*.

54. The EV-TOU Pilot was available to Residential, Small C&I and Medium C&I customers with demands less than 200 kW who own or lease an EV or who operate EV charging infrastructure at the service location. The DSP IX Pilot was a whole home program, such that the time varying rates applied to the entire usage at the premises.

55. In DSP X, the Company is proposing to continue the EV-TOU Pilot but to expand the rate offering. While the rate will remain a whole-premise rate by default, the Company proposes an option that would allow up to 500 residential customers at a time to opt into an EV-only option for the rate.

56. Residential customers that meet the eligibility criteria for the whole-premise TOU rate will also be eligible for the EV-only TOU rate option if they have a Company-qualified EV or charging station, or consent to another option, like a next-generation meter, that is able to share energy use information with the Company. This will enable the Company to apply the EV-only TOU rate to energy usage only from EV charging at their residence, while the rest of their premise is on the Company's standard default service supply rate.

57. In order to minimize costs for customers, the Company will not install a separate meter to measure EV charging usage. Customers that select the EV-only option consent to allow third-party platform access to vehicle telematics or charging station energy consumption data. See Duquesne Light St. No. 5, the Direct Testimony of Sarah Oleksak for additional details.

58. Customers that are enrolled in the existing whole-premise EV TOU Supply Rate Pilot will be eligible to switch to the EV-only rate option under the new EV TOU Supply Rate Pilot. This option will not be available to commercial customers that are otherwise eligible for the

whole-premise TOU rate.

59. Customers that elect the EV-TOU Pilot Program will be charged different supply rates for Peak, Off-Peak and Super Off-Peak time periods. These time periods are as follows:

| Schedule       | Time Period   |
|----------------|---|
| Peak           | 3pm-9pm non-holiday weekdays  |
| Off-Peak       | 6am-3pm and 9pm-11pm non-holiday weekdays;<br>6am-11pm all other days |
| Super Off-Peak | 11pm-6am every day  |

60. These time periods are consistent with the Peak and Off-Peak time periods that the Company is proposing for its distribution EV-TOU rates in its pending distribution base rate proceeding at Docket No, R-2024-3046523.

61. In order to determine EV-TOU supply rates for each time period, the Company will continue to adjust the adjusted wholesale price for each class using rate class factors that are initially based in part upon hourly locational marginal prices for energy from 2020 through 2023. The rate class factors will continue to be updated annually when DSS rates become effective June 1<sup>st</sup> of each year. The development of the EV-TOU rate factors is discussed in more detail in the testimony of Mr. Ogden in Duquesne Light Statement No. 4 and in Exhibit DBO-4.

62. The Company will obtain default service supply for EV-TOU customers through the same FPR products that provide default service supply for the respective customer classes. The FPR wholesale suppliers will be paid the same price per megawatt-hour of supply regardless of how much of its supply is for EV-TOU customers. Any mismatches between revenues from

EV-TOU supply rates and supply costs paid to FPFR product suppliers will be recovered/refunded within the existing Rider No. 8 – DSS 1307(e) customer class reconciliation. This approach will avoid cost shifting across customer classes during the EV-TOU Pilot Program and is simple to administer within the existing reconciliation process.

63. Additional details regarding the Company’s EV-TOU Pilot are provided in the testimony of Ms. Olexsak in Duquesne Light Statement No. 5.

**E. GREEN TARIFF PILOT**

64. Duquesne Light is proposing a Green Tariff for residential customers who remain on default service and affirmatively elect to increase their carbon-free electricity (“CFE”) supply above the requirements under the Pennsylvania Alternative Energy Portfolio Standards (“AEPS”). Additional details regarding the Green Tariff Pilot are provided in Duquesne Light St. No. 1, the Direct Testimony of C. James Davis.

65. Under the Pilot, an additional 7% of the participating Green Tariff customer’s annual consumption would be matched with CFE sourced within Pennsylvania. This would be in addition to the Pennsylvania AEPS requirements of 8% for Tier I resources and 10% for Tier II resources that are provided by Duquesne Light’s wholesale default service suppliers. As a result, 25% of a Green Tariff customer’s annual consumption would be subject to either the current AEPS (18%) requirements or the supplemental (7%) CFE purchases.

66. In order to acquire the additional CFE, Duquesne Light will conduct an auction, and EGSs and other third parties will be allowed to bid for the right to supply customers under the Green Tariff. The auction will solicit a fixed cost per kWh to procure EACs on behalf of customers who enroll in the Green Tariff. The winning Green Tariff provider of EACs will be determined solely on price and will be paid the per unit price that they bid.

67. In addition, Duquesne Light will list the name of the EGS or provider on customer

bills who participate in the Green Tariff.

68. The cost to customers of additional EACs required under the Green Tariff will be fixed on a per kWh basis for each DSP planning year based on the results of the auction. Administrative costs for implementing and operating the program will be recovered through Rider No. 8.

69. The Green Tariff program will be treated as non-basic service.

70. Duquesne Light notes that EGSs already can market supply services, including green products, directly to retail customers. Yet many residential customers remain on default service. The Green Tariff will allow EGSs and/or third-party suppliers to offer green services to default service customers who may be reluctant to leave utility default service. EGSs will still be able to separately market combined supply and clean energy attributes directly to customers. The Company's Green Tariff will allow EGSs and/or third-party suppliers and aggregators an opportunity to reach customers that they may not otherwise be able to serve.

#### **F. SOLAR PPA**

71. In the DSP IX proceeding, Duquesne Light sought approval to enter into a long-term Solar PPA (i.e., more than four years and less than twenty years) to support a utility-scale solar project (up to a total of 7 MW) in Pennsylvania, preferably in Duquesne Light's service area. The Commission granted this request in the *DSP IX Order*.

72. Duquesne Light is currently in the process of negotiating a long-term solar contract with the developer and anticipates submitting the contract to the Commission for approval prior to the expiration of the DSP IX plan. In the event that the Company is not able to execute a contract prior to the expiration of the DSP IX plan, the Company requests that the Commission's approval of the Solar PPA in the DSP IX proceeding extend through the DSP X program.

73. As noted in DSP IX, the Company seeks to support utility-scale solar alternative

energy generating facilities in Pennsylvania for several reasons. First, Duquesne Light believes that a long-term Solar PPA is consistent with Act 129’s requirements for default service providers to consider long-term contracts in meeting the prudent mix standard. Second, the Company believes that a long-term solar contract may provide greater opportunity for cost-effective financing for the developer of a utility-scale solar project.

#### **G. RETAIL MARKET ENHANCEMENTS**

74. Duquesne Light has supported expansion of competitive retail market opportunities for customers through its eight prior default service plans, and has already implemented a number of innovative market enhancements in order to facilitate the development of the retail market. The Company’s customer switching level is among the highest in the Commonwealth, with 67% of the total load in its service area receiving service from an EGS as of February 2024. This also puts Duquesne Light among the top electric service areas in the country in terms of percentage of total load switched. *See* Duquesne Light Statement No. 3. Duquesne Light’s proposed Default Service Plan contains several important features designed to support retail competition.

##### **Standard Offer Customer Referral Program (“SOP”)**

75. Duquesne Light currently offers a SOP to Residential and Small C&I customers who are not served by an EGS and who contact the Company to: 1) initiate or move service; 2) discuss choice questions; 3) resolve high bill concerns; or 4) inquire about the SOP.

76. In DSP IX, Duquesne Light obtained approval to rely on a third-party vendor to market and enroll SOP customers instead of Duquesne Light customer service representatives making the referrals to EGSs.

77. Duquesne Light proposes to continue its current SOP, as approved in DSP IX, for DSP X. *See* Duquesne Light St. No. 1.

### **Purchase of Receivables (“POR”)**

78. Duquesne Light proposes to continue its current POR program for Residential, Small C&I, and Medium C&I customers. Under this Plan, Duquesne Light purchases the account receivables, without recourse, associated with EGS sales of retail electric commodity service to Residential, Small C&I, and Medium C&I customers. Duquesne Light purchases the account receivables at a small discount and then reimburses EGSs for their customer billings regardless of whether it receives payment from customers.

#### **H. REQUESTS FOR WAIVERS**

79. As explained above, Duquesne Light is proposing to continue to change rates every six months for Residential & Lighting and Small C&I customers. Duquesne Light notes that the Commission’s regulation at 52 Pa. Code § 54.187 requiring quarterly rate changes was adopted prior to the passage of Act 129. Act 129 provides that default service providers shall offer residential and small business customers a default service rate that changes no more frequently than quarterly. 66 Pa. C.S. § 2807(e)(7). Therefore, Duquesne Light believes that its proposal for changes in rates on a semi-annual basis for Residential & Lighting and Small C&I customers complies with Act 129. However, Duquesne Light requests a waiver of 52 Pa. Code § 54.187 to allow semi-annual rate changes for Residential & Lighting customers and Small C&I customers to the extent deemed necessary by the Commission.

80. Section 69.1804 of the Commission’s DSP Policy Statement, 52 Pa. Code § 69.1804, provides that default service plans should be for two years, unless otherwise directed by the Commission. As explained previously, Duquesne Light proposes that the term of DSP X Program be for four years. As a Policy Statement, 52 Pa. Code § 69.1804 does not have the force of law, and no waiver is required. Nonetheless, for reasons explained above, the Company requests that the Commission approve a four-year period for DSP X.

81. Duquesne Light also requests additional waivers, if necessary, of the Commission's Orders or Regulations to allow Duquesne Light to implement its Default Service Plan as described herein and in the Testimony and Exhibits that accompany this filing.

**I. CUSTOMER NOTIFICATION**

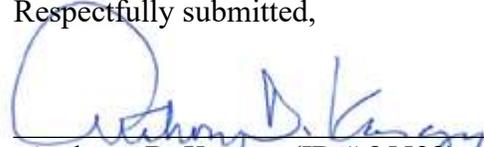
82. As indicated by the enclosed certificate of service, Duquesne Light has served a copy of this Petition upon all of the parties to Duquesne Light's most recent default service proceeding at Docket No. P-2020-3019522 and PJM. Duquesne Light is also providing notice of the filing and a web link to the filing to all registered EGSs in the Duquesne Light service area. In addition, the Company will provide a hard copy of the filing to any party upon request. Duquesne Light intends to notify its customers of new rates once approved by bill message or as otherwise directed by the Commission.

**J. CONCLUSION**

Duquesne Light's Default Service Plan is based on a proven, successful and evolving model that will provide reliable, reasonably priced default service supply to its customers, while supporting retail competition. The Plan meets and is consistent with Act 129, and should be approved.

WHEREFORE, for all of the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission approve the Default Service Plan as proposed in this Petition, approve the proposed tariff sheets set forth in the form of pro forma retail and EGS Coordination tariff supplements provided herein, grant the approvals for Duquesne Light Company to procure power as set forth herein, including, if needed, credit support from its parent, approve the Supply Master Agreement and related attachments for procuring power for default service customers and grant such other relief just and reasonable under the circumstances.

Respectfully submitted,



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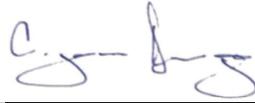
Date: April 19, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company : Docket No. P-2024-  
For Approval Of Default Service Plan :  
For The Period June 1, 2025 Through :  
May 31, 2029 :

**VERIFICATION**

I, C. James Davis, hereby state that the facts set forth above are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. 4904 (relating to unsworn falsification to authorities).



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C. James Davis  
Director – Rates, Energy Procurement, and  
Federal/RTO Affairs

Date: April 19, 2024

**DUQUESNE LIGHT STATEMENT NO. 1**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Of Duquesne Light Company            :**  
**For Approval Of Default Service Plan        :**           **Docket No. P-2024-\_\_\_\_\_**  
**For The Period June 1, 2025 Through        :**  
**May 31, 2029                                        :**

**DIRECT TESTIMONY OF  
C. JAMES DAVIS**

**Dated: April 19, 2024**

1 **I. INTRODUCTION**

2 **Q. Please state your full name, business affiliation and address.**

3 A. My name is C. James Davis. I am the Director – Rates, Energy Procurement, and  
4 Federal/RTO Affairs for Duquesne Light Company (“Duquesne Light” or the  
5 “Company”). My business address is 411 Seventh Avenue, Pittsburgh, PA 15219.

6

7 **Q. Please describe your professional and educational background.**

8 A. I graduated from St. Vincent College with a Bachelor of Arts degree in Computer Science  
9 in 1989 and Duquesne University with a Master of Business Administration in 1995. Prior  
10 to joining Duquesne Light, I had more than 24 years of diversified experience in the utility  
11 industry working for Allegheny Energy and FirstEnergy. I have held positions in Risk  
12 Management, Finance, Portfolio Management, Generation Dispatch, and Commodity  
13 Operations.

14

15 **Q. Please describe your current responsibilities as the Director of Rates, Energy  
16 Procurement and Federal/RTO Affairs.**

17 A. I am responsible for the oversight and direction of the Company’s Rates & Tariff Services  
18 Department, Supply Procurement and RTO Settlement activities, as well as Federal and  
19 RTO affairs. In this role, I am responsible for the planning, development and direction of  
20 Duquesne Light’s filing in this Default Service proceeding.

21

22 **Q. Have you previously testified before the Commission or other regulatory agencies?**

23

1 A. Yes, I testified in the 2016 Petition of Duquesne Light Company for Approval of a  
2 Distribution System Improvement Charge at Docket No. P-2016-2540046, in the  
3 Company’s Petition for a Default Service Plan for the period of June 1, 2017 through May  
4 31, 2021 at Docket No. P-2016-2543140, in the Company’s 2018 and 2021 base rate  
5 proceedings at Docket No. R-2018-3000124 and R-2021-3024750, in the Peoples Natural  
6 Gas 2018 base rate proceeding at Docket No. R-2018-3006818, and in the Company’s  
7 Petition for a Default Service Plan for the period of June 1, 2021 through May 31, 2025 at  
8 Docket No. P-2020-3019522. I am also testifying in the Company’s current base rate  
9 proceeding at Docket No. R-2024-3046523.

10

11 **Q. What is the purpose of your direct testimony?**

12 A. First, I introduce the Company’s witnesses who provide more detail about specific aspects  
13 of Duquesne Light’s plan for default service for the period from June 1, 2025 through  
14 May 31, 2029 (“Default Service Plan,” “DSP X,” or “Plan”). Second, I describe Duquesne  
15 Light’s default service obligations, and I explain how the Company currently satisfies those  
16 obligations under its ninth default service plan (“DSP IX”). Third, I provide an overview  
17 of Duquesne Light’s proposed DSP X Plan for default service. Fourth, I discuss the  
18 Company’s proposed Green Tariff. Fifth, I provide a status on the company’s Commission  
19 approved Solar Procurement Pilot. Finally, I discuss Duquesne Light’s other retail market  
20 initiatives, including the Standard Offer Customer Referral Program (“SOP”).

21

22 **Q. Please introduce the testimony of Duquesne Light’s other DSP X witnesses.**

23 A. In addition to my direct testimony, Duquesne Light is submitting the testimony of four  
24 other witnesses.

- 1 • In Duquesne Light Statement No. 2, John Peoples, Duquesne Light’s Manager of  
2 Energy Supply, discusses the power procurement methods and products to be used  
3 to supply default service for each customer class, including the Supplier Master  
4 Agreement and the Supplier Service Tariff to be used in these procurements. He  
5 also evaluates the consistency of the Plan’s procurement methods with certain  
6 requirements of Act 129.
- 7 • In Duquesne Light Statement No. 3, Scott G. Fisher, Partner at The NorthBridge  
8 Group, reviews the performance of the basic default service model used by  
9 Duquesne Light, and explains how the Company’s proposed Plan satisfies the  
10 requirements of Act 129 by incorporating a prudent mix of contracts designed to  
11 ensure least cost to customers over time, taking into account the benefits of price  
12 stability, and by including prudent steps necessary to obtain least cost generation  
13 supply.
- 14 • In Duquesne Light Statement No. 4, David B. Ogden, Duquesne Light’s Manager  
15 of Rates and Tariff Services, describes the proposed default service rates and  
16 changes to the associated Retail and EGS Coordination Tariffs. Mr. Ogden also  
17 describes the Company’s proposed Electric Vehicle Time-of-Use (“EV-TOU”)  
18 rates.
- 19 • In Duquesne Light Statement No. 5, Sarah J. Oleksak, Duquesne Light’s Senior  
20 Manager, Transportation Electrification, explains how the Company will  
21 implement the Company’s proposed Electric Vehicle Time-of-Use Pilot Program  
22 (“EV-TOU”).
- 23 •

1 **II. OVERVIEW OF DUQUESNE LIGHT’S DEFAULT SERVICE OBLIGATIONS**  
2 **AND CURRENT DSP IX PLAN**

3 **Q. Please describe Duquesne Light’s default service obligations.**

4 A. Duquesne Light is obligated to provide electric supply service to all customers within its  
5 service territory who do not select an electric generation supplier (“EGS”) or who return  
6 to default service after being served by an EGS that becomes unable or unwilling to serve.  
7 By law, Duquesne Light is required to file a plan with the Pennsylvania Public Utility  
8 Commission (the “Commission”) which sets forth how the Company will meet its default  
9 service obligations, including a strategy for procuring generation supply, a schedule for  
10 implementation, and a rate design to recover the Company’s reasonable costs.

11  
12 **Q. How does Duquesne Light currently meet its default service obligations?**

13 A. On April 20, 2020, Duquesne Light filed a petition with the Commission for approval of a  
14 default service program for the period from June 1, 2021 through May 31, 2025. On  
15 October 13, 2020, Duquesne Light filed a Joint Petition for Approval of Unopposed Partial  
16 Settlement with various parties (collectively the Joint Petitioners), expressing agreement  
17 on the petition. On January 14, 2021, the Commission entered an Order approving  
18 Duquesne Light’s default service plan as modified by the Joint Petition for Approval of  
19 Unopposed Partial Settlement. The EV-TOU Stipulation, the SOP Stipulation, and the  
20 CAP Shopping Stipulation were also approved, as modified, in the Order.. The resultant  
21 approved plan, which currently is in effect, is referred to as “DSP IX.”  
22 Pursuant to Public Utility Code, 66 Pa. C.S. §§ 2807(3.1)-(3.4), under DSP IX, Duquesne  
23 Light procures a “prudent mix” of contracts designed to obtain electric supply at the “least  
24 cost over time.” Under DSP IX, Duquesne Light procures default service supply separately  
25 for four different customer classes. The principal procurement features of DSP IX include

1 the use of fixed-price full requirements supply contracts for smaller customers, and  
2 procurement of supply for larger customers based on PJM Interconnection, LLC (“PJM”)  
3 hourly spot market prices. DSP IX also includes tailored contract lengths for each customer  
4 class. Solicitations for the full-requirements contracts occur within three months before  
5 the commencement of their delivery periods.

6  
7 **Q. Does Duquesne Light have other obligations under DSP IX?**

8 A. Yes. Consistent with its procurement obligations and its approved plan, Duquesne Light  
9 uses standardized documents and procedures approved by the Commission when  
10 conducting its default service supply procurements. In addition, in accordance with the  
11 Commission’s direction in its Retail Markets Investigation,<sup>1</sup> Duquesne Light has  
12 undertaken a wide range of initiatives to support retail competition.

13  
14 **Q. Has Duquesne Light satisfied its obligations?**

15 A. Yes. Duquesne Light has satisfied all of its obligations to date under DSP IX, including  
16 its fundamental obligation, as default service provider, to provide adequate and reliable  
17 default service to default service customers at least cost over time. In addition, Duquesne  
18 Light continues to provide its “Standard Offer” customer referral program in which default  
19 service residential and small C&I customers contacting Duquesne Light’s customer service  
20 center are given the option to select among a group of EGSs who have voluntarily chosen  
21 to offer customers a 12-month contract priced at 7% below Duquesne Light’s default  
22 service rate at the time of the offer.

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<sup>1</sup> *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Order entered February 15, 2013.

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**III. OVERVIEW OF DUQUESNE LIGHT’S PROPOSED DSP X PLAN**

**Q. What were Duquesne Light’s primary policy considerations when developing its proposed Default Service Plan?**

A. Duquesne Light developed its Plan to satisfy Act 129, which amended Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3), with respect to, among other things, power procurement for default service providers. In developing its Plan to satisfy Act 129, the Company was guided by the Second Default Service Rulemaking Order, which the Commission entered to provide guidance with respect to the interpretation of Act 129’s requirements.<sup>2</sup> In summary, in their testimony, Duquesne Light’s witnesses describe the Company’s proposed DSP X Plan and how it is aligned with legislative and regulatory requirements and associated policy considerations.

**Q. Please provide an overview of Duquesne Light’s DSP X Plan.**

A. The Default Service Plan is a comprehensive program under which Duquesne Light will provide default service to its customers from June 1, 2025 through May 31, 2029. Duquesne Light has grouped its default service customers into four primary customer classes, which are the same customer class groupings used in its currently effective default service plan: Residential & Lighting,<sup>3</sup> Small Commercial & Industrial (“Small C&I”),<sup>4</sup>

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<sup>2</sup> *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011) (“Second Default Service Rulemaking Order”).

<sup>3</sup> Residential customers are those served under rate schedules RS, RH and RA. Lighting customers are those served under rate schedules AL, SE, SM, SH, and PAL.

<sup>4</sup> Small C&I customers are those with average monthly metered demands less than 25 kW served under rate schedules GS/GM, GMH and UMS.

1 Medium Commercial & Industrial <200kW (“Medium C&I <200kW”),<sup>5</sup> and HPS-  
2 Eligible.<sup>6</sup> The Plan includes default service offerings tailored to the needs of each customer  
3 class, it complies with the requirements of Act 129, and it includes concrete steps to support  
4 retail competition. The Default Service Plan also builds upon the foundation established  
5 in previous Commission-approved plans, which have facilitated and supported the  
6 competitive retail market over a sustained period of time, while offering stable and  
7 reasonable rates for small customers who do not elect to receive service from an EGS.

8  
9 **Q. Please provide an overview of the proposed default service supply product portfolios,**  
10 **and the general methodology to set supply rates, for each of Duquesne Light’s**  
11 **customer classes under DSP X.**

12 A. In his direct testimony, Mr. Peoples provides a detailed description of the proposed mix of  
13 supply products, the procurement approach, and the schedule for implementation.  
14 Furthermore, Mr. Ogden’s direct testimony outlines the methodology to establish default  
15 service supply rates for each customer class. An overview of these aspects of the Plan is  
16 as follows:

- 17 • The HPS-Eligible customer class, consisting of Large C&I customers and Medium  
18 C&I  $\geq 200$ kW customers, will continue to be offered default service supply rates  
19 that are based on hourly spot market energy prices. Customers also will continue  
20 to be charged a pass through of PJM capacity and ancillary services costs as well  
21 as the administrative costs of providing hourly price service (“HPS”). The

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<sup>5</sup> Medium C&I <200kW customers are those served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 25 kW but less than 200kW.

<sup>6</sup> HPS-Eligible customers are those who are eligible for Rider No. 9 – Day-Ahead HPS. They include Medium C&I  $\geq 200$ kW customers (customers served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 200 kW) and Large C&I customers (customers served under rate schedules GL, GLH, L, and HVPS).

1 Company proposes to continue to procure the supply for this service through a  
2 competitive auction process.

3 • Medium C&I <200kW customers will continue to be offered default service supply  
4 rates that adjust quarterly based on fixed-price full requirements contracts.  
5 However, we are revising the procurement process to include tranches of six- and  
6 twelve-month duration as further described in Mr. People’s direct testimony.

7 • Small C&I customers will continue to be offered default service supply rates that  
8 adjust every six months based on fixed-price full requirements contracts with  
9 twelve-month and twenty-four-month, overlapping delivery periods. The contracts  
10 will be procured within three months before the commencement of their delivery  
11 periods. Default service supply for the Small C&I customers will be obtained  
12 through competitive auctions, with winning bidders selected on the basis of lowest  
13 price.

14 • Residential & Lighting customers will continue to be offered default service supply  
15 rates that adjust every six months based on fixed-price full requirements contracts  
16 with twelve-month and twenty-four-month, overlapping delivery periods. The  
17 contracts will be procured within three months before the commencement of their  
18 delivery periods. Default service supply for the Residential & Lighting customers  
19 will be obtained through competitive auctions, with winning bidders selected on  
20 the basis of lowest price.

21  
22 **Q. What changes is Duquesne Light proposing in DSP X for each customer class as**  
23 **compared to the Company’s existing plan in effect for DSP IX?**

24 A. The major changes are summarized below:

- 1           • **Medium C&I Procurement Schedule** – Duquesne Light is proposing to modify  
2           the Medium C&I procurement schedule as Mr. Peoples discusses further in his  
3           direct testimony.
- 4           • **EV-TOU Pilot Program** – Duquesne Light is continuing with an EV-TOU supply  
5           rate for Residential, Small C&I and Medium C&I <200kW customers,<sup>7</sup> on a pilot  
6           basis with some modifications to the peak, off-peak, and super off-peak time  
7           periods as well as an additional option for a residential EV only TOU supply rate  
8           vs the whole home option offered currently. Ms. Olexsak in her direct testimony  
9           discusses this program in greater detail, and Mr. Ogden describes in his direct  
10          testimony the process for determining the EV-TOU supply rates.
- 11          • **Green Tariff Pilot**– As I describe later in my testimony, Duquesne Light is  
12          proposing to offer a Green Tariff Pilot that is an opt-in program that affords  
13          customers the opportunity to have an additional seven percent of their generation  
14          supply supported by Pennsylvania carbon neutral resources.

15

16 **Q. Does Duquesne Light’s proposed DSP X include products with delivery periods that**  
17 **extend beyond May 31, 2029 (the end of the DSP X period)?**

18 A. Yes, some of the supply products for the Residential & Lighting and Small C&I customer  
19 classes extend beyond the DSP X period. As explained by Mr. Fisher in his direct  
20 testimony, this preserves the option for a fairly seamless continuation of the laddered  
21 procurement cycle as Duquesne Light transitions from DSP X to DSP XI. Mr. Fisher also

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<sup>7</sup> EV-TOU service under the Pilot Program will be offered to Residential, Small C&I, and Medium C&I <200kW customers eligible for Rider No. 8 who own or lease a plug-in battery electric vehicle or a plug-in hybrid electric vehicle (collectively “EV”) or offer charging infrastructure to employees or visitors. Customers eligible for Rider No. 9 – HPS will not be eligible for the EV-TOU Pilot Program. Unmetered accounts on Rider No. 8 also are not eligible for EV-TOU Pilot Program.

1 explains that these contracts also avoid subjecting Residential & Lighting and Small C&I  
2 customers to a “hard stop” with regard to their supply products at the end of the DSP X  
3 period, which could expose customers to magnified risks and rate instability. Furthermore,  
4 having contracts that extend beyond the default service period is consistent with the  
5 approach approved by the Commission in DSP VI, DSP VII, DSP VIII and DSP IX. It  
6 should be noted that the solicitations for these products are not scheduled until September  
7 2027, so there is a significant amount of time before new supply commitments extending  
8 beyond the DSP X period are made should legislative or regulatory developments require  
9 changes to the supply product mix.

10  
11 **Q. Is Duquesne Light proposing to use the same default service SMA for DSP X that it**  
12 **is using for DSP IX?**

13 A. As explained by Mr. Peoples in his direct testimony, the Company will continue to use the  
14 SMA template that was developed by the Procurement Collaboration Working Group, with  
15 minor revisions summarized by Mr. Peoples. The proposed Supply Master Agreement is  
16 attached to the direct testimony of Mr. Peoples.

17  
18 **Q. Does Duquesne Light’s DSP X proposal include a contingency plan in case a supply**  
19 **solicitation fails to attract a sufficient number of qualified bids, the Commission does**  
20 **not approve the submitted bids, or a winning bidder defaults on its obligations?**

21 A. Yes. Mr. Peoples describes the Company’s contingency plan in his direct testimony.

22  
23 **Q. How will Duquesne Light recover its default service supply costs?**

1 A. In his direct testimony, Mr. Ogden explains how all costs associated with default service  
2 supply procurement will be recovered.

3

4 **Q. What programs is Duquesne Light proposing to support retail market competition in**  
5 **DSP X?**

6 A. Duquesne Light is proposing several programs to support retail market competition:

7 • **Standard Offer Customer Referral Program (“SOP”).** Duquesne Light will  
8 continue to offer default service customers that contact the Company that they can  
9 receive their supply from participating EGSs at rates that will be 7% below the  
10 current Price to Compare (“PTC”). However, the Company believes that the  
11 Commission should revisit the SOP program given that over ten years has passed  
12 since its inception and Duquesne Light has experienced disruptions in the ability to  
13 offer SOP during a seven month period of elevated prices and price volatility.

14 • **Purchase of Receivables Plan.** Duquesne Light will continue its Purchase of  
15 Receivables (“POR”) plan, with the same rules and conditions to those in the  
16 current plan. Under this Plan, Duquesne Light purchases the accounts receivables,  
17 without recourse, associated with EGS sales of retail electric commodity service to  
18 Residential, Small C&I, and Medium C&I <200kW customers at a small discount  
19 and then reimburses EGSs for their customer billings regardless of whether  
20 payment is received by Duquesne Light from customers.

21 • **Bill Ready.** Duquesne Light will continue a Bill Ready program. The Bill Ready  
22 program will facilitate the EGS development of tailored products for customers.

23 In addition, as discussed by Mr. Fisher in his direct testimony, Duquesne Light’s Plan will  
24 support the competitive retail market in other ways, including by its use of competitive  
25 solicitations for fixed-price full requirements products. As Mr. Fisher explains, fixed-price  
26 full requirements default service supply products help to provide a more transparent price-  
27 to-compare benchmark against which customers can compare competing retail offers.  
28 Furthermore, the competitive solicitations for the fixed-price full requirements supply  
29 products ensure that EGSs will compete against market-based default service rates.

30

31 **IV. Green Tariff Pilot Program**

1 **Q. Please describe Duquesne Light’s proposed Green Tariff pilot program.**

2 A. Duquesne Light is proposing a Green Tariff for residential customers who remain on  
3 default service and affirmatively elect to increase their carbon-free electricity (“CFE”)  
4 supply above the requirements under the Pennsylvania Alternative Energy Portfolio  
5 Standards (“AEPS”). Twenty-five percent (25%) of a Green Tariff customer’s annual  
6 consumption would be supplied by alternative energy and/or CFE. Duquesne Light is  
7 proposing this pilot program partly in response to a customer survey conducted by the  
8 Company that indicated that thirty-six percent (36%) of residential customers were  
9 interested in procuring more clean energy. Customers could begin to enroll in the pilot  
10 program starting in DSP X.

11

12 **Q. What are the objectives of the Green Tariff?**

13 A. The Green Tariff is designed to provide a voluntary option for default service customers to  
14 increase the portion of their electricity supply from Pennsylvania clean energy resources.  
15 The Company is proposing a structure that provides this voluntary option to customers  
16 while meeting several other important objectives, including:

- 17 • Mitigate the impact on electricity suppliers participating in default service auctions,
- 18 • Expand market opportunities for EGSs and/or third parties to offer green product  
19 services to residential customers,
- 20 • Minimize the impact on non-Green Tariff participants, and
- 21 • Provide a customer-friendly design to increase the likelihood of success of the pilot  
22 program

1 The Company’s proposed pilot program is intended to inform how default service  
2 customers and suppliers could further support on a voluntary basis the expansion of clean  
3 energy supply within its service area.  
4

5 **Q. Who would be eligible to enroll in the Green Tariff?**

6 A. Residential customers who receive Duquesne Light’s default service would be eligible to  
7 participate in the pilot program up to a cap of 5,000 customers. Customers could elect to  
8 enroll in the Green Tariff on a first-come, first-served basis. CAP customers are not  
9 eligible for the program.  
10

11 **Q. What supply would qualify as CFE in the Green Tariff?**

12 A. Duquesne Light would require the provider of this service to procure and retire energy  
13 attribute certificates (“EAC”) associated with carbon-free generation located within  
14 Pennsylvania. For purposes of the Green Tariff, the Company would follow the U.S.  
15 government’s definition of CFE in its implementing instructions for federal electricity  
16 procurement, where CFE is electrical energy produced from resources that generate no  
17 carbon emissions. CFE could include marine energy, solar, wind, hydrokinetic (including  
18 tidal, wave, current, and thermal), geothermal, hydroelectric, nuclear, renewably sourced  
19 hydrogen, and electrical energy generation from fossil resources to the extent there is active  
20 capture and storage of carbon emissions that meets the EPA’s requirements.  
21

22 **Q. How would the Green Tariff impact the obligations of Duquesne Light’s default**  
23 **service suppliers?**

1 A. The default service suppliers' obligations, including their Pennsylvania AEPS  
2 requirements, would remain the same regardless of the extent to which default service  
3 customers elect to enroll in the Green Tariff. From a default service supplier's standpoint,  
4 Green Tariff customers would be treated like other default service customers.

5

6 **Q. How would the Green Tariff interact with Pennsylvania AEPS?**

7 A. The Green Tariff would be in addition to or "on top of" the AEPS. An additional seven  
8 percent (7%) of the participating Green Tariff customer's annual consumption would be  
9 matched with CFE sourced within Pennsylvania. This would be in addition to the  
10 Pennsylvania AEPS requirements of eight percent (8%) for Tier I resources and ten percent  
11 (10%) for Tier II resources that are provided by Duquesne Light's wholesale default service  
12 suppliers. As a result, twenty-five percent (25%) of a Green Tariff customer's annual  
13 consumption would be subject to either the current AEPS (18%) requirements or the  
14 supplemental (7%) CFE purchases.

15

16 **Q. Would there be any special restrictions on customer enrollment in and exit from the**  
17 **Green Tariff?**

18 A. No, customers could enroll in the Green Tariff subject to the enrollment cap. Customers  
19 could exit the Green Tariff and receive regular default service or switch to an EGS at any  
20 time in accordance with current switching rules. The Company wants to encourage  
21 customers to participate in this pilot program and provide flexibility for customers to enroll  
22 and exit as desired.

23

1 **Q. How would the Green Tariff expand market opportunities for EGSs and/or third**  
2 **parties to offer green product services to residential customers?**

3 A. Duquesne Light will auction the right to supply the EACs under the Green Tariff, and EGSs  
4 and other third parties would be allowed to bid for that right, subject to applicable  
5 qualification requirements. EGSs already can market supply services, including green  
6 products, directly to retail customers, yet many residential customers remain on default  
7 service. The Green Tariff will allow EGSs and/or third-party suppliers to offer green  
8 services to default service customers who may be reluctant to leave utility default service  
9 for whatever reason. EGSs will still be able to separately market combined supply and  
10 clean energy attributes directly to customers. The Company's Green Tariff is designed to  
11 allow EGSs and/or third-party suppliers and aggregators an opportunity to reach customers  
12 that they may not otherwise be able to serve.

13

14 **Q. How will the Green Tariff rate be determined?**

15 A. Electricity supply costs will continue to be based on Duquesne Light's default service  
16 auction process. In addition, Duquesne Light will conduct an auction annually for each  
17 DSP planning year where qualified EGSs and/or third-party suppliers will bid a fixed cost  
18 per kWh to procure EACs on behalf of customers who enroll in the Green Tariff. The bid  
19 price would reflect the costs and risks associated with providing this service. The winning  
20 Green Tariff provider of EACs will be determined solely on price and will be paid the per  
21 unit price that they bid.

22

23 **Q. How often will the Green Tariff rate change?**

1 A. The cost of additional EACs required under the Green Tariff will be fixed on a per kWh  
2 basis for each DSP planning year. Rate changes for the other electricity supply costs will  
3 match the rate changes for all residential default service customers.  
4

5 **Q. Will the winning provider of EACs be identified on default service customer bills who**  
6 **participate in the Green Tariff?**

7 A. Yes, Duquesne Light will list the name of the provider on customer bills who participate  
8 in the Green Tariff.  
9

10 **Q. How will the costs of the Green Tariff be recovered?**

11 A. The EAC costs of the Green Tariff, a non-basic service, will be recovered from  
12 participating Green Tariff customers, while administrative costs associated with the Green  
13 Tariff will be recovered from all default service customers. Mr. Ogden describes the cost  
14 recovery mechanism of the EAC's as well as the administrative costs associated with the  
15 Green Tariff in his direct testimony.  
16

17 **Q. What does Duquesne Light seek to learn from this pilot?**

18 A. Duquesne Light seeks to learn the extent to which residential default service customers are  
19 willing to affirmatively opt-in to a service option that is potentially supplied to a higher  
20 degree by clean energy resources. The Company also seeks to learn the extent to which  
21 EGSs and/or third-party providers are willing to participate in an auction process to provide  
22 EACs at a fixed price on an annual basis. Finally, Duquesne Light wants to better  
23 understand the costs of procuring additional clean energy supply sourced within

1 Pennsylvania and whether such clean energy supply could be offered on a voluntary basis  
2 to customers who remain on default service for whatever reason.

3  
4 **V. STATUS OF THE COMPANY'S COMMISSION APPROVED SOLAR**  
5 **PROCUREMENT PLAN UNDER DSP IX**

6 **Q. Please provide a status of the Company's solar procurement plan approved in DSP**  
7 **IX.**

8 A. The Company's held its initial solicitation for a solar purchase power agreement ("PPA")  
9 on December 6, 2021. The Company and the winner of the solicitation entered into  
10 negotiations of final terms of the PPA. The Company subsequently filed a Petition at  
11 Docket No. P-2020-3019522 on April 1, 2022, seeking approval of the PPA and received  
12 an order accepting the PPA on May 20, 2022. However, after receiving the order, the  
13 developer notified the Company that it was having difficulty obtaining surface mineral  
14 rights. The Company and the developer, after many attempts to resolve the surface mineral  
15 rights issue mutually agreed to terminate the PPA. The Company notified the Commission  
16 of the termination on June 23, 2023. On September 6, 2023, the Company held a second  
17 solicitation for a solar PPA. A developer was recommended by the independent auction  
18 monitor and final PPA negotiations are ongoing with the new developer. The Company  
19 expects to file a Petition seeking approval of the solar PPA before the conclusion of DSP  
20 IX. In the event that the Company is not able to execute a contract prior to the expiration  
21 of the DSP IX plan, the Company requests that the Commission's approval of the Solar  
22 PPA in the DSP IX proceeding extend to the DSP X program.

23  
24 **VI. STANDARD OFFER PROGRAM**

1 **Q. Please provide an overview of the Company’s Standard Offer Program**

2 A. The Company’s SOP was initially implemented as part of its Default Service Plan VI. The  
3 SOP targets residential and small C&I customers who are not served by an Electric  
4 Generation Supplier (“EGS”) and who contact the Company with four types of calls.  
5 Specifically, customers who contact the Company: 1) to initiate or move service, 2) to  
6 discuss choice questions, 3) to resolve high bill concerns, or 4) to inquire about the SOP,  
7 are provided information regarding participation in the Company’s SOP. After the  
8 customer’s specific inquiry is resolved, Duquesne Light’s customer service representative  
9 (“CSR”) offers the customer the opportunity to participate in the SOP Program. In the  
10 January 14,2021 order, The Company was granted approval to outsource the administration  
11 of the SOP; aligning administration of the program with other EDCs in Pennsylvania. The  
12 Company developed customer education scripts consistent with the practice of  
13 Pennsylvania’s EDCs that utilize third party SOP administrators, Allconnect. The  
14 Company agreed to monitor Allconnect’s adherence to the script to ensure compliance and  
15 to provide a report at the midpoint of DSP IX<sup>8</sup>. Customers who enroll with an EGS through  
16 SOP have the option of choosing a fixed price 7% below the Company’s then-effective  
17 price to compare (“PTC”) for a period of twelve months. Customers can leave the SOP at  
18 any time during these twelve months without penalty.

19  
20 **Q. Please describe the results of the SOP in DSP IX.**

21 A. The Company’s current DSP IX began June 1, 2021. From that date through January 31,  
22 2024, the Company had 7,462 residential referrals and 6,751 residential enrollments, for a

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<sup>8</sup>Default Service Plan IX Standard Offer Program Call Monitoring Report was filed with the PA PUC at Docket No. P-2020-3019522, pursuant to the Joint Stipulation of Duquesne Light Company, The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and The Office of Consumer Advocate, approved by the PA PUC, by Order entered January 14, 2021 at Docket No. P-2020-3019522.

1 90% referral-to-enrollment rate. The number of EGSs participating in the SOP has  
2 fluctuated somewhat during this period, with 0 to 8 EGSs participating in the SOP for the  
3 residential class in any given month. The Company's SOP for small commercial customers  
4 has seen a lack of customer participation. From June 1, 2021, through January 31, 2024.  
5 In 2024, the Company had zero small commercial referrals and zero small commercial  
6 enrollments.

7  
8 **Q. How is the SOP administered?**

9 A. The Company uses Allconnect, a third-party administrator, to offer the SOP.

10  
11 **Q. What are the Company's costs of administering the SOP and how are costs  
12 recovered?**

13  
14 A. The Company does not incur costs for administration of the SOP. The Company is  
15 invoiced by the third-party vendor at a cost of \$30 per enrollment and then passes through  
16 its costs to participating suppliers at that same rate of \$30 per enrollment.

17  
18 **Q. How does the Company propose to modify its SOP in DSP X?**

19 A. The Company does not propose modifications to the current program.

20  
21 **Q. Does this conclude your direct testimony?**

22 A. Yes, it does.

**DUQUESNE LIGHT STATEMENT NO. 2**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Of Duquesne Light Company  
For Approval Of Default Service Plan  
For The Period June 1, 2025 Through  
May 31, 2029**

**:  
:  
:  
:**

**Docket No. P-2024-\_\_\_\_\_**

**TESTIMONY OF  
JOHN A. PEOPLES**

**Dated: April 19, 2024**

1 **I. Introduction**

2 **Q. Please state your full name, business affiliation and address.**

3 A. My name is John A. Peoples. I am the Manager of Energy Procurements and Settlements  
4 at Duquesne Light Company (“Duquesne Light” or “Company”). My business address is  
5 411 7th Avenue, Pittsburgh PA 15219.

6  
7 **Q. Please describe your professional and educational background.**

8 A. I received a Bachelor of Arts and Science with a major in Accounting and a major in  
9 Business from Washington and Jefferson College in 1992. I completed a Master of Business  
10 Administration from Duquesne University with a concentration in Marketing in 1994. I  
11 have been in the energy business since 1994.

12 Prior to joining the Company I held management positions with unregulated national energy  
13 suppliers. I took a position at Consolidated Natural Gas (CNG) where I managed the CNG  
14 default customer portfolio for their various utilities CNG default customer portfolio for their  
15 various utilities. I have worked for Detroit Edison, Green Mountain Energy, Strategic  
16 Energy, and Direct Energy Business. While at these companies I had responsibilities for  
17 managing a portfolio of energy customers on a physical and financial basis.

18 I began my career at the Company in 2014 as the Supervisor of Energy Supply. Over the  
19 last ten plus years, I have held supervisory and managerial roles regarding the procurement  
20 and management of default supply for the Company. I have been responsible for managing  
21 Duquesne Light’s default service power portfolio since April 2015, which was a year into  
22 the Company’s seventh default service plan (“DSP VII”). I provided testimony and managed

1 the Company's eighth and ninth default service plans ("DSP VIII") & ("DSP IX"). I have  
2 organized the competitive solicitations for default procurement and have performed  
3 subsequent tasks related to the execution of the default service supply contracts with the  
4 winning suppliers.

5  
6 **Q: Please describe your current responsibilities.**

7 A. My current role is Manager of Procurements and Settlements, I am responsible for  
8 overseeing the Company's Default Service Plan and the auctions that procure fixed price /  
9 full requirement power for the Company's default service customers. In addition, it is my  
10 responsibility to validate and settle Duquesne Light accounts against PJM power  
11 submissions. I also am responsible for voting responsibilities at the Company at PJM.

12  
13 **Q. Have you previously testified before the Pennsylvania Public Utility Commission?**

14 A. Yes. I have testified in the Company's Default Service Plan ("DSP VIII") at Docket No. P-  
15 2016-2543140 and the Company's Default Service Plan ("DSP IX") at Docket No. P-2020-  
16 3019522.

17  
18 **Q. What is the purpose of your Direct Testimony?**

19 A. The purpose of my testimony is to address the following items regarding the Company's  
20 proposed tenth default service plan ("DSP X"):

- 1 1. Describe the proposed default service supply procurement plan for Residential and  
2 Lighting, Small Commercial and Industrial (“C&I”), Medium C&I, and Large C&I  
3 customers obtained through competitive auctions.  
4 2. Describe the changes to the default service supply procurement plan for the Company’s  
5 Medium C&I customers.

6

7 **Q. Are you sponsoring any exhibits as part of your Direct Testimony?**

8 A. Yes, I am sponsoring three exhibits.

9 **Exhibit JP-1** Overview of Supply Products and Auction Schedule by  
10 Procurement Class

11 **Exhibit JP-2** Number of Load Tranches and Supplier Load Caps

12 **Exhibit JP-3** Supplier Master Agreement

13

14 **Q. Please explain how these exhibits were prepared.**

15 A. All of the above referenced exhibits were prepared by me or under my supervision.

16

17 **Q. How is your testimony organized?**

18 A. Section I is an introduction. Section II provides an overview of the Plan with regard to its  
19 power procurement methods and supply product portfolios. Section III includes a review of  
20 how the Plan satisfies certain provisions of Act 129. Section IV discusses the Supplier  
21 Master Agreement. Section V discusses the status of DSP IX approved Solar Procurement  
22 in a PPA for Default Supply customers.

23

1           **II. OVERVIEW OF DUQUESNE LIGHT’S DSP X PROCUREMENT PLAN**

2   **Q.     Please summarize Duquesne Light’s proposed supply procurement plan for default**  
3           **service customers.**

4   A.     The DSP X procurement plan provides for 100% of default service power supply needs  
5           during the 48-month period from June 1, 2025, through May 31, 2029. As in previous DSP  
6           plans, portfolios of supply products will be separately procured for each of four different  
7           customer classes: Residential & Lighting, Small Commercial & Industrial (“Small C&I”),  
8           Medium Commercial & Industrial <200kW (“Medium C&I <200kW”), and hourly price  
9           service eligible (“HPS-Eligible”). Default service supply for each of the customer classes  
10          will be procured through competitive solicitations for full requirements, load-following  
11          products. For the Residential & Lighting, Small C&I, and Medium C&I <200kW classes,  
12          the pricing of the products will be fixed on a dollars per megawatt-hour basis. The pricing  
13          of the products for the HPS-Eligible class will be based on day-ahead hourly market prices.  
14          A depiction of the procurement products and the timeline for procurement is shown in  
15          Exhibit JP-1, and Figure 1 below summarizes the different classes’ supply product  
16          portfolios.

1

### Exhibit JP- 1: Overview of Supply Portfolio by Customer Class

| <b>Residential &amp; Lighting</b>   | <b>Small C&amp;I<br/>(<math>&lt; 25</math> kW)</b>  | <b>Medium C&amp;I<br/><math>&lt; 200</math> kW<br/>(<math>\geq 25</math> kW and <math>&lt; 200</math> kW)<sup>[1]</sup></b>  | <b>HPS-Eligible<br/>(<math>\geq 200</math> kW)<sup>[2]</sup></b>   |
|---|---|--|--|
| <ul style="list-style-type: none"> <li>• Six-month fixed default service supply rates               <ul style="list-style-type: none"> <li>• Continue procurement of 50% of supply from one-year and 50% of supply from two-year full requirements supply products with overlapping delivery periods.</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Six-month fixed default service supply rates               <ul style="list-style-type: none"> <li>• Continue procurement of 50% of supply from one-year and 50% of supply from two-year full requirements supply products with overlapping delivery periods.</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Three-month fixed default service supply rates procured every six months.               <ul style="list-style-type: none"> <li>• Continue procurement of 100% of supply from three-month full requirements supply products with delivery periods that will overlap.</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Hourly price default service supply rates</li> <li>• Continue to procure supply through an auction every twelve months within three months of start of delivery.</li> <li>• Winning suppliers are paid their fixed bid price plus their share of the associated (day-ahead hourly) energy, capacity, and ancillary service charges billed pursuant to Rider No. 9.</li> </ul> |
| • Approximately 32% of total system load  | Approximately 7% of total system load   | • Approximately 12% of total system load   | • Approximately 49% of total system load   |

2

3

4

<sup>[1]</sup> Duquesne Light lowered the threshold for customers who are not offered default service rates based on day-ahead hourly market prices from  $< 300$  kW to  $< 200$  kW on June 1, 2019.

5

<sup>[2]</sup> Duquesne Light lowered the threshold for customers who are offered default service rates based on day-ahead hourly market prices from  $\geq 300$  kW to  $\geq 200$  kW on June 1, 2019.

6

7

8

9

10

11

12

1 **Residential & Lighting and Small C&I**

2 **Q. Please describe Duquesne Light’s proposed default supply procurement plan**  
3 **for Residential & Lighting and Small C&I customers.**

4 A. DSP X will continue the basic procurement strategy for the Residential & Lighting and  
5 Small C&I classes that was established in DSP VIII and DSP IX. Specifically, the supply  
6 portfolios for these customer classes will consist of a combination of twelve-month and  
7 twenty-four-month products, with delivery periods overlapping on a semiannual basis.  
8 Accordingly, the default service rates for these classes will change twice annually, once on  
9 June 1st and once on December 1st Residential & Lighting default service supply will be  
10 split into 48 equal tranches, each representing approximately 2.08333% of the total  
11 Residential & Lighting class default service load in each hour. The Small C&I default  
12 service supply will be split into eight tranches consisting of twelve-month and twenty-four-  
13 month products, each representing 12.5% of the total Small C&I default service load in each  
14 hour. These products’ delivery periods will also overlap on a semiannual basis.

15  
16 **Q Are there supply portfolio changes that Duquesne Light is proposing for Residential &**  
17 **Lighting and Small C&I customers in DSP X as compared to its existing DSP IX Plan?**

18 A. No.

19

20

21

22

1 **Q. Why is the proposed procurement plan for Small C&I customers the same as for**  
2 **Residential & Lighting customers?**

3 A. As in DSP VIII and DSP IX, the Company’s proposed procurement plan for Small C&I  
4 customers is the same for Residential & Lighting customers because both classes have  
5 somewhat similar levels of customer switching and market sophistication. Therefore, it is  
6 reasonable to implement the same procurement approach for both classes. However, the  
7 supply product portfolios for these two classes are kept separate to safeguard against  
8 unnecessary cost shifting between customers. To increase bidder participation in the  
9 solicitations, the supply solicitations for these customer classes will be conducted  
10 simultaneously. This also allows for costs to be efficiently managed.

11  
12 **Q. Mr. Peoples, Duquesne Light’s Commission-approved DSP IX Plan included supply**  
13 **products for Residential & Lighting and Small C&I customers with delivery periods**  
14 **that extend into the DSP X period (sometimes referred to as “overhang” products). In**  
15 **its DSP X Plan, is the Company proposing any overhang products with delivery periods**  
16 **that extend beyond the DSP X period?**

17 A. Yes. Like the previous four Commission-approved default service plans, DSP X includes  
18 products that will continue or overhang into the next default service period for Residential  
19 & Lighting and Small C&I customers that will provide price stability benefits to these small  
20 customers. These products will avoid subjecting these customers to a “hard stop” with  
21 regard to their supply products at the end of the DSP X period. By so doing, the Company  
22 will avoid the need to replace all of the default service supply for these customer classes in  
23 a short period of time at the end of the DSP X period, a situation which could expose

1 customers to magnified risks and rate instability. Furthermore, the Company's Plan to  
2 include some overhang products involves considerable procurement flexibility, as the first  
3 solicitation for any overhang products is not scheduled until September 2027, so there is a  
4 significant amount of time before new supply commitments extending beyond the DSP X  
5 period are made, should changes need to be made to the supply product mix due to legislative  
6 or regulatory mandates. In the meantime, these solicitations remain scheduled because they  
7 allow for the option for a fairly seamless continuation of the laddered procurement cycle as  
8 Duquesne Light transitions from DSP X to DSP XI.

9  
10 **Q. Does the Company's procurement plan include supplier load caps for Residential &**  
11 **Lighting and Small C&I default service supply?**

12 A. Yes, the Company proposes to maintain a supplier load cap approved by the Commission  
13 for DSP VIII and DSP IX. Specifically, a given supplier in a given auction cannot be  
14 awarded more than 50% of the Residential & Lighting and Small C&I supply tranches  
15 solicited on that auction date, rounded up to the nearest integer number of tranches. See  
16 Exhibit JP-2.

17  
18 **Medium C&I <200kW**

19 **Q. Are there any modifications to the Default Service Plan for the next 4 years.**

20 A. Yes. The changes are explained in the next question. Mr. Fisher explains the rationale  
21 for this change in his testimony.

1 **Q. Please describe Duquesne Light’s proposed default supply procurement plan for**  
2 **Medium C&I <200kW customers.**

3 A. Duquesne Light’s proposal to switch from the current approach of soliciting three-month  
4 FPFRR products in quarterly solicitations to a new approach for the Medium C&I <200kW  
5 customer class. In the new approach, all of the default service supply for the Medium C&I  
6 <200kW customer class still will be procured in the form of FPFRR products, but all of the  
7 supply will be procured in solicitations held semi-annually, at the same times as the supply  
8 solicitations for the Residential & Lighting and Small C&I customer classes. Consistent  
9 with the procurement approach for the Residential & Lighting and Small C&I customer  
10 classes, the delivery period for Medium C&I <200kW customer class default service supply  
11 products solicited in the first scheduled solicitation of a given calendar year will begin on  
12 June 1 of that calendar year, and the delivery period for Medium C&I <200kW customer  
13 class default service supply products solicited in the second scheduled solicitation of a given  
14 calendar year will begin on December 1 of that calendar year.

15 Half of the default service supply for the Medium C&I <200kW customer class will be  
16 procured in the form of 12-month FPFRR products and half will be procured in the form of  
17 six-month FPFRR products. For the half of the supply that is procured in the form of 12-  
18 month FPFRR products, 50% of that supply (i.e., 25% of the total supply for the customer  
19 class) will be procured in each solicitation; therefore, the 12-month FPFRR product delivery  
20 periods will overlap on a semiannual basis. For the half of the supply that is procured in the  
21 form of six-month FPFRR products, 100% of that supply (i.e., 50% of the total supply for the  
22 customer class) will be procured in each solicitation; therefore, there will be no overlap of  
23 the six-month FPFRR supply products with three-month pricing across the solicitations.

1 Bidders for the six-month FPFR products will submit two prices for each tranche on which  
2 they bid. The first price will be for the first three months of the delivery period, and the  
3 second price will be for the second three months of the delivery period. Bids will then be  
4 selected based on lowest load-weighted average price, as they are for all FPFR  
5 products. Predetermined load factors will be applied to bidders' two bid prices for a given  
6 six-month product to determine a combined price for bid evaluation. Winning bidders will  
7 be paid their actual bid prices distinguished by the first and second three-month periods.

8  
9 **Q. Does the Company's procurement plan include supplier load caps for Medium C&I**  
10 **<200kW default service supply?**

11 A. No. The Company will continue the practice approved by the Commission for DSP IX of  
12 not imposing a supplier load cap for the Medium C&I <200kW tranches. Since the delivery  
13 periods of the default service supply products for Medium C&I <200kW customers are only  
14 three months, the potential impact of a supplier default is reduced, so there is a reduced need  
15 for load caps to guard against the exposure resulting from a large supplier defaulting on its  
16 obligation.

17  
18 **HPS-Eligible**

19 **Q. Please describe the Company's proposed default service supply procurement plan for**  
20 **HPS-Eligible customers.**

21 A. The HPS-Eligible customer class includes non-residential customers with average monthly  
22 metered demands greater than or equal to 200 kW. HPS-Eligible customers will continue

1 to be offered default service rates based on day-ahead hourly PJM energy market prices.  
2 Customers also will continue to be charged a pass through of PJM capacity and ancillary  
3 services costs as well as the administrative costs of providing hourly price service.  
4

5 **Q. Is Duquesne Light proposing any changes with respect to its HPS-Eligible customer**  
6 **default service plan?**

7 A. No. This plan will maintain the DSP IX plan for the HPS-Eligible default service product.  
8

9 **Q. Does the Company's procurement plan include supplier load caps for HPS-Eligible**  
10 **default service supply?**

11 A. No. The Company will continue the practice approved by the Commission for DSP IX of  
12 not imposing a supplier load cap for the HPS-Eligible tranches. Since the default service  
13 supply products for HPS-Eligible customers are based on day-ahead hourly market prices,  
14 the potential impact of a supplier default is reduced, so there is a reduced need for load caps  
15 to guard against the exposure resulting from a large supplier defaulting on its obligation.  
16

17 **Solicitations**

18 **Q. Is Duquesne Light proposing to engage a third-party to assist in the auction processes**  
19 **to obtain supply for the HPS-Eligible, Medium C&I <200kW, Small C&I, and**  
20 **Residential & Lighting customer classes?**

21 A. Yes. Consistent with past practices, Duquesne Light proposes to engage an independent  
22 third party to monitor and conduct the competitive solicitations, including qualifying

1 bidders, conducting bidder information sessions, receiving, and evaluating all bids,  
2 determining winning bidders, and reporting to the Commission. This will help ensure the  
3 bid process is fair and independently monitored, and that all information is provided to  
4 bidders in a non-discriminatory fashion. In DSP X, the independent evaluator will continue  
5 to assist in the auction process for all customer classes.  
6

7 **Q Does Duquesne Light have a contingency plan to obtain supply for the HPS-Eligible,**  
8 **Medium C&I <200kW, Small C&I, and Residential & Lighting customer classes?**

9 A. Yes. In the event the Company receives bids for less than all tranches, the Commission does  
10 not approve the results for all tranches, or a supplier defaults, the Company will execute the  
11 emergency contingency plan.

12 The Company may ask other DS Suppliers whether they wish to assume all or part of the  
13 delivery obligations on the same terms and price already established, but any DS Supplier  
14 shall not be obligated to assume any such step-up requests. Any agreement to make  
15 additional supply available shall be termed a “Step-Up,” and is subject to compliance with  
16 the creditworthiness provisions of Article 6 of this Agreement and the DS Supplier’s load  
17 cap as per the Company’s approved default service procurement plan. If multiple wholesale  
18 suppliers are willing to Step-Up, then the Auction Manager would allocate a pro-rata share  
19 of the unsubscribed tranche(s) to each supplier based upon the percentage of load that each  
20 supplier won in the initial auction.

21 If the Wholesale supplier(s) are unwilling to “Step-Up” and fill the Unsubscribed Tranche(s)  
22 a separate procurement auction will be conducted by the Company’s independent third-party

1 Auction Manager. The purpose of this auction would be to solicit Wholesale suppliers and  
2 procure the supply deficiency.

3 If these two options fail, the Company will procure default supply to fill the Unsubscribed  
4 Tranche(s) through purchases in the PJM spot markets until such time that a different  
5 contingency plan is approved by the Commission. The Company will submit to the  
6 Commission within fifteen (15) days after any such occurrence an emergency plan to handle  
7 any default service shortfall. All costs associated with implementing the contingency plan  
8 will be included as part of the DSS described in the section below, "Calculation of Rate."

9  
10 **Q Does Duquesne Light manage the PLC and NSPL values for some HPS-Eligible,**  
11 **Medium C&I <200kW, Small C&I, and Residential & Lighting customer classes by**  
12 **using monthly summary usage data?**

13 A. Duquesne Light uses monthly summary data to determine the PLCs/NSPL values for some  
14 accounts when interval usage data is unavailable or when monthly summary data is more  
15 practical to use. The cost and impact on IT systems to process interval usage data for every  
16 Duquesne Light customer would be significant. The Company strives to use interval usage  
17 data for all commercial and industrial customers. In order to implement a change to the  
18 Company's system to accommodate more interval usage data for a broader group, to include  
19 all residential customers, the Company would need to complete further analysis.

1 **III. THE DEFAULT SERVICE PLAN SATISFIES ACT 129 REQUIREMENTS**

2  
3 **Q. Mr. Peoples, have you reviewed Act 129’s provisions regarding default service**  
4 **procurement?**

5 A. Yes, I have. The Act amended Section 2807(e)(3) of the Public Utility Code (66 Pa. C.S.  
6 §2807(e)(3)) by adding requirements to be applied to default service procurement. These  
7 provisions include the use of “competitive procurement processes” to obtain a “prudent mix”  
8 of contracts that is designed to ensure “adequate and reliable service” at the “least cost to  
9 customers over time.” In approving a default service provider’s plan, the Commission is  
10 required to make specific findings that “the default service provider’s plan includes prudent  
11 steps necessary to negotiate favorable generation supply contracts... [and] includes prudent  
12 steps necessary to obtain least cost generation supply contracts on a long-term, short-term  
13 and spot market basis.” The Act also specifies that the Commission shall make a finding  
14 that “neither the default service provider nor its affiliated interest has withheld from the  
15 market any generation supply in a manner that violates federal law.” The Act also gives the  
16 default service provider the right to recover on a full and current basis all reasonable costs  
17 incurred under a Commission-approved competitive procurement plan.

18  
19 **Q Do you believe that Duquesne Light’s proposed DSP X incorporates a prudent mix of**  
20 **contracts, and includes prudent steps necessary to obtain least cost generation supply**  
21 **contracts, as required by Section 2807(e)(3.4) and Section 2807(e)(3.7) of the Act?**

22 A. Yes, in his direct testimony, Duquesne Light witness Mr. Fisher explains that DSP X  
23 satisfies these requirements.

1 **IV. SUPPLIER MASTER AGREEMENT**

2 **Q. Is Duquesne Light proposing to use the same default service SMA for DSP X that it is**  
3 **using for DSP IX?**

4 A. The Company will continue to use the SMA template that was developed by the Procurement  
5 Collaboration Working Group. There have been minor clarifications made to the SMA  
6 which are identified in a redline version of the SMA.

7

8 **Q How is the SMA structured?**

9 A. The main body of the SMA consists of a uniform template. Individual EDCs, such as  
10 Duquesne Light, specify unique requirements associated with their default service supply in  
11 appendices to the SMA. Such requirements relate to supply product term length and size,  
12 credit ratings and unsecured credit thresholds, mark-to-market calculations, delivery points,  
13 responsibility for various PJM line-item charges, and AEPS compliance.

14

15 **Q. Will wholesale suppliers be allowed to propose modifications to the SMA once it is**  
16 **approved?**

17 A. No, they will not. Each supplier will have the same rights and obligations when supplying  
18 default service load. Using an identical SMA across all suppliers allows for a competitive  
19 bidding process in which winning suppliers are determined solely based on lowest price.

20

21 **Q. Does this conclude your testimony?**

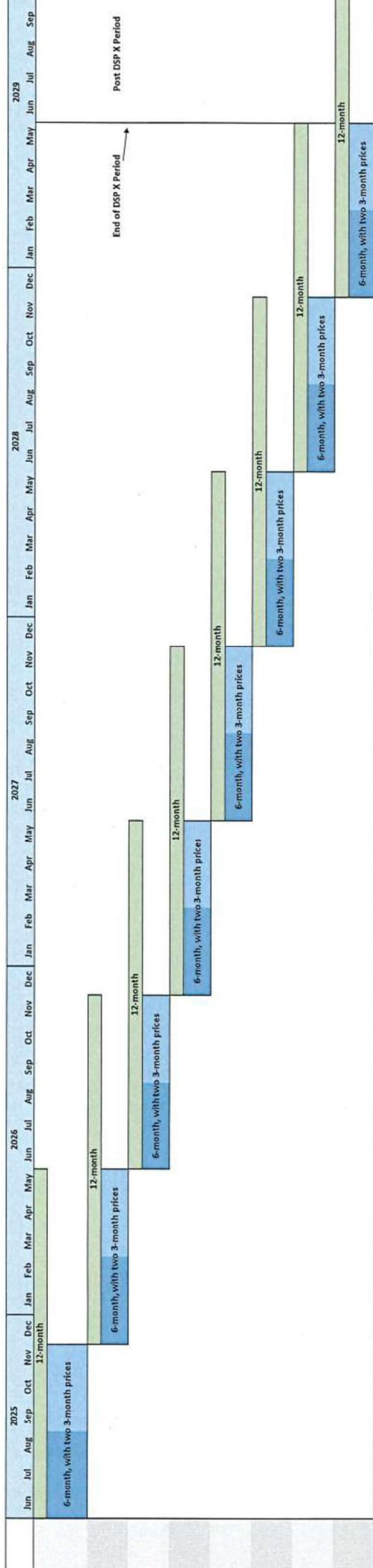
22 A. Yes.

# **EXHIBIT 1**





Medium C&I <200kW Class



three months.

each 6-month product tranche are set by having bidders submit bid prices for each of the two 3-month periods of the given 6-month product.

lined only for bid evaluation purposes), known to the bidders, are applied to the two bid prices of a given bid to calculate a weighted-average price for bid evaluation purposes only.

next calculated weighted-average prices are selected.

paid their two 3-month prices.



# **EXHIBIT 2**

|        |             |     |           |                               |                               |
|--------|-------------|-----|-----------|-------------------------------|-------------------------------|
| Mar-25 | Residential | 12  | 25.0%     | 12 Months                     | June 2025 – May 2026          |
|        |             | 6   | 12.5%     | 24 Months                     | June 2025 – May 2027          |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | June 2025 – May 2026          |
|        |             | 1   | 12.5%     | 24 Months                     | June 2025 – May 2027          |
|        | Medium C&I  | 3   | 75%       | 6 Months                      | June 2025 – November 2025     |
| 1      |             | 25% | 12 Months | June 2025 – May 2026          |                               |
|        | Large C&I   | 2   | 100%      | 12 Months                     | June 2025 – May 2026          |
| Sep-25 | Residential | 12  | 25.0%     | 12 Months                     | December 2025 – November 2026 |
|        |             | 6   | 12.5%     | 24 Months                     | December 2025 – November 2027 |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | December 2025 – November 2026 |
|        |             | 1   | 12.5%     | 24 Months                     | December 2025 – November 2027 |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | December 2025 – May 2026      |
| 1      |             | 25% | 12 Months | December 2025 – November 2026 |                               |
| Mar-26 | Residential | 12  | 25.0%     | 12 Months                     | June 2026 – May 2027          |
|        |             | 6   | 12.5%     | 24 Months                     | June 2026 – May 2028          |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | June 2026 – May 2027          |
|        |             | 1   | 12.5%     | 24 Months                     | June 2026 – May 2028          |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | June 2026 – November 2026     |
| 1      |             | 25% | 12 Months | June 2026 – May 2027          |                               |
|        | Large C&I   | 2   | 100%      | 12 Months                     | June 2026 – May 2027          |
| Sep-26 | Residential | 12  | 25.0%     | 12 Months                     | December 2026 – November 2027 |
|        |             | 6   | 12.5%     | 24 Months                     | December 2026 – November 2028 |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | December 2026 – November 2027 |
|        |             | 1   | 12.5%     | 24 Months                     | December 2026 – November 2028 |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | December 2026 – May 2027      |
| 1      |             | 25% | 12 Months | December 2026 – November 2027 |                               |
| Mar-27 | Residential | 12  | 25.0%     | 12 Months                     | June 2027 – May 2028          |
|        |             | 6   | 12.5%     | 24 Months                     | June 2027 – May 2029          |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | June 2027 – May 2028          |
|        |             | 1   | 12.5%     | 24 Months                     | June 2027 – May 2029          |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | June 2027 – November 2027     |
| 1      |             | 25% | 12 Months | June 2027 – May 2028          |                               |
|        | Large C&I   | 2   | 100%      | 12 Months                     | June 2027 – May 2028          |
| Sep-27 | Residential | 12  | 25.0%     | 12 Months                     | December 2027 – November 2028 |
|        |             | 6   | 12.5%     | 24 Months                     | December 2027 – November 2029 |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | December 2027 – November 2028 |
|        |             | 1   | 12.5%     | 24 Months                     | December 2027 – November 2029 |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | December 2027 – May 2028      |
| 1      |             | 25% | 12 Months | December 2027 – November 2028 |                               |
| Mar-28 | Residential | 12  | 25.0%     | 12 Months                     | June 2028 – May 2029          |
|        |             | 6   | 12.5%     | 24 Months                     | June 2028 – May 2030          |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | June 2028 – May 2029          |
|        |             | 1   | 12.5%     | 24 Months                     | June 2028 – May 2030          |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | June 2028 – November 2028     |
| 1      |             | 25% | 12 Months | June 2028 – May 2029          |                               |
|        | Large C&I   | 2   | 100%      | 12 Months                     | June 2028 – May 2029          |
| Sep-28 | Residential | 12  | 25.0%     | 12 Months                     | December 2028 – November 2029 |
|        |             | 6   | 12.5%     | 24 Months                     | December 2028 – November 2030 |
|        | Small C&I   | 2   | 25.0%     | 12 Months                     | December 2028 – November 2029 |
|        |             | 1   | 12.5%     | 24 Months                     | December 2028 – November 2030 |
|        | Medium C&I  | 2   | 50%       | 6 Months                      | December 2028 – May 2029      |
| 1      |             | 25% | 12 Months | December 2028 – November 2029 |                               |

## DSP X Tranches and Supplier Load Caps

| Total Number of Tranches Solicited |             |           |            |           |       |
|------------------------------------|-------------|-----------|------------|-----------|-------|
| RFP Date                           | Residential | Small C&I | Medium C&I | Large C&I | Total |
| March 2025                         | 18          | 3         | 4          | 2         | 27    |
| September 2025                     | 18          | 3         | 3          |           | 24    |
| March 2026                         | 18          | 3         | 3          | 2         | 26    |
| September 2026                     | 18          | 3         | 3          |           | 24    |
| March 2027                         | 18          | 3         | 3          | 2         | 26    |
| September 2027                     | 18          | 3         | 3          |           | 24    |
| March 2028                         | 18          | 3         | 3          | 2         | 26    |
| September 2028                     | 18          | 3         | 3          |           | 24    |

| Supplier Load Cap (Number of Tranches) |             |           |            |           |       |
|--|-------------|-----------|------------|-----------|-------|
| RFP Date                               | Residential | Small C&I | Medium C&I | Large C&I | Total |
| March 2025                             | 9           | 2         | 4          | 2         | 17    |
| September 2025                         | 9           | 2         | 3          |           | 14    |
| March 2026                             | 9           | 2         | 3          | 2         | 16    |
| September 2026                         | 9           | 2         | 3          |           | 14    |
| March 2027                             | 9           | 2         | 3          | 2         | 16    |
| September 2027                         | 9           | 2         | 3          |           | 14    |
| March 2028                             | 9           | 2         | 3          | 2         | 16    |
| September 2028                         | 9           | 2         | 3          |           | 14    |

The supplier load cap to serve Residential and Small C&I customers in a given RFP will be maintained equal to 50% of the number of tranches solicited on that RFP date, rounded up to the nearest integer number of tranches. The Company will continue the practice of removing the supplier load cap for the Medium C&I and Large C&I solicitations.

# **EXHIBIT 3**

**PENNSYLVANIA UNIVERSAL  
DEFAULT SUPPLIER MASTER AGREEMENT**

**by and between**

**Duquesne Light Company**

**and**

**[INSERT]**

**Dated [Month, Day, Year]**

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# **PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**

**THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**, made and entered into this \_\_\_\_ day of [Month, Day, Year] (the “Agreement”) by and between Duquesne Light Company (the “Company” and “Buyer”), a limited liability company and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and [INSERT] (“DS Supplier”), the Company and the DS Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

## **WITNESSETH:**

**WHEREAS**, the Company is an electric public utility engaged, inter alia, in providing retail electric service within its service territory located in the Commonwealth of Pennsylvania; and

**WHEREAS**, the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) Orders issued pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, direct Buyer to supply electric service to Default Service Load within Buyer’s Pennsylvania franchise service territory; and

**WHEREAS**, the PaPUC has found that, for periods further identified in Appendix C, it would serve the public interest for the Company to secure Default Service Supply (“DS Supply”) through a competitive procurement process (“DS Solicitation”) and the PaPUC has approved such a process; and

**WHEREAS**, the Company has conducted and completed a successful DS Solicitation for the provision of DS Supply, and the DS Supplier was one of the winning bidders in the DS Solicitation; and

**WHEREAS**, pursuant to the competitive bidding procedures of the DS Solicitation, the Company and the DS Supplier desire to enter into this Agreement setting forth their respective rights and obligations concerning the provision of DS Supply.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## **ARTICLE 1: DEFINITIONS**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

**Alternative Energy Credit or “AEC”** – Shall have the meaning ascribed thereto in the AEPS Act, including any future modifications thereto.

**AEPS Act** – The Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, including any future modifications thereto.

**Affiliate** – Means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Allocated AECs** – Shall mean the types and amounts of AECs specified on Appendix E.

**Alternative Energy Portfolio Standards or “AEPS”** – Standards requiring that a certain amount of electric energy sold to retail electric customers in the Commonwealth of Pennsylvania be composed of electricity generated from alternative energy sources, as measured by AECs, in accordance with the requirements of the AEPS Act and provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2804, 2812-14, including, without limitation, any subsequent increases in Tier I requirements under 66 Pa.C.S. § 2814.

**Ancillary Services** – Shall have the meaning ascribed thereto in the PJM Agreements.

**Applicable Legal Authorities** – Those federal and Pennsylvania statutes and administrative rules and regulations that govern the electric utility industry in Pennsylvania, as they may be amended from time to time.

**Auction Revenue Rights or “ARR”** – The current or any successor congestion management mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARRs are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM Agreements.

**Bankruptcy Code** – Those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

**Billing Month** – Each calendar month during the term of this Agreement.

**Business Day** – Any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

**Capacity** – “Unforced Capacity” as set forth in the PJM Agreements, or any successor, measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

**Capacity Proxy Price** will be implemented for those portions of supply contracts that extend into a period for which, as of the day prior to the date of the Company’s corresponding solicitation, PJM has not established a capacity price through an auction conducted by PJM in the accordance with PJM’s Reliability Pricing Model (“RPM”) (“Capacity Market Auction”). The CPP will be the average of the capacity prices from the last auctions of the previous two Capacity Market Auctions conducted by PJM.

**Charge** – Any fee, charge or other amount that is billable by the Company to the DS Supplier under this Agreement.

**Company** – Duquesne Light Company.

**Costs** – With respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations and/or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

**Customer** – Any person or entity who enters into a contractual agreement with the Company to receive retail electric service including, without limitation, all persons or entities taking service under a retail tariff, eligible to receive competitive electricity supply from an EGS or DS, respectively, in accordance with the Applicable Legal Authorities.

**Damages** – Financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. This compensation shall be assessed pursuant to Article 5 of this Agreement.

**Default Allocation Assessment** – Shall have the meaning ascribed to it under the PJM Agreements.

**Defaulting Party** – A Party to this Agreement that has caused or precipitated an Event of Default or an Early Termination of this Agreement.

**Default Service or “DS”** – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by an EGS.

**Default Service Supply or “DS Supply”** – All necessary Energy, Capacity, AECs for AEPS Act compliance and/or any other alternative energy requirements imposed by law, Ancillary Services, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, and such other services or products that the DS Supplier may be required, by PJM or any governmental body having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement and as detailed in Appendix C. For the avoidance of doubt, any reference in this Agreement to any other agreement for DS Supply shall include any agreement between the Parties for the provision of a product or service (e.g., Energy) to serve DS Load, even if such other agreement does not require delivery of additional products or services (e.g., Capacity).

**Delivery Period** – The delivery period specified in Appendix C.

**Delivery Point** – Means the applicable zone of the Company as designated by PJM.

**DS Customer(s)** – Retail customers who are provided Default Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

**DS Fixed Percentage** – The percentage of DS Supply, as set forth in Appendix C.

**DS Fixed Price** – The price in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Fixed Price Adder For Hourly Price Service** – The fixed price adder for Hourly Price Service in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Load** – Means the total sales at the retail meter, plus any losses and Unaccounted For Energy (as defined by PJM), as reflected in PJM settlement volumes (including adjustments required by PJM for PJM’s derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements), expressed in MWh of retail customers in a particular class of DS Customers being served by Company pursuant to the PUC Orders, as such sales vary from hour to hour, in Company’s Pennsylvania franchise service territory, as such territory exists on the Effective Date or may increase

or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. The DS Load is net of any reduction in load as a result of energy efficiency and demand side response programs offered by Company, PJM, curtailment service providers, or other third parties, or any retail market programs. For avoidance of doubt, DS Load shall not include (i) the amount of load that would otherwise have been served in the absence of such energy efficiency or demand side response programs or retail market programs; or (ii) sales resulting from changes in the Company's Pennsylvania service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Pennsylvania or a result of a significant franchise territory swap with another entity which has a franchised service territory in Pennsylvania.

**DS Solicitation** – The competitive bidding processes, procedures and rules employed by the Company to competitively procure DS Supply for purposes of this Agreement.

**DS Supplier** – An entity that (i) has been selected through the DS Solicitation and has accepted the obligations and associated rights to provide DS Supply to the Company for retail customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a PJM Member and registered with PJM as a LSE.

**DS Supplier Representative** – Any officer, director, employee, consultant, contractor, or other agent or representative of the DS Supplier in connection with the DS Supplier's

activity under this Agreement. To the extent the DS Supplier is a division or group of a company, the term DS Supplier Representative does not include any person in that company who is not part of the DS Supplier division or group.

**DS Supplier Responsibility Share** – The fixed percentage share of the Company’s DS Load for which the DS Supplier is responsible as set forth in Appendix C.

**DS Tariffs** – The Company’s existing schedules of rates and services provided to retail customers as currently on file with the Commission and on the Company’s website, as they may be amended from time to time.

**DS Variable Payments** – The variable supplier payments in dollars based on the Company’s Hourly Price Service formula rate, as set forth in Appendix C hereto, associated with serving the DS Supplier Responsibility Share of the DS Supply.

**Early Termination** – Termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Article 5.2 of this Agreement and the declaration of Early Termination.

**Early Termination Date** – The date upon which an Early Termination becomes effective as specified in Article 5.2 of this Agreement.

**Effective Date** – The date designated on the cover page of this Agreement upon which the terms of this Agreement were agreed to by the Parties.

**Electric Distribution Company or “EDC”** – A public utility providing facilities for the transmission and distribution of electricity to retail customers in Pennsylvania.

**Electric Generation Supplier or “EGS”** – A person or entity that is duly certified by the Commission to offer and provide competitive electric supply to retail customers located in the Commonwealth of Pennsylvania.

**Emergency** – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected Entity’s electrical system, or conditions such that the Company is unable to accept Energy from the DS Supplier without

jeopardizing the Company's electrical system or a Connected Entity's electrical system. Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

**Energy** – Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

**Event of Default** – A Party's breach of obligations under this Agreement as set forth in Article 5 of this Agreement.

**FERC** – The Federal Energy Regulatory Commission.

**Final Monthly Energy Allocation or "FMEA"** – A quantity of Energy which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

**Fixed Price Transaction** – A Transaction Confirmation that is not an Hourly Price Transaction.

**Force Majeure** – Means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, including but not limited to, riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, epidemic, terrorist attack, and acts of God, which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by

the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of DS Supplier's supply; (ii) DS Supplier's ability to sell the DS Supply at a price greater than that received under any Transaction; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase the DS Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

**Forward Market Price** – The price for On-peak Energy Forward Price and Off-peak Energy Forward Price as determined by averaging concurrent broker quotes obtained by the Company for the Market Price Hub as available.

**Gains** – With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Generator Attribute Tracking System or "GATS"** – the system owned and operated by PJM Environmental Services, Inc. to provide reporting and tracking services to its subscribers in support of the AEPS Act, or any successor credit registry selected by the PaPUC. (As specified in Appendix E)

**Guaranty** – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached to this DS Supplier Master Agreement or other form approved by the Company.

**Guarantor** – Any party having the authority and agreeing to guarantee the DS Supplier’s financial obligations under this Agreement, recognizing that such party shall be obligated to meet the Company’s creditworthiness requirements specified in this Agreement for such DS Supplier.

**Hourly Price Service** – service provided to Hourly Price Service (“HPS”)-Eligible Class pursuant to the Company’s DS Tariffs, Retail Tariff, Rider No. 9.

**Hourly Price Transaction** – A Transaction Confirmation for Hourly Price Service, as shown on such confirmation.

**Interest Index** – The average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

**Kilowatt or “kW”** – Unit of measurement of useful power equivalent to 1000 watts.

**Kilowatt-hour or “kWh”** – One kilowatt of electric power used over a period of one hour.

**Load Serving Entity or “LSE”** – An entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM Agreements or in successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. The DS Supplier, for purposes of this Agreement, is not a Load Serving Entity and nothing contained herein shall be deemed to cause the DS Supplier to be a Load Serving Entity.

**Losses** – With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Margin** – The amount by which the Total Exposure Amount exceeds the DS Supplier’s, or Guarantor’s, credit limit as defined in Section 6.4.

**Mark-to-Market (“MtM”) Exposure Amount** – Shall have the meaning ascribed to it in Section 6.3 of this Agreement.

**Market Price Hub** – refers to AEP Dayton Hub, a liquid pricing point located within PJM’s geographic footprint, at pnode #34497127.

**Maximum Credit Limit** – The lesser of the applicable percentage of TNW or the applicable credit limit cap as specified in Section 6.4 of this Agreement.

**Medium Commercial and Industrial Class** – Group of Rate Schedules that comprise the Medium Commercial and Industrial Class for DS Supply and itemized in Appendix C.

**Megawatt or MW** – One thousand kilowatts.

**Megawatt-hour or MWh** – One megawatt of electric power used over a period of one hour.

**Merger Event** – When a DS Supplier consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such DS Supplier hereunder in the sole discretion of the Company or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the DS Supplier’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement in the sole discretion of the Company.

**Minimum Rating** – A minimum senior unsecured debt rating as defined in Appendix A of this Agreement.

**Minimum Transfer Amount** – \$100,000.

**NERC** – The North American Electric Reliability Corporation or its successor.

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

**Non-Defaulting Party** – A Party to this Agreement who, at the time an Event of Default occurs, is not itself in default of this Agreement and has not otherwise caused or precipitated an Event of Default or Early Termination of this Agreement.

**Off-Peak Energy Forward Price** – Means the price for Off-Peak Hours for each billing month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer available or no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**On-Peak Energy Forward Price** – Means the price for On-Peak Hours for each billing month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**PaPUC or Commission** – The Pennsylvania Public Utility Commission or its successor.

**PJM** – PJM Interconnection L.L.C. or its successor.

**PJM Agreements** – The PJM OATT, PJM RAA, PJM OA and all other PJM agreements, procedures, manuals and documents applicable to the Transactions covered by or relating to this Agreement.

**PJM Control Area** – That certain Control Area encompassing electric systems in parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

**PJM Member** – A member in good standing of PJM that satisfies the requirements to conduct business with PJM.

**PJM OA** – The PJM Operating Agreement or the successor, superseding or amended version of the PJM Operating Agreement that may take effect from time to time.

**PJM OATT** – The PJM Open Access Transmission Tariff or the successor, superseding or amended version of the PJM Open Access Transmission Tariff that may take effect from time to time.

**PJM OI** – The PJM Office of Interconnection, the system operator for the PJM Control Area.

**PJM RAA** – The PJM Reliability Assurance Agreement or the successor, superseding or amended version of the PJM Reliability Assurance Agreement that may take effect from time to time.

**PJM RPM Zonal Net Load Price** - is the price charged by PJM to LSEs for capacity in the Company’s PJM zone under the Reliability Pricing Model (“RPM”) or its successor; and (ii) the “Capacity Proxy Price” (“CPP”) for the Company shall be calculated as described in Section 9.1 (a), and expressed in dollars per MW-day.

**PMEA/FMEA Adjustment Amount** – For any Billing Month, the monetary amount due to the DS Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to DS

Supplier for a given month and the FMEA used for calculating the final payments due to the DS Supplier for such month as more fully described in Article 9 hereof.

**Preliminary Monthly Energy Allocation or “PMEA”** – A quantity of Energy which, for any Billing Month, is the preliminary calculation of the DS Supplier’s DS Supplier Responsibility Share.

**Rate Schedule(s)** – Shall mean the specified existing, and modified or successor customer rate schedule(s) in the electric service tariff of the Company filed with the Commission.

**Reliability First Corporation or “RFC”** – The approved regional NERC entity with responsibility for the Commonwealth of Pennsylvania.

**Residential Class** – Group of Rate Schedules that comprise the Residential Class for the DS Supply and itemized in Appendix C.

**Rounding Amount** – \$100,000.

**Settlement Amount** – With respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4(a) of this Agreement. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses

and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

**Small Commercial and Industrial Class** – Group of Rate Schedules that comprise the Small Commercial and Industrial Class for DS Supply and itemized in Appendix C.

**Statement** – A monthly report prepared by the Company for the DS Supplier indicating the amount due to the DS Supplier by the Company as compensation for DS Supply supplied to DS Customers by the DS Supplier during the current Billing Month, in accordance with DS Supplier’s obligations under this Agreement.

**Supply Day** – Any calendar day during the term of this Agreement on which the DS Supplier is providing, or is obligated by this Agreement to provide, DS Supply to the Company.

**Tangible Net Worth or “TNW”** – Total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

**Termination Payment** – A payment resulting from an Early Termination that is calculated in accordance with Article 5.4.

**Tier I AEC** – Shall mean an AEC that will satisfy the non-solar Tier I requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier I (Solar) AEC** – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier II AEC** – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar Tier II requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Total Exposure Amount** – An amount calculated daily for the DS Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “Mark-to-Market Exposure Amount” arising under any other DS Supply agreements providing for “DS Supply” or similar default service; and (iii) the amount designated as the “credit exposure” under any other DS Supply agreements providing for DS Supply or similar default service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

**Tranche** – A fixed percentage share of the Company’s DS Load for the Customer Group as indicated in any given Transaction Confirmation, as specified in Appendix C.

**Transaction** – Means a particular agreement by which the Company purchases and the DS Supplier sells DS Supply pursuant to this Agreement, the details of which are more fully set forth in Exhibit 1 – Transaction Confirmation.

**Transaction Confirmation** – Shall have the meaning ascribed to it in Appendix C and Exhibit 1 of this Agreement.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Capacity in Which Company Is Entering into this Agreement**

The DS Supplier agrees and acknowledges that the Company is contracting for the provision of DS Supply from such DS Supplier for Customers receiving Default Service on the Company's electric system pursuant to the authorizations provided to the Company. The DS Supplier further agrees and acknowledges that the Company will administer and monitor the DS Supplier's performance in providing DS Supply under this Agreement and that the Company shall be entitled to enforce the DS Supplier's obligations related to the provision of DS Supply. The DS Supplier hereby permanently, expressly and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. It is the specific intention of the Parties hereto that Customers and Customer groups are not third party beneficiaries of this Agreement and that no Customer or Customer group shall seek enforcement of this Agreement against the DS Supplier on their own behalf, either independently or by joining in any legal proceeding brought by the Company.

The Parties acknowledge that the Agreement is a forward contract and, accordingly, the Parties hereto are entitled to the protections of Section 556 of the Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Article 5.2 of this Agreement.

### **2.2 Parties' Obligations**

#### **(a) Obligations of DS Supplier**

The DS Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of the Agreement meets the terms and conditions set forth in Appendix C;
- (ii) To provide sufficient quantities of DS Supply on an instantaneous basis at all times and supplied to the Delivery Point to meet the DS Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder;
- (iv) To cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of DS Supply, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;
- (v) To pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, as more fully described in Article 9 of this Agreement;
- (vi) To accept assignment of and to fulfill all obligations of a LSE that are assigned to it by this Agreement;
- (vii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier; and
- (viii) To comply with the AEPS requirements of the Company's Default Service Plan, as detailed in Appendix E.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) To pay to each DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) To pay to the DS Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the DS Supplier its estimated aggregate load obligation (capacity MW value) for each Supply Day no less than five (5) calendar days prior to the day of delivery. Further, this information will be posted in the DS Supplier's specific PJM PowerMeter account, or successor system or process;
- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company;
- (v) To accept the delivery of DS Supply necessary to meet the DS Load;
- (vi) To be responsible (as between the Company and the DS Supplier) for the provision of the Allocated AECs to satisfy AEPS requirements; and
- (vii) To be the Load Serving Entity for supply purchased under this Agreement.

**2.3 Congestion and Congestion Management**

The DS Supplier is responsible for any congestion costs incurred to meet the DS Supplier Responsibility Share. The Company shall transfer or assign to the DS Supplier the Company's rights to Auction Revenue Rights (ARRs) to which the Company is entitled

as an LSE pursuant to the PJM Agreements, including the rights to ARRs, provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the Delivery Period. All rights, liabilities and obligations associated with such ARRs will accrue and be assumed by the DS Supplier through the transfer or assignment from the Company to the DS Supplier including the responsibility and ability of the DS Supplier to request or nominate such ARRs when applicable and feasible. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARRs for the upcoming PJM planning period and such ARRs will be allocated to the DS Supplier in accordance with the PJM Agreements based upon its DS Supplier Responsibility Share.

#### **2.4 PJM Services**

The DS Supplier shall make all necessary arrangements for the delivery of DS Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each DS Supplier's actual DS Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such DS Supplier's appropriate DS Supply requirements related to the provision of service under this Agreement by DS Supplier arising under the PJM Agreements. The DS Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of DS Supply under this Agreement until the effective date of the transfer of such LSE obligations.

The Company shall generate and provide in writing to DS Supplier the PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s) may be generated for each differing contract type. DS Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM

system.

For the period of time this Agreement is in effect, both the Company and DS Supplier shall have executed the PJM Declaration of Authority, and shall remain in effect during the Term of this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the DS Supplier, DS Supplier agrees to execute a revised Declaration of Authority in accordance with PJM requirements.

## **2.5 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any schedule or section reference herein to such agreements is changed, such schedule or section reference herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the DS Supplier's responsibility for changes in PJM products and pricing during the Term. DS Supplier bears the risk and responsibility of all charges resulting from any changes in PJM products and pricing during the term of this Agreement with the exception of (i) future PJM charges related solely to the Company providing network transmission service, and (ii) those charges identified as EDC responsibility in Appendix D, including for transition costs related to the elimination of through-and-out transmission rates.

## **2.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the Term, the Company shall invoice DS Supplier, and DS Supplier shall pay an amount equal to the product of (i) DS Supplier Responsibility Share, and (ii) the Default Allocation Assessment.

## **2.7 Other Fines and Penalties**

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to noncompliance by the DS Supplier with this Agreement, any other requirements of law, or the PJM Agreements, the DS Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

## **2.8 Communications and Data Exchange**

The DS Supplier and the Company shall supply to each other in a thorough and timely manner all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

The DS Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of

installing, maintaining, testing, and operating all required information technology systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

## **2.9 Record Retention**

The Company shall retain necessary records for the longer of two years or as required under applicable PaPUC requirements so as to permit DS Supplier to confirm the validity of payments due to DS Supplier hereunder; provided that if a DS Supplier has provided notice pursuant to this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

## **2.10 Verification**

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party.

# **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

## **3.1 DS Supplier's Representations and Warranties**

The DS Supplier hereby represents, warrants and covenants to the Company on the Effective Date and throughout the term of this Agreement as follows:

(a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the

Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction and the Commonwealth of Pennsylvania;

(b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

(c) The execution and delivery of this Agreement and the performance of such DS Supplier's obligations hereunder have been duly authorized by all necessary action on the part of the DS Supplier and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the DS Supplier's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the DS Supplier is a party or by which the DS Supplier or any of its properties is bound or subject;

(d) All necessary and appropriate action that is required on the DS Supplier's part to execute this Agreement has been completed;

(e) This Agreement is the legal, valid and binding obligation of the DS Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;

(f) There are no actions at law, suits in equity, proceedings or claims pending

or, to the DS Supplier's knowledge, threatened against the DS Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the DS Supplier's performance of its obligations hereunder;

(g) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(h) It is in good standing as an LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations, rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the DS Supplier shall not be obligated to become an LSE in PJM until the date it begins providing DS Supply;

(i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;

(j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum;

(k) It is not Bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt or insolvent;

(l) There are no pending or, to its knowledge, threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any

Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;

(m) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(n) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and

(o) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of DS Supply as required by this Agreement, and it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act.

### **3.2 Company’s Representations and Warranties**

The Company hereby represents, warrants and covenants to the DS Supplier as follows:

(a) The Company is an electric utility duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

(b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

(c) The execution and delivery of this Agreement and the performance of the Company’s obligations hereunder have been duly authorized by all necessary action on the

part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company's certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;

(d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;

(e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;

(f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Commission, the Commonwealth of Pennsylvania or any other governmental authority;

(g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

(h) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(i) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

(j) The Company shall have sole responsibility for metering and billing with respect to Customers; and

(k) The Company shall be responsible for electric distribution services, and the DS Supplier shall not be responsible for distribution charges.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement or until all amounts due hereunder, including all obligations, have been paid or performed in full. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail. Company, may, in its sole discretion, treat any such materially incorrect or misleading representation or warranty as an Event of Default hereunder.

## **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the Effective Date. Unless otherwise agreed upon by the Company and the DS Supplier, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed

under this Agreement, unless the Agreement is terminated prematurely pursuant to the provisions of this Agreement.

#### **4.2 Termination of Right to Supply**

The DS Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the DS Supplier to provide DS Supply and nullify any of the entitlements to which the DS Supplier became entitled as a result of being selected as a winning bidder in the DS Solicitation.

#### **4.3 Survival of Obligations**

Termination or expiration of this Agreement for any reason shall not relieve the Company or the DS Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings, including, without limitation, Article 4 (Commencement and Termination of Agreement), Article 5 (Breach and Default), Article 11 (Dispute Resolution), Article 13 (Limitation of Remedies, Liability and Damages), Article 14 (Indemnification), and Article 16 (Miscellaneous Provisions).

#### **4.4 Mutual Termination**

The Company and the DS Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the DS Supplier (“Mutual Termination Agreement”); provided that Company agrees that it shall enter into such a Mutual Termination Agreement, which will discharge the terminating DS

Supplier (the “Terminating DS Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating DS Supplier identifies a replacement DS Supplier willing to assume all obligations of the Terminating DS Supplier hereunder for the remaining term of this Agreement (the “Replacement DS Supplier”); (ii) the Replacement DS Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness,” as of the effective date of the Mutual Termination Agreement, that determination to be made in the sole discretion of Company; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and thereby becomes a Party under this Agreement, effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating DS Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating DS Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined, as of the effective date of the Mutual Termination Agreement, that it may have incurred Damages as a result of the Event of Default, that the Replacement DS Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its sole discretion.

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

An Event of Default under this Agreement shall occur if a Party (the “Defaulting

Party”):

- (i) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) Makes an assignment for the benefit of its creditors;
- (iii) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) Is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event in the case of the DS Supplier;
- (v) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;
- (vi) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vii) In the case of a DS Supplier, PJM terminates the DS Supplier’s ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of DS Supply under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;
- (viii) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.5 or post any Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;
- (ix) Is declared by PJM to be in default of any provision of any PJM Agreement,

which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;

(x) Fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

(xi) Violates any federal, state or local code, regulation or statute applicable to the supply of DS Supply (or any constituent thereof such as Energy or AECs) in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually satisfy all applicable FERC requirements, or, in the case of the DS Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail Energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;

(xii) Is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) Subject to Section 5.3(b) of this Agreement, in the case of the Company, fails to accept DS Supply properly tendered by the DS Supplier under this Agreement;

(xiv) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the DS Solicitation; or

(xvi) Commits an act or makes an omission that constitutes an "Event of Default" under any other agreement(s) for the provision of DS Supply between the Company and the DS Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the "Non-Defaulting Party") is completely made whole

with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) above. Termination or modification of this Agreement by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement.

(xvii) With respect to the DS Supplier's Guarantor, if any:

1. Representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within two (2) Business Days after written notice;
3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or

4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

## **5.2 Rights upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Article 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all of the following remedies:

- (i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a DS Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Article 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such Supplier; and

- (ii) Receive Damages in accordance with Section 5.3 of this Agreement.

The Non-Defaulting Party shall be entitled to elect or pursue one or more of the above remedies.

## **5.3 Damages Resulting from an Event of Default**

- (a) **DS Supplier's Failure to Supply DS Supply or Declaration of Early**

**Termination By Company:** Damages resulting from (i) the DS Supplier's failure to (A) provide DS Supply in conformance with Article 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of DS Supply to meet the DS Supplier's DS Supplier Responsibility Share under this Agreement or (ii) the occurrence of any Event of Default attributable to the DS Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services and/or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting DS Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) The cost of DS Supply allocated to the Company by the PJM OI due to the failure of the DS Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) The costs of DS Supply purchased by the Company to replace DS Supply that a DS Supplier was obligated to supply under this Agreement during the term hereof;

(iii) Administrative and legal costs associated with procuring replacement DS Supply; and

(iv) Financial hedging costs incurred by the Company on behalf of DS Customers as a result of having to procure DS Supply not provided by the DS Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be

dependent upon the arrangements made by the Company to obtain replacement services or a replacement DS Supplier. The Company and the DS Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of DS Customers in the event of an Early Termination as set forth in Article 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Article 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the DS Supplier under Section 5.4 of this Agreement.

**(b) Failure by Company on Behalf of Customers to Accept DS Supply Properly Tendered by DS Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept DS Supply properly tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the DS Supplier hereunder had the Company accepted the DS Supply properly tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under this Agreement and (ii) the amount realized by the DS Supplier in disposing, in a commercially reasonable manner, of the DS Supply not accepted by the Company; provided, however, that the Company shall not be liable for any Damages if this Agreement is terminated, or modified so as to frustrate or effectively preclude Company's acceptance of the DS Supply, by the PaPUC, other regulatory authority or a court of law.

**(c) Damages Resulting from Early Termination Due to an Event of Default Attributable to the Company:** Damages resulting from Early Termination due to an

Event of Default attributable to the Company shall be as set forth in Section 5.4 of this Agreement. Damages calculated in accordance with said Article 5.4 shall be the exclusive remedy available to the DS Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

**(d) Damages Resulting from DS Supplier's Failure to Continuously Satisfy its Obligations Associated with the AEPS:** Damages resulting from the DS Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2 (a)(viii) of this Agreement shall include, but not be limited to, the amount of all penalties (including Alternative Compliance Payments), costs associated with the procurement of additional AECs, etc., including, without limitation, interest and other charges, if any, levied against the Company related to AEPS regulations, due to such DS Supplier's conduct or inaction. DS Supplier has a specific obligation to provide the AECs conforming to PaPUC requirements and not money damages in substitution. Therefore, any such attempt to supply money damages instead of AECs may be treated as an event of default in the sole discretion of Company.

**(e) Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

**(f) Waiver of Event of Default:** If an Event of Default has occurred and the Non-Defaulting Party is the Company, then unless the Event of Default was a failure by the DS Supplier to meet any or all of its DS Supply obligations, the Company may elect, at its sole discretion, to offer to waive the default on such terms and conditions as the Company, at its sole discretion, may deem appropriate to propose a special remedy. Any such special remedy can only be offered to the DS Supplier if it first is specifically

approved by the PaPUC in accordance with Commission Orders.

#### **5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment**

##### **(a) Settlement Amount**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as a date for Early Termination (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided, however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of Article 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

“ The DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(i) by checking this box. If DS Supplier does not check this box, subsection 5.4(a)(i) will be deemed to be excluded from this Agreement.”

(i) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes

as may have occurred since the previous calendar year.

**(b) Net Out of Settlement Amounts**

The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply into a single amount by netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the DS Supplier is the Defaulting Party and the Termination Payment is due to the DS Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the DS Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined

to be due and owing by the DS Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the DS Supplier, the Company will pay simple interest on the Termination Payment amount being made to the DS Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

**(c) Notice of Termination Payment**

As soon as practicable after calculation of a Termination Payment, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Article 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

**(d) Disputes With Respect to Termination Payment**

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the Termination Payment Dispute Notice.

**(e) Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

**5.5 Step-up Provision**

In the event the Company receives bids for less than all tranches, the Commission does not approve the results for all tranches, or a supplier defaults, the Company will execute the emergency contingency plan.

The Company may ask other winning DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price already established, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up,” and is subject to compliance with the creditworthiness provisions of Article 6 of this Agreement and the DS Supplier’s load cap as per the Company’s approved default service procurement plan. If multiple wholesale suppliers are willing to Step-Up, then the Auction Manager would allocate a pro-rata share of the unsubscribed tranche(s) to each supplier based upon the percentage of load that each supplier won in the initial auction.

If the Wholesale supplier(s) are unwilling to “Step-Up” and fill the Unsubscribed Tranche(s) a separate procurement auction will be conducted by the Company’s independent third-party Auction Manager. The purpose of this auction would be to solicit Wholesale suppliers and procure the supply deficiency.

If these two options fail, the Company will procure default supply to fill the Unsubscribed Tranche(s) through purchases in the PJM spot markets until such time that a different contingency

plan is approved by the Commission. The Company will submit to the Commission within fifteen (15) days after any such occurrence an emergency plan to handle any default service shortfall. All costs associated with implementing the contingency plan will be included as part of the DSS described in the section below, "Calculation of Rate."

#### **5.6 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured, but which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply.

#### **5.7 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Articles 5.4 and 5.7 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

- (a) Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
  
- (b) Return of Auction Revenue Rights. When the DS Supplier is the Defaulting Party, the DS Supplier will make best efforts to facilitate the transfer or reassignment to the entity which is the replacement DS Supplier on the Early Termination Date, any and all of the replacement DS Supplier's rights to Auction Revenue Rights (ARRs) to which the replacement DS Supplier is entitled as a LSE pursuant to the PJM Agreements, which were transferred or assigned to the DS Supplier under Section 2.3 (Congestion and Congestion Management).

## **ARTICLE 6: CREDITWORTHINESS**

### **6.1 Applicability**

The DS Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreement and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation of the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

### **6.2 Creditworthiness Determination**

The DS Supplier may submit and maintain a security deposit in accordance with

Section 6.4 of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the DS Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as practicable but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. DS Supplier shall provide the Company and its agents unrestricted access to most recent audited financial statements; provided that if current audited financial statements are not available, the Company, in its sole discretion, may specify other types of financial statements that will be accepted.

### **6.3 Mark-to-Market Credit Exposure Methodology**

To calculate the daily exposure for each DS Supplier, the MtM credit exposure methodology will be used. The "mark" for each Billing Month will be determined at the time the auction is completed based on the available Forward Market Prices, and for the remaining Billing Months, it will be derived based on historical data. At the time the auction is completed, the MtM credit exposure for each DS Supplier shall be equal to zero. Subsequently, the differences between the available Forward Market Prices on the valuation date and the "mark" prices for the corresponding Billing Months will be used to calculate the daily credit exposures for each DS Supplier. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month. The methodology for calculation of the MtM credit exposure is illustrated in the example

(using hypothetical numbers) set forth in Appendix B hereto.

#### **6.4 Credit Limit**

The following criteria constitute the Company's creditworthiness requirements for the DS Supplier, to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.

(i) For a DS Supplier to be granted an unsecured line of credit, the DS Supplier must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch. The methodology for determining the credit rating to use is set forth in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the credit matrix table in Appendix A of this Agreement.

The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7 (b) of this Agreement (see standard format in Exhibit 4) for the Margin due the Company as set forth in Section 6.5 of this Agreement;

(ii) For a DS Supplier having a Guarantor, in the case of a Guarantor organized under the laws of the United States, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Exhibit 5) will be determined based on the credit matrix table for Guarantors in Appendix A. The DS Supplier will be

granted a credit limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the Supplier's Maximum Credit Limit. The DS Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable credit limit during the time period after the Company has made a Margin call but before the DS Supplier has posted the required Margin. Notwithstanding anything herein to the contrary, the DS Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the DS Supplier may request a return of Margin in accordance with Section 6.5 of this Agreement. The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Exhibit 4) for the Margin due the Company as set forth in Section 6.5 of this Agreement; or

(iii) For a DS Supplier or Guarantor that has not been incorporated or otherwise formed under the laws of the United States and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles ("GAAP") in the United States, the DS Supplier or Guarantor shall meet all requirements of Sections 6.4(i) and (ii) of this Agreement and shall supply the following additional information:

- a. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the DS Supplier or Guarantor is incorporated or otherwise formed that this Agreement is, or upon completion of

execution formalities will become, the binding obligation of the DS Supplier or Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;

- b. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the person executing this Agreement on behalf of the DS Supplier has the authority to execute the Agreement and that the governing board of the DS Supplier or Guarantor has approved the execution of this Agreement;
- c. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the DS Supplier or Guarantor has been authorized by its governing board to enter into agreements of the same type as this Agreement; and
- d. Such other documents and certificates as may be required by the Company in its sole discretion.

(iv) The posting of cash or a letter of credit as defined in Section 6.7 (b) below for the entire Total Exposure Amount as set forth in Section 6.5 of this Agreement.

### **6.5 Posting Margin and Return of Surplus Margin**

(a) If at any time and from time to time during the term of this Agreement the Total Exposure Amount, rounded up by the Rounding amount, exceeds the DS Supplier's or the Guarantor's credit limit by the Minimum Transfer Amount (MTA), then the Company, on any Business Day, may request that the DS Supplier provide cash or a letter of credit in an acceptable form as defined in Article 6.7(b) of this Agreement (see standard format in Exhibit 4), in an amount equal to the Margin (less any Margin posted by the DS

Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply).

If the DS Supplier receives written notice for Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide Margin. If the DS Supplier receives notice for Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the DS Supplier must post Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the DS Supplier fails to post Margin when due in accordance with this Article 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

(b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the DS Supplier upon receipt of a written request by the DS Supplier. Surplus Margin means cash or a letter of credit posted by the DS Supplier as a result of a request by the Company pursuant to Article 6.5(a) that exceeds the Total Exposure Amount less the DS Supplier's or the Guarantor's credit limit (rounded up by the Rounding Amount). If the resulting Surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the DS Supplier. If the DS Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business

Day, the surplus Margin will be returned by the next following Business Day and if the DS Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. If the DS Supplier posted a letter of credit, the surplus Margin shall be returned on the next Business Day following the Business Day on which the amendment to the letter of credit is received from the issuing bank, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. The DS Supplier will not unreasonably deny a request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the DS Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

#### **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the DS Supplier posted Margin/collateral hereunder, the DS Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the DS Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default

or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the DS Supplier in the possession of the Company, whether held in connection with this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the DS Supplier, including any equity or right of purchase or redemption by the DS Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the DS Supplier's obligation under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply (the DS Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or electronic mail transmission (with the original transmitted by any of the other aforementioned delivery methods, unless agreed to otherwise by the parties) addressed as follows:

If to a DS Supplier to:

Copy to:

If to the Company to: James H. Milligan, Treasurer  
Duquesne Light Company  
Mail Drop 7-3  
411 Seventh Avenue, Pittsburgh, PA 15219  
jmilligan@duqlight.com

Copy to: Energy Procurement  
Mail Drop 15-1  
Duquesne Light Company  
411 Seventh Avenue, Pittsburgh, PA 15219  
energysupply@duqlight.com

Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided that notice by electronic mail transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically, in writing, or by responding in the same electronic mail conversation chain.

#### **6.7 Security Instruments**

At each DS Supplier's choice, the following are deemed to be acceptable methods for posting security, if required:

- (a) Cash; or
- (b) A standby irrevocable letter of credit acceptable to the Company, in its sole discretion, issued by a domestic bank (or a domestic branch of an international bank) or other domestic financial institution (or a domestic branch of an international financial institution) with a minimum "A-" senior unsecured debt rating (or, if unavailable, equivalent corporate issuer rating) from S&P or Fitch and "A3" from Moody's (see standard format in Exhibit 4). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least

ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the DS Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the DS Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a DS Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the DS Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by the Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

## **6.8 Maintenance of Creditworthiness**

### **(a) Reporting of Changes**

The DS Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The DS Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

### **(b) Change in Credit Standing**

The Company will re-evaluate the creditworthiness of a DS Supplier whenever it

becomes aware of an adverse change, through the provision of notice by the DS Supplier or otherwise, in the DS Supplier's or Guarantor's credit standing. If the lowest credit rating (whether senior unsecured debt rating or corporate issuer rating) used to determine the DS Supplier's Maximum Credit Limit or its credit limit adversely changes, the Company will require additional security from the DS Supplier in accordance with Sections 6.4 of this Agreement. The additional security must be in a form acceptable to the Company in its sole discretion, as specified in Article 6.7 of this Agreement and must be posted as set forth in Section 6.5 of this Agreement.

#### **6.9 Calling on Security**

The Company may call upon the security posted by the DS Supplier if the DS Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply after all of the following events occur:

- (a) Written Notice of Default is provided to the DS Supplier; and
- (b) Any applicable cure period associated with the written Notice of Default ends.

The foregoing notwithstanding, the security posted by the DS Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

#### **6.10 Interest on Cash Held by Company**

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement.

Each Billing Month, the Company will prepare a statement of interest amounts due to the DS Supplier. The statement will be sent to the DS Supplier within three (3) Business Days after the end of the Billing Month via overnight mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 No Endorsement of DS Supplier**

The Company's determination that a DS Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the DS Supplier. The Company will treat all DS Suppliers in a non-discriminatory manner and shall provide no preference to any DS Supplier.

#### **6.12 Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the effective date of this Agreement or is entered into after the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth in Appendix A of this Agreement; provided, however, that if another agreement has a more stringent credit threshold, then the more stringent credit threshold shall apply. Each DS Supplier that is a party to such other agreements with the Company for the provision of DS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating the Margin as described herein.

**ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING,  
CAPACITY RESOURCE SUBMISSION AND  
TRANSMISSION PROCUREMENT**

**7.1 Load Obligations**

The Company and the DS Supplier acknowledge and agree that (1) the Company shall determine the DS Load, (2) the Company shall allocate the DS Supply obligation using the DS Supplier Responsibility Share, (3) the Company shall provide the DS Supplier's DS Supply obligation to PJM, and (4) the DS Supplier shall be responsible for meeting its DS Supply obligations as a LSE under the PJM Agreements.

**7.2 Data Transmission**

The procedures for transmitting load obligation data to PJM for DS Supplier's DS Load shall be as set forth by PJM.

**7.3 Energy Scheduling**

The Company is not obligated to provide any day ahead scheduling services. If the Company chooses to provide such services, the information provided is not guaranteed by the Company.

**ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION  
PROCESS**

**8.1 Energy Settlement by PJM**

The settlement process occurs at PJM to reflect the DS Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each DS Supplier will be determined based on the DS Supplier Responsibility Share of the DS Load. The reconciled total DS Energy obligation will be based on the final total Energy loads for the Customers receiving DS service, including de-rating adjustments for marginal losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to the DS Suppliers based on the respective DS Supplier Responsibility Share.

## **8.2 Energy Settlement by the Company**

In the event that actual DS Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the DS Supplier. In the event PJM imposes penalties against the Company as a result of the DS Supplier's Transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company to the DS Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the DS Supplier.

## **ARTICLE 9: BILLING AND PAYMENT**

### **9.1 The Company Payment of Obligations to the DS Supplier**

The Company shall pay all amounts due to the DS Supplier hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the DS Supplier.

- For Fixed Price Transactions, this Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C for each hour of the Billing Month.
- For Hourly Price Transactions, this Statement will show the aggregate

amounts due based on the DS Fixed Price Adder For Hourly Price Service multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C for each hour of the Billing Month, plus the DS Variable Payments used to determine the PMEA for each hour of the Billing Month.

In the event a Capacity Proxy Price is implemented, Section 9.1 (a) of the SMA is replaced with the following:

- Each Billing Month the Company will prepare a Statement of amounts due to the DS Supplier. This Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown on the Transaction Confirmation(s) for each hour of the Billing Month, plus the aggregate amounts due based on the DS Variable Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Variable Percentage, if applicable, as shown on the Transaction Confirmation(s) for each hour of the Billing Month. For each Billing Month after the Capacity Proxy Price is known, the Companies will apply the Capacity Proxy Price true-up across the entire contract term. The calculation of the day weighted average capacity price adjustment for purposes of determining the true-up amount will reflect final unforced capacity (i.e., UCAP) quantity weighting. For example, for a

24-month contract term, the Companies will calculate the relevant 24-month average capacity price adjustment by appropriately weighting the amount of capacity (i.e., the final UCAP quantity) purchased by the supplier at each PJM capacity price.

(b) The Statement will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month.

(d) To the extent that the FMEA differs from the PMEA, the Company shall pay or charge the DS Supplier for the PMEA/FMEA Adjustment Amount within the PJM deadline for conducting the final settlement.

(e) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed.

(f) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of this Agreement.

(g) The Company shall make payments of funds payable to the DS Supplier by electronic transfer to a bank designated by the DS Supplier.

(h) If a good faith dispute arises between the Company and the DS Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(i) If payment is made to the DS Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

(j) If Seller does enter more than one transaction with Buyer, Buyer may provide a single invoice listing the relevant information detailed.

## **9.2 Billing for DS Supplier’s Obligations to Other Parties**

The Company shall have no responsibility for billing between the DS Supplier and PJM; the DS Supplier and any Energy or Capacity source; or the DS Supplier and any other third party. The Company will be solely responsible for billing DS Customers for Default

Service.

### **9.3 The DS Supplier Payment of Obligations to the Company**

The DS Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the DS Supplier for all Charges owed by the DS Supplier under this Agreement. The DS Supplier shall make payment for Charges shown on the invoice. The due date will be on the first Business Day after the 19<sup>th</sup> day of each calendar month. The invoice will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of this Agreement.

(c) The DS Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the DS Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent

per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

(e) If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

## **ARTICLE 10: SYSTEM OPERATION**

The Parties shall adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and shall satisfy any and all PJM, RFC and NERC criteria, when applicable. The DS Supplier shall also adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company’s local distribution system.

### **10.1 Disconnection and Curtailment by the Company**

The Company shall have the right, without incurring any liability to the DS Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company’s facilities, or due to any other

reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

## **10.2 Inadvertent Loss of Service to DS Customers**

The Parties agree and acknowledge that service to DS Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and distribution system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

## **10.3 Good Faith Efforts**

The Company shall use good faith efforts to minimize any curtailment, interruption or reduction in service to DS Customers to the extent reasonably practicable under the circumstances.

## **10.4 PJM Requirements**

The DS Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed

to maintain the integrity of the PJM system. The DS Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

#### **10.5 Compliance with Governmental Directives**

The DS Supplier also acknowledges and agrees that the Company may need to act in response to governmental or civil authority directives which may affect DS Customer load. The DS Supplier agrees to cooperate with the Company in order to comply with said directives.

### **ARTICLE 11: DISPUTE RESOLUTION**

#### **11.1 Informal Resolution of Disputes**

Before pursuing resolution of any dispute arising out of this Agreement (other than an Event of Default under Article 5.1(i)-(ix), (xii), or (xvi)), the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Article 11.1 (Informal Resolution of Disputes), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date

through the date of payment.

## **11.2 Recourse to Agencies or Courts of Competent Jurisdiction**

After the requirements of Article 11.1 (Informal Dispute Resolution) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act (“FPA”), with the PaPUC under relevant provisions of the Applicable Legal Authorities, with the Allegheny County Court of Common Pleas or with the Western District of Pennsylvania Federal Court. The Party’s agreement hereunder is without prejudice to any Party’s right to contest the jurisdiction of the agency or court to which a complaint is brought.

The Parties hereby acknowledge and agree that both Parties have negotiated and entered into this Agreement freely and in good faith and that the terms of this Agreement have not been affected in any way, either directly or indirectly, by (A) any fraud, duress, unfairness, or any inequity in the relative bargaining power of the Parties or (B) any manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S.

348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

## **ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance with Applicable Legal Authorities**

The Company and the DS Supplier are subject to, and shall comply with, all existing or future applicable federal, State and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

### **12.2 FERC Jurisdictional Matters**

The inclusion herein of descriptions of procedures or processes utilized by PJM or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA or if any existing procedures or processes utilized by PJM are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company and/or the DS Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

### **12.3 Energy Efficiency, Conservation, and Retail Market Programs**

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties and, for the avoidance of doubt, any programs offered or conducted by the Company or other entities relating to or arising from the PaPUC's Investigation of Pennsylvania's Retail Electricity Market, PaPUC Docket No. I-2011-2237952 (including legislation enacted to address the Commission's Final Order in Docket No. I-2011-2237952), and that such participation may reduce or change the amount of DS Supply that DS Supplier is required to provide and the amount of monies it may receive under this Agreement. The Company shall have no obligation whatsoever to DS Supplier with respect to the effect, if any, of such programs. DS Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

## **ARTICLE 13: LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

### **13.1 Limitations on Liability**

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability

shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy, and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

### **13.2 Risk of Loss**

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by the DS Supplier upon receipt thereof at the point of delivery identified in Appendix C and until delivery thereof at the retail electric meter of the Customer, and the DS Supplier shall be deemed to have custody and control of the DS Supply at all times prior to receipt thereof by the Company. The Party deemed to have custody and control of DS Supply shall be responsible for all loss or damage to property or injury or death to persons arising in connection with such DS Supply while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

## **ARTICLE 14: INDEMNIFICATION**

### **14.1 Indemnification**

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the DS Supplier with respect to an obligation arising under or in connection with this Agreement, or for which the DS Supplier has otherwise assumed liability under the terms of this Agreement, the DS Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, and shall appoint counsel at DS Supplier's expense, subject to the approval of Company, to defend any such claims or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should the DS Supplier (the "Indemnified DS Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company with respect to an obligation arising under or in connection with this Agreement, or for which the Company has otherwise assumed liability under the terms of this Agreement, the Company shall defend (at the option of the Indemnified DS

Supplier), indemnify and hold harmless the Indemnified DS Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified DS Supplier. The Indemnified DS Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) If either Party intends to seek indemnification under Article 14.1(a) or 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any Worker's

Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

## **ARTICLE 15: FORCE MAJEURE**

### **15.1 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Article 15.2 (Notification).

### **15.2 Notification**

A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

## **ARTICLE 16: MISCELLANEOUS PROVISIONS**

### **16.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or

facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the DS Supplier and Company as set forth in Exhibit 2 hereto.

Such notices, demands or requests shall also be provided to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day.

### **16.2 No Prejudice of Rights**

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

### **16.3 Effect of Regulatory or Legislative Actions**

- (a) The Parties agree that the Company's obligations under this Agreement are contingent on, and limited by, the Company's ability to recover all costs incurred by it under this Agreement from its retail customers in full and on a current basis. If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which have the effect of depriving the Company's full and current recovery of said costs, the Company may terminate this Agreement upon ten (10) days written notice. The Parties agree that any such termination shall not constitute an Event of Default

under this Agreement.

- (b) If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which transfer the Company's obligation to procure or supply DS Supply to a third party(ies), this Agreement may be transferred to such third party(ies) in accordance with the provisions of Section 16.4 below. The Parties agree that any such transfer shall not constitute an Event of Default under this Agreement.
- (c) In the event that this Agreement is terminated as a result of any of the reasons set forth in subsections (a) and (b) of Section 16.3 above, the Parties agree that the Company shall not be liable for any costs or damages incurred or otherwise associated with (i) the transfer of the Company's obligation to obtain or provide DS Supply to third party, or (ii) the elimination of the Company's obligation to obtain or provide DS Supply from DS Supplier.

#### **16.4 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.4 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the DS Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, or to a third party in accordance with Section 16.3(b), if such assignee agrees, in writing, to be bound by all of

the terms and conditions hereof and all necessary regulatory approvals are obtained. The DS Supplier may, with prior written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning DS Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the DS Supplier, and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement.

#### **16.5 Governing Law and Venue**

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Except for matters jurisdictional to FERC, the PUC or the appellate courts having jurisdiction over the PUC or FERC matters, all disputes hereunder shall be resolved in the Pennsylvania State court or Federal court of competent jurisdiction and within reasonably close proximity to the Company. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

#### **16.6 Regulatory Approvals**

DS Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and

all required State, Federal or other regulatory approvals of the Agreement and/or Transaction Confirmations hereunder. The commencement of the Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by DS Supplier of all DS Supplier required regulatory approvals, and (iii) Pennsylvania PUC approval.

### **16.7 Headings**

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

### **16.8 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **16.9 General Miscellaneous Provisions**

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable,

such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

#### **16.10 Taxes**

As between the Parties: (i) the DS Supplier is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of DS Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of DS Supply under this Agreement. Should the DS Supplier be required to remit any

Pennsylvania State Sales and Use Taxes directly to the applicable taxing authority, other than taxes previously collected by the DS Supplier on behalf of the Company, the Company will defend and indemnify the DS Supplier for such Sales and Use Taxes and will pay to the DS Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any such taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any such taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the DS Supplier, the DS Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

#### **16.11 Audit**

Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Article 9 (Billing and Payment) and 9.1(i) (Interest on Unpaid Balances) of this Agreement.

#### **16.12 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;

- (b) All titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) References to the singular include the plural and vice versa;
- (d) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

### **16.13 Confidentiality**

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was

available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

(b) Notwithstanding any other provision of this Section 16.12, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.12, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.12. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Article 16.12, which equitable relief shall be granted without bond or proof of

damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

#### **16.14 Federal Acquisition Regulation**

If any of the following clauses prescribed by the Federal Acquisition Regulation (“FAR”), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the DS Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: § 52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36; and
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

#### **16.15 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party agrees not to seek any change to such rates, terms

and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

#### **16.16 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

#### **16.17 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

#### **16.18 Successors**

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**ATTEST:**

**DUQUESNE LIGHT COMPANY**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**[INSERT]**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX A- MAXIMUM UNSECURED CREDIT

### Credit Rating Matrix Tables for EDC's

#### EDC: Duquesne Light Company

| Credit Rating of the DS Supplier |              |              | Maximum Credit Limit (calculated as the lesser of the percentage of TNW or the Credit Limit Cap below) |                  |
|----------------------------------|--------------|--------------|--|------------------|
| S&P                              | Moody's      | Fitch        | Percentage of TNW  | Credit Limit Cap |
| A- and above                     | A3 and above | A- and above | 16%  | \$60,000,000     |
| BBB +                            | Baa1         | BBB +        | 10%  | \$40,000,000     |
| BBB                              | Baa2         | BBB          | 7%   | \$30,000,000     |
| BBB-                             | Baa3         | BBB-         | 3%   | \$20,000,000     |
| Below BBB-                       | Below Baa3   | Below BBB-   | 0%   | \$0              |

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#### Credit Rating Determination Methodology

The DS Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the DS Supplier or its Guarantor is rated by all three accepted rating agencies (S&P, Moody's and Fitch), and the ratings are split, the lowest rating will be used. **Minimum Rating** – The lowest credit rating for a DS Supplier, as set forth in this Appendix A, that can obtain unsecured credit.

## **APPENDIX B – METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM) EXPOSURE**

### **Parameters**

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak Initial Mark Price
3. MW-Measure
4. On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
6. Number of awarded Tranches

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

### **Determination of On-Peak Forward Prices**

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub On-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available (“Aggregate Quotes”), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that On-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the On-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the On-Peak Forward Price for the given month may be updated based on the changes in On-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

## ***Determination of Off-Peak Forward Prices***

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub Off-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly Off-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available (“Aggregate Quotes”), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from the average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes. Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that Off-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the Off-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the Off-Peak Forward Price for the given month may be updated based on the changes in Off-Peak Forward Price

quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

### ***Example of Disaggregating Aggregate Quotes***

The following is an example of the process to be used for disaggregating Aggregate Quotes:

- a. Aggregate Quote only available for January – March: \$60/MWh.
- b. Immediate Prior Calendar year quotes for January, February, and March as follows:

January: \$42/MWh

February: \$45/MWh

March: \$40/MWh

- c. Calculations as follows:

1. Calculate Average price in (b) = \$42.33/MWh

2. Calculate monthly deviation from Average:

January: 99.2% ( $\$42/\$42.33$ )

February: 106.3% ( $\$45/\$42.33$ )

March: 94.5% ( $\$40/\$42.33$ )

3. Disaggregate the Aggregate Quote by applying percentages from c.(2) to the available aggregate quote:

January: \$59.53 ( $\$60 \times 99.2\%$ )

February: \$63.78 ( $\$60 \times 106.3\%$ )

March: \$56.69 ( $\$60 \times 94.5\%$ )

## Mark-To-Market Example

| Necessary Information from a Transaction Confirmation: |                             |                     |
|--|-----------------------------|---------------------|
| Delivery Period:                                       | June 1, 2011 - May 31, 2012 |                     |
| Bid Blocks:  | 3                           | (j)                 |
| Estimated Energy Quantity Per MW-Measure:              |                             |                     |
|  | On-Peak<br>MWh (k)          | Off-Peak<br>MWh (l) |
| Jan  | 11800                       | 8300                |
| Feb  | 13000                       | 9100                |
| Mar  | 9100                        | 6400                |
| Apr  | 7200                        | 5000                |
| May  | 8800                        | 6200                |
| Jun  | 12900                       | 9000                |
| Jul  | 15200                       | 10600               |
| Aug  | 16000                       | 11200               |
| Sep  | 9500                        | 6700                |
| Oct  | 8300                        | 5800                |
| Nov  | 9800                        | 6900                |
| Dec  | 10900                       | 7600                |

|  |               |
|--|---------------|
| <b>Business Day on which MtM is Calculated:</b>              | June 24, 2011 |
| <b>MW-Measure:</b>   | 50.0 MW (m)   |
| <b>Current Capacity PLC Per Bid Block:</b>                   | 40.0 MW (n)   |
| <b>Percent of On-Peak Hours Remaining in Current Month:</b>  | 18.2% (o)     |
| <b>Percent of Off-Peak Hours Remaining in Current Month:</b> | 21.7% (p)     |

| MtM Exposure Calculation |   |  |                                    |                                     |                                      |                                       |  |   |                     |
|--------------------------|---|--|------------------------------------|-------------------------------------|--------------------------------------|---------------------------------------|--|---|---------------------|
|                          | a                                       | b  | c                                  | d                                   | e=c-a                                | f=d-b                                 | g=k*n/m*j*o                                    | h=l*n/m*j*p                                     | i=(e*g)+(f*h)       |
|                          | On-Peak<br>Initial Mark Price<br>\$/MWh | Off-Peak<br>Initial Mark Price<br>\$/MWh | On-Peak<br>Forward Price<br>\$/MWh | Off-Peak<br>Forward Price<br>\$/MWh | Change In<br>On-Peak Price<br>\$/MWh | Change In<br>Off-Peak Price<br>\$/MWh | On-Peak<br>Estimated<br>Energy Quantity<br>MWh | Off-Peak<br>Estimated<br>Energy Quantity<br>MWh | MtM<br>Exposure     |
| Jun-11                   | 57.04                                   | 27.95                                    | 58.48                              | 28.65                               | 1.44                                 | 0.70                                  | 5,629  | 4,696   | \$ 11,393           |
| Jul-11                   | 72.81                                   | 31.31                                    | 75.26                              | 32.36                               | 2.45                                 | 1.05                                  | 36,480   | 25,440  | \$ 116,088          |
| Aug-11                   | 72.81                                   | 34.23                                    | 74.28                              | 34.91                               | 1.47                                 | 0.68                                  | 38,400   | 26,880  | \$ 74,726           |
| Sep-11                   | 45.56                                   | 24.15                                    | 47.31                              | 25.08                               | 1.75                                 | 0.93                                  | 22,800   | 16,080  | \$ 54,854           |
| Oct-11                   | 43.23                                   | 23.34                                    | 46.09                              | 24.89                               | 2.86                                 | 1.55                                  | 19,920   | 13,920  | \$ 78,547           |
| Nov-11                   | 43.23                                   | 25.50                                    | 46.40                              | 27.38                               | 3.17                                 | 1.88                                  | 23,520   | 16,560  | \$ 105,691          |
| Dec-11                   | 43.23                                   | 26.36                                    | 44.86                              | 27.36                               | 1.63                                 | 1.00                                  | 26,160   | 18,240  | \$ 60,881           |
| Jan-12                   | 50.73                                   | 38.55                                    | 54.45                              | 41.39                               | 3.72                                 | 2.84                                  | 28,320   | 19,920  | \$ 161,923          |
| Feb-12                   | 50.73                                   | 39.06                                    | 53.61                              | 41.29                               | 2.88                                 | 2.23                                  | 31,200   | 21,840  | \$ 138,559          |
| Mar-12                   | 45.23                                   | 30.75                                    | 47.64                              | 32.39                               | 2.41                                 | 1.64                                  | 21,840   | 15,360  | \$ 77,825           |
| Apr-12                   | 45.23                                   | 25.78                                    | 48.01                              | 27.36                               | 2.78                                 | 1.58                                  | 17,280   | 12,000  | \$ 66,998           |
| May-12                   | 47.06                                   | 24.94                                    | 49.06                              | 26.00                               | 2.00                                 | 1.06                                  | 21,120   | 14,880  | \$ 58,013           |
|                          |   |  |                                    |                                     |                                      |                                       |  |   | <b>\$ 1,005,499</b> |

## ***CALCULATION OF MTM EXPOSURE FOR HOURLY PRICE TRANSACTIONS***

The MtM Exposure for an Hourly Price Transaction shall be calculated as follows. During the first month of the term of a Transaction, the MtM Exposure shall be equal to Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche. Thereafter, the MtM Exposure shall be calculated on the first Business Day of each month during the term of a Transaction and shall be deemed equal to the product of: (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche; (ii) the ratio of the Current Capacity PLC Per Tranche to the MW-Measure; (iii) the number of Tranches awarded to the DS Supplier per the Transaction Confirmation; and (iv) the ratio of the calendar days remaining in the Delivery Period to the total calendar days in the Delivery Period. The following definitions shall apply for the purposes of this calculation:

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM in determining the DS Supplier’s capacity obligation for each Transaction.

“Current Capacity PLC Per Tranche” is the Capacity PLC of a Tranche as of the Business Day the MtM Exposure is calculated for the Transaction.

“MW-Measure” means the Current Capacity PLC Per Tranche as of the Transaction Date.

## APPENDIX C - DS SUPPLY SPECIFICATIONS

- 1) With respect to a Transaction, DS Supplier shall provide DS Supply on a firm and continuous basis. The terms of the Transaction shall be set forth in a Transaction Confirmation to this SMA, in a form as set forth in Exhibit 1. As used herein and in the Transaction Confirmation, Full Requirements Service shall mean all of the following necessary services or products that are required to supply the DS Responsibility Share for the DS Customers associated with the Transaction Confirmation, including: Energy, Capacity, transmission (except for Network Integration Transmission Service), Ancillary Services, Alternative Energy Credits for compliance with the AEPS Act, transmission and distribution system losses, congestion management costs, and such other products and services that are required except for distribution service.
- 2) The Transaction Confirmation shall, *inter alia*, specify the following terms with respect to a Transaction: (i) the Product (typically, Full Requirements Service); (ii) the DS Customer group associated with the applicable DS Load; (iii) the Delivery Point at which the DS Supplier shall deliver the DS Supply; (iv) the Delivery Period during which the DS Supplier shall deliver the DS Supply; (v) the number of Tranches; (vi) the DS Supplier Responsibility Share; (vii) for Fixed Price Transactions, the total number of AECs associated with each Tranche; and (viii) the DS Fixed Price or Fixed Price Adder, as applicable, for each Tranche.
- 3) The Company and DS Supplier shall be responsible for their respective PJM Billing Statement Line Item Credits and Charges associated with a Transaction as described in Appendix D, *Responsibilities for PJM Billing Line Items as Defined in Applicable PJM Agreement or Manual*. Company and DS Supplier agree to communicate

with PJM as may be necessary to ensure that PJM transfers all PJM Billing Statement Line Item Credits and Charges to the appropriate party.

4) The DS Supplier shall comply with all applicable requirements described in Appendix E, *DS Suppliers' Obligations For AEPS Compliance*.

5) Except as provided in Paragraph 1 above, DS Supplier bears the risk of any other changes in PJM products and pricing during the term of all Transactions under this Agreement. However, if there are any other new FERC-approved PJM transmission charges other than those referred to in Paragraph 1 above or other new PJM charges and costs, charged to network transmission customers, that DS Supplier believes the Company should recover through retail rates because they are directly related to the Company's obligations, then Company may file with the PaPUC a request for approval to recover such new costs. DS Supplier is required to intervene in any such proceeding before the PaPUC. Such new costs can only be charged to the Company to the extent that the PaPUC approves the Company's recovery of those costs. DS Supplier agrees to be bound by the decision of the PaPUC (subject to the normal rules for appeal of the decision of the PaPUC) and waives all claims concerning this issue before the FERC. Notwithstanding the foregoing, nothing in the Agreement shall preclude DS Supplier or Company from taking any position before the FERC regarding the creation and allocation of any such PJM charges.

**DS Customer Group:**

Each Transaction Confirmation shall be associated with DS Supply to one of the following

DS Customer categories, or their successors, as defined in the DS Tariff:

| <b>Customer Group</b>                     | <b>Rate Schedule</b>   | <b>Description</b>  |
|---|------------------------|---|
| <b>Residential &amp; Lighting</b>         | RS                     | Residential Service   |
|   | RH                     | Residential Service Heating   |
|   | RA                     | Residential Service Add-On Heat Pump  |
|   | AL                     | Architectural Lighting Service  |
|   | SE                     | Street Lighting Energy  |
|   | SM                     | Street Lighting Municipal   |
|   | SH                     | Street Lighting Highway   |
|   | PAL                    | Private Area Lighting   |
| <b>Small Commercial &amp; Industrial</b>  | GS                     | General Service Small   |
|   | GM < 25kW              | General Service Medium – Demand less than 25kW  |
|   | GMH < 25kW             | General Service Medium Heating – Demand less than 25kW                                    |
|   | UMS                    | Unmetered Service   |
| <b>Medium Commercial &amp; Industrial</b> | GM ≥ 25kW and < 200kW  | General Service Medium – Demand equal to or greater than 25kW and less than 200kW         |
|   | GMH ≥ 25kW and < 200kW | General Service Medium Heating – Demand equal to or greater than 25kW and less than 200kW |
| <b>HPS-Eligible</b>                       | GM ≥ 200kW             | General Service Medium – Demand equal to or greater than 200kW                            |
|   | GMH ≥ 200kW            | General Service Medium – Demand equal to or greater than 200kW                            |
|   | GL                     | General Service Large   |
|   | GLH                    | General Service Heating   |
|   | L                      | Large Power Service   |
|   | HVPS                   | High Voltage Power Service  |

**APPENDIX D – RESPONSIBILITIES FOR PJM BILLING LINE ITEMS AS DEFINED IN APPLICABLE PJM AGREEMENT OR MANUAL**

| ID #       | PJM Billing Statement Line Items                            | Responsible Party |             |
|------------|---|-------------------|-------------|
|            |   | EDC               | DS Supplier |
| <b>ID#</b> | <b>CHARGES</b>  |                   |             |
| 1000       | Amount Due for Interest on Past Charges                     |                   | DS Supplier |
| 1100       | Network Integration Transmission Service                    | EDC               |             |
| 1101       | Network Integration Transmission Service (ATSI Low Voltage) | EDC               |             |
| 1102       | Network Integration Transmission Service (exempt)           | EDC               |             |
| 1103       | Underground Transmission Service                            | EDC               |             |
| 1104       | Network Integration Transmission Service Offset             | EDC               |             |
| 1108       | Transmission Enhancement                                    | EDC               |             |
| 1109       | MTEP Project Cost Recovery                                  |                   | DS Supplier |
| 1110       | Direct Assignment Facilities                                |                   | DS Supplier |
| 1115       | Transmission Enhancement Settlement (EL05-121-009)          | EDC               |             |
| 1120       | Other Supporting Facilities                                 |                   | DS Supplier |
| 1130       | Firm Point-to-Point Transmission Service                    |                   | DS Supplier |
| 1133       | Firm Point-to-Point Transmission Service Resale Charge      |                   | DS Supplier |
| 1135       | Neptune Voluntary Released Transmission Service (Firm)      |                   | DS Supplier |
| 1136       | Hudson Voluntary Released Transmission Service (Firm)       |                   | DS Supplier |
| 1138       | Linden Voluntary Released Transmission Service (Firm)       |                   | DS Supplier |
| 1140       | Non-Firm Point-to-Point Transmission Service                |                   | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 1143 | Non-Firm Point-to-Point Transmission Service Resale Charge |  | DS Supplier |
| 1145 | Neptune Voluntary Released Transmission Service (Non-Firm) |  | DS Supplier |
| 1146 | Neptune Default Released Transmission Service (Non-Firm)   |  | DS Supplier |
| 1147 | Neptune Unscheduled Usage Billing Allocation               |  | DS Supplier |
| 1155 | Linden Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 1156 | Linden Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 1157 | Linden Unscheduled Usage Billing Allocation                |  | DS Supplier |
| 1165 | Hudson Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 1166 | Hudson Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 1167 | Hudson Unscheduled Usage Billing Allocation                |  | DS Supplier |
| 1200 | Day-ahead Spot Market Energy                               |  | DS Supplier |
| 1205 | Balancing Spot Market Energy                               |  | DS Supplier |
| 1210 | Day-ahead Transmission Congestion                          |  | DS Supplier |
| 1215 | Balancing Transmission Congestion                          |  | DS Supplier |
| 1216 | Pseudo-Tie Balancing Congestion Refund                     |  | DS Supplier |
| 1218 | Planning Period Congestion Uplift                          |  | DS Supplier |
| 1220 | Day-ahead Transmission Losses                              |  | DS Supplier |
| 1225 | Balancing Transmission Losses                              |  | DS Supplier |
| 1230 | Inadvertent Interchange                                    |  | DS Supplier |
| 1240 | Day-ahead Economic Load Response                           |  | DS Supplier |
| 1241 | Real-time Economic Load Response                           |  | DS Supplier |
| 1242 | Day-ahead Load Response Charge Allocation                  |  | DS Supplier |
| 1243 | Real-time Load Response Charge Allocation                  |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 1245 | Emergency Load Response   |  | DS Supplier |
| 1250 | Meter Error Correction  |  | DS Supplier |
| 1260 | Emergency Energy  |  | DS Supplier |
| 1301 | PJM Scheduling, System Control and Dispatch Service – Control Area Administration               |  | DS Supplier |
| 1302 | PJM Scheduling, System Control and Dispatch Service – FTR Administration                        |  | DS Supplier |
| 1303 | PJM Scheduling, System Control and Dispatch Service –Market Support                             |  | DS Supplier |
| 1304 | PJM Scheduling, System Control and Dispatch Service – Regulation Market Administration          |  | DS Supplier |
| 1305 | PJM Scheduling, System Control and Dispatch Service – Capacity Resource/Obligation Mgmt.        |  | DS Supplier |
| 1306 | PJM Scheduling, System Control and Dispatch Service – Advanced Second Control Center            |  | DS Supplier |
| 1307 | PJM Scheduling, System Control and Dispatch Service – Market Support Offset                     |  | DS Supplier |
| 1308 | PJM Scheduling, System Control and Dispatch Service Refund – Control Area Administration        |  | DS Supplier |
| 1309 | PJM Scheduling, System Control and Dispatch Service Refund – FTR Administration                 |  | DS Supplier |
| 1310 | PJM Scheduling, System Control and Dispatch Service Refund – Market Support                     |  | DS Supplier |
| 1311 | PJM Scheduling, System Control and Dispatch Service Refund –Regulation Market Administration    |  | DS Supplier |
| 1312 | PJM Scheduling, System Control and Dispatch Service Refund – Capacity Resource/Obligation Mgmt. |  | DS Supplier |
| 1313 | PJM Settlement, Inc.  |  | DS Supplier |
| 1314 | Market Monitoring Unit (MMU) Funding  |  | DS Supplier |
| 1315 | FERC Annual Charge Recovery   |  | DS Supplier |
| 1316 | Organization of PJM States, Inc. (OPSI) Funding   |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 1317 | North American Electric Reliability Corporation (NERC)                        |  | DS Supplier |
| 1318 | Reliability First Corporation (RFC)   |  | DS Supplier |
| 1320 | Transmission Owner Scheduling, System Control and Dispatch Service            |  | DS Supplier |
| 1330 | Reactive Supply and Voltage Control from Generation and Other Sources Service |  | DS Supplier |
| 1340 | Regulation and Frequency Response Service                                     |  | DS Supplier |
| 1350 | Energy Imbalance Service  |  | DS Supplier |
| 1360 | Synchronized Reserve  |  | DS Supplier |
| 1362 | Non-Synchronized Reserve  |  | DS Supplier |
| 1365 | Day-ahead Scheduling Reserve  |  | DS Supplier |
| 1370 | Day-ahead Operating Reserve   |  | DS Supplier |
| 1371 | Day-ahead Operating Reserve for Load Response                                 |  | DS Supplier |
| 1375 | Balancing Operating Reserve   |  | DS Supplier |
| 1376 | Balancing Operating Reserve for Load Response                                 |  | DS Supplier |
| 1377 | Synchronous Condensing  |  | DS Supplier |
| 1378 | Reactive Services   |  | DS Supplier |
| 1380 | Black Start Service   |  | DS Supplier |
| 1390 | Fuel Cost Policy Penalty  |  | DS Supplier |
| 1400 | Load Reconciliation for Spot Market Energy                                    |  | DS Supplier |
| 1410 | Load Reconciliation for Transmission Congestion                               |  | DS Supplier |
| 1420 | Load Reconciliation for Transmission Losses                                   |  | DS Supplier |
| 1430 | Load Reconciliation for Inadvertent Interchange                               |  | DS Supplier |
| 1440 | Load Reconciliation for PJM Scheduling, System Control and Dispatch Service   |  | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 1441 | Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund         |  | DS Supplier |
| 1442 | Load Reconciliation for Schedule 9-6 – Advanced Second Control Center                      |  | DS Supplier |
| 1444 | Load Reconciliation for Market Monitoring Unit Funding                                     |  | DS Supplier |
| 1445 | Load Reconciliation for FERC Annual Charge Recovery  |  | DS Supplier |
| 1446 | Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding                    |  | DS Supplier |
| 1447 | Load Reconciliation for North American Electric Reliability Corporation (NERC)             |  | DS Supplier |
| 1448 | Load Reconciliation for Reliability First Corporation (RFC)                                |  | DS Supplier |
| 1449 | Load Reconciliation for Consumer Advocates of PJM States, Inc. (CAPS) Funding              |  | DS Supplier |
| 1450 | Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service |  | DS Supplier |
| 1460 | Load Reconciliation for Regulation and Frequency Response Service                          |  | DS Supplier |
| 1470 | Load Reconciliation for Synchronized Reserve   |  | DS Supplier |
| 1472 | Load Reconciliation for Non-Synchronized Reserve   |  | DS Supplier |
| 1475 | DASR Load Reconciliation   |  | DS Supplier |
| 1478 | Load Reconciliation for Operating Reserve  |  | DS Supplier |
| 1480 | Load Reconciliation for Synchronous Condensing   |  | DS Supplier |
| 1490 | Load Reconciliation for Reactive Services  |  | DS Supplier |
| 1500 | Financial Transmission Rights Auction  |  | DS Supplier |
| 1600 | RPM Auction  |  | DS Supplier |
| 1610 | Locational Reliability   |  | DS Supplier |
| 1611 | CP Transitional Locational Reliability   |  | DS Supplier |
| 1650 | Non-Unit Specific Capacity Transaction   |  | DS Supplier |

|      |  |     |             |
|------|--|-----|-------------|
| 1660 | Demand Resource and ILR Compliance Penalty                 |     | DS Supplier |
| 1661 | Capacity Resource Deficiency                               |     | DS Supplier |
| 1662 | Generation Resource Rating Test Failure                    |     | DS Supplier |
| 1663 | Qualifying Transmission Upgrade Compliance Penalty         |     | DS Supplier |
| 1664 | Peak Season Maintenance Compliance Penalty                 |     | DS Supplier |
| 1665 | Peak-Hour Period Availability                              |     | DS Supplier |
| 1666 | Load Management Test Failure                               |     | DS Supplier |
| 1670 | FRR LSE Reliability  |     | DS Supplier |
| 1680 | FRR LSE Demand Resource And Ilr Compliance Penalty         |     | DS Supplier |
| 1681 | FRR LSE Capacity Resource Deficiency                       |     | DS Supplier |
| 1682 | FRR LSE Generation Resource Rating Test Failure            |     | DS Supplier |
| 1683 | FRR LSE Qualifying Transmission Upgrade Compliance Penalty |     | DS Supplier |
| 1684 | FRR LSE Peak Season Maintenance Compliance Penalty         |     | DS Supplier |
| 1685 | FRR LSE Peak-Hour Period Availability                      |     | DS Supplier |
| 1686 | FRR LSE Load Management Test Failure                       |     | DS Supplier |
| 1687 | FRR LSE Schedule 9-5                                       |     | DS Supplier |
| 1688 | FRR LSE Schedule 9-6                                       |     | DS Supplier |
| 1710 | PJM/MISO Seams Elimination Cost Assignment                 |     | DS Supplier |
| 1712 | Intra-PJM Seams Elimination Cost Assignment                |     | DS Supplier |
| 1720 | RTO Start-up Cost Recovery                                 |     | DS Supplier |
| 1730 | Expansion Cost Recovery                                    | EDC |             |
| 1900 | Unscheduled Transmission Service                           |     | DS Supplier |
| 1910 | Ramapo Phase Angle Regulators                              |     | DS Supplier |

|            |   |     |             |
|------------|---|-----|-------------|
| 1911       | Michigan – Ontario Interface Phase Angle Regulators         |     | DS Supplier |
| 1920       | Station Power   |     | DS Supplier |
| 1930       | Generation Deactivation                                     | EDC |             |
| 1932       | Generation Deactivation Refund                              | EDC |             |
| 1950       | Virginia Retail Administrative Fee                          |     | DS Supplier |
| 1952       | Deferred Tax Adjustment                                     | EDC |             |
| 1955       | Deferral Recovery   |     | DS Supplier |
| 1980       | Miscellaneous Bilateral                                     |     | DS Supplier |
| 1995       | PJM Annual Membership Fee                                   |     | DS Supplier |
| 1999       | PJM Customer Payment Default                                |     | DS Supplier |
| <b>ID#</b> | <b>CREDITS</b>  |     |             |
| 2100       | Network Integration Transmission Service                    | EDC |             |
| 2101       | Network Integration Transmission Service (ATSI Low Voltage) | EDC |             |
| 2102       | Network Integration Transmission Service (exempt)           | EDC |             |
| 2103       | Underground Transmission Service                            | EDC |             |
| 2104       | Network Integration Transmission Service Offset             | EDC |             |
| 2106       | Non-Zone Network Integration Transmission Service           | EDC |             |
| 2108       | Transmission Enhancement                                    | EDC |             |
| 2109       | MTEP Project Cost Recovery                                  |     | DS Supplier |
| 2110       | Direct Assignment Facilities                                |     | DS Supplier |
| 2120       | Other Supporting Facilities                                 |     | DS Supplier |
| 2130       | Firm Point-to-Point Transmission Service                    |     | DS Supplier |
| 2132       | Internal Firm Point-to-Point Transmission Service           |     | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 2133 | Firm Point-to-Point Transmission Service Resale Credit     |  | DS Supplier |
| 2135 | Neptune Voluntary Released Transmission Service (Firm)     |  | DS Supplier |
| 2136 | Hudson Voluntary Released Transmission Service (Firm)      |  | DS Supplier |
| 2138 | Linden Voluntary Released Transmission Service (Firm)      |  | DS Supplier |
| 2140 | Non-Firm Point-to-Point Transmission Service               |  | DS Supplier |
| 2142 | Internal Non-Firm Point-to-Point Transmission Service      |  | DS Supplier |
| 2143 | Non-Firm Point-to-Point Transmission Service Resale Credit |  | DS Supplier |
| 2145 | Neptune Voluntary Released Transmission Service (Non-Firm) |  | DS Supplier |
| 2146 | Neptune Default Released Transmission Service (Non-Firm)   |  | DS Supplier |
| 2155 | Linden Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 2156 | Linden Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 2165 | Hudson Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 2166 | Hudson Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 2210 | Transmission Congestion                                    |  | DS Supplier |
| 2211 | Day-ahead Transmission Congestion                          |  | DS Supplier |
| 2215 | Balancing Transmission Congestion                          |  | DS Supplier |
| 2217 | Planning Period Excess Congestion                          |  | DS Supplier |
| 2218 | Planning Period Congestion Uplift                          |  | DS Supplier |
| 2220 | Transmission Losses  |  | DS Supplier |
| 2240 | Day-ahead Economic Load Response                           |  | DS Supplier |
| 2241 | Real-time Economic Load Response                           |  | DS Supplier |
| 2245 | Emergency Load Response                                    |  | DS Supplier |
| 2260 | Emergency Energy   |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 2320 | Transmission Owner Scheduling, System Control and Dispatch Service            |  | DS Supplier |
| 2330 | Reactive Supply and Voltage Control from Generation and Other Sources Service |  | DS Supplier |
| 2340 | Regulation and Frequency Response Service                                     |  | DS Supplier |
| 2350 | Energy Imbalance Service  |  | DS Supplier |
| 2360 | Synchronized Reserve  |  | DS Supplier |
| 2362 | Non-Synchronized Reserve  |  | DS Supplier |
| 2365 | Day-ahead Scheduling Reserve  |  | DS Supplier |
| 2370 | Day-ahead Operating Reserve   |  | DS Supplier |
| 2371 | Day-ahead Operating Reserve for Load Response                                 |  | DS Supplier |
| 2375 | Balancing Operating Reserve   |  | DS Supplier |
| 2376 | Balancing Operating Reserve for Load Response                                 |  | DS Supplier |
| 2377 | Synchronous Condensing  |  | DS Supplier |
| 2378 | Reactive Services   |  | DS Supplier |
| 2380 | Black Start Service   |  | DS Supplier |
| 2415 | Balancing Transmission Congestion Load Reconciliation                         |  | DS Supplier |
| 2420 | Load Reconciliation for Transmission Losses                                   |  | DS Supplier |
| 2500 | Financial Transmission Rights Auction   |  | DS Supplier |
| 2510 | Auction Revenue Rights  |  | DS Supplier |
| 2600 | RPM Auction   |  | DS Supplier |
| 2620 | Interruptible Load for Reliability  |  | DS Supplier |
| 2630 | Capacity Transfer Rights  |  | DS Supplier |
| 2640 | Incremental Capacity Transfer Rights  |  | DS Supplier |
| 2650 | Non-Unit Specific Capacity Transaction  |  | DS Supplier |

|      |  |     |             |
|------|--|-----|-------------|
| 2660 | Demand Resource and ILR Compliance Penalty                 |     | DS Supplier |
| 2661 | Capacity Deficiency Resource                               |     | DS Supplier |
| 2662 | Generation Resource Rating Test Failure                    |     | DS Supplier |
| 2663 | Qualifying Transmission Upgrade Compliance Penalty         |     | DS Supplier |
| 2664 | Peak Season Maintenance Compliance Penalty                 |     | DS Supplier |
| 2665 | Peak-Hour Period Availability                              |     | DS Supplier |
| 2666 | Load Management Test Failure                               |     | DS Supplier |
| 2670 | FRR LSE Reliability Credit                                 |     | DS Supplier |
| 2680 | FRR LSE Demand Resource And Ilr Compliance Penalty         |     | DS Supplier |
| 2681 | FRR LSE Capacity Resource Deficiency                       |     | DS Supplier |
| 2682 | FRR LSE Generation Resource Rating Test Failure            |     | DS Supplier |
| 2683 | FRR LSE Qualifying Transmission Upgrade Compliance Penalty |     | DS Supplier |
| 2684 | FRR LSE Peak Season Maintenance Compliance Penalty         |     | DS Supplier |
| 2685 | FRR LSE Peak-Hour Period Availability                      |     | DS Supplier |
| 2686 | FRR LSE Load Management Test Failure                       |     | DS Supplier |
| 2687 | FRR LSE Schedule 9-5                                       |     | DS Supplier |
| 2688 | FRR LSE Schedule 9-6                                       |     | DS Supplier |
| 2710 | PJM/MISO Seams Elimination Cost Assignment                 |     | DS Supplier |
| 2712 | Intra-PJM Seams Elimination Cost Assignment                |     | DS Supplier |
| 2720 | RTO Start-up Cost Recovery                                 |     | DS Supplier |
| 2730 | Expansion Cost Recovery                                    | EDC |             |
| 2910 | Ramapo Phase Angle Regulators                              |     | DS Supplier |
| 2912 | CT Lost Opportunity Cost Allocation                        |     | DS Supplier |

|      |                                    |     |             |
|------|------------------------------------|-----|-------------|
| 2930 | Generation Deactivation            | EDC |             |
| 2932 | Generation Deactivation Refund     | EDC |             |
| 2950 | Virginia Retail Administrative Fee |     | DS Supplier |
| 2952 | Deferred Tax Adjustment            | EDC |             |
| 2955 | Deferral Recovery                  |     | DS Supplier |
| 2980 | Miscellaneous Bilateral            |     | DS Supplier |
| 2996 | Annual PJM Cell Tower              |     | DS Supplier |
| 2997 | Annual PJM Building Rent           |     | DS Supplier |

## **APPENDIX E – DS SUPPLIER’S OBLIGATIONS FOR AEPS COMPLIANCE**

With respect to the DS Supplier Responsibility Share, DS Supplier shall:

- (1) Provide sufficient AECs for each Tranche, in accordance with the schedule provided below.
- (2) Provide actual AECs that conform to all applicable PaPUC or other legal requirements in effect as of the date that the AECs are provided to the Company. DS Supplier shall be responsible for any incremental costs associated with ensuring that the AECs it provides to the Company conform to such requirements then in effect.
- (3) Provide AECs on a six (6) month basis or at the end of any Delivery Period, if the Delivery Period is less than six (6) months, and shall be transferred to the Company within 30 days from the final day of any such six month period or Delivery Period; provided; however, that if the term of any Delivery Period includes two different AEPS reporting years, then DS Supplier shall provide the AECs required for the first AEPS reporting year by June 30th of each year.
- (4) Pay any penalties, costs, charges, damages, or other fees assessed against the DS Supplier and/or the Company associated with the DS Supplier’s non-performance with this Agreement or any other applicable requirements related to AEPS.
- (5) Submit to the Company proof of compliance under this Agreement in such form and manner as may be required by the Company.
- (6) Provide to the Company all information the Company may require to comply with the AEPS Act and its implementing regulations and other

requirements of law, including, but not limited to the price paid per AEC required by 73 Pa. C.S. § 1648.3(e)(8).

This Appendix E shall confirm the Alternative Energy Portfolio Standards Obligation of the Transaction agreed to on the Bid Proposal Due Date.

With respect to Transactions for Full Requirements Service, the DS Supplier shall deliver AECs conforming to all applicable requirements for the Delivery Period based on a percentage of the total MWh supplied by DS Supplier, in accordance with the following schedule:

| <u>Compliance Period</u> | <u>Tier 1</u> | <u>PV</u> | <u>Tier 2</u> |
|--------------------------|---------------|-----------|---------------|
| 6/1/2021 – 5/31/2022     | 7.5%          | 0.50%     | 10.0%         |

The percentages set forth above are those applicable for the first DS auction in DSP IX and may be revised for future DS Auctions to reflect changes in law or other applicable requirements. Unless the PaPUC or other authority with jurisdiction implements changes related to AEPS, compliance obligations for periods beyond 6/1/2021 to 5/31/2022 will remain at the 6/1/2021 to 5/31/2022 percentages. These are subject to revision if there are changes from the Pennsylvania AEPS Administrator.

For each compliance period during the Delivery Period, the number of AECs that a DS Supplier is obligated to provide may be reduced by a pre-determined number of AECs allocated to the DS Supplier (“Allocated AECs”). The number of Allocated AECs will be defined prior to the Transaction Date. Any Allocated AECs will not be transferred to the DS Supplier; but instead, the DS Supplier’s AEC obligations will be reduced by a pro rata share of the Allocated AECs, and the Allocated AECs will remain the property of the Company.

The above amounts are estimates and will vary based on actual load served. DS Supplier will need to true-up, higher or lower, actual credits needed based on final reconciled settlement data from PJM.

EXHIBIT 1

TRANSACTION CONFIRMATION FOR FIXED PRICE TRANSACTIONS

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Agreement dated [Month, Day, Year] (**Date of the Contract/DS Auction**) between Duquesne Light Company (“Company”) and [INSERT] (“DS Supplier”). Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Transaction Confirmation shall confirm the following terms of the Transaction agreed to on [Month, Day, Year] (**Date of the current DS Auction for the tranches the won and will be serving**) (“Transaction Date”).

Product: Full Requirements Service

DS Customer Group: [INSERT CUSTOMER CLASS]

Delivery Point: Duquesne Residual Aggregate Zone in PJM Pnode 116472943

Delivery Period: [Month, Day, Year] through [Month, Day, Year]

Number of Tranches: [INSERT]

DS Fixed Percentage: [INSERT] % of DEFAULT SERVICE Load (for applicable customer class)

DS Fixed Price: [INSERT AVERAGE PRICE] per MWh

Tranche 1 at [INSERT] per MWH

Tranche 2 at [INSERT] per MWH

Tranche 3 at [INSERT] per MWH

⋮

Tranche [X] at [INSERT] per MWH

Alternative Energy Credit (AEC) Allocation (if any):

| <b>Alternative Energy Portfolio Standards - Reporting Period</b> | <b>AEC Allocation per Tranche, (AECs)</b> | <b>Total AEC Allocation (AECs)</b> |
|--|---|------------------------------------|
| 2021-22  |   |                                    |

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between DS Supplier and Company by returning an executed copy of this Transaction Confirmation by email to the Company at energysupply@duqlight.com. The signatories to this Transaction must have the authority to enter into this Transaction.

Duquesne Light Company\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[INSERT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT 2  
FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

|                        |              |
|------------------------|--------------|
| Buyer:                 | DS Supplier: |
| Duquesne Light Company | [INSERT]     |

**All Notices:**

Street: 411 Seventh Ave.  
City/State/Zip: Pittsburgh, PA 15219  
Attn: Chief Financial Officer  
Facsimile: (412) 393-1190  
Duns: 007915606  
Federal Tax ID Number: 25-0451600

**All Notices:**

Street:  
City/State/Zip:  
Attn:  
Facsimile:  
Duns:  
Federal Tax ID Number:

**Invoices:**

Attn: Supply Procurement – John Peoples  
Phone: (412) 393-6385  
Email: [jpeoples@duqlight.com](mailto:jpeoples@duqlight.com)

**Invoices:**

Attn:  
Phone:  
Facsimile:

**Scheduling:**

Attn: Scheduling – John Peoples  
Phone: (412) 393-6385  
Email: [jpeoples@duqlight.com](mailto:jpeoples@duqlight.com)

**Scheduling:**

Attn:  
Phone:  
Facsimile:

**Payments:**

Attn: Accounting – Jaime Bachota  
Phone: (412) 393-1122  
Email: [jbachota@duqlight.com](mailto:jbachota@duqlight.com)

**Payments:**

Attn:  
Phone:  
Facsimile:

**Wire Transfer:**

BNK:  
ABA:  
ACCT:

**Wire Transfer**

BNK:  
ABA:  
ACCT:

**Credit and Collections:**

Attn: Treasurer – James Milligan  
Phone: (412) 393-1216  
Email: jmilligan@duqlight.com

**With additional Notices of an**

**Event of Default to:**

Attn: Legal Department – Tishekia Williams  
Phone: (412) 393-1541  
Email: twilliams@duqlight.com

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

**With Additional Notices of an**

**Event of Default to:**

Attn:  
Phone:  
Facsimile:

EXHIBIT 3

PERFORMANCE ASSURANCE LETTER OF CREDIT

{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE \_\_\_\_\_ EXPIRY DATE \_\_\_\_\_

APPLICANT  
[NAME]  
[ADDRESS]

BENEFICIARY  
[NAME]  
[ADDRESS]

CURRENCY  
USD

AMOUNT  
\*\*\*\*\*\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO:  
\_\_\_\_\_ FOR THE ACCOUNT OF \_\_\_\_\_ ("APPLICANT") FOR AN  
AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS  
\_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE  
BANK OF \_\_\_\_\_ ("ISSUER") \_\_\_\_\_ {ADDRESS},  
EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS AT  
\_\_\_\_\_ ON OR BEFORE \_\_\_\_\_ OR ANY  
AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF  
CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT  
SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND  
DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF  
CREDIT WILL BE HONORED UPON PRESENTATION TO ISSUER OF THE FOLLOWING  
STATEMENT:

"I HEREBY CERTIFY THAT BENEFICIARY, DUQUESNE LIGHT COMPANY,  
IS ENTITLED TO DRAW THE AMOUNT OF THE ACCOMPANYING DRAFT  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_, ISSUED BY  
\_\_\_\_\_ {ISSUER'S NAME} AND THAT SUCH DRAFT  
REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM  
\_\_\_\_\_ {APPLICANT'S NAME} FOR PERFORMANCE  
ASSURANCE RELATED TO THE DEFAULT SUPPLY MASTER  
AGREEMENT(S) DATED \_\_\_\_\_ BETWEEN BENEFICIARY  
AND APPLICANT."

THE AMOUNT WHICH MAY BE DRAWN BY BENEFICIARY UNDER THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY DRAWINGS PAID THROUGH ISSUER REFERENCING THIS LETTER OF CREDIT NO. \_\_\_\_\_.

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM BENEFICIARY RELEASING ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF ISSUER UNDER THIS LETTER OF CREDIT AND ISSUER SHALL ALWAYS REMAIN LIABLE TO BENEFICIARY FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS TO BENEFICIARY AS SET FORTH HEREIN NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY APPLICANT.
2. THIS LETTER OF CREDIT MAY BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISIONS(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH

ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF PENNSYLVANIA. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF BENEFICIARY AND ISSUER.

5. BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS BENEFICIARY OR AN AUTHORIZED AGENT OF BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.

6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:

[BANK NAME, ADDRESS AND PHONE NUMBER]

EXHIBIT 4

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this “Guaranty”) is made and entered into as of this day of \_\_\_\_\_, by \_\_\_\_\_ (“Guarantor”), with an address at \_\_\_\_\_, in favor of Duquesne Light Company (“Creditor”), with an address at 411 Seventh Avenue, Pittsburgh, PA 15219, in consideration of the Default Supply Master Agreement(s) (the “DSMA(s)”) between Creditor and \_\_\_\_\_ (“Seller”) dated \_\_\_\_\_, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

WHEREAS, Guarantor is an \_\_\_\_\_ of Seller, and will therefore benefit by Seller entering into the DSMA with Creditor and Guarantor desires Creditor to enter into the DSMA with Seller and to extend credit to Seller thereunder.

WHEREAS, without this Guaranty, Creditor would not execute and deliver the DSMA or consummate the transactions contemplated thereby. Therefore, in consideration of the execution and delivery by Creditor of the DSMA and consummation of the transactions contemplated thereby, Guarantor has agreed to execute and deliver this Guaranty.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty of Obligations.

(a) Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not a surety with effect from date hereof, the prompt and complete payment when due of all of Seller’s payment obligations under the DSMA, whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the DSMA and giving effect to any applicable grace period, and all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of Guarantor’s obligations or collection under this Guaranty, including reasonable attorney’s fees and expenses (collectively, the “Obligations”).

(b) The limitations on liabilities of Seller set forth in Article 13 of the DSMA shall also apply to the liabilities of Guarantor hereunder.

2. Nature of Guaranty; Waivers.

(a) This is a guaranty of payment and not of collection and Creditor shall not be required, as a condition of Guarantor’s liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and Guarantor is not obligated to provide power under the DSMA or this Guaranty.

(b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the DSMA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the DSMA resulting from the conduct of Creditor) or any part thereof.

(c) Except as to any claims, defenses, rights of set-off or to reductions of Seller in respect of its obligations under the DSMA (all of which are expressly reserved under this Guaranty), Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim Guarantor may have against Seller or Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the DSMA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the DSMA (other than any law or regulation that eliminates or nullifies the obligations under the DSMA).

(d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Seller or their assets or any other guarantor or person; provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. Guarantor waives all defenses based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Seller in respect of its obligations under the DSMA.

(e) Creditor at any time and from time to time, without notice to or the consent of Guarantor, and without impairing or releasing, discharging or modifying Guarantor's liabilities hereunder, may (i) to the extent permitted by the DSMA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the DSMA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as Creditor deems appropriate at its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. Guarantor hereby represents and warrants that:

(a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;

(b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;

(c) this Guaranty constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;

(d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on Guarantor or this Guaranty);

(e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or of Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and

(f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Guarantor, threatened by or against Guarantor that would have a material adverse effect on this Guaranty.

4. Repayments or Recovery from Creditor. If any demand is made at any time upon Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of Seller and if Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief

of debtors under federal or state law will affect, modify, limit or discharge Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.

6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, Guarantor postpones and subordinates in favor of Creditor any and all rights which Guarantor may have to (a) assert any claim against Seller based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of Seller, including participation in any marshalling of Seller's assets. Upon payment of such due and unpaid Obligations, Creditor agrees that Guarantor shall be subrogated to the rights of Creditor against Seller to the extent of Guarantor's payment to Creditor.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by email transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for Creditor and Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:  
Phone:  
Email:  
With a copy to:

Phone:  
Email:

or such other address as Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:  
Phone:  
Email:

or such other address as Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Creditor's action or inaction impair any such right or power. Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Creditor may have under other agreements with Guarantor, at law or in equity.

9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom, will be effective unless made in a writing signed by Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Guarantor in any case will entitle Guarantor to any other or further notice or demand in the same, similar or other circumstance.

11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between Guarantor and Creditor with respect to the subject matter hereof.

12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of Guarantor and Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the DSMA in accordance with Section 163 of the DSMA, and except that this Section 12 shall not limit Guarantor's right to assign this Guaranty, along with substantially all of Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB-, as rated by S&P or Fitch, or Baa3, as rated by Moody's, and (ii) Seller is in compliance the DSMA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.

13. Interpretation. In this Guaranty, unless Creditor and Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or

exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF CREDITOR AND GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) Guarantor hereby irrevocably consents to the jurisdiction of the federal district court for the Western District of Pennsylvania or to the county court jurisdiction of the Allegheny County Court of Common Pleas; provided that nothing contained in this Guaranty will prevent Creditor from bringing any action, enforcing any award or judgment or exercising any rights against Guarantor individually, against any security or against any property of Guarantor within any other county, state or other foreign or domestic jurisdiction. Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both Creditor and Guarantor. Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the DSMA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the DSMA is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the DSMA shall nonetheless be payable by Guarantor hereunder on written demand by Creditor.

Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

ATTEST:

[Guarantor]

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PENNSYLVANIA UNIVERSAL  
DEFAULT SUPPLIER MASTER AGREEMENT**

**by and between**

**Duquesne Light Company**

**and**

**[INSERT]**

**Dated [Month, Day, Year]**

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## **PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**

**THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**, made and entered into this \_\_\_\_ day of [Month, Day, Year] (the “Agreement”) by and between Duquesne Light Company (the “Company” and “Buyer”), a limited liability company and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and [INSERT] (“DS Supplier”), the Company and the DS Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

### **WITNESSETH:**

**WHEREAS**, the Company is an electric public utility engaged, inter alia, in providing retail electric service within its service territory located in the Commonwealth of Pennsylvania; and

**WHEREAS**, the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) Orders issued pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, direct Buyer to supply electric service to Default Service Load within Buyer’s Pennsylvania franchise service territory; and

**WHEREAS**, the PaPUC has found that, for periods further identified in Appendix C, it would serve the public interest for the Company to secure Default Service Supply (“DS Supply”) through a competitive procurement process (“DS Solicitation”) and the PaPUC has approved such a process; and

**WHEREAS**, the Company has conducted and completed a successful DS Solicitation for the provision of DS Supply, and the DS Supplier was one of the winning bidders in the DS Solicitation; and

**WHEREAS**, pursuant to the competitive bidding procedures of the DS Solicitation, the Company and the DS Supplier desire to enter into this Agreement setting forth their respective rights and obligations concerning the provision of DS Supply.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

#### **ARTICLE 1: DEFINITIONS**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

**Alternative Energy Credit or “AEC”** – Shall have the meaning ascribed thereto in the AEPS Act, [including any future modifications thereto](#).

**AEPS Act** – The Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, [including any future modifications thereto](#).

**Affiliate** – Means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Allocated AECs** – Shall mean the types and amounts of AECs specified on Appendix E.

**Alternative Energy Portfolio Standards or “AEPS”** – Standards requiring that a certain amount of electric energy sold to retail electric customers in the Commonwealth of Pennsylvania be composed of electricity generated from alternative energy sources, as measured by AECs, in accordance with the requirements of the AEPS Act and provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2804, 2812-14, ~~in effect on the Effective Date~~ including, without limitation, any subsequent increases in Tier I requirements under 66 Pa.C.S. § 2814.

**Ancillary Services** – Shall have the meaning ascribed thereto in the PJM Agreements.

**Applicable Legal Authorities** – Those federal and Pennsylvania statutes and administrative rules and regulations that govern the electric utility industry in Pennsylvania, as they may be amended from time to time.

**Auction Revenue Rights or “ARR”** – The current or any successor congestion management mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARRs are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM Agreements.

**Bankruptcy Code** – Those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

**Billing Month** – Each calendar month during the term of this Agreement.

**Business Day** – Any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

**Capacity** – “Unforced Capacity” as set forth in the PJM Agreements, or any successor, measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

**Capacity Proxy Price** will be implemented for those portions of supply contracts that extend into a period for which, as of the day prior to the date of the Company’s corresponding solicitation, PJM has not established a capacity price through an auction conducted by PJM in the accordance with PJM’s Reliability Pricing Model (“RPM”) (“Capacity Market Auction”). The CPP will be the average of the capacity prices from the last auctions of the previous two Capacity Market Auctions conducted by PJM.

**Charge** – Any fee, charge or other amount that is billable by the Company to the DS Supplier under this Agreement.

**Company** – Duquesne Light Company.

**Costs** – With respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations and/or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

**Customer** – Any person or entity who enters into a contractual agreement with the Company to receive retail electric service including, without limitation, all persons or entities taking service under a retail tariff, eligible to receive competitive electricity supply from an EGS or DS, respectively, in accordance with the Applicable Legal Authorities.

**Damages** – Financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. This compensation shall be assessed pursuant to Article 5 of this Agreement.

**Default Allocation Assessment** – Shall have the meaning ascribed to it under the PJM Agreements.

**Defaulting Party** – A Party to this Agreement that has caused or precipitated an Event of Default or an Early Termination of this Agreement.

**Default Service or “DS”** – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by an EGS.

**Default Service Supply or “DS Supply”** – All necessary Energy, Capacity, AECs for AEPS Act compliance [and/or any other alternative energy requirements imposed by law](#), Ancillary Services, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, and such other services or products that the DS Supplier may be required, by PJM or any governmental body having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement and as detailed in Appendix C. For the avoidance of doubt, any reference in this Agreement to any other agreement for DS Supply shall include any agreement between the Parties for the provision of a product or service (e.g., Energy) to serve DS Load, even if such other agreement does not require delivery of additional products or services (e.g., Capacity).

**Delivery Period** – The delivery period specified in Appendix C.

**Delivery Point** – Means the applicable zone of the Company as designated by PJM.

**DS Customer(s)** – Retail customers who are provided Default Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

**DS Fixed Percentage** – The percentage of DS Supply, as set forth in Appendix C.

**DS Fixed Price** – The price in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Fixed Price Adder For Hourly Price Service** – The fixed price adder for Hourly Price Service in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Load** – Means the total sales at the retail meter, plus any losses and Unaccounted For Energy (as defined by PJM), as reflected in PJM settlement volumes (including adjustments required by PJM for PJM’s derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements), expressed in MWh of retail customers in a particular class of DS Customers being served by Company pursuant to the PUC Orders, as such sales vary from hour to hour, in Company’s Pennsylvania franchise service territory, as such territory exists on the Effective Date or may increase

or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. The DS Load is net of any reduction in load as a result of energy efficiency and demand side response programs offered by Company, PJM, curtailment service providers, or other third parties, or any retail market programs. For avoidance of doubt, DS Load shall not include (i) the amount of load that would otherwise have been served in the absence of such energy efficiency or demand side response programs or retail market programs; or (ii) sales resulting from changes in the Company's Pennsylvania service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Pennsylvania or a result of a significant franchise territory swap with another entity which has a franchised service territory in Pennsylvania.

**DS Solicitation** – The competitive bidding processes, procedures and rules employed by the Company to competitively procure DS Supply for purposes of this Agreement.

**DS Supplier** – An entity that (i) has been selected through the DS Solicitation and has accepted the obligations and associated rights to provide DS Supply to the Company for retail customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a PJM Member and registered with PJM as a LSE.

**DS Supplier Representative** – Any officer, director, employee, consultant, contractor, or other agent or representative of the DS Supplier in connection with the DS Supplier's

activity under this Agreement. To the extent the DS Supplier is a division or group of a company, the term DS Supplier Representative does not include any person in that company who is not part of the DS Supplier division or group.

**DS Supplier Responsibility Share** – The fixed percentage share of the Company’s DS Load for which the DS Supplier is responsible as set forth in Appendix C.

**DS Tariffs** – The Company’s existing schedules of rates and services provided to retail customers as currently on file with the Commission and on the Company’s website, as they may be amended from time to time.

**DS Variable Payments** – The variable supplier payments in dollars based on the Company’s Hourly Price Service formula rate, as set forth in Appendix C hereto, associated with serving the DS Supplier Responsibility Share of the DS Supply.

**Early Termination** – Termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Article 5.2 of this Agreement and the declaration of Early Termination.

**Early Termination Date** – The date upon which an Early Termination becomes effective as specified in Article 5.2 of this Agreement.

**Effective Date** – The date designated on the cover page of this Agreement upon which the terms of this Agreement were agreed to by the Parties.

**Electric Distribution Company or “EDC”** – A public utility providing facilities for the transmission and distribution of electricity to retail customers in Pennsylvania.

**Electric Generation Supplier or “EGS”** – A person or entity that is duly certified by the Commission to offer and provide competitive electric supply to retail customers located in the Commonwealth of Pennsylvania.

**Emergency** – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected Entity’s electrical system, or conditions such that the Company is unable to accept Energy from the DS Supplier without

jeopardizing the Company's electrical system or a Connected Entity's electrical system.

Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

**Energy** – Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

**Event of Default** – A Party's breach of obligations under this Agreement as set forth in Article 5 of this Agreement.

**FERC** – The Federal Energy Regulatory Commission.

**Final Monthly Energy Allocation or "FMEA"** – A quantity of Energy which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

**Fixed Price Transaction** – A Transaction Confirmation that is not an Hourly Price Transaction.

**Force Majeure** – Means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, including but not limited to, riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, epidemic, terrorist attack, and acts of God, which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by

the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of DS Supplier's supply; (ii) DS Supplier's ability to sell the DS Supply at a price greater than that received under any Transaction; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase the DS Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

**Forward Market Price** – The price for On-peak Energy Forward Price and Off-peak Energy Forward Price as determined by averaging concurrent broker quotes obtained by the Company for the Market Price Hub as available.

**Gains** – With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Generator Attribute Tracking System or "GATS"** – the system owned and operated by PJM Environmental Services, Inc. to provide reporting and tracking services to its subscribers in support of the AEPS Act, or any successor credit registry selected by the PaPUC. (As specified in Appendix E)

**Guaranty** – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached to this DS Supplier Master Agreement or other form approved by the Company.

**Guarantor** – Any party having the authority and agreeing to guarantee the DS Supplier’s financial obligations under this Agreement, recognizing that such party shall be obligated to meet the Company’s creditworthiness requirements specified in this Agreement for such DS Supplier.

**Hourly Price Service** – service provided to Hourly Price Service (“HPS”)-Eligible Class pursuant to the Company’s DS Tariffs, Retail Tariff, Rider No. 9.

**Hourly Price Transaction** – A Transaction Confirmation for Hourly Price Service, as shown on such confirmation.

**Interest Index** – The average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

**Kilowatt or “kW”** – Unit of measurement of useful power equivalent to 1000 watts.

**Kilowatt-hour or “kWh”** – One kilowatt of electric power used over a period of one hour.

**Load Serving Entity or “LSE”** – An entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM Agreements or in successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. The DS Supplier, for purposes of this Agreement, is not a Load Serving Entity and nothing contained herein shall be deemed to cause the DS Supplier to be a Load Serving Entity.

**Losses** – With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Margin** – The amount by which the Total Exposure Amount exceeds the DS Supplier’s, or Guarantor’s, credit limit as defined in Section 6.4.

**Mark-to-Market (“MtM”) Exposure Amount** – Shall have the meaning ascribed to it in Section 6.3 of this Agreement.

**Market Price Hub** – refers to AEP Dayton Hub, a liquid pricing point located within PJM’s geographic footprint, at pnode #34497127.

**Maximum Credit Limit** – The lesser of the applicable percentage of TNW or the applicable credit limit cap as specified in Section 6.4 of this Agreement.

**Medium Commercial and Industrial Class** – Group of Rate Schedules that comprise the Medium Commercial and Industrial Class for DS Supply and itemized in Appendix C.

**Megawatt or MW** – One thousand kilowatts.

**Megawatt-hour or MWh** – One megawatt of electric power used over a period of one hour.

**Merger Event** – When a DS Supplier consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such DS Supplier hereunder in the sole discretion of the Company or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the DS Supplier’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement in the sole discretion of the Company.

**Minimum Rating** – A minimum senior unsecured debt rating as defined in Appendix A of this Agreement.

**Minimum Transfer Amount** – \$100,000.

**NERC** – The North American Electric Reliability Corporation or its successor.

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

**Non-Defaulting Party** – A Party to this Agreement who, at the time an Event of Default occurs, is not itself in default of this Agreement and has not otherwise caused or precipitated an Event of Default or Early Termination of this Agreement.

**Off-Peak Energy Forward Price** – Means the price for Off-Peak Hours for each billing month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer available or no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**On-Peak Energy Forward Price** – Means the price for On-Peak Hours for each billing month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**PaPUC or Commission** – The Pennsylvania Public Utility Commission or its successor.

**PJM** – PJM Interconnection L.L.C. or its successor.

**PJM Agreements** – The PJM OATT, PJM RAA, PJM OA and all other PJM agreements, procedures, manuals and documents applicable to the Transactions covered by or relating to this Agreement.

**PJM Control Area** – That certain Control Area encompassing electric systems in parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

**PJM Member** – A member in good standing of PJM that satisfies the requirements to conduct business with PJM.

**PJM OA** – The PJM Operating Agreement or the successor, superseding or amended version of the PJM Operating Agreement that may take effect from time to time.

**PJM OATT** – The PJM Open Access Transmission Tariff or the successor, superseding or amended version of the PJM Open Access Transmission Tariff that may take effect from time to time.

**PJM OI** – The PJM Office of Interconnection, the system operator for the PJM Control Area.

**PJM RAA** – The PJM Reliability Assurance Agreement or the successor, superseding or amended version of the PJM Reliability Assurance Agreement that may take effect from time to time.

**PJM RPM Zonal Net Load Price** - is the price charged by PJM to LSEs for capacity in the Company's PJM zone under the Reliability Pricing Model ("RPM") or its successor; and (ii) the "Capacity Proxy Price" ("CPP") for the Company shall be calculated as described in Section 9.1 (a), and expressed in dollars per MW-day.

**PMEA/FMEA Adjustment Amount** – For any Billing Month, the monetary amount due to the DS Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to DS

Supplier for a given month and the FMEA used for calculating the final payments due to the DS Supplier for such month as more fully described in Article 9 hereof.

**Preliminary Monthly Energy Allocation or “PMEA”** – A quantity of Energy which, for any Billing Month, is the preliminary calculation of the DS Supplier’s DS Supplier Responsibility Share.

**Rate Schedule(s)** – Shall mean the specified existing, and modified or successor customer rate schedule(s) in the electric service tariff of the Company filed with the Commission.

**Reliability First Corporation or “RFC”** – The approved regional NERC entity with responsibility for the Commonwealth of Pennsylvania.

**Residential Class** – Group of Rate Schedules that comprise the Residential Class for the DS Supply and itemized in Appendix C.

**Rounding Amount** – \$100,000.

**Settlement Amount** – With respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4(a) of this Agreement. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses

and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

**Small Commercial and Industrial Class** – Group of Rate Schedules that comprise the Small Commercial and Industrial Class for DS Supply and itemized in Appendix C.

**Statement** – A monthly report prepared by the Company for the DS Supplier indicating the amount due to the DS Supplier by the Company as compensation for DS Supply supplied to DS Customers by the DS Supplier during the current Billing Month, in accordance with DS Supplier’s obligations under this Agreement.

**Supply Day** – Any calendar day during the term of this Agreement on which the DS Supplier is providing, or is obligated by this Agreement to provide, DS Supply to the Company.

**Tangible Net Worth or “TNW”** – Total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

**Termination Payment** – A payment resulting from an Early Termination that is calculated in accordance with Article 5.4.

**Tier I AEC** – Shall mean an AEC that will satisfy the non-solar Tier I requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier I (Solar) AEC** – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier II AEC** – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar Tier II requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Total Exposure Amount** – An amount calculated daily for the DS Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “Mark-to-Market Exposure Amount” arising under any other DS Supply agreements providing for “DS Supply” or similar default service; and (iii) the amount designated as the “credit exposure” under any other DS Supply agreements providing for DS Supply or similar default service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

**Tranche** – A fixed percentage share of the Company’s DS Load for the Customer Group as indicated in any given Transaction Confirmation, as specified in Appendix C.

**Transaction** – Means a particular agreement by which the Company purchases and the DS Supplier sells DS Supply pursuant to this Agreement, the details of which are more fully set forth in Exhibit 1 – Transaction Confirmation.

**Transaction Confirmation** – Shall have the meaning ascribed to it in Appendix C and Exhibit 1 of this Agreement.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Capacity in Which Company Is Entering into this Agreement**

The DS Supplier agrees and acknowledges that the Company is contracting for the provision of DS Supply from such DS Supplier for Customers receiving Default Service on the Company's electric system pursuant to the authorizations provided to the Company. The DS Supplier further agrees and acknowledges that the Company will administer and monitor the DS Supplier's performance in providing DS Supply under this Agreement and that the Company shall be entitled to enforce the DS Supplier's obligations related to the provision of DS Supply. The DS Supplier hereby permanently, expressly and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. It is the specific intention of the Parties hereto that Customers and Customer groups are not third party beneficiaries of this Agreement and that no Customer or Customer group shall seek enforcement of this Agreement against the DS Supplier on their own behalf, either independently or by joining in any legal proceeding brought by the Company.

The Parties acknowledge that the Agreement is a forward contract and, accordingly, the Parties hereto are entitled to the protections of Section 556 of the Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Article 5.2 of this Agreement.

### **2.2 Parties' Obligations**

#### **(a) Obligations of DS Supplier**

The DS Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of the Agreement meets the terms and conditions set forth in Appendix C;
- (ii) To provide sufficient quantities of DS Supply on an instantaneous basis at all times and supplied to the Delivery Point to meet the DS Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder;
- (iv) To cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of DS Supply, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;
- (v) To pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, as more fully described in Article 9 of this Agreement;
- (vi) To accept assignment of and to fulfill all obligations of a LSE that are assigned to it by this Agreement;
- (vii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier; and
- (viii) To comply with the AEPS requirements of the Company's Default Service Plan, as detailed in Appendix E.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) To pay to each DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) To pay to the DS Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the DS Supplier its estimated aggregate load obligation (capacity MW value) for each Supply Day no less than five (5) calendar days prior to the day of delivery. Further, this information will be posted in the DS Supplier's specific PJM PowerMeter account, or successor system or process;
- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company;
- (v) To accept the delivery of DS Supply necessary to meet the DS Load;
- (vi) To be responsible (as between the Company and the DS Supplier) for the provision of the Allocated AECs to satisfy AEPS requirements; and
- (vii) To be the Load Serving Entity for supply purchased under this Agreement.

**2.3 Congestion and Congestion Management**

The DS Supplier is responsible for any congestion costs incurred to meet the DS Supplier Responsibility Share. The Company shall transfer or assign to the DS Supplier the Company's rights to Auction Revenue Rights (ARRs) to which the Company is entitled

as an LSE pursuant to the PJM Agreements, including the rights to ARR's, provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the Delivery Period. All rights, liabilities and obligations associated with such ARR's will accrue and be assumed by the DS Supplier through the transfer or assignment from the Company to the DS Supplier including the responsibility and ability of the DS Supplier to request or nominate such ARR's when applicable and feasible. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARR's for the upcoming PJM planning period and such ARR's will be allocated to the DS Supplier in accordance with the PJM Agreements based upon its DS Supplier Responsibility Share.

#### **2.4 PJM Services**

The DS Supplier shall make all necessary arrangements for the delivery of DS Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each DS Supplier's actual DS Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such DS Supplier's appropriate DS Supply requirements related to the provision of service under this Agreement by DS Supplier arising under the PJM Agreements. The DS Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of DS Supply under this Agreement until the effective date of the transfer of such LSE obligations.

The Company shall generate and provide in writing to DS Supplier the PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s) may be generated for each differing contract type. DS Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM

system.

For the period of time this Agreement is in effect, both the Company and DS Supplier shall have executed the PJM Declaration of Authority, and shall remain in effect during the Term of this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the DS Supplier, DS Supplier agrees to execute a revised Declaration of Authority in accordance with PJM requirements.

## **2.5 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any schedule or section reference herein to such agreements is changed, such schedule or section reference herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the DS Supplier's responsibility for changes in PJM products and pricing during the Term. DS Supplier bears the risk and responsibility of all charges resulting from any changes in PJM products and pricing during the term of this Agreement with the exception of (i) future PJM charges related solely to the Company providing network transmission service, and (ii) those charges identified as EDC responsibility in Appendix D, including for transition costs related to the elimination of through-and-out transmission rates.

## **2.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the Term, the Company shall invoice DS Supplier, and DS Supplier shall pay an amount equal to the product of (i) DS Supplier Responsibility Share, and (ii) the Default Allocation Assessment.

## **2.7 Other Fines and Penalties**

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to noncompliance by the DS Supplier with this Agreement, any other requirements of law, or the PJM Agreements, the DS Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

## **2.8 Communications and Data Exchange**

The DS Supplier and the Company shall supply to each other in a thorough and timely manner all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

The DS Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of

installing, maintaining, testing, and operating all required information technology systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

**2.9 Record Retention**

The Company shall retain necessary records for the longer of two years or as required under applicable PaPUC requirements so as to permit DS Supplier to confirm the validity of payments due to DS Supplier hereunder; provided that if a DS Supplier has provided notice pursuant to this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

**2.10 Verification**

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party.

**ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

**3.1 DS Supplier's Representations and Warranties**

The DS Supplier hereby represents, warrants and covenants to the Company on the Effective Date and throughout the term of this Agreement as follows:

- (a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the

Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction and the Commonwealth of Pennsylvania;

(b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

(c) The execution and delivery of this Agreement and the performance of such DS Supplier's obligations hereunder have been duly authorized by all necessary action on the part of the DS Supplier and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the DS Supplier's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the DS Supplier is a party or by which the DS Supplier or any of its properties is bound or subject;

(d) All necessary and appropriate action that is required on the DS Supplier's part to execute this Agreement has been completed;

(e) This Agreement is the legal, valid and binding obligation of the DS Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;

(f) There are no actions at law, suits in equity, proceedings or claims pending

or, to the DS Supplier's knowledge, threatened against the DS Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the DS Supplier's performance of its obligations hereunder;

(g) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(h) It is in good standing as an LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations, rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the DS Supplier shall not be obligated to become an LSE in PJM until the date it begins providing DS Supply;

(i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;

(j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum;

(k) It is not Bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt or insolvent;

(l) There are no pending or, to its knowledge, threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any

Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;

(m) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(n) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and

(o) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of DS Supply as required by this Agreement, and it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act.

### **3.2 Company’s Representations and Warranties**

The Company hereby represents, warrants and covenants to the DS Supplier as follows:

(a) The Company is an electric utility duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

(b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

(c) The execution and delivery of this Agreement and the performance of the Company’s obligations hereunder have been duly authorized by all necessary action on the

part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company's certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;

(d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;

(e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;

(f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Commission, the Commonwealth of Pennsylvania or any other governmental authority;

(g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

(h) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(i) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

(j) The Company shall have sole responsibility for metering and billing with respect to Customers; and

(k) The Company shall be responsible for electric distribution services, and the DS Supplier shall not be responsible for distribution charges.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement or until all amounts due hereunder, including all obligations, have been paid or performed in full. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail. Company, may, in its sole discretion, treat any such materially incorrect or misleading representation or warranty as an Event of Default hereunder.

## **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the Effective Date. Unless otherwise agreed upon by the Company and the DS Supplier, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed

under this Agreement, unless the Agreement is terminated prematurely pursuant to the provisions of this Agreement.

#### **4.2 Termination of Right to Supply**

The DS Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the DS Supplier to provide DS Supply and nullify any of the entitlements to which the DS Supplier became entitled as a result of being selected as a winning bidder in the DS Solicitation.

#### **4.3 Survival of Obligations**

Termination or expiration of this Agreement for any reason shall not relieve the Company or the DS Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings, including, without limitation, Article 4 (Commencement and Termination of Agreement), Article 5 (Breach and Default), Article 11 (Dispute Resolution), Article 13 (Limitation of Remedies, Liability and Damages), Article 14 (Indemnification), and Article 16 (Miscellaneous Provisions).

#### **4.4 Mutual Termination**

The Company and the DS Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the DS Supplier ("Mutual Termination Agreement"); provided that Company agrees that it shall enter into such a Mutual Termination Agreement, which will discharge the terminating DS

Supplier (the “Terminating DS Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating DS Supplier identifies a replacement DS Supplier willing to assume all obligations of the Terminating DS Supplier hereunder for the remaining term of this Agreement (the “Replacement DS Supplier”); (ii) the Replacement DS Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness,” as of the effective date of the Mutual Termination Agreement, that determination to be made in the sole discretion of Company; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and thereby becomes a Party under this Agreement, effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating DS Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating DS Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined, as of the effective date of the Mutual Termination Agreement, that it may have incurred Damages as a result of the Event of Default, that the Replacement DS Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its sole discretion.

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

An Event of Default under this Agreement shall occur if a Party (the “Defaulting

Party”):

- (i) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) Makes an assignment for the benefit of its creditors;
- (iii) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) Is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event in the case of the DS Supplier;
- (v) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;
- (vi) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vii) In the case of a DS Supplier, PJM terminates the DS Supplier’s ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of DS Supply under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;
- (viii) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.5 or post any Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;
- (ix) Is declared by PJM to be in default of any provision of any PJM Agreement,

which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;

(x) Fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

(xi) Violates any federal, state or local code, regulation or statute applicable to the supply of DS Supply (or any constituent thereof such as Energy or AECs) in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually satisfy all applicable FERC requirements, or, in the case of the DS Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail Energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;

(xii) Is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) Subject to Section 5.3(b) of this Agreement, in the case of the Company, fails to accept DS Supply properly tendered by the DS Supplier under this Agreement;

(xiv) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the DS Solicitation; or

(xvi) Commits an act or makes an omission that constitutes an "Event of Default" under any other agreement(s) for the provision of DS Supply between the Company and the DS Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the "Non-Defaulting Party") is completely made whole

with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) above. Termination or modification of this Agreement by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement.

(xvii) With respect to the DS Supplier's Guarantor, if any:

1. Representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within two (2) Business Days after written notice;
3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or

4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

## **5.2 Rights upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Article 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all of the following remedies:

- (i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a DS Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Article 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such Supplier; and
- (ii) Receive Damages in accordance with Section 5.3 of this Agreement.

The Non-Defaulting Party shall be entitled to elect or pursue one or more of the above remedies.

## **5.3 Damages Resulting from an Event of Default**

- (a) **DS Supplier's Failure to Supply DS Supply or Declaration of Early**

**Termination By Company:** Damages resulting from (i) the DS Supplier's failure to (A) provide DS Supply in conformance with Article 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of DS Supply to meet the DS Supplier's DS Supplier Responsibility Share under this Agreement or (ii) the occurrence of any Event of Default attributable to the DS Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services and/or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting DS Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) The cost of DS Supply allocated to the Company by the PJM OI due to the failure of the DS Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) The costs of DS Supply purchased by the Company to replace DS Supply that a DS Supplier was obligated to supply under this Agreement during the term hereof;

(iii) Administrative and legal costs associated with procuring replacement DS Supply; and

(iv) Financial hedging costs incurred by the Company on behalf of DS Customers as a result of having to procure DS Supply not provided by the DS Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be

dependent upon the arrangements made by the Company to obtain replacement services or a replacement DS Supplier. The Company and the DS Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of DS Customers in the event of an Early Termination as set forth in Article 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Article 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the DS Supplier under Section 5.4 of this Agreement.

**(b) Failure by Company on Behalf of Customers to Accept DS Supply Properly Tendered by DS Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept DS Supply properly tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the DS Supplier hereunder had the Company accepted the DS Supply properly tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under this Agreement and (ii) the amount realized by the DS Supplier in disposing, in a commercially reasonable manner, of the DS Supply not accepted by the Company; provided, however, that the Company shall not be liable for any Damages if this Agreement is terminated, or modified so as to frustrate or effectively preclude Company's acceptance of the DS Supply, by the PaPUC, other regulatory authority or a court of law.

**(c) Damages Resulting from Early Termination Due to an Event of Default Attributable to the Company:** Damages resulting from Early Termination due to an

Event of Default attributable to the Company shall be as set forth in Section 5.4 of this Agreement. Damages calculated in accordance with said Article 5.4 shall be the exclusive remedy available to the DS Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

**(d) Damages Resulting from DS Supplier's Failure to Continuously Satisfy its Obligations Associated with the AEPS:** Damages resulting from the DS Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2 (a)(viii) of this Agreement shall include, but not be limited to, the amount of all penalties (including Alternative Compliance Payments), costs associated with the procurement of additional AECs, etc., including, without limitation, interest and other charges, if any, levied against the Company related to AEPS regulations, due to such DS Supplier's conduct or inaction. DS Supplier has a specific obligation to provide the AECs conforming to PaPUC requirements and not money damages in substitution. Therefore, any such attempt to supply money damages instead of AECs may be treated as an event of default in the sole discretion of Company.

**(e) Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

**(f) Waiver of Event of Default:** If an Event of Default has occurred and the Non-Defaulting Party is the Company, then unless the Event of Default was a failure by the DS Supplier to meet any or all of its DS Supply obligations, the Company may elect, at its sole discretion, to offer to waive the default on such terms and conditions as the Company, at its sole discretion, may deem appropriate to propose a special remedy. Any such special remedy can only be offered to the DS Supplier if it first is specifically

approved by the PaPUC in accordance with Commission Orders.

**5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment**

**(a) Settlement Amount**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as a date for Early Termination (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided, however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of Article 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

The DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(i) by checking this box. If DS Supplier does not check this box, subsection 5.4(a)(i) will be deemed to be excluded from this Agreement.”

(i) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes

as may have occurred since the previous calendar year.

**(b) Net Out of Settlement Amounts**

The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply into a single amount by netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the DS Supplier is the Defaulting Party and the Termination Payment is due to the DS Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the DS Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined

to be due and owing by the DS Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the DS Supplier, the Company will pay simple interest on the Termination Payment amount being made to the DS Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

**(e) Notice of Termination Payment**

As soon as practicable after calculation of a Termination Payment, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Article 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

**(d) Disputes With Respect to Termination Payment**

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the Termination Payment Dispute Notice.

**(e) Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

**5.5 Step-up Provision**

In the event the Company receives bids for less than all tranches, the Commission does not approve the results for all tranches, or a supplier defaults, the Company will execute the emergency contingency plan.

The Company may ask other winning DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price already established, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up,” and is subject to compliance with the creditworthiness provisions of Article 6 of this Agreement and the DS Supplier’s load cap as per the Company’s approved default service procurement plan. If multiple wholesale suppliers are willing to Step-Up, then the Auction Manager would allocate a pro-rata share of the unsubscribed tranche(s) to each supplier based upon the percentage of load that each supplier won in the initial auction.

If the Wholesale supplier(s) are unwilling to “Step-Up” and fill the Unsubscribed Tranche(s) a separate procurement auction will be conducted by the Company’s independent third-party Auction Manager. The purpose of this auction would be to solicit Wholesale suppliers and procure the supply deficiency.

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If these two options fail, the Company will procure default supply to fill the Unsubscribed Tranche(s) through purchases in the PJM spot markets until such time that a different contingency plan is approved by the Commission. The Company will submit to the Commission within fifteen (15) days after any such occurrence an emergency plan to handle any default service shortfall. All costs associated with implementing the contingency plan will be included as part of the DSS described in the section below, "Calculation of Rate."

~~The Company may ask other DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a "Step-Up," and is subject to compliance with the creditworthiness provisions of Article 6 of this Agreement and the DS Supplier's load cap as per the Company's approved default service procurement plan. For the avoidance of doubt, in the event that the DS Supplier does not respond to the Company's Step-Up request within the relevant timeframe, then the DS Supplier shall be deemed to have rejected the Company's request in full.~~

#### **5.6 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this

Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured, but which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply.

**5.7 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Articles 5.4 and 5.7 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

- (a) Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
  
- (b) Return of Auction Revenue Rights. When the DS Supplier is the Defaulting Party, the DS Supplier will make best efforts to facilitate the transfer or reassignment to the entity which is the replacement DS Supplier on the Early Termination Date, any and all of the replacement DS Supplier's rights to Auction Revenue Rights (ARRs) to which the replacement DS Supplier is entitled as a LSE pursuant to the PJM Agreements, which were transferred or assigned to the DS Supplier under Section 2.3 (Congestion and Congestion Management).

## **ARTICLE 6: CREDITWORTHINESS**

### **6.1 Applicability**

The DS Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreement and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation of the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

### **6.2 Creditworthiness Determination**

The DS Supplier may submit and maintain a security deposit in accordance with Section 6.4 of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the DS Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as practicable but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. DS Supplier shall provide the Company and its agents unrestricted access to most recent audited financial statements; provided that if current audited financial statements are not available, the Company, in its sole discretion, may specify other types of financial statements that will be accepted.

### **6.3 Mark-to-Market Credit Exposure Methodology**

To calculate the daily exposure for each DS Supplier, the MtM credit exposure methodology will be used. The “mark” for each Billing Month will be determined at the time the auction is completed based on the available Forward Market Prices, and for the remaining Billing Months, it will be derived based on historical data. At the time the auction is completed, the MtM credit exposure for each DS Supplier shall be equal to zero. Subsequently, the differences between the available Forward Market Prices on the valuation date and the “mark” prices for the corresponding Billing Months will be used to calculate the daily credit exposures for each DS Supplier. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month. The methodology for calculation of the MtM credit exposure is illustrated in the example (using hypothetical numbers) set forth in Appendix B hereto.

### **6.4 Credit Limit**

The following criteria constitute the Company’s creditworthiness requirements for the DS Supplier, to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.

(i) For a DS Supplier to be granted an unsecured line of credit, the DS Supplier must be rated by at least two of the following rating agencies: S&P, Moody’s, or Fitch. The methodology for determining the credit rating to use is set forth in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the credit matrix table in Appendix A of this Agreement.

The DS Supplier will be required to post cash or a letter of credit in an acceptable

form as defined in Section 6.7 (b) of this Agreement (see standard format in Exhibit 4) for the Margin due the Company as set forth in Section 6.5 of this Agreement;

(ii) For a DS Supplier having a Guarantor, in the case of a Guarantor organized under the laws of the United States, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Exhibit 5) will be determined based on the credit matrix table for Guarantors in Appendix A. The DS Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the Supplier's Maximum Credit Limit. The DS Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable credit limit during the time period after the Company has made a Margin call but before the DS Supplier has posted the required Margin. Notwithstanding anything herein to the contrary, the DS Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the DS Supplier may request a return of Margin in accordance with Section 6.5 of this Agreement. The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this

Agreement (see standard format in Exhibit 4) for the Margin due the Company as set forth in Section 6.5 of this Agreement; or

(iii) For a DS Supplier or Guarantor that has not been incorporated or otherwise formed under the laws of the United States and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (“GAAP”) in the United States, the DS Supplier or Guarantor shall meet all requirements of Sections 6.4(i) and (ii) of this Agreement and shall supply the following additional information:

- a. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the DS Supplier or Guarantor is incorporated or otherwise formed that this Agreement is, or upon completion of execution formalities will become, the binding obligation of the DS Supplier or Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
- b. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the person executing this Agreement on behalf of the DS Supplier has the authority to execute the Agreement and that the governing board of the DS Supplier or Guarantor has approved the execution of this Agreement;
- c. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the DS Supplier or Guarantor has been authorized by its governing board to enter into agreements of the same type as this Agreement; and

d. Such other documents and certificates as may be required by the Company in its sole discretion.

(iv) The posting of cash or a letter of credit as defined in Section 6.7 (b) below for the entire Total Exposure Amount as set forth in Section 6.5 of this Agreement.

**6.5 Posting Margin and Return of Surplus Margin**

(a) If at any time and from time to time during the term of this Agreement the Total Exposure Amount, rounded up by the Rounding amount, exceeds the DS Supplier's or the Guarantor's credit limit by the Minimum Transfer Amount (MTA), then the Company, on any Business Day, may request that the DS Supplier provide cash or a letter of credit in an acceptable form as defined in Article 6.7(b) of this Agreement (see standard format in Exhibit 4), in an amount equal to the Margin (less any Margin posted by the DS Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply).

If the DS Supplier receives written notice for Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide Margin. If the DS Supplier receives notice for Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the DS Supplier must post Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the DS Supplier fails to post Margin when due in accordance

with this Article 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

(b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the DS Supplier upon receipt of a written request by the DS Supplier. Surplus Margin means cash or a letter of credit posted by the DS Supplier as a result of a request by the Company pursuant to Article 6.5(a) that exceeds the Total Exposure Amount less the DS Supplier's or the Guarantor's credit limit (rounded up by the Rounding Amount). If the resulting Surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the DS Supplier. If the DS Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business Day, the surplus Margin will be returned by the next following Business Day and if the DS Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. If the DS Supplier posted a letter of credit, the surplus Margin shall be returned on the next Business Day following the Business Day on which the amendment to the letter of credit is received from the issuing bank, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. The DS Supplier will not unreasonably deny a request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the DS Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

## **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the DS Supplier posted Margin/collateral hereunder, the DS Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the DS Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the DS Supplier in the possession of the Company, whether held in connection with this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the DS Supplier, including any equity or right of purchase or redemption by the DS Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the DS Supplier's obligation under this Agreement or any other agreement(s) between the Company and the DS Supplier for the

provision of DS Supply (the DS Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or electronic mail transmission (with the original transmitted by any of the other aforementioned delivery methods, unless agreed to otherwise by the parties) addressed as follows:

If to a DS Supplier to:

Copy to:

If to the Company to: James H. Milligan, Treasurer

Duquesne Light Company  
Mail Drop 7-3  
411 Seventh Avenue, Pittsburgh, PA 15219  
jmilligan@duqlight.com

Copy to: Energy Procurement

Mail Drop 15-1  
Duquesne Light Company  
411 Seventh Avenue, Pittsburgh, PA 15219  
energysupply@duqlight.com

Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided that notice by electronic mail transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically, in writing, or by responding in the same electronic mail conversation chain.

## **6.7 Security Instruments**

At each DS Supplier's choice, the following are deemed to be acceptable methods for posting security, if required:

(a) Cash; or

(b) A standby irrevocable letter of credit acceptable to the Company, in its sole discretion, issued by a domestic bank (or a domestic branch of an international bank) or other domestic financial institution (or a domestic branch of an international financial institution) with a minimum "A-" senior unsecured debt rating (or, if unavailable, equivalent corporate issuer rating) from S&P or Fitch and "A3" from Moody's (see standard format in Exhibit 4). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the DS Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the DS Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a DS Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the DS Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from another bank or other financial institution that

meets those standards, unless such period is extended in writing by the Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

**6.8 Maintenance of Creditworthiness**

**(a) Reporting of Changes**

The DS Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The DS Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

**(b) Change in Credit Standing**

The Company will re-evaluate the creditworthiness of a DS Supplier whenever it becomes aware of an adverse change, through the provision of notice by the DS Supplier or otherwise, in the DS Supplier's or Guarantor's credit standing. If the lowest credit rating (whether senior unsecured debt rating or corporate issuer rating) used to determine the DS Supplier's Maximum Credit Limit or its credit limit adversely changes, the Company will require additional security from the DS Supplier in accordance with Sections 6.4 of this Agreement. The additional security must be in a form acceptable to the Company in its sole discretion, as specified in Article 6.7 of this Agreement and must be posted as set forth in Section 6.5 of this Agreement.

**6.9 Calling on Security**

The Company may call upon the security posted by the DS Supplier if the DS Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply

after all of the following events occur:

- (a) Written Notice of Default is provided to the DS Supplier; and
- (b) Any applicable cure period associated with the written Notice of Default ends.

The foregoing notwithstanding, the security posted by the DS Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

**6.10 Interest on Cash Held by Company**

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Billing Month, the Company will prepare a statement of interest amounts due to the DS Supplier. The statement will be sent to the DS Supplier within three (3) Business Days after the end of the Billing Month via overnight mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

**6.11 No Endorsement of DS Supplier**

The Company's determination that a DS Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the DS Supplier. The Company will treat all DS Suppliers in a non-discriminatory manner and shall provide no preference to any DS Supplier.

#### **6.12 Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the effective date of this Agreement or is entered into after the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth in Appendix A of this Agreement; provided, however, that if another agreement has a more stringent credit threshold, then the more stringent credit threshold shall apply. Each DS Supplier that is a party to such other agreements with the Company for the provision of DS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating the Margin as described herein.

### **ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING, CAPACITY RESOURCE SUBMISSION AND TRANSMISSION PROCUREMENT**

#### **7.1 Load Obligations**

The Company and the DS Supplier acknowledge and agree that (1) the Company shall determine the DS Load, (2) the Company shall allocate the DS Supply obligation using the DS Supplier Responsibility Share, (3) the Company shall provide the DS Supplier's DS Supply obligation to PJM, and (4) the DS Supplier shall be responsible for meeting its DS Supply obligations as a LSE under the PJM Agreements.

#### **7.2 Data Transmission**

The procedures for transmitting load obligation data to PJM for DS Supplier's DS Load shall be as set forth by PJM.

### **7.3 Energy Scheduling**

The Company is not obligated to provide any day ahead scheduling services. If the Company chooses to provide such services, the information provided is not guaranteed by the Company.

## **ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION PROCESS**

### **8.1 Energy Settlement by PJM**

The settlement process occurs at PJM to reflect the DS Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each DS Supplier will be determined based on the DS Supplier Responsibility Share of the DS Load. The reconciled total DS Energy obligation will be based on the final total Energy loads for the Customers receiving DS service, including de-rating adjustments for marginal losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to the DS Suppliers based on the respective DS Supplier Responsibility Share.

### **8.2 Energy Settlement by the Company**

In the event that actual DS Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the DS Supplier. In the event PJM imposes penalties against the Company as a result of the DS Supplier's Transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company to the DS Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the DS Supplier.

## **ARTICLE 9: BILLING AND PAYMENT**

### **9.1 The Company Payment of Obligations to the DS Supplier**

The Company shall pay all amounts due to the DS Supplier hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the DS Supplier.

- For Fixed Price Transactions, this Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C for each hour of the Billing Month.
- For Hourly Price Transactions, this Statement will show the aggregate amounts due based on the DS Fixed Price Adder For Hourly Price Service multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C for each hour of the Billing Month, plus the DS Variable Payments used to determine the PMEA for each hour of the Billing Month.

In the event a Capacity Proxy Price is implemented, Section 9.1 (a) of the SMA is replaced with the following:

- Each Billing Month the Company will prepare a Statement of amounts due to the DS Supplier. This Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy

requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown on the Transaction Confirmation(s) for each hour of the Billing Month, plus the aggregate amounts due based on the DS Variable Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Variable Percentage, if applicable, as shown on the Transaction Confirmation(s) for each hour of the Billing Month. For each Billing Month after the Capacity Proxy Price is known, the Companies will apply the Capacity Proxy Price true-up across the entire contract term. The calculation of the day weighted average capacity price adjustment for purposes of determining the true-up amount will reflect final unforced capacity (i.e., UCAP) quantity weighting. For example, for a 24-month contract term, the Companies will calculate the relevant 24-month average capacity price adjustment by appropriately weighting the amount of capacity (i.e., the final UCAP quantity) purchased by the supplier at each PJM capacity price.

(b) The Statement will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month.

(d) To the extent that the FMEA differs from the PMEA, the Company shall pay or charge the DS Supplier for the PMEA/FMEA Adjustment Amount within the PJM

deadline for conducting the final settlement.

(e) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed.

(f) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of this Agreement.

(g) The Company shall make payments of funds payable to the DS Supplier by electronic transfer to a bank designated by the DS Supplier.

(h) If a good faith dispute arises between the Company and the DS Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(i) If payment is made to the DS Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid.

This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

(j) If Seller does enter more than one transaction with Buyer, Buyer may provide a single invoice listing the relevant information detailed.

### **9.2 Billing for DS Supplier’s Obligations to Other Parties**

The Company shall have no responsibility for billing between the DS Supplier and PJM; the DS Supplier and any Energy or Capacity source; or the DS Supplier and any other third party. The Company will be solely responsible for billing DS Customers for Default Service.

### **9.3 The DS Supplier Payment of Obligations to the Company**

The DS Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the DS Supplier for all Charges owed by the DS Supplier under this Agreement. The DS Supplier shall make payment for Charges shown on the invoice. The due date will be on the first Business Day after the 19<sup>th</sup> day of each calendar month. The invoice will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become

known within one (1) year of the termination of this Agreement.

(c) The DS Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the DS Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

(e) If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

**ARTICLE 10: SYSTEM OPERATION**

The Parties shall adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and shall satisfy any and all PJM, RFC and NERC criteria, when applicable. The DS Supplier shall also adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company's local distribution system.

**10.1 Disconnection and Curtailment by the Company**

The Company shall have the right, without incurring any liability to the DS Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's facilities, or due to any other reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

**10.2 Inadvertent Loss of Service to DS Customers**

The Parties agree and acknowledge that service to DS Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and distribution

system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

### **10.3 Good Faith Efforts**

The Company shall use good faith efforts to minimize any curtailment, interruption or reduction in service to DS Customers to the extent reasonably practicable under the circumstances.

### **10.4 PJM Requirements**

The DS Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed to maintain the integrity of the PJM system. The DS Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

### **10.5 Compliance with Governmental Directives**

The DS Supplier also acknowledges and agrees that the Company may need to act

in response to governmental or civil authority directives which may affect DS Customer load. The DS Supplier agrees to cooperate with the Company in order to comply with said directives.

## **ARTICLE 11: DISPUTE RESOLUTION**

### **11.1 Informal Resolution of Disputes**

Before pursuing resolution of any dispute arising out of this Agreement (other than an Event of Default under Article 5.1(i)-(ix), (xii), or (xvi)), the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Article 11.1 (Informal Resolution of Disputes), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

### **11.2 Recourse to Agencies or Courts of Competent Jurisdiction**

After the requirements of Article 11.1 (Informal Dispute Resolution) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act (“FPA”), with the PaPUC under relevant provisions of the Applicable Legal Authorities, with the Allegheny County Court of Common Pleas or with the Western

District of Pennsylvania Federal Court. The Party's agreement hereunder is without prejudice to any Party's right to contest the jurisdiction of the agency or court to which a complaint is brought.

The Parties hereby acknowledge and agree that both Parties have negotiated and entered into this Agreement freely and in good faith and that the terms of this Agreement have not been affected in any way, either directly or indirectly, by (A) any fraud, duress, unfairness, or any inequity in the relative bargaining power of the Parties or (B) any manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the "public interest" standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the "Mobile-Sierra Doctrine").

## **ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance with Applicable Legal Authorities**

The Company and the DS Supplier are subject to, and shall comply with, all existing or future applicable federal, State and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal

Authorities.

### **12.2 FERC Jurisdictional Matters**

The inclusion herein of descriptions of procedures or processes utilized by PJM or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA or if any existing procedures or processes utilized by PJM are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company and/or the DS Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

### **12.3 Energy Efficiency, Conservation, and Retail Market Programs**

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties and, for the avoidance of doubt, any programs offered or conducted by the Company or other entities relating to or arising from the PaPUC's Investigation of Pennsylvania's Retail Electricity Market, PaPUC Docket No. I-2011-2237952 (including legislation enacted to address the Commission's Final Order in Docket No. I-2011-2237952), and that such participation may reduce or change the amount of DS Supply that DS Supplier is required to provide and the amount of monies it may receive under this

Agreement. The Company shall have no obligation whatsoever to DS Supplier with respect to the effect, if any, of such programs. DS Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

**ARTICLE 13: LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

**13.1 Limitations on Liability**

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy, and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise

obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

**13.2 Risk of Loss**

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by the DS Supplier upon receipt thereof at the point of delivery identified in Appendix C and until delivery thereof at the retail electric meter of the Customer, and the DS Supplier shall be deemed to have custody and control of the DS Supply at all times prior to receipt thereof by the Company. The Party deemed to have custody and control of DS Supply shall be responsible for all loss or damage to property or injury or death to persons arising in connection with such DS Supply while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

**ARTICLE 14: INDEMNIFICATION**

**14.1 Indemnification**

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the DS Supplier with respect to an obligation arising under or in connection with this Agreement, or for which the DS Supplier has otherwise assumed liability under the terms of this Agreement, the DS Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and

all such third party claims and/or liabilities, and shall appoint counsel at DS Supplier's expense, subject to the approval of Company, to defend any such claims or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should the DS Supplier (the "Indemnified DS Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company with respect to an obligation arising under or in connection with this Agreement, or for which the Company has otherwise assumed liability under the terms of this Agreement, the Company shall defend (at the option of the Indemnified DS Supplier), indemnify and hold harmless the Indemnified DS Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified DS Supplier. The Indemnified DS Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) If either Party intends to seek indemnification under Article 14.1(a) or 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the

commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

### **ARTICLE 15: FORCE MAJEURE**

#### **15.1 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit

damages to the other Party; and (iii) fulfill the requirements set forth in Article 15.2 (Notification).

**15.2 Notification**

A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

**ARTICLE 16: MISCELLANEOUS PROVISIONS**

**16.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the DS Supplier and Company as set forth in Exhibit 2 hereto.

Such notices, demands or requests shall also be provided to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day.

**16.2 No Prejudice of Rights**

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder,

shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

**16.3 Effect of Regulatory or Legislative Actions**

- (a) The Parties agree that the Company's obligations under this Agreement are contingent on, and limited by, the Company's ability to recover all costs incurred by it under this Agreement from its retail customers in full and on a current basis. If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which have the effect of depriving the Company's full and current recovery of said costs, the Company may terminate this Agreement upon ten (10) days written notice. The Parties agree that any such termination shall not constitute an Event of Default under this Agreement.
- (b) If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which transfer the Company's obligation to procure or supply DS Supply to a third party(ies), this Agreement may be transferred to such third party(ies) in accordance with the provisions of Section 16.4 below. The Parties agree that any such transfer shall not constitute an Event of Default under this Agreement.
- (c) In the event that this Agreement is terminated as a result of any of the reasons set forth in subsections (a) and (b) of Section 16.3 above, the Parties agree that the Company shall not be liable for any costs or damages incurred

or otherwise associated with (i) the transfer of the Company's obligation to obtain or provide DS Supply to third party, or (ii) the elimination of the Company's obligation to obtain or provide DS Supply from DS Supplier.

#### **16.4 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.4 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the DS Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, or to a third party in accordance with Section 16.3(b), if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The DS Supplier may, with prior written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning DS Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the DS Supplier, and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising

under this Agreement.

#### **16.5 Governing Law and Venue**

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Except for matters jurisdictional to FERC, the PUC or the appellate courts having jurisdiction over the PUC or FERC matters, all disputes hereunder shall be resolved in the Pennsylvania State court or Federal court of competent jurisdiction and within reasonably close proximity to the Company. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

#### **16.6 Regulatory Approvals**

DS Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the Agreement and/or Transaction Confirmations hereunder. The commencement of the Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by DS Supplier of all DS Supplier required regulatory approvals, and (iii) Pennsylvania PUC approval.

#### **16.7 Headings**

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

### **16.8 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **16.9 General Miscellaneous Provisions**

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all

proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

#### **16.10 Taxes**

As between the Parties: (i) the DS Supplier is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of DS Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of DS Supply under this Agreement. Should the DS Supplier be required to remit any Pennsylvania State Sales and Use Taxes directly to the applicable taxing authority, other than taxes previously collected by the DS Supplier on behalf of the Company, the Company will defend and indemnify the DS Supplier for such Sales and Use Taxes and will pay to the DS Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any such taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any such taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the DS Supplier, the DS Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

#### **16.11 Audit**

Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Article 9 (Billing and Payment) and 9.1(i) (Interest on Unpaid Balances) of this Agreement.

#### **16.12 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) All titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) References to the singular include the plural and vice versa;
- (d) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;

- (e) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

**16.13 Confidentiality**

(a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

(b) Notwithstanding any other provision of this Section 16.12, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions

of this Section 16.12, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.12. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Article 16.12, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

#### **16.14 Federal Acquisition Regulation**

If any of the following clauses prescribed by the Federal Acquisition Regulation ("FAR"), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the DS Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: § 52.223-2;

- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36; and
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

#### **16.15 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party agrees not to seek any change to such rates, terms and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

#### **16.16 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and

irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

**16.17 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

**16.18 Successors**

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**ATTEST:**

**DUQUESNE LIGHT COMPANY**

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

**[INSERT]**

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## APPENDIX A- MAXIMUM UNSECURED CREDIT

### Credit Rating Matrix Tables for EDC's

#### EDC: Duquesne Light Company

| Credit Rating of the DS Supplier |              |              | Maximum Credit Limit (calculated as the lesser of the percentage of TNW or the Credit Limit Cap below) |                  |
|----------------------------------|--------------|--------------|--|------------------|
| S&P                              | Moody's      | Fitch        | Percentage of TNW  | Credit Limit Cap |
| A- and above                     | A3 and above | A- and above | 16%  | \$60,000,000     |
| BBB +                            | Baa1         | BBB +        | 10%  | \$40,000,000     |
| BBB                              | Baa2         | BBB          | 7%   | \$30,000,000     |
| BBB-                             | Baa3         | BBB-         | 3%   | \$20,000,000     |
| Below BBB-                       | Below Baa3   | Below BBB-   | 0%   | \$0              |

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#### Credit Rating Determination Methodology

The DS Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the DS Supplier or its Guarantor is rated by all three accepted rating agencies (S&P, Moody's and Fitch), and the ratings are split, the lowest rating will be used. **Minimum Rating** – The lowest credit rating for a DS Supplier, as set forth in this Appendix A, that can obtain unsecured credit.

## **APPENDIX B – METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM) EXPOSURE**

### **Parameters**

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak Initial Mark Price
3. MW-Measure
4. On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
6. Number of awarded Tranches

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

### **Determination of On-Peak Forward Prices**

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub On-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available (“Aggregate Quotes”), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that On-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the On-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the On-Peak Forward Price for the given month may be updated based on the changes in On-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

### ***Determination of Off-Peak Forward Prices***

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub Off-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly Off-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from the average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that Off-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the Off-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the Off-Peak Forward Price for the given month may be updated based on the changes in Off-Peak Forward Price

quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

### ***Example of Disaggregating Aggregate Quotes***

The following is an example of the process to be used for disaggregating Aggregate Quotes:

- a. Aggregate Quote only available for January – March: \$60/MWh.
- b. Immediate Prior Calendar year quotes for January, February, and March as follows:

January: \$42/MWh

February: \$45/MWh

March: \$40/MWh

- c. Calculations as follows:

- 1. Calculate Average price in (b) = \$42.33/MWh

- 2. Calculate monthly deviation from Average:

- January: 99.2% ( $\$42/\$42.33$ )

- February: 106.3% ( $\$45/\$42.33$ )

- March: 94.5% ( $\$40/\$42.33$ )

- 3. Disaggregate the Aggregate Quote by applying percentages from

- c.(2) to the available aggregate quote:

- January: \$59.53 ( $\$60 \times 99.2\%$ )

- February: \$63.78 ( $\$60 \times 106.3\%$ )

- March: \$56.69 ( $\$60 \times 94.5\%$ )

## Mark-To-Market Example

| Necessary Information from a Transaction Confirmation: |                             |                     |
|--|-----------------------------|---------------------|
| Delivery Period:                                       | June 1, 2011 - May 31, 2012 |                     |
| Bid Blocks:  | 3 (i)                       |                     |
| Estimated Energy Quantity Per MW-Measure:              |                             |                     |
|  | On-Peak<br>MWh (k)          | Off-Peak<br>MWh (l) |
| Jan  | 11800                       | 8300                |
| Feb  | 13000                       | 9100                |
| Mar  | 9100                        | 6400                |
| Apr  | 7200                        | 5000                |
| May  | 8800                        | 6200                |
| Jun  | 12900                       | 9000                |
| Jul  | 15200                       | 10600               |
| Aug  | 16000                       | 11200               |
| Sep  | 9500                        | 6700                |
| Oct  | 8300                        | 5800                |
| Nov  | 9800                        | 6900                |
| Dec  | 10900                       | 7600                |

|  |               |
|--|---------------|
| <b>Business Day on which Mtm is Calculated:</b>              | June 24, 2011 |
| <b>MW-Measure:</b>   | 50.0 MW (m)   |
| <b>Current Capacity PLC Per Bid Block:</b>                   | 40.0 MW (n)   |
| <b>Percent of On-Peak Hours Remaining in Current Month:</b>  | 18.2% (o)     |
| <b>Percent of Off-Peak Hours Remaining in Current Month:</b> | 21.7% (p)     |

| Mtm Exposure Calculation |   |  |                                    |                                     |                                      |                                       |  |   |                     |
|--------------------------|---|--|------------------------------------|-------------------------------------|--------------------------------------|---------------------------------------|--|---|---------------------|
|                          | a                                       | b  | c                                  | d                                   | e=c-a                                | f=d-b                                 | g=k*n/m*o                                      | h=l*p/n*o                                       | i=(e*g)+(f*h)       |
|                          | On-Peak<br>Initial Mark Price<br>\$/MWh | Off-Peak<br>Initial Mark Price<br>\$/MWh | On-Peak<br>Forward Price<br>\$/MWh | Off-Peak<br>Forward Price<br>\$/MWh | Change In<br>On-Peak Price<br>\$/MWh | Change In<br>Off-Peak Price<br>\$/MWh | On-Peak<br>Estimated<br>Energy Quantity<br>MWh | Off-Peak<br>Estimated<br>Energy Quantity<br>MWh | Mtm<br>Exposure     |
| Jun-11                   | 57.04                                   | 27.95                                    | 58.48                              | 28.65                               | 1.44                                 | 0.70                                  | 5,629  | 4,696   | \$ 11,393           |
| Jul-11                   | 72.81                                   | 31.31                                    | 75.26                              | 32.36                               | 2.45                                 | 1.05                                  | 36,480   | 25,440  | \$ 116,088          |
| Aug-11                   | 72.81                                   | 34.23                                    | 74.28                              | 34.91                               | 1.47                                 | 0.68                                  | 38,400   | 26,880  | \$ 74,726           |
| Sep-11                   | 45.56                                   | 24.15                                    | 47.31                              | 25.08                               | 1.75                                 | 0.93                                  | 22,800   | 16,080  | \$ 54,854           |
| Oct-11                   | 43.23                                   | 23.34                                    | 46.09                              | 24.89                               | 2.86                                 | 1.55                                  | 19,920   | 13,920  | \$ 78,547           |
| Nov-11                   | 43.23                                   | 25.50                                    | 46.40                              | 27.38                               | 3.17                                 | 1.88                                  | 23,520   | 16,560  | \$ 105,691          |
| Dec-11                   | 43.23                                   | 26.36                                    | 44.86                              | 27.36                               | 1.63                                 | 1.00                                  | 26,160   | 18,240  | \$ 60,881           |
| Jan-12                   | 50.73                                   | 38.55                                    | 54.45                              | 41.39                               | 3.72                                 | 2.84                                  | 28,320   | 19,920  | \$ 161,923          |
| Feb-12                   | 50.73                                   | 39.06                                    | 53.61                              | 41.29                               | 2.88                                 | 2.23                                  | 31,200   | 21,840  | \$ 138,559          |
| Mar-12                   | 45.23                                   | 30.75                                    | 47.64                              | 32.39                               | 2.41                                 | 1.64                                  | 21,840   | 15,360  | \$ 77,825           |
| Apr-12                   | 45.23                                   | 25.78                                    | 48.01                              | 27.36                               | 2.78                                 | 1.58                                  | 17,280   | 12,000  | \$ 66,998           |
| May-12                   | 47.06                                   | 24.94                                    | 49.06                              | 26.00                               | 2.00                                 | 1.06                                  | 21,120   | 14,880  | \$ 58,013           |
|                          |   |  |                                    |                                     |                                      |                                       |  |   | <b>\$ 1,005,499</b> |

***CALCULATION OF MTM EXPOSURE FOR HOURLY PRICE TRANSACTIONS***

The MtM Exposure for an Hourly Price Transaction shall be calculated as follows. During the first month of the term of a Transaction, the MtM Exposure shall be equal to Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche. Thereafter, the MtM Exposure shall be calculated on the first Business Day of each month during the term of a Transaction and shall be deemed equal to the product of: (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche; (ii) the ratio of the Current Capacity PLC Per Tranche to the MW-Measure; (iii) the number of Tranches awarded to the DS Supplier per the Transaction Confirmation; and (iv) the ratio of the calendar days remaining in the Delivery Period to the total calendar days in the Delivery Period. The following definitions shall apply for the purposes of this calculation:

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM in determining the DS Supplier’s capacity obligation for each Transaction.

“Current Capacity PLC Per Tranche” is the Capacity PLC of a Tranche as of the Business Day the MtM Exposure is calculated for the Transaction.

“MW-Measure” means the Current Capacity PLC Per Tranche as of the Transaction Date.

## APPENDIX C - DS SUPPLY SPECIFICATIONS

- 1) With respect to a Transaction, DS Supplier shall provide DS Supply on a firm and continuous basis. The terms of the Transaction shall be set forth in a Transaction Confirmation to this SMA, in a form as set forth in Exhibit 1. As used herein and in the Transaction Confirmation, Full Requirements Service shall mean all of the following necessary services or products that are required to supply the DS Responsibility Share for the DS Customers associated with the Transaction Confirmation, including: Energy, Capacity, transmission (except for Network Integration Transmission Service), Ancillary Services, Alternative Energy Credits for compliance with the AEPS Act, transmission and distribution system losses, congestion management costs, and such other products and services that are required except for distribution service.
- 2) The Transaction Confirmation shall, *inter alia*, specify the following terms with respect to a Transaction: (i) the Product (typically, Full Requirements Service); (ii) the DS Customer group associated with the applicable DS Load; (iii) the Delivery Point at which the DS Supplier shall deliver the DS Supply; (iv) the Delivery Period during which the DS Supplier shall deliver the DS Supply; (v) the number of Tranches; (vi) the DS Supplier Responsibility Share; (vii) for Fixed Price Transactions, the total number of AECs associated with each Tranche; and (viii) the DS Fixed Price or Fixed Price Adder, as applicable, for each Tranche.
- 3) The Company and DS Supplier shall be responsible for their respective PJM Billing Statement Line Item Credits and Charges associated with a Transaction as described in Appendix D, *Responsibilities for PJM Billing Line Items as Defined in Applicable PJM Agreement or Manual*. Company and DS Supplier agree to communicate

with PJM as may be necessary to ensure that PJM transfers all PJM Billing Statement Line Item Credits and Charges to the appropriate party.

4) The DS Supplier shall comply with all applicable requirements described in Appendix E, *DS Suppliers' Obligations For AEPS Compliance*.

5) Except as provided in Paragraph 1 above, DS Supplier bears the risk of any other changes in PJM products and pricing during the term of all Transactions under this Agreement. However, if there are any other new FERC-approved PJM transmission charges other than those referred to in Paragraph 1 above or other new PJM charges and costs, charged to network transmission customers, that DS Supplier believes the Company should recover through retail rates because they are directly related to the Company's obligations, then Company may file with the PaPUC a request for approval to recover such new costs. DS Supplier is required to intervene in any such proceeding before the PaPUC. Such new costs can only be charged to the Company to the extent that the PaPUC approves the Company's recovery of those costs. DS Supplier agrees to be bound by the decision of the PaPUC (subject to the normal rules for appeal of the decision of the PaPUC) and waives all claims concerning this issue before the FERC. Notwithstanding the foregoing, nothing in the Agreement shall preclude DS Supplier or Company from taking any position before the FERC regarding the creation and allocation of any such PJM charges.

**DS Customer Group:**

Each Transaction Confirmation shall be associated with DS Supply to one of the following DS Customer categories, or their successors, as defined in the DS Tariff:

| <b>Customer Group</b>                     | <b>Rate Schedule</b>   | <b>Description</b>  |
|---|------------------------|---|
| <b>Residential &amp; Lighting</b>         | RS                     | Residential Service   |
|   | RH                     | Residential Service Heating   |
|   | RA                     | Residential Service Add-On Heat Pump  |
|   | AL                     | Architectural Lighting Service  |
|   | SE                     | Street Lighting Energy  |
|   | SM                     | Street Lighting Municipal   |
|   | SH                     | Street Lighting Highway   |
|   | PAL                    | Private Area Lighting   |
| <b>Small Commercial &amp; Industrial</b>  | GS                     | General Service Small   |
|   | GM < 25kW              | General Service Medium – Demand less than 25kW  |
|   | GMH < 25kW             | General Service Medium Heating – Demand less than 25kW                                    |
|   | UMS                    | Unmetered Service   |
| <b>Medium Commercial &amp; Industrial</b> | GM ≥ 25kW and < 200kW  | General Service Medium – Demand equal to or greater than 25kW and less than 200kW         |
|   | GMH ≥ 25kW and < 200kW | General Service Medium Heating – Demand equal to or greater than 25kW and less than 200kW |
| <b>HPS-Eligible</b>                       | GM ≥ 200kW             | General Service Medium – Demand equal to or greater than 200kW                            |
|   | GMH ≥ 200kW            | General Service Medium – Demand equal to or greater than 200kW                            |
|   | GL                     | General Service Large   |
|   | GLH                    | General Service Heating   |
|   | L                      | Large Power Service   |
|   | HVPS                   | High Voltage Power Service  |

**APPENDIX D – RESPONSIBILITIES FOR PJM BILLING LINE ITEMS AS DEFINED IN APPLICABLE PJM AGREEMENT OR MANUAL**

| ID # | PJM Billing Statement Line Items                            | Responsible Party |             |
|------|---|-------------------|-------------|
|      |   | EDC               | DS Supplier |
| ID#  | CHARGES   |                   |             |
| 1000 | Amount Due for Interest on Past Charges                     |                   | DS Supplier |
| 1100 | Network Integration Transmission Service                    | EDC               |             |
| 1101 | Network Integration Transmission Service (ATSI Low Voltage) | EDC               |             |
| 1102 | Network Integration Transmission Service (exempt)           | EDC               |             |
| 1103 | Underground Transmission Service                            | EDC               |             |
| 1104 | Network Integration Transmission Service Offset             | EDC               |             |
| 1108 | Transmission Enhancement                                    | EDC               |             |
| 1109 | MTEP Project Cost Recovery                                  |                   | DS Supplier |
| 1110 | Direct Assignment Facilities                                |                   | DS Supplier |
| 1115 | Transmission Enhancement Settlement (EL05-121-009)          | EDC               |             |
| 1120 | Other Supporting Facilities                                 |                   | DS Supplier |
| 1130 | Firm Point-to-Point Transmission Service                    |                   | DS Supplier |
| 1133 | Firm Point-to-Point Transmission Service Resale Charge      |                   | DS Supplier |
| 1135 | Neptune Voluntary Released Transmission Service (Firm)      |                   | DS Supplier |
| 1136 | Hudson Voluntary Released Transmission Service (Firm)       |                   | DS Supplier |
| 1138 | Linden Voluntary Released Transmission Service (Firm)       |                   | DS Supplier |
| 1140 | Non-Firm Point-to-Point Transmission Service                |                   | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 1143 | Non-Firm Point-to-Point Transmission Service Resale Charge |  | DS Supplier |
| 1145 | Neptune Voluntary Released Transmission Service (Non-Firm) |  | DS Supplier |
| 1146 | Neptune Default Released Transmission Service (Non-Firm)   |  | DS Supplier |
| 1147 | Neptune Unscheduled Usage Billing Allocation               |  | DS Supplier |
| 1155 | Linden Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 1156 | Linden Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 1157 | Linden Unscheduled Usage Billing Allocation                |  | DS Supplier |
| 1165 | Hudson Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 1166 | Hudson Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 1167 | Hudson Unscheduled Usage Billing Allocation                |  | DS Supplier |
| 1200 | Day-ahead Spot Market Energy                               |  | DS Supplier |
| 1205 | Balancing Spot Market Energy                               |  | DS Supplier |
| 1210 | Day-ahead Transmission Congestion                          |  | DS Supplier |
| 1215 | Balancing Transmission Congestion                          |  | DS Supplier |
| 1216 | Pseudo-Tie Balancing Congestion Refund                     |  | DS Supplier |
| 1218 | Planning Period Congestion Uplift                          |  | DS Supplier |
| 1220 | Day-ahead Transmission Losses                              |  | DS Supplier |
| 1225 | Balancing Transmission Losses                              |  | DS Supplier |
| 1230 | Inadvertent Interchange                                    |  | DS Supplier |
| 1240 | Day-ahead Economic Load Response                           |  | DS Supplier |
| 1241 | Real-time Economic Load Response                           |  | DS Supplier |
| 1242 | Day-ahead Load Response Charge Allocation                  |  | DS Supplier |
| 1243 | Real-time Load Response Charge Allocation                  |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 1245 | Emergency Load Response   |  | DS Supplier |
| 1250 | Meter Error Correction  |  | DS Supplier |
| 1260 | Emergency Energy  |  | DS Supplier |
| 1301 | PJM Scheduling, System Control and Dispatch Service – Control Area Administration               |  | DS Supplier |
| 1302 | PJM Scheduling, System Control and Dispatch Service – FTR Administration                        |  | DS Supplier |
| 1303 | PJM Scheduling, System Control and Dispatch Service –Market Support                             |  | DS Supplier |
| 1304 | PJM Scheduling, System Control and Dispatch Service – Regulation Market Administration          |  | DS Supplier |
| 1305 | PJM Scheduling, System Control and Dispatch Service – Capacity Resource/Obligation Mgmt.        |  | DS Supplier |
| 1306 | PJM Scheduling, System Control and Dispatch Service – Advanced Second Control Center            |  | DS Supplier |
| 1307 | PJM Scheduling, System Control and Dispatch Service – Market Support Offset                     |  | DS Supplier |
| 1308 | PJM Scheduling, System Control and Dispatch Service Refund – Control Area Administration        |  | DS Supplier |
| 1309 | PJM Scheduling, System Control and Dispatch Service Refund – FTR Administration                 |  | DS Supplier |
| 1310 | PJM Scheduling, System Control and Dispatch Service Refund – Market Support                     |  | DS Supplier |
| 1311 | PJM Scheduling, System Control and Dispatch Service Refund –Regulation Market Administration    |  | DS Supplier |
| 1312 | PJM Scheduling, System Control and Dispatch Service Refund – Capacity Resource/Obligation Mgmt. |  | DS Supplier |
| 1313 | PJM Settlement, Inc.  |  | DS Supplier |
| 1314 | Market Monitoring Unit (MMU) Funding  |  | DS Supplier |
| 1315 | FERC Annual Charge Recovery   |  | DS Supplier |
| 1316 | Organization of PJM States, Inc. (OPSI) Funding   |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 1317 | North American Electric Reliability Corporation (NERC)                        |  | DS Supplier |
| 1318 | Reliability First Corporation (RFC)   |  | DS Supplier |
| 1320 | Transmission Owner Scheduling, System Control and Dispatch Service            |  | DS Supplier |
| 1330 | Reactive Supply and Voltage Control from Generation and Other Sources Service |  | DS Supplier |
| 1340 | Regulation and Frequency Response Service                                     |  | DS Supplier |
| 1350 | Energy Imbalance Service  |  | DS Supplier |
| 1360 | Synchronized Reserve  |  | DS Supplier |
| 1362 | Non-Synchronized Reserve  |  | DS Supplier |
| 1365 | Day-ahead Scheduling Reserve  |  | DS Supplier |
| 1370 | Day-ahead Operating Reserve   |  | DS Supplier |
| 1371 | Day-ahead Operating Reserve for Load Response                                 |  | DS Supplier |
| 1375 | Balancing Operating Reserve   |  | DS Supplier |
| 1376 | Balancing Operating Reserve for Load Response                                 |  | DS Supplier |
| 1377 | Synchronous Condensing  |  | DS Supplier |
| 1378 | Reactive Services   |  | DS Supplier |
| 1380 | Black Start Service   |  | DS Supplier |
| 1390 | Fuel Cost Policy Penalty  |  | DS Supplier |
| 1400 | Load Reconciliation for Spot Market Energy                                    |  | DS Supplier |
| 1410 | Load Reconciliation for Transmission Congestion                               |  | DS Supplier |
| 1420 | Load Reconciliation for Transmission Losses                                   |  | DS Supplier |
| 1430 | Load Reconciliation for Inadvertent Interchange                               |  | DS Supplier |
| 1440 | Load Reconciliation for PJM Scheduling, System Control and Dispatch Service   |  | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 1441 | Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund         |  | DS Supplier |
| 1442 | Load Reconciliation for Schedule 9-6 – Advanced Second Control Center                      |  | DS Supplier |
| 1444 | Load Reconciliation for Market Monitoring Unit Funding                                     |  | DS Supplier |
| 1445 | Load Reconciliation for FERC Annual Charge Recovery  |  | DS Supplier |
| 1446 | Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding                    |  | DS Supplier |
| 1447 | Load Reconciliation for North American Electric Reliability Corporation (NERC)             |  | DS Supplier |
| 1448 | Load Reconciliation for Reliability First Corporation (RFC)                                |  | DS Supplier |
| 1449 | Load Reconciliation for Consumer Advocates of PJM States, Inc. (CAPS) Funding              |  | DS Supplier |
| 1450 | Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service |  | DS Supplier |
| 1460 | Load Reconciliation for Regulation and Frequency Response Service                          |  | DS Supplier |
| 1470 | Load Reconciliation for Synchronized Reserve   |  | DS Supplier |
| 1472 | Load Reconciliation for Non-Synchronized Reserve   |  | DS Supplier |
| 1475 | DASR Load Reconciliation   |  | DS Supplier |
| 1478 | Load Reconciliation for Operating Reserve  |  | DS Supplier |
| 1480 | Load Reconciliation for Synchronous Condensing   |  | DS Supplier |
| 1490 | Load Reconciliation for Reactive Services  |  | DS Supplier |
| 1500 | Financial Transmission Rights Auction  |  | DS Supplier |
| 1600 | RPM Auction  |  | DS Supplier |
| 1610 | Locational Reliability   |  | DS Supplier |
| 1611 | CP Transitional Locational Reliability   |  | DS Supplier |
| 1650 | Non-Unit Specific Capacity Transaction   |  | DS Supplier |

|      |  |     |             |
|------|--|-----|-------------|
| 1660 | Demand Resource and ILR Compliance Penalty                 |     | DS Supplier |
| 1661 | Capacity Resource Deficiency                               |     | DS Supplier |
| 1662 | Generation Resource Rating Test Failure                    |     | DS Supplier |
| 1663 | Qualifying Transmission Upgrade Compliance Penalty         |     | DS Supplier |
| 1664 | Peak Season Maintenance Compliance Penalty                 |     | DS Supplier |
| 1665 | Peak-Hour Period Availability                              |     | DS Supplier |
| 1666 | Load Management Test Failure                               |     | DS Supplier |
| 1670 | FRR LSE Reliability  |     | DS Supplier |
| 1680 | FRR LSE Demand Resource And Ilr Compliance Penalty         |     | DS Supplier |
| 1681 | FRR LSE Capacity Resource Deficiency                       |     | DS Supplier |
| 1682 | FRR LSE Generation Resource Rating Test Failure            |     | DS Supplier |
| 1683 | FRR LSE Qualifying Transmission Upgrade Compliance Penalty |     | DS Supplier |
| 1684 | FRR LSE Peak Season Maintenance Compliance Penalty         |     | DS Supplier |
| 1685 | FRR LSE Peak-Hour Period Availability                      |     | DS Supplier |
| 1686 | FRR LSE Load Management Test Failure                       |     | DS Supplier |
| 1687 | FRR LSE Schedule 9-5                                       |     | DS Supplier |
| 1688 | FRR LSE Schedule 9-6                                       |     | DS Supplier |
| 1710 | PJM/MISO Seams Elimination Cost Assignment                 |     | DS Supplier |
| 1712 | Intra-PJM Seams Elimination Cost Assignment                |     | DS Supplier |
| 1720 | RTO Start-up Cost Recovery                                 |     | DS Supplier |
| 1730 | Expansion Cost Recovery                                    | EDC |             |
| 1900 | Unscheduled Transmission Service                           |     | DS Supplier |
| 1910 | Ramapo Phase Angle Regulators                              |     | DS Supplier |

|            |   |     |             |
|------------|---|-----|-------------|
| 1911       | Michigan – Ontario Interface Phase Angle Regulators         |     | DS Supplier |
| 1920       | Station Power   |     | DS Supplier |
| 1930       | Generation Deactivation                                     | EDC |             |
| 1932       | Generation Deactivation Refund                              | EDC |             |
| 1950       | Virginia Retail Administrative Fee                          |     | DS Supplier |
| 1952       | Deferred Tax Adjustment                                     | EDC |             |
| 1955       | Deferral Recovery   |     | DS Supplier |
| 1980       | Miscellaneous Bilateral                                     |     | DS Supplier |
| 1995       | PJM Annual Membership Fee                                   |     | DS Supplier |
| 1999       | PJM Customer Payment Default                                |     | DS Supplier |
| <b>ID#</b> | <b>CREDITS</b>  |     |             |
| 2100       | Network Integration Transmission Service                    | EDC |             |
| 2101       | Network Integration Transmission Service (ATSI Low Voltage) | EDC |             |
| 2102       | Network Integration Transmission Service (exempt)           | EDC |             |
| 2103       | Underground Transmission Service                            | EDC |             |
| 2104       | Network Integration Transmission Service Offset             | EDC |             |
| 2106       | Non-Zone Network Integration Transmission Service           | EDC |             |
| 2108       | Transmission Enhancement                                    | EDC |             |
| 2109       | MTEP Project Cost Recovery                                  |     | DS Supplier |
| 2110       | Direct Assignment Facilities                                |     | DS Supplier |
| 2120       | Other Supporting Facilities                                 |     | DS Supplier |
| 2130       | Firm Point-to-Point Transmission Service                    |     | DS Supplier |
| 2132       | Internal Firm Point-to-Point Transmission Service           |     | DS Supplier |

|      |  |  |             |
|------|--|--|-------------|
| 2133 | Firm Point-to-Point Transmission Service Resale Credit     |  | DS Supplier |
| 2135 | Neptune Voluntary Released Transmission Service (Firm)     |  | DS Supplier |
| 2136 | Hudson Voluntary Released Transmission Service (Firm)      |  | DS Supplier |
| 2138 | Linden Voluntary Released Transmission Service (Firm)      |  | DS Supplier |
| 2140 | Non-Firm Point-to-Point Transmission Service               |  | DS Supplier |
| 2142 | Internal Non-Firm Point-to-Point Transmission Service      |  | DS Supplier |
| 2143 | Non-Firm Point-to-Point Transmission Service Resale Credit |  | DS Supplier |
| 2145 | Neptune Voluntary Released Transmission Service (Non-Firm) |  | DS Supplier |
| 2146 | Neptune Default Released Transmission Service (Non-Firm)   |  | DS Supplier |
| 2155 | Linden Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 2156 | Linden Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 2165 | Hudson Voluntary Released Transmission Service (Non-Firm)  |  | DS Supplier |
| 2166 | Hudson Default Released Transmission Service (Non-Firm)    |  | DS Supplier |
| 2210 | Transmission Congestion                                    |  | DS Supplier |
| 2211 | Day-ahead Transmission Congestion                          |  | DS Supplier |
| 2215 | Balancing Transmission Congestion                          |  | DS Supplier |
| 2217 | Planning Period Excess Congestion                          |  | DS Supplier |
| 2218 | Planning Period Congestion Uplift                          |  | DS Supplier |
| 2220 | Transmission Losses  |  | DS Supplier |
| 2240 | Day-ahead Economic Load Response                           |  | DS Supplier |
| 2241 | Real-time Economic Load Response                           |  | DS Supplier |
| 2245 | Emergency Load Response                                    |  | DS Supplier |
| 2260 | Emergency Energy   |  | DS Supplier |

|      |   |  |             |
|------|---|--|-------------|
| 2320 | Transmission Owner Scheduling, System Control and Dispatch Service            |  | DS Supplier |
| 2330 | Reactive Supply and Voltage Control from Generation and Other Sources Service |  | DS Supplier |
| 2340 | Regulation and Frequency Response Service                                     |  | DS Supplier |
| 2350 | Energy Imbalance Service  |  | DS Supplier |
| 2360 | Synchronized Reserve  |  | DS Supplier |
| 2362 | Non-Synchronized Reserve  |  | DS Supplier |
| 2365 | Day-ahead Scheduling Reserve  |  | DS Supplier |
| 2370 | Day-ahead Operating Reserve   |  | DS Supplier |
| 2371 | Day-ahead Operating Reserve for Load Response                                 |  | DS Supplier |
| 2375 | Balancing Operating Reserve   |  | DS Supplier |
| 2376 | Balancing Operating Reserve for Load Response                                 |  | DS Supplier |
| 2377 | Synchronous Condensing  |  | DS Supplier |
| 2378 | Reactive Services   |  | DS Supplier |
| 2380 | Black Start Service   |  | DS Supplier |
| 2415 | Balancing Transmission Congestion Load Reconciliation                         |  | DS Supplier |
| 2420 | Load Reconciliation for Transmission Losses                                   |  | DS Supplier |
| 2500 | Financial Transmission Rights Auction   |  | DS Supplier |
| 2510 | Auction Revenue Rights  |  | DS Supplier |
| 2600 | RPM Auction   |  | DS Supplier |
| 2620 | Interruptible Load for Reliability  |  | DS Supplier |
| 2630 | Capacity Transfer Rights  |  | DS Supplier |
| 2640 | Incremental Capacity Transfer Rights  |  | DS Supplier |
| 2650 | Non-Unit Specific Capacity Transaction  |  | DS Supplier |

|      |  |     |             |
|------|--|-----|-------------|
| 2660 | Demand Resource and ILR Compliance Penalty                 |     | DS Supplier |
| 2661 | Capacity Deficiency Resource                               |     | DS Supplier |
| 2662 | Generation Resource Rating Test Failure                    |     | DS Supplier |
| 2663 | Qualifying Transmission Upgrade Compliance Penalty         |     | DS Supplier |
| 2664 | Peak Season Maintenance Compliance Penalty                 |     | DS Supplier |
| 2665 | Peak-Hour Period Availability                              |     | DS Supplier |
| 2666 | Load Management Test Failure                               |     | DS Supplier |
| 2670 | FRR LSE Reliability Credit                                 |     | DS Supplier |
| 2680 | FRR LSE Demand Resource And Ilr Compliance Penalty         |     | DS Supplier |
| 2681 | FRR LSE Capacity Resource Deficiency                       |     | DS Supplier |
| 2682 | FRR LSE Generation Resource Rating Test Failure            |     | DS Supplier |
| 2683 | FRR LSE Qualifying Transmission Upgrade Compliance Penalty |     | DS Supplier |
| 2684 | FRR LSE Peak Season Maintenance Compliance Penalty         |     | DS Supplier |
| 2685 | FRR LSE Peak-Hour Period Availability                      |     | DS Supplier |
| 2686 | FRR LSE Load Management Test Failure                       |     | DS Supplier |
| 2687 | FRR LSE Schedule 9-5                                       |     | DS Supplier |
| 2688 | FRR LSE Schedule 9-6                                       |     | DS Supplier |
| 2710 | PJM/MISO Seams Elimination Cost Assignment                 |     | DS Supplier |
| 2712 | Intra-PJM Seams Elimination Cost Assignment                |     | DS Supplier |
| 2720 | RTO Start-up Cost Recovery                                 |     | DS Supplier |
| 2730 | Expansion Cost Recovery                                    | EDC |             |
| 2910 | Ramapo Phase Angle Regulators                              |     | DS Supplier |
| 2912 | CT Lost Opportunity Cost Allocation                        |     | DS Supplier |

|      |                                    |     |             |
|------|------------------------------------|-----|-------------|
| 2930 | Generation Deactivation            | EDC |             |
| 2932 | Generation Deactivation Refund     | EDC |             |
| 2950 | Virginia Retail Administrative Fee |     | DS Supplier |
| 2952 | Deferred Tax Adjustment            | EDC |             |
| 2955 | Deferral Recovery                  |     | DS Supplier |
| 2980 | Miscellaneous Bilateral            |     | DS Supplier |
| 2996 | Annual PJM Cell Tower              |     | DS Supplier |
| 2997 | Annual PJM Building Rent           |     | DS Supplier |

## **APPENDIX E – DS SUPPLIER’S OBLIGATIONS FOR AEPS COMPLIANCE**

With respect to the DS Supplier Responsibility Share, DS Supplier shall:

- (1) Provide sufficient AECs for each Tranche, in accordance with the schedule provided below.
- (2) Provide actual AECs that conform to all applicable PaPUC or other legal requirements in effect as of the date that the AECs are provided to the Company. DS Supplier shall be responsible for any incremental costs associated with ensuring that the AECs it provides to the Company conform to such requirements then in effect.
- (3) Provide AECs on a six (6) month basis or at the end of any Delivery Period, if the Delivery Period is less than six (6) months, and shall be transferred to the Company within 30 days from the final day of any such six month period or Delivery Period; provided; however, that if the term of any Delivery Period includes two different AEPS reporting years, then DS Supplier shall provide the AECs required for the first AEPS reporting year by June 30th of each year.
- (4) Pay any penalties, costs, charges, damages, or other fees assessed against the DS Supplier and/or the Company associated with the DS Supplier’s non-performance with this Agreement or any other applicable requirements related to AEPS.
- (5) Submit to the Company proof of compliance under this Agreement in such form and manner as may be required by the Company.
- (6) Provide to the Company all information the Company may require to comply with the AEPS Act and its implementing regulations and other

requirements of law, including, but not limited to the price paid per AEC required by 73 Pa. C.S. § 1648.3(e)(8).

This Appendix E shall confirm the Alternative Energy Portfolio Standards Obligation of the Transaction agreed to on the Bid Proposal Due Date.

With respect to Transactions for Full Requirements Service, the DS Supplier shall deliver AECs conforming to all applicable requirements for the Delivery Period based on a percentage of the total MWh supplied by DS Supplier, in accordance with the following schedule:

| <u>Compliance Period</u> | <u>Tier 1</u> | <u>PV</u> | <u>Tier 2</u> |
|--------------------------|---------------|-----------|---------------|
| 6/1/2021 – 5/31/2022     | 7.5%          | 0.50%     | 10.0%         |

The percentages set forth above are those applicable for the first DS auction in DSP IX and may be revised for future DS Auctions to reflect changes in law or other applicable requirements. Unless the PaPUC or other authority with jurisdiction implements changes related to AEPS, compliance obligations for periods beyond 6/1/2021 to 5/31/2022 will remain at the 6/1/2021 to 5/31/2022 percentages. These are subject to revision if there are changes from the Pennsylvania AEPS Administrator.

For each compliance period during the Delivery Period, the number of AECs that a DS Supplier is obligated to provide may be reduced by a pre-determined number of AECs allocated to the DS Supplier (“Allocated AECs”). The number of Allocated AECs will be defined prior to the Transaction Date. Any Allocated AECs will not be transferred to the DS Supplier; but instead, the DS Supplier’s AEC obligations will be reduced by a pro rata share of the Allocated AECs, and the Allocated AECs will remain the property of the Company.

The above amounts are estimates and will vary based on actual load served. DS Supplier will need to true-up, higher or lower, actual credits needed based on final reconciled settlement data from PJM.

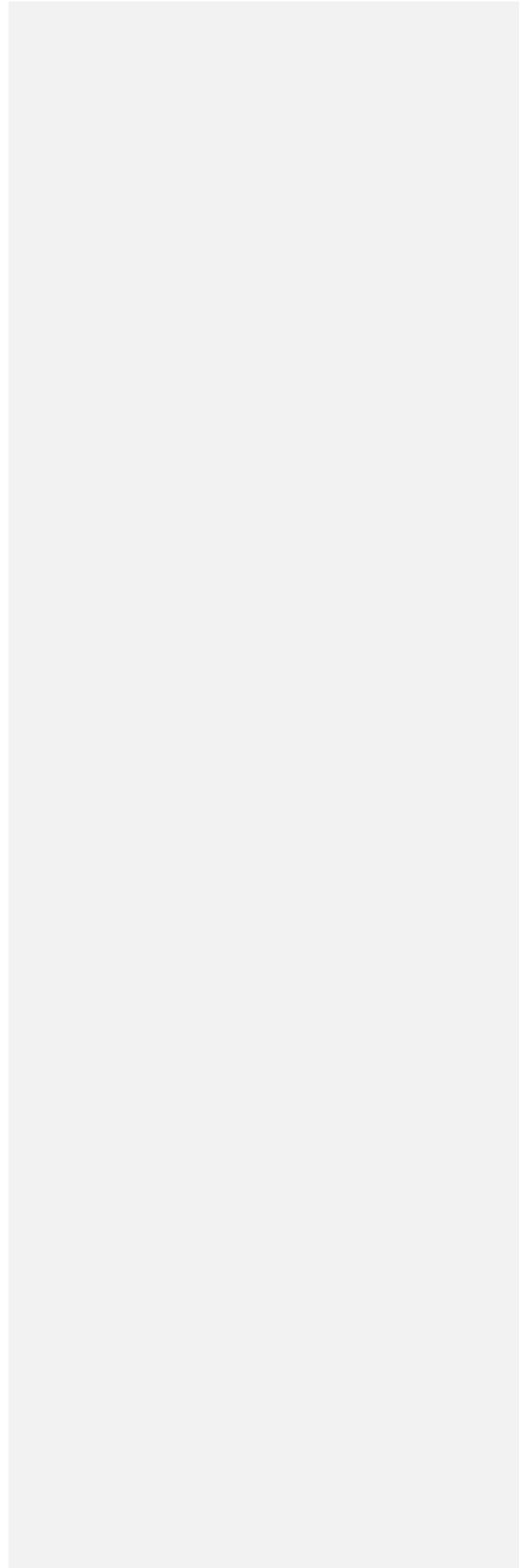


EXHIBIT 1

TRANSACTION CONFIRMATION FOR FIXED PRICE TRANSACTIONS

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Agreement dated [Month, Day, Year] (**Date of the Contract/DS Auction**) between Duquesne Light Company (“Company”) and [INSERT] (“DS Supplier”). Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Transaction Confirmation shall confirm the following terms of the Transaction agreed to on [Month, Day, Year] (**Date of the current DS Auction for the tranches the won and will be serving**) (“Transaction Date”).

Product: Full Requirements Service  
DS Customer Group: [INSERT CUSTOMER CLASS]  
Delivery Point: Duquesne Residual Aggregate Zone in PJM Pnode 116472943  
Delivery Period: [Month, Day, Year] through [Month, Day, Year]  
Number of Tranches: [INSERT]  
DS Fixed Percentage: [INSERT] % of DEFAULT SERVICE Load (for applicable customer class)  
DS Fixed Price: [INSERT AVERAGE PRICE] per MWh  
Tranche 1 at [INSERT] per MWh  
Tranche 2 at [INSERT] per MWh  
Tranche 3 at [INSERT] per MWh  
:  
:  
Tranche [X] at [INSERT] per MWh

Alternative Energy Credit (AEC) Allocation (if any):

| Alternative Energy Portfolio Standards - Reporting Period | AEC Allocation per Tranche, (AECs) | Total AEC Allocation (AECs) |
|---|------------------------------------|-----------------------------|
| 2021-22   |                                    |                             |

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between DS Supplier and Company by returning an executed copy of this Transaction Confirmation by email to the Company at [energysupply@duqlight.com](mailto:energysupply@duqlight.com). The signatories to this Transaction must have the authority to enter into this Transaction.

Duquesne Light Company\_ [INSERT]  
By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_



EXHIBIT 2  
FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

|                        |              |
|------------------------|--------------|
| Buyer:                 | DS Supplier: |
| Duquesne Light Company | [INSERT]     |

|                                      |                        |
|--------------------------------------|------------------------|
| <b>All Notices:</b>                  | <b>All Notices:</b>    |
| Street: 411 Seventh Ave.             | Street:                |
| City/State/Zip: Pittsburgh, PA 15219 | City/State/Zip:        |
| Attn: Chief Financial Officer        | Attn:                  |
| Facsimile: (412) 393-1190            | Facsimile:             |
| Duns: 007915606                      | Duns:                  |
| Federal Tax ID Number: 25-0451600    | Federal Tax ID Number: |

|   |                  |
|---|------------------|
| <b>Invoices:</b>                        | <b>Invoices:</b> |
| Attn: Supply Procurement – John Peoples | Attn:            |
| Phone: (412) 393-6385                   | Phone:           |
| Email: jpeoples@duqlight.com            | Facsimile:       |

|                                 |                    |
|---------------------------------|--------------------|
| <b>Scheduling:</b>              | <b>Scheduling:</b> |
| Attn: Scheduling – John Peoples | Attn:              |
| Phone: (412) 393-6385           | Phone:             |
| Email: jpeoples@duqlight.com    | Facsimile:         |

|                                  |                  |
|----------------------------------|------------------|
| <b>Payments:</b>                 | <b>Payments:</b> |
| Attn: Accounting – Jaime Bachota | Attn:            |
| Phone: (412) 393-1122            | Phone:           |
| Email: jbachota@duqlight.com     | Facsimile:       |

|                       |                      |
|-----------------------|----------------------|
| <b>Wire Transfer:</b> | <b>Wire Transfer</b> |
| BNK:                  | BNK:                 |
| ABA:                  | ABA:                 |
| ACCT:                 | ACCT:                |

**Credit and Collections:**

Attn: Treasurer – James Milligan  
Phone: (412) 393-1216  
Email: jmilligan@duqlight.com

**With additional Notices of an**

**Event of Default to:**

Attn: Legal Department – Tishekia Williams  
Phone: (412) 393-1541  
Email: twilliams@duqlight.com

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

**With Additional Notices of an**

**Event of Default to:**

Attn:  
Phone:  
Facsimile:

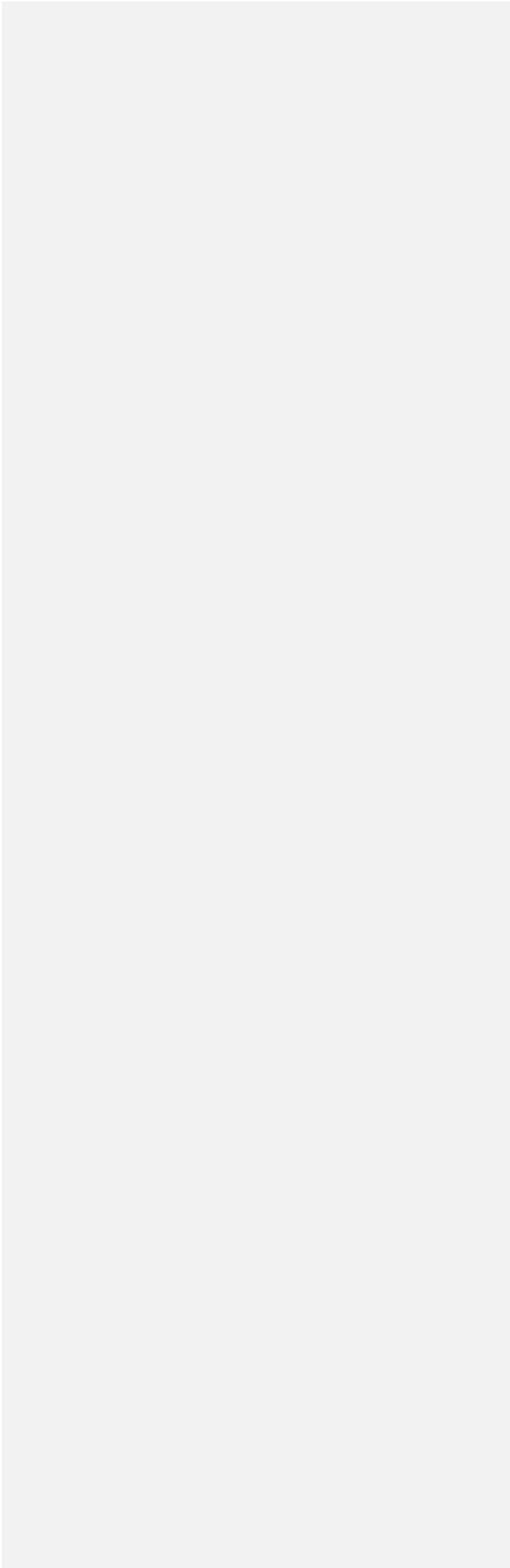


EXHIBIT 3

PERFORMANCE ASSURANCE LETTER OF CREDIT

{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE \_\_\_\_\_ EXPIRY DATE \_\_\_\_\_

APPLICANT  
[NAME]  
[ADDRESS]

BENEFICIARY  
[NAME]  
[ADDRESS]

CURRENCY  
USD

AMOUNT  
\*\*\*\*\*\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO:  
\_\_\_\_\_ FOR THE ACCOUNT OF \_\_\_\_\_ ("APPLICANT") FOR AN  
AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS  
\_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE  
BANK OF \_\_\_\_\_ ("ISSUER") \_\_\_\_\_ {ADDRESS},  
EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS AT  
\_\_\_\_\_ ON OR BEFORE \_\_\_\_\_ OR ANY  
AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF  
CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT  
SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND  
DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF  
CREDIT WILL BE HONORED UPON PRESENTATION TO ISSUER OF THE FOLLOWING  
STATEMENT:

"I HEREBY CERTIFY THAT BENEFICIARY, DUQUESNE LIGHT COMPANY,  
IS ENTITLED TO DRAW THE AMOUNT OF THE ACCOMPANYING DRAFT  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_, ISSUED BY  
\_\_\_\_\_ {ISSUER'S NAME} AND THAT SUCH DRAFT  
REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM  
\_\_\_\_\_ {APPLICANT'S NAME} FOR PERFORMANCE  
ASSURANCE RELATED TO THE DEFAULT SUPPLY MASTER  
AGREEMENT(S) DATED \_\_\_\_\_ BETWEEN BENEFICIARY  
AND APPLICANT."

THE AMOUNT WHICH MAY BE DRAWN BY BENEFICIARY UNDER THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY DRAWINGS PAID THROUGH ISSUER REFERENCING THIS LETTER OF CREDIT NO. \_\_\_\_\_.

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM BENEFICIARY RELEASING ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF ISSUER UNDER THIS LETTER OF CREDIT AND ISSUER SHALL ALWAYS REMAIN LIABLE TO BENEFICIARY FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS TO BENEFICIARY AS SET FORTH HEREIN NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY APPLICANT.
2. THIS LETTER OF CREDIT MAY BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISIONS(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH

ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF PENNSYLVANIA. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF BENEFICIARY AND ISSUER.

5. BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS BENEFICIARY OR AN AUTHORIZED AGENT OF BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.

6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:

[BANK NAME, ADDRESS AND PHONE NUMBER]

EXHIBIT 4

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this “Guaranty”) is made and entered into as of this day of \_\_\_\_\_, by \_\_\_\_\_ (“Guarantor”), with an address at \_\_\_\_\_, in favor of Duquesne Light Company (“Creditor”), with an address at 411 Seventh Avenue, Pittsburgh, PA 15219, in consideration of the Default Supply Master Agreement(s) (the “DSMA(s)”) between Creditor and \_\_\_\_\_ (“Seller”) dated \_\_\_\_\_, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

WHEREAS, Guarantor is an \_\_\_\_\_ of Seller, and will therefore benefit by Seller entering into the DSMA with Creditor and Guarantor desires Creditor to enter into the DSMA with Seller and to extend credit to Seller thereunder.

WHEREAS, without this Guaranty, Creditor would not execute and deliver the DSMA or consummate the transactions contemplated thereby. Therefore, in consideration of the execution and delivery by Creditor of the DSMA and consummation of the transactions contemplated thereby, Guarantor has agreed to execute and deliver this Guaranty.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty of Obligations.

(a) Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not a surety with effect from date hereof, the prompt and complete payment when due of all of Seller’s payment obligations under the DSMA, whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the DSMA and giving effect to any applicable grace period, and all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of Guarantor’s obligations or collection under this Guaranty, including reasonable attorney’s fees and expenses (collectively, the “Obligations”).

(b) The limitations on liabilities of Seller set forth in Article 13 of the DSMA shall also apply to the liabilities of Guarantor hereunder.

2. Nature of Guaranty; Waivers.

(a) This is a guaranty of payment and not of collection and Creditor shall not be required, as a condition of Guarantor’s liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and Guarantor is not obligated to provide power under the DSMA or this Guaranty.

(b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the DSMA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the DSMA resulting from the conduct of Creditor) or any part thereof.

(c) Except as to any claims, defenses, rights of set-off or to reductions of Seller in respect of its obligations under the DSMA (all of which are expressly reserved under this Guaranty), Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim Guarantor may have against Seller or Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the DSMA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the DSMA (other than any law or regulation that eliminates or nullifies the obligations under the DSMA).

(d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Seller or their assets or any other guarantor or person; provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. Guarantor waives all defenses based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Seller in respect of its obligations under the DSMA.

(e) Creditor at any time and from time to time, without notice to or the consent of Guarantor, and without impairing or releasing, discharging or modifying Guarantor's liabilities hereunder, may (i) to the extent permitted by the DSMA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the DSMA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as Creditor deems appropriate at its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. Guarantor hereby represents and warrants that:

(a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;

(b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;

(c) this Guaranty constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;

(d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on Guarantor or this Guaranty);

(e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or of Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and

(f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Guarantor, threatened by or against Guarantor that would have a material adverse effect on this Guaranty.

4. Repayments or Recovery from Creditor. If any demand is made at any time upon Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of Seller and if Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief

of debtors under federal or state law will affect, modify, limit or discharge Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.

6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, Guarantor postpones and subordinates in favor of Creditor any and all rights which Guarantor may have to (a) assert any claim against Seller based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of Seller, including participation in any marshalling of Seller's assets. Upon payment of such due and unpaid Obligations, Creditor agrees that Guarantor shall be subrogated to the rights of Creditor against Seller to the extent of Guarantor's payment to Creditor.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by email transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for Creditor and Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:  
Phone:  
Email:  
With a copy to:

Phone:  
Email:

or such other address as Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:  
Phone:  
Email:

or such other address as Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Creditor's action or inaction impair any such right or power. Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Creditor may have under other agreements with Guarantor, at law or in equity.

9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom, will be effective unless made in a writing signed by Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Guarantor in any case will entitle Guarantor to any other or further notice or demand in the same, similar or other circumstance.

11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between Guarantor and Creditor with respect to the subject matter hereof.

12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of Guarantor and Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the DSMA in accordance with Section 163 of the DSMA, and except that this Section 12 shall not limit Guarantor's right to assign this Guaranty, along with substantially all of Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB-, as rated by S&P or Fitch, or Baa3, as rated by Moody's, and (ii) Seller is in compliance the DSMA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.

13. Interpretation. In this Guaranty, unless Creditor and Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or

exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF CREDITOR AND GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) Guarantor hereby irrevocably consents to the jurisdiction of the federal district court for the Western District of Pennsylvania or to the county court jurisdiction of the Allegheny County Court of Common Pleas; provided that nothing contained in this Guaranty will prevent Creditor from bringing any action, enforcing any award or judgment or exercising any rights against Guarantor individually, against any security or against any property of Guarantor within any other county, state or other foreign or domestic jurisdiction. Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both Creditor and Guarantor. Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the DSMA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the DSMA is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the DSMA shall nonetheless be payable by Guarantor hereunder on written demand by Creditor.

Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

ATTEST:

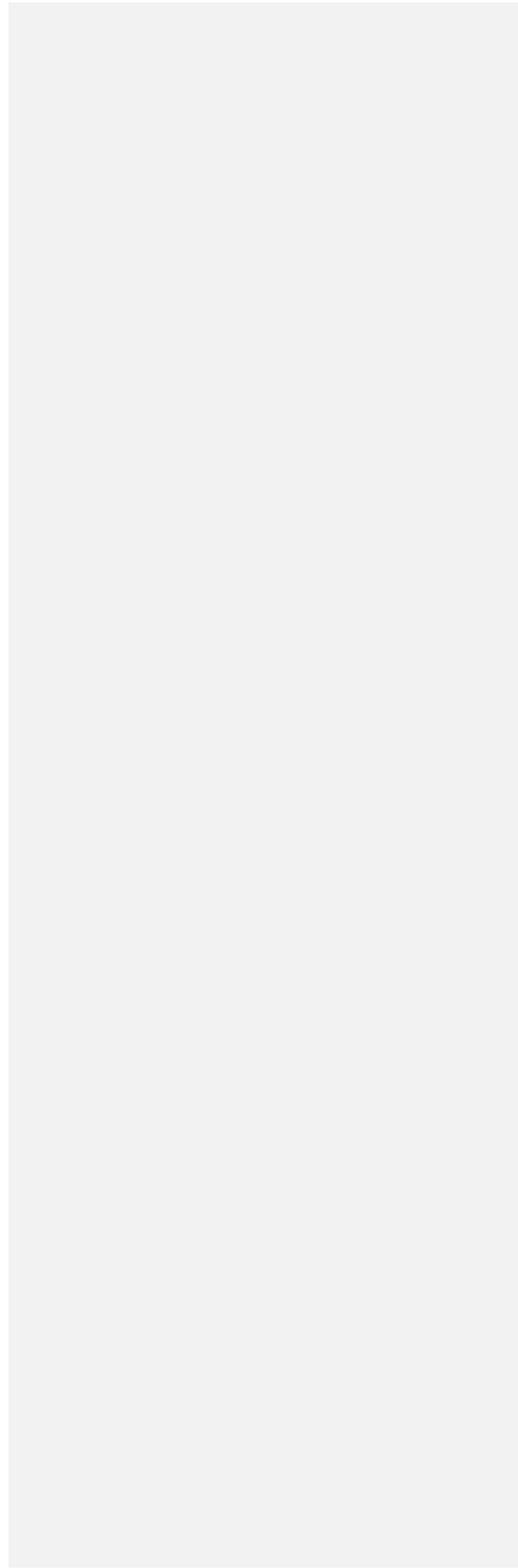
[Guarantor]

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**DUQUESNE LIGHT STATEMENT NO. 3**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Of Duquesne Light Company            :**  
**For Approval Of Default Service Plan        :**           **Docket No. P-2024-\_\_\_\_\_**  
**For The Period June 1, 2025 Through        :**  
**May 31, 2029                                       :**

**DIRECT TESTIMONY OF  
SCOTT G. FISHER**

**Dated: April 19, 2024**

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1 **I. Introduction**

2 **Q. Please state your name and business address.**

3 A. My name is Scott G. Fisher. My business address is 30 Monument Square, Suite 105,  
4 Concord, Massachusetts, 01742.

5

6 **Q. What is your current position?**

7 A. I am a Partner with The NorthBridge Group, Inc. (“NorthBridge”), an economic and  
8 strategic consulting firm serving the electric and natural gas industries. NorthBridge has  
9 advised Duquesne Light Company (“Duquesne Light” or the “Company”) on matters  
10 relevant to its default service plans (“DSP” or “default service” or “POLR”) for many  
11 years. In these efforts, I have advised Duquesne Light on matters pertaining to both  
12 default service supply product portfolio development and rate design.

13

14 **Q. Please summarize your professional and academic background.**

15 A. Since joining NorthBridge in 1998, I have advised companies in the electric industry on  
16 decisions related to risk management, asset valuation and portfolio management, product  
17 pricing, contract negotiations, regulatory affairs, supply procurement, rate design,  
18 emerging technologies, public policy formulation and negotiations, and overall corporate  
19 strategy. I also have served as an expert witness on several of these topics, particularly  
20 with respect to default service supply procurement and ratemaking, in state public utility  
21 commission proceedings. Before joining NorthBridge, I was a consultant at Strategic

1 Decisions Group, a management consulting firm serving a variety of industries. I  
2 received an A.B. from Dartmouth College and a B.E. from the Thayer School of  
3 Engineering at Dartmouth College, with high honors. In addition, I received an M.S. in  
4 Engineering-Economic Systems from Stanford University and an M.B.A. from the Tuck  
5 School of Business at Dartmouth College, with high honors. I presently serve as a guest  
6 lecturer at the Tuck School of Business on energy industry matters.

7  
8 **Q. Have you testified previously before the Pennsylvania Public Utility Commission**  
9 **(“Commission”)?**

10 A. Yes, I testified in Docket No. P-2012-2301664, Petition of Duquesne Light Company for  
11 Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013  
12 through May 31, 2015,<sup>1</sup> and Docket No. P-2020-3019522, Petition of Duquesne Light  
13 Company for Approval of its Default Service Plan for the Period from June 1, 2021  
14 through May 31, 2025.<sup>2</sup> I also testified in Docket No. P-2008-2062739, Petition of  
15 PECO Energy Company for Approval of its Default Service Program and Rate Mitigation  
16 Plan,<sup>3</sup> Docket No. P-2012-2283641, Petition of PECO Energy Company for Approval of  
17 its Default Service Program,<sup>4</sup> Docket No. P-2014-2409362, Petition of PECO Energy

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<sup>1</sup> See *Petition of Duquesne Light Company for Approval of Default Service Plan For the Period June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2301664 (Order entered January 25, 2013).

<sup>2</sup> See *Petition of Duquesne Light Company for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522 (Order entered Jan. 14, 2021).

<sup>3</sup> See *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009).

<sup>4</sup> See *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Order entered October 12, 2012).

1 Company for Approval of its Default Service Program for the Period from June 1, 2015  
2 through May 31, 2017,<sup>5</sup> Docket No. P-2016-2534980, Petition of PECO Energy  
3 Company for Approval of its Default Service Program for the Period from June 1, 2017  
4 through May 31, 2021,<sup>6</sup> Docket No. P-2020-3019290, Petition of PECO Energy  
5 Company for Approval of its Default Service Program for the Period from June 1, 2021  
6 through May 31, 2025,<sup>7</sup> and Docket No. P-2024-3046008, Petition of PECO Energy  
7 Company for Approval of its Default Service Program for the Period from June 1, 2025  
8 through May 31, 2029.<sup>8</sup>

9  
10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my testimony is to evaluate Duquesne Light’s proposed default service  
12 plan (the “Default Service Plan” or “Plan” or “DSP X”) to procure supply for default  
13 service customers for the period beginning June 1, 2025, and ending May 31, 2029. My  
14 direct testimony is divided into two parts. First, I briefly provide some background  
15 information and observations pertaining to Duquesne Light’s current default service plan.  
16 Second, I support Duquesne Light’s overall design for DSP X, especially given Act 129’s  
17 (the “Act”) requirement that the plan include a “prudent mix” of contracts designed to

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<sup>5</sup> See *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014).

<sup>6</sup> See *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Order entered December 8, 2016).

<sup>7</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Order entered Dec. 3, 2020).

<sup>8</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008.

1 ensure the least cost to customers over time.<sup>9</sup>

2

3 **Q. Please summarize your conclusions.**

4 A. I have two main conclusions.

5 1. The basic default service model used by Duquesne Light has been appropriately  
6 tailored to provide price stability benefits to customers while supporting the  
7 competitive retail electricity market.

8 2. DSP X satisfies the requirements of Act 129 by incorporating a prudent mix of  
9 contracts designed to ensure least cost to customers over time, taking into account  
10 the benefits of price stability, and by including prudent steps necessary to obtain  
11 least cost generation supply.

12 Each of these conclusions is described in more detail below.

13

14 **II. The Basic Default Service Model Used by Duquesne Light Has Been Appropriately**  
15 **Tailored to Provide Price Stability Benefits to Customers While Supporting the**  
16 **Competitive Retail Electricity Market**

17 **Q. Please provide a high-level overview of Duquesne Light's default service approach.**

18 A. Duquesne Light has adopted tailored supply portfolios for different customer classes that  
19 are designed to ensure the least cost to customers over time, taking into account benefits  
20 of price stability. Duquesne Light's largest customers are offered default service rates

---

<sup>9</sup> 66 Pa. C.S. § 2807(e)(3.4).

1 based on day-ahead hourly market prices, while the supply approaches for smaller  
2 customers provide them with more stable default service rates. A greater degree of  
3 default service rate stability is appropriate for smaller customers, as they are less likely to  
4 have the time, incentive, knowledge, sophistication, or resources to elect an alternative  
5 electric generation supplier (“EGS” or “competitive retail supplier”) offering that  
6 provides the price stability at reasonable levels that they seek. I am advised by counsel  
7 that Act 129 is consistent with this position, as it requires that a default service plan  
8 include a “prudent mix” of contracts that considers any benefits of price stability.<sup>10</sup>  
9

10 **Q. Please characterize Duquesne Light’s delineation of customers who are offered**  
11 **default service rates based on day-ahead hourly market prices versus those who are**  
12 **offered more stable default service rates.**

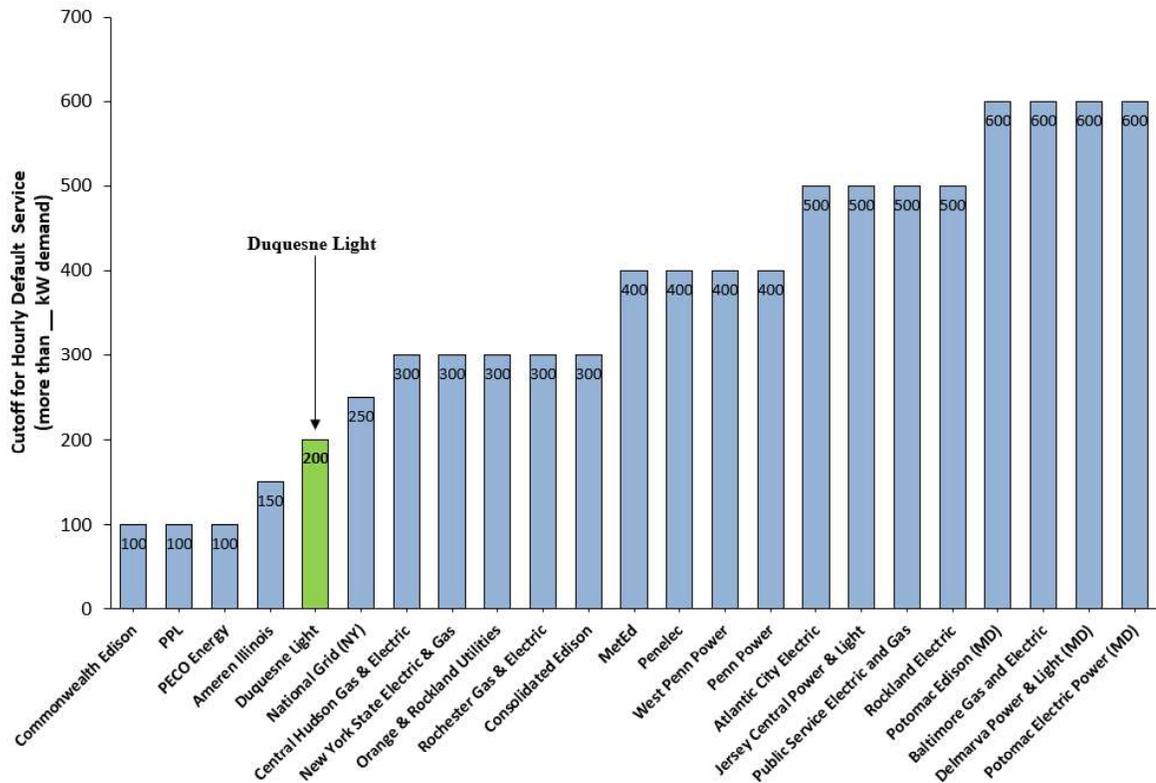
13 A. Duquesne Light was one of the first utilities in the nation to offer hourly-priced default  
14 service to all customers with metered demands greater than or equal to 300 kW.  
15 Furthermore, as shown in the following figure, with its kilowatt demand threshold of 200  
16 kW, Duquesne Light is among the utilities with the lowest demand thresholds for hourly-  
17 priced default service in the United States.

---

<sup>10</sup> 66 Pa. C.S. § 2807(e)(3.4), and Act 129 of 2008 (Preamble).

1  
2  
3  
4

**Figure 1 Duquesne Light Has One of the Lower kW Thresholds for Hourly Price Default Service for Commercial and Industrial Customers in the United States**



5  
6  
7  
8  
9  
10

Duquesne Light currently offers the following customers default service rates based on day-ahead hourly market prices:<sup>11</sup>

- Medium C&I ≥200kW – Customers served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 200 kW.
- Large C&I – Customers served under rate schedules GL, GLH, L, and HVPS.

---

<sup>11</sup> For the purposes of my testimony, I refer to these customers as “HPS-Eligible,” as they are eligible for Rider No. 9 – Day-Ahead HPS.

1 As a result, the default service rates offered to about half of Duquesne Light's total system  
2 load are based on day-ahead hourly market prices. As of February 2024, 94% of this load  
3 is receiving supply from an EGS.<sup>12</sup>

4  
5 **Q. How does Duquesne Light provide more stable default service rates to its customers**  
6 **who are not offered default service rates based on day-ahead hourly market prices?**

7 A. Duquesne Light relies on open solicitations for fixed-price full requirements ("FPFR")  
8 default service supply products for its customers who are not offered default service rates  
9 based on day-ahead hourly market prices (i.e., Residential & Lighting, Small C&I, and  
10 Medium C&I <200kW customer classes),<sup>13</sup> and it passes through the costs of those  
11 products to customers. Furthermore, Duquesne Light tailors the specific mix of products  
12 to the needs of each customer class.

13  
14 **Q. Mr. Fisher, please describe the characteristics of the FPFR supply products that**  
15 **Duquesne Light procures through open solicitations for its Residential & Lighting,**  
16 **Small C&I, and Medium C&I <200kW default service customers.**

17 A. A FPFR default service supply product obligates the seller of the product to satisfy a  
18 specified percentage of all of the default service customers' supply requirements in every

---

<sup>12</sup> Source: Duquesne Light Company.

<sup>13</sup> Residential customers are those served under rate schedules RS, RH and RA. Lighting customers are those served under rate schedules AL, SE, SM, SH, and PAL. Small C&I customers are those with average monthly metered demands less than 25 kW served under rate schedules GS/GM, GMH and UMS. Medium C&I <200kW customers are those served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 25 kW but less than 200kW.

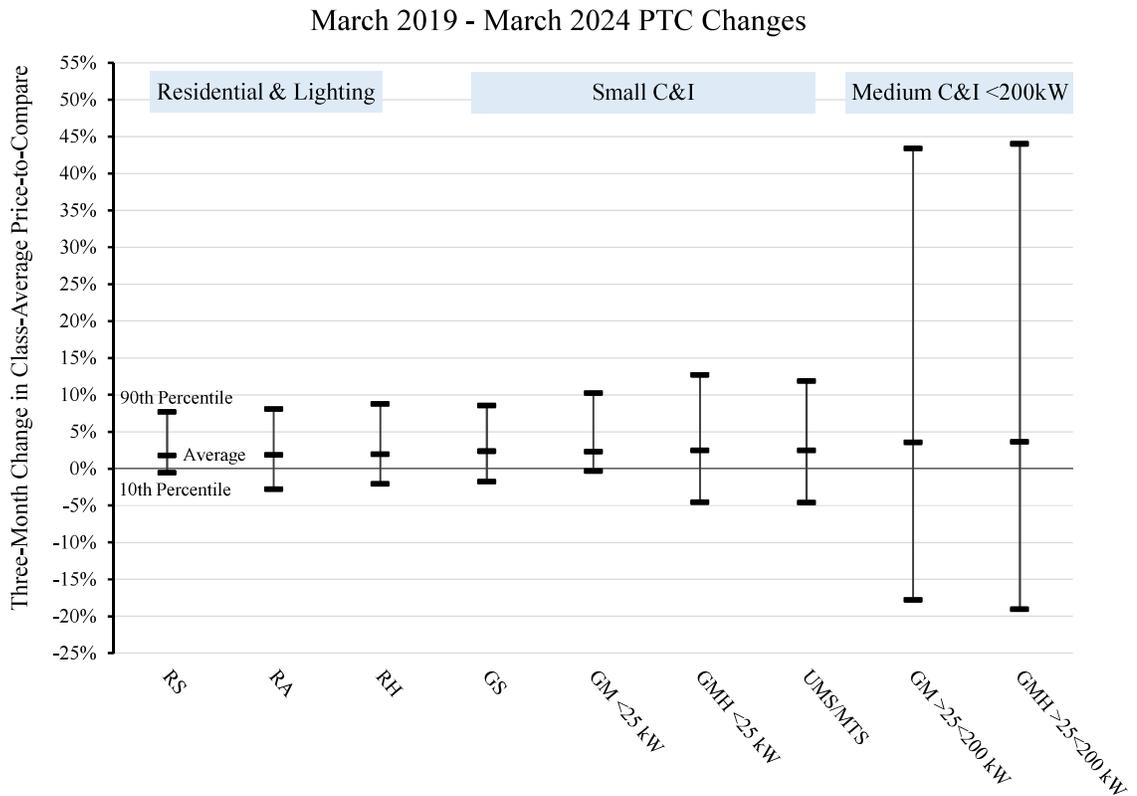
1 hour of the delivery period, regardless of the default service customers' instantaneous  
2 changes in energy consumption, regardless of how frequently customers switch to or  
3 from default service, and regardless of how the seller's cost to satisfy its supply  
4 obligation may change. The seller is paid a predetermined price per megawatt-hour for  
5 this service. The FPFR products that Duquesne Light procures include the generation  
6 components required to supply Duquesne Light's default service customers, including  
7 energy, capacity, and ancillary services, as well as alternative energy credits required for  
8 compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act.  
9 In Duquesne Light's solicitations for FPFR products, qualified bidders compete with one  
10 another by submitting the prices at which they are willing to provide the full requirements  
11 default service supply, and the suppliers with the lowest prices are selected upon approval  
12 of the procurement by the Commission. Furthermore, additional price stability benefits  
13 can be achieved for certain customer classes if the FPFR products are procured at  
14 different times and with overlapping delivery periods. This approach limits the  
15 percentage of supply that must be solicited or replaced at any given time or in any given  
16 short period of time, thereby reducing the likelihood of significant rate changes due to  
17 adverse circumstances or market conditions at any given time.

18  
19 **Q. Please provide a statistical summary of Duquesne Light's historical Price-to-  
20 Compare ("PTC") changes for the major rate schedules that are currently offered  
21 default service rates based on FPFR supply products.**

22 A. Figure 2 provides a statistical summary of Duquesne Light's class-average PTC changes  
23 over a recent five-year historical period for the major rate schedules that are currently

1 offered default service rates based on FPCR supply products. Throughout this period,  
 2 percentage changes in the PTC from one date to the date three months later were  
 3 measured. Figure 2 illustrates the PTC volatility for each rate schedule by providing the  
 4 10<sup>th</sup> and 90<sup>th</sup> percentiles of the percentage changes.

5 **Figure 2 Three-Month Changes in Duquesne Light’s Prices-to-Compare**



6

7 As shown in Figure 2, Duquesne Light’s historical default service plans have been  
 8 effective in providing the Residential & Lighting and Small C&I customer classes with  
 9 greater default service rate stability than that provided to the Medium C&I <200kW  
 10 customer class. Since DSP X will continue the basic procurement strategy for the  
 11 Residential & Lighting and Small C&I customer classes that was established in DSP VIII

1 and maintained in DSP IX, Figure 2 supports the conclusion that the benefits of price  
2 stability for these smaller customers, who are more likely to rely on default service to  
3 provide these benefits, will be achieved in DSP X. As I will explain later, Duquesne Light  
4 is proposing a change to the procurement strategy for the Medium C&I <200kW customer  
5 class that is designed to increase the default service rate stability for that customer class.

6  
7 **Q. How does Duquesne Light’s default service approach provide the benefits of price**  
8 **stability to default service customers in the Residential & Lighting and Small C&I**  
9 **customer classes?**

10 A. The mix of one-year and two-year FPCR products in Duquesne Light’s Residential &  
11 Lighting and Small C&I default service supply portfolios, and the semi-annual  
12 overlapping of their delivery periods, provides these customers with greater assurances of  
13 price stability. This is true for several reasons. First, the mix of fixed-price one-year and  
14 two-year products smooths out rate fluctuations over time. Second, 37.5% of the  
15 Residential & Lighting and Small C&I default service supply is replaced every six  
16 months,<sup>14</sup> thereby mitigating the impacts of adverse circumstances or market conditions  
17 at any given time, while updating prices over time. Third, Duquesne Light’s reliance on  
18 supply purchased on four different solicitation dates to determine the default service  
19 supply rate at any given point in time, versus a plan in which the default service supply  
20 rate at any given point in time is based on supply procured on fewer solicitation dates,

---

<sup>14</sup> Duquesne Light conducts solicitations every six months, but in each solicitation 25% of the supply requirement is procured in the form of one-year products and 12.5% of the supply requirement is procured in the form of two-year products.

1 provides Residential & Lighting and Small C&I default service customers with greater  
2 rate stability. Finally, Duquesne Light's approach does not require that 100% of the  
3 supply be replaced at the end of the DSP period (a "hard stop"), which would expose  
4 Residential & Lighting and Small C&I customers to unnecessary rate instability and  
5 risks.

6  
7 **Q. Have Duquesne Light's solicitations for FPFR supply products been successful?**

8 A. Yes. Multiple suppliers have participated in Duquesne Light's FPFR product  
9 solicitations. In each solicitation held in March or September since 2021, between 7 and  
10 14 bidders actively participated through the submission of bids in the solicitation.<sup>15</sup>  
11 Furthermore, of the 452 tranches of FPFR products solicited since March 2017,<sup>16</sup> 99.8%  
12 (i.e., all but one tranche) was subscribed.<sup>17</sup> The one tranche that was not subscribed was  
13 one of the four Medium C&I <200kW tranches solicited in the September 2022  
14 solicitation.<sup>18</sup> As I explain later in my direct testimony, Duquesne Light is proposing a  
15 change to the Medium C&I <200kW procurement strategy in DSP X in part to address  
16 possible future undersubscriptions. Finally, with the exception of the one unsubscribed

---

<sup>15</sup> Source: Duquesne Light Company.

<sup>16</sup> March 2017 was the first solicitation conducted by CRA International, the independent party hired by Duquesne Light to conduct the solicitations.

<sup>17</sup> CRA International's published reports on results from all Duquesne Light Company DSP VIII and DSP IX Wholesale Power Procurements, <https://www.duquesnedsp.com/Results.aspx>

<sup>18</sup> Petition of Duquesne Light Company for Emergency Approval of Contingency Modification to Its Default Service Plan Docket No. P-2020-3019522, <https://www.puc.pa.gov/pcdocs/1760373.pdf>

1 Medium C&I <200kW tranche, the Commission has approved the bid results for all of  
2 the FPFR default service supply product tranches that have been solicited.

3 These facts indicate that suppliers understand the products being solicited and are willing  
4 to compete to provide those products. This is beneficial for customers and helps to ensure  
5 that the winning prices are the lowest possible for the products being solicited. When  
6 bidders are faced with a high likelihood that other bidders are also competing on the basis  
7 of price for the same product, they have the incentive to submit their lowest possible price  
8 in order to avoid being underpriced by another bidder.

9  
10 **Q. Have Duquesne Light's default service plans supported the competitive retail**  
11 **electricity market?**

12 A. Yes, Duquesne Light's default service plans have facilitated and supported the  
13 competitive retail market over a sustained period. In fact, Duquesne Light is one of the  
14 top twenty utilities in the United States in terms of percentage of total load switched to a  
15 competitive supplier.<sup>19</sup> As of February 2024, 67% of the load in Duquesne Light's  
16 service area is receiving supply from an EGS.<sup>20</sup> These results have been achieved  
17 without imposing undue price volatility on default service customers or without the use  
18 of opt-out customer assignment programs. The foundation for these results has been the  
19 tailored supply portfolios that take into account benefits of price stability, as well as other

---

<sup>19</sup> Based on the most recent data available.

<sup>20</sup> Source: Duquesne Light Company.

1 initiatives that Duquesne Light has implemented to promote competition while balancing  
2 the interests of its customers and shareholders.<sup>21</sup>

3  
4 **III. DSP X Satisfies the Requirements of Act 129 by Incorporating a Prudent Mix of**  
5 **Contracts Designed to Ensure Least Cost to Customers Over Time, Taking into**  
6 **Account the Benefits of Price Stability, and by Including Prudent Steps Necessary to**  
7 **Obtain Least Cost Generation Supply**

8 **Q. Please summarize Duquesne Light’s proposed plan for DSP X.**

9 A. DSP X will continue the basic default service model that has been approved and  
10 implemented in Duquesne Light’s previous default service plans, and which includes  
11 procurement of a prudent mix of products from competitive wholesale suppliers and has  
12 supported retail market competition. Figure 3 provides a summary of the DSP X  
13 portfolio for each customer class:

---

<sup>21</sup> For example, Duquesne Light’s management proposed a market determination of stranded costs through the voluntary divestiture of its generation assets. This provided enormous benefits to customers in the form of accelerated recovery of stranded costs, significant rate reductions, and a faster transition from capped default service rates to default service rates that are better designed to reflect market price levels, against which EGSs may compete. Duquesne Light was the first utility in Pennsylvania to develop an hourly pricing program for large commercial and industrial customers. In DSP IV, Duquesne Light negotiated with EGSs, customer groups, and other parties one of the first Pennsylvania purchase of receivables (“POR”) pilot programs, whereby Duquesne Light offered to purchase the receivables of EGSs serving Residential and Small C&I customers. In DSP V, Duquesne Light expanded the POR program to include Medium C&I customers.

1 **Figure 3 DSP X: Duquesne Light Tailors its Supply Portfolios by Customer Class**

| Residential & Lighting   | Small C&I (< 25 kW)  | Medium C&I <200kW (≥ 25 kW and < 200 kW) <sup>22</sup>   | HPS-Eligible (≥ 200 kW) <sup>23</sup>   |
|--|--|--|---|
| <ul style="list-style-type: none"> <li>• Six-month fixed default service supply rates</li> <li>• Continue procurement of 50% of supply from one-year and 50% of supply from two-year full requirements supply products with overlapping delivery periods</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> | <ul style="list-style-type: none"> <li>• Six-month fixed default service supply rates</li> <li>• Continue procurement of 50% of supply from one-year and 50% of supply from two-year full requirements supply products with overlapping delivery periods</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> | <ul style="list-style-type: none"> <li>• Three-month fixed default service supply rates</li> <li>• Procurement of 50% of supply from one-year supply products with overlapping delivery periods, and 50% of supply from six-month full requirements supply products with three-month pricing and no overlapping delivery periods</li> <li>• Products are procured every six months within three months of start of delivery</li> </ul> | <ul style="list-style-type: none"> <li>• Hourly price default service supply rates</li> <li>• Continue to procure supply through an auction every twelve months within three months of start of delivery</li> <li>• Winning suppliers are paid their fixed bid price plus their share of the associated (day-ahead hourly) energy, capacity, and ancillary service charges billed pursuant to Rider No. 9.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Approximately 32% of total system load</li> </ul>   | <ul style="list-style-type: none"> <li>• Approximately 7% of total system load</li> </ul>  | <ul style="list-style-type: none"> <li>• Approximately 12% of total system load</li> </ul>   | <ul style="list-style-type: none"> <li>• Approximately 49% of total system load</li> </ul>  |

2 HPS-Eligible customers, which comprise approximately 49% of the total load in  
 3 Duquesne Light’s service area, will continue to be offered default service rates based on  
 4 day-ahead hourly market prices.

5 Medium C&I <200kW customers, which comprise approximately 12% of the total  
 6 load in Duquesne Light’s service area, will continue to be offered three-month fixed-price  
 7 default service rates. The product mix will consist of one-year and six-month FPCR supply

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<sup>22</sup> Duquesne Light lowered the threshold for customers who are not offered default service rates based on day-ahead hourly market prices from <300 kW to <200 kW on June 1, 2019.

<sup>23</sup> Duquesne Light lowered the threshold for customers who are offered default service rates based on day-ahead hourly market prices from ≥300 kW to ≥200 kW on June 1, 2019.

1 products solicited semiannually, and the six-month FPFR supply products will have  
2 separate pricing for the first and second three months of the six-month delivery period. In  
3 contrast, under DSP IX, Medium C&I <200kW default service customers were supplied  
4 by three-month products procured quarterly.

5 Small C&I customers, which comprise approximately 7% of the total load in  
6 Duquesne Light's service area, will continue to be offered default service supply rates that  
7 adjust every six months, and these rates will continue to be based on a combination of  
8 overlapping one-year contracts and overlapping two-year contracts procured every six  
9 months.

10 Residential & Lighting customers, which represent about 32% of the total load in  
11 Duquesne Light's service area, also will continue to be offered default service supply rates  
12 that adjust every six months, and these rates will continue to be based on a combination of  
13 overlapping one-year contracts and overlapping two-year contracts procured every six  
14 months.

15 In Duquesne Light Statement No. 2, Duquesne Light witness John Peoples  
16 describes the procurement processes for the different customer classes in more detail. In  
17 addition, as explained by Duquesne Light witness C. James Davis in Duquesne Light  
18 Statement No. 1, Duquesne Light is engaged in final negotiations regarding its solar  
19 purchase power agreement, and it expects to file a Petition seeking approval of the  
20 agreement before the conclusion of DSP IX. The alternative energy credits associated with  
21 this agreement will be used toward compliance with the requirements of the AEPS Act  
22 with respect to default service load.

23

1 **Q. Please describe Duquesne Light's proposed default supply procurement plan for**  
2 **Medium C&I <200kW customers.**

3 A. In Duquesne Light Statement No. 2, Duquesne Light witness John Peoples explains  
4 Duquesne Light's proposal to switch from the current approach of soliciting three-month  
5 FPFRR products in quarterly solicitations to a new approach for the Medium C&I <200kW  
6 customer class. In the new approach, all of the default service supply for the Medium  
7 C&I <200kW customer class still will be procured in the form of FPFRR products, but all  
8 of the supply will be procured in solicitations held semi-annually, at the same times as the  
9 supply solicitations for the Residential & Lighting and Small C&I customer classes.  
10 Consistent with the procurement approach for the Residential & Lighting and Small C&I  
11 customer classes, the delivery period for Medium C&I <200kW customer class default  
12 service supply products solicited in the first scheduled solicitation of a given calendar  
13 year will begin on June 1 of that calendar year, and the delivery period for Medium C&I  
14 <200kW customer class default service supply products solicited in the second scheduled  
15 solicitation of a given calendar year will begin on December 1 of that calendar year.

16 Half of the default service supply for the Medium C&I <200kW customer class will be  
17 procured in the form of 12-month FPFRR products, and half will be procured in the form of  
18 six-month FPFRR products with three-month pricing. For the half of the supply that is  
19 procured in the form of 12-month FPFRR products, 50% of that supply (i.e., 25% of the total  
20 supply for the customer class) will be procured in each solicitation; therefore, the 12-month  
21 FPFRR product delivery periods will overlap on a semiannual basis. For the half of the  
22 supply that is procured in the form of six-month FPFRR products, 100% of that supply (i.e.,  
23 50% of the total supply for the customer class) will be procured in each solicitation;

1           therefore, there will be no overlap of the six-month FPFR supply products across the  
2           solicitations. The six-month FPFR products will be structured to incorporate separate  
3           prices for the first and second three-month periods of the six-month delivery period, as  
4           determined by bidders and described by Duquesne Light witness John Peoples in Duquesne  
5           Light Statement No. 2.

6  
7   **Q.   Why is Duquesne Light proposing this change to the Medium C&I <200kW**  
8   **procurement strategy?**

9   A.   There are two reasons for this change. First, the shift from three-month FPFR products to  
10   12-month and six-month FPFR products, and the overlapping delivery periods of the 12-  
11   month products, will provide greater price stability for Medium C&I <200kW customers,  
12   which is especially important given the higher underlying wholesale market volatility  
13   experienced recently. Second, this change in the Medium C&I <200kW procurement  
14   strategy is designed to better encourage supplier participation and better ensure  
15   successful solicitations. Specifically, without the change, in two solicitations each year,  
16   only Medium C&I <200kW supply is solicited, and only in the form of very short-term  
17   (three-month) products. This may discourage some supplier participation because, all  
18   else equal, suppliers may be less likely to be interested in investing time and resources in  
19   a solicitation if the amount of supply that they can be awarded is small. In contrast, by  
20   instead procuring all of the Medium C&I <200kW supply as a part of larger supply  
21   solicitations in which Residential & Lighting and Small C&I supply is also procured, and  
22   in which all supply products are for longer terms (six months or longer), greater supplier  
23   participation may be encouraged.

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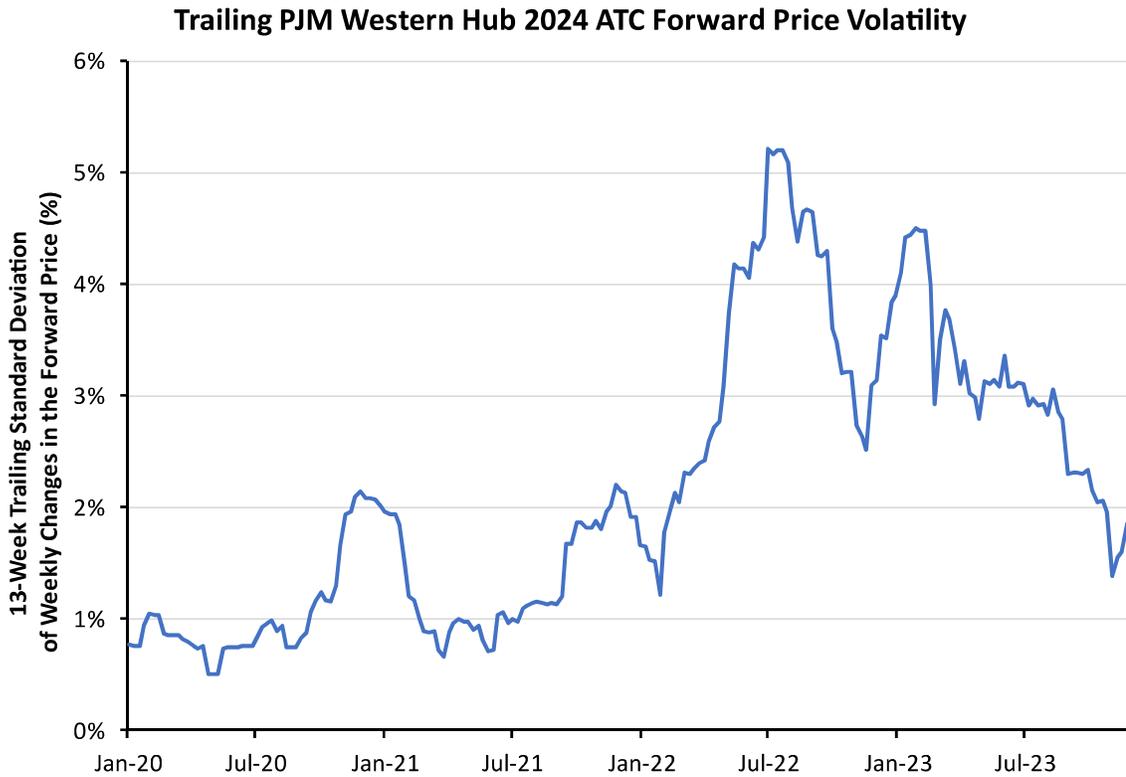
**Q. Why is it beneficial to incorporate greater price stability into the procurement strategy for Medium C&I <200kW customers?**

A. As Figure 2 shows, Duquesne Light’s current procurement approach provides notably less default service rate stability for the Medium C&I <200kW customer class than for the Residential & Lighting and Small C&I customer classes. This is a result of the fact that Medium C&I <200kW default service customers’ exposure to shorter-term underlying wholesale market price volatility is greater than that for the Residential & Lighting and Small C&I customer classes, because 100% of the default service supply for the Medium C&I <200kW customer class is replaced every three months. In contrast, the FPCR default service supply products for the Residential & Lighting and Small C&I customer classes have longer delivery periods that overlap, thereby smoothing out shorter-term changes in the underlying wholesale markets.

Furthermore, underlying wholesale energy market volatility increased notably during the DSP IX period, thereby indicating that Medium C&I <200kW default service customers could be exposed to greater and unnecessary default service price swings going forward (than they experienced before market volatility increased) if the procurement strategy is not changed. Figure 4 illustrates the increase in underlying wholesale market volatility experienced during the DSP IX period.

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**Figure 4 PJM Western Hub Forward Price Volatility**



Source: Mantis Innovation, derived from data at <https://mantisinnovation.com/marketintelligence/marketupdate/>.

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Figure 4 shows the trailing standard deviation (over the previous 13 weeks, or roughly three months) of weekly percentage changes in the forward price for around-the-clock (“ATC”) calendar year 2024 energy delivery at PJM Western Hub over time. In other words, this exhibit indicates the variations in market price changes over time. As can be seen, starting in early 2022, forward price volatility increased to higher levels.

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Multiple factors contributed to the increased market volatility. Rapidly increasing American exports of liquified natural gas caused American natural gas prices, and therefore American electricity prices, to be more closely tied to volatile global energy prices,<sup>24</sup> with

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<sup>24</sup> <https://www.americanprogress.org/article/lng-exports-raise-natural-gas-prices-for-americans/>

1 the volatility severely exacerbated by Russia's February 2022 invasion of Ukraine.<sup>25</sup>  
2 Furthermore, shortages in coal supply limited utility operators' ability to switch to coal-  
3 fired generation in response to higher natural gas prices, further exposing American  
4 electricity prices to the increased volatility of the international natural gas market.<sup>26</sup> In  
5 addition, four extreme weather events in 2022 in the United States, two winter storms and  
6 two heat waves, caused major price spikes in regional wholesale electricity prices,<sup>27</sup>  
7 providing further evidence of the increasing frequency of significant climate events<sup>28</sup> and  
8 the increased energy price risk associated with this trend.<sup>29</sup>

9  
10 **Q. Have you performed an analysis that indicates that Duquesne Light's proposed**  
11 **procurement strategy for the Medium C&I <200kW customer class will result in**  
12 **notably more stable default service rates than its current procurement strategy for**  
13 **this customer class?**

14 A. Yes. I have simulated and compared the Medium C&I <200kW default service supply  
15 rate stability under Duquesne Light's proposed procurement strategy versus Duquesne  
16 Light's current procurement strategy.

17  

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<sup>25</sup> <https://www.iea.org/topics/russias-war-on-ukraine>

<sup>26</sup> <https://www.eia.gov/todayinenergy/detail.php?id=54419>

<sup>27</sup> <https://www.eia.gov/todayinenergy/detail.php?id=55139>

<sup>28</sup> <https://www.climate.gov/news-features/blogs/beyond-data/2022-us-billion-dollar-weather-and-climate-disasters-historical>

<sup>29</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0140988321002139>

1 **Q. Please describe your rate stability analysis in further detail.**

2 A. The analysis consisted of separate phases.<sup>30</sup> In the first phase, I used historical wholesale  
3 price and customer class load data to calculate the volatility (i.e., variability) of historical  
4 wholesale energy prices, capacity prices, and loads, as well as the correlations between  
5 these variables.<sup>31</sup> In the second phase, I developed potential future time-series outcomes  
6 for wholesale energy prices, capacity prices, and Medium C&I <200 kW loads, that are  
7 consistent with the volatilities and correlations calculated from the historical data.<sup>32</sup> In  
8 the third phase, I applied Duquesne Light’s current procurement strategy for Medium  
9 C&I <200 kW customers, and I separately applied its proposed procurement strategy for  
10 Medium C&I <200 kW customers under DSP X, to the potential future time-series  
11 outcomes.<sup>33</sup> I then compared the resultant supply cost variability under each procurement  
12 strategy to determine whether Duquesne Light’s proposed procurement strategy is likely  
13 to produce more stable default service rates than its current procurement strategy.<sup>34</sup>

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<sup>30</sup> Tasks in this answer attributed to me were performed either by me or under my supervision.

<sup>31</sup> Historical wholesale energy price data, and historical load data for Medium C&I customers who are not eligible for HPS, from January 2019 to December 2023, were used to develop statistical measures of volatility, rates of mean-reversion, and correlations. The analysis captures statistical characteristics of around-the-clock average real-time LMPs, the average hourly load, and the load-weighting gross-ups that account for the total energy cost of serving load on an hourly basis when weighted by real-time hourly energy prices and loads. The volatility and rate of mean reversion of capacity prices is based on historical PJM capacity price data for delivery years 2012 to 2024.

<sup>32</sup> Each individual time-series outcome is a self-contained potential future characterized by outcomes regarding real-time energy prices, capacity prices, Medium C&I <200kW loads and load-weighting gross-ups, and forward energy prices and load expectations.

<sup>33</sup> In both cases, I assumed that supply products are procured approximately 2.5 months before the start of delivery.

<sup>34</sup> Supply cost variability is analyzed in a “steady state,” where all supply portfolios are equally exposed to procurements executed under uncertain market conditions. For the purposes of this analysis, smaller contributions to default service rates (e.g., ancillary services and other PJM line items allocated to the FPFRR product suppliers, Alternative Energy Credits, residual compensation required by FPFRR product suppliers to assume various costs and risks, any approved adders that are required to cover administrative costs, distribution line losses, Pennsylvania

1

2 **Q. What do you conclude from your rate stability analysis?**

3 A. I conclude that Duquesne Light's proposed procurement strategy for the Medium C&I  
4 <200kW customer class will result in notably more stable default service supply rates  
5 than its current procurement strategy for this customer class. Figure 5 depicts the results  
6 of my rate stability analysis.

---

Gross Receipts Tax, etc.) were assumed to have a negligible impact on the percentage change in the default service rate from period to period. Given the fixed-price nature of FPFR products, I assumed for the purposes of this analysis that collections from customers match underlying costs, so reconciliations are minimal and supply cost variability is a reasonable proxy for default service supply rate variability.

1

**Figure 5 Comparison of Medium C&I <200kW Procurement Strategies**

|   | Current Procurement Strategy | Proposed Procurement Strategy |
|---|------------------------------|-------------------------------|
| <u>95<sup>th</sup> Percentile</u>           |                              |                               |
| Year-to-Year Overall Change in Rate Level   | 36%                          | 22%                           |
| Rate Change as of:                          |                              |                               |
| June  | 63%                          | 34%                           |
| September                                   | 38%                          | 4%                            |
| December                                    | 12%                          | 10%                           |
| March                                       | 20%                          | 2%                            |
| <u>5<sup>th</sup> Percentile</u>            |                              |                               |
| Year-to-Year Overall Change in Rate Level   | -27%                         | -19%                          |
| Rate Change as of:                          |                              |                               |
| June  | -4%                          | -8%                           |
| September                                   | -34%                         | -6%                           |
| December                                    | -28%                         | -19%                          |
| March                                       | -30%                         | -9%                           |
| <u>95<sup>th</sup> Minus 5<sup>th</sup></u> |                              |                               |
| Year-to-Year Overall Change in Rate Level   | 62%                          | 41%                           |
| Rate Change as of:                          |                              |                               |
| June  | 67%                          | 42%                           |
| September                                   | 73%                          | 10%                           |
| December                                    | 41%                          | 29%                           |
| March                                       | 50%                          | 12%                           |

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When looking at the 95<sup>th</sup> percentile possibilities across all scenarios, the current procurement strategy could produce a 36% year-to-year overall change in rate level, yet the proposed strategy would lower this possibility to a 22% increase. Furthermore, the rate changes on a quarterly basis are even more striking. When looking at the 95<sup>th</sup> percentile possibilities across all scenarios, the possible rate increase is reduced in every quarter of the year, and quite significantly in all quarters except December. In sum, Duquesne Light's proposed procurement strategy for the Medium C&I <200kW customer class is expected to result in notably more stable default service supply rates than its current procurement strategy for this customer class.

1 **Q. Do you have any other comments about the results of your analysis?**

2 A. Yes. It is important to recognize that actual future rate variability could be even greater  
3 than what I show in my analysis, as my analysis does not capture all possible drivers of  
4 rate uncertainty. This underscores the importance of incorporating greater price stability  
5 into the procurement strategy for Medium C&I <200kW customers, as Duquesne Light  
6 has proposed.

7

8 **Q. Does DSP X satisfy Section 2807(e)(3.1) of the Act, which requires that supply be**  
9 **acquired through competitive procurement processes?**

10 A. Yes, DSP X satisfies this requirement. Section 2807(e)(3.1) provides that the default  
11 service provider shall acquire electric power through competitive procurement processes  
12 including one or more of the following: auctions, RFPs, and/or bilateral agreements  
13 entered into at the sole discretion of the default service provider. DSP X satisfies Section  
14 2807(e)(3.1) by relying on open and competitive solicitation processes utilizing auctions  
15 for full requirements supply contracts to obtain default service supply for all of its  
16 customers.

17

18 **Q. Act 129 requires a default service plan to procure a prudent mix of contracts and to**  
19 **include prudent steps necessary to obtain least cost generation supply contracts on a**

1 **long-term, short-term and spot market basis.<sup>35</sup> What guidance has the Commission**  
2 **provided in interpreting that standard?**

3 A. On October 4, 2011, the Commission entered its Second Default Service Rulemaking  
4 Order, and in this Order, it provided guidance based on input received from stakeholders.  
5 Some of the Commission’s guidance regarding the interpretation of “least cost” and  
6 “prudent mix” is as follows:

7 [T]he [“least cost”] standard must give the DSP sufficient latitude to select  
8 contracts that constitute a “prudent mix” which includes a sufficient  
9 variety of products that adequately take into consideration price volatility,  
10 changes in generation supply, customer usage characteristics and the need  
11 to assure safe and reliable service.<sup>36</sup>

12 In implementing default service standards, the Commission must be  
13 concerned about rate stability as well as other considerations such as  
14 ensuring a “prudent mix” of supply and ensuring safe and reliable service.  
15 In our view, a default service plan that meets the “least cost over time”  
16 standard should not have, as its singular focus, the achievement of the  
17 absolute lowest cost over the default service plan time frame but rather a  
18 cost for power that is both relatively stable and also economical relative to  
19 other options.<sup>37</sup>

20 Price stability benefits are very important to some customer groups, so an  
21 interpretation of “least cost” that mandates subjecting all default service  
22 customers to significant price volatility through general reliance on short  
23 term pricing is inconsistent with Act 129’s objectives.<sup>38</sup>

24 We agree with the majority of parties that the “prudent mix” of contracts  
25 be interpreted in a flexible fashion which allows the DSPs to design their

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<sup>35</sup> 66 Pa. C.S. § 2807(e)(3.4), and 66 Pa. C.S. § 2807(e)(3.7).

<sup>36</sup> *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011) (“*Second Default Service Rulemaking Order*”), p. 38.

<sup>37</sup> *Second Default Service Rulemaking Order*, p. 40.

<sup>38</sup> *Second Default Service Rulemaking Order*, p. 41.

1 own combination of products that meets the various obligations to achieve  
2 “least cost to customers over time,” ensure price stability, and maintain  
3 adequate and reliable service.<sup>39</sup>

4 We do reject the positions of those parties that “prudent mix” be defined  
5 to always require a specific mix or percentage of types of contract  
6 components in each default service plan or a minimum of two types of  
7 products.<sup>40</sup>

8  
9 **Q. Do you believe that DSP X incorporates a prudent mix of contracts, and includes**  
10 **prudent steps necessary to obtain least cost generation supply contracts, as required**  
11 **by Section 2807(e)(3.4) and Section 2807(e)(3.7) of Act 129?**

12 **A.** Yes, I do. There are several reasons for this conclusion:

- 13 1. The procurement process is designed to ensure the least cost to customers by  
14 requiring qualified bidders in the supply product solicitations to compete and be  
15 selected based on the lowest price. Furthermore, when FPCR products are solicited,  
16 default service customers are provided the benefits of competition on all aspects of  
17 the full requirements supply obligation, including the portfolio management  
18 function.<sup>41</sup> It is reasonable to assume that bidders in the FPCR product solicitations  
19 will consider the costs and risks associated with all forms of supply available to  
20 them to satisfy their fixed-price full requirements obligation, and will reflect in their

---

<sup>39</sup> *Second Default Service Rulemaking Order*, p. 60.

<sup>40</sup> *Second Default Service Rulemaking Order*, p. 60.

<sup>41</sup> FPCR product suppliers have the responsibility for continuously satisfying the uncertain and constantly changing supply requirements at the agreed-upon price, and therefore must manage the associated costs and risks through their supply portfolio decisions.

1 bid prices the benefits of any opportunity that they believe is the least cost supply  
2 opportunity.

- 3 2. DSP X relies on FPFR default service supply products, which are well-tested in the  
4 marketplace. These products have been successfully procured by Duquesne Light  
5 and are frequently procured by utilities in Pennsylvania and in other jurisdictions.<sup>42</sup>
- 6 3. The Commission has recognized the benefits of reliance on full requirements  
7 products in a default service portfolio, as it stated in its Second Default Service  
8 Rulemaking Order:

9 The [full requirements] process insulates default supply customers  
10 from the volatility associated with wholesale market conditions  
11 with the supplier bearing the risks of factors such as customer  
12 migration, weather, load variation and economic activity.<sup>43</sup>

13 We do express a preference for continued reliance by DSPs on the  
14 [full requirements] approach to the extent this method best suits the  
15 DSP's particular procurement needs.<sup>44</sup>

16 The seller of a FPFR product is responsible for assuming, managing, and covering  
17 the financial costs and risks associated with electricity supply, while customers are  
18 protected against adverse market and/or generation cost outcomes. Sellers of FPFR  
19 products must satisfy their obligation, regardless of how much market prices or  
20 generation costs may increase during the delivery period and regardless of the  
21 default service load level. Yet if market prices decrease after these types of supply

---

<sup>42</sup> Examples of specific jurisdictions in which full requirements supply products are procured include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, and Washington D.C.

<sup>43</sup> *Second Default Service Rulemaking Order*, p. 54.

<sup>44</sup> *Second Default Service Rulemaking Order*, p. 56.

1 contracts are signed, customers may elect service from a lower cost competitive  
2 retail supplier.

3 4. Duquesne Light's use of a reservation price in the evaluation of default service  
4 supply bids mitigates the possibility that customers will pay FPFR product prices  
5 that exceed the level that they may be willing to pay for the benefits of FPFR  
6 products. This further ensures that customers are provided generation supply at the  
7 least cost. Furthermore, if tranches are unsubscribed because of bid rejection due  
8 to the application of the reservation price, Duquesne Light's contingency plan will  
9 help ensure the remaining load is filled in an appropriate manner.

10 5. DSP X continues the use of a standard supply contract (referred to as a supply  
11 master agreement or "SMA"), which lets bidders know the terms and requirements  
12 of the default service supply obligation well in advance of the bid due date, and  
13 therefore allows qualified bidders to submit firm bid prices knowing that these  
14 contract terms and conditions will not change. The use of a standard contract also  
15 assures qualified bidders that the selection of the winning bidders will be an  
16 objective process. Consequently, the use of a standard contract encourages  
17 participation in the solicitations from many potential suppliers.

18 6. DSP X is also prudent because it includes tailored supply portfolios for different  
19 customer classes that take into account the benefits of price stability, the different  
20 shopping propensity of each customer class, and the desire to support the  
21 competitive retail market in Duquesne Light's service area.

22

1 **Q. Has the Commission supported the use of a tailored supply portfolio for each**  
2 **customer class?**

3 A. Yes. Specifically, in its Second Default Service Rulemaking Order, in its discussion of  
4 the “prudent mix” requirement under Act 129, the Commission stated:

5 The Commission notes there was substantial unanimity on this point and  
6 agrees with the parties that the “prudent mix” standard should be  
7 interpreted to allow for a class-specific product mix that best matches the  
8 needs of each DSP customer class.<sup>45</sup>

9

10 **Q. Do you believe that DSP X is designed to ensure adequate and reliable service, as**  
11 **required by Section 2807(e)(3.4) of the Act?**

12 A. Yes. First, the supply contracts contain protections to provide reliability with respect to  
13 the sellers’ ability to satisfy the terms and conditions of the contracts. Under DSP IX,  
14 suppliers must satisfy certain requirements (including being a member in good standing  
15 of PJM) that help ensure that they are able to perform their obligations.

16 In addition, since all of the load served under the contracts will be supplied through  
17 PJM, regardless of whether the winning default service supply bidders own or control  
18 generation, reliable and adequate service is further ensured. PJM is a FERC-approved  
19 regional transmission organization with a central responsibility to ensure the reliability of  
20 its regional electricity grid of which Duquesne Light is a part, and PJM has numerous  
21 mechanisms in place to meet this responsibility. Furthermore, if a default service supplier

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<sup>45</sup> *Second Default Service Rulemaking Order*, p. 69.

1 defaults on its contract, Duquesne Light can procure from PJM the physical supply  
2 necessary to ensure adequate and reliable service to satisfy its default service obligations.

3  
4 **Q. Mr. Fisher, does DSP X include a reasonable degree of flexibility to accommodate the**  
5 **possibility of future changes in the default service supply approach?**

6 A. Yes. DSP X incorporates this flexibility in several ways. First, the default service supply  
7 product portfolio for the HPS-Eligible customer class does not include any supply  
8 products with delivery periods that extend beyond May 31, 2029, the end of the DSP X  
9 period. As a result, the Commission can easily adopt a similar plan or a very different  
10 plan for the period starting June 1, 2029, without facing situations involving pre-existing  
11 default service supply products for this customer class with deliveries that extend beyond  
12 the DSP X period.

13 Second, the first solicitation for a Medium C&I <200kW supply product with a  
14 delivery period that extends beyond May 31, 2029 (the end of the DSP X period) does not  
15 occur until September 2028, and the first solicitation for Residential & Lighting and Small  
16 C&I supply products with delivery periods that extend beyond May 31, 2029 does not  
17 occur until September 2027.<sup>46</sup> As a result, there is a significant amount of time before  
18 commitments to new supply products extending beyond the DSP X period are made, should  
19 changes need to be made due to legislative or regulatory mandates. In the meantime, these  
20 solicitations remain scheduled because they allow for the option for a fairly seamless

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<sup>46</sup> Furthermore, the Residential & Lighting and Small C&I supply products obtained in the September 2027 solicitation that extends beyond May 31, 2029 represent only 12.5% of the respective customer class's default service load.

1 continuation of the laddered procurement cycle as Duquesne Light transitions from DSP X  
2 to DSP XI,<sup>47</sup> and they avoid subjecting Residential & Lighting, Small C&I, and Medium  
3 C&I <200kW customers to a “hard stop” with regard to their supply products at the end of  
4 the DSP X period. This helps to avoid the need to replace an unnecessarily large portion  
5 of default service supply in a short period of time at the end of the DSP X period.  
6 Customers could be exposed to magnified risks and rate instability if a default service plan  
7 were to require that a large portion of the customers’ default service supply be procured in  
8 a short period of time.

9 Finally, DSP X provides flexibility because it relies on full requirements supply  
10 products. Full requirements products provide just enough supply to satisfy the actual load  
11 obligations, thereby mitigating the risk of being saddled with commitments to purchase  
12 supply that is not needed. This is especially valuable given ongoing uncertainty about  
13 future customer migration.

14  
15 **Q. Is DSP X designed to support the competitive retail electricity market?**

16 A. Yes. EGSs will compete against market-based default service rates, as the default service  
17 rates will be based on the prices for supply products obtained through competitive  
18 solicitations in which multiple bidders compete to sell the products solely on the basis of  
19 price. In addition, the use of FPCR supply products for the Residential & Lighting, Small

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<sup>47</sup> In its *Second Default Service Rulemaking Order*, the Commission recognized the importance of “laddering” contracts in procuring default service supply. Specifically, the Commission stated, “We agree with those parties that utilizing such practices as laddering contracts, with varying procurement periods and contract durations over multiple procurements provide definite benefits in terms of minimizing the impacts of market volatility and decreasing customer risk.” (*Second Default Service Rulemaking Order*, pp. 62-63.)

1 C&I, and Medium C&I <200kW classes will allow those classes' default service rates to  
2 closely match the market-based supply costs, reducing the likelihood of significant over-  
3 and under-collections from retail customers and enhancing rate transparency for retail  
4 supply decisions.<sup>48</sup> Furthermore, the FPFR supply products and their procurement timing  
5 under DSP X will result in a relatively stable and transparent residential price-to-compare  
6 benchmark against which residential customers can compare competing retail offers.  
7 Finally, as discussed by Duquesne Light witness Davis in Duquesne Light Statement No.  
8 1, Duquesne Light will continue its pre-established retail market initiatives, such as its  
9 Standard Offer Program, through May 31, 2029.

10  
11 **Q. Do you believe that FPFR suppliers' bid prices will be noticeably higher due to**  
12 **Duquesne Light's continued inclusion of the supply for customers enrolled in**  
13 **Duquesne Light's proposed Electric Vehicle Time-of-Use ("EV TOU") Supply Rate**  
14 **Pilot?<sup>49</sup>**

15 A. No. Both the fixed-rate default service and the EV TOU Supply Rate Pilot will continue  
16 to be supplied via the same FPFR products, so customer switching between the fixed-rate

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<sup>48</sup> Over- and under-collections are related to the degree to which actual costs during a given period may vary from the retail rates that were set for that period. If there is significant uncertainty about the all-in dollar-per-megawatt-hour default service supply cost for an upcoming rate period when the default service retail supply rate for that period is set, then the likelihood of significant over- and under-collections is increased. FPFR products generally entail very little uncertainty about the default service supply costs on a dollars-per-megawatt-hour basis for any given upcoming rate period at the time that the default service retail rate for that period is set, effectively reducing the potential for significant over- or under-collections. It should be noted that over- and under-collections also can occur due to billing cycle lag.

<sup>49</sup> Duquesne Light witness Sarah J. Olexsak in Duquesne Light Statement No. 5 describes the EV TOU Supply Rate Pilot and the customer enrollment process. In Duquesne Light Statement No. 4, Duquesne Light witness David B. Ogden describes the supply rates for the EV TOU Supply Rate Pilot.

1 default service and the EV TOU Supply Rate Pilot will not cause load uncertainty issues  
2 which the suppliers otherwise may be expected to price into their bids.<sup>50</sup> Furthermore,  
3 since suppliers will be paid the same price for a megawatt-hour of supply regardless of  
4 what proportion of the supply is for EV TOU Supply Rate Pilot customers, suppliers will  
5 not bear any revenue risk associated with whether a given megawatt-hour of supply is  
6 needed by a customer on the fixed-rate default service or a customer enrolled in the EV  
7 TOU Supply Rate Pilot. In addition, to the extent that customers elect the EV TOU  
8 Supply Rate Pilot and shift their usage to lower-priced periods or reduce their usage  
9 during higher-priced periods, the underlying market-based cost to supply the customers  
10 could be reduced, resulting in lower FPFR supplier bid prices over time. Finally,  
11 Duquesne Light expects the number of customers who elect the EV TOU Supply Rate  
12 Pilot in the near term to continue to be relatively small relative to the overall customer  
13 base. If the EV TOU Supply Rate Pilot is expected to represent a small percentage of a  
14 given FPFR product's supply, then any effects of the EV TOU Supply Rate Pilot on the  
15 FPFR product supplier's bid price should be small.

16  
17 **Q. Does this conclude your direct testimony?**

18 **A.** Yes, it does.

---

<sup>50</sup> In contrast, if the supply for the EV TOU Supply Rate Pilot were solicited separately, default service suppliers would bear additional risks related to customer switching to and from the EV TOU Supply Rate Pilot. Duquesne Light's proposal eliminates these risks and is relatively easy to administer.

**DUQUESNE LIGHT STATEMENT NO. 4**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Of Duquesne Light Company           :**  
**For Approval Of Default Service Plan       :**       **Docket No. P-2024\_\_\_\_\_**  
**For The Period June 1, 2025 Through       :**  
**May 31, 2029                                       :**

**DIRECT TESTIMONY OF  
DAVID B. OGDEN**

**Dated: April 19, 2024**

1 **I. INTRODUCTION**

2 **Q. Please state your full name, business affiliation and address.**

3 A. My name is David B. Ogden. I am the Manager of Rates and Tariff Services at Duquesne  
4 Light Company (“Duquesne Light” or “Company”). My business address is 411 7<sup>th</sup>  
5 Avenue, Pittsburgh, PA, 15219.

6

7 **Q. Please describe your professional and educational background.**

8 A. I received a Bachelor of Science in Business Administration Degree with a major in  
9 Accounting from Clarion University of Pennsylvania in 2001. I am a Certified Public  
10 Accountant. I began my career at the Company in 2008 as the Supervisor of Derivative  
11 Accounting and Special Projects. Over the last fifteen years, I have held supervisory and  
12 managerial positions within Accounting, Financial Planning and Analysis and currently the  
13 Rates and Tariff Services Department. Prior to joining Duquesne Light, I was a senior  
14 audit associate in the Pittsburgh office of PricewaterhouseCoopers LLP, a public  
15 accounting firm, where I performed attestation, advisory and compliance services for  
16 clients throughout the United States. Prior to joining PricewaterhouseCoopers, I held audit  
17 positions within the Allegheny County Controllers Office.

18

19 **Q. Please describe your current responsibilities.**

20 A. In my current role as Manager of Rates and Tariff Services, I am responsible for overseeing  
21 the Company’s retail rates and wholesale transmission rates. In addition, it is my  
22 responsibility to ensure the rates are properly distributed to Customer Billing.

23

24

1 **Q. Have you previously testified before the Pennsylvania Public Utility Commission?**

2 A. Yes. I have testified in the Company's Default Service Plan ("DSP VIII") at Docket No.  
3 P-2016-2543140, the Company's Distribution System Improvement Charge ("DSIC")  
4 proceeding at Docket No. P-2016-2540046, the Company's 2018 base rate proceeding at  
5 Docket No. R-2018-3000124, the Company's Default Service Plan ("DSP IX") at Docket  
6 No. P-2020-3019522, the Company's 2020 Phase IV Energy Efficiency and Conservation  
7 Plan (EE&C) at Docket No. P-2020-3015228, the Company's 2021 base rate proceeding  
8 at Docket No. R-2021-3024750 and the Company's 2024 base rate proceeding at Docket  
9 No. R-2024-3046523.

10

11 **Q. What is the purpose of your Direct Testimony?**

12 A. The purpose of my testimony is to address the following items regarding the Company's  
13 proposed tenth default service plan ("DSP X"):

- 14 1. Describe the proposed default service supply rates for Residential and Lighting, Small  
15 Commercial and Industrial ("C&I"), Medium C&I, and Large C&I customers  
16 obtained through competitive auctions.
- 17 2. Describe the default service supply rates for the Company's continued Electric  
18 Vehicle Time-of-Use ("EV-TOU") Pilot Program.
- 19 3. Describe the Company's default service costs and cost recovery.
- 20 4. Describe the Company's plan to recover retail competition costs.
- 21 5. Describe the reconciliation process for Rider No. 8 - Default Service Supply ("DSS")  
22 rates and Rider No. 9 – Day-Ahead Hourly Price Service ("HPS") rates.



1 **Q. How is your testimony organized?**

2 A. I first discuss the proposed DSS rates for the various customer classes. I then describe the  
3 rate design for the Company’s proposed EV-TOU Pilot Program. Next, I describe the  
4 proposed method to recover the costs associated with implementing the DSP X plan and  
5 of administering certain retail competition programs and initiatives. I then describe the  
6 DSS reconciliation and PTC posting processes. Next, I describe the Company’s plan to  
7 recover its Green Tariff Pilot Program costs. Finally, I describe the proposed changes to  
8 the Company’s Retail and EGS Coordination Tariffs necessary to implement the proposed  
9 default service plan.

10

11 **II. RIDER NO. 8 – DEFAULT SERVICE SUPPLY (“DSS”) RATES FOR**  
12 **RESIDENTIAL AND LIGHTING CUSTOMERS**

13

14 **Q. What rate schedules apply to Residential and Lighting customers?**

15 A. Residential customers are served under rate schedules RS, RH and RA. Lighting customers  
16 are served under rate schedules AL, SE, SM, SH, and PAL.

17

18 **Q. Please describe the current DSS rates applicable to Residential and Lighting**  
19 **customers.**

20 A. The current DSS rates for these rate schedules are designed to recover the costs of electric  
21 supply that are procured through a competitive auctions solicitation process approved in  
22 the Company’s DSP IX proceeding at Docket No. P-2020-3019522 and described in Rider  
23 No. 8 – DSS of the Company’s current retail Tariff No. 25. The competitive auctions are  
24 for full requirements service that includes both the Residential and Lighting load. Full

1 requirements service includes the cost of energy, capacity, congestion and congestion  
2 management charges, alternative energy requirements, ancillary services, and PJM grid  
3 management charges. DSS rates for Residential and Lighting rate schedules AL and SE  
4 are a reconcilable, flat supply charge per kilowatt-hour (“kWh”). DSS rates for Lighting  
5 rate schedules SM, SH and PAL are a fixed rate per fixture based on the monthly kWh  
6 consumption of the fixture and are also reconcilable.

7  
8 **Q. Is the Company proposing any changes to the basic process of determining DSS rates**  
9 **for Residential and Lighting customers in DSP X?**

10 A. No. As discussed by Duquesne Light witness Mr. Peoples, the Company is proposing to  
11 continue to obtain DSS through multiple competitive auctions, and the Company will use  
12 the same basic process to calculate the new supply rates. Under the current and proposed  
13 plan, new supply rates will continue to be effective every June 1 and December 1 for the  
14 period June 1, 2025 through May 31, 2029.

15  
16 **Q. In DSP X, please describe how the Residential and Lighting DSS rates will be**  
17 **determined.**

18 A. Winning bids will be determined through the competitive auction process as described by  
19 Duquesne Light witness Mr. Peoples. In general, a single weighted-average price will be  
20 calculated from the winning bids necessary to fill the applicable tranches in accordance  
21 with the guidelines of the competitive auction process.

22 The Company will then adjust the weighted-average winning bid price to recover  
23 the cost of line losses, initial and ongoing administrative costs to provide default service,

1 the cost of solar contracts (if any) obtained by the Company on behalf of Residential and  
2 Lighting default service customers,<sup>1</sup> and prior period over/under collections with interest.  
3 Once the gross weighted average of the winning bid price is determined, the Company will  
4 adjust the price using class rate factors to derive Residential and Lighting class rates based  
5 on their respective energy consumption patterns and capacity requirements. Next, the  
6 Company will adjust the individual class rates for any costs that are directly related to either  
7 the Residential or Lighting class. The final step will adjust the price to recover  
8 Pennsylvania gross receipts tax (“GRT”). This process is generally the same as that used  
9 by the Company in DSP IX.

10  
11 **Q. Have you prepared an exhibit that shows the derivation of DSS rates for Residential**  
12 **and Lighting customers?**

13 A. Yes. Exhibit DBO-1 is an illustrative example showing the derivation of the Residential  
14 and Lighting DSS rates for the DSP X period.

15  
16 **Q. Have you updated the rate factors used to derive the DSS rates for Residential and**  
17 **Lighting customers?**

18 A. Yes. Exhibit DBO-2 shows the derivation of the rate factors that the Company proposes  
19 to use for the 2025-2026 effective rate period. As shown in Exhibit DBO-2, capacity prices

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<sup>1</sup> Initially, the same basic process that exists today will be used to develop Residential and Lighting DSS rates. The rates will be adjusted for those costs associated with the Company’s long-term solar contracts, if any, during the DSP X period that are approved by the Pennsylvania Public Utility Commission. Duquesne Light witness Mr. Davis discusses the Company’s plan to evaluate entering into long-term solar contracts during the DSP X period.

1 per MWh were determined based on the results of the 2024-2025 PJM capacity auction<sup>2</sup>,  
2 and on historical customer class capacity obligations and loads.<sup>3</sup> Hourly load-weighted  
3 locational marginal prices (“LMPs”) for energy were calculated based on hourly market  
4 price and load data from 2020 through 2023. The load-weighted average LMPs for  
5 Lighting customers reflect the off-peak nature of these customers’ load. Rate factors were  
6 derived by adding capacity prices and LMPs per MWh, and expressing these values relative  
7 to the load-weighted average sum of capacity prices and LMPs per MWh for the  
8 Residential and Lighting customer load combined.

9  
10 **III. RIDER NO. 8 – DEFAULT SERVICE SUPPLY (“DSS”) RATES FOR SMALL**  
11 **C&I CUSTOMERS**

12  
13 **Q. What rate schedules apply to Small C&I customers?**

14 A. Small C&I customers are those customers with monthly metered demand less than 25 kW  
15 served under rate schedules GS/GM and GMH and unmetered customers served under rate  
16 schedule Unmetered Service (“UMS”).<sup>4</sup>

17  
18 **Q. Please describe how the current DSS rates for Small C&I customers were developed.**

19 A. DSS is procured through a competitive auction solicitation process approved in the  
20 Company’s DSP IX proceeding and described in Rider No. 8 – DSS of the Company’s

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<sup>2</sup> The Company will update Exhibit DBO-2 to account for the 2025-2026 PJM capacity auction, that is currently forecasted to occur in the summer of 2024 for the rate factors effective 6/1/25.

<sup>3</sup> Due to ongoing changes in PJM capacity rules and delays in the capacity auction process, capacity auction prices have not yet been established for the 2025-2026 capacity planning period and beyond. The Company proposes to update the rate factors using the same basic methodology shown in Exhibit DBO-1 and DBO-2 as future base capacity auction prices are published.

<sup>4</sup> Municipal traffic signals are an example of UMS customers.

1 current retail Tariff No. 25. The competitive auctions are for full requirements service.  
2 Small C&I DSS rates are reconcilable, flat supply charges per kWh.

3  
4 **Q. Is Duquesne Light proposing any changes to the basic process of determining DSS**  
5 **rates for Small C&I customers in DSP IX?**

6 A. No. The proposed process for determining DSS rates for Small C&I customers in DSP X  
7 is generally the same as the current process. As discussed by Duquesne Light witness Mr.  
8 Peoples, the Company is proposing to continue to obtain DSS through multiple competitive  
9 auctions, and the Company will use the same basic process to calculate the retail rate.  
10 Under the current and proposed plan, new DSS rates will continue to be effective every  
11 June 1 and December 1 for the period June 1, 2025 through May 31, 2029.

12  
13 **Q. Please describe how the DSS rates will be determined for rate schedules GS/GM,**  
14 **GMH and UMS.**

15 A. A single weighted-average price will be calculated from the winning bids necessary to fill  
16 the applicable tranches in accordance with the guidelines of the competitive auction  
17 process. Similar to the derivation of the Residential and Lighting DSS rates shown in  
18 Exhibit DBO-1, the Company proposes to adjust the weighted-average winning bid price  
19 to recover the cost of line losses, initial and ongoing administrative costs to provide default  
20 service, the cost of solar contracts (if any) obtained by the Company on behalf of Small  
21 C&I default service customers, and prior period over/under collections with interest. Once  
22 the gross weighted-average of the winning bid price is determined, the Company will adjust  
23 the rate for any costs that are directly related to the Small C&I class. The final step will

1 adjust the price to recover Pennsylvania gross receipts tax (“GRT”). This process is  
2 generally the same as that used by the Company in DSP IX.

3  
4 **IV. RIDER NO. 8 – DEFAULT SERVICE SUPPLY (“DSS”) RATES FOR MEDIUM**  
5 **C&I CUSTOMERS**

6  
7 **Q. What rate schedules apply to Medium C&I customers?**

8 A. Medium C&I customers are those customers served under rate schedules GS/GM and  
9 GMH with monthly metered demand that is at least 25 kW. For purposes of Rider No. 8 –  
10 DSS, medium customers are those customers with a monthly metered demand that is at  
11 least 25 kW and less than 200kW, on average, in a twelve (12) month period.<sup>5</sup>

12  
13 **Q. How are C&I customers assigned to Rider No. 8 – DSS or Rider No. 9 – HPS?**

14 A. For purposes of assigning customers not being served by an EGS to the applicable supply  
15 rate, the Company evaluates the customer’s twelve (12) most recent months of monthly  
16 billing demand available in October of the preceding year. If the customer’s average  
17 monthly billing demand is greater than or equal to 25 kW but less than 200 kW in the  
18 twelve (12) month period, then that customer is assigned to the Rider No. 8 – DSS rate for  
19 Medium C&I customers effective with the customer’s June billing.<sup>6</sup> If the customer’s  
20 average monthly billing demand is greater than or equal to 200 kW, the customer will be

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<sup>5</sup> For purposes of assigning customers to the applicable supply rate, each October, Duquesne Light shall evaluate the customer’s average monthly usage and billing demand for the past twelve (12) most recent months.

<sup>6</sup> Duquesne Light lowered the upper threshold for the Medium C&I class from < 300 kW to < 200 kW on June 1, 2019.

1 assigned to Rider No. 9 – HPS effective June 1st. Customers served on Rider No. 9 are  
2 described further in Section V.

3  
4 **Q. Please describe how the current Rider No. 8 - DSS rates for Medium C&I customers**  
5 **were developed.**

6 A. DSS is procured through a competitive auction solicitation process approved in the  
7 Company's DSP IX proceeding and described in Rider No. 8 – DSS of the Company's  
8 current retail Tariff No. 25. The competitive auction is for full requirements service.  
9 Medium C&I DSS rates are reconcilable, flat supply charges per kWh.

10  
11 **Q. Is Duquesne Light proposing any changes to the basic process of determining DSS**  
12 **rates for Medium C&I customers in DSP X?**

13 A. Yes. As discussed further by Duquesne Light witness Mr. Peoples, the Company is  
14 proposing to continue to obtain DSS through multiple competitive auctions for full  
15 requirements supply products, but it is proposing to switch from the current approach of  
16 soliciting three-month fixed price, full requirements ("FPFR") products in quarterly  
17 solicitations to a new approach designed to help reduce rate volatility for Medium C&I  
18 customers.

19 As explained by Mr. Peoples, in the proposed new approach, all of the default service  
20 supply for Medium C&I customers will be procured in the form of FPFR products, in  
21 solicitations held semi-annually. The FPFR products will consist of a mix of 12-month  
22 and six-month products. The delivery periods for products solicited in the first scheduled  
23 solicitation of a given calendar year will begin on June 1 of that calendar year, and the

1 delivery periods for products solicited in the second scheduled solicitation of a given  
2 calendar year will begin on December 1 of that calendar year. Bidders for the six-month  
3 PFR products will submit two prices for each tranche on which they bid, one for the first  
4 three months of the delivery period and one for the second three months of the delivery  
5 period, with winning bidders selected as described by Mr. Peoples. This will result in  
6 three-month pricing for these contracts.

7 While the proposed new approach will incorporate changes to the supply product mix and  
8 pricing structure, it will result in default service supply rates that adjust quarterly, which is  
9 the same frequency of rate adjustments that is currently in use. Consequently, under the  
10 proposed plan, through May 31, 2029, new DSS rates will continue to become effective  
11 every June 1, September 1, December 1, and March 1 for Medium C&I customers served  
12 under Rider No. 8.

13  
14 **Q. Please describe how the Rider No. 8 - DSS rates will be determined for rate schedules**  
15 **GS/GM and GMH.**

16 A. The Company proposes to continue the same basic process used to derive DSS rates. A  
17 single weighted-average price will be calculated from the winning bids necessary to fill the  
18 applicable tranches in accordance with the guidelines of the competitive auction process.  
19 Similar to the derivation of the Residential and Lighting rates shown in Exhibit DBO-1,  
20 the Company proposes to adjust the weighted-average winning bid price to recover the cost  
21 of line losses, initial and ongoing administrative costs to provide default service, the cost  
22 of solar contracts (if any) obtained by the Company on behalf of Medium C&I default  
23 service customers, and prior period over/under collections with interest. Once the gross

1 weighted average of the winning bid price is determined, the Company will adjust the rate  
2 for any costs that are directly related to the Medium C&I class. The final step will adjust  
3 the price to recover Pennsylvania gross receipts tax (“GRT”). This process is generally the  
4 same as that used by the Company in DSP IX.

5  
6 **V. RIDER NO. 9 – DAY-AHEAD HOURLY PRICE SERVICE (“HPS”) SUPPLY**  
7 **RATES FOR MEDIUM AND LARGE C&I CUSTOMERS**

8  
9 **Q. What rate schedules are eligible for Rider No. 9 – Day-Ahead HPS?**

10 A. HPS default service applies to customers served under rate schedules GS/GM and GMH  
11 with monthly metered demand that is greater than or equal to 200 kW on average, in a  
12 twelve (12) month period, as well as Large C&I customers served under rate schedules GL,  
13 GLH, L, and HVPS.

14  
15 **Q. Please describe how HPS rates are developed in DSP X.**

16 A. The formula used to calculate HPS rates is provided in Rider No. 9 – Day-Ahead HPS.  
17 The Company procures full requirements supply for HPS through a competitive auction  
18 solicitation process. As described by Duquesne Light witness Mr. Peoples, the Company  
19 issues a single solicitation each year, wherein the Company requests competitive offers  
20 from suppliers to provide default service supply. The suppliers (or supplier) with the  
21 lowest fixed price bids are selected as the winners of the HPS solicitation. In addition to  
22 being paid its winning bid price, each winning supplier is paid for its share of the associated  
23 energy (at the day-ahead hourly energy market prices), capacity, and ancillary service  
24 charges billed to HPS customers, as described in Rider No. 9 – Day-Ahead HPS. The

1 winning suppliers' fixed price bids are designed to recover the alternative energy credit  
2 costs, the energy balancing costs associated with day-ahead pricing versus final energy  
3 costs, and any other third-party supplier administrative costs of providing HPS. The annual  
4 solicitation is conducted in March of each year.

5  
6 **Q. Is Duquesne Light proposing any changes to the basic process of determining HPS**  
7 **rates in DSP X?**

8 A. No. The Company is proposing to continue to issue annual competitive auctions and  
9 charge each HPS customer based on the winning bid prices and its actual hourly usage at  
10 the day-ahead hourly energy prices. This will continue to allow customers to manage their  
11 electricity usage and supply costs by providing customers with day-ahead notice of hourly  
12 energy prices. The methodology used to calculate the other bill components of the HPS  
13 rate will remain the same.

14  
15 **Q. Is the Company proposing any changes to the methodology used to determine the**  
16 **Fixed Retail Administrative Charge ("FRA") in Rider No. 9?**

17 A. No. The Company is proposing to continue to include only the implementation and  
18 ongoing annual costs in the price billed to customers in the same manner as previously  
19 described for DSS rates in Rider No. 8. Specifically, in the derivation of the rates effective  
20 June 1 of each year, the Company will include for recovery through the FRA the annual  
21 ongoing costs to provide Rider No. 9 as well as the costs to conduct the competitive auction  
22 for Rider No. 9. The Company will continue to adjust the FRA to include the initial and  
23 ongoing administrative costs to provide default service, the cost of solar contracts (if any)

1 obtained by the Company on behalf of HPS default service customers, as well as a true-up  
2 for the prior period over/under collection of Company costs recovered with interest.  
3 Consistent with DSP IX, only the Company expenses to be recovered through the FRA  
4 will be included in the Company's Rider No. 9 – Day-Ahead HPS 1307e reconciliation.  
5

6 **VI. ELECTRIC VEHICLE TIME-OF-USE DEFAULT SERVICE SUPPLY RATE**

7  
8 **Q. Does the Company currently have in effect any TOU supply rate offering?**

9 A. Yes, the Company received Commission approval as part of its DSP IX proceeding to  
10 establish an optional Electric Vehicle Time-of-Use (“EV-TOU”) Pilot Program for  
11 Residential, Small C&I and Medium C&I customers with less than 200 kW of demand who  
12 use Default Service (Rider No. 8) supply. The existing EV-TOU rates differentiate prices  
13 across three periods (Peak, Off-Peak and Super Off-Peak) that remain constant year-round  
14 based on rate factors for each procurement class that are updated on an annual basis and  
15 are designed to provide price signals to end-use customers to encourage load-shifting.

16 The current EV-TOU supply rates are distinguished by three time periods  
17 throughout the year. The Super Off-Peak Period consists of all hours every day from 11:00  
18 PM through 6:00 AM. The Peak Period consists of all hours every day from 1:00 PM  
19 through 9:00 PM. All other hours are included in the Off-Peak Period. The same Peak, Off-  
20 Peak, and Super Off-Peak Periods are applicable to all eligible EV-TOU customers.

21 Witness Olexsak describes the overall experience with the current EV-TOU pilot  
22 program.  
23

1 **Q. In Duquesne Light’s service area, are EGSs currently permitted to offer TOU supply**  
2 **rates?**

3 A. Yes. EGSs may offer a TOU product using the Duquesne Light bill-ready billing option.  
4 The Company will continue to facilitate the offering of EGS TOU rates in DSP X.

5  
6 **Q. Is the Company proposing any changes related to the EV-TOU Pilot Program in this**  
7 **proceeding?**

8 A. Yes, in addition to changing the name of the program to the “EV TOU Supply Rate Pilot,”  
9 the Company is proposing three modifications to the program as a part of DSP X. First,  
10 based on an examination of the PJM DLC zonal price data over the past four years, the  
11 Company is proposing to adjust the Peak, Off-Peak and Super Off-Peak hours to further  
12 encourage EV load shifting to lower-priced periods. Secondly, the Company is proposing  
13 to shift the 3:00 PM through 9:00 PM hours on weekends and holidays<sup>7</sup> from the Peak  
14 Period to the Off-Peak Period. Lastly, as further described by Witness Oleksak, in addition  
15 to the Whole Home EV TOU rate option that the Company currently offers, the Company  
16 is proposing to offer an EV-Only EV TOU rate option that would utilize EV charging  
17 station and EV telematics data as an alternative to a second revenue grade meter.

18

19

20

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<sup>7</sup> Holidays follow the PJM definition and include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1 **Q. Which customers will be eligible to participate in the EV TOU Supply Rate Pilot?**

2 A. Consistent with DSP IX, the Company will continue to offer EV TOU to Residential, Small  
3 C&I, and Medium C&I customers eligible for Rider No. 8 who own or lease a plug-in  
4 battery electric vehicle or a plug-in hybrid electric vehicle (collectively “EV”) or offer  
5 charging infrastructure to employees or visitors. Customers eligible for Rider No. 9 – Day-  
6 Ahead HPS will continue to not be eligible for the EV TOU Supply Rate Pilot, and they  
7 will not bear any of the costs associated with the program.<sup>8</sup> The EV TOU Supply Rate  
8 Pilot eligibility requirements are described further by Duquesne Light witness Ms.  
9 Olexsak.

10

11 **Q. Are customers that participate in the EV TOU Supply Rate Pilot also eligible for net  
12 metering?**

13 A. Yes, consistent with DSP IX, customers who are eligible for Rider No. 8 – DSS EV-TOU  
14 supply rates are also eligible for net metering in accordance with the terms and conditions  
15 in Rider No. 21 – Net Metering Service.

16

17 **Q. How will electricity for the EV TOU Supply Rate Pilot be supplied?**

18 A. Consistent with DSP IX, the EV TOU service for a given customer class will continue to  
19 be supplied via the same fixed price, full requirements (“FPFR”) products that provide  
20 default service supply for that customer class. Suppliers will be paid the same price for a  
21 megawatt-hour of supply regardless of how much of its supply is for EV TOU customers.

22

---

<sup>8</sup> Unmetered accounts on Rider No. 8 also are not eligible for EV-TOU supply rates.

1 **Q. By what time periods will EV TOU supply rates be differentiated?**

2 A. The EV TOU supply rates will continue to be distinguished by three time periods  
3 throughout the year. The Super Off-Peak Period will consist of all hours every day from  
4 11:00 PM through 6:00 AM. The Peak Period will consist of all hours from 3:00 PM  
5 through 9:00 PM on non-holiday weekdays. All other hours will be included in the Off-  
6 Peak Period. The same Peak, Off-Peak, and Super Off-Peak Periods will be applicable to  
7 all eligible EV TOU customers.

8

9 **Q. Would the EV TOU supply rates apply to all load behind the customer meter or just**  
10 **the EV load?**

11 A. In the Company's current Whole Home EV TOU option, the EV TOU supply rates apply  
12 to all load associated with the applicable meter, not just the EV load. As noted above, the  
13 Company is proposing to also offer an EV Only EV TOU option in which it would utilize  
14 EV charging station or EV telematics data as an alternative to a second revenue grade meter  
15 and thus capture just the EV load. This proposal is further described by Duquesne Light  
16 witness Ms. Olexsak.

17

18 **Q. Please explain the rationale for the three EV TOU time periods (Peak, Off-Peak, and**  
19 **Super Off-Peak).**

20 A. The EV TOU supply rates are designed primarily to help promote the adoption and cost-  
21 efficient charging of electric vehicles in the Duquesne Light service area by making it less  
22 expensive to charge EVs overnight. The EV TOU supply rate will promote charging of  
23 EVs overnight (i.e., incent customers to add incremental load at lower rates) when the

1 underlying market costs of electricity are relatively low and discourage EV charging during  
2 Peak Periods when the underlying market costs of electricity are relatively high. The  
3 discounted Super Off-Peak Period supply rate (from 11:00 PM through 6:00 AM) that  
4 applies every day of the week also will continue to be simple for customers to understand.  
5

6 **Q. How will the EV TOU supply rates be determined for the Peak Period, Off-Peak**  
7 **Period, and the Super Off-Peak Period?**

8 A. Consistent with DSP IX, for each applicable procurement class, the process will begin with  
9 the weighted-average winning bid price for the applicable class's default service supply.  
10 The Company will then adjust the weighted-average winning bid price to recover the cost  
11 of line losses, initial and ongoing administrative costs to provide default service, the cost  
12 of solar contracts (if any) obtained by the Company on behalf of default service customers,  
13 and prior period over/under collections with interest. Once the resulting price is  
14 determined, the Company will adjust the price using the applicable class EV TOU supply  
15 rate factors to derive the Peak Period, Off-Peak Period, and Super Off-Peak Period rates  
16 for that customer class.<sup>9</sup> Next, the Company will adjust the individual class rates for other  
17 costs related to the applicable customer classes. The final step will adjust the price to  
18 recover Pennsylvania gross receipts tax ("GRT"). This process is generally the same as  
19 that proposed by the Company for DSP IX.  
20  
21  
22

---

<sup>9</sup> Residential and Lighting class rate factors will also be applied at this point, as applicable.

1 **Q. Have you prepared an exhibit that shows the derivation of the EV TOU supply rates?**

2 A. Yes. Exhibit DBO-1 is an illustrative example showing the derivation of the EV TOU  
3 supply rates for the DSP X period.

4

5 **Q. How did you derive the EV TOU supply rate factors for the Peak Period, Off-Peak**  
6 **Period, and Super Off-Peak Period for each customer class?**

7 A. Exhibit DBO-3 shows the derivation of the EV TOU supply rate factors that the Company  
8 proposes to use for the 2025-2026 effective rate period for each applicable customer class.  
9 As shown in Exhibit DBO-3, capacity prices per MWh were determined based on the  
10 results of the 2024-2025 PJM capacity auction, and on historical customer class capacity  
11 obligations and loads.<sup>10</sup> Hourly load-weighted locational marginal prices (“LMPs”) for  
12 energy were calculated based on hourly market price and load data from 2020 through  
13 2023. Rate factors were derived by adding capacity prices and LMPs per MWh for each  
14 given time period, and expressing these values relative to the load-weighted average sum  
15 of capacity prices and LMPs per MWh across all hours. This process is very similar to the  
16 process used to derive EV TOU supply rate factors in DSP IX.

17

18 **Q. Did you adjust the underlying methodology used to calculate the EV TOU supply rate**  
19 **factors for any customer class?**

20

---

<sup>10</sup> Due to ongoing changes in PJM capacity rules and delays in the capacity auction process, capacity auction prices have not yet been established for the 2025-2026 capacity planning period and beyond. The Company proposes to update the rate class factors using the same basic methodology shown in Exhibit DBO-2 and DBO-3 as future base capacity auction prices are published.

1 A. Yes. With the launch of the EV-TOU Pilot Program during DSP IX, the Company now  
2 has historical load data for its EV-TOU Pilot Program customers, which are comprised  
3 overwhelmingly of Residential customers. As a result, the Company is basing the  
4 calculation of the Residential EV TOU supply rate factors on the historical loads of  
5 Residential EV TOU customers. This refinement should better reflect the applicable load  
6 patterns of participating customers in the EV TOU supply rate factor calculations. This  
7 refinement is not applied to the calculation of the EV TOU supply rates for Small C&I and  
8 Medium C&I customers due to an insufficient sample of historical EV-TOU Pilot Program  
9 loads for these customer classes.

10

11 **Q. Will the Company develop separate rate factors for the WholeHome EV TOU**  
12 **product and the EV-Only EV TOU product?**

13 A. No. The Company is not proposing separate rate factors for the two metering options.

14

15 **Q. Will the EV TOU supply rates be reflected in the Company's Retail Tariff?**

16 A. Yes. The Company will reflect the EV TOU supply rates for each applicable customer  
17 class within Rider No. 8 – DSS, as shown in Exhibits DBO-5 and DBO-6 that contain the  
18 necessary changes to Rider No. 8 – DSS (both clean and redline versions).

19

20 **Q. Under the Company's plan to have default service providers supply customers under**  
21 **the EV TOU Supply Rate Pilot, will the Company perform any reconciliation of**  
22 **revenues collected from EV TOU customers with the associated supply costs?**

1 A. Yes. The FPFRR suppliers will be paid the same price per megawatt-hour of supply  
2 regardless of how much of its supply is for EV TOU customers. The Company will charge  
3 customers who enroll in the EV TOU Supply Rate Pilot Peak, Off-Peak, and Super Off-  
4 Peak period supply rates included in Rider No. 8 – DSS in Duquesne Light’s Retail Tariff.  
5 Any mismatches between revenues from EV TOU supply rates and supply costs paid to  
6 FPFRR product suppliers will be recovered/refunded within the existing Rider No. 8 – DSS  
7 1307e customer class reconciliation. This approach will avoid cost shifting across  
8 customer classes during the Pilot and is simple to administer within the existing  
9 reconciliation process.

10  
11 **Q. How will the Company’s costs to continue the EV TOU Supply Rate Pilot be**  
12 **recovered?**

13 A. The Company proposes to continue to recover any costs incurred by the Company to  
14 maintain the EV TOU Supply Rate Pilot from default service customers. These costs are  
15 described by Duquesne Light witness Ms. Olexsak and are reflected on Exhibit DBO-4.  
16 EV TOU Supply Rate Pilot costs readily attributable to a specific customer class (e.g.,  
17 Residential customers) will be directly assigned to the default service class for which such  
18 costs are incurred and will be recovered in Rider No. 8. All other costs, which cannot be  
19 directly assigned, will be allocated to all of the default service classes eligible to participate  
20 in the program in proportion to each class’s default service load.

21

1 **VII. DEFAULT SERVICE COSTS AND COST RECOVERY**

2

3 **Q. What types of administrative costs does the Company incur to provide default**  
4 **service?**

5 A. Consistent with previous default service plans, in addition to the supply costs necessary to  
6 provide default service, the Company incurs costs in two primary areas. First, initial start-  
7 up costs are incurred to develop and obtain approval of the proposed default service plan.  
8 Second, ongoing costs are incurred throughout the duration of the default service plan to  
9 implement the plan (e.g., the costs related to the process of conducting the competitive  
10 auctions and evaluating the results of these solicitations, the incremental administrative  
11 costs to provide HPS, etc.).

12

13 **Q. Has the Company previously unbundled default service costs from base distribution**  
14 **rates?**

15 A. Yes. In compliance with the terms of the non-unanimous settlement within the Petition of  
16 Duquesne Light Company for Approval of a Default Service Plan for the Period June 1,  
17 2017 to May 31, 2021 (DSP VIII), the Company agreed to unbundle the costs set forth in  
18 Exhibit DBO-5, effective June 1, 2017.<sup>11</sup>

19

20 **Q. How does the Company currently recover administrative costs to prepare and obtain**  
21 **approval of the proposed default service plan?**

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<sup>11</sup> DSP VIII Recommended Decision, page 7 that was approved in the DSP VIII Order entered December 22, 2016 at Docket No. P-2016-2543140.

1 A. The Company currently recovers the costs for external legal and consulting services to  
2 prepare and obtain approval of the default service plan through both DSS and HPS rates.

3

4 **Q. How does the Company currently recover the ongoing administrative costs to provide**  
5 **default service?**

6 A. The ongoing administrative costs are primarily associated with managing the competitive  
7 auction process. A third-party independent evaluator conducts the recurring competitive  
8 auctions to obtain DSS and HPS from wholesale suppliers, monitors the results, and  
9 prepares reports to the Commission. These costs for the independent evaluator to conduct  
10 the competitive auctions are easily identifiable and are recovered through an adder in the  
11 applicable procurement class default service rates. These costs are included in the build-  
12 up of the DSS rates in Rider No. 8 and the FRA in Rider No. 9. Cost and revenue recovery  
13 associated with these administrative costs for specific activities are tracked separately for  
14 each procurement group to ensure no cross-subsidy occurs. The costs for the independent  
15 evaluator to conduct multiple solicitations on a given date are allocated to each  
16 procurement group for recovery based on the number of solicitations for each procurement  
17 class.

18

19 **Q. Did you prepare an estimate of the default service costs in dollars that are applicable**  
20 **to the DSS and HPS rates?**

21 A. Yes. I have estimated these costs based on the information that is available at this time.

22 These costs are summarized in the table shown in Exhibit DBO-4. These are preliminary

1 cost estimates that are subject to change based on final plan design and implementation  
2 costs.

3  
4 **Q. How did you estimate the costs to prepare and obtain approval of the DSP X plan?**

5 A. The cost estimates in Exhibit DBO-4 are the consulting and legal fees to prepare and obtain  
6 approval of the DSP X plan. The Company will plan to update these default service costs  
7 with actual external legal and consulting service costs to prepare and obtain approval for  
8 the DSP X plan as part of the Company's DSP X Compliance filing that would be filed in  
9 April 2025, prior to the effective date of DSP X.

10  
11 **Q. How did you estimate the cash working capital costs associated with DSS and HPS  
12 rates?**

13 A. The cash working capital cost shown in Exhibit DBO-4 is based on the supply-related cash  
14 working capital costs that were excluded from the distribution rate base in the Company's  
15 2024 base rate proceeding at Docket No. R-2024-3046523. The annual revenue  
16 requirement for working capital costs shown equals the Company's pre-tax overall return  
17 applied to those costs.

18  
19 **Q. When does the Company propose to begin to recover these costs through DSS and  
20 HPS rates?**

21 A. The Company proposes to update and recover the estimated DSP X filing and other  
22 identified costs through DSS & HPS rates beginning June 1, 2025.

23

1 **Q. Please explain how the Company proposes to assign the default service costs to each**  
2 **customer class.**

3 A. Default service costs are directly assigned to the default service class for which such costs  
4 are incurred. All other costs, which cannot be directly assigned, are allocated to all of the  
5 default service classes in proportion to each class's forecasted default service load.

6  
7 **Q. Once the total estimated costs are allocated to a customer class, how does the**  
8 **Company propose to recover those costs?**

9 A. Consistent with DSP IX, the Company proposes to divide the default service costs by the  
10 approved number of years of the DSP X Plan and develop a monthly fixed expense amount  
11 for each of the three Rider No. 8 customer classes (i.e. Residential/Lighting, Small C&I,  
12 Medium C&I), as well as for the Rider No. 9 customers. Consistent with DSP IX, as shown  
13 in Exhibit DBO-1, the Company will include the monthly expense amounts in the  
14 derivation of the rates for each rate effective period based on the number of months in the  
15 rate effective period. For example, the DSS rates effective June 1, 2025 through  
16 November 30, 2025 will include six months of default service expenses.

17  
18 **Q. Regarding the default service costs, is the Company proposing any changes in the**  
19 **reconciliation process currently in use for default service rates?**

20 A. No. The 1307e reconciliation statement for each applicable customer class will include a  
21 line item for the monthly expense. The reconciliation for the monthly expense will capture  
22 only changes in default service kWh sales (e.g., the difference between the forecasted kWh  
23 at the outset when setting rates and actual default service kWh sales). The difference in

1 recovery of the unbundled expense (over or under collection) created by variations in kWh  
2 sales will be recovered through the e-factor component of the DSS and HPS rates for the  
3 applicable customer class.  
4

5 **VIII. RETAIL COMPETITION COSTS AND COST RECOVERY**

6  
7 **Q. What types of activities is the Company engaged in to support retail competition?**

8 A. The Company currently engages in several activities to support retail competition,  
9 including:

- 10 • Administering a Purchase of Receivables (“POR”) program, whereby  
11 Duquesne Light agrees to purchase the accounts receivable, without recourse,  
12 associated with EGS sales of retail electric commodity services to Residential,  
13 Small C&I, and Medium C&I customers within Duquesne Light’s service  
14 territory.
- 15 • Administering a Standard Offer Program (“SOP”), which is designed to  
16 encourage customers to shop with an EGS at a prescribed discount to the PTC  
17 at the time of the offer.
- 18 • Administering other Commission-mandated activities, programs, projects,  
19 services, etc. to enhance the competitive energy market in Pennsylvania.  
20

21 **Q. How does the Company currently recover the costs of these retail competition**  
22 **initiatives?**

1 A. The Company has several mechanisms in place to recover the costs of these retail  
2 competition initiatives.

3 • For the POR program, defined in Rule 12.1.7 of the EGS Coordination Tariff,  
4 Duquesne Light purchases the EGSs' electric commodity (which is comprised of  
5 generation and transmission service) receivables at a fixed discount currently set at  
6 0.10% for incremental, ongoing operating and administrative expenses associated  
7 with the POR Program related to these customers.

8 • For the SOP program, defined on pages 42B of the current EGS Coordination  
9 Tariff, the Company charges participating EGSs a fee of \$30.00 for every customer  
10 referral that is submitted.

11 • The Company has the ability to recover the expenses associated with implementing  
12 Commission-mandated activities, programs, projects, services, etc. to enhance the  
13 competitive energy market in Pennsylvania through a non-bypassable Retail  
14 Market Enhancement Surcharge ("RMES")<sup>12</sup> defined in Rider No. 1 of the  
15 Company's Retail Tariff.

16

17 **Q. Is the Company proposing to change the way it recovers these costs to support retail**  
18 **competition in this proceeding?**

19

20 A. No. As explained by Duquesne Light witness Mr. Davis, the Company is not altering its  
21 current SOP program. The cost recovery of the SOP program will continue as a direct pass  
22 through between the third-party vendor and the participating supplier.

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<sup>12</sup> The RMES was approved in the Company's DSP VII plan effective June 1, 2015 (Docket No. P-2014-2418242).

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**X. RECONCILIATION PERIODS AND PRICE TO COMPARE POSTING**

**Q. What reconciliation period does the Company currently use for DSS rates?**

A. DSS rates are currently reconciled on a six-month basis. In general, the current reconciliation period is the six-month period ending 120 days prior to the effective date of the new rates. New rates effective on June 1<sup>st</sup> include reconciliation of actual revenue and actual expense for the six months ending January 31<sup>st</sup>. New rates effective on December 1<sup>st</sup> include reconciliation of actual revenue and actual expense for the six months ending July 31<sup>st</sup>. For the statements necessary for 1307e filing requirements which are on a twelve-month basis, the Company combines two six-month reconciliation periods and submits a twelve-month reconciliation filing for the twelve months ending January 31<sup>st</sup> in accordance with 66 Pa C.S. §1307e. The reconciliation periods are defined in Rider No. 8 – DSS of the Company’s current retail Tariff No. 25.

**Q. What reconciliation period does the Company currently use for HPS rates?**

A. The Company portion of the FRA is currently reconciled on a twelve-month basis. The current reconciliation period is the twelve-month period ending 120 days prior to the effective date of the new rates. New rates effective June 1<sup>st</sup> include reconciliation of actual revenue and actual expense associated with the Company portion of the FRA for the twelve months ending January 31<sup>st</sup>. The reconciliation period is defined in Rider No. 9 – Day-Ahead HPS of the Company’s current retail Tariff No. 25. All other cost components of Rider No. 9 are the responsibility of the wholesale supplier(s).

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**Q. Is the Company proposing any changes to the reconciliation periods in this proceeding?**

A. No. The reconciliation periods were approved in DSP IX to provide sufficient time for EGSs to evaluate the impact to the PTC. The Company is proposing to continue the same reconciliation schedule in DSP X.

**Q. Please explain the current process of how the Company posts the PTC.**

A. The Company has implemented the following steps in its procurement process to post the PTC:

- Post an estimated PTC and default service rate model within 60 days of the PTC becoming effective.
- Once the Company receives the secretarial letter approving the Company’s default service rates, the Company posts the final PTC and default service rate model showing the derivation of the final default service rates.

**Q. How is the Company proposing to post the PTC in this proceeding?**

A. The Company proposes to continue its current practices and will post the estimated PTC 60 days in advance of each application period except for the June 1 application period. For the June 1 application period, the Company will post the supply component in the default service rate model 60 days in advance and will post the final PTC, including the

1 transmission component, 15 days in advance because the transmission component of the  
2 PTC will not be known until May 15 of each year.

3  
4 **XI. GREEN TARIFF PILOT PROGRAM**

5 **Q. Is the Company proposing a Green Tariff pilot program in DSP X?**

6 A. Yes, as described by Duquesne Light witness Mr. Davis, the Company is proposing a  
7 Green Tariff for residential customers who remain on default service and affirmatively  
8 elect to increase their carbon-free electricity (“CFE”) supply above the requirements  
9 under the Pennsylvania Alternative Energy Portfolio Standards (“AEPS”).

10  
11 **Q. What are the primary costs associated with the Green Tariff program?**

12 A. As described by Duquesne Light witness Mr. Davis, Duquesne Light would require the  
13 provider of this service to procure and retire additional energy attribute certificates  
14 (EACs) associated with carbon-free generation located within Pennsylvania. The  
15 additional EACs supplied under the Green Tariff will be solicited via an annual  
16 competitive solicitation process. The supplier who bids the lowest price (\$ per EAC) in  
17 this solicitation will be selected to provide the additional EACs. The cost of additional  
18 EACs will be fixed on a per kWh basis for each DSP/PJM planning year.

19  
20 **Q. How will the cost of the additional EACs procured for the Green Tariff be recovered?**

21 A. The costs of the additional EACs in the Green Tariff will be recovered from participating  
22 Green Tariff customers on a monthly basis. The Company will pass-through the winning

1 Green Tariff provider's fixed per unit EAC costs associated with 7% of the metered  
2 monthly load of the Green Tariff customer. Green Tariff customer bills will include a  
3 separate line item equal to the winning bid price multiplied by 7% of the metered  
4 monthly load.

5  
6 **Q. Is the Company proposing to reconcile revenues collected from Green Tariff**  
7 **customers with the EAC costs paid to the winning Green Tariff provider?**

8 A. No. The amount each month that is charged to Green Tariff customers for additional  
9 EACs will match the amount that is paid to the Green Tariff provider. As a result, costs  
10 and revenues should be closely aligned.

11  
12 **Q. Is the Company proposing to reflect the Green Tariff revenues as non-basic service?**

13 A. Yes, the Company is proposing to reflect the Green Tariff revenues as non-basic service  
14 where termination for non-payment of the charge would not be applicable. The Company  
15 would further propose to capture the Green Tariff revenues in FERC Account 456.12,  
16 which is considered non-taxable from a Gross Receipts Tax (GRT) perspective.

17  
18 **Q. How will the Green Tariff be incorporated in the Company's Retail Tariff?**

19 A. The Company will include a new rider, Rider No. XX – Green Tariff Pilot Program, as  
20 shown in Exhibits DBO-5 and DBO-6. If approved, the Company will assign a specific  
21 Rider number as part of its DSP X Compliance Filing.

1 **Q. What are the main administrative costs to implement the Green Tariff?**

2 A. The administrative costs to implement the Green Tariff come from three sources. The  
3 first set of administrative costs come from managing the competitive solicitation process  
4 for additional EACs. A third-party independent evaluator will conduct a competitive  
5 solicitation once a year to obtain the EACs during the DSP X period. The second set of  
6 administrative costs will come from costs associated with customer outreach. The third  
7 set of administrative costs would cover contingency costs if the winning supplier were to  
8 default, and the Company would have to provide the balance of the EACs through spot  
9 market purchases until such time that a new supplier was selected.

10

11 **Q. How will the Company's administrative costs to implement the Green Tariff pilot  
12 program be recovered?**

13 A. The Company proposes to recover the incremental administrative costs to implement the  
14 Green Tariff pilot program from residential default service customers. These costs will  
15 be recovered in Rider No. 8, as part of the overall administrative costs included in this  
16 rider.

17

18 **XII. RETAIL AND EGS tariff changes**

19 **Q. Have you prepared a Retail Tariff supplement that contains changes necessary to  
20 implement the Company's proposed default service plan?**

21 A. Yes. Exhibit DBO-5 contains the necessary changes to the applicable riders to implement  
22 the proposed default service plan. Exhibit DBO-6 is a red-line version of the current Retail  
23 Tariff reflecting the proposed changes in Exhibit DBO-5.

1 **Q. In general, what changes is the Company proposing to make to the Retail Tariff?**

2 A. The proposed changes are necessary to implement the proposed default service plan in this  
3 proceeding and recover the associated costs. The Company proposes to make the following  
4 modifications to reflect the default service plan described above:

5

6 • Updated to reflect the proposed changes to the EV TOU Supply Rate Pilot,  
7 including the WholeHome EV TOU Supply Rate program and the EV-Only  
8 TOU Supply Rate program including applicable special terms and conditions.  
9 (Rider No. 8 and Rider No. 21)

10 • The proposed eligibility criteria currently reference Rider No. 7 – Residential  
11 Managed Charging Pilot and Rider No. 23 – Behavioral Load Management  
12 Pilot, and the proposed Special Terms and Conditions currently references  
13 Rider No. 4 – EV TOU Distribution Rate Pilot, all of which are being requested  
14 as part of the Company’s pending 2024 base rate case proceeding at Docket No.  
15 R-2024-3046523. The Company will ensure that it aligns Rider No. 8 - Default  
16 Service Supply with the eventual outcome of the base rate case.

17 • Expanded to include the cost recovery for the Green Tariff Pilot Program  
18 administrative costs. (Rider No. 8)

19 • Consistent with the DSP IX Final Order at Docket P-2020-3019522, the  
20 Company has updated the retail tariff to reflect the recovery of cash-out  
21 payments for net-metering customers to recoup the customer class  
22 compensation as an expense in the respective default service class over/under  
23 collection calculation. (Rider No. 8, Rider No. 9, and Appendix A)

- Added Rider No. XX – Green Tariff Pilot Program. (Rider Matrix)

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**Q. Have you prepared a form of Electric Generation Supplier Coordination Tariff Supplement that contains changes necessary to implement the Company’s proposed default service plan?**

A. Yes. Exhibit DBO-7 contains the necessary changes to the language and applicable riders to implement the proposed default service plan. Exhibit DBO-8 is a red-line version of the current EGS Tariff reflecting the proposed changes in Exhibit DBO-7.

**Q. In general, what are the changes that the Company is proposing to the EGS Tariff?**

A. The proposed changes consist of housekeeping updates administrative in nature and are necessary to implement the proposed default service plan in this proceeding and recover the associated costs.

**XII. CONCLUSION**

**Q. Does this conclude your Direct Testimony at this time?**

A. Yes.



1 **Q. Please state your full name and business address.**

2 A. My name is Sarah J. Oleksak. My business address is Duquesne Light Company,  
3 411 Seventh Avenue, Pittsburgh, PA 15219.

4

5 **Q. What is your position at Duquesne Light Company?**

6 A. I am employed by Duquesne Light Company (“Duquesne Light” or “Company”)  
7 as Senior Manager, Transportation Electrification.

8

9 **Q. How long have you worked at Duquesne Light?**

10 A. I have been employed by Duquesne Light since May 2018.

11

12 **Q. What are your current responsibilities?**

13 A. As the Senior Manager, Transportation Electrification, my primary responsibilities  
14 include developing and implementing the Company’s transportation electrification  
15 (“TE”) programs. In this role, I oversaw the execution of the EV ChargeUp Pilot  
16 and Transportation Electrification Programs approved as part of the Company’s  
17 prior base rate cases, Docket No. R-2018-3000124 and Docket No. R-2021-  
18 3024750, as well as the Company’s current base rate proceeding at Docket No. R-  
19 2024-3046523. I also contributed to the development of the Company’s EV Time-  
20 of-Use Rate for default supply, which was approved by the Commission at Docket  
21 No. P-2020-3019522 and has been available to customers since June 2021.

22

23 **Q. What are your qualifications, work experience and educational background?**

1 A. I have been employed in the energy and automotive sector since 2006. Prior to  
2 joining Duquesne Light, I was employed at the U.S. Department of Energy (“U.S.  
3 DOE”) within the Office of Energy Efficiency and Renewable Energy (“EERE”).  
4 During my eight-year tenure in EERE, I held a variety of positions within the Office  
5 of Strategic Programs and the Vehicle Technologies Office. These positions  
6 included Manager, Electrification and Project Manager, Innovation & Deployment,  
7 wherein I managed electric vehicle (EV) market readiness research and performed  
8 analysis to inform strategic investment across EERE’s research portfolio, and  
9 Coordinator of the Workplace Charging Challenge. I also served as a Senior  
10 Sustainability Officer on assignment to the White House Council on Environmental  
11 Quality. Prior to this, I worked as a consultant to the U.S. DOE under employment  
12 by Sentech, Inc. managing the evaluation of EV and battery manufacturing loan  
13 and tax credit proposals, and as an analyst at the U.S. Fuel Cell Council (now the  
14 Fuel Cell and Hydrogen Energy Association), the trade association of the hydrogen  
15 fuel cell industry.

16 I have previously served on the Pittsburgh Region Clean Cities Board and  
17 currently serve on the Pittsburgh Parks Conservancy Board. I have an M.S. in  
18 Energy Policy and Climate from Johns Hopkins University, and a B.S. in Biology  
19 from Muskingum University.

20

21 **Q. What is the purpose of your direct testimony?**

22 A. The purpose of my testimony is to provide context regarding the Company’s  
23 proposal to continue an Electric Vehicle Time-of-Use (“EV TOU”) Supply Rate

1 Pilot for customers with electric vehicles, which is discussed in further detail in Mr.  
2 Ogden’s Statement No. 4.

3

4 **Q. Are you sponsoring any Exhibits along with your direct testimony?**

5 A. Yes. Exhibit SO-1 depicts the Company’s budget for customer tools,  
6 implementation, customer outreach, and customer research associated with the EV  
7 TOU Supply Rate Pilot. Exhibit SO-2 is the Company’s report on the EV Time-of-  
8 Use Pilot Program under Default Service Plan IX filed under Docket No. P-2020-  
9 3019522. Exhibit SO-3 depicts the Company’s evaluation and assessment plan for  
10 the EV TOU Supply Rate Pilot.

11

12 **I. ELECTRIC VEHICLE TIME-OF-USE SUPPLY RATE PILOT**

13 **Q. Describe the Company’s current time-of-use supply rate pilot for customers**  
14 **with electric vehicles.**

15 A. Under DSP IX, the Company proposed and received approval to offer an optional  
16 EV TOU Supply Rate Pilot to Residential, Small C&I, and Medium C&I < 200kW  
17 customers eligible for Rider No. 8 who own or lease a plug-in battery electric  
18 vehicle or a plug-in hybrid electric vehicle (collectively “EV”) or offer charging  
19 infrastructure to employees or visitors. The EV TOU Supply Rate Pilot provides  
20 for time-varying prices for electric supply delivered during “Peak,” “Off-peak,” and  
21 “Super off-peak” pricing periods. The EV TOU Supply Rate Pilot is a “whole  
22 premises” rate, i.e., it applies to all electric load behind a given meter.

1            These three pricing periods remain the same each day of the year, regardless  
2 of weekends, holidays, etc. The Company obtains default service supply for EV  
3 TOU Supply Rate Pilot customers through the same products that provide default  
4 service supply for the respective customer classes. The rates for each pricing period  
5 are based on price multipliers for each procurement class which are updated  
6 annually as further described in Mr. Ogden’s Statement No 4. The time periods for  
7 the current EV TOU Supply Rate Pilot are as follows:

8            **Current EV TOU Supply Rate Pilot Schedule**

| Schedule       | Time Period       |
|----------------|-------------------|
| Peak           | 1pm-9pm           |
| Off-Peak       | 6am-1pm; 9pm-11pm |
| Super Off-Peak | 11pm-6am          |

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14            The off-peak pricing periods offer a lower rate than the Company’s standard  
15 default service rate, with the lowest pricing occurring during the super off-peak  
16 period (11 p.m. – 6 a.m. daily) when grid demand is lowest. The peak pricing period  
17 (1 – 9 p.m. daily) offers a higher rate than the Company’s standard default service  
18 rate when grid demand is highest.

19            Once an eligible customer enrolls, they may un-enroll at any time and return  
20 to DLC’s standard default service or an EGS rate. After un-enrolling, customers are  
21 ineligible to re-enroll for 12 billing months to prevent gaming of the EV TOU  
22 Supply Rate Pilot pricing.

23  
24            **Q. Please describe the Company’s experience with the current EV TOU Supply**  
25            **Rate Pilot implemented during DSP IX.**

1 A. The Company opened enrollment in the EV TOU Supply Rate Pilot for eligible  
2 customers on June 1, 2021. As of December 31, 2023, there were 1,005 cumulative  
3 and 836 active enrollments in the EV TOU Supply Rate Pilot. Of the cumulative  
4 enrollments, 997 were residential customers, five were small commercial  
5 customers, and three were medium commercial customers. The average per bill  
6 savings over DLC's standard default service rates for residential customers<sup>1</sup>  
7 through December 31, 2023, was \$7.19 monthly and \$3.83 monthly for commercial  
8 customers. In-depth analysis conducted by the Company has demonstrated that the  
9 EV TOU Supply Rate Pilot has been highly effective in shifting customer  
10 consumption to the super off-peak pricing period that otherwise would have been  
11 largely consumed during the off-peak and peak pricing periods. Overall, customers  
12 enrolled in the EV TOU Supply Rate Pilot are not using any more energy during  
13 the peak period than they were prior to purchasing an EV, which indicates the price  
14 signals are a successful motivator for altering customer behavior. Comprehensive  
15 findings can be found in Exhibit SO-2.

16

17 **Q. Why is the Company proposing a continuation of the EV TOU Supply Rate**  
18 **Pilot?**

19 A. The Company is proposing a continuation of the EV TOU Supply Rate Pilot  
20 because it provides environmental, economic, and operational benefits for  
21 customers and for the Company. Additionally, the Pennsylvania Public Utility  
22 Commission has issued a proposed Policy Statement on Electric Utility Rate

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<sup>1</sup> Excludes customers enrolled in net metering.

1 Design for Electric Vehicle Charging, which encourages EDCs to develop EV-  
2 specific rates. The proposed Policy Statement includes the following:

3 “...[T]he Commission is encouraging development of rate structures for electric-  
4 vehicle charging customers. Electric-vehicle charging will increase  
5 demand on existing infrastructure, and it is imperative that electric  
6 distribution companies are prepared to address this increased demand with  
7 distribution and default service generation rates structures that properly  
8 signal to electric-vehicle charging customer to incentivize increased  
9 capacity utilization of the distribution system.”<sup>2</sup>

10 EVs are an ideal flexible load since they are parked most of the time and  
11 can be easily programmed to begin charging at specific hours so that they are fully  
12 charged when a customer needs their vehicle. The Company expects a significant  
13 increase in the number of EVs operating in its service territory in the next decade,  
14 from the current approx. 11,000 light-duty EVs to more than 79,000 expected by  
15 2030, under a medium-growth scenario. This growth in EVs is expected to increase  
16 the system peak demand by approximately 6.5% and cause the number of circuits  
17 that are at or near capacity ( $\geq 90\%$ ) to increase from 25% to 31% within the next 10  
18 years.<sup>3</sup> As this load expands, the Company wants to optimize existing grid and  
19 generation capacity by shifting EV charging to off-peak times, which will reduce  
20 the amount of higher-priced, on-peak energy required to serve our customers.

21 EVs also have environmental, health, and economic benefits that can help  
22 the Company’s customers:

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<sup>2</sup>See Proposed Policy Statement Order by the Commission, Docket No. M-2023-3040755.

<sup>3</sup> See Duquesne Light Company’s Load Management Report, Docket No. R-2024-3046523.

- 1 • Reduced Greenhouse Gas (“GHG”) Emissions: According to the U.S.  
2 Department of Energy, a light duty EV charging in PA has zero tailpipe  
3 emissions and is responsible for 80% fewer CO<sub>2</sub> emissions overall compared  
4 to a similar gasoline-fueled vehicle.<sup>4</sup>
- 5 • Improved Air Quality and Health: Increased transportation electrification will  
6 cut criteria pollutants emitted by motor vehicles including ozone, particulate  
7 matter, carbon monoxide, nitrogen dioxide and hazardous air pollutants  
8 (HAPs), leading to better overall health, including fewer respiratory  
9 conditions.
- 10 • Customer Savings: Customers can save up to \$1,700 annually on fuel and  
11 maintenance when driving electric in PA and can save up to \$10,500 on the  
12 upfront purchase price with the federal tax credit and state rebate.<sup>5</sup>

13 The EV TOU Supply Rate Pilot is another mechanism to encourage EV  
14 adoption by helping to lower the total cost of ownership for EV drivers and  
15 operators. Cost continues to be a barrier to more wide-spread EV adoption, and by  
16 providing more rate flexibility, the Company aims to give customers additional  
17 tools to lower their costs of EV fueling.

18  
19 **Q. Who will be eligible to participate in the EV TOU Supply Rate Pilot Program?**

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<sup>4</sup> U.S. Department of Energy (2023, December). “Emissions from Electric Vehicles,” Obtained from: [https://afdc.energy.gov/vehicles/electric\\_emissions.html](https://afdc.energy.gov/vehicles/electric_emissions.html)

<sup>5</sup> U.S. Department of Energy (2023, October). “Energy Facts: Impact of the Investing in America Agenda on Pennsylvania,” Obtained from: <https://www.energy.gov/articles/energy-facts-impact-investing-america-agenda-pennsylvania>

1 A. Residential, Small C&I and Medium C&I <200kW customers eligible for Rider 8  
2 – Default Service Supply who own or lease an EV that is registered to their service  
3 address or Small and Medium C&I <200 kW customers eligible for Rider 8 that  
4 host EV charging at their premise will continue to be eligible for the EV TOU  
5 Supply Rate Pilot. Customers eligible for Rider 9 – Day-Ahead Hourly Price  
6 Service will continue to be ineligible for the Pilot and will not bear any of the costs  
7 associated with the Pilot. Customers must continue to have a valid e-mail address  
8 to ensure that the Company can provide enrolled customers with regular and timely  
9 communications regarding their savings performance.

10 Additionally, customers will continue to be ineligible for the EV TOU  
11 Supply Rate Pilot if they participate in the Company’s CAP, virtual meter  
12 aggregation, or budget billing programs. The Company is proposing to continue  
13 excluding CAP customers since they may not have the flexibility to shift their load  
14 outside of the higher-priced peak period, thus creating a risk of higher generation  
15 charges on customers’ electric bills. The Company is proposing to continue  
16 excluding virtual meter aggregation customers due to the administrative  
17 complexities of managing billing for these groups. The Company is proposing to  
18 continue excluding budget billing customers due to administrative complexities and  
19 because budget billing would “smooth out” the price signals sent by the TOU rate,  
20 which may dilute its effectiveness in incenting customer load-shifting.  
21 Additionally, customers enrolled in the Company’s proposed Managed Charging  
22 Pilot or Behavioral Load Management Pilot described in the Company’s current  
23 base rate proceeding at Docket No. R-2024-304652 will not be eligible for the EV

1 TOU Supply Rate Pilot. Lastly, the Company is proposing that the customer's  
2 account must be in good standing, signifying that the account is active, does not  
3 have a past due balance or outstanding payment arrangement at the time of  
4 enrollment, and the customer has demonstrated a timely payment history.

5 Within these parameters, all customers who own an EV or host EV charging  
6 will continue to be eligible to participate in the EV TOU Supply Rate Pilot  
7 regardless of whether they are currently being served through the Company's  
8 default service offering or through an existing EGS.

9

10 **Q. Is the Company proposing to maintain the same pricing periods for DSP X?**

11 A. No. While the Company proposes to continue with three pricing periods, it proposes  
12 to change the time windows of each pricing period to create a larger price  
13 differential between each pricing period, thus sending a stronger price signal to  
14 customers. The pricing windows were refined by analyzing customer consumption  
15 patterns and system load data, as further described in Mr. Ogden's Statement No.  
16 4. The Company's proposed EV TOU Supply Rate Pilot schedule for non-holiday  
17 weekdays is defined in the table below. During holidays and weekends, the Peak  
18 time period will become part of the Off-Peak time period, while the Super Off-Peak  
19 time period will remain the same. Holidays follow the PJM definition and include  
20 New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving  
21 Day, and Christmas Day.

1 **Proposed EV TOU Supply Rate Pilot Schedule for Non-Holiday Weekdays**

2

3

| Schedule       | Time Period       |
|----------------|-------------------|
| Peak           | 3pm-9pm           |
| Off-Peak       | 6am-3pm; 9pm-11pm |
| Super Off-Peak | 11pm-6am          |

4

5

6

7

8 **Q. Does the Company propose any other changes to the EV TOU rate?**

9 A. Yes. While the rate will remain a whole-premise rate by default, the Company

10 proposes an option that would allow up to 1,500 residential customers at a time to

11 opt into an EV-only option for the rate.

12 While the whole-premise approach has proven to be a simple, cost effective,

13 and quick way to encourage EV TOU Supply Rate Pilot enrollment, it does notably

14 limit some customers from participating if they are not able to shift their entire

15 premise load to off-peak pricing periods. Currently, if a customer wants the EV

16 TOU rate to only apply to their EV charging, they must install a separate meter

17 exclusively for the charging. While several customers have inquired about this

18 option, none have chosen to pursue it to enroll in the rate likely due to the high

19 customer cost of installing a separate meter. In a 2022 survey of the Company's

20 residential EV driving customers who had not enrolled in the existing EV TOU

21 Rate, inability to shift load to the off-peak pricing periods was one of most

22 frequently cited reasons for not enrolling in the rate. When asked if they would be

23 more likely to enroll if the rate only applied to their EV charging and not their entire

24 premise, 64% indicated being much or somewhat more interested. As a result, the

25 Company proposes an EV-only TOU rate option to encourage EV drivers who

1 otherwise might be charging during the peak period to shift their EV load to the  
2 off-peak and super off-peak pricing periods.

3

4 **Q. What customers will be eligible for the EV-only TOU rate option?**

5 A. Residential customers that meet the eligibility criteria for the whole-premise TOU  
6 rate will also be eligible for the EV-only TOU rate option if they have a Company-  
7 qualified EV or charging station, or consent to another option, like a next-  
8 generation meter, that is able to share energy use information with the Company.  
9 This will enable the Company to apply the EV-only TOU rate to energy usage only  
10 from EV charging at their residence, while the rest of their premise is on the  
11 Company's standard default service supply rate. For this purpose, customers that  
12 select the EV-only option consent to allow third-party platform access to vehicle  
13 telematics or charging station energy consumption data. Customers that are  
14 enrolled in the existing whole-premise EV TOU Supply Rate Pilot will be eligible  
15 to switch to the EV-only rate option under the new EV TOU Supply Rate Pilot.  
16 This option will not be available to commercial customers that are otherwise  
17 eligible for the whole-premise TOU rate.

18

19 **Q. How will the Company track, report, and bill the EV energy consumption for**  
20 **the EV-only Rate?**

21 A. Through a Request for Proposal (RFP) process, the Company will identify and  
22 contract with one or more vendors to track and report on energy use for EV  
23 charging. The Company will explore a variety of solutions but anticipates that

1 vendors will communicate with charging stations or vehicle telematics to gather  
2 and report this information back to the Company.

3 Charging stations and vehicles record a wide range of information including  
4 the amount of energy consumed at specific intervals via embedded metrology and  
5 OEM telematics (or similar) respectively. Third-party managed charging platforms  
6 have data relationships with charging stations and vehicles OEMs or aggregators to  
7 receive and process this data, typically via API. Once they receive this data, it will  
8 be shared with the Company via a defined format and secure platform and  
9 integrated into the Company's Meter Data Management system. From there, the  
10 EV usage will be subtracted from the overall premise meter usage and billed at the  
11 EV-Only rate, while the remainder of the customer's usage will be assessed at the  
12 standard default service supply rate.

13 If a charging station or EV does not transmit data initially, but later comes  
14 online and is able to communicate the consumption data, the Company will follow  
15 its standard re-bill procedures as it does for all residential customers.

16 Customers will enroll their charging station or vehicle when they sign-up  
17 for the pilot. The Company will seek a vendor that has relationships with a wide  
18 number of charging station manufacturers and vehicle OEMs to ensure that as many  
19 customers as possible are eligible to participate in the pilot.

20

21 **Q. Why is the Company not requiring the installation of a second meter?**

1 A. The Company is not requiring the installation of a second meter due to the cost.<sup>6</sup>  
2 Today, the Company effectively offers an EV-only rate through its existing EV  
3 TOU Supply Rate Pilot since customers are permitted to install a separate meter for  
4 their EV charging. However, since its launch, no customers have elected that  
5 option. The capabilities exist today through charging stations and vehicle telematics  
6 to track and report the energy consumption data necessary to apply the rate to a  
7 customer's EV charging and are more cost effective than requiring a second meter.  
8 Additionally, more advanced metering technology (AMI 2.0) may also soon  
9 eliminate the need for a second meter.

10 **Q. Can customers be un-enrolled from the EV-only Rate?**

11 A. Yes. If an EV-only Rate customer is repeatedly unable to provide timely charging  
12 data through their enrolled device then the Company may un-enroll them from the  
13 rate after three months if efforts to resolve the issue are unsuccessful or if the  
14 customer is non-communicative or non-cooperative. For example, if a customer  
15 enrolls their charging station in the EV-only Rate but does not have their station  
16 connected to wi-fi for 3 months so it cannot transmit its charging data, then the  
17 Company may elect to un-enroll the customer. The customer will then be charged  
18 at their standard default service supply rate for all their household load. The  
19 Company will make good-faith efforts to work with customers to resolve any  
20 technology issues and will notify customers prior to un-enrollment.

21

---

<sup>6</sup> The expected cost of installing a second meter is approximately \$900 based on online research for local providers. Costs would likely be higher if additional work is required to refinish walls, etc. Xcel Energy estimates the cost of a second meter installation at \$2,000. See: <https://ev.xcelenergy.com/ev-charging-programs>.

1 **Q. How will the Company validate the charging station or vehicle telematics**  
2 **data?**

3 A. Under the Company's current base rate proceeding at Docket No. R-2024-3046523,  
4 the Company proposes to install 50 non-billing sub-meters at select participating  
5 customer homes to compare sub-metered EV electricity consumption to electricity  
6 consumption reported by the vehicle and/or charging station. This will help to  
7 assess the accuracy of the charging station metrology or telematics data for energy  
8 consumption reporting and billing purposes. Through this effort, the Company will  
9 sample the equipment accuracy of approximately 10% of customers enrolled in this  
10 pilot. For comparison, in a typical year the Company sample tests less than 1% of  
11 residential customer meters. Customers will be asked if they would be willing to  
12 participate in this effort during the EV-Only Rate enrollment process. These sub-  
13 meters would be installed at no cost to the participating customers.

14  
15 **Q. How does the Company propose to address EVs participating in the EV TOU**  
16 **rate beginning to charge at the same time when the super off-peak period**  
17 **begins?**

18 A. To help prevent timer peaks<sup>7</sup> which can also put undue strain on distribution assets,  
19 for a sub-set of customers, the Company will test controlling when those customers  
20 begin charging to avoid having all EVs begin charging at exactly 11:01 pm at the  
21 start of the super off-peak period, for example. The Transportation Electrification  
22 Team will collaborate with the Company's System Planning Team to identify high-

---

<sup>7</sup> A timer peak can occur when EVs in enrolled in a TOU rate all begin to charge at the start of the super off-peak period and can create new peaks that strain the grid.

1 EV penetration areas where circuits may already be overloaded or are forecasted to  
2 become overloaded to pilot this approach with customers and study the effects.  
3 Although timer peaks are not a challenge to the distribution system today, the  
4 Company recognizes that as EV growth continues this could be an issue in the  
5 future and wants to test the technology and customer comfort with more optimized  
6 charging.

7  
8 **Q. Does the Company have any similar distribution pilot programs?**

9 A. Not currently. However, the Company is proposing a similar EV TOU Distribution  
10 Rate Pilot and Residential Managed Charging Pilot as part of its Distribution Rate  
11 Review filed with the PUC on March 20, 2024, under Docket No. R-2024-3046523.  
12 Costs of the pilot program platform and IT set-up are divided between EV TOU  
13 Distribution Rate, Residential Managed Charging Pilot, and the EV TOU Supply  
14 Rate Pilot since all the programs will be able leverage the same technology  
15 platform.

16  
17 **Q. Does the Company propose any limitations on the EV TOU Supply Rate Pilot  
18 options customers can elect between distribution and supply rates?**

19 A. Yes, the Company is proposing some limitations on rate options for this pilot phase  
20 due to technical and customer experience challenges of implementing certain rate  
21 combinations and to prioritize rate combinations that the Company thinks will be  
22 of greatest interest to customers. Table 5 shows which rate combinations will be  
23 permitted. Customers interested in selecting an Energy Generation Supplier will

1 not be restricted from participating in any distribution rate option. The Company  
 2 will reexamine rate options in the future based on the results of the pilot.

3 **Permitted Distribution and Supply EV TOU Rate Combinations**

| Distribution Rate Options |            |       |               |               |                            |
|---------------------------|------------|-------|---------------|---------------|----------------------------|
| Supply Rate Options       |            |       | WholeHome     | EV-Only       | Standard Distribution Rate |
| Default                   | Service    | -     | Permitted     | Not Permitted | Permitted                  |
| WholeHome                 |            |       |               |               |                            |
| Default                   | Service    | - EV- | Not Permitted | Permitted*    | Not Permitted              |
| Only                      |            |       |               |               |                            |
| Default                   | Service    | -     | Not Permitted | Not Permitted | Permitted                  |
| Standard                  |            |       |               |               |                            |
| Energy                    | Generation |       | Permitted     | Permitted     | Permitted                  |
| Supplier                  |            |       |               |               |                            |

4 \*Remainder of supply must be on Default Service - Standard

5

6 **Q. How will customers enroll in the EV TOU Pilot Program?**

7 A. To enroll in the EV TOU Pilot Program, customers must complete an online EV  
 8 TOU Supply Rate Pilot enrollment application and provide a copy of their electric  
 9 vehicle registration or related documentation. For residential customers to enroll,  
 10 the vehicle registration must have the same address as the address associated with  
 11 the account. If a customer moves during the course of the DSP period, the customer  
 12 will remain enrolled in the EV TOU Supply Rate Pilot unless they direct otherwise.

1           Customer that are enrolling in the EV-only TOU rate option will also be  
2 required to complete an enrollment process verifying they have a Company-  
3 qualified vehicle, charging station, or meter to participate.

4

5 **Q. Will annual recertification be required to remain enrolled in the EV TOU**  
6 **Supply Rate Pilot?**

7 A. Annual recertification will not be required. Once customers have signed up for the  
8 rate and provided appropriate documentation, they will not be required to provide  
9 documentation again during the DSP X period.

10

11 **Q. Will customers participating in the EV TOU Supply Rate Pilot be able to**  
12 **switch to default service fixed rate or select an EGS?**

13 A. Yes. Customers may un-enroll from the EV TOU Pilot Supply Rate and switch to  
14 an EGS or default service fixed rate at any time.

15

16 **Q. Can customers re-enroll in the EV TOU Supply Rate Pilot after un-enrolling?**

17 A. Yes. However, EV TOU customers leaving the EV TOU Supply Rate Pilot will be  
18 prohibited from re-enrolling in the Pilot for twelve billing months after switching  
19 off the Pilot. Having this provision in place will help reduce customers' abilities to  
20 game rates.

21

22 **Q. Will customers enrolled in the existing EV TOU Supply Rate Pilot under DSP**  
23 **IX be automatically enrolled in the EV TOU Supply Rate Pilot under DSP X?**

1 A. Yes. Customers will be automatically enrolled in the whole-premise version of the  
2 EV TOU rate under DSP X. However, the Company will conduct education and  
3 outreach with existing customers to ensure they understand and have advanced  
4 notice of the changes to the rate under DSP X to also ensure they have sufficient  
5 opportunity to un-enroll before the changes take effect.

6

7 **Q. What is expected enrollment for the EV TOU Supply Rate Pilot?**

8 A. Based on the experiences under DSP IX, the Company anticipates residential  
9 enrollment of about 9% of EV-driving customers in 2025 with gradual increase to  
10 around 11% over the 4-year period as awareness of the EV TOU Supply Rate Pilot  
11 grows and more customers become interested.

12 Auto manufacturers are heavily investing in the EV space and consumer  
13 adoption is expected to grow as more options come to market. Additionally, EV  
14 costs are expected to continue dropping and become more cost competitive with  
15 gas vehicles as EV production grows in scale and component costs, like batteries,  
16 decrease in price.

1 The table below estimates the total number of accounts enrolled at the end  
2 of each DSP year (June-May):

3  
4 **Estimated EV TOU Supply Rate Pilot Enrollment\***

| <b>DSP Year</b> | <b>EVs Registered in DLC Service Territory</b> | <b>Enrollment %</b> | <b>Cumulative EV TOU Enrollment</b> |
|-----------------|--|---------------------|-------------------------------------|
| 2025-26         | 27,664   | 9%                  | 2,490                               |
| 2026-27         | 37,115   | 10%                 | 3,712                               |
| 2027-28         | 48,020   | 10%                 | 4,802                               |
| 2028-29         | 60,084   | 11%                 | 6,609                               |

5 *\*EV Registration projections based on Electric Power Research Institute medium*  
6 *EV adoption projections for the Company's service territory.*

7  
8 Based on existing enrollment history, the Company expects a much smaller  
9 proportion of small and medium C&I customers to enroll in the EV TOU Supply  
10 Rate Pilot, but proposes the pilot remain open to these customers as more of them  
11 begin installing EV charging infrastructure.

12  
13 **Q. How will the Company make customers aware of and keep them informed**  
14 **about the EV TOU Supply Rate Pilot?**

15 A. The Company will continue to provide and expand upon its educational tools and  
16 resources through a variety of channels to help customers select the rate that works  
17 best for them. The Company will host information about the EV TOU Supply Rate  
18 Pilot and enrollment on its website, on its "Electric Vehicles" page and in the Retail  
19 Tariff. The Company will also continue to include a tool on its website that will  
20 enable customers to compare their supply rate options and will offer suggestions  
21 for shifting EV and other energy usage. The existing rate tool has been used

1 substantially by customers under DSP IX. Since its launch in October 2021 through  
2 December 2023, the tool was used more than 10,300 times and about one-third of  
3 surveyed EV-driving customers reported they have used the tool.<sup>8</sup>

4 The Company will also continue to engage customers that have claimed its  
5 EV Registration Incentive and likely EV drivers via email to make them aware of  
6 the EV TOU Supply Rate Pilot, available resources, and enrollment process.  
7 Periodically, the Company will also run social media posts and digital  
8 advertisements to spread awareness of the rate option. When the Company holds  
9 EV-related events, it will provide information to customers about the EV TOU  
10 Supply Rate Pilot. The Company will also coordinate with local stakeholder groups  
11 to disseminate information about the EV TOU Supply Rate Pilot, including local  
12 auto dealerships and non-profit partners.

13 Exhibit SO-1 displays the proposed customer tools, outreach, and research  
14 budget for the EV TOU Supply Rate Pilot. The recovery of these costs is addressed  
15 in Mr. Ogden’s Statement No. 4.

16

17 **Q. Does the Company provide information to enrolled EV TOU Supply Rate Pilot**  
18 **customers about the opportunity for bills savings?**

19 A. Yes. After a residential customer enrolls in the EV TOU Supply Rate Pilot, they  
20 begin receiving behavioral load shaping (BLS) communications via email from a  
21 third-party provider, which informs them how much electricity they use during each  
22 TOU period and provides them with tips for shifting consumption away from the

---

<sup>8</sup> EV driving customers were identified from customers who had registered their EV with the Company.

1 peak period. Additionally, enrolled residential customers have access to a unique  
2 electricity usage dashboard on the Company's website which allows them to  
3 evaluate how much electricity they use in each TOU period. In total, the Company  
4 dispatched nearly 37,000 BLS communications to residential customers enrolled in  
5 the EV TOU Supply Rate Pilot and customers used the unique online dashboard  
6 more than 3,300 times from October 2021 to December 2023. These  
7 communications and tools have positively influenced the consumption shift away  
8 from the peak period as further described in Exhibit SO-2. As such, these  
9 communications and tools or similar will continue to be available to customers  
10 under DSP X.

11

12 **Q Does this conclude your direct testimony?**

13 **A.** Yes, it does.

**SO-1**

| EV TOU Supply Rate Pilot Costs                         | Year 1            | Year 2            | Year 3            | Year 4            | Total             | Notes  |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|--|
| <b>Customer Tools</b>                                  |                   |                   |                   |                   |                   |  |
| Pre-Enrollment Rate Advisor                            | \$ 50,600         | \$ 25,600         | \$ 25,600         | \$ 25,600         | \$ 127,400        | Based on historical costs. Splitting costs with distribution TOU.                        |
| Post-Enrollment Behavioral Load Shaping Communications | \$ 70,000         | \$ 40,000         | \$ 40,000         | \$ 40,000         | \$ 190,000        | Based on historical costs and vendor quotes. Splitting costs with distribution TOU.      |
| <b>Implementation</b>                                  |                   |                   |                   |                   |                   |  |
| EV-Only Platform & Administration                      | \$ 72,000         | \$ 72,000         | \$ 72,000         | \$ 72,000         | \$ 288,000        | Based on vendor quotes. Splitting costs with distribution TOU.                           |
| IT & Billing Administration                            | \$ 31,250         | \$ -              | \$ -              | \$ -              | \$ 31,250         | Based on historical costs. Splitting costs with distribution TOU.                        |
| <b>Customer Outreach</b>                               |                   |                   |                   |                   |                   |  |
| Webpage (Design and Development)                       | \$ 5,000          | \$ -              | \$ -              | \$ -              | \$ 5,000          | Based on historical costs.   |
| Print Materials (Design and Printing)                  | \$ 7,500          | \$ 1,000          | \$ 3,000          | \$ 1,000          | \$ 12,500         | Based on historical costs.   |
| Advertising  | \$ 15,000         | \$ 15,000         | \$ 10,000         | \$ 10,000         | \$ 50,000         | Based on historical costs.   |
| Email Deployments                                      | \$ 5,000          | \$ -              | \$ 5,000          | \$ -              | \$ 10,000         | Based on historical costs. Email distribution costs covered under existing subscription. |
| <b>Customer Research</b>                               |                   |                   |                   |                   |                   |  |
| Surveys (Non-Enrolled, Enrolled, and Exit)             | \$ 6,000          | \$ 6,000          | \$ 1,000          | \$ 1,000          | \$ 14,000         | Based on historical costs.   |
| EV TOU Effectiveness Study                             | \$ 5,000          | \$ 10,000         | \$ 20,000         | \$ -              | \$ 35,000         | Based on historical costs. Splitting costs with distribution TOU.                        |
| <b>Total</b>   | <b>\$ 267,350</b> | <b>\$ 169,600</b> | <b>\$ 176,600</b> | <b>\$ 149,600</b> | <b>\$ 763,150</b> |  |

| Customer Class Breakout | Year 1            | Year 2            | Year 3            | Year 4            | Total             |
|-------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Residential             | \$ 255,683        | \$ 162,267        | \$ 161,267        | \$ 148,933        | \$ 728,150        |
| Small C&I               | \$ 5,833          | \$ 3,667          | \$ 7,667          | \$ 333            | \$ 17,500         |
| Medium C&I              | \$ 5,833          | \$ 3,667          | \$ 7,667          | \$ 333            | \$ 17,500         |
| <b>Total</b>            | <b>\$ 267,350</b> | <b>\$ 169,600</b> | <b>\$ 176,600</b> | <b>\$ 149,600</b> | <b>\$ 763,150</b> |

| Category Breakout | Year 1            | Year 2            | Year 3            | Year 4            | Total             |
|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Customer Tools    | \$ 120,600        | \$ 65,600         | \$ 65,600         | \$ 65,600         | \$ 317,400        |
| Implementation    | \$ 103,250        | \$ 72,000         | \$ 72,000         | \$ 72,000         | \$ 319,250        |
| Customer Outreach | \$ 32,500         | \$ 16,000         | \$ 18,000         | \$ 11,000         | \$ 77,500         |
| Customer Research | \$ 11,000         | \$ 16,000         | \$ 21,000         | \$ 1,000          | \$ 49,000         |
| <b>Total</b>      | <b>\$ 267,350</b> | <b>\$ 169,600</b> | <b>\$ 176,600</b> | <b>\$ 149,600</b> | <b>\$ 763,150</b> |

**SO-2**



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March 6, 2024

**Via Electronic Filing**

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

**Re: Duquesne Light Company – Default Service Plan IX  
Time-Of-Use Pilot Program Report  
Docket No. P-2020-3019522**

Dear Secretary Chiavetta:

Enclosed for filing, please find an original copy of Duquesne Light Company's ("Duquesne Light" or the "Company") June 1, 2021 through December 31, 2023 Time-Of-Use Pilot Program Report. Should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink that reads "Smaye".

Shelly-Ann Maye  
Sr. Manager, Regulatory Claims

Enclosure

cc: Certificate of Service

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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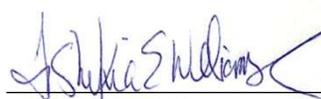
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Dated: March 6, 2024



DSP IX  
EV TOU Pilot Program Report  
June 1, 2021 through December 31, 2023

March 6, 2024

## Background

On June 1, 2021, Duquesne Light Company (“DLC” or “Company”) launched its Electric Vehicle Time-of-Use Pilot default service supply rate program (“Pilot”) for residential, small commercial and industrial (“C&I”) and medium C&I customers with less than 200 kW<sup>1</sup> of demand who use default service supply. The Company’s Pilot was approved by the Pennsylvania Public Utility Commission (“Commission”) on January 14, 2021, as part of the Company’s Default Service Plan IX (“DSP IX”).<sup>2</sup>

Pursuant to the Final Order<sup>2</sup> the Company submits this EV TOU Pilot Program Report assessing the Pilot for the period June 1, 2021, through December 31, 2023.

## Overview

As previously noted, the Company’s Pilot began on June 1, 2021. The Pilot is an optional time-of-use (“TOU”) default service supply rate available to eligible customers. To be eligible for the Pilot, a residential, small C&I or medium C&I customer with demand less than 200 kW must own or lease an EV or operate EV charging infrastructure at the service location. Customers who are eligible for hourly price service (“HPS”), or those who participate in the Customer Assistance Program (“CAP”), virtual meter aggregation or budget billing are not eligible for the Pilot. Participating customers may withdraw from the Pilot at any time without penalty but may not re-enroll for a period of twelve months thereafter.

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<sup>1</sup> DLC customers with demands less than 200kW are eligible for default service under the Company’s tariffed Rider No. 8 – Default Service Supply. The Company evaluates a customer’s twelve (12) most recent months of monthly billing demand of the preceding year. If the customer’s average monthly billing demand is greater than or equal to 200 kW, the customer will become eligible for default service under Rider No. 9 – Day Ahead Hourly Price Service.

<sup>2</sup> See *Petition of Duquesne Light Company for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31 2025*, Opinion and Order, Docket No. P-2020-3019522, entered Jan. 14, 2021. The Order included approval of the EV-TOU Stipulation, which required, among other things, DLC to file a report prior to its next DSP filing that includes information regarding customer enrollments, bill impacts, energy usage shifts and customer installation of separate meters for EV charging. The EV-TOU Stipulation also provided for stakeholder review and feedback on EV-TOU Pilot customer education materials and required DLC to convene a collaborative meeting around the midpoint of DSP IX to discuss the EV-TOU Pilot Program implementation, results to-date and rates for mass transit and fleet EVs.

Participating customers receive Pilot TOU service for the entire usage served by their smart meter. Customers are charged different supply rates for the Peak, Off-Peak and Super Off-Peak<sup>3</sup> periods as follows:

| <b>Schedule</b> | <b>Time Period</b>                  |
|-----------------|-------------------------------------|
| Peak            | 1 p.m. – 9 p.m.                     |
| Off-Peak        | 6 a.m. – 1 p.m.<br>9 p.m. – 11 p.m. |
| Super Off-Peak  | 11 p.m. – 6 a.m.                    |

This schedule is year-round, seven days a week, including holidays. The Company obtains default service supply for Pilot customers through the same products that provide default service supply for the respective customer classes.

The Company determines the Pilot default service supply rates for the peak, off-peak, and super off-peak periods by modifying the adjusted wholesale price for each class using rate class factors that are based in part upon hourly locational marginal prices for energy, respective energy consumption patterns and capacity requirements. The Company annually updates the rate factors as part of its tariff supplements updating Rider No. 8 - Default Service Supply rates effective June 1 of each year.

### **Customer Enrollment Levels**

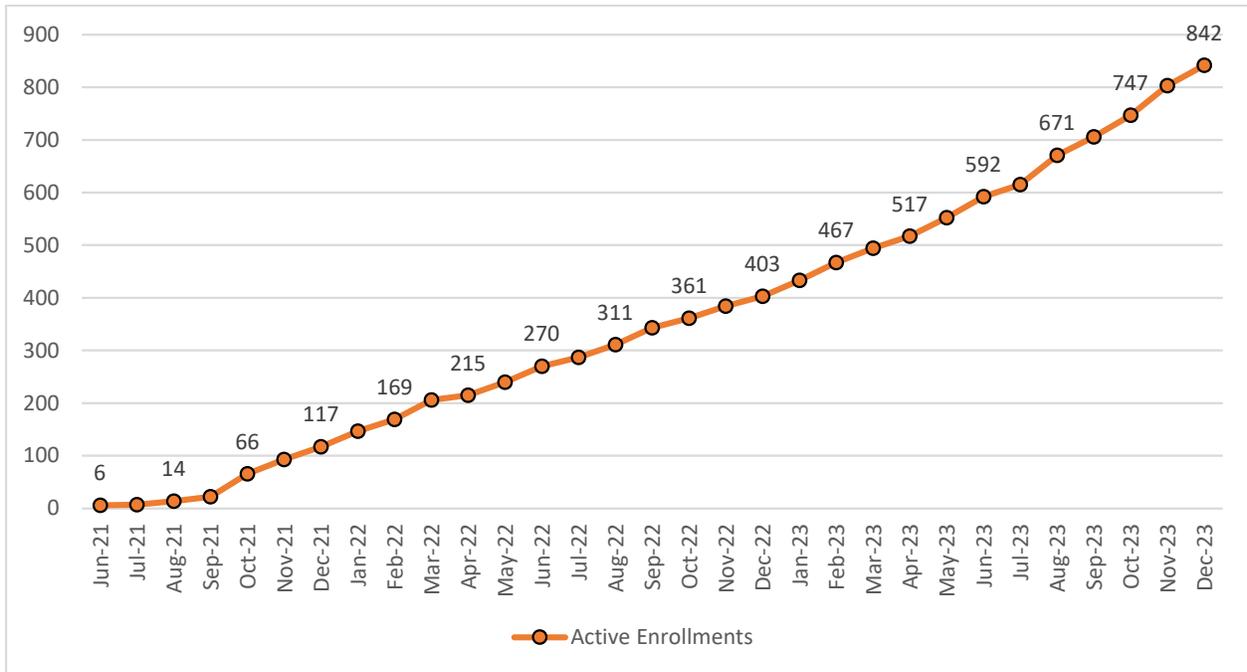
Eligible customers were able to enroll in the Pilot beginning June 1, 2021. As of December 31, 2023, 836 residential, 4 small C&I and 2 medium C&I customers were

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<sup>3</sup> DLC's initial DSP IX filing included the terms "On-Peak," "Shoulder" and "Off-Peak" for the EV-TOU time periods. In its Supplement No. 23 replacement pages, DLC amended the period names to "Peak," "Off-Peak" and "Super Off-Peak" for consistency with other utilities' terminology and customer preference. See *Duquesne Light Company – Tariff Electric – PA P.U.C. No. 25; Supplement No. 23 Replacement Pages and Request for Waiver of 60-Day Notice Period*, Docket No. P-2020-3019522, submitted Apr. 28, 2021. The Commission served, at this docket, a Secretarial Letter on May 11, 2021, approving the replacement pages.

actively enrolled, including 139 residential customers also participating in net metering. Please see Figure 1 below for a breakdown of active Pilot enrollment by month.

Figure 1: Active Pilot Enrollment by Month



In total, there were 1,005 customers that enrolled in the Pilot during this reporting period. This includes nine confirmed low-income customers and 26 customers living in multi-unit dwellings.

While there were three residential customers that expressed interest in installing a separate meter for their EV charging for the purposes of the Pilot, no customers pursued this option likely due to the costs associated with the installation and separate service charges.

### Customer Outreach Summary

DLC conducts periodic customer outreach and education regarding the Pilot through various efforts, including emails and website updates. In all communications, DLC encourages customers to compare the Pilot TOU rate with the standard default service rates and with supply offerings from electric generation suppliers, including on its [residential customer webpage](#) and its [commercial customer webpage](#) for the Pilot.

In October 2021, DLC launched its [Rate Advisor Tool](#), an online tool residential customers can use to help determine if the Pilot is right for them. Using the Rate Advisor, customers can compare the Pilot TOU rates with DLC's standard default service rates and electric generation supplier rates to estimate bill impacts. The Rate Advisor was used by customers more than 10,300 times during this reporting period with 1/3 of surveyed EV driving customers reporting having used the tool.<sup>4</sup>

### **Customer Bill Impacts**

The average per bill savings over DLC's standard default service rates for non-net metering residential customers enrolled in the Pilot during this report period was \$7.19 monthly and the median was \$5.91 monthly. For commercial customers, the average savings was \$3.83 monthly, and the median savings was \$3.56 monthly.

### **Consumption Impacts**

After a residential customer enrolls in the Pilot, they begin receiving behavioral load shaping (BLS) communications via email from a third-party provider, which informs them how much electricity they use during each TOU period and provides them with tips for shifting consumption away from the peak period. Additionally, enrolled residential customers have access to a unique electricity usage dashboard on the Company's website which allows them to evaluate how much electricity they use in each TOU period. In total, the Company dispatched nearly 37,000 BLS communications to residential customers enrolled in the Pilot and customers used the unique online dashboard more than 3,300 times during this report period, which positively influenced the consumption shift away from the peak period as further described below.

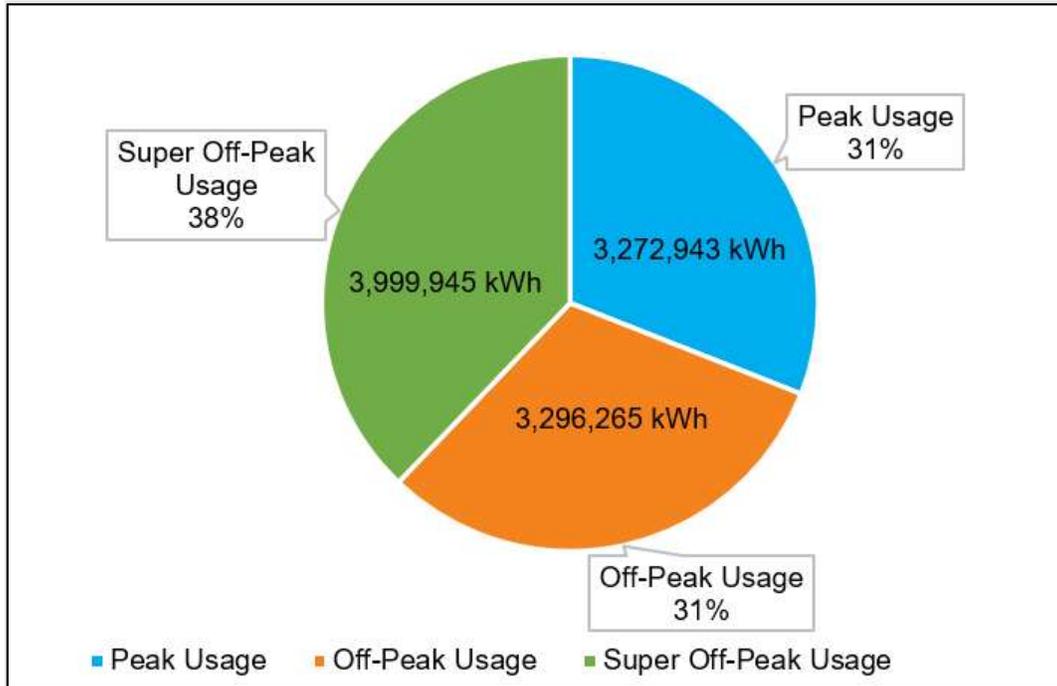
DLC evaluated the proportion of energy that was consumed during each Pilot TOU pricing period for non-net metering Pilot participants. During this reporting period, 69% of the Pilot participants' usage occurred during the super off-peak and off-peak periods,

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<sup>4</sup> Schmidt Market Research. DLC Survey of EV customers. September-October 2022.

with 38% of consumption occurring during the super off-peak period and 31% occurring during the off-peak period.

Figure 3: Pilot Customers' Energy Usage by TOU Pricing Period



DLC compared the share of utilization by TOU period by month for the non-net metering Pilot customers and EV driving customers who were not enrolled in the Pilot.<sup>5</sup> As shown in Figures 4 and 5, customers enrolled in the Pilot used a much larger share of electricity during the super off-peak period, as compared to EV driving customers who were not enrolled in the Pilot. Notably, the share of energy consumed during the peak period among Pilot customers increased during the summer months likely due to increased use of air conditioning during the daytime hours. This increase was also true of non-pilot enrolled customers with EVs.

The Company also compared those Pilot participants' usage profile to that of EV owners who did not participate in the Pilot program. If the customers enrolled in the Pilot had

<sup>5</sup> EV driving customers were identified from customers who had registered their EV with the Company.

used electricity at the same time period as non-enrolled EV driving customers, DLC estimates an additional 1,033,064 kWh would have been consumed during the peak period and an additional 28,460 kWh would have been consumed during the off-peak period. Instead, 1,061,524 kWh was consumed during the super off-peak period (see Figures 4 and 5 below). This demonstrates a correlation between Pilot participation and proportionally lower peak electricity consumption.

Figure 4: Share of Total Utilization by TOU Period and Month for Pilot Enrolled Customers

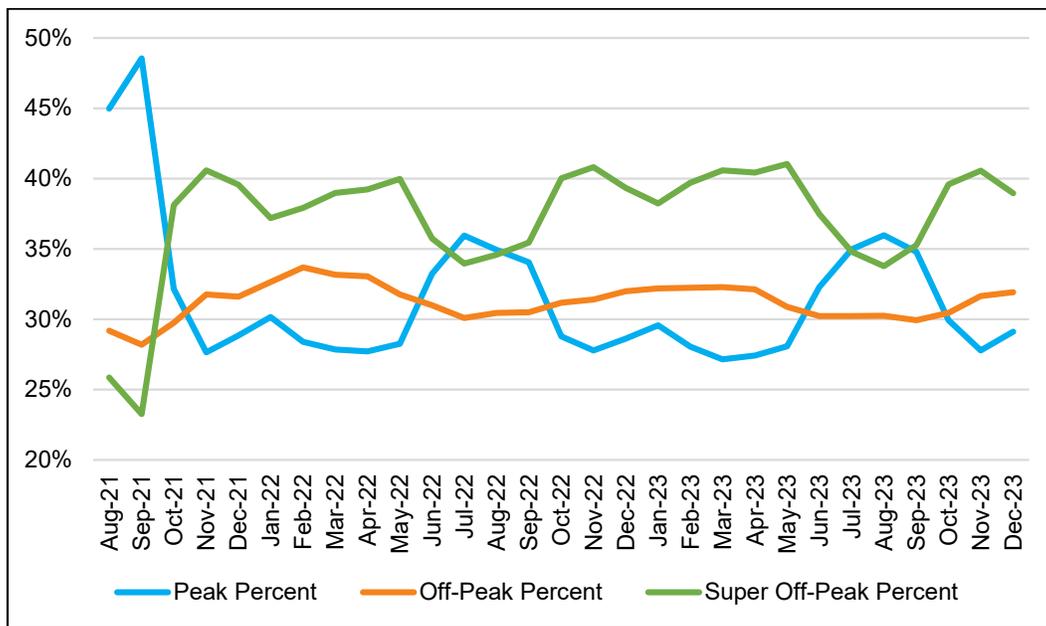
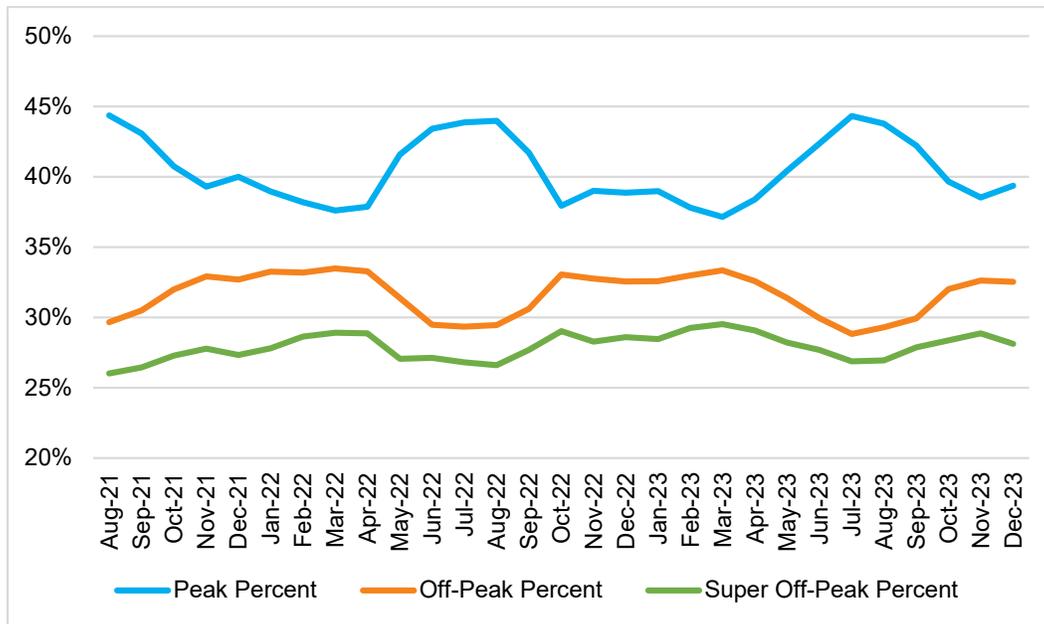


Figure 5: Share of Total Utilization by TOU Time Period and Month for Non-Pilot enrolled customers with EVs



Further, the Company conducted additional pre- and post-enrollment analysis to demonstrate a causal relationship that enrollment in the Pilot led residential customers to change their behaviors and shift their consumption away from the peak period. Since the analysis required an evaluation of customer behavior while driving electric before and after enrolling in the Pilot, customers were excluded from the analysis if they were enrolled in the Pilot for less than 180 days or if they did not drive electric for at least 180 days before enrolling in the Pilot. Due to these limitations, approximately 200 customers were included in the analysis, representing approximately 23% of total Pilot enrollment at the time of the analysis. Additionally, commercial customers were not included in this analysis due to low enrollment among commercial customers.

As shown in Figure 6 below, the analysis demonstrates that residential customers that eventually enroll in the Pilot do consume more electricity after purchasing or leasing an EV across all time periods and this total customer usage does not change significantly after enrolling in the Pilot. However, residential customers enrolled in the Pilot reduce their consumption in the peak and off-peak periods and shift it to the super off-peak period. This shift in consumption neutralizes the increase in peak period consumption associated with a residential customer driving an EV. This means a customer enrolled in the Pilot is not using any more energy during the peak period than they were prior to

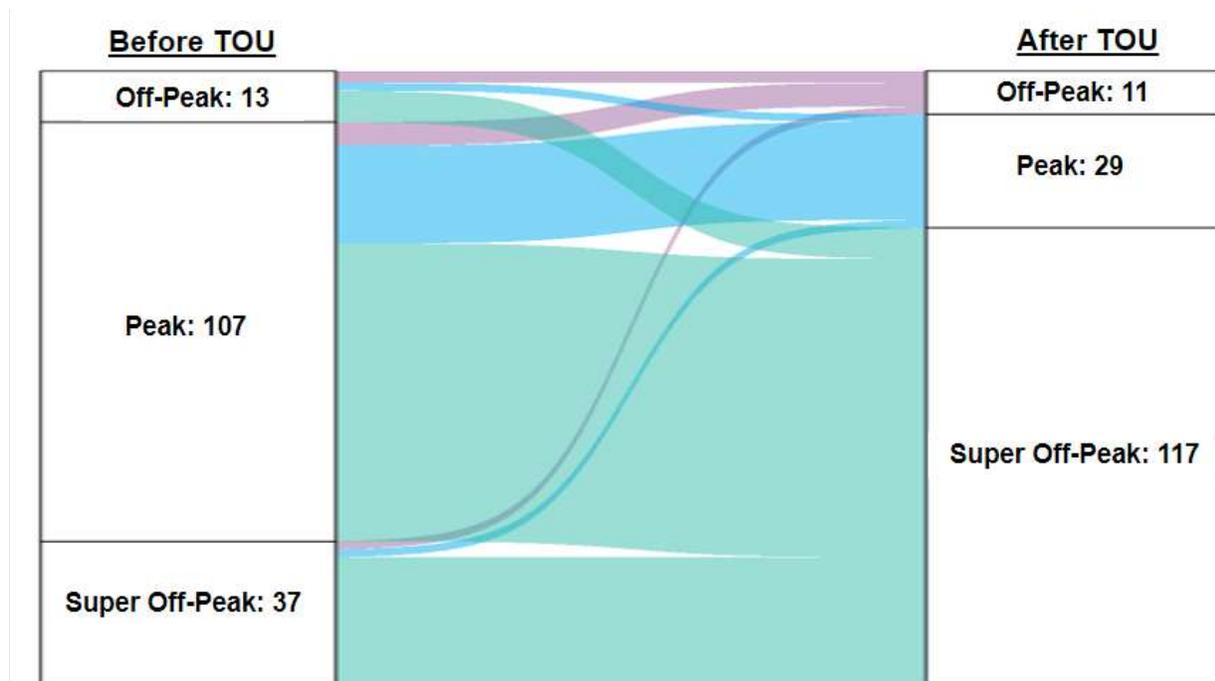
purchasing an EV and indicates the price signals are a successful motivator for altering customer behavior.

Figure 6: Average hourly change in kWh by TOU period

|                | <b>Avg. Hourly Change by Time of Use</b> |                    |  |
|----------------|--|--------------------|--|
|                | After EV,<br>Before TOU<br>(kWh)         | After TOU<br>(kWh) | Total Difference<br>from Pre-EV<br>(kWh) |
| Super Off-Peak | +0.43                                    | +0.65              | <b>+1.08</b>                             |
| Off-Peak       | +0.27                                    | -0.12              | <b>+0.15</b>                             |
| Peak           | +0.34                                    | -0.35              | <b>-0.01</b>                             |

As shown in Figure 7 below, only 24% of standard metering residential customers used the most electricity in the super off-peak period prior to enrolling in the Pilot, but, after enrolling, 75% of customers used the most electricity in the super off-peak period.

Figure 7: Customer Count by Highest Utilization Bucket



**Conclusion**

Collectively, these results demonstrate the Pilot has been highly effective in shifting customer consumption to the super off-peak period that otherwise would have been largely consumed during the off-peak and peak periods.

**SO-3**



**Electric Vehicle Time-of-Use Supply  
Rate Pilot  
Evaluation and Assessment Plan**

**Dated: April 19, 2024**

## EV TOU Supply Rate Pilot

The Company's EV TOU Supply Rate Pilot is designed to encourage off-peak charging to mitigate increased peak demand. The pilot will provide the Company insights into customer response to, administration of, and efficacy of passive load management solutions, allowing it to leverage data to help inform its on-going load management strategy.

### Objectives

- Assess the degree to which an EV TOU Supply Rate can be a reliable and meaningful load management asset for the grid.
- Assess customer participation and response to rate price signals.
- Assess the ability of a third-party platform to successfully report on customer EV-only charging and enable customer interactions.

### Evaluation Components:

- Report on the types of customers who enrolled, including by:
  - Rate type (WholeHome or EV-only)
  - Rate class
  - Year
  - Census tract
  - Five-digit zip code
  - Vehicle type (i.e., BEV vs. PHEV)
- Report on net customer bill impacts as compared to the standard default service supply rate by:
  - Rate type
  - Rate class
- Report on energy usage shifted from on-peak hours (for those customers for whom the Company has sufficient historical usage data) from pre- to post-enrollment by:
  - Rate type
  - Rate class
  - Distribution rate type enrollment (e.g., Standard or time-of-use distribution rate).
- Produce EV charging load curves, including average load shape by:
  - Household
  - Rate Class
  - Season
  - Weekday/Weekend.
- Report on customer satisfaction with the Pilot.
- Report on success of tracking and reporting EV-only customer energy use by technology pathway. Describe any challenges encountered and how they were addressed.
- Report on customer usage of pre-enrollment tools.
- Report on customer interaction with post-enrollment behavioral load shaping communications.
- Describe how pilot results have been used to estimate longer-term grid impacts and benefits.

## KPIs, Targets and Data Sources

In addition to the evaluation components described above, the Company has established and will report on the below KPIs and targets.

| KPIs  | 2025-26 Target | 2026-27 Target | 2027-28 Target | 2028-29 Target | Measurement/ Data Source                             |
|---|----------------|----------------|----------------|----------------|--|
| Cumulative EV-Only Participants   | 100            | 225            | 400            | 500            | Enrollment based on capturing 9% of EVs in Operation |
| Cumulative WholeHome Participants   | 2,390          | 3,115          | 3,922          | 4,908          |  |
| Share of energy consumed by WholeHome participants during off-peak periods                        | 65%            | 65%            | 65%            | 65%            | Customer meter data                                  |
| Share of energy consumed by EV-only participants during off-peak periods                          | 90%            | 90%            | 90%            | 90%            |  |
| Customer Satisfaction – % of customer reporting being satisfied or greater with the pilot program | 80%            | 80%            | 80%            | 80%            | Customer surveys                                     |