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October 7, 2016

BY ELECTRONIC FILING

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

Re: ***Petition of Duquesne Light Company For Approval of Default Service Plan For The Period June 1, 2017 Through May 31, 2021***
Docket No. P-2016-2543140

Dear Secretary Chiavetta:

Enclosed for filing in the above referenced matter please find the Retail Energy Supply Association's Reply in Support of Joint Petition for Settlement. Copies have been provided pursuant to the attached Certificate of Service.

Please feel free to contact me should you have any questions.

Sincerely,

Brian R. Greene

Enclosures

cc: Service List (see Certificate of Service)
Honorable Conrad A. Johnson

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017, through May 31, 2021	* * *	Docket No. P-2016-2543140

CERTIFICATE OF SERVICE

I certify that a true and correct copy of RESA's Reply in Support of Settlement 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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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2017 through May 31, 2019	: : :	Docket No. P-2016-2543140

RETAIL ENERGY SUPPLY ASSOCIATION'S
REPLY IN SUPPORT OF JOINT PETITION FOR SETTLEMENT

I. Introduction and Background

The Retail Energy Supply Association ("RESA")[1] submits this Reply in Support of the Joint Petition for Approval of Non-Unanimous Settlement ("Settlement"), which resolved all issues in this proceeding between RESA, Duquesne Light Company ("Duquesne"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("PA-CAUSE"), and Exelon Generation Company, LLC ("ExGen") (collectively the "Settling Parties"). The only party opposing the Settlement is Noble Americas Energy Solutions, LLC ("Noble), which explained in its Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement ("Objections") that it opposes Paragraph 22 of the Settlement relating to the purchase of receivables discount rate.

Paragraph 22 of the Settlement provides as follows:

> Effective June 1, 2017, the Company will eliminate the uncollectible accounts component of the POR discounts for EGSs. Calendar year 2015 POR discount expense of $797,900 POR

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

> uncollectible expense will be moved to the Company's Rider 1 RMES for recovery until the next base rate proceeding. The amount of $797,000 will be fixed and reconciled only for differences between projected and actual consumption. Recovery of other uncollectible expenses will remain in base rates. The component of the POR discount for administrative costs (0.1%) will continue.[2]

Noble argues incorrectly that the Settlement should be denied because: (1) the issue of eliminating the uncollectible expense from the POR discount rate and collecting those amounts from all customers through the RMES was not properly raised in this proceeding;[3] (2) Paragraph 22 is unjust, unreasonable, and contrary to the public interest;[4] and (3) Paragraph 22 further contravenes the public interest by ignoring the anti-competitive and discriminatory impact it would have on the competitive retail electricity market.[5]

RESA explained in its Statement in Support that the Commission's long-standing policy is to encourage settlements for numerous sound reasons, including because they "may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case."[6] RESA also explained that the Commission must determine that the proposed terms and conditions of the Settlement are in the public interest.[7] Finally,

[2] Settlement, ¶ 22. The RMES is Duquesne's Retail Market Enhancement Surcharge, applicable to all customers regardless of whether they take default electricity service from Duquesne or if they contract with an EGS for competitive supply service.
[3] Objections at 5-8.
[4] Objections at 8-10.
[5] Objections at 10-12.
[6] *Petition of Duquesne Light Company for Approval of a Default Service Program for the Period from June 1, 2015 through May 31, 2017*, P-2014-2418242, Opinion and Order at 11 (issued Jan. 15, 2015) (internal citation omitted).
[7] *Id*. at 11-12 (citing *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991)).

settling parties have the burden of proving by a preponderance of the evidence that the Settlement is in the public interest.[8] Here, the Settling Parties have satisfied this burden.

As explained below, RESA continues to support the Settlement as a reasonable resolution of the issues raised in this proceeding, including in Noble's Objections. The Settlement is procedurally appropriate, lawful, fully supported by the record in this proceeding and by broad and diverse parties, and approving it is in the public interest. Therefore, RESA recommends that the Administrative Law Judge ("ALJ") deny Noble's Objections.

II. The issue of eliminating the uncollectible expense from the POR discount rate and collecting those amounts from all customers through the RMES was properly raised in this proceeding.

Noble argues that the Settlement's proposal to modify the POR program, as explained in Paragraph 22, involved a "brand new proposal" that was in appropriately inserted "for the very first time" in rebuttal testimony, in contravention of 52 Pa Code § 5.243(e)(2) and (3).[9] That is incorrect.

Noble misapplies 52 Pa. Code § 5.243(e)(2) and (3), which provides as follows:

> (e) A party will not be permitted to introduce evidence during a rebuttal phase which:
> ***
> (2) Should have been included in the party's case-in-chief.
> (3) Substantially varies from the party's case-in-chief.

Issues relating to unbundling of costs, including uncollectible costs, from distribution rates were central to this proceeding. Duquesne addressed unbundling issues in its application and direct testimony in accordance with the settlement agreement from its last default service proceeding.[10]

[8] *See, e.g., Samuel J. Lansbeny, Inc. v. Pa. Pub. Util Comm'n*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990); *see also* 66 Pa.C.S. §332(a).
[9] Objections at 6.
[10] *See, e.g.,* Duquesne St. No. 4 at 14-16.

RESA, in its direct testimony, took exception to the timing of the Duquesne's proposed unbundling, and also provided testimony explaining Pennsylvania's policy favoring unbundling and identifying the cost items to be unbundled.[11] RESA also proposed an allocation methodology that would have allocated approximately $35 million, which included uncollectible costs, in unbundled costs to default service.[12] Thus, in direct testimony, RESA proposed to unbundle a portion of uncollectible costs from base rates and recover those unbundled uncollectible costs through default service rates.[13]

In this regard, Noble's statement on page 5 of its Objections that, "RESA witness White briefly addressed the unbundling of uncollectible expense" is simply inaccurate. In RESA's direct testimony, Mr. White specifically identified uncollectible costs as a cost to be unbundled and included a copy of Duquesne's 2015 FERC Form 1, which identified $12,956,792 to Uncollectible Accounts in 2015.[14] Mr. White included that dollar amount in his $35 million unbundling proposal. Thus, the evidence does not support Noble's statement, as the unbundling of uncollectible costs comprised a significant portion of RESA's unbundling proposal. Duquesne, apparently recognizing the significance of RESA's unbundling proposal, including the unbundling of uncollectible costs, submitted rebuttal testimony in response to RESA's proposals; Noble did not.

Responding to RESA's proposal, Duquesne in its rebuttal testimony argued first that uncollectible costs should not be unbundled. At the same time, however – and this is where Noble's argument truly begins to unwind – Duquesne testified it would be willing to eliminate

[11] RESA St. No. 1 at 4-12.
[12] RESA St. No. 1 at 12-19.
[13] RESA St. No. 1 at 7-9 and Exhibit MW-1 (see line 162, Account No. 904, showing that Duquesne booked $12,956,792 to Uncollectible Accounts in 2015).
[14] *Id*.

the current portion of the EGS discount rate related to EGS uncollectible costs, effective June 1, 2017, if it was permitted to include those costs in the RMES.[15] In sum, Duquesne' application and direct testimony raised unbundling issues and identified certain costs to be unbundled, to which RESA responded with voluminous direct testimony. Duquesne's rebuttal testimony responded to RESA's direct testimony, which included proposals that Duquesne and all parties were seeing for the first time as is usually the case when intervenors submit direct testimony. Thus, Duquesne's proposal regarding uncollectible costs set forth in its rebuttal testimony did not run afoul of 52 Pa. Code § 5.243(e)(2) and (3) because it responded to RESA's direct testimony and assisted in narrowing issues in this proceeding, and it did not "substantially" vary from Duquesne's case-in-chief.

Importantly, Noble had the opportunity to submit surrebuttal testimony regarding Duquesne's uncollectible cost proposal. Noble did not do so. Thus, even when made aware of the issue and given an opportunity to address it, Noble sat on the sidelines and did not file testimony.[16] RESA, however, filed surrebuttal testimony, supporting Duquesne's proposal to recover uncollectible costs through the RMES.[17] RESA witness Matthew White testified that it would be reasonable to remove uncollectible expense from the costs that should be unbundled if the EGS discount rate was removed and EGS uncollectible expense was recovered through the RMES:

> If the EGS discount rate was eliminated, and all uncollectible costs were collected via a non-bypassable charge, EGS and default service uncollectibles would be treated equally. Thus, there would be no need to include uncollectible expense in the costs that should be unbundled.[18]

[15] Duquesne St. No. 3-R at 32-33.
[16] Noble acknowledges that Duquesne proposed in rebuttal testimony the possibility of eliminating the uncollectible portion of the POR discount rate. Objections at 5-6.
[17] RESA St. No. 1-S at 9-10.
[18] RESA St. No. 1-S at 10.

Thus, the parties were given ample opportunity to address the uncollectible cost issue: RESA was critical of Duquesne for not addressing it in its application and direct testimony; Duquesne responded to RESA and addressed the issue in rebuttal; RESA addressed the issue in surrebuttal; and yet, Noble did not file any testimony at any point in the proceeding. Noble's argument that Paragraph 22 was somehow unfairly inserted into the Settlement lacks merit.

III. Paragraph 22 is lawful, supported by the record evidence presented in this proceeding, and in the public interest.

The record evidence in this case does not support Noble final two arguments – that Paragraph 22 is contrary to the public interest and also violates the Electric Generation Customer Choice and Competition Act ("Competition Act)"[19] because of the anti-competitive and discriminatory impact it would have on the competitive retail electricity market.

A. Noble cannot rely on facts outside of the record.

Virtually all of the facts on which Noble relies to advance its substantive arguments are not in the record in this proceeding, including:

- The Settlement "completely disregards cost causation principles, by eliminating the uncollectible component of the POR discount and unfairly shifting recovery of those costs to Duquesne Light's Rider No.1 RMES."[20]

- "The modifications proposed to Duquesne Light's POR discount, if permitted to go into effect as proposed, will unfairly subsidize participating EOSs to the detriment of nonparticipating EGSs, like Noble."[21]

- "Noble has built its own state of the art billing systems and uses dual billing exclusively for its Pennsylvania customers, so it does not participate in the POR program. As a result, Noble is responsible for and covers its own uncollectibles

[19] 66 Pa. C.S. §§ 2801-2812.
[20] Objections at 9.
[21] Objections at 10.

with no burden to the ratepayer, properly placing the risk of collection squarely on the shoulders of Noble's shareholders."[22]

- The Settlement results in "additional subsidies" that "will go straight to the bottom lines of those participating EGSs, which can then be used to directly compete with Noble and other non-participating EGSs for customers in the competitive retail market within Duquesne Light's service territory.[23]

- The "Settlement will directly and materially interfere with the ability of non-participating suppliers, including Noble, from offering competitively-priced retail market products and services and further innovations to shopping customers."[24]

- Eliminating the uncollectible portion of the POR discount will discourage EGSs "from seeking the means to manage their costs more effectively."[25]

None of these facts is in the record. The Commission's regulations preclude reliance on non-record evidence: "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion."[26] Therefore, there is no record support for Noble's Objections.

B. The record supports the Settlement and the legality of Paragraph 22.

In the event that the Commission nevertheless considers Noble's Objections despite Noble's assertions of facts not in the record, Noble's arguments in opposition to Paragraph 22 should be rejected. The record in this case fully supports Paragraph 22 of the Settlement. Factually, as explained above, Duquesne and RESA submitted testimony supporting Paragraph

[22] Objections at 10-11. Noble cites to its Petition to Intervene with respect to its building of its own billing system and dual billing Pennsylvania customers; however, Noble did not file testimony, and the Petition to Intervene is not part of the evidentiary record in this proceeding.
[23] Objections at 11.
[24] Objections at 11.
[25] Objections at 11-12.
[26] 52 Pa. Code § 5.431(b). In accordance with this regulation and basic principles of due process, Administrative Law Judges have struck new "evidence" that a party seeks to introduce after the close of the record. *See, e.g., Third Ave. Realty Ltd. Partners v. Pennsylvania-American Water Co.*, Docket No. C-2008-2072920, at 10 (Initial Decision issued Oct. 13, 2010, Opinion and Order entered Jan. 14, 2011).

22, while Noble did not submit any testimony at any point in this proceeding. Moreover, Noble's legal argument regarding the Competition Act should be rejected.

The evidence showed that EDCs in Pennsylvania recover their uncollectible costs differently, "but all end up at the result of all customers paying average uncollectible costs."[27] As Duquesne testified in its rebuttal testimony, PECO's EGS-related uncollectibles remain in distribution rates, while the FirstEnergy EDCs utilize a non-bypassable rider.[28] In essence, the modifications to the POR discount rate under Paragraph 22 would allow Duquesne to recover its uncollectible accounts expense "consistent with how both PECO and the FirstEnergy EDCs recover uncollectible expense."[29] The First Energy EDCs are already recovering their POR-related uncollectibles through a non-bypassable charge like the RMES established in the Settlement.[30] Moreover, PECO recovers uncollectible accounts expense in its distribution rates,[31] so all customers pay these costs just as if they were in base rates. The Commission approved those programs, and modified them throughout the years, and presumably would not have done so had they been in violation of prevailing law or policy.

C. The Settlement is in the public interest.

Ultimately, the Commission must determine whether approval of the settlement is in the public interest. For the reasons discussed above, Noble's Objections provide neither legal justification nor record support to reject the Settlement. Aside from this, however, it is important

[27] Duquesne St. No. 3-R at 31.
[28] Duquesne St. No. 3-R at 31.
[29] Duquesne Statement in Support at 26.
[30] *See, e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Opinion and Order entered Aug. 16, 2012).
[31] *See, e.g., PUC v. PECO Energy Company*, Docket No. R-2011-2161575, *et seq.* (Opinion and Order entered Dec. 21, 2010).

to recognize that the Commission has approved similar cost recovery mechanisms for other EDCs in Pennsylvania. Moreover, the Settling Parties represent diverse interests, including the utility, residential and business customers, and retail suppliers. No one Settling Party got everything it wanted. With respect to Paragraph 22, OCA correctly summed up the Settlement:

> The settlement provisions relating to unbundling and the POR program are a reasonable compromise of the various positions taken by RESA, the Company, and the OCA. Specifically, the OCA submits that the costs to be unbundled pursuant to the Settlement are consistent with the outcomes in recent DSP proceedings filed by other EDCs and are, in the OCA's view, within the range of the likely outcome in the event of full litigation of this case. As such, the OCA submits that the settlement is reasonable, in the public interest, and should be adopted.[32]

For these and other reasons as stated above and in each Settling Party's Statement in Support, RESA submits that the Settlement is a reasonable and practicable outcome of this case, supported by the evidence, and consistent with the Commission's long-standing policy of encouraging settlements.

IV. Conclusion

RESA continues to support the Settlement as a reasonable resolution of the issues raised this proceeding. RESA recommends that the Commission reject Noble's Objections and approve the Settlement as filed.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel

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[32] OCA Statement in Support at 6.

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Date: October 7, 2016