

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 10, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Pamela A. Witmer
John F. Coleman, Jr.
Robert F. Powelson

Petition of Duquesne Light Company for
Approval of its Energy Efficiency and
Conservation Phase III Plan

M-2015-2515375

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OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition (Petition) of Duquesne Light Company (Duquesne or the Company) for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan (Phase III Plan) filed on November 25, 2015. Also before the Commission is the Joint Petition for Full Settlement (Settlement) filed by Duquesne, the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Office of Small Business Advocate (OSBA), Citizen Power, Inc. (Citizen Power), and the Duquesne Industrial Intervenors (DII), (collectively, the Joint Petitioners) on February 9, 2016. As discussed, *infra*, on February 9, 2016, Duquesne submitted a revised Phase III Energy Efficiency and Conservation Plan (Revised Plan). In accordance with the Commission's Order in *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Order entered June 19, 2015) (*Phase III Implementation Order*), Administrative Law Judge (ALJ) Katrina L. Dunderdale certified the record in this proceeding on February 11, 2016. For the reasons fully delineated herein, we will approve the Settlement, grant Duquesne's Petition and approve the Revised Plan.

I. Background

A. Act 129

On October 15, 2008, Act 129 of 2008 (Act 129 or Act) was signed into law with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth's largest electric distribution

companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission's EE&C Program and of the EDCs' approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

The Commission subsequently issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order*), which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet), and provided guidance

on the procedures to be followed for submittal, review and approval of all aspects of the EDCs' Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On March 11, 2015, the Commission issued a Tentative Implementation Order (*Phase III Tentative Implementation Order*) at Docket No. M-2014-2424864 for Phase III of the EE&C Program. Following the submittal and review of comments, on June 19, 2015, the Commission issued an Implementation Order at that same docket number (*Phase III Implementation Order*). Among other things, the *Phase III Implementation Order* established standards each plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C plans for the period from June 1, 2016 through May 31, 2021.

On July 6, 2015, the Energy Association of Pennsylvania (EAP) filed a Petition for Clarification of Final Act 129 Phase III Implementation Order (EAP Petition) seeking clarification of certain aspects of the peak demand reduction program. Also on July 6, 2015, the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy) filed a Petition for Clarification of the *Phase III Implementation Order* (First Energy Petition), or, in the alternative, a Petition for Waiver of a Bidding Requirement *Phase III Implementation Order* (Petition for Waiver). By Order entered on August 20, 2015, the Commission granted the EAP and First Energy Petitions and denied FirstEnergy's Petition for Waiver (*Phase III Clarification Order*).

B. The Company

Duquesne is a public utility as the term is defined under Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102, certificated by the Commission to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania. Duquesne is also an electric distribution company (EDC) and a default service provider as those terms are defined under Section 2803 of the Code. 66 Pa. C.S. § 2803. Duquesne provides electric distribution service to approximately 580,000 customers in its service territory.

II. Procedural History

In the *Phase II Implementation Order*, we adopted an EE&C plan approval process which included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as posting of each proposed plan on the Commission's website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed was to be assigned to an ALJ for an evidentiary hearing within sixty-five days after the plan was filed, after which, the parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission was then to approve or reject all or part of a plan at public meeting within 120 days of the plan filing. *Phase II Implementation Order* at 61 and 62. In the *Phase III Implementation Order* we adopted this same process for Phase III. *Phase III Implementation Order* at 91.

In the *Phase III Implementation Order*, the Commission directed the EDCs to file their Phase III plans by November 30, 2015. *Id.* at 92. Accordingly, on November 25, 2015, Duquesne filed with the Commission its Petition for approval of its Phase III Plan. On December 12, 2015, a notice of Duquesne's Phase III Plan filing was published

in the *Pennsylvania Bulletin*, at 45 Pa. B. 7078 and provided that comments on the Phase III Plan were due on January 4, 2016. Included with the Petition was the direct testimony of David Defide (Duquesne Light Statement No. 1); and the direct testimony of William Pfrommer (Duquesne Light Statement No. 2), including a pro forma cost recovery mechanism under 66 Pa. C.S. § 1307.

On December 10, 2015, the OCA filed a Notice of Intervention and Public Statement. The OSBA filed a Notice of Intervention, Public Statement, and Notice of Appearance on December 18, 2015, and filed an Answer on January 4, 2016. Petitions to Intervene were filed by CAUSE-PA on December 17, 2015; Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, Wal-Mart) on December 31, 2015; Citizen Power on January 4, 2016; and DII on January 5, 2016.

Comments or Letters in lieu of Comments were filed by: CAUSE-PA¹ on December 30, 2015; Energy Efficiency for All (EEFA) on January 4, 2016; EnergyHub on January 4, 2016; the OCA on January 4, 2016; the OSBA on January 4, 2016; and Citizens for Pennsylvania's Future with Sierra Club, Environmental Defense Fund, and Clean Air Council (collectively, PennFuture) on January 4, 2016; and DII on January 5, 2016.

On January 7, 2016, the ALJ issued the Scheduling Order which, *inter alia*, granted the Petitions to Intervene listed above, developed the service list, established the litigation schedule and provided a common briefing outline to be used by all parties submitting briefs. The evidentiary hearing was scheduled to be conducted in Pittsburgh, Pennsylvania, on January 26, 2016.

¹ Legal Counsel for the Pennsylvania Utility Law Project filed the comments on behalf of CAUSE-PA.

Subsequently, on January 11, 2016, the ALJ issued a Prehearing Order which revised the litigation schedule, after consultation with the Parties, to account for a change in the public meeting schedule. Specifically, the litigation schedule was revised to reflect that Duquesne's Revised Plan was to be filed on February 10, 2016, and that the ALJ would certify the hearing record on February 12, 2016.

On January 13, 2016, the OCA served the direct testimonies of Stacy L. Sherwood (OCA St. No. 1); and Roger D. Colton (OCA St. No. 2). Also on January 13, 2016, CAUSE-PA served the direct testimony of Mitchell Miller (CAUSE-PA St. No. 1) and accompanying attachments (Attachment A through Attachment H).

On January 21, 2016, Duquesne served the rebuttal testimonies of James Karcher (Duquesne St. No. 2-R) and William V. Pfrommer (Duquesne St. No. 3-R). Also on January 21, 2016, the Parties informed the ALJ, via electronic mail, that an agreement in principle had been reached between the Parties. The Parties requested a suspension of the litigation schedule and indicated a Settlement Petition would be filed, along with Duquesne's Revised Plan, on or before February 10, 2016. In addition, the Parties asserted that they stipulated with each other that all written statements and exhibits would be admitted into the hearing record, without objection, provided the written statements and exhibits were filed with the Secretary's Bureau with fully-executed affidavits on or before February 10, 2016. The Parties further requested that the ALJ cancel the evidentiary hearing scheduled for January 26, 2016.

Thereafter, the ALJ issued the Second Prehearing Order which suspended the litigation schedule and authorized the Parties to submit evidence via stipulation and affidavit. Also on January 22, 2016, Duquesne filed a Motion for Protective Order. Accordingly, the ALJ issued the Protective Order on January 22, 2016.

On February 9, 2016, the Joint Petition for Full Settlement was filed by Duquesne, CAUSE-PA, the OCA, the OSBA, DII and Citizen Power asking the Commission to approve the Phase III Plan. The Joint Petition included Statements of Support, as attached appendices, from each of the Joint Petitioners. Also, a Letter of Non-Opposition from Wal-Mart was attached as an appendix. Also on February 9, 2016, the Parties submitted a Joint Stipulation for the Admission of Testimony and Exhibits, which included a copy of every written testimony and exhibit which was to be admitted into the record. On February 10, 2016, CAUSE-PA, the OCA and Duquesne filed separate affidavits for each witness statement and exhibit filed with the Secretary's Bureau which affidavits affirmed the truthfulness of the statements and exhibits.

By Order Certifying the Record dated February 11, 2016, ALJ Dunderdale provided a history of the proceeding; delineated the transcripts, statements and exhibits admitted into the record; and certified the record to the Commission for consideration and disposition.

III. Description of the Plan

The *Phase III Implementation Order* established a Phase III consumption reduction target for Duquesne of 440,916 MWh over a five-year period from June 1, 2016 through May 31, 2021, and a demand reduction target of 42 MW. *Phase III Implementation Order* at 35 and 57. In its Petition, Duquesne explained that it selected fifteen energy efficiency programs for its Phase III Plan that are tailored for its residential, small commercial and industrial, large commercial and industrial and governmental/education customers and that will reduce annual energy consumption by 449,734 MWh and reduce total demand by 61 MW. In its Petition, Duquesne provided the following summary of its fifteen proposed programs:

Residential Energy Efficiency Rebate Program. This program encourages customers to make an energy efficient

choice when purchasing and installing household appliances and equipment measures by offering educational materials on energy efficiency options and energy efficiency rebates to offset the higher cost of energy efficient equipment. Program educational materials and rebates are provided in conjunction with the Duquesne online home energy audit.

Residential Appliance Recycling Program. This program encourages residential customers to turn in their older operating refrigerators and freezers to be recycled. To encourage participation in this program, it provides a check of up to \$50 for the removal of an old refrigerator or freezer.

Residential Home Energy Reporting Program. This program sends, via direct mail, home energy use reports that compare recipient customer's energy use to the use of 100 customers with similar home type and size. This program provides for comparison purposes the last two months of energy consumption by: (1) the most efficient twenty percent of the peer group; (2) the recipient, and (3) the entire peer group. The reports generate verifiable savings from 1.5 to 3.5 percent of total home energy use.

Residential Whole House Retrofit Program. This program provides resources to residential customers to encourage a comprehensive residential home energy audit, installation of conservation measures and rebates for a range of eligible measures. The program provides up to a \$250 home energy credit for the installation of audit recommended measures. Direct installation measures are provided at no cost. The program also provides home energy use education, as well as information about available rebates and other program options.

Residential Low-Income Energy Efficiency Program. This program is an income-qualified program providing services designed to assist low-income households to conserve energy and reduce electricity costs. This program relies on several contributing engagement channels to deliver program services and achieve projected savings impacts and program cost-effectiveness.

Residential Savings By Design New Construction Program. The purpose of this program is to improve efficiency of newly constructed homes in Duquesne's service territory. The objectives of this program are to contribute toward achievement of the Company's energy savings goals and to influence residential new construction practices.

Small Commercial/Industrial [(C&I)] Express Efficiency Program. This program provides incentives to offset the higher cost of high-efficiency equipment when compared to standard efficiency equipment. Customers can submit rebate applications on-line, by mail or fax.

Small Non-Residential Upstream Lighting Program. This program will provide incentives for efficient lighting products directly to technology manufacturer distributors to offset the higher cost, and thereby drive uptake of, the most efficient lighting equipment options.

Small Commercial Direct Install Program. By providing for the direct installation of energy efficiency measures at small and medium C&I customer facilities, this program will produce cost-effective, long-term peak demand and energy savings. The program will be delivered in a staged delivery approach to provide program services in specific geographic areas at different time periods.

Multifamily Housing Retrofit Program. This program provides services including the administration of energy efficiency audits, technical assistance for measure level project review and bundling, property aggregation, contractor negotiation and equipment bulk purchasing. The multifamily market manager will integrate funding sources to include program and agency co-funding, performance contracting, grant funding and available financing options. Services also include processing rebate applications and other funding source documentary requirements as well as applicable project TRC screening.

Commercial Efficiency Program. This program helps commercial customers to assess the potential for energy efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by

installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training, and technical assistance. Energy audits provide business customers a readily available, reliable source of information about their energy use and outline ways to save energy that, when implemented, will result in energy savings, reduced operating costs, lowered carbon emissions, and improved air quality.

Industrial Efficiency Program. This program helps industrial customers assess the potential for energy efficiency project implementation, cost and energy savings, and, for appropriate customers, provides follow-through by installing measures and verifying savings. Program components include auditing of energy use, provision of targeted financing and incentives, project management and installation of retrofit measures, training, and technical assistance. Energy audits provide business customers a readily available, reliable source of information about their energy use and outline ways to save energy that, when implemented, will result in energy savings, reduced operating costs, lowered carbon emissions, and improved air quality.

Large Non-Residential Upstream Lighting Program. This program will provide incentives for efficient lighting products directly to technology manufacturer distributors to offset the higher cost, and thereby drive uptake of, the most efficient lighting equipment options.

Public Agency Partnership Program. This program establishes partnerships between Duquesne and selected local governmental agencies through the execution of a Memorandum of Understanding (MOU). The MOU establishes working groups comprised of Duquesne and agency representatives that identify project areas within agency departments (and jurisdictional agencies). The working groups define project scopes of service and establish project agreements to co-fund agreed-to projects.

Community Education Energy Efficiency Program. This program will be comprised of a High School and Middle School Energy Auditing Program that will offer two 1-week

trainings per summer to 25 students each for a total of 50 high school students trained per summer. The participating high school interns will earn a stipend and a Certificate in Energy Auditing. The 50 students per summer will represent 12 high schools in 12 districts. Each school will select 3-5 students and a lead teacher for the program. Both the student interns and the lead teachers will earn a stipend. Teachers will lead their school team during the training, and subsequently to:

- Perform a school energy audit
- Develop an energy audit report
- Design a school conservation action plan
- Present their recommendations to their School Board
- Implement their Conservation Action Plan at their school, and
- Compete in a School Energy Conservation Competition between the participating schools

See, Phase III Plan at 24-73.²

IV. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

Because the Joint Petitioners have reached a settlement, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote

² The Revised EE&C Plan filed pursuant to the Settlement eliminates the Residential Savings By Design Program.

settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Phase III Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

The *Phase III Implementation Order* established a Phase III energy consumption reduction target of 440,916 MWh for Duquesne, which was based on a 3.1% reduction in the Company's expected load as forecasted by the Commission for the period June 1, 2009 through May 31, 2010. *Phase III Implementation Order* at 57. Consumption reductions are measured using a savings approach. *Id.* at 108. Each EDC was directed to develop a plan that was designed to achieve at least 15% of the target amount in each program year. *Id.* at 59.

In the *Phase III Implementation Order*, the Commission expressed concern that the carryover of all excess savings from phase to phase of the EE&C Program will lead to a scenario in which EDCs meet most, if not all, of its reduction target simply with carryover savings. As a result, the Commission concluded that EDCs are allowed to carry-over only excess savings obtained in Phase II for application toward Phase III targets. *Phase III Implementation Order* at 84-85.

2. Overall Demand Reduction Requirements

Phase I of the EE&C Program included demand reduction (DR) requirements. 66 Pa. C.S. § 2806.1(d). The Commission did not believe it had the information necessary at the time to definitively determine that a demand reduction program would be cost-effective as part of Phase II. Consequently, Phase II did not include DR requirements. *Phase II Implementation Order* at 32-33. For Phase III, the Commission concluded that it had sufficient information to determine that DR requirements would be cost-effective in the service territories of six of the seven EDCs

(all EDCs except Penelec). *Phase III Tentative Implementation Order* at 36; *Phase III Implementation Order* at 34-35.

The DR target for Duquesne is 42 MW, which is a 1.7 % reduction in peak demand. *Phase III Implementation Order* at 35. Peak demand reductions are measured using the demonstrated savings approach. *Id.* at 111-112. EDCs are not required to obtain peak demand reductions during the first year of Phase III; the required reductions apply to the remaining four program years of Phase III. *Id.* at 35.

The Commission will determine compliance with the peak demand reduction requirements outlined above based on an average of the MW reductions obtained from each event called over the last four years of the Phase. However, EDCs are to obtain no less than 85% of the target in any one event. *Id.* at 36. Finally, each EDC plan must demonstrate that the cost to acquire MWs from customers that participate in the PJM Emergency Load Response Program (ELRP) is no more than half the cost to acquire MWs from customers in the same rate class that are not participating in PJM's ELRP. *Id.* at 44.

3. Requirements for a Variety of Programs Equitably Distributed

The *Phase III Implementation Order* did not require a proportionate distribution of measures among customer classes. However, it did require that each customer class be offered at least one program. *Phase III Implementation Order* at 113. In addition, the Commission required that EE&C Plans include at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers. *Id.* at 61.

4. Government/Educational/Non-Profit Requirement

Act 129 required that Phase I EE&C Plans obtain a minimum of ten percent of all consumption and peak demand reduction requirements from units of the Federal, State and local governments, including municipalities, school districts, institutions of higher education and non-profit entities (G/E/NP Sector). 66 Pa. C.S.

§ 2806.1(b)(1)(i)(B). The Commission believes that it has the discretion to modify and/or remove the specific sector carve-out for the G/E/NP Sector if no cost-effective savings can be obtained from that sector. *Phase III Implementation Order* at 71, 74-75. We directed all EDCs to obtain at least 3.5% of their consumption reduction targets from the G/E/NP Sector. *Id.* at 76. EDCs are permitted to carryover excess savings for the G/E/NP Sector from Phase II for application to their Phase III G/E/NP Sector target.

5. Low-income Program Requirements

Act 129 prescribed in Phase I that each EDC's EE&C Plan must include specific energy efficiency measures for households at or below 150% of the FPIG, in proportion to that sector's share of the total energy usage in the EDC's service territory. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G). For Phase III, the Commission proposed to continue this measure prescription. In addition, the Commission required that each EDC obtain a minimum of five-and-one-half percent of its total consumption target from the low-income sector. *Phase III Implementation Order* at 62-63 and 69. Savings counted toward this target could only come from specific low-income programs or low-income verified participants in multifamily housing programs. Savings from non-low income programs cannot be counted for compliance. *Id.* EDCs are only allowed to carryover excess low-income savings into Phase III, based on an allocation factor determined by the ratio of low income specific program savings to savings from non-low income specific programs at the end of Phase II. *Id.* at 85.

6. Proposal for Improvement of Plan

The Company's EE&C Program must include "procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption." 66 Pa. C.S. § 2806.1(a)(6). We note that through the Settlement, Duquesne agrees to adopt or investigate and study several improvements proposed by the Parties to the Settlement. All Parties to this proceeding either agreed to the Settlement or did not oppose the Settlement. As these proposed improvements are addressed in the Company's Plan as revised by the Settlement and as there are no remaining contested issues related to these proposed improvements, we will not discuss them in this Opinion and Order.

C. Cost Issues

In the *Phase III Implementation Order*, we stated:

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale [of] rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding LIURP, established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S.

§ 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

Phase III Implementation Order at 130-131.

1. Plan Cost Issues

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code Ch. 58. 66 Pa. C.S. § 2806.1(g). The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings. For Duquesne, the cap is \$19,545,951.58. This is an annual budgetary limitation, rather than a budget for all of Phase III. *Phase III Implementation Order* at 135.

EDCs cannot use excess Phase II funds to implement Phase III programs. After June 1, 2016, EDCs can only use Phase II budgets to finalize measures installed and commercially operable on or before May 31, 2016, and to finalize any contracts and other Phase II administrative obligations. *Phase III Implementation Order* at 140. Similarly, EDCs may continue to spend their Phase III budgets even if their consumption and/or peak demand reduction goals are met before the end of Phase III. EDCs can spend their Phase III budgets past May 31, 2021, only to account for those program measures installed and commercially operable on or before May 31, 2021, and to finalize the conservation service provider (CSP) and administrative fees related to Phase III. The Commission's Bureau of Audits will subsequently reconcile Phase III funds collected

compared to expenditures, and direct the EDCs to refund any over-collections to the appropriate rate classes. *Id.* at 140.

Finally, the *Phase III Implementation Order* required EDCs to include rebate deadlines in their Phase III EE&C Plans. Although the Commission believes that EDCs and their stakeholders are in the best position to determine the appropriate deadlines, the Commission suggested that 180 days be the maximum deadline. *Phase III Implementation Order* at 142.

2. Cost Effectiveness/Cost-Benefit Issues

The Act requires an EDC to demonstrate that its plan is cost-effective, using the Total Resource Cost (TRC) Test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The TRC Test to be used for evaluating Phase III EE&C Plans was approved by Order entered June 22, 2015 at Docket No. M-2015-2468992 (*2016 TRC Order*).

The Commission will maintain the practice, used in Phases I and II, of using a Net-to-Gross (NTG) ratio for making modifications to programs during the phase, and for planning purposes for future phases. The Commission, however, will determine compliance with targets using gross verified savings. *Phase III Implementation Order* at 105 and 107. We required EDCs to include net TRC ratios, as well as gross TRC ratios, and encouraged EDCs to incorporate language in their EE&C Plans to clarify the speculative nature of these estimates, in order to provide clarity to stakeholders regarding these values. *Id.* at 107.

3. Cost Allocation Issues

66 Pa. C.S. § 2806.1(a)(11) requires that EE&C measures be financed by the same customer class that receives the energy and conservation benefits of those measures. In the *Phase III Implementation Order*, we stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, the EDC is required to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

Phase III Implementation Order at 144 (note omitted).

4. Cost Recovery Issues

The Act allows an EDC to recover from customers, on a full and current basis, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k)(1). Each EDC's plan must include a proposed cost-recovery tariff mechanism, to fund all measures and to ensure a full and current recovery of prudent and

reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H).

In the *Phase III Implementation Order*, the Commission adopted a standardized cost recovery and reconciliation process, and directed EDCs to transition from the cost recovery methodology used during Phase II to a new cost recovery methodology to be used during Phase III. *Phase III Implementation Order* at 145-147 and 149. Among other things, the Commission directed each EDC to include in its Phase III EE&C Plan an annual cost recovery methodology based on the projected program costs that the EDC anticipates will be incurred over the surcharge application year. Each EDC was directed to file a supplement to its tariff to become effective June 1, 2016, accompanied by an explanation of its application to each customer class. The Commission also directed each EDC to annually reconcile actual expenses incurred with actual revenues received for the reconciliation period. *Id.* at 147 and 149.

D. Conservation Service Provider Issues

In the *Phase III Implementation Order*, the Commission required that all Phase III CSP contracts be competitively bid. As a result, the Commission required EDCs to file their Phase III request for proposal (RFP) procedures for Commission review and approval. *Phase III Implementation Order* at 121 and 124. EDCs were encouraged to file their proposed RFP process by August 30, 2015. If Commission staff did not comment on the proposed process within fifteen days of its filing, the EDC was permitted to use that process. *Id.* at 121-122. Duquesne filed its RFP process on August 28, 2015, and Commission staff approved this process by Secretarial Letter dated September 16, 2015.

E. Joint Petition for Full Settlement

1. Introduction

As stated above, on February 9, 2016, the Joint Petitioners filed the Settlement. The Joint Petitioners state that the Settlement has been agreed to, or is not opposed by all active parties in this proceeding, noting that Wal-Mart has indicated that it does not oppose the Settlement. According to the Joint Petitioners, the Settlement is in the public interest and should be approved by the Commission without modification. The Settlement provides for the approval of Duquesne's Phase III EE&C Plan with certain modifications and clarifications as agreed upon by the Joint Petitioners.

2. Terms and Conditions of the Full Settlement

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, and seven appendices. Appendices A through F to the Settlement are the Statements of Duquesne, CAUSE-PA, the OCA, the OSBA, DII and Citizen Power in Support of the Joint Petition for Full Settlement. Appendix G is the letter of non-opposition to the Settlement submitted by Wal-Mart.

The essential terms and conditions of the Settlement are set forth in Section III, as follows:

21. The following terms of Settlement reflect a carefully balanced compromise of the interests of all of the Joint Petitioners in this proceeding. The Joint Petitioners agree that the Settlement, as a whole, provides a reasonable resolution of the issues raised by the various parties in the previously submitted Notices of Intervention, Petitions to Intervene, Comments, and Testimony, and that approval of the Settlement is in the public interest.

22. The Joint Petitioners respectfully request that Duquesne Light's revised Phase III EE&C Plan be approved subject to the terms and conditions of this Settlement as specified below.

23. Duquesne Light will remove the Savings by Design (SBD) residential new construction program in its entirety. Duquesne Light will evaluate the possibility of including a residential new construction program for its Phase IV EE&C Plan.

24. Duquesne Light will reduce the budget for the Residential (non low-income) Home Energy Reports Program from \$2,721,589 to \$1,985,133.

25. Duquesne Light will reduce the budget for the Low Income Home Energy Report Program from \$1,280,218 to \$558,141.

26. Duquesne Light will reduce the projected kWh savings attributable to the Low Income Home Energy Report Program from 12,731,450 to 6,788,925.

27. All amounts reduced from the budgets for the Residential (non low-income) Home Energy Reports Program and the Low Income Home Energy Report Program will be added to the Low Income Whole House Retrofit Program (Low Income WHRP), such that the budget for the Low Income WHRP will be increased from \$2,871,330 to \$5,541,645.

28. Duquesne Light will modify the program description of the Low Income Whole House Retrofit Program (WHRP) to include LEDs and a component for participation by individually metered low income multifamily housing facilities.

29. Duquesne Light will increase the projected kWh savings attributable to the Low Income WHRP from 3,819,435 to 9,761,960.

30. All costs associated with the Low Income WHRP will continue to be allocated to the residential class.

31. All other rate class allocations and budgets proposed in the Plan will remain as originally proposed, but may be modified during the Plan in accordance with the plan change process authorized by the Commission and the requirements of Act 129.

32. The following table shows the effect of the modifications to budgets and projected savings under the Plan.

Program	Original			Settlement		
	kWh	% Low Income	Budgets	kWh	% Low Income	Budgets
Residential						
Savings By Design	409,000		\$1,566,598	0		0
Residential Home Energy Reports	24,146,105		\$2,721,589	24,146,105		\$1,985,133
Low Income						
Low Income Home Energy Reports	12,731,450	50%	\$1,280,218	6,788,925	27%	\$558,141
Whole House Retrofit	3,819,435	15%	\$2,871,330	9,761,960	38%	\$5,541,645
Multi-Family Housing Retrofit (Commercial)	8,912,014	35%	\$4,254,168	8,912,014	35%	\$4,254,168
Total Low Income	25,462,899		\$8,405,716	25,462,899		\$10,353,953

33. Duquesne Light will cooperate with the Pennsylvania Public Utility Commission regarding any necessary modifications to this plan as a result of a change in law, including, but not limited to the potential impact of any modifications to the Public Utility Code. Duquesne Light agrees to collaborate with the parties to this proceeding as necessary to address any such change in law.

34. To the extent Duquesne Light participates in PJM's market, it will comply with the rules for its participation. Additionally, Duquesne Light acknowledges that dual enrolled capacity will require coordination between the Act 129 Conservation Service Providers implementing the

Demand Reduction programs and the participating customer's PJM Curtailment Service Provider.

35. For the Low Income Whole House Retrofit Program, Duquesne Light will make readily available a call-in option for customers unable to access the online audit, in addition to the ability to access the program through referrals from LIURP, gas distribution companies, and other Act 129 residential programs.

36. Duquesne Light will conduct a stakeholder meeting with the Housing Alliance of Pennsylvania, [Pennsylvania Housing Finance Agency], other interested affordable housing trade groups, and other interested stakeholders within 6 months from the start of Phase III to coordinate and tailor the measures targeted in the development of affordable housing.

37. At least once per year, prior to the commencement of a program year, Duquesne Light will include a review of the content of the Home Energy Reports as an agenda item for a stakeholder meeting. Duquesne Light will consider comments from the stakeholders regarding the content of these reports.

38. Duquesne Light will make a good faith effort to implement a combined EE&C Surcharge for the Small & Medium Commercial Class and Small & Medium Industrial Class prior to the end of Phase III. Duquesne Light will make the appropriate filing to the Commission to implement the change and will notify the parties to this case prior to making that filing.

39. To the extent possible, Duquesne Light agrees to include in its final Phase III annual report, in aggregate, the total number of dual enrolled and the single enrolled participants in the Curtailable Load Program, and the aggregate amount of incentive payments paid to dual enrolled participants and single enrolled participants.

40. Duquesne Light confirms that Figure 39 of the Plan (Figure 37 of the Revised Plan) provides the estimated budget for the Large Non-Residential Upstream Lighting Program.

This program targets commercial buildings owners and operators that procure commercial lighting products from commercial lighting equipment distributors. This program is treated as a Commercial program. As planned, the program is funded entirely from the Large Commercial sector surcharge collections. It is the corollary to the Small Nonresidential Upstream Lighting Program that is funded entirely from small commercial sector bill surcharges. Actual program benefits and surcharges will apply to the rate class and customer sector for which the actual program expenditures are made.

41. Duquesne Light confirms that Figure 41 of the Plan (Figure 39 of the Revised Plan) provides the estimated budget for the Public Agency Partnership Program. This program targets governmental buildings and jurisdictional agencies. This program is treated as a Large Commercial program. As planned, the program is funded entirely from the Large Commercial sector surcharge collections. Actual program benefits and surcharges will apply to the rate class and customer sector for which the actual program expenditures are made.

42. With respect to the cost-sharing requirements of the Commercial Multifamily Housing Retrofit Program, Duquesne Light confirms that all property owners and jurisdictional agencies that participate in the program will be required to make a contribution towards the costs of installed measures. Duquesne Light further confirms that Multifamily Housing Retrofit Program costs charged to Commercial customers will not include any expenditures for individually metered customers taking service under a Residential tariff.

43. Duquesne Light further confirms that expenditures within the Multifamily Housing Retrofit Program that are made for individually metered customers residing in multifamily buildings will be recovered in the Residential surcharge, and any associated savings will be credited to the appropriate Residential Program.

Settlement at 6-10.

In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains certain general, miscellaneous terms. The Settlement is conditioned upon the Commission's approval of the terms and conditions without modification. The Settlement establishes the procedure by which any of the Joint petitioners may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to disapprove or modify the Settlement. Settlement at 11, ¶ 49. In addition, the Settlement states that it does not constitute an admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation, including further litigation of this case. Settlement at 11, ¶ 48.

Further, the Settlement provides that if the Commission adopts the Settlement without modification, the Joint Petitioners waive their individual rights to file Exceptions, requests for modification or clarification, and/or appeals with regard to the Settlement. Settlement at 12, ¶ 55. The Joint Petitioners request that the Commission approve this Settlement, including all terms and conditions thereof, without modification and that Duquesne be permitted to implement its proposed Phase III EE&C Plan, as modified by the Settlement. Settlement at 12.

3. Positions of the Parties

The Joint Petitioners assert that, consistent with the requirements set forth in Act 129 and the Commission's *Phase III Implementation Order*, Duquesne's Phase III Plan covers the period from June 1, 2016, through May 31, 2021 and: (a) includes measures to achieve or exceed the required reductions and states the manner in which the consumption reductions will be achieved or exceeded; (b) complies with the designated expenditure cap of 2% of 2006 Annual Revenues for each year of the five-year plan; (c) achieves a total cumulative energy reduction of at least 440,916 MWh by May 31, 2021, with at least 15% of the savings compliance target being achieved in each of the five program years; (d) achieves a minimum of 5.5% of the total required reductions from

the low-income customer sector by May 31, 2021; (e) achieves a minimum of 3.5% of all consumption reduction requirements from units of federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities; (f) includes a proportionate number of energy efficiency measures for low income households as compared to those households' share of the total energy usage in the service territory; (g) offers at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers; (h) achieves peak demand reductions of at least 42 MW; (i) includes a contract with one CSP; (j) includes an analysis of administrative costs of the plan; (k) includes a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307; and (l) demonstrates that the Phase III Plan is cost-effective based on the Commission's TRC Test. Settlement at 2-3.

As stated above, the Commission is required to review proposed settlements to determine if they are in the public interest. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of Duquesne, and its customers, and reflects a carefully balanced compromise of the interests of all of the Joint Petitioners. *Id.* at 10. The Joint Petitioners further assert that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to Duquesne's customers. *Id.*

Each of the six Joint Petitioners prepared a statement in support of the Settlement (Statements). The Statements, which are appended to the Joint Petition as Appendices A through F, are summarized briefly below.

Duquesne submits that, given the diverse interests of the Joint Petitioners, the fact that they have fully resolved their respective issues provides strong evidence that the proposed Settlement is reasonable and in the public interest. Duquesne asserts that it

provided responses to numerous interrogatories and requests for production of documents and provided additional information regarding its Phase III Plan to the Parties during informal discussions. According to Duquesne, the Settlement represents a carefully balanced compromise among the Joint Petitioners, who believe that its approval is in the public interest. Duquesne St. at 1-2.

Duquesne submits that its proposed Phase III Plan complies with the Commission's *Phase III Implementation Order*, including the expenditure cap of \$97.74 million, the allocation of costs to the customer class that receives the benefits of the EE&C measures, and the requirement that the portfolio be cost-effective based on the Commission's TRC Test. Duquesne states that its originally filed Phase III Plan included a total of fifteen programs, but pursuant to the Settlement, the Company agreed to remove one of the programs targeting the residential sector, the Savings By Design New Construction Program. According to Duquesne, the Plan includes measures for each of its customer classes, as required. Duquesne St. at 5-7.

Duquesne notes that under Act 129, the Commission is required to use a TRC test to analyze the costs and benefits of EDC energy efficiency and conservation plans. According to Duquesne, the TRC Test was adopted by the Commission at Docket No. M-2009-2108601 on June 18, 2009, and subsequently was modified on July 28, 2011, August 20, 2012 and June 11, 2015. *Id.* at 11. Duquesne avers that the overall benefit/cost ratio of its proposed Phase III Plan is 1.9, and that it is therefore cost-effective as a whole. *Id.* at 11. Duquesne states that the projected cost of its five-year Phase III Plan is \$97,739,968, exclusive of Duquesne's share of the costs of the Statewide Evaluator (SWE). *Id.* at 10.

With regard to Duquesne's proposed allocation of the costs of its Phase III Plan, Duquesne states that no other Party raised any issues on this proposal. Duquesne notes that it proposed to implement five surcharges to recover costs as close as

reasonably possible to the customer class receiving the benefit as required by Act 129. *Id.* at 11-12.

With regard to its proposed cost recovery mechanism, Duquesne is proposing to continue to use its current EE&C Phase II Surcharge to recover the costs remaining for Phase II and recovery of its Phase III EE&C Plan costs in accordance with the *Phase III Implementation Order*, with one change. Consistent with the Commission's *Phase III Implementation Order*, the reconciliation period for Phase III will run from April 1 to March 31 of a given plan year instead of June 1 to May 31 in the current Phase II Surcharge. Duquesne's mechanism will account for and reconcile Phase II and Phase III revenues and expenses separately. According to Duquesne, no party raised any issues regarding the Company's proposed Cost Recovery Mechanism. Duquesne St. at 13-14.

Duquesne submits that, because no Party has opposed the provisions in its proposed Phase III Plan pertaining to its CSPs; its Quality Assurance/Quality Control process and standards; its Program Management and Reporting System; and its Evaluation, Measurement and Verification Plan; these provisions should be approved. *Id.* at 14-17.

With regard to the specific terms of the proposed Settlement, Duquesne states that, in response to concerns with the effectiveness of the Low-income Home Energy Reports Program raised by both CAUSE-PA and the OCA, the Company has agreed to significant modifications to this program. Under the terms of the Settlement, Duquesne notes that the Company will do the following:

1. Reduce the budget for the Residential (non low-income) Home Energy Reports Program from \$2,721,589 to \$1,985,133.

2. Reduce the budget for the Low Income Home Energy Report Program from \$1,280,218 to \$558,141.
3. Reduce the projected kWh savings attributable to the Low Income Home Energy Report Program from 12,731,450 to 6,788,925.

Duquesne St. at 18-19.

Duquesne states that all amounts reduced from the budgets for the Home Energy Reports Programs will be added to the Low Income Whole House Retrofit Program, such that the budget for this program will be increased from \$2,871,330 to \$5,541,645. Duquesne notes that both CAUSE-PA and the OCA believe that the Low Income Whole House Retrofit Program is a beneficial program that has the potential to provide very real benefits to low-income families. According to Duquesne, CAUSE-PA advocated for expanding this particular program and both CAUSE-PA and the OCA advocated for expanding this program to allow participation by individually metered low income multifamily housing facilities. As such, Duquesne agreed to modify this program to include light emitting diode (LED) lightbulbs and participation by individually metered low-income multifamily housing facilities. Duquesne further agreed to increase the projected kWh savings attributable to this program from 3,819,435 to 9,761,960. Duquesne St. at 18-19.

Duquesne explains that, in response to suggestions of CAUSE-PA, the Company has confirmed that for the Low Income Whole House Retrofit Program, a call-in option will be made readily available for customers unable to access the online audit. Duquesne has also agreed to conduct a stakeholder meeting with the Housing Alliance of Pennsylvania, the Pennsylvania Housing Finance Agency, other interested affordable housing trade groups and other interested stakeholders within six months from the start of Phase III to coordinate and tailor the measures targeted in the development of affordable housing. Duquesne states that it further agreed to include a review of the content of the

Home Energy Reports as an agenda item for a stakeholder meeting prior to the commencement of each program year. Duquesne St. at 18-19.

Next, Duquesne states that in response to concerns raised by CAUSE-PA with regard to the Multifamily Housing Retrofit Program, the Company has agreed to add a component to this program to allow participation by individually metered units. Duquesne avers that to allay the OSBA's concerns with this change, the Company confirms that Multifamily Housing Retrofit Program costs charged to commercial customers will not include any expenditures for individually metered customers taking service under a residential tariff. Duquesne notes that, with respect to the cost-sharing requirements of the Commercial Multifamily Housing Retrofit Program, the Company confirms that all property owners and jurisdictional agencies that participate in the program will be required to make a contribution toward the costs of installed measures. Duquesne further notes that based on feedback from the OSBA, the Company will make a good faith effort to implement a combined EE&C Surcharge for the Small & Medium Commercial Class and Small & Medium Industrial Class prior to the end of Phase III. Duquesne states that it will make the appropriate filing to the Commission to implement this change. Duquesne St. at 20-21.

With regard to the suggestions of the OCA with respect to the Savings By Design Program, Duquesne states that it has agreed to remove that program from the Phase III Plan, and move the funds budgeted for this program into the Low-Income Whole House Retrofit Program. Duquesne avers that the Parties agree that the expenditures within the Multifamily Housing Retrofit Program that are made for individually metered customers residing in multi-family buildings will be recovered in the residential surcharge, and any associated savings will be credited to the appropriate residential program. Duquesne St. at 22-23.

Next, Duquesne submits that in response to some legal and policy issues expressed by DII in its Comments regarding Demand Response, the Settlement confirms that the Company will cooperate with the Commission regarding any necessary modifications to this plan as a result of a change in law, and to collaborate with the Parties to this proceeding as necessary to address any such change in law. According to Duquesne, the Settlement also confirms that to the extent the Company participates in PJM's market, it will comply with the rules for its participation, and acknowledges that dual enrolled capacity will require coordination between the Act 129 CSPs implementing the Demand Reduction programs and the participating customer's PJM CSP. Lastly, Duquesne states that, to the extent possible, the Company agrees to include in its final Phase III annual report, in aggregate, the total number of dual enrolled and single enrolled participants in the Curtailable Load Program, and the aggregate amount of incentive payments paid to dual enrolled participants and single enrolled participants. Duquesne St. at 23.

In conclusion, Duquesne submits that the proposed Settlement is just, reasonable and in the public interest, and should be approved without modification. Duquesne avers that its Phase III EE&C Plan meets all the requirements of Act 129 and the Commission's *Phase III Implementation Order*, and over the course of the five-year program, the Plan will achieve the required energy reduction and demand reduction results with a budget that meets the applicable spending cap. According to Duquesne, the modifications to the Plan made by the Settlement address legitimate concerns of the Parties to this proceeding and will improve the overall performance of the Plan. *Id.* at 25-26.

In its Statement, CAUSE-PA submits that the proposed terms and conditions of the Settlement are in the public interest and should be approved. CAUSE-PA St. at 1. CAUSE-PA states that the Settlement represents a compromise on the issues presented within this proceeding, is fair and reasonable, and avoids the necessity for

further administrative and appellate proceedings and an uncertain outcome inherent in such proceedings. *Id.* at 2-3.

In particular, CAUSE-PA supports the increase in budget for the Low Income Whole House Retrofit Program as this represents a shift in savings targets away from an indirect measure and focuses more intently on deriving savings from direct installation programs. CAUSE-PA asserts that this revision is a critical feature of the Settlement and is consistent with the Commission's stated priority in Phase III for enhanced direct installation measures for low income households. *Id.* at 3-4 (citing *Phase III Implementation Order* at 69-70). CAUSE-PA further states its support for Settlement ¶ 37 as this provision further enhances the focus on direct installation by ensuring that home energy reports are leveraged to achieve long-term savings through participation in programs which offer deeper, more lasting bill and energy saving impacts. *Id.* at 4-5. CAUSE-PA supports the Settlement provisions in ¶¶ 28 and 35, which will allow all low-income residents of multifamily housing in Duquesne's territory to have access to impactful, direct-install measures and with the addition of the call-in option, will allow low-income customers to have greater access to the Low Income Whole House Retrofit Program. *Id.* at 5-6. Finally, CAUSE-PA maintains that the Settlement avoids extended litigation, actively addresses low-income concerns and satisfies the Commission's requirements of Act 129 Phase III. As such, CAUSE-PA submits that the Settlement is in the public interest and should be approved without modification. *Id.* at 7-8.

In its Statement, the OCA states that the Settlement adopts its recommendation to remove the Savings By Design Residential New Construction Program from the Phase III Plan because it did not believe the program would be cost effective. Also, the OCA notes that if Pennsylvania were to adopt an updated International Energy Conservation Code, the cost effectiveness of the program would be even lower than currently projected. The OCA recommended that the funds for this

program be reallocated to other, more cost-effective programs. However, the OCA points out that the Settlement leaves open the possibility of including a residential new construction program in the future by providing that Duquesne will evaluate the possibility of such a program for its Phase IV EE&C Plan. The OCA opines that this agreement results in the most effective use of resources at the current time while also providing flexibility for development of a similar program in the future. OCA St. at 4-5.

Next, the OCA notes that it expressed concern about Duquesne's level of reliance on the Residential Home Energy Reporting Program for significant energy savings and whether the reports are adequately personalized to be useful to individual customers. The OCA states that the Settlement reduces the size of this program and moves funding to other programs that are likely to achieve greater energy savings. The OCA points out that the Settlement reduces the budget for the Residential Home Energy Reporting Program (non low-income) from \$2,721,589 to \$1,985,133, and the budget for the Low Income Home Energy Reporting Program from \$1,280,218 to \$558,141. The OCA explains that funds removed from these two programs will be added to the Low Income Whole House Retrofit Program increasing that program's budget from \$2,871,330 to \$5,541,645. According to the OCA, these Settlement terms help to ensure that the Company's resources are being used in programs that provide assistance with direct install measures to reduce consumption while still providing useful educational information to consumers as well as continuing the home energy reports. OCA St. at 5-6.

Next, the OCA notes that it expressed concern that the messaging included in the Home Energy Reports may not be individualized and targeted enough to be useful to consumers. As such, the OCA had recommended that Duquesne allow customers to provide information regarding the attributes of the specific home energy efficiency measures they have already implemented or programs in which they are participating. The OCA points out that the Settlement provides that at least once per year, prior to the commencement of a program year, Duquesne will include a review of the content of the

Home Energy Reports as an agenda item for a stakeholder meeting which will provide interested parties the opportunity to review the reports and provide feedback to ensure that the reports are as targeted and useful to consumers as possible. Also, the OCA points out that the Settlement will provide the opportunity for customers to call the Company to access the home energy audits if they are unable or do not wish to use an online system. The OCA avers that these Settlement terms will provide valuable movement toward ensuring that home energy reports are targeted and useful to individual customers, which will allow the reports to be more effective tools and to achieve greater energy efficiency reductions in the future. OCA St. at 7-8.

The OCA further notes that it expressed concern that Duquesne's Plan only targeted a small subset of multifamily housing and excluded a large portion of multifamily housing, such as smaller buildings and individually-metered units. The OCA had recommended that the Plan include the full range of multifamily housing, including both small units and large buildings, as well as individually and master-metered buildings. The OCA points out that the Settlement provides that individually metered low-income multifamily housing facilities can participate in the Low Income Whole House Retrofit Program and provides for stakeholder meetings to address energy efficiency measures related to the development of affordable housing. The OCA avers that these Settlement terms will allow the Company to target a larger set of multifamily housing for energy efficiency measures. OCA St. at 8-9.

The OCA submits that the terms and conditions of the proposed Settlement of Duquesne's EE&C Plan represents a fair and reasonable resolution of the issues and claims arising in this matter. According to the OCA, the proposed Settlement will benefit the Commission and all Parties by foregoing the additional costs of litigation and will provide consumers with a reasonable EE&C Plan. As such, the OCA submits that the proposed Settlement is in the public interest and should be approved. OCA St. at 10.

In its Statement, the OSBA states its concerns that in its Phase III Plan, Duquesne combines the Small and Medium C&I customer classes for the purposes of setting an EE&C Rider Charge, but then separates the customers into Commercial and Industrial categories. The OSBA points out that under the Company's current forecasts, the charge for Industrial designated customers, who represent less than seven percent of the class total kWh, will be 0.37 cents per kWh, compared to only 0.07 cents per kWh for the Commercial customers. The OSBA asserts that aggregating the two classes would produce an average of about 0.09 cents per kWh. According to the OSBA, none of the other EDCs differentiate Commercial from Industrial EE&C Surcharges within the Small/Medium C&I rate class group. As such, the OSBA submits that it is reasonable and in the interest of Duquesne's Small C&I customers that, in the Settlement, Duquesne has agreed to make a good faith effort to implement a combined EE&C Surcharge for the Small and Medium Commercial Class and Small and Medium Industrial Class prior to the end of Phase III. OSBA St. at 3.

Next, the OSBA points out that certain master-metered multi-family residences take service under Duquesne's general service tariff schedules and as a result, EE&C subsidies to these customers are borne by other small business customers. The OSBA avers that any load reductions from these customers provides a direct benefit to the landlord who pays the electric bills. The OSBA opines that EE&C plans are both more effective and more equitable when customers contribute a significant share of the costs for the specific programs from which they benefit. The OSBA states that the Settlement provides that landlords shall be required to make a contribution to installed measures which will decrease the disproportionate subsidies to Small C&I customers participating in the Multifamily Housing Retrofit Program, compared to other Small C&I customers. The OSBA asserts that this is in the best interest of Duquesne's Small C&I customers as a class. OSBA St. at 4-5.

The OSBA further notes that Settlement ¶ 42 clarifies that Multifamily Housing Retrofit Program costs charged to Commercial customers will not include any expenditures for individually metered customers taking service under a Residential tariff. Also, the OSBA states that Settlement ¶ 43 clarifies that expenditures within the Multifamily Housing Retrofit Program that are made for individually metered customers residing in multi-family buildings will be recovered in the Residential surcharge, and any associated savings will be credited to the appropriate Residential Program. The OSBA asserts that these clarifications confirm that costs that benefit residential customers are paid by Residential customers and costs that benefit Small C&I customers are paid by Small C&I customers. OSBA St. at 5.

Finally, the OSBA states that settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. The OSBA asserts that avoiding further litigation will serve judicial efficiency and will allow it to more efficiently employ its resources in other areas. The OSBA states its support for the proposed Settlement and asserts that it should be approved in its entirety without modification. OSBA St. 5-6.

In its Statement, DII submits that the Settlement is in the public interest and represents a fair, just and reasonable resolution of Duquesne's Phase III EE&C Plan and should be approved. DII notes that resolving claims related to the Company's Petition through settlement is more cost effective than pursuing these issues further through litigation and avoids uncertainties regarding further expenses associated with possible appeals. Additionally, DII asserts that the Settlement reflects compromises on all sides presented without prejudice to any position any Party may have advanced so far in these proceedings or in future proceedings involving Duquesne. DII St. at 1-3.

With regard to its specific concerns, DII states that Settlement ¶ 33 includes a provision wherein Duquesne agrees to collaborate with the Parties as necessary to

address any changes in law. DII points out that the U.S. Supreme Court recently upheld FERC Order 745, eliminating the need for statewide management of demand response initiatives.³ However, DII states that a vote on Senate Bill 805 remains pending, but, if enacted, that legislation would enable large commercial and industrial ratepayers to opt out of Duquesne's Phase III EE&C Plan.⁴ DII notes that the Settlement acknowledges that the Company must adjust its Phase III Plan accordingly to accommodate for DII's opt-out of any and all EE&C initiatives via a collaborative process among the Parties to achieve consensus regarding DII's participation in Duquesne's present and future EE&C initiatives. DII St. at 3-4.

Next, DII states that Settlement ¶ 34 acknowledges that Duquesne will abide by PJM's Open Access Transmission Tariff requirement that a customer location may have only one PJM Curtailment Service Provider per PJM demand response program. Also, Duquesne acknowledges that dual enrolled capacity will require coordination between the Act 129 Conservation Service Providers implementing the demand reduction programs and the participating customer's PJM Curtailment Service Provider. DII next notes that the terms of Settlement ¶ 39 ensure transparency with regard to Duquesne's demand response programs. DII states that it supports the Company's disclosure of the total number of dual enrolled and single enrolled participants in the Curtailable Load Program and the disclosure of the aggregate amount of incentive payments paid to dual enrolled participants and single enrolled participants. DII further notes that Duquesne agreed to provide the parties with ample information on its demand response initiatives in a degree of detail reflected by the Company's tables in Figures 45 and 46 of its Phase III EE&C Plan. DII St. at 4.

³ *FERC v. Elec. Power Supply Association*, 136 S.Ct. 760, 193 L.Ed.2d 661 (2016).

⁴ S.B. 805, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).

In its Statement, Citizen Power states that, although the Settlement is not perfect, it represents a reasonable compromise that is in the best interest of Duquesne's residential customers, especially the large low-income population. Also, from an environmental standpoint, Citizen Power opines that the Settlement improves upon the Company's original Phase III EE&C Plan. Additionally, Citizen Power avers that the Settlement has the additional public benefit of limiting the costs that would be incurred through litigation of these issues. As such, Citizen Power submits that the Settlement is in the public interest and should be approved. Citizen Power St. at 2.

Specifically, Citizen Power states that the reduction of the budget and projected savings for the Low Income Home Energy Report Program represents a reasonable approach given the minimal amount of evidence supporting the efficacy of these types of programs when applied to low-income populations. Citizen Power avers that the increased budget for the Low Income Whole House Retrofit Program, along with the greater projected savings, benefits the low-income population by providing a greater number of direct-install measures that have an impact on energy affordability and benefits all ratepayers by using the funding for measures that reduce electricity usage over a long-term period. Also, Citizen Power notes that the modification of the Low Income Whole House Retrofit Program to include LEDs as a component not only increases the useful life of the measure beyond that of compact fluorescent lights (CFLs), but also has the potential to create a spillover effect by exposing low-income populations to LEDs as the prices of LEDs continue to decrease in the marketplace. Citizen Power further asserts that the addition of a call-in option for the Low Income Whole House Retrofit Program allows for those without internet access to directly enter the program without having to go through indirect means such as referrals from gas companies. Citizen Power St. at 3-4.

Next, Citizen Power points out some of the environmental benefits of the Settlement, such as Duquesne's commitment to evaluate the potential for a residential

new construction program in its Phase IV EE&C Plan. Citizen Power states that this supports an existing trend toward a greater amount of green building in the Pittsburgh region, which is known as a hub for commercial green building. According to Citizen Power, increasing cost efficiencies may make a residential new construction program more attractive in Phase IV. Citizen maintains that the inclusion of LEDs in the Low Income Whole House Retrofit Program will result in lower levels of free-ridership than if CFLs were used in the program. Additionally, the commitment of Duquesne to review the content of the Home Energy Reports annually during a stakeholder meeting will allow for potential adjustments to the program to be made, potentially resulting in higher savings and/or persistence levels. Citizen Power opines that the existence of an annual review of the Home Energy reports will allow for such information to be used during Phase III to improve the programs as the information becomes available. Citizen Power St. at 4-5.

4. Disposition

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the proposed Settlement. The Settlement provides for certain modifications to the Phase III Plan initially proposed by Duquesne, and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding. Based on our review of the record, we conclude that the proposed Settlement is in the public interest, and shall approve it without modification

We are in agreement with the Joint Petitioners that the proposed Settlement represents a reasonable compromise and resolution of the issues that the Joint Petitioners raised in this proceeding. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of Duquesne and its customers, and reflects a carefully balanced compromise of the interests of all of the Joint Petitioners. Settlement at 6. The Joint Petitioners further assert, and we agree, that

approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to Duquesne's customers by lending certainty to the outcome of this proceeding. *Id.* at 10.

In addition, we conclude that Duquesne's Revised Phase III Plan filed pursuant to the Settlement is in the public interest because it conforms to the Commission's previously described requirements as set forth in Act 129 and our *Phase III Implementation Order*. We find that consistent with these requirements, Duquesne's Revised Phase III Plan: (a) includes measures to achieve or exceed the required reductions and states the manner in which the consumption reductions will be achieved or exceeded; (b) complies with the designated expenditure cap of 2% of 2006 Annual Revenues for each year of the five-year plan; (c) achieves a total cumulative energy reduction of at least 440,916 MWh by May 31, 2021, with at least 15% of the savings compliance target being achieved in each of the five program years; (d) achieves a minimum of 5.5% of the total required reductions from the low-income customer sector by May 31, 2021; (e) achieves a minimum of 3.5% of all consumption reduction requirements from units of federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities; (f) includes a proportionate number of energy efficiency measures for low income households as compared to those households' share of the total energy usage in the service territory; (g) offers at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers; (h) achieves peak demand reductions of at least 42 MW; (i) includes a contract with one conservation service provider; (j) includes an analysis of administrative costs of the plan and how they are allocated; (k) includes a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307; and (l) demonstrates that the Phase III Plan is cost-effective based on the Commission's Total Resource Cost Test.

Nevertheless, we conclude that the proposed tariff should include additional language in order to conform to the Plan. Because the additions to the proposed tariff are intended to promote consistency, this issue does not affect our conclusion that the proposed Settlement complies in all material respects with the requirements of the *Phase III Implementation Order*.

Specifically, we find that the Plan adequately addresses how the Company will allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits. However, we find that the proposed tariff does not provide a description of this methodology. To ensure that the allocation methodology is clearly defined in its EEC III tariff, we direct the Company, when it submits its compliance filing, to include a detailed description of the allocation methodology that will be used to allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits.

V. Conclusion

For the reasons set forth, *supra*, and based on our review of the record and the applicable law, we will grant Duquesne's Petition for Approval of its Energy Efficiency and Conservation Phase III Plan, approve the Petition for Full Settlement, and approve Duquesne's Revised Phase III EE&C Plan, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase III Plan is granted, consistent with this Opinion and Order.

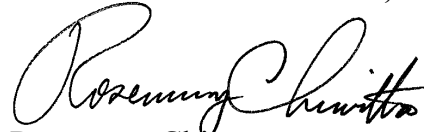
2. That Duquesne Light Company is permitted to implement its revised Energy Efficiency and Conservation Phase III Plan, as filed on February 9, 2016, consistent with this Opinion and Order.

3. That the Joint Petition for Full Settlement filed on February 10, 2016 is approved.

4. That Duquesne Light Company is directed to include a detailed description of the allocation methodology that will be used to assign costs to the various customer classes in its compliance tariff.

5. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering paragraph, shall have the full force and effect as if fully contained in this part.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 10, 2016

ORDER ENTERED: March 10, 2016