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October 5, 2012

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015
Docket No. P-2012-2302074

Dear Secretary Chiavetta:

Enclosed for filing please find the Main Brief of PPL Electric Utilities Corporation for the above-referenced proceeding. Copies will be provided as indicated.

Respectfully Submitted,

Michael W. Hassell

MWH/skr
Enclosures
cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

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

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Michael W. Hassell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015	: : : : :	Docket No. P-2012-2302074

MAIN BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

TO ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL

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Dated: October 5, 2012

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I. INTRODUCTION

A. SUMMARY AND STATEMENT OF POSITION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company") has filed a petition with the Pennsylvania Public Utility Commission ("Commission") requesting approval of a default service program and procurement plan for the period June 1, 2013 through May 31, 2015 ("DSP II Program"). The purpose of the DSP II Program is to establish the terms and conditions under which PPL Electric will provide default service and obtain generation supply for the period beginning June 1, 2013 through May 31, 2015. In addition, PPL Electric's DSP II Program filing includes PPL Electric's proposals to comply with the Commission's final orders in its Retail Markets Investigation. *See Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket Number I-2011-2237952 (December 16, 2011) ("*December 16 RMI Order*") and the Commission's *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, 2012 Pa. PUC LEXIS 324 (March 2, 2012) ("*RMI-IWP Final Order*").

In developing the default service components of the DSP II Program, PPL Electric retained the basic structure of the successful laddered procurement process that is being used in the current Default Service I ("DSP I") Program and in the predecessor Competitive Bridge Plan ("CBP") (PPL Electric St. 1, p. 7). The Company incorporated certain modifications in the DSP II Program to address lessons learned from the DSP I Program and to align the program with provisions of the Commission's order in the *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, 2011 Pa. PUC LEXIS 617 (Dec. 16, 2011) ("*December 16 RMI Order*"). The DSP II Program contains the following major default service components:

- Residential and Small Commercial and Industrial ("Small C&I") Customer Class default service supplies will be separately acquired through a series of fixed-price, full-requirements, load-following contracts;

- The fixed-price, full-requirements, load-following supply will be obtained through semi-annual solicitations beginning in April 2013 and continuing through October of 2014;

- PPL Electric will obtain fixed percentages of default service load through 12- and 9-month contracts replacing expiring contracts under the DSP I Program, in order to position itself for procurements to be made under laddered yearly contracts procured every six months;

- The October 2014 procurement will procure 6- and 3-month contracts, so that no fixed-price load-following, full-requirements contracts extend beyond May 31, 2015, consistent with the Commission's *December 16 RMI Order*;

- The Company will cease procuring spot supply for the Residential and Small C&I Customer Classes;

- The Company will not procure additional block supplies and will allow block supplies procured for the Residential Customer Class under the DSP I Program to expire as scheduled, with the result that the Company will have only 150 MW of block supply under contract at May 31, 2015, pursuant to existing 5- and 10- year contracts procured under DSP I Program;

- The Company proposes that certain winning suppliers under the default service procurements for the Residential and Small C&I Customer Classes also would be responsible to provide supply to serve default service time-of-use ("TOU") load under separately established payment terms.

- Regarding the Large C&I Customer Class, the Company proposes to continue to procure default service supply with energy priced to the PJM real-time spot market, through annual solicitations to obtain competitive offers from wholesale suppliers.

(PPL Electric St. 1, pp. 8, 13; PPL Electric St. 2, pp. 14-23).

In addition, the DSP II Program includes proposals to establish new retail market enhancement initiatives. These initiatives include:

- A Customer Referral Mailing prior to undertaking the Opt-In Auction Program;

- An Opt-In Auction Program with a minimum 5% discount off the PTC, a $50 bonus, and a 6-month contract term; and

- A Standard Offer Referral Program with a 7% discount off the PTC and a 6-month contract term.

(PPL Electric St. 4, pp. 19-29). As explained in this Brief, these initiatives are closely modeled after the program designs established in the Commission's *RMI-IWP Final Order*. PPL Electric is a strong supporter of customer choice and is encouraged by the success of shopping to date in its service territory, which is the highest of any of the major electric distribution companies in Pennsylvania. (PPL Electric St. 1-R, p. 4). PPL Electric believes that these further initiatives can build upon the success of shopping to date in PPL Electric's service territory. As will be explained in this Brief, the Company believes that the success of these initiatives will depend, in part, on the timing of the introduction of the programs, so as to avoid customer confusion that could hinder the further development of a robust retail competitive market.

PPL Electric developed an integrated design for the various proposals set forth in the DSP II Program. The default service products and procurement structure recognize, and adapt to, the high level of shopping in PPL Electric's service area. In addition, the default service products and procurements are aligned with the market enhancement initiatives set forth in the DSP II Program. The default service products and procurements also align with the Commission's plans to establish an "end-state" default service structure to be effective June 1, 2015. As such, the DSP II Program should be viewed as a further interim step to the final development of default service.

For the reasons set forth below, PPL Electric's DSP II Program is in the public interest and should be approved.

B. BACKGROUND INFORMATION AND PROCEDURAL HISTORY

On January 1, 1997, the Electricity Generation Customer Choice and Competition Act ("Customer Choice Act") became effective, adding Chapter 28 to the Public Utility Code.[1] Of specific relevance to this proceeding, Section 2807 required each Electric Distribution Company

[1] 66 Pa. C.S. Chapter 28.

("EDC") to act as the Default Service provider for its non-shopping customers in accordance with the Commission's regulations. The Commission adopted regulations governing the Default Service obligation in 52 Pa. Code §§ 54.181-189 (relating to Default Service) (*i.e.*, the Default Service Regulations), as required by 66 Pa. C.S. § 2807(e) (relating to the duties of electric distribution companies). Pursuant to the Default Service Regulations, the Default Service provider shall be the EDC in its certificated service territory unless the Commission assigns the Default Service obligation to another entity. A Default Service provider is responsible for the provision of Default Service to retail customers who do not choose to receive generation service from an Electric Generation Supplier ("EGS"),[2] or whose EGS has failed to deliver electric energy.

On October 15, 2008, then Governor Rendell signed House Bill No. 2200, subsequently identified as Act 129 of 2008 ("Act 129"),[3] which established, *inter alia*, certain new requirements for the acquisition of Default Service supply by EDCs. Among other provisions, the law amended the Customer Choice Act to require EDCs, in their role as Default Service providers, to procure supply through competitive processes utilizing a "prudent mix" of contracts that are designed to ensure "the least cost to customers over time."[4] In addition, Act 129 also required EDCs to furnish smart meter technology and directed Default Service providers to offer time-of-use rates.[5] The Commission subsequently adopted amendments to its Default Service Regulations to conform to the provisions of Act 129. *Final Rulemaking Order, Implementation of Act 129 of 2008*, Docket No. L-2009-2095604, 2011 Pa. PUC LEXIS 114 (Oct. 4, 2011) ("*Default Service Final Rulemaking Order*").

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[2] *See* 66 Pa. C.S. § 2803.
[3] Codified in relevant part in 66 Pa. C.S. § 2807(e).
[4] *See* 66 Pa. C.S. § 2807(e)(3.2), (3.4).
[5] *See* 66 Pa. C.S. §2807(f).

Pursuant to the requirements of the Competition Act, on April 1, 1997, PPL Electric's predecessor, Pennsylvania Power & Light Company, submitted a comprehensive restructuring plan to the Commission. In a final order entered August 27, 1998, the Commission approved the Restructuring Settlement among the Company and almost all other active parties in the restructuring proceeding.[6] The Restructuring Settlement, *inter alia*, confirmed that PPL Electric would continue to serve as the Default Service provider for its non-shopping retail customers through December 31, 2009.[7]

On August 2, 2006, PPL Electric filed the CBP that set forth a detailed proposal for how PPL Electric would obtain its Default Service supply for 2010, which was described as a "bridge" year because PPL Electric's generation rate cap expired one year before most other major Pennsylvania EDCs. After extensive review and several modifications addressing issues raised by other parties, the Commission approved a revised CBP on May 17, 2007, at Docket No. P-00062227.[8]

On August 28, 2008, PPL Electric filed its DSP I Program[9] to establish the terms and conditions under which PPL Electric would provide Default Service and obtain generation supply for that service following conclusion of the CBP. On March 11, 2009, a Joint Petition for Settlement ("Settlement") was submitted to the presiding Administrative Law Judge in the DSP I Program proceeding. The Settlement contained a full description of the DSP I Program, as revised and agreed to by the parties, pursuant to which PPL Electric would provide Default

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[6] *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code*, Docket No. R-00973954, 1998 Pa. PUC LEXIS 131 (June 15, 1998) ("Restructuring Order").

[7] *See* Restructuring Settlement, Section C.1 (*i.e.*, for the duration of the stranded cost recovery period) (PPL Electric Ex. 1, p. 14).

[8] Although not a filed settlement, as a result of revisions and stipulations made in response to various parties' concerns, the revised CBP that was approved by the Commission either was supported by or was not objected to by a majority of the parties to the CBP proceeding. (PPL Ex. 1, pp. 14-15).

[9] *See* Docket No. P-2008-2060309.

Service and obtain generation supply for that service for the period from January 1, 2011 through May 31, 2013. On June 30, 2009, the Commission entered a Final Order approving the Settlement and ruling upon two issues not resolved by the Settlement.[10]

On May 1, 2012, PPL Electric filed its Petition for approval of the DSP II Program. The Company served the Petition on the public advocates and the electric generation suppliers doing business in its territory. On May 16, 2012, PPL Electric filed its direct testimony.

On May 19, 2012, notice of the Petition was published in the Pennsylvania Bulletin, 42 Pa.B. 2871, along with notice of the prehearing conference scheduled for June 6, 2012. The deadline for filing interventions and protests was set for June 4, 2012.

A Notice of Appearance was filed by the Commission's Bureau of Investigation and Enforcement ("I&E") on May 14, 2012. A Notice of Intervention and Answer was filed by the Office of Consumer Advocate ("OCA") on May 21, 2012, and by the Office of Small Business Advocate ("OSBA") on June 4, 2012. Petitions to intervene were filed by: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE"), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, "Constellation"), Dominion Retail, Inc. d/b/a Dominion Energy Solutions, and Interstate Gas Supply (collectively, "DES/IGS"), Eric Joseph Epstein, UGI Energy Services d/b/a UGI EnergyLink, Direct Energy Services ("Direct Energy"), FirstEnergy Solutions Corporation ("FES"), Nextera Energy Resources, and Noble Americas Energy Solutions, PP&L Industrial Customer Alliance

[10] *Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Docket No. P-2008-2060309, 2009 Pa. PUC LEXIS 1446 (June 30, 2009). Subsequently, by Order entered March 11, 2011, the Commission approved a modification to the DSP I Program to incorporate a revised method for acquiring Solar Tier I AECs. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan For the Period of January 1, 2011 Through May 31, 2013 for Approval to Modify its Procurement of Solar Alternative Energy Credits*, Docket No. P-2008-2060309, 2011 Pa. PUC LEXIS 793 (March 1, 2011). (PPL Electric Ex. 1, pp. 15-17).

("PPLICA"), Retail Energy Supply Association ("RESA") and Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF").

In accordance with the first prehearing order issued on May 9, 2012, each of the parties and intervenors filed a prehearing memorandum on June 4, 2012.

A prehearing conference was held as scheduled on June 6, 2012, with Administrative Law Judge Susan D. Colwell (the "ALJ") presiding. At the prehearing conference, the ALJ adopted the procedural schedule agreed to by the parties. On June 7, 2012, the ALJ issued the second prehearing order.

Consistent with the procedural schedule established in this proceeding, the opposing parties filed direct testimony on July 20, 2012. On July 30, 2012, the parties participated in a settlement conference. On August 17, 2012, the parties filed rebuttal testimony and surrebuttal was filed on August 31, 2012.

Evidentiary hearings were held on September 7, 10 and 11, 2012. At the evidentiary hearings held on September 10, 2012, PPL Electric submitted rejoinder testimony. Furthermore, the prefiled written testimony and exhibits were admitted into the record, and various witnesses were cross-examined at the evidentiary hearings held on September 7, 10 and 11, 2012.

II. SUMMARY OF ARGUMENT

PPL Electric has sought to support several goals with its DSP II Program filing. First, the Company has sought to retain the basic structure of the procurement process it has used in the DSP I Program and CBP. This procurement process has worked very successfully in these prior programs, and the Company believes the basic structure should be retained. Second, the Company has sought to simplify that procurement process by reducing the number of products and frequency of procurements. The simplifications were developed in large measure in

response to the successful level of shopping to date across all of the Company's customer classes, and to accommodate and encourage further increases in shopping in the future. Third, the Company has sought to structure its default service procurements in a manner that could provide the greatest flexibility to respond to the Commission's ultimate determination on end-state default service structure. The Company has minimized the amount of default supplies under contract after May 31, 2015, and has generally structured its proposals with the underlying view that this is a transitional filing to end state. Fourth, the Company has sought to closely follow the Commission's recommendations related to retail market enhancements set forth in the *RMI-IWP Final Order*. The Commission undertook a detailed analysis before establishing those market enhancements, and in a further effort to simplify the filing, the Company chose to follow those recommendations. Finally, PPL Electric sought to coordinate the components of the default service procurements and the retail market enhancements in an effort to further enhance shopping. The Company believes that a coordinated effort will best enhance the possibility for success of the retail enhancements by providing comfort and confidence to customers that they will experience a positive shopping experience.

PPL Electric respectfully requests that its DSP II Program filing be approved in its entirety.

III. ARGUMENT

A. LEGAL STANDARDS

1. Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), PPL Electric has the burden of proof in this proceeding:

> "Except as may be otherwise provided in Section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

It is to be emphasized, however, that the burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). If the Applicants and opposing parties present evidence found to be of precisely equal weight, then the Applicants will not have carried their burden of proof. Otherwise, the side that presented evidence found to be more persuasive, even by the slightest amount, will prevail. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). However, a party that offers a proposal not included in the Applicant's filing bears the burden of proof for such proposal. *See, e.g., Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. R-00061931, 2007 Pa. P.U.C. LEXIS 45 at *165-68 (Sept. 28, 2007); *Pa. P.U.C. v. Metropolitan Edison Company*, Docket No. R-00061366, 2007 Pa. P.U.C. LEXIS 5 at *111-12 (Jan. 11, 2007). As the proponent of a Commission order with respect to its proposals, such party bears the burden of proof as to proposals not included in the filing.

As explained below, the Company has fully met its burden of proof, and its position on the issues presented in this proceeding should be adopted.

2. Standards Applicable To Default Service

The DSP II Program includes and/or addresses all of the elements prescribed by Section 2807(e) of the Public Utility Code, the Commission's regulations and the Commission's policies for a Default Service plan. Pursuant to 52 Pa. Code § 54.185, a Default Service provider must file a Default Service program with the Commission no later than 12 months prior to the

conclusion of the currently effective Default Service program.[11] PPL Electric's DSP I Program will conclude May 31, 2013 and the Company filed its proposed DSP II Program on May 1, 2012. The Commission's regulations provide that after the first Default Service program, the program term will be determined by the Commission.[12] In its *December 16 RMI Order*, the Commission directed EDCs to propose two-year Default Service plans in their next filing. The Company is proposing that the DSP II Program be in place for a period of two years.

Sections 2807(e)(3.1), (3.2), (3.4) and 2807(f) of the Public Utility Code provide among other things, that:

- The Default Service provider shall provide electric generation supply service to customers pursuant to a Commission-approved competitive procurement plan.[13]
- The electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following: (i) auctions; (ii) requests for proposal; and (iii) bilateral agreements.[14]
- The electric power procured shall include a prudent mix of the following: (i) spot market purchases; (ii) short-term contracts; and (iii) long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract.[15]
- The prudent mix of contracts shall be designed to ensure: (i) adequate and reliable service; (ii) the least cost to customers over time; and (iii) compliance with the requirements of Section 2807(e)(3.1).[16]
- The Default Service service provider shall offer a time-of-use rate plan to all customers that have been provided smart meter technology.

As will be explained in this Brief, the Company's proposed Default Service Procurement Plan meets these standards.

In addition, pursuant to 52 Pa. Code §§ 54.185(d)(1)-(6), a Default Service program must include, among other things, the following elements:[17]

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[11] 52 Pa. Code § 54.185(a).
[12] 52 Pa. Code § 54.185(c).
[13] *See* Section III.B.1, below.
[14] *Id.*
[15] *Id.*
[16] *Id.*

(1) A procurement plan identifying the default service provider's electric generation supply acquisition strategy for the period of service. The procurement plan should identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1 – 1648.8) for the period of service.[18]

(2) An implementation plan identifying the schedules and technical requirements of competitive bid solicitations and spot market energy purchases, consistent with § 54.186 (relating to default service procurement and implementation plans).[19]

(3) A rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff.[20]

(4) Documentation that the program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the default service provider is providing service. The default service procurement plan's period of service must align with the planning period of that RTO or other entity.[21]

(5) Contingency plans to ensure the reliable provision of default service when a wholesale generation supplier fails to meet its contractual obligations.[22]

(6) Copies of agreements or forms to be used in the procurement of electric generation supply for default service customers. This includes all documents used as part of the implementation plan, including supply master agreements, request for proposals documents, credit documents and confidentiality agreements. When applicable, the default service provider shall use standardized forms and agreements that have been approved by the Commission.[23]

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[17] 52 Pa. Code §§ 54.185(d)(7) is inapplicable because PPL Electric does not have any generation contracts of greater than two years in effect with retail customers in its service territory.

[18] *See* Section III.B.1., below.

[19] *See* PPL Electric Ex. 1, Appendices B and C and Section III.B.4.a., below.

[20] *See* Section III.B.2., below, and PPL Electric Ex. 1, Appendix D. *See* 66 Pa. C.S. § 2807(3.9) ("The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a Commission-approved competitive procurement plan").

[21] *See* Section III.B.4.c., below.

[22] *See* Section III.B.4.d., below.

[23] *See* Section III.B.4.a., below, and PPL Electric Ex. 1, Appendices A and B.

In addition to addressing each of these requirements, the DSP II Program also addresses the various other guidelines established by the Commission's *RMI–IWP Final Order* and the *December 16 RMI Order.*

B. THE PROPOSED DEFAULT SERVICE PROGRAM

1. Class Procurements

a. Residential - Fixed Rate

PPL Electric's proposed procurement plan for the Residential Class fixed rate default service is built off of, and coordinates with, the procurement structure established in the DSP I Program. (PPL Electric Ex. 1, Appendix C). As explained by PPL Electric witnesses Cavicchi and Yeager, PPL Electric proposed certain modifications to the DSP I Program procurements in its DSP II Program filing in order to improve upon the DSP I Program procurement based upon certain lessons learned. (PPL Electric St. 2, pp. 8-14; PPL Electric St. 1, pp. 7-10; PPL Electric St. 1-R, pp. 5-7). In order to better understand the structure of procurements and the proposed modifications contained in DSP II Program, it is helpful to summarize the procurement terms of the DSP I Program.

PPL Electric's DSP I Program obtains a portfolio of laddered fixed-price full-requirements[24] load following supplies, real-time wholesale electricity spot market full-requirement, load-following supplies, and longer-term fixed price block supplies for residential customers. (PPL Electric St. No. 2, p. 8). As shown on PPL Electric Ex. JC-1, PPL Electric currently purchases 350 MW of block supplies under 24 x 7 contracts. These block supplies include four layered 50 MW block products that are scheduled to expire in 50 MW increments

[24] The term "full requirements" means that the wholesale supplier is responsible to provide energy, capacity, transmission (other than Non-market-based Transmission Services), ancillary services, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply Default Service to PPL Electric's default customers, including AEPS credits. (PPL Electric St. 1, p. 6).

on a quarterly basis beginning May 31, 2013. The Company has two 50 MW five-year term block products that will expire on December 31, 2015.[25] The ten-year 50 MW block unit entitlement product has a contract term extending to May 31, 2021. (PPL Electric St. 1, p. 10). PPL Electric purchases full-requirements, load-following products to supply 100% of residential default service requirements that remain after the purchase of the long term block products. (PPL Electric Ex. JC-1). Of these load-following products, 90% are purchased under fixed-price, full-requirements contracts. The remaining 10% of these full-requirements, load-following supplies are purchased under contracts priced at the real time spot market. The purchase of the fixed-price, full-requirements, load-following supplies are laddered, with a mixture of 12-month and 24-month products. (PPL Electric Ex. JC-1).[26] Under the DSP I Program, the product mixture is structured around quarterly procurements with one or more block, spot full-requirements, or fixed-price full-requirements products being procured every three months. (PPL Electric St. 2, p. 9; PPL Electric Ex. JC-1).

PPL Electric's DSP II Program proposes several changes to the product mixture and schedule of procurements of default service supplies for residential customers. First, PPL Electric proposes to eliminate 24-month contracts. As these contracts expire, they will be replaced with fixed-price, full-requirements, load-following products with contract terms that are no greater than 12 months. Second, PPL Electric proposes to eliminate the purchase of spot market full-requirements load-following supplies and replace these products with fixed-price, full-requirements, load-following products with terms no greater than 12 months. Third, PPL Electric proposes to eliminate the procurement of additional block supply and allow a gradual

[25] See PPL Electric Ex. JC-4A.

[26] In order to achieve the laddering effect following PPL Electric's one-year CBP, and to coincide with the PJM year, the 12- and 24-month fixed price full requirements contracts were preceded by contracts with terms varying from 5 months to 26 months. (PPL Electric Ex. JC-1). The spot market full-requirements, load-following contracts are purchased once per year, effective June 1. (PPL Electric Ex. JC-1).

phase down in the amount of block supply procured for the Residential Class as block supply contracts executed during the DSP I Program expire during the DSP II Program. (PPL Electric St. 2, p. 5; PPL Electric St. 1-R, p. 6). At the conclusion of the DSP II Program term, the Company would have 150 MW of block supplies remaining under contract. (PPL Electric St. 2, p. 10).

In addition, PPL Electric proposes to reduce the frequency of procurements from a quarterly basis to a semi-annual basis. (PPL Electric St. 2, p. 16). The goal is to move to a product mixture in which half of the Company's procurements turn over every six months. (PPL Electric St. 1-R, p. 6). To achieve this goal, the Company proposes to purchase 12- and 9-month products semi-annually. Through these semi-annual procurements, the 12-month product will be solicited approximately one month prior to delivery while the 9-month product will be procured approximately four months prior to delivery. (PPL Electric St. 2, p. 16; PPL Electric Exhibit JC-4A). The one exception to this procurement schedule is that the October 2014 procurement will obtain supplies under 6- and 3-month fixed-price, full-requirements, load-following contracts, so that no fixed-price load-following contracts would extend beyond May 31, 2015. (PPL Electric St. 1-R, pp. 6-7). This is designed to comply with the Commission's recommendation in its *December 16 RMI Order* that default service suppliers minimize the amount of supply under contract after May 31, 2015. (*December 16 RMI Order* at p. 19). PPL Electric has included a provision that would allow it to extend the term of these final DSP II procurements by an additional six months depending upon what the Commission decides with respect to the end state of default service. (PPL Electric St. 2, p. 16).

i. Product Mixture

As noted above, PPL Electric's proposed product mixture for the residential fixed rate procurement is to purchase laddered 12-month and 9-month fixed price full requirements load-following products. The Company proposes to eliminate the purchase of 24-month full requirements load following products, as well as the 10% of load-following spot price products currently being acquired under the DSP I Program.[27] In addition, the Company proposes to not procure any additional block products, with the result that the current layered standard 350 MW of 24 X 7 block products will be reduced by 50 MW every three months beginning June 2013 until only 150 MW of long term block products will remain after March 2014. (PPL Electric Ex. JC-4A).

PPL Electric's proposed changes to its residential product mixture are substantially related to the Company's relatively high success in encouraging and supporting customer shopping in PPL Electric's service territory. PPL Electric has the highest current percentage of customer shopping of all major EDCs in Pennsylvania, and as of July 1, 2012, over 46% of residential customer load was being served by an alternative supplier. (OSBA Ex. IEc-S1; PPL Electric St. 2, pp. 17-20). This level of shopping, combined with expectations of further

[27] PPL Electric proposes to continue to purchase a small amount of spot market supply, approximately 3 MW of energy, priced at the real time locational marginal price ("LMP") for the PPL Zone through a PJM internal bilateral contract, for a six-month period of time from June through November 2013. This purchase will be made to resolve a legacy contract issue. The term "Block Supply" as originally defined in the DSP I Program Supply Master Agreement ("SMA") identified a total of 350 MW of purchases with no stated reference to potential reductions to block procurements that could occur as block contracts begin to expire at the end of May 2013 and quarterly thereafter. (PPL Electric St. 1, p. 11). When PPL Electric became aware that full requirement suppliers in the DSP I procurements might be expecting the level of block supplies to continue indefinitely, the Company in December 2011 requested that existing full requirements wholesale suppliers sign a contract addendum containing a revision to the definition of block supply. All new wholesale suppliers were required to sign the same contract addendum going forward. Two existing wholesale suppliers, with two-year term supply contracts extending to November 2013, declined to sign the addendum. To avoid a contract interpretation issue with these suppliers, the Company will use the approximately 3 MW of spot supplies to fill in expiring block supplies for these two wholesale suppliers over the first six months of the new DSP II Program. (PPL Electric St. 1, pp. 11-12).

increases in residential shopping, supported a decision to move to a more simplified product mix, with shorter term fixed-price, full-requirements, load-following contracts.

With respect to PPL Electric's proposal to eliminate further procurements of 24-month fixed-price, full-requirements, load-following products, PPL Electric's expert consultant, Mr. Cavicchi, concluded that the significant reduction in default service supply obligation increases the volumetric risk to wholesale suppliers associated with these longer-term products. (PPL Electric St. 2, p. 17). The Company has already seen evidence of less interest in supplying a 24-month product as compared to the 12-month product. (PPL Electric St. 2-R, p. 25; PPL Electric Ex. JC-1-R). This observation provides further support for the decision to eliminate 24-month contracts from the DSP II Program product mix.

The Company's proposal to eliminate spot market products also is associated with the increased level of residential shopping in PPL Electric's service area. As explained by PPL Electric's witness Cavicchi, spot market products have been included in PPL Electric's DSP I procurement to balance the less frequent price changes that occur with 24-month products. By eliminating the 24-month products, and shifting to shorter term laddered one-year products, the need for spot supply to balance the longer term products is eliminated. (PPL Electric St. 2, p. 18). Furthermore, as explained later in this Brief, the use of spot market priced products has contributed to the need for reconciliation adjustments, as spot market projections included in the price to compare vary from actual spot market prices. (PPL Electric St. 2, p. 19). The result has been that default service prices, and the resulting Price to Compare ("PTC"), have not accurately tracked market conditions. By eliminating contracts with spot market pricing, this contributing factor to reconciliation adjustments is removed.

Finally, the Company's proposal to reduce reliance on block products for residential customers also is associated with the comparative success of shopping in PPL Electric's service area. Because block supply under the DSP I Program is a fixed level of 350 MW of 24 x 7 product, increased shopping has increased the proportion of default service load that is being provided by block supply. As shown on PPL Electric Ex. JC-5, PPL Electric's current reliance on block supply has risen to almost 40% of total annual residential default service load. (PPL Electric St. 2, p. 12). Under minimum load conditions, the current level of block supplies is providing nearly all residential default service load. (PPL Electric St. 2-R, p. 8). Given PPL Electric's and the Commission's further efforts to increase shopping, PPL Electric will likely be forced to sell a portion of its block supplies, potentially at a loss, if it continues to purchase the current level of block supplies. (PPL Electric St. 1, p. 10). By allowing existing block purchases to expire without replacement, PPL Electric estimates that it will be able to reduce its reliance on block products to approximately 15-20% of its residential default service supply during the term of the DSP II Program. (PPL Electric St. 2, p. 20).

The use of block products also has contributed to the need for reconciliation. Changes in the percentage of customer load that is shopping changes the percentage of customer load that is being served by the block supplies. As a result, PTC price projections, which necessarily must project the amount of residential load and the proportion that is served by block supply, will vary from actual residential load served by default supplies and thereby change the proportion of default service supply actually served from the block supplies. This increases the likelihood of a divergence between amounts collected from default service customers and actual payments to the Company's various wholesale suppliers. (PPL Electric St. 2, p. 20). PPL Electric's proposal to reduce reliance on block supply will therefore reduce reconciliation adjustments arising from

forecasting, thereby more closely align default service prices with actual market prices established by fixed-price, full-requirements, load-following contracts.

PPL Electric's procurement satisfies Act 129's requirements to obtain a prudent mix of supplies for customers that insures a least cost over time. PPL Electric's reliance on shorter term, fixed-price, full-requirements, load-following products, with block supplies providing about 15-20% of customer requirements, will provide the benefit of reasonable price stability while tracking ongoing changes in wholesale electricity market prices. (PPL Electric St. 1-R, pp. 7-10). The proposed product mix will continue to promote development of retail competition while protecting against extreme price volatility. The products being purchased are well known throughout the industry, and past experience demonstrates that one-year fixed-price, full-requirements, load-following products can be competitively procured by PPL Electric. (PPL Electric St. 2, p. 29).

The use of fixed-price, full-requirements, load-following products also has resulted in reasonable prices for customers while encouraging retail competition. PPL Electric witness Cavicchi presented calculations to demonstrate that the prices obtained for the various fixed-price, full-requirements, load-following products serving the residential class were consistent with, and likely less expensive than, a cost buildup that totaled the estimated costs of each of the major components of the full requirement product obtained separately.[28] On average, across the auction solicitations, the fixed-price, full-requirements, load-following product prices, which include all costs plus margin, were only slightly higher than the cost buildup, by roughly $1.10 per megawatt hour for the residential customer group. This demonstrates that default service pricing based on the auction procurement of fixed-price, full-requirements, load-following

[28] The components of the cost buildup included the cost of energy based upon block products plus a load-shaping adjustment, the cost of capacity, the cost of ancillary services and the cost of Alternative Energy Credits. (PPL Electric St. 2, pp. 30-31).

products has been competitive and consistent with market conditions. (PPL Electric St. 2, p. 31). Moreover, if overhead, risk management and profit margins were included in the cost buildup, Mr. Cavicchi estimates that this would increase the cost buildup in the range $3 to $10 per megawatt hour, providing further demonstration that the fixed-price, full-requirements, load-following contracts are a prudent product supply. (PPL Electric St. 2, p. 32).

Other concerns further support the prudence of PPL Electric's proposed supply mix. In recognition of the relatively high level of residential shopping in PPL Electric's service territory, PPL Electric has concluded that a prudent mix would eliminate additional spot supplies and reduce block supplies. These changes will help to reduce reconciliation differences caused by uncertainty in projecting supply mix with increased shopping load. (PPL Electric St. 2, pp. 12-13). In addition, reducing the amount of block supplies will reduce the very real potential that PPL Electric may need to sell block supplies in periods of low default service customer load.

Mr. Cavicchi also supports the conclusion that PPL Electric's proposed DSP II procurement plan meets the least cost over time standard. Mr. Cavicchi explained that the least cost over time standard can be interpreted in both a broad and a narrow context. (PPL Electric St. 2, pp. 36-39). In the broader context, Mr. Cavicchi analyzed PPL Electric's proposed procurement from the prospective of satisfying policy objectives under Act 129. Mr. Cavicchi explained that one of these policy objectives is to protect default service customers, over time, from the potentially costly risk that could arise from the absence of laddered supplies and from contracts with too short a term. (PPL Electric St. 2, p. 37; PPL Electric St. 2-R, p. 22). At the same time, Mr. Cavicchi recognized that another policy objective is to support retail competition through default service rates that reasonably track changes in wholesale electric prices. Mr. Cavicchi concludes that PPL Electric's proposed procurement mix during the DSP II Program

term satisfied this policy objective as well. (PPL Electric St. 2, p. 37). The procurement of 9-month and 12-month laddered contracts will encourage non-shopping customers to consider offers from EGSs, as default service prices move with market changes. (PPL Electric St. 2, p. 34). Mr. Cavicchi also explained his understanding of least cost over time from the narrow context of ensuring that default service products are procured through a process that produces the lowest cost for the particular product being purchased. (PPL Electric St. 2, p. 37). Mr. Cavicchi concludes that PPL Electric's proposed DSP II procurement process satisfies this standard by regularly holding transparent solicitations in which wholesale suppliers compete with one another to be the sources of default service supply. Mr. Cavicchi explained further that by obtaining default service supplies through competitive solicitations, undertaken in the form of an auction, PPL Electric is always able to obtain default supplies at the lowest possible cost for the product being procured at that time. (PPL Electric St. 2, p. 38).

Several parties to this proceeding have proposed changes to PPL Electric's product mixture. These proposed modifications should be rejected.

FES proposed that the Company continue procuring a mixture of 24-month and 12-month fixed-price, full-requirements, load-following products. FES asserts that such a portfolio would result in "greater price stability and certainty during DSP II than PPL Electric's proposed mix." (FES St. 1, p. 8). FES contends this would encourage shopping by creating a relatively stable PTC for shopping comparison purposes. (FES St. 1, p. 10). PPL Electric does not support FES's proposal. FES's proposal would result in a product portfolio that is largely similar to that used in the DSP I Program. As such, PPL Electric believes that FES's proposal cannot be expected to encourage further develop of retail markets beyond the levels of shopping achieved under the DSP I Program because it will continue to include less market-responsive 24-month contracts.

(PPL Electric St. 2-R, p. 24). The result would be a PTC that responds to market conditions more slowly. To the extent that future market conditions experience an uptick in prices, the slower responsiveness of a portfolio with two-year contracts will tend to result in a PTC that is lower than market prices for some time period, which may not be conducive to encouraging increased shopping. (PPL Electric St. 2-R, p. 24). It is PPL Electric's position that FES's proposal is not sufficiently market-responsive, is not consistent with high level of supply in PPL Electric's service territory, and therefore should not be adopted.

At the opposite extreme from FES is RESA. RESA has recommended that the Company adopt a default service product portfolio that progressively relies on greater amounts of 3-month fixed-price, full-requirements, load-following products. (RESA St. 1, p. 18). Eventually under RESA's proposal, the Company would be purchasing all of the power required for supplying default service customers once every three months. RESA's witness Williams could not recall any other proceeding in which RESA has supported such a drastic proposal. (Tr. 203-204).

PPL Electric does not support RESA's proposal. PPL Electric does not believe such a proposal is in the interest of customers at this time. This proposal would immediately expose residential customers to substantial rate swings and rate instability. PPL Electric considers this to be contrary to the Commission's recently revised default service regulations in which the Commission considered relative price stability to be an important consideration in implementing default service standards. (PPL Electric St. 1-R, p. 8). Part of the risk is that, as a greater and greater portion of default service load is served by an unladdered product procured at a single point in time, there is an increased possibility that a solicitation will occur at a time of unusual market conditions. (PPL Electric St. 2-R, p. 20). *See Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike*

County Light & Power Company, Docket No. P-00062205, 2006 Pa. PUC LEXIS 3; 249 P.U.R.4th 327 (Apr. 20, 2006). RESA has offered no reason for having PPL Electric's default service customers, alone among customers of any major EDC in the state, be exposed to such a substantial risk of instability. RESA's proposal to move to 3-month full-requirements products for residential customers should be rejected.

As an alternative to its proposal to move to 3-month full-requirements products, RESA argues that the Company should continue to purchase spot market products in its default service portfolio. (RESA St. 1, p. 15). RESA argues for spot market products as a way to "approximate" real time market price. PPL Electric disagrees. Including spot market products in the default service product portfolio requires that the Company make projections of spot prices and load for the upcoming PTC period. (PPL Electric St. 2-R, pp. 15-16). However, as RESA's witness acknowledged, future spot market prices cannot be known when determining the PTC. (Tr. 208-209). If actual spot market prices turn out to be different than the price forecast for spot market products, as they are certain to be, the PTC will not have "approximated" real time market conditions. (PPL Electric St. 2-R, p. 22). Instead, the result will be to create additional E-factor adjustments in subsequent PTCs, which can de-link the PTC from relevant market prices as the PTC varies, either up or down, from underlying default service contract prices. (PPL Electric St. 2-R, pp. 15-16; OSBA St. 1, p. 5). RESA's alternative proposal to continue the purchase of spot market supplies will continue to contribute to E-factor variances and should be rejected.

OCA seeks to have PPL Electric manage its product mixture by limiting the use of fixed-price, full-requirements, load-following products to 75% of residential customer default service load and obtaining the remaining 25% of load through a combination of managed block and spot

market product purchases. OCA would have the block purchases be different in amounts in on-peak and off-peak periods with different amount of block purchases during summer peak hours, winter peak hours and other hours. (OCA St. 1, pp. 9-12). PPL Electric does not support OCA's proposal. OCA's proposal would require that the Company actively manage its procurements, rather than procuring contracts with supply terms clearly established at the beginning of procurements. Such an approach requires that, before each procurement, PPL Electric prepare forecasts of the quantity of power needed to match a projected load shape, and to forecast the prices and amount of spot supply that will be a fallout of the projected block shapes. (PPL Electric St. 2-R, pp. 8-9). This will result in PPL Electric purchasing and selling spot supplies to manage differences between the block supplies it purchased and actual customer requirements. (PPL Electric St. 2-R, p. 12; Tr. 245).[29] Although OCA's witness suggests that the adjustments to be made with each procurement would be "mechanical" in nature (OCA St. 1-S, p. 4), he offered no testimony explaining how the Company would go about making projections of what would be its on-peak and off-peak load requirements. As a result, there are no objective criteria or metrics to evaluate the Company's decisions as to the size and type of block products that it purchases at any time. (PPL Electric St. 2-R, p. 12). Moreover, by reducing the proportion of fixed-price load-following products in the product mix, OCA will increase the likelihood of greater reconciliation adjustments due to variances in actual load from projected load and resulting spot market purchases that vary both in amount and price from projections used to set the PTC. (PPL Electric St. 2-R, p. 15). In addition, OCA's proposal will further layer into reconciliation the risk of excess power being sold at a loss to the extent that actual default service load shapes do not match actual load shape and result in excess supplies. (PPL Electric St. 2-R,

[29] As explained by PPL Electric witness Cavicchi, block quantities vary only by on-peak and off-peak periods, and thus cannot easily be matched to a load shape. (PPL Electric St. 2-R, p. 12; OCA St. 1, p. 11, Figure 4).

p. 12). In addition, PPL Electric does not have employees with knowledge and experience to make judgments about what will be appropriate block loads. (PPL Electric St. 1-R, p. 9). The cost to employ persons with the expertise needed to implement OCA's proposal would need to be added to the cost of default service. However, OCA has offered no analysis of the resulting costs to PPL Electric and default service customers compared to any potential market timing benefits from its managed portfolio approach. (PPL Electric St. 2-R, p. 16).[30] OCA's proposal adds complexity to the procurement process, whereas PPL Electric supports simplicity as it moves to the ultimate end stage of default service procurement. OCA's proposal should be rejected.

OCA also has offered alternative default service procurement proposals that are associated with its concerns that wholesale suppliers participating in default service solicitations will recognize additional uncertainty associated with default service customers electing to take supply from EGSs under the Retail Opt-In Program. (OCA St. 1, pp. 20-22). OCA's alternatives would "set aside" the procurement of a portion of the full-requirements, load-following products until after the results of the Retail Opt-In Program are known. Depending upon the results of the Opt-In Program, some portion of the "set aside" load would be procured with spot supplies. There are several flaws with these proposals. First, they may increase the amount of supplies procured at spot prices, thereby adding to reconciliation adjustments that cause the PTC to vary from market price. (PPL Electric St. 2-R, p. 29). Second, OCA's proposal fails to take into account the nature of the full-requirements, load-following contracts that PPL Electric has with wholesale suppliers. Full-requirements, load-following contract suppliers are committed to serve a set percentage of load (not otherwise met by block supplies).

[30] The Commission recently expressed concerns that EDCs do not have the expertise to perform portfolio management responsibilities. (*Default Service Final Rulemaking Order* at 55-56).

OCA's proposals would change that construct, with the result that the contracted percentage of load provided by a supplier would need to change to meet a target amount of load, rather than a percentage of load. (OCA Ex. RSH-7). OCA has offered no explanation of how a supplier's contract should be modified to accomplish this post-solicitation modification of transaction confirmations. (PPL Electric St. 2-R, p. 30). OCA's alternative proposals also should be rejected.[31]

In summary, PPL Electric supports a simplified product mix that supports an appropriate balance between market reflective prices and price stability. As stated by DES/IGS witness Barkas, PPL Electric's proposed product mix will "allow the influence of changing market prices to be reflected in the rates while still providing fairly stable rates over the default service period." (Dominion St. 1, pp. 3-4). As the Commission has recently noted in adopting revised default service regulations:

> In implementing default service standards, the Commission must be concerned about rate stability as well as other considerations such as insuring a "prudent mix" of supply and insuring safe and reliable service. In our view a default service plan that meets the "least cost over time" standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan timeframe, but rather a cost for power that is both relatively stable and also economical relative to other options. In this regard we agree with those points raised by both PECO and PPL. To reiterate our prior point, the "least cost over time" standard should not be viewed as synonymous with maximizing market time and benefits at the expense of price stability and economy.[32]

PPL Electric's proposed product procurement for the residential class is superior to the other proposals set forth in this proceeding as it strikes an appropriate balance between being

[31] The Commission rejected a similar OCA proposal to hold back a portion of default service procurements in the FirstEnergy Companies' default procurement case. *See Joint Petition of Metropolitan Edison Company, et al., For Approval of Their Default Service Plans*, Docket No. P-2011-2273650 at pp. 27-29, 2012 Pa. PUC LEXIS 1348 at *43-47 (August 16, 2012) ("*FirstEnergy Order*").

[32] *Default Service Final Rulemaking Order*, pp. 40-41.

market reflective and providing a level of price stability for default service customers. PPL Electric's proposed residential product mix should be adopted.

ii. Procurement Schedule

Another aspect of PPL Electric's efforts to simplify procurements under the DSP II Program is to change from a quarterly procurement process to a semi-annual procurement process. This change to the procurement schedule is related to PPL Electric's proposal to purchase a series of laddered 9-month and 12-month fixed-price, full-requirements, load-following contracts while eliminating 24-month contracts. Thus, semi-annual procurements will procure a relatively larger percentage of supply for shorter durations than under the DSP I Program. (PPL Electric St. 1, p. 8). PPL Electric's goal is to move to a procurement schedule where half of default service supplies turn over every six months. (PPL Electric St. 2, p. 17). The change also is related to PPL Electric's proposal to move to semi-annual price changes. (PPL Electric St. 1-R, p. 5). PPL Electric explained that this proposal would produce savings in procurement costs. (PPL Electric St. 1-R, p. 10).

RESA and OCA oppose the Company's proposal to move to semi-annual procurements. OCA contends that quarterly solicitation will provide more appropriate laddering of procurements. (OCA St. 1, p. 12). Although the Company does support laddered procurements, too much laddering can create problems. Multiple procurements create instances where actual default supplier load obligations can be very small, due to shopping and block supplies. Less frequent laddered procurements can allow for increased product size. (PPL Electric St. 2, p. 13). In addition, quarterly laddered solicitations obtain a smaller share of supplies needed for default service than semi-annual solicitations, with the result that default service prices will tend to change more slowly. (PPL Electric St. 2, pp. 13-14).

RESA contends that a switch to semi-annual procurements could result in procurements that are too far in advance of the delivery date, with the result that pricing would not reflect market prices at the time of delivery. (RESA St. 1, p. 14). However, as PPL Electric has demonstrated, RESA's concerns are unfounded. By eliminating two-year contracts in the DSP II Program, PPL Electric is actually shortening the time between procurement and the final month of delivery under its contracts. (PPL Electric St. 1-R, pp. 10-11). In addition, under PPL Electric's proposed procurement schedule, contracts will be entered into approximately one month from the start date of delivery for the 12-month full requirements product and approximately four months from the start date of delivery for the 9-month full requirements product.[33] In PPL Electric's opinion, these time periods should not be viewed as "too far in advance" of the delivery date.[34]

Finally, both parties argue that four solicitations per year should not be substantially more costly than semi-annual procurements. (RESA St. 1, p. 14; OCA St. 1, p. 12). However, PPL Electric demonstrated that the cost to undertake quarterly default service solicitations is approximately $225,000-$275,000. This cost is almost entirely due to the use of an independent third-party manager, NERA Economic Consulting ("NERA"), to oversee all aspects of the solicitation process.[35] The Commission's Default Service Policy Statement provides that procurements should be monitored by an independent manager. 52 Pa. Code § 69.1807(8).[36] By

[33] RESA has proposed that procurements be undertaken two months in advance of the start date of delivery, which is longer than PPL Electric's proposal for 12-month term contracts. (RESA St. 1, p. 14).

[34] In the *FirstEnergy Order*, the Commission authorized procurements for one year and two year full requirements load following contracts up to five months prior to the time the FirstEnergy Companies were scheduled to first receive supply under those contracts. *FirstEnergy Order* at 26.

[35] NERA is the administrator for various other EDCs' default service procurements in Pennsylvania, and has substantial expertise in this area. (PPL Electric Ex. 1, p. 36).

[36] NERA is responsible for initial bidder qualifications, running the bidder information session, overseeing responses to bidder information questions, preparing a pre-bid evaluation report for the Commission, running the procurement, identifying winning bidders, and preparing a post-bid report to the Commission. (PPL Electric St. 1-RJ, p. 2). By having the solicitation run by an independent procurement manager, the Commission is provided

changing from quarterly to semi-annual procurements, the Company can reduce procurement costs by roughly $500,000 per year. This is a worthwhile savings that should be adopted.

Semi-annual procurements will simplify and lessen the cost of default service procurements. The proposal is reasonable and should be adopted.

iii. Wholesale Supplier Load Cap

PPL Electric's current DSP I Program currently has two load caps that limit the amount of supply that may be won by any wholesale supplier. First, there is in place a Solicitation Load Cap of 85% that is applicable to each of the three customer solicitation groups (Residential, Small C&I and Large C&I). (PPL Electric St. 1, p. 22). Thus, an individual bidder cannot win more than 85% of a customer class's default service load offered in each solicitation. In addition, under the settlement of the DSP I Program, an aggregate load cap of 70% was applied to wholesale suppliers providing supply to the Residential customer class. (PPL Electric St. 1-R, p. 19). Under this separate load cap, PPL Electric (through its independent procurement manager NERA) must monitor and disallow bids if a single supplier provides more than 70% of the aggregate load of the class. (OCA St. 1, p. 16).

PPL Electric has learned through the implementation of the DSP I Program that supplier diversity has not been a problem. There are currently 22 different suppliers providing products to meet PPL Electric's default service requirements. (PPL Electric St. 1-R, p. 20). As a result, PPL Electric proposes to remove this separate aggregate load cap.

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assurance that the bid process is run fairly and objectively, without the concern of any favoritism in the selection of winning bidders. Moreover, the Commission receives expert pre- and post-bid evaluations, again prepared by an independent party, that facilitate the Commission's one-day review of bid results. While this information is invaluable, it is as noted above, expensive.

Two parties, RESA and OCA, recommend that the aggregate supplier load cap for residential customers be reduced to 50% from the current 70% level. (RESA St. 1, p. 21; OCA St. 1, p. 16).[37]

Both RESA and OCA contend that a reduced load cap of 50% is necessary to provide protection in the event of supplier default. However, PPL Electric requires suppliers to provide security under the terms of the SMA. (PPL Electric St. 2-R, p. 20). PPL Electric has in place strong performance assurance requirements, and as explained later in Section III.B.4.a. of this Brief, seeks to further strengthen those provisions under DSP II by reducing the unsecured credit for even the most creditworthy of wholesale suppliers down to $50 million. The SMA contains a detailed formula for calculating mark to market exposure for each transaction. (PPL Electric Ex. 1, Appendix A (SMA), Article 14.6 and Ex. F, pp. 40 and 59). If at any time PPL Electric's credit exposure to a wholesale supplier, as calculated pursuant to the mark to market formula, exceeds that supplier's unsecured credit on any business day, then PPL Electric can require that the supplier post additional performance insurance to cover the additional risk of projected future prices exceeding the contract price. (PPL Electric Ex. 1, Appendix A, Article 14.1, p. 37).

The potential effect of implementing a lower load cap would be to increase default service rates. This could result if an otherwise successful low bid would be disallowed because a supplier otherwise would exceed the applicable load cap. (Tr. 247). Given the strong security provisions in effect, PPL Electric does not support the trade-off of potentially higher bid results in exchange for any incremental protection from default provided by a lower supplier load cap. OCA's and RESA's proposal to reduce the load cap should be rejected.

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[37] FES indicated in rebuttal that it supports a complete elimination of any wholesale supplier load cap, but acknowledged it did not oppose PPL Electric's proposal to retain the 85% Solicitation Load Cap. (FES St. 1-R, p. 16).

b. Small C&I - Fixed Rate

i. Product Mixture

PPL Electric's product mixture under the DSP I Program for the Small C&I fixed rate is similar to the product mix currently procured for the Residential class. The one difference from the Residential procurements is that PPL Electric currently does not procure any block supplies for the Small C&I class. (PPL Electric St. 2, p. 9 n. 10). Thus, PPL Electric's current procurement for the Small C&I class is a mixture of 90% fixed-price, full-requirements, load-following supply procured under one-year and two-year contracts, and 10% spot market priced, full-requirements, load-following supply.

PPL Electric's proposal in this case is to eliminate the spot market and two-year term full requirements contracts for the Small C&I class. (PPL Electric St. 2, p. 21).

For the reasons explained previously with respect to the residential procurement product mix, PPL Electric considers the proposed procurement for Small C&I customers to be a prudent mix of supplies for this class to be acquired consistent with the least cost over time requirements of Act 129. In the case of the Small C&I class, the Company considers the procurement of a laddered full-requirements product with a one-year term to be an appropriate approach for this class, as a transition from the current mix of spot, one year and two year contracts.[38] One of the reasons for this reliance on one-year fixed-price, full-requirements, load-following contracts is that the remaining Small C&I customers taking default service tend to be smaller customers. This is demonstrated by the fact that as of August 8, 2012, nearly 50% of Small C&I customers representing over 88% of load were shopping. (PPL Electric St. 1-R, p. 4). Therefore, the reasons supporting the elimination of spot and 2-year term contracts to provide default service

[38] The Commission has previously approved the use of a single product to provide default service to a single customer class (see the default service procurement for the Large C&I class under the DSP I Program).

supplies for residential customers are applicable to the Small C&I class. (PPL Electric St. 2, p. 22).. Thus, the Company concluded that laddered one-year, fixed-price, full-requirements, load-following contracts would best serve the remaining default service Small C&I customers and provide further support for increased shopping.

As is the case with respect to the Residential class product mix, RESA and FES propose opposite extremes from PPL Electric's product procurement proposal. FES proposes that the Company continue to procure one and two year fixed-price, full requirements, load-following contracts. (FES St. 1, p. 8). RESA, in contrast, proposes that the Company move to unladdered fixed-price, full-requirements, load-following products with a three-month term. (RESA St. 1, p. 19). RESA's proposal with respect to Small C&I customers differs from its Residential customer proposal only to the extent that it would transition the Small C&I class even more quickly to three-month price products. RESA's proposal would replace every expiring product from the DSP I Program with quarterly procured products having three-month terms. (RESA St. 1, p. 19). Under RESA's proposal, by June of 2014, over 80% of Small C&I customer supply would be procured under unladdered three-month term fixed-price, full-requirements, load-following contracts. (RESA Ex. AW-1). PPL Electric does not support either of these proposals.

FES's proposal reflects essentially no change from the current procurement mix under PPL Electric's DSP I Program. (PPL Electric St. 2-R, p. 24). FES has offered no evidence to support a conclusion that continuation of the same procurement plan will provide any further support or encouragement for additional shopping. Thus, for the reasons explained above with respect to FES's residential product mixture proposal, FES's proposal should be rejected.

RESA's arguments in favor of its proposal to move all procurements for Small C&I default service customers to three-month full-requirements contracts are likewise similar to its arguments with respect to its proposed residential class procurement, with one additional argument. RESA contends that its proposal to move this class's product mix quickly to three-month contracts will serve as a good transition to moving customers with load over 100 kW to real time (hourly) pricing. (RESA St. 1-SR, p. 9).[39] However, the record demonstrates that a potential conversion of these larger Small C&I customers to hourly price service is not a basis for moving the entire Small C&I class to three-month term contracts. Only 4,007 Small C&I customers are currently larger than 100 kW, and of these customers, 3,709 or 93% are already shopping. (PPL Electric St. 1-R, p. 32). Thus, only about 300 default service Small C&I customers may transition, in the future, to real time hourly price service. In contrast, there are 85,000 Small C&I customers under 25 kW receiving default service. (RESA Ex. CHK-3). This is not a basis for moving all default service Small C&I customers to a product mix that would cause their rates to change, potentially quite substantially, every three months. RESA's proposal does not reflect a reasoned balance between market reflective pricing and rate stability anticipated by the Commission's recent amendments to its default service regulations.

In addition, RESA has offered no reason for eliminating contract laddering at this time, which is a natural byproduct of its procurement proposal. As more and more, and eventually all, Small C&I default service supplies move to quarterly procurements under RESA's proposal, laddering is eliminated. The Commission is well aware that there are risks inherent in any procurement plan that does not ladder procurement. *See Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike*

[39] The provision of hourly price default service for Small C&I customers with load over 100 kW is the subject of Section III.B.2.a.ii. of this Brief.

County Light & Power Company, Docket No. P-00062205, 2006 Pa. PUC LEXIS 3; 249 P.U.R.4th 327 (Apr. 20, 2006). These risks include the possibility of an unusual event causing extreme price spikes, and the potential of substantial uncovered load in the event of a procurement failure. (PPL Electric St. 2-R, pp. 20-22). For these reasons, and those explained previously with respect to RESA's Residential procurement proposal, RESA's proposed transition of the Small C&I class to complete three month term full requirements contract should be rejected.

In rebuttal testimony, OSBA witness Knecht opposes RESA's procurement proposal, but expresses the view that the rate volatility that would be experienced might not be much worse than that experienced by Small C&I customers under PPL Electric's DSP I Program. (OSBA St. 2, p. 3). However, upon review of that testimony, it is apparent that Mr. Knecht is most concerned with PTC changes under the DSP I Program that have resulted from swings in the reconciliation E-factor. PPL Electric has made a proposal to moderate these E-factor swings, *i.e.*, rolling 12-month reconciliation, which is supported by both OCA and OSBA. (See Section III.B.2.b. of this Brief). Moreover, Mr. Knecht does not offer any evidence to suggest that RESA's proposal for three-month term contracts would resolve his concerns with reconciliation. PPL Electric respectfully submits that correcting the reconciliation issue is achievable, and should not serve as the basis for adopting what may be even more volatile price swings (and non solution to E-Factor swings) through quarterly term contracts.

For all of these reasons, PPL Electric's proposed product mix for the Small C&I class should be adopted.

ii. Procurement Schedule

As with the Residential class, PPL Electric proposes to procure supplies for the Small C&I class on a semi-annual basis with 9-month and 12-month contracts procured at the same time. The only party that has indicated an opposition to this proposal is RESA. For all of the reasons set forth in Section III.B.1.a.ii. of this Brief with respect to the Residential procurement schedule, RESA's objections to semi-annual procurement are without merit and should be rejected.[40]

iii. Wholesale Supplier Load Cap

As is the case with respect to the Residential class procurement, the Company under the DSP I Program currently has a procurement load cap of 85% for Small C&I procurements. In addition, the Company has an aggregate supplier load cap of 65% for Small C&I customers. (PPL Electric St. 1-R, p. 19). PPL Electric proposes to eliminate the aggregate supplier load cap for Small C&I customers, but retain the procurement load cap of 85%. No party appears to object to the elimination of the aggregate supplier load cap for this class. (See RESA St. 1, pp. 21-22). The Company's proposal to eliminate the aggregate load cap for the Small C&I class should be adopted.

c. Large C&I - Real-Time Hourly Rate

i. Product Mixture

In this proceeding, PPL Electric proposes to continue the strategy used in the DSP I Program to satisfy its Large C&I Customer Class Default Service obligation, *i.e.*, it will acquire

[40] As is the case with respect to the Residential procurement, the Company proposes that the final procurement in October 2014 be for 6-month and 3-month contracts in order that all fixed price full requirements contracts may expire as of May 31, 2015. As with the Residential contracts, PPL Electric proposes that these procurements include a provision that allows PPL Electric to extend the contracts to 12-month and 9-month terms, depending upon the outcome of the Commission's end-state default service investigation, in order to allow for laddering of contracts if needed. (PPL Electric St. 1-R, p. 15).

supply via the spot market. (PPL Electric St. 2, p. 15, 22-23). Specifically, the Company will provide Default Service through one-year term products procured from wholesale suppliers through competitive procurements. (PPL Electric St. 1, p. 7, PPL Electric St. 2, p. 9). Each winning supplier is paid the hourly real-time spot market energy price for the PPL Zone, PJM's capacity charge for the PPL Zone, and the price it bid to cover all other components of the full-requirements, load-following service. (PPL Electric Ex. 1, Appendix B, p. 8). PPL Electric's witness Cavicchi explained that the vast majority of PPL Electric's large commercial and industrial customers are purchasing power supplies from competitive retail suppliers and can be expected to continue to seek supplies from competitive retail suppliers. (PPL Electric St. 2, p. 24).[41] Continuing the default service spot market offering for these larger customers provides a flexible default service that is reasonably priced and available whenever a customer must rely on default service supply. *Id.* Moreover, the spot market product has been an appropriate default service product for supporting the development of a retail competitive market in Pennsylvania for these large customers. *Id.* No party has objected to the continuation of this product mix for the Large C&I customer class, and it should be approved.

ii. Procurement Schedule

PPL Electric proposes to issue a single annual solicitation, wherein the Company will request competitive offers from suppliers to provide Default Service spot market supply. (PPL Electric St. 1, p. 7, PPL Electric St. 2, p. 22). The first solicitation will take place in April 2013 and the second in April 2014 for the subsequent PJM planning period beginning June 1, 2013 and June 1, 2014, respectively. No party has objected to this procurement schedule and it should be adopted. (PPL Electric St. 1, p. 7).

[41] *See* Constellation St. 1, p. 14 (providing examples of the various types of products and services available to large customers in the competitive retail market).

iii. Wholesale Supplier Load Cap

Similar to the DSP I Program, the DSP II Program maintains the Solicitation Load Cap of 85% for Large C&I customers. There is no separate aggregate load cap for this Class, as all procurements for the year are undertaken at the same time. No party has opposed the continuation of the current Solicitation Load Cap, and the Company's proposal should be approved.

d. Contract Terms Beyond May 31, 2015

As noted above, PPL Electric proposes contract terms of six and three months in length for the final procurements under the DSP II Program for the Residential and Small C&I rate classes. These short-term contracts, which replace the last of the expiring DSP I Program contracts and expiring one-year term contracts under the DSP II Program, will permit all contracts for supply, other than the 150 MW of long term five and ten year block supplies for residential customers, to expire as of May 31, 2015.[42] OCA, OSBA and FES all argue in favor of extending the terms of these final contracts beyond May 31, 2015.[43]

OCA, OSBA and to a lesser extent FES argue that these final procurements should extend an additional six months beyond May 31, 2015 to avoid a "cliff period" that would be created if all supplies had to be procured within a short period of time to provide default service after June 1, 2015. However, the Commission's *December 16 RMI Order* did encourage companies to minimize supplies procured under contracts with terms that extend beyond May 31, 2015, and PPL Electric sought to comply with this recommendation. This is the date that the

[42] The Large C&I real time hourly rate contracts are one-year term contracts which would expire on May 31, 2015, and therefore there is no issue regarding extension of these terms beyond May 31, 2015. (PPL Electric Ex. 1, Appendix B, Article 1.1.10).

[43] Because FES has proposed a series of 24-month full-requirements contracts, its initial proposal would have had over 65% of contracted supplies continuing beyond May 31, 2015. (FES Ex. TCB-2; PPL Electric St. 1-R, p. 15) On surrebuttal, FES revised its proposal to shorten the term of some of its 24-month products so that most, but not all, contracts would terminate by May 31, 2015. (FES St. 1-S, p. 6).

Commission plans to implement end-state default procurement policies. OCA, OSBA and FES contend that the Commission's end-state determination can manage contracts extending beyond May 31, 2015, through assignment of the contracts if another entity is named the default service supplier after that date. PPL Electric believes that the Commission's end-state decision is not just an issue about whether PPL Electric or another entity would be the default service provider. The Commission also may be considering a different concept of how default service requirements will be met. (PPL Electric St. 1-R, p. 16). If substantial amounts of default service load are tied up in contracts that extend beyond May 31, 2015, this will delay the Commission's implementation of its end-state structure. For these reasons, PPL Electric has not proposed that these final contracts be extended beyond May 31, 2015.

PPL Electric, however, is concerned about the possibility of a "cliff period." (PPL Electric St. 1-R, p. 15). PPL Electric therefore has proposed an option that would allow it to extend the term of these contracts if it continues as the default service provider and if the Commission's end-state structure supports contracts layered for a term beyond May 31, 2015. PPL Electric notes that it would anticipate the Commission's end-state decision will be made well in advance of the renewal date of these contracts.[44] Moreover, if such a decision has not been made, it will be necessary for PPL Electric to submit a new default service plan well in advance of May 31, 2015. Thus, there will be sufficient time to extend these contracts if appropriate.

As noted previously, PPL Electric has two block contracts of 50 MW each with five-year terms ending December 31, 2015, and one 50 MW unit specific product with a ten-year term ending May 31, 2021. If PPL Electric does not continue in the role of default service provider after May 31, 2015, appropriate provision must be made for PPL Electric to recover costs

[44] At Public Meeting held September 27, 2012, the Commission released a proposal for end-state default service.

associated with these contracts extending beyond May 31, 2015, along with the costs of any associated Alternative Energy Credit ("AEC") contracts. PPL Electric requests that the Commission, in its final order in this proceeding, confirm that if these contracts do not continue to be used to provide default service supplies for residential customers, that PPL Electric will be made whole for the cost of supplies that it must purchase under these contracts. (PPL Electric St. 1, p. 12).

e. AEPS Procurement

The Alternative Energy Portfolio Standards Act ("AEPS Act") requires that EDCs and EGSs obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. See 52 Pa. § Code 54.182. The Company proposes to procure certain AEC credits to meet its obligation under the AEPS Act as a component of its fixed-price and spot-market Default Service supply contracts. (PPL Electric St. 1, p. 15). This process is unchanged from that used in the DSP I Program. (PPL Electric St. 1, p. 16). Each wholesale supplier must provide its proportional share of actual AEC credits to fulfill PPL Electric's AEPS obligation, in accordance with the terms of the SMA. (PPL Electric St. 1, p. 15). Additionally, the SMA requires the seller to complete its transfer of AEPS credits into PPL Electric's Generation Attribute Tracking System ("GATS") account(s) in the amount necessary to fulfill the seller's AEPS obligation, with the delivery of AECs monthly pursuant to the schedule set forth in the SMA. (PPL Electric Ex. 1, Appendix A, Article 4.4(c)).

The Company separately has entered into contracts to procure AECs for certain of its residential block contracts. However, PPL Electric must still acquire Tier I non-solar and Tier II AECs to cover the period from June 1, 2013 through May 31, 2015 for the 10-year long-term

product obligation during the DSP II Program Period. (PPL Electric St. 1, p. 15).[45] Because PPL Electric only needs to acquire additional AECs to cover a 50 MW obligation, PPL Electric proposes to solicit at least 3 pricing offers from AEC brokers in both June of 2013 and June of 2014 for Tier I non-solar and Tier II credits required to cover this long-term contract obligation. (PPL Electric St. 1, p. 15). The Company will accept the least cost offer and will document the entire process, including the brokers contacted and price offerings by AEC vintage. (PPL Electric St. 1, p. 15). PPL Electric proposes to recover the costs of these AECs using the same mechanism currently used for AEC costs, *i.e.*, through the GSC-1. (*See* Ex. No. JMK-1). Based on current market conditions, the Company estimates the total costs for Tier I Non-Solar and Tier II AECs to be procured through the separate solicitation to be approximately $79,000. (PPL Electric St. 1, p. 16).

The Company is proposing to use the broker market for AECs mentioned above because the quantity of additional credits required is very small (covering only 50 MW of load, and including only Tier I Non-Solar and Tier II AECs). (PPL Electric St. 1, p. 16). The Company believes that a competitive RFP solicitation would be unnecessarily expensive given the small number of credits required and could result in poor participation. Furthermore, by obtaining multiple pricing offers from AEC brokers, a competitive offer is still obtained and AEPS obligations are met in a less complicated and more cost-effective manner. (PPL Electric St. 1, p. 16).

No party has opposed this process for procuring these additional AECs, and it should be approved.

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[45] Under the separate solar procurement process adopted as a modification to the DSP I Program, the Company already has contracted for Tier I solar AECs to cover the 10-year block product for the term of DSP II Program. (PPL Electric St. 1, p. 15).

i. Transfer of AECs

Constellation proposes that wholesale suppliers be permitted to transfer AECs to PPL Electric on a yearly rather than monthly basis. (Constellation St. 1, p. 35). This proposal should be rejected.

There are various reasons for requiring transfers of AECs on a monthly basis. (PPL Electric St. 1-R, p. 26). First, by implementing monthly transfers, PPL Electric reduces the risk of its non-compliance with the AEPS Act if a supplier defaults on its obligation to transfer AECs. If during a reporting year a supplier defaults on its transfer obligation, PPL Electric can take actions to acquire necessary AECs prior to the end of the year when the Company must transfer its credit obligations to the state. This ensures the Company is able to comply with state AEPS requirements and can respond to a contract default in a timely fashion. (PPL Electric St. 1-R, p. 26). Second, due to the significant number of suppliers with obligations to supply AECs across all of PPL Electric's contracts, by implementing a monthly transfer requirement, all suppliers understand their obligations in conjunction with when monthly invoices are issued, reducing confusion and enabling suppliers to procure credits closer to the time of delivery than would otherwise be possible with an annual transfer obligation. (PPL Electric St. 1-R, p. 27). Finally, by implementing monthly transfers, the Company is more appropriately matching its payment of the cost associated with AECs , which are part of the overall price paid to wholesale suppliers each month under the full-requirements contracts, with its actual receipt of credits.

Constellation's proposed change to the schedule for delivery of AECs should be rejected.

ii. Alternative Compliance Payment

Constellation also proposes that PPL Electric revise the SMA to permit a supplier to remedy any failure to provide the full amount of its required AEC obligation by paying to the

Company the Alternative Compliance Payment ("ACP") set forth in the AEPS Act for the full amount of such shortfall. (Constellation St. 1, p. 36). In short, Constellation seeks to permit a supplier to avoid its AEPS obligation by making an ACP.

Constellation's proposal should be rejected. Wholesale suppliers should not avoid their obligation to provide AECs by "buying out" of their responsibility through payment of an ACP whenever it is convenient (or less costly). In the Commission's *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, at Docket No. M-00051865, 2005 Pa. PUC LEXIS 45 (July 18, 2005) ("*Implementation Order II*"), the Commission explained that any EDC or EGS who fails "to meet the Tier I and Tier II obligations for a given reporting year shall be assessed an alternative compliance payment." (*Implementation Order II*, p. 12, 73 P.S. §1648.3(f)(2)). The Commission further stated in interpreting the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §1648.3, that, "[t]he alternative compliance payment appears to be intended to serve as a penalty provision that will encourage compliance with the Act." (*Implementation Order II*, p. 13). Based upon these statements, the Company views the ACP as a penalty for non-compliance, and thus the ACP should not be viewed as a second option in lieu of transferring AECs. (PPL Electric St. 1-R, p. 27). PPL Electric believes it is the clear intent of the statute and of the Commission for EDCs (and by extension, default service wholesale suppliers) to acquire credits.

There is a further issue with respect to paying an ACP in lieu of delivering AECs. The Commission goes on to state, in the *Implementation Order II*, that "the force majeure mechanism will serve to provide adequate financial protection to EDCs and that alternative compliance payments are therefore not recoverable from ratepayers." (*Implementation Order II*, p. 14). As such, PPL Electric is concerned that issues could be raised concerning recovery of payments to

wholesale suppliers who elect to pay an ACP. In an event where a supplier is actually unable to acquire AECs in the market to meet its obligations (as opposed to choosing not to acquire AECs), the supplier should contend for force majeure, and not simply pay the ACP. PPL Electric would then ask the Commission to review the circumstance and determine if an instance of force majeure exists. If force majeure does not exist, supplier payment of an ACP should not be sufficient to meet the SMA requirements and therefore a default should occur. (PPL Electric St. 1-R, p. 28).

For the foregoing reasons, Constellation's proposal to revise the AEPS compliance requirements to allow for payment of an AEC should be rejected.

f. Administrative Costs and Cash Working Capital

PPL Electric has proposed that the administrative costs related to this proceeding and other costs incurred prior to June 1, 2013 related to procurement of supply be included in the rates for default service as applicable with the costs amortized ratably over the 24 month term of the DSP II Program. No party has objected to this proposal.

Furthermore, the Company has included a provisional claim for cash working capital ("CWC") in this case as an administrative expense. Depending upon whether Constellation's proposal to require weekly payments to wholesale suppliers is adopted, [46] PPL Electric's CWC claim is either $7.5 million or $16.7 million. (PPL Electric St. 5, p. 10; PPL Electric St. 5-R, p. 16). At the time of its filing, PPL Electric was involved in a complaint proceeding at Docket Nos. C-2011-2245906 and M-2011-2243137, wherein the manner of PPL Electric's reconciliation of default service costs was questioned. In that proceeding, PPL Electric contended that its current reconciliation methodology provided it some allowance for CWC

[46] As explained later in this Section, Constellation has proposed that PPL Electric advance the period for payments to EGSs from monthly to weekly payments. Such proposal would create a new CWC requirement.

related to default service expenses. PPL Electric explained that if its GSC-1 reconciliation methodology was revised, it would no longer recover any CWC allowance through the GSC-1 reconciliation methodology and thus it should be entitled to CWC recovery in this proceeding. Since the CWC is based upon the timing of its payments to suppliers and its subsequent recovery of default service charges from customers, it was appropriate to include a provisional claim for CWC as part of this case. (PPL Electric St. 5, pp. 9-10).

Prior to the submission of rebuttal testimony in this proceeding, the Commission ruled on Exceptions and Reply Exceptions in the proceeding at Docket Nos. C-2011-2245906 and M-2011-2243137. As relevant to this proceeding, the Commission concluded that PPL Electric's GSC-1 reconciliation methodology was prepared in accordance with established practice and rejected proposals to revise such methodology. However, as part of its order, the Commission indicated it would open a new docket on default service reconciliation interim guidelines to investigate possible concerns of rate volatility and improper price signals resulting from the traditional method of 1307(e) reconciliation accounting. *PPL Electric Utilities Corporation Proposed Generation Supply Charge-I for the Period June 1, 2011 Through August 31, 2011*, Docket No. M-2011-2243137 at p. 26, 2012 Pa. PUC LEXIS 1332, (July 19, 2012). The result of that separate proceeding could result in a revised GSC-1 reconciliation methodology that would deprive PPL Electric of any CWC compensation that it receives through the current reconciliation methodology. Thus, PPL Electric has continued to make its provisional CWC claim and requests a ruling on the issues related to the appropriate calculation of CWC presented in this proceeding.

PPL Electric's calculation of its CWC requirement associated with default service costs follows the standard process for computing CWC that it has used in calculating CWC for base

rate costs. (PPL Electric St. 5-R, p. 17). Specifically, PPL Electric calculated an average lag in days between payment of Default Service bills and receipt of revenue, based upon the weighted average number of days until it has received payment from customers, and compared that amount to the average lag days between PPL Electric's receipt of default service supply from wholesale suppliers and its payment of such costs. The resulting net average lag of 27 days was multiplied by PPL Electric's average daily default service expense to develop a working capital requirement of $54.3 million. (PPL Electric Ex. JMK-4). That amount was then multiplied by the Company's weighted average cost of debt and equity, grossed up for income taxes, to produce its CWC revenue requirement. (PPL Electric St. 5-R, p. 17).

OCA witness Hahn challenged various aspects of the Company's CWC claim. Initially, Mr. Hahn challenged the addition of any CWC allowance in the Company's default service costs. However, Mr. Hahn offered no evidence that CWC is not an appropriate cost to consider in providing default service.

Mr. Hahn also argued that any CWC requirement should be based upon a short-term cost of debt rather than the weighted average cost of debt and equity grossed up for income taxes. Mr. Hahn has offered no basis for such proposal. Such a calculation is contrary to established practice for calculating CWC in Pennsylvania, and Mr. Hahn has offered no reason why a different methodology should be used. (PPL Electric St. 5-R, p. 17). Moreover, as explained by PPL Electric witness Mr. Kleha, short-term debt is used to finance construction projects and is a component of an electric utility's calculation of its monthly allowance for funds used during construction ("AFUDC") rate. As such, Mr. Hahn's proposal would inappropriately account for short-term debt twice. (PPL Electric St. 5-R, p. 17). Accordingly, Mr. Hahn's proposal to use a short term debt cost rate to calculate CWC is inappropriate and should be rejected.

Mr. Hahn also challenged the payment lag days of 63 days used to compute the revenue lag from 20-day due date customers. Mr. Hahn asserted that this lag day amount was an "unsupported assumption." (OCA St. 1, p. 29). However, as Mr. Kleha explained, the payment lag days of 63 days for these customers is based upon a calculation that uses the same methodology used in PPL Electric's rate case to determine payment lag. (PPL Electric St. 5-R, p. 17). PPL Electric's calculation is not an unsupported assumption, and Mr. Hahn's assertion to that effect should be rejected.

Mr. Hahn also contended that PPL Electric did not account for late payment fees in its calculation. (OCA St. 1, p. 29). Mr. Hahn asserts that such late fees on payments not made within the due date would reduce the CWC requirement. However, as Mr. Kleha explained, Mr. Hahn failed to recognize that the Company credits pro forma revenues for all late payment fees received in its base rate case. (PPL Electric St. 5-R, p. 18). Therefore, it would be a double count to offset the CWC claim in this proceeding with late payment fees.[47] Such contention is without merit and should not be adopted.

Finally, OCA witness Hahn questioned why revenues and expenses that were presented in Mr. Kleha's CWC calculation on PPL Electric Ex. JMK-4 did not match. This should not be surprising, as there are revenues such as E-Factor amounts that cause revenues and expenses for a twelve-month period to diverge. (PPL Electric St. 5-R, p. 18). Importantly, the CWC formula is not dependent upon whether revenues and expenses match. The calculation is based upon lag days for both receipt of revenue and for payment of default service bills. It is the net of those revenue and expense lag days, which is then multiplied by the average daily default service expense, that determines working capital requirement. (PPL Electric St. 5, p. 18; PPL Electric

[47] As should be apparent, late payment fees are applied to amounts not paid without regard to whether the unpaid amount is for base rate charges, default service charges or any other regulated charges appearing on the customer's bill.

Ex. JMK-4). Thus, Mr. Hahn's purported concern with the difference between revenue and expenses is not relevant to the calculation.

OSBA witness Mr. Knecht also challenged aspects of the Company's CWC calculation. Mr. Knecht asserted that the company used its claimed cost of equity from its pending base rate case in its calculation, and that the final allowed cost of equity may be different. (OSBA St. 1, p. 13). In rebuttal, Company witness Kleha acknowledged Mr. Knecht's assertion, and stated that PPL Electric would not object to any CWC allowance in this case being adjusted for the allowed return in its pending base rate case, which will be decided in advance of the conclusion of this case. (PPL Electric St. 5-R, p. 18).

Mr. Knecht also contended that the Company did not address any lead/lag associated with its purchase of receivables ("POR") program in the CWC allowance. (OSBA St. 1, p. 14). However, the POR is related to the purchase of receivables from EGSs. As explained by Company witness Kleha, lead lag associated with the POR program has nothing to do with any CWC requirement associated with the acquisition of generation supply for default service customers. (PPL Electric St. 5-R, p. 19). In surrebuttal, Mr. Knecht responded that his reference to POR lead/lag was to identify a concern that the cost of supply from EGSs may be understated, and therefore not properly matched to the costs reflected in default service rates, by the failure to include a lead/lag allowance in its POR program. (OSBA St. 3, p. 9). OSBA's modified explanation of its objection still does not support a disallowance of the Company's CWC claim. Mr. Knecht's contention may justify an increase to the discount rate applied to purchased receivables in the POR program. However, that issue should be taken up in the proper context of a base rate proceeding, where a POR discount rate can be examined. It should not be

presented as a reason for denying the recovery of appropriate default service costs in this proceeding.

OSBA also contends that PPL Electric's CWC calculation fails to recognize differences between rate classes, and that Small C&I customers have a shorter lag period than Residential customers. (OSBA St. 1, p. 14). However, CWC calculations are generally based upon total billed revenues and total incurred costs for all customers, with the resulting requirement then spread among customer classes based upon the results of a class cost allocation study. (PPL Electric St. 5-R, p. 19). If the Commission accepts OSBA's contention that Residential customers should bear all of the CWC costs, such a conclusion does not negate the fact that the Company has a CWC requirement; it only affects the determination of how that CWC requirement is allocated among default service customers.

Finally, OSBA asserts that any CWC requirement should be reflected in a Merchant Function Charge as a percentage applied to the PTC rather than included as a default service cost. (OSBA St. 1, p. 14) This, again, is a matter of presentation. The cost remains a proper cost whether it is to be recovered in default service rates or as an adder to the Merchant Function Charge. In either event, it is a charge that would be assessed to default service customers. It is PPL Electric's position that changes to the Merchant Function Charge are appropriately reflected in the context of a base rate proceeding. (PPL Electric St. 5-R, pp. 19-20). Therefore, the cost should be recognized at this time as part of default service costs; in no event, though, should this form a basis for denial of the Company's recovery of CWC associated with provision of default service.

Constellation has presented a proposal which, if adopted, would increase the Company's CWC requirement, without regard to the Commission's examination of reconciliation in the new

docket on default service reconciliation interim guidelines. Specifically, Constellation proposes that PPL Electric change from a monthly settlement schedule to a weekly settlement schedule for payments to default service suppliers. (Constellation St. 1, p. 33). Constellation asserts that because wholesale suppliers are being billed weekly by PJM, continued monthly payment by PPL Electric to wholesale suppliers creates a credit need on the part of wholesale suppliers. (Constellation St. 1, p. 33).[48] In response, PPL Electric's witness Kleha explained that if PPL Electric accelerates its payments to wholesale suppliers from a monthly to a weekly basis, it will be on average paying suppliers 30 days sooner than it does currently. However, PPL Electric will continue to receive payments at the same time that it does now from its customers. As a result, payments of generation supply bills will have an approximately 30 day shorter lag time than the current calculation, resulting in a net increase in the lag between receipt of revenues and the payment of bills. The result would be to more than double the CWC requirement associated with the lead/lag of payments of generation supply bills and the receipt of revenues from customers. (PPL Electric St. 5-R, p. 16). This would translate into an annual revenue requirement of $16.7 million, or an incremental revenue requirement of $8.8 million over the amount calculated in PPL Electric Ex. JMK-4. (PPL Electric St. 5-R, p. 16). Thus, if Constellation's proposal were to be adopted, a minimum CWC requirement of $8.8 million should be reflected in default service costs to account for this change.[49]

[48] Constellation's testimony that there is a credit need resulting from receipt of payments lagging cost incurrence is further demonstration of the validity of PPL Electric's claim for a CWC requirement associated with default service.
[49] As explained in Section III.B.4.a. of this Brief, PPL Electric does not support Constellation's proposal for a change in the payment date for wholesale generation suppliers.

2. Rate Design

a. Residential and Small C&I Customer Classes - Fixed Rate Option

PPL Electric proposes to continue to charge flat default service rates, *i.e.*, a single charge per kWh, to the Residential and Small C&I customer classes under the GSC-1 fixed rate option. As a flat rate, there is no demand charge or declining energy block rate design. (PPL Electric Ex. 1, p. 25). All costs incurred under various wholesale supplier contracts for default service, costs incurred to procure and administer the DSP II Program contracts for the Residential and Small C&I customer classes and costs incurred for separately acquired AECs will be recovered through the GSC-1. As there are separate procurements for the Residential and Small C&I customer classes, so also will there be separately calculated GSC-1 rates for the two customer classes. PPL Electric proposes that the GSC-1 be recalculated every six months, beginning June 1, 2013. PPL Electric further proposes that the GSC-1 be adjusted every six months thereafter to reflect the prices under the default service supply contracts for the upcoming six-month period. (PPL Electric Ex. 1, p. 25).[50]

i. Frequency of Rate Changes

As explained above, PPL Electric proposes to adopt semi-annual PTC price changes. This represents a change from the DSP I Program in which the PTC changes on a quarterly basis. (PPL Electric St. 1-R, p. 5). RESA and DES/IGS object to the change to semi-annual PTC changes. Both parties have expressed concerns that twice yearly PTC changes would potentially reduce the "market responsiveness" of the PTC. (RESA St. 1, p. 18; DES/IGS St. 1, p. 5).[51]

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[50] The generation supply charges under rate schedule GSC-1 and transmission charges borne by PPL Electric and billed on a flat rate per kWh basis to the Residential and Small C&I customer classes under Rate Schedule Transmission Service Charge ("TSC") are both included in the PTC. (OSBA St. 1, p. 1). Issues related to the TSC are explained later in Section III.B.2.h. of this Brief.

[51] OCA witness Hahn also expressed a preference for quarterly price changes but testified that he could accept PPL Electric's proposal to change the PTC semi-annually. (OCA St. 1, pp. 15-16).

PPL Electric's proposal to change its PTC on a semi-annual basis should be considered in the context of the entire proposed DSP II Program, including semi-annual procurement solicitations, reconciliation of GSC-1 costs, and the Company's proposed structure of the Opt-In and Standard Offer programs. For reasons explained in Section III.B.1.a.ii. above, the Company proposes to move to semi-annual procurements in order to reflect a balance between market reflective pricing, through laddered 9-month and 12-month fixed-price, full-requirements, load-following contracts, and default service price stability, consistent with the Commission's default service regulations. (PPL Electric St. 1, p. 13). In addition, as explained previously, as greater and greater numbers of Residential and Small C&I customers continue to move off of default service and to EGSs, a semi-annual procurement and price change mechanism will simplify the default service process, giving further encouragement to shopping. Finally, semi-annual changes in default service prices align with the Company's proposals for six month contract terms for the Opt-In and Standard Offer Referral Programs, as explained in Section III.C. of this Brief. Limiting the frequency of PTC changes to twice per year will give Residential default service customers greater assurance that the offers that they consider under these Opt-In and Standard Offer Referral Programs will result in real savings off of the PTC rates. This should encourage more of the remaining default service customers to try shopping and provide them with a positive experience to continue shopping after their initial contract terms end.

RESA's and DES/IGS's proposals to continue with quarterly PTC price changes should be rejected.

ii. Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW

The Company currently provides real time hourly default service pricing to its large C&I customer class.[52] This class includes customers with demands greater than 500 kW.

In the *December 16 RMI Order*, the Commission noted that PPL Electric has interval metering capability and directed the Company to file testimony in this default service case setting forth the cost to convert its billing system to allow hourly price service to all default service customers larger than 100 kW. In compliance with this directive, PPL Electric estimated that it would cost over $360,000 to implement real-time default service pricing for all default service customers larger than 100 kW. (PPL Electric St. 1-R, p. 31).

The Company also provided additional information relevant to implementing real time pricing for default service customers larger than 100 kW. As of August 2012, there were 4,007 Small C&I customers larger than 100 kW who are eligible for fixed-price default service. Of this number, 3,709, or 93%, of the customers are currently shopping. (PPL Electric St. 1-R, p. 32). The Company further explained that the procurement contracts currently in effect and scheduled under the DSP I Program for Small C&I customers specifically established that supplies for the Small C&I class were being acquired for customers smaller than 500 kW. The last of these DSP I contracts will not expire until March 2015. (PPL Electric St. 4, p. 33). Based upon the terms of existing contracts with wholesale suppliers under DSP I for service to Small C&I customers, the small number of customers over 100 kW actually taking default service and the cost of making necessary billing system modifications, the Company proposed in a *Petition*

[52] The customers who are subject to real time hourly pricing under the Company's generation supply charge-2 ("GSC-2") are those customers served under Rate Schedules LP-4, IS-P(R), LP-5, LP-6, LPET, IS-P(R) and standby service for those Rate Schedules. Schedule LP-4 customers who have a peak demand of less than 500 kW are served under the GSC-1 rate and Rate Schedule GS-3 customers who have a peak demand of 500 kW or greater are subject to the GSC-2 hourly default service rate. (PPL Electric Ex. JMK-2).

for Approval to Modify Its Smart Meter Technology Procurement and Installation Plan and to Extend Its Grace Period, at Docket No. P-2012-2303075, 2012 Pa. PUC LEXIS 1232 (August 2, 2012) ("*Smart Meter Order*"), to undertake the modifications necessary to provide hourly priced service for all default service customers larger than 100 kW on a schedule intended to permit the introduction of this capability by June of 2015, which would be the start of the next procurement plan period for PPL Electric default service customers.[53] The Commission denied PPL Electric's request to implement real-time default service pricing for Small C&I customers over 100 kW as part of its Smart Meter Technology Procurement and Installation Plan. The Commission's Order encouraged PPL Electric to propose a mechanism for implementing such real-time pricing in a future default service filing. (*Smart Meter Order* at pp. 9-10). Consistent with this directive, PPL Electric will address the implementation of a 100 kW split for Small C&I customers in a future default service filing. PPL Electric is aware of no opposition to this proposal.

b. Residential and Small C&I – Reconciliation

PPL Electric currently reconciles its GSC-1 revenues and expenses on a quarterly basis. As the Commission is well aware, and as demonstrated on PPL Electric Ex. No. JMK-5, quarterly reconciliation has produced substantial variances and swings in the E-Factor rate of the GSC-1. For the Residential class, the Company has experienced swings from a .68 cent/kWh recoupment to a .36 cent/kWh refund in the E-factor by quarter. (PPL Electric Ex. JMK-5). These variances have been even more pronounced for the Small C&I customer class, where the E-factor has varied from a 4.15 cent/kWh charge to a 1.53 cent/kWh refund. (PPL Electric Ex. JMK-5). In response to these large swings in the E-Factor, PPL Electric has proposed to revise its method of computing the GSC-1 reconciliation in order to calculate the reconciliation amount

[53] It is noted that PPL Electric's proposed default service procurement plan has no procurements for Small C&I customers continuing beyond May 31, 2015, and therefore there would be no issue regarding the definition of Small C&I customers for default service contracts beginning June 1, 2015.

every six months based upon a rolling 12-month average of projected GSC-1 sales, rather than a reconciliation of a three-month period of revenues and costs divided by a projection of the next three months' sales. (PPL Electric St. 5-R, pp. 4-5). RESA and DES/IGS oppose the use of a rolling 12-month average reconciliation and support the continuation of quarterly reconciliation periods. Both parties assert that a continued quarterly reconciliation process is needed to maintain a market-responsive PTC and to avoid default service prices becoming "out of market." (RESA St. 1, p. 23; DES/IGS St. 1, p. 5). PPL Electric disagrees.

E-Factors in general, and quarterly recomputed E-factors in particular, by definition do not insure that default service rates reflect current market prices. The Section 1307(e) reconciliation process is a comparison of actual prior period billed revenue under the GSC-1 to actual prior period default service costs incurred to provide service under the GSC-1. Thus, the resulting recoupment charge or refund credit has nothing to do with, and is therefore not reflective of, prospective market prices. (PPL Electric St. 5-R, p. 6).

PPL Electric believes that large swings in over/under collections can distort, and have distorted, the PTC. As RESA's own witness, Ms. Williams, acknowledged, to the extent a customer considers default service prices to be a relevant factor in deciding whether to shop, a large refund or a large recoupment factor in the E-factor could influence that customer's decision to shop. (Tr. 211). Evidence of this effect can be seen from the table presented on page 4 of OSBA Statement No. 1, where shopping load moves in relation to whether there is a positive E-factor that increase the GSC rate or a negative E-factor that reduces the GSC rate. As explained by PPL Electric's witness Kleha, use of a short-term quarterly reconciliation process contributes to these E-factor variances because, due to the limited period of time for refund or recoupment of over or under collections, the quarterly reconciliation process exacerbates any misforecast of

revenues and costs. Such misforecasts occur because of reduced revenues resulting from customer migration, misprojection of the cost of spot market purchases, misprojections of the portion of default service load being provided by block and full requirements contracts due to changes in customer load, and any deviation of customer monthly usage caused by periods of extreme weather conditions. (PPL Electric St. 5-R, p. 7).

A rolling 12-month average reconciliation methodology will smooth E-Factor rate adjustments and allow C-factor rate adjustments, which reflect the changes in market prices resulting from default service procurements, to more accurately reflect default service rates over time. The smoothing effects of PPL Electric's proposal are demonstrated on PPL Electric Exs. JMK-5 and JMK-6. On these exhibits, the Company has shown the actual effects of E-Factor swings, and re-cast the E-factor changes from June 2011 through August 2012 using its proposed 12-month rolling average reconciliation process. The differences are shown in the tables below:

Residential Customer Class – Actual Rates					
Quarterly Periods	June 1, 2011 – August 31, 2011	Sept. 1, 2011 – Nov. 30, 2011	Dec. 1, 2011 – Feb. 29, 2012	March 1, 2012 – May 31, 2012	June 1, 2012 – Aug. 31, 2012
E-Factor Rate	0.141	0.683	(0.363)	(0.077)	(0.096)
Total Rate	8.047	7.683	7.039	6.203	7.329

Residential Customer Class – Recast Rates					
Quarterly Periods	June 1, 2011 – August 31, 2011	Sept. 1, 2011 – Nov. 30, 2011	Dec. 1, 2011 – Feb. 29, 2012	March 1, 2012 – May 31, 2012	June 1, 2012 – Aug. 31, 2012
E-Factor Rate	0.035	0.196	0.072	0.139	0.061
Total Rate	7.949	7.237	7.452	6.414	7.481

Small C&I Customer Class – Actual Rates					
Quarterly Periods	June 1, 2011 – August 31, 2011	Sept. 1, 2011 – Nov. 30, 2011	Dec. 1, 2011 – Feb. 29, 2012	March 1, 2012 – May 31, 2012	June 1, 2012 – Aug. 31, 2012
E-Factor Rate	4.154	2.107	(1.533)	(1.214)	.269
Total Rate	12.171	9.319	5.900	5.511	7.886

Small C&I Customer Class – Recast Rates					
Quarterly Periods	June 1, 2011 – August 31, 2011	Sept. 1, 2011 – Nov. 30, 2011	Dec. 1, 2011 – Feb. 29, 2012	March 1, 2012 – May 31, 2012	June 1, 2012 – Aug. 31, 2012
E-Factor Rate	1.039	1.289	0.902	0.742	(0.229)
Total Rate	9.056	8.501	8.335	7.396	7.404

As demonstrated in the foregoing tables, the E-Factor portion of rates has created substantial savings in the PTC, and these swings can be greatly mitigated by adoption of a 12-month rolling average reconciliation. The foregoing is compelling evidence to demonstrate the

merit in revising the E-Factor calculation to moderate default rate swings that are unrelated to market price changes, which alternately can encourage and discourage customer shopping.

RESA witness Williams also opposes use of a rolling 12-month reconciliation period on the basis that greater over/under collection interest will be accrued. (RESA St. 1, p. 24). PPL Electric acknowledges that interest is computed monthly from the month of an over/under collection to the midpoint of the period in which an overcollection is refunded or an undercollection is recouped. However, as explained by PPL Electric witness Kleha, the overall impact on customer bills from interest is negligible and will not have a substantial effect on the E-Factor calculations or on customer shopping decisions. (PPL Electric St. 5-R, p. 9). Moreover, Ms. Williams' assertion does not take into account that a 12-month rolling average will incorporate periods of overcollection and undercollection, as can be seen on PPL Electric Ex. JMK-5, with the net effect that interest calculated and due to the Company on monthly undercollection balances may be offset by interest owed to customers on monthly overcollection balances.

For all of the foregoing reasons, the Company's proposal to adopt a 12-month rolling average for E-factor reconciliation of GSC-1 rates should be adopted.

Finally, PPL Electric notes that the DSP II GSC-1 reconciliation calculations will include the remaining over/under collection balances for both the fixed price and TOU price rate options as of May 31, 2013 under the DSP I Program for the separate Residential and Small C&I customer classes. In this regard, the Company intends to follow the order issued by the Commission on August 30, 2012 at Docket No. R-2011-2264771, wherein the Commission held that PPL Electric may recover the net undercollection of its prior period TOU program from all default service customers, by customer class, following certification by the Commission's

Bureau of Audits that the amount of the net undercollection claimed is correct and has been accounted for consistent with Commission directives. (PPL Electric St. 5-RJ, p. 2). PPL Electric is aware of no opposition to this proposal.

c. Large C&I Customer Class – Rates

PPL Electric has proposed no change from the DSP I Program with respect to the calculation of charges for default service to customers in the Large C&I Customer class under the GSC-2. The Company proposes to continue to collect: (1) an energy charge per kWh based on the real time hourly spot-market price and the customer's actual hourly energy usage, (2) a capacity charge per kW based on the PJM reliability pricing model ("RPM") price for capacity and the customer's peak load contribution and (3) an energy charge per kWh to recover all supplier charges and PPL Electric's costs of administration, including an amortization of the costs of procurement. (PPL Electric Ex. 1, p. 32). The energy charge per kWh to cover supplier charges and administrative costs is revised annually, consistent with the annual procurement process for default service supplies for the Large C&I customer class. (PPL Electric Ex. 1, p. 32). The energy charge for real-time hourly spot market prices and capacity charge are derived from PJM markets.

PPL Electric is not aware of any challenge to the structure of rates for the Large C&I customer class, and PPL Electric's proposal should be approved.

d. Large C&I Customer Class – Reconciliation

PPL Electric currently reconciles the GSC-2 revenues and costs on an annual basis. (PPL Electric St. 5-R, p. 8). This is consistent with the fact that the bulk of the charges are pass-throughs of PJM real-time spot and capacity charges, and the annual non-laddered procurement of contracts from suppliers. PPL Electric has proposed no change to this reconciliation

methodology in DSP II. PPL Electric proposes that any remaining over or under collection from the DSP I Program be included in the ongoing GSC-2 charge reconciliation. PPL Electric is not aware of any challenge to the proposed continuation of annual reconciliation of the GSC-2 charge. It is noted that over 98% of Large C&I customer load is currently shopping and thus there is no reason, from a shopping perspective, to change the existing process of reconciliation.

e. The Green Power Program

PPL Electric is proposing in this proceeding not to extend the PPL Electric Green Power Program, which became effective on August 11, 2009 and is scheduled to terminate on May 31, 2013. The Green Power Program was implemented to provide Residential and Small C&I default service customers with an option to pay a fee, in addition to their monthly bill, with the fees of all participating customers used to purchase AECs. (PPL Electric St. 4, p. 34). Customer participation varies from month to month, but has never exceeded a few hundred customers. (PPL Electric St. 4, p. 34). There are several reasons why PPL Electric proposes to end the Green Power program on May 31, 2013. First, the contract between Community Energy, Inc. (the supplier of the AECs in this program) and PPL Electric will terminate on May 31, 2013. Second, PPL Electric believes that this type of optional service should be offered by competitive market participants, not by a Default Service provider. (PPL Electric St. 4, p. 34). The Company proposes to send a letter to each participant prior to the contract termination date informing each customer that the Green Power Program will be ending. (PPL Electric St. 4, p. 34).

Two parties, SEF and RESA, raised concerns about the Company's proposal to allow the Green Power Program expire, although one party, SEF, opposes the termination of the optional service, while the other, RESA, supports its termination.

SEF contends that the Green Power Program should not be eliminated because it provides "significant benefits" to ratepayers. (SEF St. 1, pp. 4-5). The Company acknowledges that when the Green Power Program was instituted in 2009 when the EGSs were only beginning to re-enter the market, the Program did offer a benefit in that it assured customers that they would have at least one green option available. (PPL Electric St. 4-R, p. 50). However, as competition has redeveloped with the expiration of generation rate caps, there are now many green options available to customers and they are easily found on PaPowerSwitch. Notably, in August of this year, the PaPowerSwitch website listed two credit purchase programs similar to the Green Power Program and thirteen (13) green energy programs offered by EGSs. (PPL Electric St. 4-R, p. 50). Furthermore, the Company's Green Power Program has a disadvantage in that participating customers cannot shop for electricity and, thereby, lose the opportunity to achieve additional savings. *Id.* SEF's claim that the Green Power Program should continue because of benefits to customers is no longer a valid claim in today's competitive market and should be rejected.

SEF's second contention, related to the first, is that PPL Electric's Green Power Program should be continued and actively promoted by PPL Electric because it has a lower cost than a purportedly comparable program offered by PPL Electric's EGS affiliate, PPL EnergyPlus. (SEF St. 1, pp. 4-5). SEF's comparison of the Green Power Program to a program offered by PPL EnergyPlus is inappropriate and inaccurate. First, it is totally inappropriate to argue, as SEF does, that PPL Electric should promote a program available only to default service customers as a competitor to any program offered in the competitive space, including any programs offered by an affiliate. (PPL Electric St. 4-R, p. 50). Such promotion would inevitably involve the use of ratepayer resources to subsidize a product that would be in direct competition with competitive offerings. (PPL Electric St. 4-R, p. 51). Furthermore, it is inaccurate to assert that the PPL

EnergyPlus Green Power Program "is priced significantly higher than PPL Electric's current Green Program." (SEF St. 1, pp. 4-5). SEF's contentions fail to present an accurate comparison. As PPL Electric witness Krall explained, when computed on a per AEC basis (with one AEC equal to one MWh), the PPL EnergyPlus program offers six different annual options priced from $18 per AEC, to $20.00 per AEC. (PPL Electric St. 4-R, p. 51). PPL Electric's Green Power Program offers 100 kWh per month (or one-tenth of an AEC) consisting of 64% wind generation and 34% hydro generation at a cost of $2.50 or $25 per AEC. While the renewable credits offered by each of these programs is different, on a simple dollar-per-credit basis, the PPL EnergyPlus program appears to be lower priced. (PPL Electric St. 4-R, p. 51). Therefore, SEF's argument that the Green Program should be continued based on its assertions concerning the benefits to ratepayers and because of its cost should be rejected.

As indicated above, RESA agrees with the Company that the Green Power Program should be allowed to expire. (RESA St. 2, p. 45). However, RESA recommends that the Company send two notices to remaining program participants. RESA further recommends that one, if not both, of the notices contain offers (prepared at EGSs' expense) describing alternative green products offered in the competitive market. *Id.* Consistent with the Company's proposal, the Company believes that a single letter will be sufficient to convey the necessary information. (PPL Electric St. 4-R, p. 52). The Company also believes it is appropriate to explain to participants in that letter that the PaPowerSwitch website clearly lists numerous green options of various types. *Id.* The Company is not adverse to an EGS-sponsored mailing as described by RESA, as long as all costs are paid by the entities whose marketing material is being distributed by the mailing. The Company believes, however, that such a mailing to a population that has

already demonstrated awareness of and an ability to seek out green options is unnecessary. (PPL Electric St. 4-R, p. 52).

f. Optional Monthly Pricing Service

The Company proposes in this proceeding to eliminate procurements for the Optional Monthly Pricing Service ("OMPS") and to eliminate this rate option for the Large C&I Customer Class. The OMPS was established in the settlement of the DSP I Program, and was designed to provide a monthly fixed price service option for Large C&I customers. (PPL Electric St. 1, p. 10). The provision of OMPS was contingent upon PPL Electric receiving bids from wholesale suppliers to provide the service. In every procurement to date under the DSP I Program, no supplier has bid to provide OMPS service, and the service has never been available. (PPL Electric St. 1, p. 10). Based on this evidence, it is clear that no supplier is willing to undertake the risk of providing OMPS. Therefore, the Company is proposing to discontinue offering this product. No party has objected to this proposal, and therefore it should be adopted.

g. Price to Compare Calculation Date

PPL Electric publishes a final PTC rate about 10-15 days prior to the rate effective date. (PPL Electric St. 1-R, p. 14). PPL Electric also provides a preliminary PTC rate approximately 90 days in advance of the final PTC rate. (Tr. 157).

RESA witness Williams contends that moving default service procurements to take place approximately 60 days in advance of the applicable effective period, compared to the Company's proposal to undertake procurements of 12-month full requirements contracts approximately 30 days in advance of the applicable effective period, will permit PPL Electric to calculate the new PTC 45 days in advance of the effective date. RESA argues that advancing the date for calculating a new PTC will provide customers with "accurate information needed to make

informed shopping decisions." (RESA St. 1, p. 15). PPL Electric disagrees with RESA's proposal.

Initially, PPL Electric emphasizes that it currently provides a preliminary PTC approximately 90 days in advance of when the final PTC is provided. (Tr. 157). This information provides customers with an estimate of the PTC in order that they may have that information available as they assess EGS offers. However, RESA's contention that PPL Electric should undertake the default service RFP approximately 60 days in advance of the effective period and that the Company should then provide a final PTC rate 45 days prior to the effective date will result in a less accurate PTC rate and greater E-Factor distortions. The Company's regulatory accounting department does not finalize its calculation of the E-factor component of the PTC until about 15 days prior to the effective date of new GSC rates. (PPL Electric St. 1-R, p. 14). The Company seeks to have the most recent available over/under collection data, calculated through the end of the month prior to the new PTC date, in order to minimize the potential distortion, and resulting increased reconciliation, that would result from having less current actual data. (Tr. 157). In addition, the Company receives updated forecasts of default service load on a monthly basis. By waiting for the beginning of the month in which the PTC is calculated, the Company is able to use a more current forecast of projected sales to calculate the PTC. Current forecasts of projected default service sales also reduce reconciliation distortions. (PPL Electric St. 1-R, p. 14).

RESA's proposal to accelerate the date for publication of a final PTC can distort the E-factor and the resulting PTC price. Such distortions result in PTCs that are less market reflective of the Company's true default service costs, and for reasons explained in Section III.B.2.b.

above, should be minimized where possible. For all the foregoing reasons, RESA's proposal to accelerate procurements and require an earlier publication of the final PTC should be rejected.

h. Recovery of Transmission and Other Related Charges

The Company also imposes a Transmission Service Charge ("TSC") on all default service customers to recover the cost of acquiring transmission service for such customers. (PPL Electric St. 5, p. 10). In its filing, the Company proposed to modify the language of the TSC to clarify what FERC-approved costs are to be recovered through the TSC. The TSC includes those charges that, under the default service Supply Master Agreement ("SMA"), are billed to the Company and not to default service wholesale suppliers. (PPL Electric St. 5, p. 10; PPL Electric Ex. JMK-3). Under the SMA, PPL Electric is responsible for payment of all "non-market based transmission services" costs, which the SMA defines as network integration transmission services ("NITS"), transmission enhancement costs, expansion cost recovery costs, non-firm point-to-point transmission service credits, regional transmission expansion plan ("RTEP") and generation deactivation charges. (PPL Electric Ex. 1, Appendix A, Article 2.3 and Article 1, Definition of "non-market-based transmission services"). It is these transmission charges that PPL Electric recovers through the TSC.

Pursuant to PPL Electric's tariff, the TSC is separately computed and applied to four customer classes: Residential, Small C&I, Large C&I Primary and Large C&I Transmission. For TSC purposes, the Large C&I – Primary customers take service at 12 kV primary voltage level and are served under Rate Schedules LP-4 and IS-P(R). Large C&I – Transmission customers take service at the 69 kV or higher transmission voltage level. Residential and Small C&I customers are served at a secondary voltage level. (PPL Electric St. 5-R, p. 10).[54]

[54] These four TSC customer classes were developed as part of a unanimous settlement of the remand of PPL Electric's 2004 base rate proceeding at Docket No. R-00049255. (PPL Electric St. 5, p. 10). Pursuant to settlement

OSBA initially raised an issue concerning whether Small C&I customers under Rate Schedule GSC-3 with a peak demand of 500 kW or greater should be switched to the Large C&I Primary class for TSC purposes, and whether Large C&I Primary customers under Rate Schedule LP-4 with a peak demand of less than 500 kW should be switched to the Small C&I class for TSC purposes. This proposal was based upon the fact that these customers were in the Large C&I and Small C&I customer classes, respectively, for generation procurement (GSC-1 and GSC-2) purposes. (OSBA St. 1, p. 9). PPL Electric opposed OSBA's proposed change to the assignment of customers for transmission cost purposes. PPL Electric argued that it was more appropriate to continue the assignment of customers for TSC purposes based upon their service voltage level, rather than based upon a previously-agreed upon assignment of the customers for procurement purposes. (PPL Electric St. 5-R, pp. 11-12). PPL Electric further explained that a change in the class assignment of certain customers could result in adverse affects on such customers and cost shifting among the different customer classes. (PPL Electric St. 5-R, p. 12). In surrebuttal, OSBA witness Knecht testified that it was not his intent to create a cost shifting problem, and that if PPL Electric presented credible evidence of a material amount of cost shifting, he would recommend that OSBA no longer support this adjustment. In response, PPL Electric witness Kleha testified that the 104 Rate Schedule LP-4 customers who would be moved from the Large C&I – Primary class to the Small C&I class under OSBA's proposal would collectively pay about $226,000 more (averaging over $2,000 more per customer). In addition, the six Rate Schedule GS-3 customers who would be moved from the Small C&I class to the Large C&I – Primary class would collectively pay about $121,000 less. (PPL Electric St. 5-RJ, pp. 1-2). Mr. Kleha further explained that the switch would not only

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of that proceeding and provisions contained in the TSC tariff, different TSC charges are imposed on the four separate TSC default service customer classes. (PPL Electric St. 5-R, pp. 13-14; PPL Electric Ex. JMK-3).

substantially affect the individual customers who would be moved between the two TSC rate classes, but would also affect existing customers on those two classes. Specifically, the remaining Small C&I customers would receive a decrease in costs of about $152,000 while existing Large C&I – Primary customers would experience an increase in costs of $47,000. (PPL Electric St. 5-RJ, pp. 1-2). PPL Electric believes these class shifts are material and provide further substantial evidence that these GSC-3 and LP-4 customers should not be moved out of their existing TSC customer classes.

i. Costs to be Included in the TSC or GSC

Constellation proposes that new economic load response ("ELR") charges be recovered through the TSC rider, and not be the responsibility of wholesale default service suppliers. PPL Electric disagrees, and contends that such charges should be paid by wholesale suppliers.

As explained by Constellation witness Bennett, FERC has determined that when demand response resources are dispatched by a regional transmission organization such as PJM, such resources are to be compensated at the locational marginal price ("LMP"). The compensation paid to ELR resources will be billed by PJM to load serving entities through a calculation undertaken on a regional-wide basis under two new charges known as the "Day Ahead Load Response Charge Allocation" and the "Real-Time Load Response Charge Allocation." (Constellation St. 1, pp. 20-21).

It is PPL Electric's position that these ELR charges should not be included in the TSC but should instead be the responsibility of wholesale suppliers under the SMA. Constellation acknowledges that the amount of any costs to be billed under the new ELR charges are based upon LMP, which is a market-based cost. (Constellation St. 1-S, pp. 4-5). In addition, the

payments are for demand response resources, which are clearly generation-related costs.[55] As a result, PPL Electric considers the resulting ELR charges to have a market basis and, therefore, these charges should be included in the cost to be borne by wholesale suppliers. (PPL Electric St. 1-R, p. 28). *See FirstEnergy Order*, p. 86. Although Constellation seems to focus attention on the fact that the spread of the cost is formulaic, the costs themselves are determined by the market and it is reasonable that wholesale suppliers take on this market risk. Constellation's proposal should not be adopted.

ii. Non-Bypassable Structure

OSBA and Constellation have proposed that the TSC be revised to apply to all distribution customers, shopping and non-shopping, on a non-bypassable basis. (OSBA St. 1, p. 8; Constellation St. 1, p. 23). In rebuttal, RESA supported these proposals. (RSA St. 1-R, p. 13). These parties propose that instead of limiting the TSC to default service customers, the charge would be imposed upon all customers. PPL Electric does not support this proposal. This proposal involves numerous complexities, and could result in substantial cost shifting among customers that has not been examined by the proponents of this proposal. To accomplish this proposal, transmission-related costs currently billed by PJM to EGSs would need to be reassigned to PPL Electric, which would then need to develop new class cost allocators. (Constellation St. 1-SR, p. 2). This process would need to account for all customers' load, peak load and costs. (*See* PPL Electric St. 5-R, p. 13). In addition, a change to a non-bypassable charge applied to all distribution customers would deprive customers of the opportunity to seek alternative arrangements for payment of transmission-related costs. Constellation witness

[55] In *Pa. PUC v. Pennsylvania Electric Company Pennsylvania and Metropolitan Edison Company*, Docket Nos. M-2008-2036188, *et. al.*, 2010 Pa. PUC LEXIS 247 (March 3, 2010), the Commission held that transmission line losses are a generation-related cost, even though billed as a transmission charge by PJM. *Aff'd Metropolitan Edison Company and Pennsylvania Electric Company, v. Pa. PUC*, 22 A.3d 353 (June 14, 2011), *appeal denied*, 40 A.3d 123 (February 12, 2012).

Bennett acknowledged that Large C&I customers currently may have contracts with pass through or fixed price arrangements related to recovery of transmission charges. Among these arrangements are EGS offerings to collect costs through a collection method that reflects a customer's individual PJM transmission obligation. (Constellation St. 1-SR, p. 6). As the Commission examines potential end state default service structures and EGSs argue that shopping provides opportunities to tailor new products for customers, it would appear to be a step backward to make a substantial change to the structure of the TSC rider to create a non-bypassable charge to be imposed by the default service provider upon all customers. PPL Electric further notes that, as acknowledged by witnesses for OSBA and RESA, the Commission rejected a proposal to establish a non-bypassable transmission charge in the *FirstEnergy Order*. (OSBA St. 3, p. 3; RESA St. 1-R, p. 14; *FirstEnergy Order* at pp. 77-78). For these reasons, the proposal to create a non-bypassable TSC should be rejected.

Alternatively, OSBA's witness Knecht proposes to eliminate the TSC as a charge to default service customers, and require wholesale suppliers to bear those costs and price them into their default service supply bids. (OSBA St. 1, p. 8). Constellation does not support the alternative proposal. (Constellation St. 1-R, p. 7).

There are difficulties with this alternative proposal that have not been examined by OSBA. Current contracts with wholesale suppliers under the DSP I Program do not provide for suppliers to be responsible for these transmission-related charges. These DSP I Program contracts extend for various terms into the DSP II Program period, with the last of the fixed-price, full-requirements, load-following contracts for the Residential and Small C&I customer classes not expiring until March of 2015. (PPL Electric St. 1-R, p. 30; PPL Electric Ex. JC-4A; PPL Electric Ex. JC-4B). As such, it is not possible to require these suppliers to bear such

transmission-related costs. Thus, as Mr. Knecht concedes, there would need to be a process to phase out the TSC charge. (PPL Electric St. 1-R, p. 30; OSBA St. 3, p. 2). Mr. Knecht has offered no explanation of how the process of phasing out the TSC charge would be accomplished. He also has not offered any analysis of whether such a phase out process could affect shopping decisions by customers or affect the willingness of wholesale suppliers to continue to participate in future default service procurements. (PPL Electric St. 1-R, p. 30).[56] OSBA's alternative proposal to phase out the TSC should be rejected.

iii. Reconciliation

PPL Electric's current TSC cost allocation and reconciliation procedure among the customer classes is based on each transmission customer class's percentage contribution to the five highest coincident peaks used by PJM to bill PPL Electric for default service transmission costs. The percentages for these five days are averaged to develop a customer class contribution. The resulting calculated class peak load responsibility is adjusted for the forecast amount of default service load for the upcoming annual TSC application period. The adjusted peak load responsibility values then are used to determine the annual percentage of the demand related components of the PJM transmission-related charges assigned to each customer class for the term of the annual TSC application period. Currently PPL Electric uses the same calculated percentages for the after-the-fact reconciliation of the actual demand related costs that are incurred. (PPL Electric St. 5-R, pp. 13-14).

OSBA has challenged the foregoing procedure used to reconcile demand-related costs in the TSC. OSBA contends that PPL Electric's allocation of such demand-related costs to the four TSC customer classes should be revised in the reconciliation process to use experienced class

[56] Although OSBA witness Knecht asserts that the current structure of the TSC is inequitable and anti-competitive, such claims are not borne out by the high levels of shopping among all customer classes on the PPL Electric system as compared to that experienced on other EDC systems. (OSBA St. 1, p. 6; OSBA Ex. IEc-S1).

contributions to peak demand during the reconciliation period, rather than the initial forecasted demands that were used to develop the TSC charges. (OSBA St. 1, p. 6).

PPL Electric explained in rebuttal that it concurs with Mr. Knecht that a modification of the TSC allocation procedure to reflect actual monthly TSC demand per customer class is appropriate. (PPL Electric St. 5-R, p. 13). PPL Electric witness Kleha explained the process that PPL Electric has recommended to allocate demand costs for purposes of TSC reconciliation in the Commission's Docket No. M-2011-2239714.[57] PPL Electric recognizes that maintaining the same customer class allocation factors can distort the class's responsibility for demand related costs due to customers moving to and from default service. Therefore, PPL Electric proposes that the customer class allocation factors for the demand related transmission costs should be adjusted on a monthly basis. (PPL Electric St. 5-R, p. 15). Under this approach, the percentage of demand-related costs assigned to each customer class would change monthly to account for increases and decreases in the customer classes' assigned peak load responsibility, based on a customer class's share of default service load in a given month. This monthly adjustment to the customer class allocation factors would then be reflected in the annual reconciliation of TSC demand-related costs. (PPL Electric St. 5-R, p. 15).

No party has opposed this modification. Therefore, PPL Electric respectfully recommends that this modification be adopted for the current annual TSC application/reconciliation period, for the twelve months ending May 31, 2013.

[57] In May 2011, in response to concerns related to PPL Electric's final 2010 TSC reconciliation report, the Commission opened a generic investigation at Docket No. M-2011-2239714 to request comments to address the appropriate method to allocate demand costs for purposes of TSC reconciliation. Comments and/or reply comments have been submitted by various parties including PPL Electric, OCA and OSBA. No order has been entered in that proceeding.

3. Time of Use Rate Option[58]

a. Introduction

To understand and properly resolve the TOU issues presented in this proceeding, it is important to understand the legal, factual and policy background surrounding TOU rates in the Commonwealth and the history of PPL Electric's TOU rate offerings. Historically, electric utilities charged flat rates per customer or kWh that did not vary with time of use. The cost of generating electricity and the wholesale market price of electricity, however, are not constant and can vary substantially by time of year and time of day. Based on this difference between cost incurrence and rate design, some policymakers have advocated for electric rates that vary by time of use. *See* 66 Pa. C.S. § 2807(f)(5) (requiring EDCs to file one or more TOU and real-time rates). The goal of such rates is to give customers more accurate price signals as to the cost of electricity and encourage them to shift their usage from higher cost on-peak periods to lower cost off-peak periods. The resulting decrease in peak demand, all else equal, would lower the cost of supply and benefit all customers.

The ability to implement time of use rates for residential customers, however, was substantially limited by a lack of meters which could measure hourly usage. Act 129 addressed this issue by requiring EDCs to install "smart" meters for all of their customers and requiring the EDC to offer, but not require, time of use and real time rates for all customers with smart meters. *See* 66 Pa. C.S. § 2807(f)(5).

The implementation of TOU rates in Pennsylvania has given rise to several difficult and controversial issues. These issues have included, *inter alia*, the proper definition of on-peak and off-peak periods; whether the periods should be different for different classes of customers; how

[58] Due to the length of this section the Company has expanded and added to the headings listed in the common outline circulated in this proceeding.

to account for seasonal differences in the electric market; what steps should be taken to encourage customers to participate in a voluntary TOU program; whether TOU rates should be "revenue neutral;" and whether customers should be able to switch back and forth freely between TOU rates and fixed rates.

The development of TOU rates was further complicated by the adoption of the Competition Act, which required rate unbundling, provided for retail competition and required each EDC to act as the default service provider for its non-shopping customers. *See* 66 Pa.C.S. § 2807. Initially, several stakeholders contended that TOU rates are not default service rates even though, under Act 129, they must be provided by the default service provider. The Commission definitively resolved this issue only a month ago in *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 at 23, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012), when it held that TOU service is default service. Additional issues arose as to whether TOU default service rates should be a "plain vanilla" offering so as to not compete with EGS service, or whether a TOU default service program should have a more robust design to encourage customer participation, but at the same time directly competing with EGS time-of-use rate offerings. Disputes also arose as to whether TOU default service rates should be priced independently or in reference to fixed-price default service rates, how TOU rates should be reconciled, and how supply for TOU service should be procured.

All of these issues have been further complicated by recent Commission actions that have called into question the continued role of EDCs as the default service provider. *See, e.g., Investigation of Pennsylvania's Retail Electricity Market,* Docket No. I-2011-2237952, (Secretarial Letter Issued September 27, 2012), and the related "RMI End State Proposal." If EDCs are to exit the default service function in the near future, does it make any sense to utilize

the time and resources required to develop and implement new TOU programs that may only be in effect for a short period of time?

PPL Electric has been a long-time supporter of TOU rates. Prior to restructuring, PPL Electric implemented interruptible rates for large customers in the early 1980s, and thereafter implemented several other TOU-type programs, including demand free days, time of day billing options, reduced off-peak billing demand components and interruptible rate options.[59] And, after restructuring and prior to the adoption of Act 129, PPL Electric offered several pilot TOU programs for Residential customers.[60]

Following the adoption of Act 129, the Company was required, as a default service provider, to offer a TOU rate option to its default service customers.[61] In 2010, PPL Electric proposed a TOU program for Residential and Small C&I customers that contained an on-peak rate that was higher than the fixed-price default service rate and an off-peak rate that was lower than the fixed-price default service rate. The Commission approved this program, but also held that PPL Electric could not recover lost or decreased revenues resulting from reduced or shifted demand.[62] The effect of this Order was to require PPL Electric to offer a TOU program under which it would not be able to fully recover its costs, which in the Company's view violated the provisions of Act 129 and the Competition Act that guaranteed the default service provider's full cost recovery. *See* 66 Pa.C.S. § 2807 (e)(3.9) ("The default service provider shall have the right

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[59] *See Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket Number R-00027175, Order Entered April 11, 2002. (discussing the DSR Rider and Residential Service Rate Schedule, which adjusted for seasonal and time-of-day usage). *See Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code*, Docket No. R 00973954 at Para. 327, 1998 Pa. P.U.C. LEXIS 129 (Recommended Decision April 1, 1998) (summarizing the Company's historical TOU-type programs).

[60] *Id.*

[61] *Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945 (Order Entered June 24, 2010)(approving various pilot programs). See also, PPL Electric St. 3, p. 3.

[62] *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718, 2010 Pa. P.U.C. LEXIS 461 (Order entered March 9, 2010).

to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.").

In response to the Commission's Order, PPL Electric proposed a new TOU program for 2011, in which TOU default service rates were set independently of fixed-price default service rates. (PPL Electric St. 3, p. 3). This program also was approved by the Commission,[63] but quickly proved unworkable and caused a number of serious problems, including a significant undercollection due to unexpected increases in spot market prices, significant customer enrollment when both on-peak and off-peak prices were below the fixed-price default service rate, and rapid and massive customer exits from the TOU program when on-peak and off-peak rates were above the fixed-price default service rate. *Id.* To avoid exacerbating these problems, in August 2011, PPL Electric requested that the Commission suspend the TOU rates that were to become effective on September 1, 2011, keep the then-current TOU rates in effect and allow PPL Electric to submit a revised TOU program within 30 days. By order entered August 25, 2011, at Docket No. M-2011-2258733, the Commission granted the Company's request and directed the Company to submit a new TOU program.

In accordance with the Commission's Order, on September 26, 2011, the Company proposed a new 2012 TOU program. In essence, the proposed 2012 TOU plan returned to the 2010 model and provided that customers would pay a percentage premium over the fixed-price default service rate in on-peak periods and receive a percentage discount off of the fixed-price default service rate in off-peak periods. The proposed 2012 TOU plan was pending before the Commission at the time of the DSP II Program filing (May 1, 2012). Given the lack of a final

[63] *PPL Electric Utilities Corporation Supplement No. 94 to Tariff Electric – Pa. P.U.C. No. 201-Time of Use Rates*, Docket No. R-2010-2201138 (Order entered December 2, 2010).

Commission decision, the transitional nature of the default service filing and the uncertainty regarding PPL Electric's default service provider status after June 1, 2015, the Company decided to "stick with" its 2012 TOU proposal in its default service filing, and to reflect any changes that might later be required as a result of the pending 2012 TOU rate proceeding.

On June 20, 2012, ALJ Colwell issued her Recommended Decision ("R.D.") in the 2012 TOU proceeding. The R.D. characterized the Company's 2012 TOU plan as a stop-gap program designed only to meet the minimum standards required by Act 129. The R.D. also noted that the proposed program would have been effective for less than a calendar year and that the parties were already litigating TOU issues in the current default service proceeding. The R.D. therefore rejected the Company's TOU proposal and encouraged the parties to negotiate a TOU program in the current DSP II proceeding.[64]

On August 30, 2012, after rebuttal testimony was submitted in this proceeding and only shortly before the start of hearings, the Commission affirmed the Recommended Decision's rejection of PPL Electric's 2012 TOU Program. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771, *et al.*, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012). The Commission's Order contains three important holdings. First, the Commission definitively held that TOU service is a default service and expressly stated that, "... based upon the language in the statute, we agree with PPL's position that the TOU program is a form of default service." *Id.* at 23. Second, the Commission held that it was not persuaded that TOU default service rates should be derived from or based on fixed-price default service rates. Specifically, the Commission explained that it was "not persuaded by the record in this proceeding that PPL's TOU rates should be a derivation of the DSP rate." *Id.* at 18. Third, the

[64] *Pa. P.U.C., v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 at pp. 20, 25, 2012 Pa. P.U.C. LEXIS 1007 (Recommended Decision June 20, 2012).

Commission determined that the Company could recover prior period and ongoing undercollections from all Residential and Small C&I customers, respectively, On the issue of undercollections, the Commission explained that "[f]ollowing certification by the Commission's Bureau of Audits that the amount of the net undercollection claimed is correct, the accounting method used is consistent with Commission directives and the allocation among rate classes is appropriate, PPL may begin recovery of its TOU undercollection." *Id.* at 23.

Because the Commission's Order was only entered shortly after testimony was filed and shortly before hearings began in this proceeding, PPL Electric and other interested parties did not have the opportunity to fully react and respond to the Commission's Order. For the reasons set forth below, and given all of the above facts and circumstances, PPL Electric believes that the most prudent course of action would be to approve PPL Electric's as-filed TOU plan as an interim, transitional measure. If the Commission does not adopt PPL Electric's plan as filed, PPL Electric presents in this Brief an alternative proposal that seeks to address the major concerns raised by the ALJ, the Commission and other parties to this proceeding. While the basic elements of the alternative proposal, explained below, are supported by the record in this proceeding, the Company requests that a collaborative be implemented so that details of the alternative proposal can be worked out and to ensure that all implementation issues are fully addressed.

b. PPL Electric's As Filed Proposal

i. TOU Program Overview and Rate Design

The Company's proposed TOU rate program establishes a separate default service rate option for Residential and Small C&I customers. Under the TOU rate option, the Company has selected on-peak and off-peak periods that remain constant throughout the year and prices that are based on the underlying fixed-price default service rate, *i.e.*, customers will pay a premium

above the fixed rate during on-peak periods and will pay a discount below the fixed rate during off-peak periods.

PPL Electric had several goals in mind in designing the TOU program. (PPL Electric St. 3-R, p. 2). The first goal was to have a simple TOU program that would provide a basic TOU rate option for default service customers that would allow them the opportunity to save money if they shifted usage. The second goal was to design a program that did not unduly inhibit the development of or compete with TOU rate options in the competitive retail market. *Id.* The third goal was to avoid a design that would encourage customers to switch back and forth between the TOU and fixed default service rates based on structural differences in the two programs. *Id.* The fourth goal was to enable the Company to recover all costs associated with providing TOU default service on a full and current basis. As explained below, PPL Electric's proposed TOU program achieves each of these goals.

Under PPL Electric's proposed TOU program for Residential customers, the Company is proposing an on-peak period from 12:00 p.m. to 7:00 p.m. year-round, excluding weekends and PJM holidays. (PPL Electric St. 3, p. 6). All other hours would be considered off-peak. *Id.* This consistent year-round time period will simplify TOU program implementation for customers because it will: (1) be easier for customers to remember, (2) not require them to reset timers on appliances or other devices, and (3) not require them to change usage patterns on a seasonal basis. *Id.* The actual load shape for the Residential class was used to determine the hourly percentage variance from the annual average for all possible combinations of on-peak and off-peak periods. *Id.* The on-peak period was evaluated based on several criteria including: a premium/discount that would encourage shifting of load and/or conservation; a reasonable time

frame to encourage participation; and periods that included the typical summer and winter peak load times. (PPL Electric St. 3, pp. 6-7).

The on-peak period for Small C&I customers is from 7:00 a.m. to 7:00 p.m., also on a year-round basis, excluding week-ends and PJM holidays. All other hours would be considered off-peak. (PPL Electric St. 3, p. 7). The same criteria set forth above for the Residential Class were used to select the on-peak period for the Small C&I class including in particular that customers taking optional off-peak space heating and water heating service under Rate Schedules GH-1 and GH-2 already have equipment that is controlled to minimize use during the 7:00 a.m. to 7:00 p.m. period. *Id.*

The rates for Residential and Small C&I TOU customers will be fixed for a 6-month period, corresponding with each proposed fixed-price default service PTC period, *i.e.,* June - November and December - May supply periods. The rates will reflect the generation cost component of the respective Customer Class GSC-1 rates adjusted by an adder for the on-peak period and a discount for the off-peak period, plus the Customer Classes' respective portions of Company administrative costs and the E-Factor. (PPL Electric St. 3, p. 7).

As described in detail by PPL Electric witness Woodruff, the on-peak adder and off-peak discount will be determined based on an analysis of the prior three calendar years of energy prices and load. (PPL Electric St. 3, pp. 8-9). This analysis will include a review of the Customer Class hourly load, the hourly PJM LMP, the hourly spot market energy dollars, the on-peak and off-peak $/MWh averages, and the generation cost factor of the GSC-1 rate for the respective Customer Class. *Id.*

TOU over/under collections will be reconciled across all default service customers by rate class, *i.e.,* Residential TOU over/undercollections will be reconciled over all Residential

default service load and Small C&I over/undercollections will be reconciled over all Small C&I default service load.[65]

Customers will be provided with advance notice and must affirmatively elect to participate in the TOU program, *i.e.*, there will be no carry over of customers from the former program. (PPL Electric St. 3, p. 10). There is no cap on the number of customers who can participate in the proposed TOU program. All existing TOU customers would be removed from the then-existing TOU rates as of their meter reading in May 2013, and would be eligible for the new TOU rates as of their meter reading in June 2013. The TOU program end date will be based on a customer's final billing cycle on or before May 31, 2015. *Id.*

ii. Default service TOU rates should be derived from fixed-price default service rates

As noted above, the Commission was "not persuaded" in PPL Electric's 2012 TOU proceeding that default service TOU rates should be derived from or based on fixed-price default service rates. The Company, however, for several reasons, continues to believe that it is reasonable and appropriate to determine the on-peak and off-peak rates in relation to the fixed-price default service rates.

First, as explained above, the Commission has now definitively held that TOU service is a default service. The Company believes that its two default service rate options, *i.e.*, fixed-price and TOU, should be established and designed on a consistent basis. Developing these two rate options for the same underlying service in two completely different ways will create artificial distortions which will cause customers to either elect or not elect the TOU option because of artificial rate design differences as opposed to a desire or willingness to shift load from on-peak to off-peak periods. This is not appropriate public policy.

[65] This proposal was accepted by the Commission in its August 30, 2012 Order in the 2012 TOU proceeding at Docket No. R-2011-2264771.

Second, establishing the two default service rate options on a consistent basis will promote retail competition. Customers compare EGSs' rate offers to an EDC's default service rates. If PPL Electric offers two different default service rates determined on two completely different bases, this can make price comparisons more difficult and could inhibit the development of TOU type rates in the competitive market.

Third, history has provided a clear lesson as to the dangers of detaching TOU rates from fixed default service rates. Under PPL Electric's 2011 TOU program, the futures market as of December 2010 was used to establish the TOU price for the first 5 months of 2011. At that time, however, the futures price was lower than the PPL Electric fixed-price default service price, which was based on multiple contracts over three years. (PPL Electric St. 3-RJ, pp. 4-5). As a result, the TOU price was well below the fixed-price default service rate and customers flocked to the rate. However, unanticipated disruptions in foreign oil markets caused a jump in spot market prices and increased the acquisition cost for TOU supply. (*See* PPL Electric St. 3, p. 3). This resulted in a large undercollection of TOU costs and a large reconciliation adjustment in June of 2011. This, in turn, caused more customers to flee the TOU rate which resulted in a further increase in the undercollection factor. By linking TOU and fixed-price rates, disruptions of this kind would not occur in the future.

Fourth, the Company's proposal to maintain the *status quo* is consistent with the transitional nature of this filing and the uncertainty surrounding EDCs future as the default service provider. It does not make sense to expend limited Commission resources to develop a new TOU rate program that may only be in effect for a short period of time.

The Company fully acknowledges that ALJ Colwell and the Commission were not previously supportive of this approach. But given all of the facts and circumstance and the

unique posture of this case, the Company respectfully suggests that its as-filed proposal should be approved.

iii. On-peak and Off-peak Periods.

OCA requests that PPL Electric revise the definitions of on-peak and off-peak periods. (OCA St. 1, p. 25). This proposal should be rejected. As illustrated in PPL Electric 3-R, p. 5, and Exhibit DRW-2, for the PJM Energy Market, PJM uses the same on-peak period and off-peak period for the entire year, therefore, PPL Electric has followed this guidance. One of the Company's primary goals in proposing the TOU program is to present a simple program for customers, particularly with respect to the on- and off-peak periods. (PPL Electric 3-R, pp. 5-6). A simple program design makes it easier for customers to compare options, including competitive options. As explained by PPL Electric witness Woodruff, a year-round, consistent time period, as proposed by PPL Electric, simplifies the proposed TOU program's implementation because the consistent year-round period: (1) is easy to remember, (2) does not require the resetting of timers on appliances or other devices, and (3) does not require customers to change usage patterns on a seasonal basis. (PPL Electric 3-R, pp. 6). While PJM uses a longer daily on-peak period, year-round of 7 a.m. to 11 p.m., PPL Electric has proposed a shorter daily year-round time period, in order to give most customers the ability to shift load out of the on-peak period to the off-peak period as defined in the proposed TOU program. *Id.*

SEF, as a secondary option to bidding out the TOU service (explained in subsection d. below), recommends that PPL Electric establish two different TOU rates: an "Easy TOU rate" and a more "traditional TOU rate." (SEF St. 1, at p. 15; Tr. 271-272). The Easy TOU rate would be available to Residential and Small C&I customers from June 1 through August 31.

(SEF St. 1, at p. 15).[66] The on-peak periods would be 3:30 p.m. to 6:30 p.m. Monday through Friday excluding holidays.[67] According to SEF, the on-peak and off-peak rates would be fixed for the period from June 1 through August 31 and during the remainder of the year (September 1 through May 31) customers would receive the same rates as the standard default service customers. The other, traditional, TOU rate option would be available to both Residential and Small C&I customers in the winter from December 1 through February 28 and in the summer from June 1 through August 31. The winter on-peak hours would be 6:00 a.m. to 9:00 am. and 5:00 p.m. to 8:00 p.m., while the summer on-peak hours would be from 12 noon to 7:00 p.m. Monday through Friday excluding holidays. During the months of March, April, May, September and November,[68] customers would receive the same rates as standard default service customers, *i.e.*, TOU rates will be a fixed-price for each period. *Id.*

With regard to the Easy TOU rate option, which proposes an on-peak period of 3:30 p.m. to 6:30 p.m., there are two reasons this is not currently feasible. (PPL Electric St. 1-R, p.10). First, the majority of PPL Electric's meters record full clock hour interval data because the PJM market is an hourly market. *Id.* PPL Electric currently has no way to record 30-minute data with the existing meters (with the exception of larger customers with MV90 meters that record 15-minute intervals). *Id.* Second, PPL Electric' s existing billing system cannot bill on 30-minute intervals without extensive re-programming. *Id.* The "traditional TOU rate" proposed by SEF, with its varying peak periods based on the season, is not consistent with the Company's goal to have a program that is easy to remember, does not require the resetting of timers on

[66] In its testimony SEF references both August 30 and August 31 as the end of the Easy TOU rate period, however, it is assumed that SEF intended that the Easy TOU rate period would end August 31 as it is the last day of the month. (*See* SEF St. 1, at p. 15, lines 3, 7 and 8).
[67] SEF also stated that an alternative period would be acceptable, SEF St. 1-R, p. 9.
[68] In SEF's testimony, SEF St. 1, at p. 15, it appears to have inadvertently not included October in the list of months that a customer would receive the same rates as standard default service customers.

appliances or other devices, and does not require customers to change usage patterns on a seasonal basis. (PPL Electric 3-R, pp. 6). The shifting of the on-peak period renders SEF's proposal unduly complicated with the on-peak period not easily remembered. Altering on-peak periods by season also would require the resetting of timers on appliances, and would require customers to change usage patterns on a seasonal basis.

Furthermore, both of SEF's proposals are determined on a calendar-month basis, while customer billing periods include portions of two calendar months. To implement such a proposal PPL Electric would need to make modifications to its supplier payment system and load responsibility mechanism to accommodate the change in service responsibility from the TOU supplier to the default service contract suppliers, or vice versa, several times a year, provided that such switching is contemplated under SEF's proposals.. (PPL Electric St. 1-R, p.11).. Additionally, PPL Electric does not have a calendar-month meter read schedule. PPL Electric would not be in favor of manually calculating potentially thousands of TOU customer meter reads monthly, and it would require changes to the existing billing system to add a calendar-month billing control. (PPL Electric 3-RJ, p. 5).

c. TOU Program Procurement

As part of the fixed-price solicitations, the Company proposes that winning bidders of the 6- and 12-month fixed-price load following product procurements also provide supply to meet the default service load of TOU customers for a 6-month period beginning each June and December. (PPL Electric St. 1, p. 13). These winning suppliers will be proportionally responsible for a portion of all loads of supply required to all loads of customers on the TOU rate option. *Id.* This approach will streamline the bidding process and the evaluation process. *Id.* Additionally, this approach helps ensure that the Company will be able to successfully offer the TOU product as compared to a separate procurement for TOU. *Id.*

In order to reduce reconciliation issues related to over/under collections, PPL Electric will compensate suppliers based on the amount that PPL Electric bills to the assigned TOU customers for generation costs, exclusive of gross receipts tax, company administrative costs and E-Factor amounts, on a *pro rata* basis for all TOU billings. (PPL Electric St. 1, p. 13). The Company is proposing to reset the reconciliation component of the GSC-1 every six months, based upon a rolling reconciliation of over/under collections calculated over a 12-month period. (PPL Electric St. 5, pp. 4-5; Exhibit No. JMK-1). The Company will continue to use this reconciliation process for any TOU over/under collections. (PPL Electric St. 1, pp. 13-14). Also, the Company will transition any remaining TOU over/under collections from the DSP I Program's TOU rate option into the reconciliation of the GSC-1. (PPL Electric St. 1, p. 14).

OSBA and FES recommend a separate procurement for TOU supply. (OSBA St. 1, pp. 10-11; FES St. 1, p. 12). Witnesses for OSBA and FES take the position that as a result of the Company combining the procurement of TOU supply with its default service supply product, wholesale suppliers will face increased risk, which they will reflect in their bid price and which default service customers will be asked to absorb. *Id.* Furthermore, SEF maintains that the suppliers should be able to bid on the on-peak and off-peak price separately. (SEF St. 1, pp. 15-16).

The Company's goal in combining the fixed price and TOU procurements is to ensure that it is able to obtain adequate supply to provide a TOU rate option. (PPL Electric St. 1-R, p. 18). While PPL Electric does not object conceptually to a separate TOU procurement, the Company is concerned that it will not receive adequate bids if the TOU product is bid separately. *Id.* The aggregate amount of TOU supply is expected to be quite small and the amount of load will not be known because the rate is voluntary and customers may come and go at any time,

thereby increasing the risks to the suppliers. (*See* PPL Electric St. 3, p. 4). Due to these risks, the Company does not believe that the TOU product should be bid separately.

SEF's proposal that suppliers bid on the on-peak and off-peak price separately should not be accepted. SEF argues that "it is unjust and unreasonable to not use competitive market prices for on-peak and off-peak pricing when such prices are available." (SEF St. 1-R, p. 6). SEF's proposal would likely create the scenario, outlined in PPL Electric St. 3, p. 3, whereby the separate TOU bid processes result in either: (1) in on-peak and off-peak rates that are both below the fixed-price default service rates, resulting in a large number of customers swinging from the fixed-price default service rates to the TOU rates; or (2) on-peak and off-peak rates that are both above the fixed-price default service rates, resulting in customers deciding not to elect the TOU rate or swinging back to fixed-price default service rates. (PPL Electric St. 1-R, p. 19). The decision to sign up for TOU rates should be based on a good faith willingness to shift load to reduce costs. It should not be based on arbitrary and artificial differences in how fixed and TOU default service rates are determined.

Constellation recommends that the Company allocate a *pro rata* percentage share of TOU customer load to each tranche. (Constellation St. 1, pp. 39-40). Additionally, Constellation also recommends the Company include in this *pro rata* allocation those suppliers awarded in prior default service program's RFPs and not revise the price paid to suppliers under their contracts. *Id.* Given the Commission's recent decision on reconciliation of TOU under/over collections, the Company would not oppose this proposal. (See PPL Electric St. 1-R, p. 19).

d. Bidding Out the TOU Service

Certain parties propose that PPL Electric be required to "bid out" its TOU program to one or more EGSs. (RESA St. 2, p. 5; SEF 2-SR, p. 5: Tr. 271). Exactly what this means and the details of how such a "bidding" out process would take place, however, are far from clear. For

example, SEF maintains "it is appropriate to place the TOU rate with a third party who is both willing and capable of delivering a just and reasonable Time of Use program." (SEF St. 1-R, p. 5). SEF has further explained that it is proposing that the TOU service be bid out to an EGS to fulfill those responsibilities, but that PPL Electric would serve as the backstop for those TOU customers just as they do for traditional default service. (Tr. 272). Therefore, SEF's proposal does not appear to contemplate a reassignment of this default service function because PPL Electric would still retain some level of backstop default service responsibility. *Id.* RESA, on the other hand, states that PPL Electric could meet its Act 129 obligation to provide a time-of-use rate by simply certifying that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory. (RESA St. 2, p. 42).

PPL Electric opposes bidding out the TOU service or simply certifying that such a rate is available from an EGS on both legal and policy grounds. As a legal matter, a "default service provider" is:

> An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:
>
> (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or
>
> (2) do not choose an alternative electric generation supplier.

66 Pa. C.S. § 2803. PPL Electric, as the EDC for its customers in its certified service territory, is the default service provider as defined in section 2803 and must remain the default supplier unless and until it is replaced by a new entity after Commission approval. No alternate supplier has been approved by the Commission to provide default service to retail electric customers in PPL Electric's certified service territory.

One of the specific obligations of a default service provider is to offer one or more TOU or real time rates:

> . . . a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. . . . The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology

66 Pa. C.S. § 2807(f)(5). Importantly, the statute required the default service provider (not an EGS) to submit time of use rates to the Commission and requires the default service provider (not an EGS) to "offer" time of use rates. Pursuant to this statutory provision, PPL Electric has offered Act 129 TOU programs to default service customers since 2010. This is fully consistent with the Commission's recent decision in *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 at p. 23, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012) where the Commission stated that:

> The statute clearly states that, unless a customer switches to an EGS for its generation supply, the default service provider is required to provide service to that customer, as a default service customer. The nature of default service is not limited by the statute. Further, the statute requires a default service provider, such as PPL, to offer to its non-shopping, or default service customers, a TOU program. Thus, based upon the language in the statute, we agree with PPL's position that the TOU program is a form of default service.

Therefore, pursuant to 66 Pa. C.S. § 2807(f)(5), as the default service provider, PPL Electric is required by Act 129 to offer a TOU rate option to its default service customers and the Commission has explicitly stated that the TOU program is a form of default service. If PPL Electric were to bid out the TOU service to an EGS then the EGS, by definition, would be providing this service and the Company would not be meeting its statutory obligation. Such a result would clearly violate section 2807(f)(5) because PPL Electric, the statutory default service provider, would not be "offering" a TOU rate to its customers. Moreover, the TOU service

would be offered by an EGS, which again, by definition, is not a default service provider. This also violates the plain language of the statute. The statute is clear. The obligation to offer TOU rates lies with the default service provider. PPL Electric is the default service provider and, therefore, must offer TOU default service. If PPL Electric "bids out" this service, it is no longer offering the service. Unless and until PPL Electric is replaced as the default service provider, it and it alone must offer TOU default service.

Apart from this legal flaw, bidding out the TOU rate option would, in effect, split the default service function into two or more pieces. There is no indication that the statute permits bifurcation of the default service provider function and such a result would likely cause confusion among customers regarding the relative roles of the EGSs and the default service provider, and certainly would result in duplication of effort and increase the overall cost of default service (PPL Electric St. 1, pp. 12-13). As explained above, PPL Electric, in essence, has two default service rate options, the regular default service rate option and the TOU default service rate option. In the event that TOU default service rate option is somehow provided by another entity, customers may be confused by the presence of two default service providers in the same service territory and the overall cost of service will clearly increase.

Even assuming that it were legal to split the default service function and require PPL Electric to "bid out" a portion of its default service role, the parties offering this proposal bear the burden of proof on this issue. As explained in Section III.1.A., a party that offers a proposal not included in the applicant's filing bears the burden of proof for such proposal.[69] The applicant, in this case PPL Electric, has not proposed to bid out or assign to a third party its TOU responsibility and, therefore, it does not bear the burden to support such a proposal. The "bid

[69] *See, e.g., Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. R-00061931, 2007 Pa. P.U.C. LEXIS 45 at *165-68; *Pa. P.U.C. v. Metropolitan Edison Company*, Docket No. R-00061366, 2007 Pa. P.U.C. LEXIS 5 at *111-12.

out" proposals offered by the other parties fall woefully short in meeting this burden. The record in this proceeding is far from clear as to what "bidding out" the TOU program even means, and no party has offered any specific proposal as to how such a "bid out" would work and how it would be implemented. There is a long list of open issues that the parties have not addressed, including: what backstop responsibility if any would PPL Electric have if the service is bid out; whether bidding out the TOU to a single EGS would provide an unfair competitive advantage to the winning EGS; whether EGSs bidding on the default service TOU offering would be subject to the same solicitation load cap that is in place for wholesale suppliers to ensure a competitive process of at least two EGSs; how billing would be administered; how the universal service requirements would be satisfied, how the least cost procurement requirements of Act 129 would be satisfied; and how the customer assistance responsibilities would be satisfied. There is simply no basis to adopt any "bid out" proposal in this proceeding.[70]

Finally, this default service program is a transition to an end state whereby an EDC's default service obligation may be substantially reformed or eliminated. There is no need and no possible justification to adopt a novel, untested, unsubstantiated "bid out" proposal in this context.

e. Alternative Proposal

For the reasons set forth above, PPL Electric believes that its as-filed TOU program should be approved. PPL Electric recognizes, however, that its proposal is the same, in all relevant aspects, as the TOU program rejected by the ALJ and the Commission in PPL Electric's 2012 TOU proceeding. The Final Order in that proceeding was not issued until August 30, 2012, and there was not adequate time to develop an alternative proposal on the record in this

[70] Furthermore, there is no basis for adopting a bid out proposal just for PPL Electric. Any such proposal should be considered and implemented, if at all, on a statewide basis.

proceeding. However, the record does include an alternative proposal by SEF, which if modified, presents an appropriate transitional TOU proposal for inclusion in this proceeding.

An alternative summer only TOU program ("Summer TOU") would have the following characteristics:

- An on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding weekends and PJM holidays.
- During the remainder of the year, Summer TOU customers would receive the same rates as the standard default service customers, and would be included in load to be met by fixed rate default service suppliers.
- The same on-peak and off-peak periods would apply to Residential and Small C&I customers.
- The default service Summer TOU load would be bid out separately from fixed-price supply, but at the same time as the fixed-price default service load.
- The Company would issue an RFP[71] requesting bidders to provide both an on-peak price and off-peak price at the same time in seeks bids for the fixed-price load-following contracts. The TOU RFP would seek to procure products to meet the default service load of TOU customers for the summer period only.
- The Company would evaluate the bids based on the prices that would result in the greatest economic benefit, *i.e.*, the least overall cost to the TOU customer using the existing rate class profiles. The Company and the supplier will enter into a supply agreement with the winning bidders.
- The rates for the on-peak and off-peak periods would be those directly resulting from the winning suppliers bids, plus the Customer Classes' respective portions of Company administrative costs and the E-Factor. Winning suppliers for the Summer TOU period would be paid their bid price.
- Any over/under collections will be recovered as per the Company's as filed proposal.
- A collaborative should be implemented so that details of the Summer TOU could be worked out and to ensure that implementation issues are addressed.

[71] If this alternative proposal is accepted the Company will need to revise the SMA and RFP filed on May 1, 2011 to account for this new Summer TOU program which will be separately procured. Furthermore, the Company will need to formulate an SMA and RFP applicable to the Summer TOU program.

This alternative proposal is modeled after the Easy TOU rate proposal presented by SEF in this proceeding with two changes. (SEF St. 1, p. 14-15). First, the on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding week-ends and PJM holidays, is intended to target the highest peak periods during the summer months. (*See* SEF St. 1, p. 15; SEF St. 1-R, p. 9).[72] Second, TOU customers will be billed on their normal billing cycles and not on a calendar month basis.

The Company acknowledges that certain details would need to be worked out in order to finalize this alternative proposal. Therefore, if the ALJ decides to adopt this alternative proposal, rather than PPL Electric's filed TOU Program, a collaborative should be implemented so that details of the Summer TOU can be worked out to ensure that all implementation issues are fully addressed.

This alternative generally satisfies the goals that PPL Electric has set for in the TOU rate option. It is a simple and easy to understand program that would provide a basic TOU rate option for default service customers and allow them the opportunity to save money if they shifted usage. It also avoids seasonal differences in on-peak and off-peak periods and, therefore, will not require seasonal adjustments or changes in customer behavior. The alternative design will provide customers the opportunity to shift load and save money, but at the same time should not unduly inhibit the development of other TOU rate options in the competitive retail market. Finally, the Company will recover all costs associated with providing TOU default service on a full and current basis.

[72] Although SEF's Easy TOU proposal provided for a 3:30 p.m. to 6:30 a.m. on-peak period, PPL Electric witness Woodruff explained the difficulty of operating a TOU program in half-hour increments on PJM. (PPL Electric St. 1-R, p.10). Furthermore, SEF explained that "the Easy TOU "on-peak" period could be modified to start at 3:00 PM and at 6:00 PM or as suggested by Mr. Woodruff." (SEF St. 1-SR, p. 9).

This alternative also addresses, at least in part, many of the concerns and criticisms raised by other parties to this proceeding. OSBA and FES assert that TOU supply should be bid out separately from fixed-price default service load. PPL Electric's alternative proposal adopts this approach. The Commission and others do not believe that TOU prices should be developed from fixed-price default service rates. PPL Electric's alternative proposal separates the determination of TOU rates from fixed-price default service rates. SEF contends that TOU prices should be market based. (SEF St. 1-SR, p. 6). PPL Electric's alternative proposal adopts this approach. SEF contends that the same on peak and off peak periods should be used for Residential and Small C&I customers.[73] PPL Electric's alternative proposal adopts this approach..

The Summer TOU program, however, is not perfect. It is not clear that wholesale suppliers will bid on a separate TOU product where the amount of load is likely to be small, at least initially, and where customers can freely join or leave the rate at any time.[74] Also, the prices for TOU service, while market based, would be detached from fixed-price default service rates and could lead to customers joining or leaving the TOU rates based on the different designs of the rates as opposed to the merits of the TOU program. However, given the unique facts and circumstances of this case and the transitional nature of this proceeding, the Company would support the adoption of a Summer TOU program as an interim measure to transition to a yet undefined default service end state if its as-filed proposal is not adopted.

[73] *See also,* OSBA St. 1, pp. 10-11 (while OSBA supports the Company's TOU it does note that makes little sense to have different on-peak periods for the Residential and Small C&I classes.

[74] In the event that the Company is not able to procure supply for the Summer TOU load, it will not offer the Summer TOU rate option to customers and will return to the Commission with a new proposal.

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

PPL Electric proposes to carry out its DSP II Program procurement process generally using the same successful approach it has used to implement the DSP I Program and the CBP. (PPL Electric St. 1, p. 16). PPL Electric will implement the DSP II Program by holding solicitations pursuant to a Request for Proposal ("RFP") process to obtain the Default Service products from competitive wholesale power suppliers. All winning suppliers will be required to execute a standard Supply Master Agreement ("SMA"). The RFP and the SMA are based upon documents previously used in the DSP I Program, and the prior CBP Program, and incorporate considerable experience obtained in these other procurement proceedings. These documents detail a transparent, well-defined and objective procurement process for PPL Electric's DSP II Program. (PPL Electric Ex. 1, pp. 33-35).

As stated in the RFP, the results for each solicitation will be presented to the Commission within one business day of the bid proposal due date for that solicitation. (PPL Electric St. 1, p. 17). After receiving Commission approval of the solicitation results, PPL Electric will then execute transaction confirmations with the winning suppliers. The prices in the resulting wholesale supply agreements will form the basis of the rates charged to each of the customer classes. This is the same process used in the DSP I Program.

Each solicitation will be designed to procure a pro rata portion of the estimated Default Service load for each customer class. The portion of total Default Service supply included in each solicitation has been established so that, over the course of the DSP II Program, each solicitation will procure a specific number of tranches of supply based on product quantity

percentage. (PPL Electric St. 1, p. 18; PPL Electric Exs. JC-4A, JC-4B; PPL Electric Ex. 1, Appendix B, p. 10).

For both the Residential and Small C&I Customer Classes, each tranche will be a fixed percentage of the customer class' Default Service load. The RFP tranche percentages are estimated to produce approximately 100 MW of peak load per tranche based on current PPL Electric forecasts and the customer class' 2012-2013 projected peak load contribution with PJM, including both default and shopping load. The actual MW size of each tranche will depend on the Company's actual Default Service load at the time of delivery. Supply must be load following. (PPL Electric Ex. 1, Appendix B, p. 9; PPL Electric St. 1, p. 18).

As has been required under the CBP and DSP I Program, PPL Electric proposes that suppliers selected to serve any portion of PPL Electric's Default Service load be required to post performance assurance. Such assurance is required to enable PPL Electric to recover costs arising from a supplier default. Depending upon its credit rating, a supplier will be extended an unsecured credit amount, and the required performance assurance will be a calculated amount in excess of any unsecured credit. The Company proposes that the performance assurance will be recalculated every business day based upon forward prices for energy and capacity to be delivered under the contract. (PPL Electric St. 1, p. 20).

Included with the Company's Petition was the proposed SMA and proposed RFP Process and Rules ("RFP Rules"). (PPL Electric Ex. 1, Appendices A and B). The SMA is based upon the supply master agreements approved by the Commission in the DSP I Program proceeding. (PPL Electric St. 1, p. 21). The Company has updated the SMA and the revisions are both ministerial and substantive. Because the Company will be procuring fewer product types, the Company has eliminated the multiple SMAs used in the DSP I Program, and will undertake all

procurements pursuant to a single form of SMA. Other substantive changes include, inter alia, including TOU load, updating the credit sections, adding a TOU exhibit, removing the "Sample PJM Invoice" Exhibit, and updating the "Transaction Confirmation Example" Exhibit. The RFP Rules are also similar to the rules approved by the Commission in the DSP I Program proceeding. The RFP also has been updated to reflect changes between the DSP I Program and the DSP II Program. (PPL Electric St. 1, pp. 21-22).

As explained next, Constellation has proposed several modifications to the proposed SMA. PPL Electric opposes most of Constellation's proposals. However, it should be emphasized that the vast majority of the provision of the SMA and the RFP rules are uncontested.[75]

i. Revisions to the Supply Master Agreement

Unrecovered Credit. As part of the DSP II Program, PPL Electric revised its unsecured credit amounts. The revisions are shown at page 29 of Constellation Statement No. 1. The largest change was to reduce the unsecured credit for suppliers rated A- or above from $75 million to $50 million. Smaller reductions were also included for suppliers with lower credit ratings. Constellation proposes that the SMA be revised to include higher unsecured credit thresholds than the Company has proposed. (Constellation St. 1, pp. 28-29). Constellation supports substantially increasing the unsecured credit limits above those contained in the DSP I Program, up to $125 million for the highest rated suppliers. (Constellation St. 1, p. 29). Constellation contends that potential wholesale suppliers might choose not to participate in PPL Electric's procurements because other utilities have higher unsecured credit limits. (Constellation St. 1, p. 30).

[75] It is noted that the SMA and RFP reflect PPL Electric's proposed procurement plan, and thus any changes to that procurement plan related to issues presented in prior Sections of this Brief would require appropriate changes to the SMA and RFP.

Constellation, however, has provided only one example of an EDC (West Penn Power Company) with higher unsecured credit limits. This isolated example does not support its contention that PPL Electric's proposed unsecured credit limits are unreasonable and could lead to loss of bidders in future procurements. PPL Electric reviewed various agreements issued by EDCs to determine what their credit thresholds are compared to those proposed by PPL Electric. *See* Ex. RGY-1R. As seen in that Exhibit, the Company's unsecured credit amounts are reasonably aligned with all of the companies reviewed (including Constellation's affiliate PECO). This evidence demonstrates that the unsecured credit limits set forth in the DSP II SMA are consistent with similar agreements and should not result in a reduction in bidder interest. Furthermore, unsecured credit represents a risk to default service customers in the event of supplier default, because in the event the supplier refuses or is unable to pay in the event of default, any additional cost to obtain supply would be charged in the default service price to customers. (PPL Electric St. 1-R, p. 21). Therefore, it is in the interest of default service customers to moderate that risk by holding the unsecured credit amount to a lower level. Constellation's proposed modification to the unsecured credit levels should be rejected.

Definition of Default. As proposed by PPL Electric in this proceeding, Section 12.1(f) of the SMA, states, in pertinent part, that a default occurs when there is " the failure to perform or comply with any covenant or obligation set forth in this Agreement..." Constellation requests that the line be revised to read "... any *material* covenant or obligation...". (Constellation St. 1, p. 31). Constellation contends that a supplier should not be declared in default for a minor or "foot-fault" violation of the SMA. Constellation's contention should be rejected.

The term "material" was not included in Section 12.1(f) because an issue could be raised as to what is deemed "material," and the exclusion of the term removes any ambiguity in what is

deemed a default. (PPL Electric St. 1-R, p. 22). Additionally, there is no basis to be concerned that a "foot-fault" would result in default. Section 12 includes a provision that default occurs only if the failure to comply has not been rectified within 3 business days after written notice. Therefore, if a violation is minor, it will not become a ground for default until after PPL Electric becomes aware of the violation, notifies the supplier, and gives the supplier three days to correct. If after all of this the supplier does not correct the violation, it is in default, and there need be no debate about the level of "materiality" of the violation. *Id.* The word material should not be added into Section1 2.1(f).

Failure to Comply. Proposed SMA Section 12.1(j) states:

> the failure of Seller to provide Performance Assurance or to maintain Performance Assurance in effect thereafter until such time as Buyer is obligated to return such Performance Assurance to Seller (subject to its right to replace such Performance Assurance in accordance with Article 14) or to comply with its other obligations pursuant to Article 14 (Performance Assurance) if such failure to comply is not remedied within three (3) Business Days after written notice;

Constellation requests that PPL Electric insert the words "the failure of a Party" such that the provisions reads as follows: ". . . or *the failure of a Party* to comply with its other obligations pursuant to Article 14 . . . ." (Constellation St. 1, p. 31). Constellation maintains that the current version of this provision would only apply only to a supplier failure, rather than a failure by either Party. *Id.*

Constellation's request should be denied. Section 12.1(j) of the SMA is focused specifically on a Seller's failure to perform in providing Performance Assurance. Performance Assurance is the additional protection provided above any unsecured credit and is vitally important for the Seller to maintain, for reasons explained previously. (*See* PPL Electric St. 1-R, p. 22). The 'catch all' type wording requested by Constellation is unnecessary, since any breach

by PPL Electric of any duties under Section 14 (or other sections of the SMA) would be covered by the failure to perform provisions of Section 12.1(f) of the SMA. *Id.* Therefore, the Company does not agree that this section should be changed, as proposed by Constellation.

Definition of Guarantor. PPL Electric modified the definition of "guarantor" in the DSP II Program SMA to provide as follows:

> "Guarantor" means any Affiliate to the Seller that is acceptable to Buyer in its sole discretion that guaranties Seller's financial obligations under this Agreement pursuant to the Guaranty Agreement.

The substantive change to the definition of Guarantor was made by PPL Electric to make clear that the Guarantor be an Affiliate of the Seller, and not an unrelated third party. Determining the acceptability of unrelated third parties adds unnecessary complexity to the Guaranty process, and should be eliminated. (PPL Electric St. 1-R, p. 23). Where the Guarantor is related to the Seller, the checks necessary to determine whether the Guarantor is acceptable are simplified. *Id.*

Constellation proposes that the definition for the term "guarantor" in Article 1 of the proposed SMA be replaced with the definition used in the DSP I Program SMA. (Constellation St. 1, p. 32). The DSP I definition of "Guarantor" reads:

> "Guarantor" means any party who agrees to guaranty Seller's financial obligations under the Agreement pursuant to the Guaranty Agreement recognizing that such a party will be obligated to meet or exceed Buyer's credit requirements for Seller and that the acceptability of such guaranty will be determined at Buyer's sole discretion.

Constellation contends that the DSP I Program definition of "guarantor" should continue because the proposed definition gives PPL Electric discretion to decide if a guaranty is acceptable. (Constellation St. 1, p. 32). However, Constellation's proposed solution does not address Constellation's purported concern, as both definitions contain a provision that the acceptability of an offered guaranty would be determined at PPL Electric's sole discretion.

PPL Electric must retain discretion to assess the acceptability of proposed guaranties. There are various instances, specifically if there are foreign investors or where issues of enforceability of contracts may exist, where it is appropriate for PPL Electric to review whether an offered guarantee is acceptable, and these instances cannot be defined with precision. (PPL Electric St. 1-R, p. 23). Constellation has presented no evidence that PPL Electric has used this discretionary provision in the DSP I Program to improperly refuse a proffered guaranty. Constellation's proposal should be rejected.

Monthly vs. Weekly Payment. PPL Electric currently pays suppliers on a monthly basis, and proposes to continue that payment process in the DSP II Program. (PPL Electric St. 1-R, p. 25). Constellation requests the Company provide weekly settlements as opposed to monthly settlements. (Constellation St. 1, p. 32). Constellation notes that wholesale suppliers are required to make weekly settlements with PJM. (Constellation St. 1, p. 33). Constellation states that by moving to weekly settlements there is a higher likelihood for more competitive bids in the PPL Electric RFPs because the credit need incurred by suppliers will be reduced. PPL Electric disagrees with Constellation's contentions. PPL Electric has held twelve successful DSP I Program solicitations which included monthly settlement provisions. (PPL Electric St. 1-R, p. 25). Throughout that period of time, PJM has invoiced suppliers on a weekly basis. (PPL Electric St. 1-R, p. 25). Thus, there is no evidence that implementation of a monthly settlement process in the SMA has negatively impacted participation or the success of any solicitation. Therefore, there is no reason to change from a monthly to a weekly settlement process.

Constellation further asserts that suppliers' weekly settlements with PJM, and PPL Electric's monthly payments to suppliers, creates a "credit need" that could be reduced by requiring PPL Electric to make weekly payments. However, as PPL Electric witness Kleha

explains, a change to a weekly settlement process will simply shift the Cash Working Capital responsibility from being borne by suppliers and included in their bid prices to being borne by PPL Electric and being charged to customers as an additional cost in Default Service rates. (PPL Electric 5-R, p. 15-16). Thus, contrary to Constellation's contention, there will be no net benefit to default service customers from a change to the payment terms. Constellation's proposal should be rejected.

Letter of Credit. Constellation has proposed two changes to Section 14.2(b) of the SMA, which concerns the provision of a Letter of Credit. A Letter of Credit is a form of Performance Assurance given as security against default. (PPL Electric Ex. 1, Appendix A, page 15 – definition of Performance Assurance). Constellation contends that it would be more reasonable to allow a supplier three Business Days rather than only two Business Days to replace a Letter of Credit. The Company has reviewed the proposed change to Section 14.2(b) with regards to the number of days a supplier has to replace a Letter of Credit. The current language in the SMA allows for two (2) business days, whereas Constellation has proposed three (3) business days. This change is minor in nature and is not opposed by the Company. (PPL Electric St. 1-R, p. 24).

Also concerning Section 14.2(b) of the SMA, Constellation proposed that the following provision be removed:

> In addition, if Buyer as the beneficiary of any Letter of Credit determines, for any reason, in its sole discretion that the issuer's financial condition or ability to perform its obligations under such Letter of Credit has deteriorated or become impaired in any material respect, then Buyer shall have the right to demand and receive, from Seller a replacement Performance Assurance issued by a Qualified Institution not later than the 2nd Business Day following such demand.

Constellation contends that the Company should only have the right to demand replacement of a Letter of Credit based on "objective criteria." (Constellation St. 1, p. 36). As explained above concerning the definition for the term Guarantor, the Company should be permitted to review and make a determination that the issuer of a Letter of Credit is no longer fit, without being required to identify in advance the innumerable reasons why an issuer's ability to perform may be questioned. The Company must have discretion to make these judgments. Removal of this line from Section 14.2(b) would limit the Company's ability to assert and seek replacement Performance Assurance from a supplier. Constellation's proposal should be rejected.

Finally, Constellation proposes that Section 14.2(f) of the SMA be modified. Section 14.2(f) provides as follows:

> On any Business Day (but no more frequently than weekly with respect to Letters of Credit or other security constituting Performance Assurance, and daily with respect to cash), Seller, at its sole cost, may request that surplus Performance Assurance not needed to satisfy Aggregate Buyer's Exposure on such Business Day be reduced correspondingly to reflect the amount by which Unsecured Credit exceeds Aggregate Buyer's Exposure on such Business Day, if any (rounding downwards for any fractional amount to the nearest $100,000)...

Constellation asserts that the foregoing provision gives PPL Electric discretion to not review the level of Performance Assurance, and contends that such review should occur at least weekly. However, Constellation appears to have misread this provision. Per this section, PPL Electric will review the current position of the Seller's Performance Assurance, and the Seller has the right to demand that such review, and return of any excess Performance Assurance, occur weekly for Letters of Credit, and daily for other forms of security, such as cash. (PPL Electric St. 1-R, pp. 24-25). As a result, Constellation's request to recalculate credit exposures at least weekly is already included in Section 14.2(f).

b. Third-Party Manager

The Default Service Policy Statement provides that the competitive bid solicitation process should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. 52 Pa. Code § 69.1807(8). The Default Service Policy Statement also states that the independent evaluator should have expertise in the analysis of wholesale energy markets, including methods of energy procurement. *Id.* Consistent with these requirements, PPL Electric has retained NERA as the independent third-party to administer each procurement, analyze the results of the solicitations for each customer class, select the supplier(s) that will provide services at the lowest cost and submit all necessary reports to the Commission. (PPL Electric St. 1, p. 23). NERA has successfully administered the DSP I Program procurements to date, and based on this track record, the Company proposes to continue to retain NERA to administer the DSP II Program.[76] No party has objected to the use of NERA as the third-party manager.

c. RTO Compliance and Consistency

52 Pa. Code § 54.185(d)(4) requires Default Service plans to include documentation that the program is consistent with the requirements regarding the generation, sale and transmission of electricity of the RTO in the control area where the Default Service provider is providing service. PPL Electric's DSP II Program fully meets this requirement. In addition to proposing a plan that is in alignment with PJM's planning period, the SMA and the RFP Rules require that both PPL Electric and any bidder in the procurement process must be in compliance with PJM requirements. (PPL Electric Ex. 1, Appendix A, p. 33; PPL Electric Ex. 1, Appendix B, p. 44). For example, the SMA recognizes PJM authority and assures that each party is in compliance

[76] In addition NERA is the administrator for other Default Service programs in Pennsylvania and elsewhere, and has substantial expertise in this arena.

with PJM's tariff, operating agreement, reliability agreement and business practices. Additionally, Article 4 of the RFP Rules document requires that an applicant must certify that it is a member of PJM and qualified as a market buyer and market seller in good standing that is able to secure generation or otherwise obtain and deliver electricity in PJM through compliance with all applicable requirements of PJM to fulfill a full requirements obligation. (PPL Electric Ex. 1, Appendix B, p. 21). Moreover, an applicant must certify that it has been authorized by Federal Energy Regulatory Commission ("FERC") to make sales of energy, capacity and ancillary services at market-based rates. (PPL Electric Ex. 1, appendix B, p. 44). No party has challenged the DSP II Program's RTO compliance. Therefore, the Company submits that the DSP II Program satisfies the requirements of 52 Pa. Code § 54.185(d)(4).

d. Contingency Planning

52 Pa. Code § 54.185(d)(5) requires that Default Service plans include contingency plans to ensure the reliable provision of Default Service if a wholesale generation supplier fails to meet its contractual obligations. The DSP II Program meets these requirements. If the Commission rejects all bids for a given product, in any solicitation, or if some tranches of a given product, in a particular solicitation do not receive bids, the Company will expeditiously seek guidance and approval from the Commission to address this short fall in procurement of Default Service supply. (PPL Electric Ex. 1, p. 38). However, to the extent that unfilled tranches remain at the commencement of delivery for a given product, the Company will obtain Default Service supply through the spot market administered by PJM. (PPL Electric St. 1, p. 25). Specifically, PPL Electric will supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets, including, but not limited to, the PJM energy, capacity, and ancillary services markets, any other service required by PJM to serve such unserved load,

and any AEPS requirements. (PPL Electric Ex. 1, p. 38). PPL Electric proposes to recover all of the costs of such purchases from Default Service customers in the retail rates charged for the service for which the purchases are made. (PPL Electric Ex. 1, p. 38).

In the event a supplier defaults, PPL Electric will offer full requirements supply assignment to other winning bidders for the same product consistent with the step-up process described in the Default Service SMA. (PPL Electric Ex. 1, Appendix A, pp. 24-25). If this assignment is not successful, PPL Electric will offer full requirements supply assignment to all Default Service suppliers consistent with the Default Service SMA, even if a Default Service supplier does not serve tranches for that product. These assignments will be offered at the original bid price in the event of default(s), or at the average price from the last successful bid for that product in the event of insufficient bids. *Id.*

No party has challenged the sufficiency of the DSP II Program's contingency planning. PPL Electric submits that its contingency plans be approved.

e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

Constellation requests that the Company provide additional information to wholesale suppliers regarding shopping and procurements. (Constellation St. 1, pp. 38-39). Specifically, Constellation requests that PPL Electric provide the following data:

- Hourly shopping and non-shopping data by rate class;
- Aggregate historical hourly data specifically for those customers that choose PPL Electric's TOU offering;
- Daily eligible and non-shopping data for peak load contribution ("PLCs") and network service peak load ("NSPL") by rate class;
- Daily shopping and non-shopping customer counts by rate class;
- Hourly data prior to 2011 for customers classes that were reclassified as part of the 500 kW peak demand reclassification of Small and Large C&I customers;

- PPL Electric should provide to RFP bidders and DS Suppliers all of the same data that it provides to EGSs bidding in its Retail Opt-In Auction.

As explained by PPL Electric witness Yeager, based upon the current availability of data, or the ease of access to necessary data and information, the Company can provide some of the additional data requested. Specifically, the Company is able to provide daily shopping and non-shopping customer counts by rate class, to be issued in conjunction with already provided rate category and load data though PPL Electric's Default Service Procurement website. (PPL Electric St. 1-R, p. 33). PPL Electric can also supply aggregate historical hourly data specifically for those customers that choose PPL Electric's TOU default service rate option. *Id.* Furthermore, any additional data and information provided to bidders in the Retail Opt-in Auction will be issued through the PPL Electric Default Service Procurement website, and as such, will be made universally available to all external parties, regardless of participation in the auction. *Id.*

Regarding the request for hourly shopping and non-shopping data by rate class, and daily eligible and non-shopping data for PLC and NSPL by rate class, the Company does not currently compile this data. (PPL Electric St. 1-R, p. 33). The data request is in addition to aggregate data already provided to all wholesale suppliers. Moreover, PPL Electric has no plans or a business need to compile the data. It would require substantial time and resources to compile this data on a regular basis. As such, the Company is unable to meet these data requests, and opposes Constellation's proposal.

As noted above, Constellation also requested PPL Electric provide hourly data prior to 2011 for customer classes that were reclassified as part of the 500 kW peak demand reclassification of Small C&I and Large C&I customers. (PPL Electric St. 1-R, p. 33). PPL Electric witness Yeager explained that this data cannot be provided. Data aggregations are done

on a rate schedule basis at the end of each month, and the historical data reflects actual meter usage by rate schedule. As a result, the Company cannot provide historic data related to customers on rate schedules split by the over/under 500 kW provision. Second, the 500 kW split is based on a given year's Capacity PLC value, and the basis year will change periodically, as is proposed for the DSP II Program.[77] Finally, the Company notes that prior to June 2009, all hourly data was based on extrapolation of sample meters, and thus in no event could the Company provide the request data prior to that date. (PPL Electric St. 1-R, p. 34). For all of these reasons, PPL Electric opposes this request.

PPL Electric has committed to provide some of the additional data requested by Constellation in this proceeding. However, as stated above, in the testimony of witness Yeager, some of the data can not be provided because either it is not collected by the Company or the information is not collected in the manner requested by Constellation.

C. RETAIL MARKET ENHANCEMENTS AND CUSTOMER REFERRAL PROGRAMS

The Commission's *RMI-IWP Order* contained directives or recommendations for a series of actions to be undertaken by EDCs in support of customer shopping. These actions included:

1) three separate consumer education mailings in late 2012 and early 2013;

2) a New/Moving Customer program to encourage shopping, to be implemented in late 2012 under the auspices of the Commission's Office of Competitive Markets Oversight ("OCMO");

3) a retail Opt-In Auction Program; and

4) a Standard Offer Referral Program.[78]

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[77] If Constellation's request were granted, then next year the Company would have three sets of historical data, actual by rate schedule, modified based on the current 500 kW split, and another modified based on the 2014 Capacity PLC value.

[78] In addition, the RMI-IWP Order addressed issues related to accelerating customer switching (deferred to a separate proceeding at Docket No. M-2011-2270442), adding PTC information on all customers' bills and improving coordination between EDCs and EGSs. These items are not the subject of this proceeding.

PPL Electric supports the Commission's objectives to further advance the development of a robust retail competitive market in PPL Electric's service territory. PPL Electric also believes that the success of retail market enhancements depends, in part, on designing and rolling out the enhancements in a way that avoids customer confusion that could hinder, rather than further advance, shopping in PPL Electric's service territory. (PPL Electric St. 4, p. 17). Consistent with this belief, PPL Electric developed a timeline for the four foregoing initiatives, and incorporated a fifth initiative, a Customer Referral Mailing. This additional initiative is offered contingent upon the Commission's acceptance of the Company's proposed timing for the Opt In Auction and Standard Offer Programs, and upon full recovery by PPL Electric of the costs of the proposed Customer Referral Mailing. (PPL Electric St. 4, p. 19). The proposed timeline for the five initiatives is as follows:

1. Undertake the customer education mailing in late 2012-early 2013, as directed by the Commission.

2. Implement the New/Moving Customer program scripts and New Customer Welcome Package in late 2012, as directed by the Commission.

3. Undertake the added Customer Referral Mailing in the second or third quarter of 2013.

4. Undertake the Opt-In Auction in late November/early December 2013.

5. Initiate the ongoing Standard Offer Referral Program in mid-2014.

PPL Electric notes that the Commission had directed that the customer education mailing and the New/Moving Customer program scripts be implemented some time in late 2012 or early 2013. Thus, the Company did not included details regarding these two programs in its filing, as it anticipated that these initiatives would be undertaken prior to a final decision in this case. (PPL Electric St. 4, pp. 12-13). However, certain parties have raised issues that involve these two initiatives, and those issues will be considered in following sections of this Brief.

1. New and Moving Customer Program

As indicated above, PPL Electric has not included details of its New/Moving Customer Referral Program in this filing because the Commission's timeline for implementing this initiative preceded the expected date of a final Commission Order in this proceeding. In fact, during cross-examination, PPL Electric's witness Krall explained that the Commission's New/Moving Customer program working group has developed script objectives, and that the Company anticipated that it would start the New/Moving Customer referral program by the end of September 2012. (Tr. 86).

RESA witness Kallaher nonetheless criticizes aspects of the New/Moving Customer Referral Program. Initially, RESA contends that PPL Electric should focus on other initiatives rather than the New/Moving Customer Program. (RESA St. 2, p. 32). PPL Electric disagrees. PPL Electric supports efforts to advise and encourage new and moving customers to shop, and expects to begin this program shortly. Although the New/Moving Customer Program might ultimately merge into the Standard Offer Program, PPL Electric considers these to be separate initiatives to be undertaken. (Tr. 87-88). Based upon the decision in the *FirstEnergy Order*, the Commission appears to agree. (*FirstEnergy Order* at 53-54).

RESA also asserts, without specification, that PPL Electric's "intentions" with respect to the New/Moving Customer program do not "appear to track" what the Commission has proposed. (RESA St. 2, p. 32). In rebuttal, PPL Electric witness Krall assured that the Company would implement the Commission's New/Moving Customer directives. (PPL Electric St. 4-R, p. 43).

RESA finally contends that PPL Electric's New/Moving Customer Referral Program should include a "day-one switch" capability, that allows the customer to initiate service with an

EGS directly through the Company's Customer Service Representative ("CSR"), with a transfer to an EGS representative. PPL Electric witness Krall explained that system modifications are needed to accomplish the type of "day-one switch" envisioned by RESA. (Tr. 92). These modifications are anticipated in support of the Company's Standard Offer Referral Program. (Tr. 92). However, Mr. Krall did explain that, as part of the New/Moving Customer Program, the Company will transfer a requesting customer to an EGS's customer service center to initiate service from the EGS. (Tr. 90). If a customer is moving and currently receives service from an EGS, the Company intends to establish a new account number in real time to avoid any interruption in EGS service. (Tr. 88-89). Mr. Krall further explained another practical problem with a "day one switch" in the context of the New/Moving Customer Program. Because the New/Moving Customer Program does not involve standarized EGS offers, the Company's CSR could not place a new/moving customer on EGS service, but must instead refer customers to an EGS or to the Commission's PowerSwitch website, as the terms of service would be unknown. (Tr. 92).

For the foregoing reasons, RESA's criticisms of the Company's New/Moving Customer Program should be rejected.

2. Customer Referral Mailing

As indicated above, and for the reasons explained in Section III.C.5. of this Brief, the Company proposes to undertake the Opt In Program in late November/early December, 2013 and the Standard Offer Referral Program in mid-2014. To continue the momentum of customer education/referrals from the mailings and New/Moving Customer Program in late 2012-early 2013, the Company proposes to undertake a Customer Referral Mailing to all Residential default service customers in mid-2013. (PPL Electric St. 4, p. 19). The Company recommends this

initial initiative contingent upon its proposal that the Opt In Program and Standard Offer Program not begin until later in 2013 and 2014. (PPL Electric St. 4, p. 19).

PPL Electric proposes a simple process for EGSs to participate in the Customer Referral Mailing. Any EGS licensed to provide service to Residential Customers in PPL Electric's service territory may participate by providing to PPL Electric, in electronic format, a standard 5" x 8" size offering to Residential Customers. PPL will include a letter with the offers that describes the content of the mailing. Once the total cost of the mailing is known, the cost will be divided evenly among participating EGSs.[79] Each participating EGS will be advised of the costs, and will be required to execute an agreement accepting responsibility to pay their respective portion of the costs before the mailing is sent. PPL Electric estimates a minimum program cost of about $500,000. (PPL Electric St. 4, p. 20).

RESA recommends that the proposed Customer Referral Mailing be merged with the last of the Consumer Education letters which will include answers to Frequently Asked Questions ("FAQs") and which is required by the RMI Order on Consumer Education Mailings entered June 21, 2012. RESA further recommends a mailing date of no later than March 1, 2013, and that the merged mailings be undertaken without regard to the timing of the Opt In and Standard Offer Programs. Further, RESA recommends that Small C&I Customers also be included in the mailing. With this proposed merged mailing, RESA recommends that the basic mailing cost be recovered through the mechanism established for recovery of the costs of the Consumer Education mailing, and that EGSs pay the cost of their inserts, as well as incremental postage costs. (RESA St. 2, pp. 16-17).

[79] The cost of the mailing will be affected by the total number of participating EGSs, as well as the number of Residential Default Service Customers at the time of the mailing.

PPL Electric is not opposed to RESA's proposal, with certain caveats. PPL Electric does not believe this proposal should be adopted if the Company's proposal on timing is altered such that the mailing would occur around the same time as the Opt In or Standard Offer Programs. (PPL Electric St. 4-R, p. 21). PPL Electric does not want to create customer confusion and negative views of customer choice by presenting multiple different offers to customers in overlapping contexts. PPL Electric notes that in the RMI-Revised Schedule for Consumer Education Mailings, I-2011-2237952, Order entered June 21, 2012, the Commission expressed similar sentiments as it delayed certain consumer education mailings because of concerns about overwhelming customers and giving a negative impression about shopping. (Order at p. 3).

PPL Electric also is not adverse to providing Small C&I Customers a similar mailing, provided that the mailings are directed to Residential and Small C&I customers separately. As PPL Electric witness Krall explained, Residential and Small C&I Customers have different shopping characteristics, and a "one size fits all" mailing will likely confuse customers. (PPL Electric St. 4-R, p. 20). This is particularly the case with a FAQ mailing that needs to address separately the shopping questions of Residential and Small C&I Customers. (PPL Electric St. 4-R, p. 21).

PPL Electric also is not adverse to Mr. Kallaher's cost-sharing concept, if the Commission were to authorize a merger of this Customer Referral Mailing with the FAQ Mailing.[80] However, if the merged mailing concept is not adopted, then PPL Electric continues to endorse its original funding proposal. PPL Electric notes that in direct testimony, DES/IGS appeared to contend that the costs of this Customer Referral Mailing should be borne, at least in part, by PPL Electric, or recovered as consumer education costs. (DES/IGS St. 1, p. 7). In

[80] PPL Electric notes that in its pending base rate case, it has included a proposed Competitive Enhancement Rider for recovery of consumer education and other costs of competitive enhancements. (PPL Electric St. 4-R, p. 21).

surrebuttal, DES/IGS appears to accept the RESA proposal to share costs through a merged mailing. (DES/IGS St. 1–SR, p. 8). As explained above, PPL Electric is not opposed to a merged mailing with the FAQ mailing, with EGSs' responsible only for incremental costs. However, if the Customer Referral Mailing is a stand-alone mailing, PPL Electric would not endorse recovery of the costs of the mailing as "consumer education." (PPL Electric St. 4-R, p. 45). In no event would PPL Electric agree to bear any portion of the costs of this additional initiative.

3. Opt-In Auction / Aggregation Program Design

Another retail market enhancement program proposed by the Company in this proceeding is an Opt-In Program. As part of its initial filing, PPL Electric proposed to implement an Opt-In Auction Program to be undertaken in late November – early December 2013. Under the proposed Opt-In Auction, participating EGSs will offer residential customers a 6-month, fixed-price product at a minimum 5% discount off PPL Electric's December 1, 2013 PTC. The initial amount of the discount would be set by an auction among participating EGSs. In addition, PPL Electric proposed that customers participating in the auction would receive a $50 cash payment from the EGS who acquires the customer in the auction. The customer would be eligible to receive this $50 bonus after it had received electric generation service from the EGS for three consecutive billing cycles. PPL Electric prepared a proposed RFP for conducting the auction, which it presented as Ex. DAK-1. (PPL Electric St. 4, pp. 20-21).

PPL Electric proposes to offer participation in the Opt-In Auction to all residential customers, with a limit on participation by non-shopping customers capped at 50% of the number of Default Service customers as of October 31, 2013.[81] Although the Opt-In Auction

[81] Based upon shopping statistics at the time the Company's direct testimony was prepared, the capped limit on participants is equal to approximately 360,000 residential customers. (PPL Electric St. 4, p. 21).

will be marketed to Default Service customers, shopping customers who make an affirmative request will be permitted to participate without first moving to the Company's Default Service.[82] (PPL Electric St. 4, p. 21).

PPL Electric proposes to send two mailings to all non-shopping customers. The first mailing, to be undertaken November 2013, would inform customers about the upcoming Opt-In Auction program. The second customer mailing would follow the auction and would include the resulting price and instructions to customers on how to participate. Residential customers who seek to accept the auction price would be required to make their election within a 30-day window following the second customer mailing. Customers would be given multiple ways to elect to participate, including signing up on-line, calling the customer contact center or sending the postcard received with the post-auction mailing. Customers would be randomly assigned to winning suppliers at the time they elect to participate. Default service customers will be accepted on a first-come, first-serve basis until the capped number of customers is met or the 30-day enrollment period ends. Participating EGSs would be notified of customers assigned to them by an EDI transaction that PPL Electric would do on the EGS's behalf. (PPL Electric St. 4, pp. 21-22).

Participating customers would receive the $50 cash bonus directly from the EGS to which the customer is assigned. PPL Electric would take no responsibility for insuring that EGSs remit the $50 bonus payment to customers, although EGSs would be required to acknowledge their responsibility to make the $50 bonus payment under the terms of the binding bid agreement. (PPL Electric St. 4, p. 22; PPL Electric Ex. DAK-1, p. 17). Customers would receive the Opt-In Auction rate on their next monthly meter read following their election to

[82] Any participation by shopping customers would not impact the cap of 50% of default service customers. (PPL Electric St. 4, p. 21).

participate in the program, and that rate would continue for a term of six months. Customers would have the right to exit the Opt-In Auction program at any time, consistent with the Company's switching rules, without penalty other than forfeiting their right to receive a $50 cash bonus from the EGS if they exit in the first three months. At the end of the contract term, customers would be notified by their EGS of their options to continue to receive service or to switch to another supplier or back to default service, consistent with regulations that an EGS must follow to provide notice. Customers would not automatically return to default service at the end of the contract term. (PPL Electric St. 4, pp. 22-23).

In terms of the auction process itself, PPL Electric proposes to conduct the auction as soon as the December 1, 2013 PTC is known. The auction will be conducted using a sealed-bid auction format, with NERA, an independent monitor, overseeing and conducting the Opt-In Auction process. Auction reports would be submitted to the Commission, as outlined in the Commission's *RMI-IWP Final Order*. The auction would be open to all EGSs licensed to provide service to residential customers in PPL Electric's service territory. EGSs who elect to participate in the auction would bid on tranches, representing a percentage of participating residential customers. PPL Electric proposes to bid ten tranches, with each tranche equal to 10% of the customers who elect the auction terms, up to the capped residential customer base plus any participating shopping customers. Consistent with the *RMI-IWP Final Order*, a supplier may only win a maximum of 50% of the offered tranches (up to five). Winning bidders will be selected in order from the highest discount to the PTC (lowest bid price), followed by the next highest discount and continuing until all ten tranches are filled. The auction price offered to customers would be set by the last selected qualifying bid (subject to the minimum 5% discount off the PTC). (PPL Electric St. 4, pp. 23-24).

If there are not sufficient qualifying bids to take all ten tranches, the Company will contact those EGSs that make qualifying bids to offer them the opportunity to "step up" and take remaining tranches at the highest bid price (lowest discount off the PTC), that was received. However, consistent with the *RMI-IWP Final Order*, no supplier would be permitted to step up beyond a total of five tranches awarded. If tranches thereafter remain unfilled, the auction would not proceed. (PPL Electric St. 4, pp. 24-25). In addition, if only two suppliers are winning bidders (i.e., each wins five tranches), these EGSs will be notified of the result. Because these two EGSs would be responsible for payment of all post-auction costs, PPL Electric would give the two EGSs the option not to participate further. (See Section III.C.6 of this Brief regarding cost recovery for the auction costs). If either of these two winning EGSs decide to opt out of the auction under this provision, the auction program would be canceled for lack of EGS participation. (PPL Electric St. 4, pp. 23-24).

Subsequent to the submission of the Company's direct testimony describing its Opt-In Auction Program proposal, the Commission issued the *FirstEnergy Order*. In that order, the Commission eliminated the use of an auction process and instead adopted what PPL Electric witness Krall described in surrebuttal as an aggregation program. Mr. Krall explained how, with small modifications, the Company's basic structure of a retail Opt-In Auction Program could be modified to a retail Opt-In Aggregation Program. (PPL Electric St. 4-SR, pp. 6-11).

From the perspective of a customer participating in the program, there would only need to be two modifications. First, the price that customers would pay would be a 5% discount from the Company's December 1, 2013 PTC, instead of a minimum 5% discount with the actual price determined by auction results. (PPL Electric St. 4-SR, p. 9). The second modification is that

customers would only be sent a single letter advising them of the terms of the program and providing instructions on how they may elect to participate. (PPL Electric St. 4-SR, pp. 9-10).

From the EGS perspective, with elimination of an auction, the Company would propose to solicit participation from all licensed EGSs authorized to serve residential customers. A minimum of two participating EGSs would have to agree to participate in order to comply with the 50% participation cap established by the *RMI-IWP Final Order*. (PPL Electric St. 4-SR, p. 8). Based upon the number of customers electing to participate, tranches of load would be divided evenly among participating EGSs with customers randomly assigned. (PPL Electric St. 4-SR, p. 8). EGSs would compensate the Company on a pro rata basis for the cost the Company incurs in marketing and conducting the aggregation. However, because no auction would be conducted and only a single mailing would be sent to customers, the cost of the program would be substantially reduced. (See Section III.C.6 for further explanation of the issue of cost recovery of an Opt-In Aggregation Program).

Various parties have proposed modifications to the design of the retail Opt-In Program. For reasons explained next, these proposed modifications should not be adopted.

Dominion/IGS, FES and OCA all have recommended that the retail Opt-In Program term be for 12 months rather than 6 months, although OCA does indicate it could accept a 6-month term. (Dominion/IGS St. 1, p. 10; FES St. 1, p. 15; OCA St. 2, p. 11). OCA further recommends that regardless of term length the savings to participating customers must be guaranteed, that is, if the PTC changes during the term of the contract, the supplier rate also must change to preserve the percentage discount. (OCA St. 2, p. 11-12). However, EGS parties have indicated unwillingness to offer a 12-month term if they must guarantee savings. (PPL Electric Ex. DAK-1R; PPL Electric St. 4-R, p. 26). The Company continues to support a 6-month

contract term. The Company's proposal of a 6-month term is consistent with the guideline established by the Commission's *RMI-IWP Final Order*. As described in the Commission's order, the Commission indicated, among other things, that a 6-month term would likely get consumers into the market sooner and that the use of fixed price product across a longer term would increase the risk that intervening PTC changes during the term of the product would lead to a loss of savings. (*RMI-IWP Order* at p. 50). With respect to the latter point, the Company notes that its proposal for a 6-month term, coupled with its proposed schedule for implementing the auction and changing the PTC on a semi-annual basis, would effectively assure that participants would achieve five months of certain savings off the PTC. (PPL Electric St. 4-R, p. 25). While this is not the 12-month guarantee that OCA proposes, it does provide a level of certainty for a reasonable period of time. At the same time, the Company is concerned about customers being required to enter into a one-year term contract for what is intended to be an introduction to shopping. Thus, the Company's 6-month term, combined with its proposed implementation date and semi-annual PTC changes, can be viewed as effecting a compromise between the OCA and the EGS positions; customers effectively receive a savings guarantee for at least five months, but EGSs are not required to change their prices under the program to match PTC changes.

The Company notes that under the Opt-In Aggregation Program adopted in the *FirstEnergy Order*, customers would receive a 5% discount off of the PTC for a period of 4 months, and then would receive an unspecified fixed price for an additional 8-month term. (*FirstEnergy Order*, p. 108). The Company respectfully is concerned that an opt-in program that does not have standardized price terms among all participating EGS for the length of the contract may result in customer confusion and dissatisfaction and, ultimately, be harmful to shopping. As

explained by PPL Electric witness Krall in surrebuttal, if, for example, a customer becomes aware that EGS "A" offered a 4% discount after the initial 4-month term, but they were randomly assigned to EGS "B", which offered only a 2% discount after the 4-month term, then PPL Electric, EGSs and the Commission likely will deal with criticisms, possibly complaints about assignments and negative impressions of the shopping experience. (PPL Electric St. 4-SR, p. 11). Similar to the explanation above with respect to price guarantees, PPL Electric believes that an aggregation approach that establishes a 6-month term with a stated discount of 5% would produce a more positive shopping experience than a 5% discount for 4 months followed by a non-standard price among EGSs for a remaining 8-month period. (PPL Electric St. 4-SR, p. 11).

For all of the foregoing reasons, the Company's 6-month term for the Opt-In Auction/Aggregation Program, without a guarantee of savings, is appropriate and should be adopted.

RESA contends that customers who are receiving service from an EGS should be prohibited from participating in the Opt-In Program. (RESA St. 2, p. 28). RESA contends that existing EGSs should not be at risk of losing customers to other EGSs under the Program. (RESA St. 2, pp. 27-28). RESA would place upon PPL Electric the burden to advise customers that they cannot change suppliers to participate in the program. (RESA St. 1, p. 29). As such, RESA would let PPL Electric bear the brunt of customer criticisms, and possibly even complaints to the Commission, when shopping customers call to ask about the Opt-In Program and are told that they are ineligible. (PPL Electric St. 4-R, p. 27). This is not a fair approach. Moreover, the Commission has already considered this issue in the *RMI-IWP Final Order*, and concluded that while an Opt-In Program should not be marketed to shopping customers, those customers should be permitted to participate if they affirmatively make a request to the utility.

(*RMI-IWP Final Order* at pp. 41-42). RESA has offered no reasons, not previously considered and rejected by the Commission, for preventing shopping customers from participating in the Opt-In Program. RESA's proposal should not be adopted.

OCA recommends that the participation cap be set at 20% instead of 50% of non-shopping customers. OCA expresses concerns about possible effects upon default supplier bids, and argues that the relatively high level of residential shopping in PPL Electric service territory did not justify a program that could involve 50% of remaining default service customers. (OCA St. 1, p. 20; OCA St. 2, p. 11).[83] OCA has offered no new arguments, not previously considered by the Commission in the *RMI-IWP Final Order*, to justify changing the 50% participant cap. Furthermore, the Company would prefer to not be placed in the position of having to tell customers that elect the program that their choice was made too late and that the program is closed. This is more likely to occur where the participation cap is set too low. (PPL Electric St. 4-R, pp. 28-29). In Comments submitted by PPL Electric in the RMI proceeding, the Company supported having no participation cap, because the Company believes that complicated rules may actually reinforce reasons underlying customers' reluctance to shop. (PPL Electric St. 4-R, p. 29). This is an additional reason for rejecting OCA's proposed participant cap.

OCA proposes that PPL Electric be required to provide notice, in addition to the two notices EGSs are required by Commission regulation, to advise customers participating in the Opt-In Program of their rights and responsibilities at the end of the contract term. OCA further argues that, absent an election by the customer, the EGS should be required to provide service under a fixed month-to-month contract. (OCA St. 2, p. 13-14). CAUSE witness Krone argues

[83] Although OCA witness Alexander asserted that the high level of shopping by residential customers in PPL Electric's service territory was a basis for proposing a 20% participation cap, Ms. Alexander conceded that her 20% participation cap recommendation would be unchanged if residential customer shopping was 25% higher or lower than PPL Electric's experienced level. (PPL Electric St. 4-R, p. 28; PPL Electric Ex. DAK-1R).

further that confirmed low-income customers should be automatically returned to default service absent an affirmative election to shop at the end of the Opt-In Program term. (CAUSE St. 1, p. 21). These are additional requirements that were not accepted in the *RMI-IWP Final Order* (Order pp. 71-72) and they are not requirements that should be adopted here. Adding additional notice requirements, or adding a requirement that the Company separately track low-income customers under the program and determine whether such customers have made an affirmative election to continue to shop, will only add costs to the program and should be rejected. Furthermore, PPL Electric does not support treating customers participating in the Opt-In Program differently from other shopping customers just because this program might be their first experience with shopping. Other first-time shoppers do not receive such added protections of additional notice or limitations on contract renewals, and PPL Electric does not believe it should be involved in the shopping relationship between a customers and an EGS. (PPL Electric St. 4-R, pp. 29-30). OCA's and CAUSE's proposals should not be adopted.

RESA proposes that non-shopping customers in the Small C&I class should be eligible to participate in the Opt-In Program. (RESA St. 2, p. 29). The Commission concluded in the *RMI-IWP Final Order* that Small C&I customers should not participate in the Opt-In Auction, and no new arguments have been presented here to justify a change in that recommendation. PPL Electric notes that in the Opt-In Aggregation Program adopted by the Commission in the *FirstEnergy Order*, Small C&I customers were permitted to participate in the program. However, in making this modification to the *RMI-IWP Final Order*, the Commission emphasized the relatively low level of current shopping by small commercial customers in the FirstEnergy Companies' service areas. (*FirstEnergy Order* at pp.103-04). However, data in this case demonstrates that there is much more robust shopping by small business customers in PPL

Electric's service territory. For example, OSBA Ex. 1Ec-S1 shows that over 51% of PPL Electric's commercial customers and 89.6% of their load is shopping as compared to around 30% of customers and 60% of load shopping in the FirstEnergy Companies' service areas. Even among PPL Electric's very small (under 25 kW) business customers, over 43% of customers and over 64% of load is shopping. (RESA Ex. CHK-4; Tr. 320). Therefore, the reasons relied upon by the Commission to allow Small C&I customers to participate in the Opt-In Program in the FirstEnergy Order are not present in PPL Electric's service territory.[84] For the foregoing reasons, the Opt-In Program should not be expanded to include Small C&I customers.

RESA recommends that a minimum of four winning bidders be selected in an Opt-In Auction process. (RESA St. 2, p. 30) PPL Electric disagrees. Adding a requirement of a minimum of four winning bidders complicates the process of selecting winning bidders through an auction process and may result in a lesser percentage discount being provided to customers. (PPL Electric St. 4-R, p. 31; PPL Electric Ex. DAK-1R). In contrast, FES recommends that there be no limit on the number of winning bidders. (FES St. 1, p. 17). However, a requirement that no bidder can win all tranches serves the purpose of encouraging EGS participation, as there is assurance that a single entity cannot dominate. Neither RESA's nor FES's recommendations on bidder participation limits was adopted by the Commission in the *RMI-IWP Final Order*, and neither party has presented a justification here to deviate from the limitation that no EGS win more than 50% of tranches in an auction.[85]

[84] PPL Electric further notes that if an Opt-In Auction process is used, a separate auction process would be necessary to solicit Small C&I customers because of customer class differences. (PPL Electric St. 4-R, pp. 27-28). A separate auction process would add further costs.

[85] If the Opt-In Program is not an auction, but an aggregation, PPL Electric continues to support a requirement that no EGS serve more than 50% of customers and would continue to disagree with a requirement that at least four EGSs participate.

FES recommends the use of a declining clock auction instead of a sealed bid process for an Opt-In Auction program. (FES St. 1, p. 18).[86] FES contends that a declining clock structure would be more conducive to "head-to-head" competition and therefore more likely to lead to a price below the 5% discount threshold. (FES St. 1, p. 19). The Company disagrees with FES's recommendation. The Company proposed a sealed bid approach because it is less complex, less costly and more consistent with the processes that the Company routinely uses to acquire full requirements default service. (PPL Electric St. 4-R, pp. 31-32). Moreover, FES has produced no analysis to support a claim that a declining clock approach would significantly alter the resulting discount in an auction process. (PPL Electric St. 4-R, pp. 31-32). FES's proposal to adopt a declining clock option is not supported and should be rejected.

Finally, RESA proposes that the structure of the auction process set forth in the *RMI-IWP Final Order* be revised substantially.[87] RESA proposes that customers be enrolled prior to the auction being undertaken. RESA further proposes additional mailings, information gathering and "aggressive promotion by the Commission and PPL Electric" prior to the auction. (RESA St. 2, pp. 22-24). Alternatively, RESA proposes that the Company's initial mailing include an opportunity for customers to indicate an expression of interest. (RESA St. 2, p. 23). RESA's proposals should be rejected here as they were already addressed and rejected by the Commission. (*RMI-IWP Final Order* at pp. 9-13, 51-56). The Company further observes that RESA's proposals for additional promotion and mailings add complexity and cost that directly benefit EGSs' interests, but which RESA proposes be recovered from customers. (PPL Electric St. 4-R, p. 33). RESA's additional changes to the Opt-In Auction process should not be adopted.

[86] This recommendation is irrelevant if an aggregation program is adopted.
[87] This recommendation is irrelevant if an aggregation program is adopted.

For the foregoing reasons, other parties' changes to the Opt-In Auction Program should be rejected and PPL Electric's proposal should be adopted. Alternatively, if the auction process is to be changed to an aggregation process, the Company's proposed modifications to implement an Opt-In Aggregation Program should be adopted.

4. Standard Offer Program Design

The final retail market enhancement initiative proposed by PPL Electric in this proceeding is a Standard Offer Referral Program. The Company proposed to implement a Standard Offer Program which follows the specifications contained in the *RMI-IWP Final Order*. As noted previously, and as explained in greater detail in Section III.C.5. of this Brief, the Company proposes to initiate the Standard Offer Referral Program on an ongoing basis in mid-2014 after necessary programming changes have been made to the Company's customer information and billing systems to implement the program. PPL Electric proposes that the program target residential customers on default service, but non-default customers who affirmatively request the program will be eligible to participate. (PPL Electric St. 4, pp. 25-26). The Program proposes to provide participants with a standard 7% discount off the then-current PTC for a term of six billing cycles. In the event the PTC changes, any new offers by an EGS must change to reflect a 7% discount off the new PTC. However, contracts entered into previously under the Standard Offer Referral Program would not be subject to a pricing change when the PTC changes. (PPL Electric St. 4, pp. 26-27). A customer who elects the standard offer price may choose to receive service from a particular EGS that is then participating in the program, and customers who do not chose a specific EGS will be randomly assigned to an EGS. (PPL Electric St. 4, p. 27). Customers may exit a standard offer contract at any time without penalty, either to select another EGS or to return to default service. At the end of the term of the

standard offer contract, customers will be notified of their options to renew consistent with their disclosure statement and the regulations an EGS must follow to provide notice. (PPL Electric St. 4, p. 27). Absent an affirmative action by the customer to switch at the end of the contract term, the customer will remain with the chosen/assigned EGS on a month to month basis with no termination penalty or fee. (PPL Electric St. 4, pp. 26-28). The program will be presented to shopping customers during contacts to the PPL Electric call center, other than in the event that the call concerns emergencies, terminations, or similar circumstances where it might be deemed inappropriate. The Company also anticipates engaging customers through IVR functionality and website enrollment capability (PPL Electric St. 4, p. 27).

PPL Electric also proposes a simple process for EGSs to participate. The Company will solicit all EGSs serving residential customers in its service territory for their interest in serving customers under the program. (PPL Electric St. 4, p. 27). Each participating EGS will be required to sign a one time Binding Program Agreement Form, which spells out the EGS's basic responsibilities (Ex. DAK-2). After executing the Binding Program Agreement Form, EGSs will have the opportunity to chose to participate or not on a month to month basis through a simple notification to PPL Electric. (PPL Electric St. 4, pp. 26-27). When electing to participate in a month, EGSs will be indicating their willingness to provide a price for six billing cycles that is equal to a 7% discount from the then-current PTC (PPL Electric St. 4, p. 29). EGSs will be permitted to continue the enrollment of customers up to June 1, 2015, which is the end of the DSP II Program.[88]

Various parties have proposed modifications to the Company's Standard Offer Referral Program. Several of these issues are similar or identical to issues that have been addressed

[88] The Company is not proposing at this time to continue the program beyond June 1, 2015, pending a final determination of the Commission with regard to end-state default service.

previously with respect to the Opt-In Program design, and the Company will limit its responses accordingly.

DES/IGS and FES recommend that the program term for the Standard Offer Referral Program be 12 months. OCA, in contrast, recommends a term of four months with a requirement that the 7% savings be guaranteed with relation to any PTC price changes occurring during the term of the contract (DES/IGS St. 1, p. 12; FES St. 1, p. 23; OCA St. 2, p. 17). The Company notes that in the *RMI-IWP Final Order*, the Commission established that the standard offer should be provided for a minimum of four months but should not exceed one year (Order, p. 31). Thus, the term lengths proposed by the Company, OCA, DES/IGS and FES all fall within the range established by the *RMI-IWP Final Order*. It is important to note that various EGS parties would not support a guarantee of a 7% savings the term of the contract, as recommended by OCA witness Alexander (PPL St. 4-R, p. 36).

The Company appreciates the positions of the opposing parties on this issue and recognizes both the merits and the objections to these positions. The Company believes that its proposal represents a compromise of the concerns of EGSs and OCA, as explained by Company witness Krall:

> The Company believes that it is significant that its proposal falls between the proposal of the party most focused on consumer protections and the parties most focused on promoting the market. The Company shares Ms. Alexander's concern for customer confusion at the time of PTC changes and that is one of the reasons it has proposed a shorter term. However, Ms. Alexander's proposed 4 month term does not guarantee that this won't happen. It is her proposal of guaranteed savings, which was not adopted by the Order and which is not supported by EGSs, which achieves that end. Furthermore, the Company observes that consumers are exposed in a number of settings to "buyer's remorse" resulting from market movement after a purchase decision is made (for example, locking in rates on certificates of deposit, entering into a loan or mortgage, and purchasing any item that subsequently goes

> on sale) and sees no reason why extraordinary steps should be taken in regard to this program to shield what they already accept as reality in regard to other purchase decisions.
>
> The Company believes that the objective of the Standard Offer Referral Program is to introduce customers to shopping. Customers should not be sheltered from the realities of the market (such as PTC changes), but should also not be locked into the possibility of several such changes during the term of what is intended to be an introductory program. The Company believes that a six-month term accomplishes that objective in the following ways: (1) it is short enough so that, consistent with the Company's proposal for 6-month PTC price changes, participants will experience only one such change; (2) it is a term that is consistent with non-introductory products the customer will find in the marketplace; (3) the customer is free to exit at any time, and; (4) it allows the customer to become familiar with seeing supplier charges on his bill, receiving communications from an EGS, and considering alternative options at the end of the term within a reasonable time frame.

(PPL Electric St. 4-R, pp. 37-38). For the reasons explained by Mr. Krall, the Company believes its proposed term is reasonable and should be adopted.

RESA proposes that shopping customers not be eligible for the standard offer referral program. (RESA St. 2, pp. 37-38). RESA's basic position on this point is the same as its position in opposition to shopping customers participating in the retail Opt-In Program. As explained previously, these objections were considered and rejected by the Commission in the *RMI-IWP Final Order* and RESA has offered no reason why the guidance in that Order should be disregarded here. RESA does suggest that by prohibiting shopping customers from participating in the standard offer referral program, PPL Electric would be able to reduce its customer information system changes. (RESA St. 2, p. 37). However, Mr. Krall explained the error in RESA's assertion:

> Mr. Kallaher is wrong in his assertion that making shopping customers ineligible will reduce or eliminate PPL Electric's need for systems and process changes. Mr. Kallaher states that because the Company can identify shopping customers for the purpose of

> reporting, then nothing else would need to be done. Mr. Kallaher fails, however, to understand the difference between monthly querying and reporting from a data base and presenting information to a customer service representative so that person can engage a live customer, respond to an unscripted variety of questions and concerns, and convey to the customer the sense of safety and confidence that the Company believes is necessary to accomplish the Commission's objective of introducing customers to choice.

(PPL Statement 4-R, p. 39).

PPL Electric supports allowing current shopping customers to participate in the Standard Offer Referral Program if they so request. A shopping customer who goes through the effort to learn about the availability of the program should not be told that they are ineligible for a program that gives them a 7% discount off the current PTC, and that may be less than the price they are currently paying to an EGS.[89]

CAUSE recommends that confirmed low-income customers be returned to default service at the end of the term of the Standard Offer contract, absent an affirmative choice to remain with their EGS. (CAUSE St. 1, p. 23). OCA recommends that any participating customer who does not affirmatively select an EGS at the end of the Standard Offer contract be returned to default service. (OCA St. 2, p. 18). As explained previously with respect to the Opt-In Program, these recommendations are contrary to the Commission's recommendations in the *RMI-IWP Final Order* (Order, page 32). For the reasons explained in Section III.C.3. above, the Company does not support special rules for customers participating in the Standard Offer Referral Program. The Commission's established rules related to shopping, including the notification of customer rights that are required to be provided by EGSs at the end of the contract term are sufficient. Furthermore, with respect to CAUSE's recommendation, the Company does not support

[89] This potentially could lead to the perverse consequence that customers may seek to leave their current EDC to go on default service for a period of time and then be eligible for the Standard Offer Referral Program.

establishing a separate process for tracking and changing low income customers back to default service at the end of a standard offer contract term. (PPL Electric St. 4-R, pp. 41-42).

As noted in the introduction to this section of the Brief, PPL Electric proposes that the Standard Offer Referral Program be presented to customers during any contacts to its call center, other than emergencies, terminations, and other circumstances where it might be deemed inappropriate. This language closely follows the direction articulated in the *RMI-IWP Final Order* (Order, p. 32). OCA and CAUSE recommend that the program not be offered during calls regarding high bill concerns, and other service-related issues. (OCA St. 2, p. 17; CAUSE St. 1, p. 23). The Company notes that the Commission's *RMI-IWP Final Order* specifically addressed the issue of contacts for high bill issues and directed that the standard offer program be presented "only and explicitly after the customer's concerns were satisfied." (Order, p. 32.) Consistent with the foregoing, it is the Company's intent to first identify the source of the customer's high bill concern and then attempt to satisfy that concern before presenting the program. Furthermore, the Company would only present the program in those circumstances that are relevant to the caller's concerns, for example, if the caller seeks alternatives to reduce their bill or complains generally about the price of electricity (PPL Electric St. 4-R, p. 40). The Company believes that its plans with respect to the types of calls that may be presented with the Standard Offer Referral Program are consistent with the Commission's directives and should be adopted.

Finally, RESA recommends that terms between EGSs and the Company related to the provision of standard offer service be negotiated after a final order in this proceeding. (RESA St. 2, pp. 38-39). The Company believes that the guidelines contained in the Commission's *RMI-IWP Final Order* provide a sufficient framework within which to consider program design, and, therefore, there is no reason why a separate negotiation is needed to establish program terms.

(PPL Electric St. 4-R, p. 42). RESA has identified no specific aspects of the Binding Program Agreement Form that need to be reviewed. This recommendation should not be adopted.

For all the reasons explained herein, the Company's Standard Offer Referral Program should be adopted.

5. Timing of the Retail Market Enhancements and Customer Referral Programs

PPL Electric has previously described the timing for its five Retail Market Enhancement Initiatives. The timing of the first two Initiatives (the Customer Education Mailings and the New/Moving Customer Program) are directed by the Commission and are outside of PPL Electric's control. The Customer Referral Mailing is an optional Initiative proposed by PPL Electric, which has been offered in support of PPL Electric's proposed timing for the Opt In and Standard Offer Referral Programs.

PPL Electric's proposals for the roll-out dates of the Opt In Program and the Standard Offer Referral Program are based upon several factors. First, PPL Electric has entered into several contracts under its DSP I Program that would be affected by these Retail Market Enhancement Programs. Specifically, the Company has entered into several fixed-priced, full requirements, load following contracts under its current DSP I Program that do not expire until November 30, 2013. These were contracts that were executed prior to the Commission's initiation of its retail electricity market investigation and the proposal to undertake active initiatives to shift customers from default service through the Opt In Program and the Standard Offer Program. (PPL Electric St. 4-R, p. 14).[90] The Company proposed to avoid affecting winning wholesale suppliers under existing DSP I Program contracts that were entered into prior

[90] As soon as the Company became aware of the possibility of a Retail Opt-In Auction Program, it began to notify potential bidders in its DSPI Program procurements. Thus, suppliers who have won bids in contracts with terms that extend beyond November 30, 2013 are aware of the potential for substantial numbers of default service customers to move to shopping.

to the initiation of the RMI, consistent with the Commission's statement in the *December 16 Order* that "[T]he Commission does not intend to disrupt the default service supply contracts under commissioned-approved plans." (Order at p. 63). PPL Electric explained that there are four wholesale default suppliers of the 24-month contracts, with a total load of 11.25% of default service load, whose contracts would be impacted if the Company were to accelerate the Opt In or Standard Offer Programs to June 1, 2013. (PPL Electric St. 1-R, p. 30). In addition, to these fixed-price, full-requirements, load-following contracts that would be affected if the Market Enhancement Programs were to begin prior to November 30, 2013, there are block contracts that would be affected as well. As a result of the relatively successful shopping in the Residential Class to date, residential default service load on minimum load days has begun to fall close to the 350 megawatts of load currently acquired under 24 x 7 block contracts. (PPL Electric St. 2-R, p. 8). As explained in Section III.B.1.a.i. of this Brief, the current high level of residential default service shopping is one reason, among others, why PPL Electric has proposed not to acquire any additional block supplies under DSP II Program and to allow the existing block contracts to expire, in 50 megawatt steps, beginning June 1, 2013. PPL Electric's proposal to delay the Retail Opt In Program start date to December 2013 would allow approximately 150 megawatts of block supply contracts to expire (PPL Electric St. 1-R, p. 30), thereby substantially reducing the likelihood that the Company would sell back a portion of these supplies into the PJM market.

The second factor for the proposed timing of the Opt In and the Standard Offer Referral Program is that the Company believes that the Opt In Program and the Standard Offer Referral Program should not operate simultaneously. PPL Electric is concerned about substantial customer confusion that may result from simultaneous operation of the two Programs. Because the Opt In Program is a one-time program, whereas the Standard Offer Referral Program will be

an ongoing program, the Company believes it would be most efficient, and least confusing, to undertake the Opt In Program and then proceed with the Standard Offer Referral Program. (PPL Electric St. 4, p. 18).

Finally, the Company proposes to begin the Standard Offer Referral Program in mid-2014 in order to provide sufficient time to make appropriate enhancements to its customer information and billing systems. PPL Electric witness Krall explained the programming changes that are necessary.

> From an enrollment perspective, the Company must develop and be able to process an outbound 814 enrollment transaction which will allow the Company to enroll participating customers with an EGS and inform the EGS of this new customer relationship. The Company will also have to create service representative, web, and IVR functionality to enroll customers, assign an EGS (if none is chosen), and create the outbound 814. More significant, however, is the need to identify program participants as being different from other shoppers so that service representatives and automated systems can recognize their participation. One goal of the Commission's RMI process is to introduce customers to shopping in a positive way. Offering participation to a customer during a customer initiated contact to a customer who is already shopping could cause serious confusion and result in a negative experience. The Company believes that the modifications necessary to make correct information available to service representatives, IVR dialogues, and web applications will require the Company to invest approximately $3,000,000 and require over a year to complete.

(PPL Electric St. 4, p. 31). Mr. Krall explained that failure to implement these changes to the Company's customer information and billing system may result in customer confusion, enrollment and billing errors and generally detract from the goal of making default service customers comfortable with shopping. (PPL Electric St. 4-R, p. 18). Mr. Krall also explained that these programming changes are necessary to accomplish seamless switching without the need to hand off a customer to an EGS, consistent with the "day-one" switching that RESA witness Kallaher supports. (Tr. 91-92).

It is the position of the various EGS parties that both the Opt In Program and Standard Offer Referral Program should begin in June, 2013. PPL Electric does not believe that rushing these two programs into operation serves the ultimate goal of helping to further develop a robust retail competitive market. This is particularly relevant in PPL Electric's case because comparatively large numbers of customers are already shopping. Thus, jump starting competition is less critical in the PPL Electric service territory than it may be in other EGSs' service territories. (PPL Electric St. 4-R, p. 15). PPL Electric believes that the comparatively larger number of shoppers in PPL Electric's service area supports the conclusion that PPL Electric's customers are already more sophisticated in shopping basics than may be found in other service territories. Thus, increased attention to careful, non-confusing program design may be very important to encourage meaningful numbers of these remaining non-shopping customers to enter the retail competitive market. (PPL Electric St. 4-R, p. 15). Rolling out both programs at or near the same time will lead to confusion, as customers are asked to decide between a 5% discount and $50 bonus or 7% discount.

For the foregoing reasons, PPL Electric's proposed start dates for its customer initiatives should be adopted.

6. Cost Recovery for the Retail Market Enhancements and Customer Referral Programs

It is PPL Electric's position that, consistent with the *RMI-IWP Final Order*, the identifiable costs associated with the Retail Opt-In Program and the Standard Offer Referral Program should be paid by EGSs that participate in the Programs. The specifics of PPL Electric's cost recovery proposals for the two programs are explained next.[91]

[91] The question of cost recovery with respect to the Company's additional Customer Referral Mailing is interrelated with issues concerning whether the Mailing would be merged with the customer education mailings. Thus, the cost recovery aspects of the Customer Referral Mailing have been explained in Section III.C.2 of this Brief.

With respect to the retail Opt In Program, the Company set forth a two-stage process for payment of the costs of the auction. The stages were split into pre-auction costs and post-auction costs. Pre-auction costs are defined as those costs that PPL Electric would incur prior to and through the auction request for proposal process, including, but not limited to, costs associated with a pre-auction mailing to non-shopping Residential Customers notifying them of the Program, preparing for the auction RFP and conducting the auction RFP. Post-auction costs will include all costs incurred after the auction, including, but not limited to, costs associated with a post-auction mailing to non-shopping customers, notifying them of the auction RFP results, any call-center costs, and any remaining program costs not otherwise recovered. (PPL Electric St. 4, pp. 23-24, Ex. DAK-1, p. 5, § 1.13). PPL Electric proposes to issue an estimate for both pre-auction and post-auction Program costs prior to the auction. EGSs that choose to participate in the auction must sign a binding bid agreement prior to the auction, agreeing to pay pre-auction costs upfront, based upon the number of EGSs that sign the binding bid agreement. These pre-auction costs would not be refunded to EGSs. If no EGSs chose to participate in the auction process, PPL Electric will seek to minimize the amount of costs pre-auction that it incurs. However, in such event, any pre-auction costs that were incurred would be recovered from customers, which PPL proposes to accomplish through the Competitive Enhancement Rider proposed in the Company's pending base rate case. (PPL Electric St. 4, pp. 23-24). Post-auction costs, and any true up of pre-auction costs, would be spread to winning EGSs based upon the respective number of tranches won by each EGS. (PPL Electric St. 4, p. 24; PPL Electric St. 4-R, p. 49). PPL Electric estimates that the Opt In Auction pre-auction costs would be approximately $1 million and that the post-auction costs would be approximately $1 million. (RESA Ex. CHK-1). Most of these costs relate to pre-auction and post-auction mailings to all

non-shopping Residential customers. Based upon the Company's experience, it would anticipate incurring mailing costs of about $1.00 per customer. (Ex. CHK-1).

The EGS parties to this proceeding offer as their primary position that the costs of the retail Opt In Auction Program should be recovered from customers rather than from EGSs. (DES/IGS St. 1, p. 9; FES St. 1, pp. 19-20; RESA St. 2, p. 27). These parties primarily support recovering the cost from default service customers only, but in the alternative, would propose recovery from all customers through a non-by-passable charge. It is the Company's position that such proposals are contrary to the directives contained in the *RMI-IWP Final Order*. The Commission there concluded that the Opt In Auction Program benefits EGSs and, therefore, the cost of the Program should be charged to the EGSs. (*RMI-IWP Final Order*, p. 43). If the Commission were to conclude that all or a portion of the Opt-In Program cost should be recovered from customers, the Company would recommend that the cost be charged to all customers in eligible customer classes. Any proposal to limit recovery to default service customers could result in difficulties in PPL Electric fully recovering the costs of the Program. As customers leave default service to shop under the Opt-In Program, the pool of remaining default service customers will shrink, thereby increasing the amount of the charge needed to fully recover PPL Electric's costs. (PPL Electric St. 4-R, p. 47).

As explained above, PPL Electric has presented an alternative proposal to operate an Opt In Aggregation Program that would not involve an auction process. See Section III.C.3. An aggregation approach would eliminate the need for a pre-auction mailing and the auction itself, and thus, would substantially reduce the cost of the Program. (PPL Electric St. 4-SR, p. 9). Under this alternative, participating EGSs would be required to compensate the Company on a pro rata basis for the costs it incurs but there would not be a split of pre-auction and post-auction

responsibility. (PPL Electric St. 4-SR, p. 9). Although no EGS party directly addressed this alternative, PPL Electric anticipates that at least some of the EGSs will continue to contend that customers should pay the costs of this alternative. For the reasons explained above, PPL Electric would disagree.

FES and DES/IGS have challenged the Company's proposal to split auction costs into pre-auction and post-auction pieces. It is their position that only EGSs that actually win tranches in the auction should pay the costs of the auction. (FES St. 1, p. 22; DES/IGS St. 1, p. 9). However, as explained by PPL Electric witness Krall, recovering costs only from winning EGSs could increase the risk that PPL Electric could bill no EGSs for the costs of an auction and result in the need for substantial cost recovery from the Company's customers in the event of a failed auction. Under the auction process, by the time the auction takes place, the Company will have incurred approximately $1 million in costs. If no EGSs actually participate in the auction, and costs are billed only to winning EGSs, no EGS would pay these pre-auction costs. (PPL Electric St. 4-R, p. 48). By requiring EGSs to pay for pre-auction costs up front, the Company can determine whether EGSs are committed to participate in an auction, and avoid unwanted costs. FES also questions why any true up of pre-auction costs would be billed only to winning EGSs. Again, this payment proposal was developed to address the practicality of the situation. If an EGS signed up to participate in the auction but was not selected, it would have no motivation to pay additional costs after the fact. Without a true up process that charges remaining pre-auction costs to winning EGSs, PPL Electric could potentially be left with unrecovered program costs that it would have to charge to customers. (PPL Electric St. 4-R, p. 48). PPL Electric's proposals for split payment of auction costs is reasonable and should be adopted.

With respect to recovery of costs for the Standard Offer Referral Program, the Company proposes to require all EGSs electing to participate in the Program to sign a Binding Program Agreement Form, which requires them to be responsible to pay a pro rata share of Program costs, based upon the number of participating EGSs and the months they participate. Thus, if one EGS participates for 12 months, while another EGS only participates for six months, the first EGS would pay a higher share of the costs of the Program. Final Program costs would be calculated at the end of the Program year and costs would be divided among the EGSs. In the event there are unrecovered costs, the Company would recover such costs from its customers. (PPL Electric St. 4, pp. 29-30).

PPL Electric identified two categories of costs that could be viewed as associated with the Standard Offer Referral Program that would not be recovered from participating EGSs. The first of these would be service representative call time. As a practical matter, the Company cannot determine the amount of incremental time that would be incurred by service representatives to inform customers about the Standard Offer Referral Program. Thus, these costs would simply be reflected as part of operating expenses in a future rate case. (PPL Electric St. 4, p. 29; PPL Electric St. 4-R, p. 44).

The second category of costs that would not be billed to EGSs are capital costs associated with the modifications to the Company's customer information and billing systems, that are identified previously. (See Section III.C.4). These costs are estimated at $3 million, and would be recovered in a future base rate case. (PPL Electric St. 4, p. 29).

Similar to their position with regard to recovery of Opt-In Auction Program costs, the EGSs contend that the costs PPL Electric proposes to recover from EGSs for the Standard Offer Program should be recovered from customers. (DES/IGS St. 1, p. 12; FES St. 1, p. 25; RESA St.

2, p. 38). Such proposal is contrary to the Commission's *RMI/IWP Final Order*, and the EGSs have offered no reason, not otherwise considered by the Commission, to change that decision. The EGSs' proposal to charge customers for the cost of the Standard Offer Referral Program should be rejected.

OCA and CAUSE assert that in no instance should costs associated with either the retail Opt In Program or the Standard Offer Referral Program be charged to customers. (OCA St. 2, p. 19; CAUSE St. 1, p. 22). This includes the capital costs identified above, as well as any proposal to recover unrecovered costs of either Program from Residential customers. (OCA St. 2, p. 19).

With respect to the customer information and billing system modifications, Company witness Krall explained that the Company cannot separate and account for that portion of the customer information billing system modifications that relate only to implementing a Standard Offer Referral Program from other portions of the modifications that are likely to be useful in managing other aspects of the Company's relationship with its customers. (PPL Electric St. 4-R, pp. 44-45). Accordingly, the Company's proposal represents a fair and practical balancing of interests by seeking recovery from EGSs of those costs that are clearly assignable to them, and obtaining recovery from customers for those costs that have broader application.

Finally, with respect to OCA's and CAUSE's objection to recovery of any unrecovered costs of the two Programs from customers, PPL Electric will undertake all reasonable efforts to recover costs assigned to EGSs from EGSs. However, the Company cannot be directed to undertake these Programs and bear the risk of non-recovery either because it incurred costs in anticipation of EGS participation that did not occur or because EGSs failed, for whatever reason, to pay their full share of costs. *See Columbia Gas of Pennsylvania v. Pa. PUC*, 613 A.2d 74 (Pa. Cmwlth. 1992) (holding that a utility could not be directed to undertake a program and then be

denied recovery of the costs of such program). OCA's and CAUSE's positions that customers should never be responsible for any share of these costs should be rejected.

For the foregoing reasons, PPL Electric's cost recovery proposals are reasonable and should be adopted.

7. CAP Customer Participation in the Retail Market Enhancements

PPL Electric's position on whether customers participating in its low-income Customer Assistance Program ("CAP"), known as OnTrack, should be permitted to participate in the Opt-In Program and the Standard Offer Customer Referral program has evolved as the Company has examined information regarding OnTrack customers' current participation in shopping programs.

The issue of CAP customers' shopping is complicated, because the OnTrack program has a number of important policy objectives that are not necessarily related to shopping. One such objective is the need to administer a cost effective program. Non-CAP residential customers pay the CAP shortfall, which is the difference between the full bill and the CAP customer's unique required payment. If OnTrack customers' full bill responsibility increases, the CAP shortfall increases. (PPL Electric St. 4-SR, pp. 11-15; CAUSE St. 1, p. 13). Furthermore, if CAP customers receive benefits that are not reflected in the determination of their required payment, non-CAP customer cost responsibility would be higher than necessary to provide an affordable bill payment for CAP customers. (Tr. 106). Another important policy objective of OnTrack is developing payment plans that recognize the customer's ability to pay and improve customer's bill payment habits and attitudes so that the customer can remain in the OnTrack program. (PPL Electric St. 4-SR, pp. 13-14). If OnTrack customers' required payments are unaffordable, they will default and likely face service termination. Achieving a balance between these objectives can be difficult.

OnTrack customers have been eligible to shop since the beginning of customer choice in the PPL Electric service territory. (PPL Electric St. 4-R, p. 7). However, in recognition that ineffective shopping by OnTrack customers can create a burden on the rest of the residential population which pays the CAP shortfall, the Company has put in place billing protocols that provide for a sharing of the costs and benefits of shopping by OnTrack participants. (PPL Electric St. 4-R, p. 8).[92] Under these billing protocols, if an OnTrack customer's choice to shop results in either a $10 savings or a $10 increased cost compared to the PTC, there is no change to the customer's required OnTrack bill payment. The resulting savings or costs are passed through to or recovered from other residential customers that pay the universal service charge. (CAUSE Ex. SRK-2, Attachment 1, p. 2). If an OnTrack customer selects a supplier that has a price significantly above the PTC, then the OnTrack customer must pay that extra amount (above the $10 per month threshold) as part of their OnTrack bill. If an OnTrack customer selects a supplier that has a price that produces a significant savings over the PTC, then OnTrack participants and residential customers paying the cost of the CAP Program through PPL Electric's universal service surcharge share the shopping savings by a ratio of 60% to the OnTrack participant and 40% to non-cap customers who pay the program's cost. (CAUSE Ex. SRK-2, Attachment 1, p. 2). These protocols are designed to encourage efficient shopping by OnTrack customers by increasing their required payment if they take more expensive service from an EGS while allowing them to receive a share of savings from shopping, while providing a share of shopping savings to the non-CAP residential customers that pay the CAP shortfall.

CAUSE's and OCA's primary position in this proceeding is that OnTrack customers should not participate in the Opt-In and Standard Offer Referral Programs. These parties argue

[92] By use of the term "ineffective shopping", PPL Electric is referring to decisions by OnTrack participants to purchase supplies at prices above the PTC. (PPL Electric St. 4-SR, p. 14).

that CAP customers are not necessarily efficient shoppers and could readily find themselves paying higher bills to EGSs after the conclusion of any period of savings under the two programs. (CAUSE St. 1, p. 17; OCA St. 2, pp. 14-15). In addition, CAUSE argues that, under the terms of the protocols, OnTrack customers would not receive the full level of stated savings even at the beginning of the two programs because a portion of the savings would flow to the residential customers who bear the responsibility for paying CAP shortfall under the protocols. (CAUSE St. 1, p. 15). OCA further contends that the administrative costs to reset OnTrack customers' required payments under the protocols may offset any portion of the savings that non-CAP customers would receive under the OnTrack billing protocols. (OCA St. 2, p. 15).[93]

Alternatively, CAUSE contends that if OnTrack customers are permitted to participate in the two Programs, the Company should adopt procedures that would return OnTrack customers automatically to default service at the conclusion of the initial terms of the Opt-In and Standard Offer Referral Programs, unless the customer made an affirmative decision to stay with their EGS. (CAUSE St. 1, p. 21).

Initially, PPL Electric opposed CAUSE's and OCA's positions, and argued that OnTrack customers should participate in these program without limitation because these customers generally are currently permitted to shop. (PPL Electric St. 4-R, p. 11). However, after further consideration, the Company has concerns about such an unrestricted approach. As explained by PPL Electric witness Krall, after learning, through responses to discovery, that 73% of the Company's OnTrack participants who receive competitive supply were being charged a price higher than the PTC, the Company explored the implications of this result. The Company is concerned that such a large number of "ineffective" shoppers may signal that CAP customers' shopping decisions are increasing the program costs borne by non-CAP residential customers.

[93] The OnTrack program is administered by community-based organizations. (PPL Electric St. 4-R, p. 10).

Further, because OnTrack customers bear the burden of bill increases from shopping above $10 per month under the billing protocols, this could result in increased defaults under the OnTrack program and removal of customers from OnTrack because they have exceeded their annual maximum limit of CAP credits. (PPL Electric St. 4-SR, p. 14). If these concerns are demonstrated to be a long-term issue with OnTrack customers, then the policy objectives of CAP, explained above, will not be met.

The Company emphasizes that it has not reached a definitive conclusion that OnTrack customers are making decisions that increase costs to non-CAP customers, or that are resulting in increased OnTrack program defaults. (Tr. 105). However, OnTrack customers receive many offers, such as inducements for airline miles, gift cards and other benefits. If these benefits are offered in exchange for higher EGS prices, non-CAP customers who pay the cost of OnTrack shortfalls pay the cost of higher prices but do not receive the benefit of these other inducements. (Tr. 106).

Based upon these concerns, the Company has modified its position to continue to allow OnTrack customers to participate in the two programs, but not have the Company market the programs to OnTrack participants until there has been a further examination of whether shopping by OnTrack customers has produced net benefits for both OnTrack customers and the non-CAP customers that pay the cost of the OnTrack program. (PPL Electric St. 4-RJ, p. 2). Such examination can be made either in the context of the Commission's CAP working group in the Retail Market Investigation proceeding or PPL Electric's next universal services program review. (PPL Electric St. 4-RJ, p. 2). This modified approach would mean that the Company would not mail material regarding the retail Opt-In Program to OnTrack participants and would not offer the Standard Offer Referral Program to OnTrack participants who initiate contact with

the Company to discuss other matters. (PPL Electric St. 4-RJ, p. 2). OnTrack customers will be permitted to participate in either program if they request, in the same way that shopping customers may participate.

PPL Electric does not support the alternatives offered by CAUSE and OCA that would treat CAP customers differently from other customers participating in the two retail market enhancement programs through procedures that would have the Company return only OnTrack customers to default service after the conclusion of the contracts under the Opt-In and Standard Offer Referral Programs. This would require systems and processes to be modified to distinguish between OnTrack customers taking EGS service within one of these programs and all other residential customers taking EGS service, thereby adding costs. (PPL Electric St. 4-R, p. 41).

D. ADDITIONAL ISSUES

1. Issues for CAP Customers Currently Served by EGSs

CAUSE has proposed that all OnTrack customers should be prohibited from shopping. (CAUSE St. 1, pp. 19-20). CAUSE bears the burden of proof for such proposal. *See* Section III.A.1. of this Brief. CAUSE proposes that all OnTrack shopping customers be transitioned back to default service upon expiration of their existing contracts with EGSs. (CAUSE St. 1, p. 20). CAUSE witness Krone makes this proposal based upon his views about the ability of OnTrack customers to make effective shopping decisions. Mr. Krone cites as support for his conclusion that 73% of OnTrack customers that are currently taking service from an EGS are paying a price greater than the PTC.

As noted above, PPL Electric also is concerned that this statistic may demonstrate that OnTrack customers are ineffective shoppers. However, the 73% figure is based on a single point

in time, and therefore cannot be used to conclusively determine that these customers were paying a higher price for the entire term of their contract with EGSs or that they have not or will not obtain savings over the life of the term of their contract. (PPL Electric St. 4-R, p. 8). It is quite possible that some portion of this group of customers had entered into contracts at a discount to the PTC when the contract began but were paying more than the PTC later in the contract, as PPL Electric's PTC has fallen with recent reductions in market prices. (PPL Electric St. 4-R, p. 9).

PPL Electric does not believe that a decision to prevent OnTrack customers from shopping should be made based upon such limited data. Moreover, a default service filing is not the appropriate proceeding to decide the eligibility of OnTrack customers to shop. However, for reasons explained above, the data does give some reasons for concern that non-CAP customers may be bearing costs for ineffective shopping decisions by OnTrack customers. There are important issues about how shopping may or may not assist the Company in achieving policy objectives for the OnTrack program, and those issues have not been sufficiently examined in the context of this proceeding. (PPL Electric St. 4-SR, p. 13). These broader issues should be reviewed in the Company's next universal service and energy conservation plan, to be filed within the next year, or in the context of the Commission's working group within the RMI Investigation to address whether CAP participants should be permitted to shop. (PPL Electric St. 4-SR, p. 15).

RESA witness Kallaher has also made a proposal regarding shopping by OnTrack customers. RESA recommends that the Company's OnTrack program be replaced by a "standard" and "statewide" program that gives a "portable" benefit to be applied equally whether the CAP customer is shopping or not shopping. (RESA St. 2-R, pp. 15-16). As is the case with

CAUSE's proposal to prohibit shopping by OnTrack customers, RESA bears the burden of proof with respect to this proposal. It appears that RESA proposes a standardized percentage or a standardized dollar discount off a CAP customer's bill. However, the design of a CAP program considers issues and subjects that are much broader than whether the program easily accommodates shopping. (PPL Electric St. 4-SR, pp. 12-13). A standardized statewide program with portable benefits may on the one hand, result in unaffordable CAP customer payments or, on the other hand, may provide too large a benefit and thereby increase the CAP shortfall borne by other non-CAP residential customers. (PPL Electric St. 4-SR, p. 14). As is the case with CAUSE's proposal, RESA's proposal for standardization of CAP benefits and portability of benefits should not be considered in the context of this proceeding, but rather should be considered in the Company's next universal service filing or in the Commission's RMI working group regarding CAP customers. Mr. Kallaher's other alternatives, such as monitoring EGSs serving CAP customers for predatory price schemes or providing further education efforts directed to OnTrack customers, may be appropriate, but may raise concerns regarding intervention in the competitive retail market. (PPL Electric St. 4-SR, pp. 14-15). Such alternatives also should be evaluated more fully in another context.

In conclusion, there is not sufficient evidence in this record, and the Company does not at this time have sufficient understanding of the potential problems with OnTrack customer shopping and potential solutions, to propose a course of action. At this time, OnTrack customers should be permitted to continue to shop. The Commission should investigate these matters as separate proceedings.

2. Proposed 5 mils/kWh Charge Added to Default Service Rates

RESA proposes that the Company impose a 5 mil/kWh charge on default service rates. RESA proposes that the charge be used to pay any "verifiable" costs related to providing default service that have not previously been unbundled, and to pay costs related to implementing and maintaining the competitive market enhancements, with any balance remaining being returned to distribution customers.[94] PPL Electric does not support RESA's proposal, which has previously been rejected by the Commission in the *FirstEnergy Order*. (Order at p. 62).

PPL Electric does not believe that there would be any costs that would be recovered by this proposed 5 mil/kWh charge. First, it is PPL Electric's position that all of its costs of providing default service have been unbundled. Thus, there would be no "verifiable costs related to providing default service" that would be recovered by the charge. (PPL Electric St. 1-R, p. 14). Second, unless the Commission alters its position in the *RMI/IWP Final Order* that the cost of competitive market enhancements be paid by EGSs, there would be no costs for such programs to be charged against the 5 mil/kWh adder either. Thus, the effect of RESA's proposal would be to simply increase default service charges to provide decreases to distribution charges. Such a result would be contrary to ratemaking principles that charges be aligned with the cost to serve. *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007). Moreover, RESA's proposal to increase default service charges will not result in an equal distribution rate decease. RESA's witness Mr. Kallaher conceded that if default service customers make up about half of all distribution customers, then a default service customer would receive back only about half of the 5 mil adder as a reduction to that customer's distribution charges. (Tr. 294).

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[94] RESA also suggests, as an alternative, that PPL Electric might be permitted to retain up to 10% of any balance remaining before the balance is returned to distribution customers. (RESA St. 2, p. 40).

RESA's proposal is simply an effort to create artificial headroom to increase shopping. Although PPL Electric supports shopping, it does not support artificially inflating default service charges to drive such an outcome. RESA's proposal should be rejected.

3. Requested Ruling Pursuant to 66 PA. C.S. § 2102

In its Petition, the Company requested that the Commission approve the SMA as an affiliated interest agreement under 66 Pa. C.S. § 2102 and include such approval in its final order.[95] Under 52 Pa. Code § 54.186(b)(5), an affiliated supplier may participate in a Default Service provider's competitive bid solicitations for generation service. Therefore, PPL Electric's unregulated affiliates will be permitted to participate in the Company's Default Service supply solicitations. If one of those affiliates is the successful bidder for one or more tranches of Default Service supply, PPL Electric would enter into a SMA with that affiliate. It would not be practical or efficient, in light of the procurement schedule, for the Commission to review the SMA under 66 Pa. C.S. § 2102 at that time. Moreover, rejection or significant modification of the agreement after a solicitation has concluded, and winning suppliers have been selected, could significantly disrupt the Company's Default Service procurement process. The CBP and DSP I Program Default Service SMAs were approved by the Commission under 66 Pa. C.S. § 2102(b) in advance of execution of contracts with PPL Electric's affiliate, and, therefore the Commission should approve the DSP II Program SMA as an affiliated interest agreement. No party has objected to this requested ruling.

4. Requested Waivers

In its Petition, pursuant to 52 Pa. Code § 54.185(f), PPL Electric requested a waiver of a limited number of the Commission's regulations.[96] Specifically, regarding the customer class

[95] PPL Electric Ex. 1, p. 46.
[96] PPL Electric Ex. 1, p. 47.

divisions, the Commission's regulations and policy statement provide that Default Service providers should divide customers into three groups based upon peak loads from 0-25 kW, 25-500 kW or above 500 kW.[97] However, the regulations and policy statement also provide that Default Service providers may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.[98] The rate schedule designations in PPL Electric's tariff are primarily based upon the nature of the service (*e.g.*, residential or commercial) and the voltage at which that service is provided. The Company's tariffs, with limited exceptions, are not based on registered peak demand.[99] Thus, a requirement to divide all customers by maximum registered peak demand for Default Service purposes would create several problems for the Company and potentially its customers. First, such an approach would create a situation where two customers served under the same rate schedule would be classified differently for purposes of purchasing Default Service supply.[100] Second, as a customer's peak load changes, that customer may have to be re-assigned to a different customer class for Default Service purposes. Both circumstances could create customer confusion and dissatisfaction, particularly because a customer assigned to the Large C&I Customer Class could only purchase Default Service supply on an hourly basis. For that reason, PPL Electric proposes to use its current rate schedule designations as a basis for identifying customer classes in the DSP II Program. The Company currently is using that approach in the DSP I Program, and it is working

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[97] 52 Pa. Code §§ 54.187, 69.1805.

[98] *Id.*

[99] The Company notes that certain customers that have a peak demand of 500 kW or greater, receive service under Rate Schedule LP-4 and certain customers who have a peak demand of less than 500 kW also receive service under Rate Schedule LP-4. With this filing the Company is not seeking to revise the 500 kW customer split in Rate Schedule LP-4. Furthermore, as discussed in Section III.C.5, above, PPL Electric anticipates proposing an hourly priced service for Small and Large C&I customers with load over 100 kW, in a future default service filing.

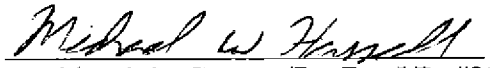
[100] While such a situation exists for certain customers with a peak demand over 500 kW, such a situation may not be appropriate at this time for customers with less peak demand.

well. Accordingly, PPL Electric requested a waiver of this provision of the Commission's regulations. Notably, no party in this proceeding challenged this request.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons discussed herein, the DSP II Program of PPL Electric Utilities Corporation, as proposed in this proceeding, should be approved.

Respectfully submitted,



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