

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

FAX (717) 783-7152
consumer@paoca.org

IRWINA. POPOWSKY
Consumer Advocate

October 5, 2012

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

RE: Petition of PPL Electric Utilities
Corporation for Approval of 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 please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487

Enclosures

cc: Honorable Susan D. Colwell, ALJ
Certificate of Service

156348

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

James A. Mullins
PA Attorney I.D. # 77066
E-mail: JMullins@paoca.org
Assistant Consumer Advocate

Erin L. Gannon
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org
Assistant Consumer Advocate

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATED: October 5, 2012

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I. INTRODUCTION

A. Summary and Statement of Position

Taking the legal requirements of default service and the RMI proceedings into consideration, the OCA has proposed modifications to the Company's proposed DSP.¹ First, the OCA submits that PPL must procure a more diverse mix of supplies, including purchases of different products on different dates. Second, modifications to the Company's retail enhancement proposals must be made to ensure their success while maintaining necessary consumer protections. In support of its proposals, the OCA submitted the testimony of Barbara Alexander and Richard S. Hahn. In that testimony, the OCA's witnesses proposed modifications to PPL's plan in order ensure compliance with the statutory and legal requirements of default service while best serving both the Commission's goal of increasing customer interest in the retail market and ensuring that customers benefit as a result of the adoption of these retail market enhancements. The specifics of the OCA's proposals will be addressed in detail in the Sections below.

B. Background Information and Procedural History

The Office of Consumer Advocate (OCA) submits this Main Brief in the matter of the Petition of PPL Electric Utilities Corporation (PPL or Company) for Approval of its Default Service Program (Petition) in accordance with the procedural schedule adopted by Administrative Law Judge Susan D. Colwell by Order dated June 7, 2012. The Petition addresses the default service plan of PPL for the period of June 1, 2013 through May 31, 2015. The Company's current default service plan expires on May 31, 2013.

¹ The OCA's Briefs and testimony address residential default service except where specifically noted.

Intervenors in this proceeding include: the OCA; the Bureau of Investigation and Enforcement (I&E); Office of Small Business Advocate (OSBA); Sustainable Energy Fund (SEF), Eric Joseph Epstein, VGI Energy Services d/b/a UGI Energy Link, Direct Energy Services (Direct), Retail Energy Supply Association (RESA), PP&L Industrial Customer Alliance (PPLICA), FirstEnergy Solutions Corporation (FES), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Dominion Retail, Inc. d/b/a Dominion Energy Solutions (Dominion), Interstate Gas Supply (IGS), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC, Nextera Energy Resources, and Noble Americas Energy Solutions.

At hearings in this matter on September 11, 2012, the OCA submitted into the record direct, rebuttal and surrebuttal testimonies and accompanying attachments of Richard S. Hahn² and Barbara R. Alexander.³

Contemporaneous with this proceeding, the Pennsylvania Public Utility Commission (Commission) has been investigating the retail electricity market. In its Order initiating the Retail Market Investigation (RMI), the Commission stated that the statewide investigation would

² Mr. Hahn is a principal consultant with La Capra Associates in Boston, Massachusetts. Mr. Hahn has a Bachelors of Science in Electrical Engineering, a Masters of Science in Electrical Engineering, both from Northeastern University (1973 and 1974, respectively). He also has a Masters in Business Administration from Boston College (1982). Mr. Hahn is a registered professional engineer in Massachusetts. He has worked in the electric utility industry for over 35 years and has diverse experience with both regulated and unregulated companies. Mr. Hahn's qualifications are detailed in OCA St. 1 at Exhibit OCA-RSH-1.

³ Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney and a graduate of the University of Michigan and the University of Maine School of Law. Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at Exhibit BA-1.

be conducted “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”⁴ To that end, the Commission has issued two orders providing recommendations and guidance for upcoming default service plans, which include the Company’s pending Petition.⁵

The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose. The provision of default service and the enhancements that have been proposed by the Company and other parties in this proceeding are closely interrelated. The default service products purchased, and the timing of those purchases, must be coordinated with the retail enhancements (*e.g.*, opt-in auction, referral program) approved in this proceeding. As discussed in further detail in this Main Brief, the OCA submits the following recommendations regarding PPL’s Default Service Plan.

⁴ Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952, Order (Apr. 29, 2011).

⁵ Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order (Dec. 16, 2011) (December 16 Final Order); Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order (Mar. 2, 2012).

II. SUMMARY OF ARGUMENT

The OCA submits that the Company's proposed Default Service Plan is in need of modification to meet the statutory requirements governing the provision of Default Service. In particular, the OCA submits that PPL should procure a more diverse mix of supplies and should make purchases on a more frequent basis to achieve a reasonable laddering and layering of its procurements.

The OCA also submits that modifications are needed to the Company's retail enhancement proposals to better ensure the success of these proposals and to ensure necessary consumer protections. The OCA has made specific recommendations as to modifications to the Retail Opt-in Program and the Standard Offer Program for the purpose of serving the Commission's goal of increasing customer interest in the retail market and ensuring that customers benefit as a result of these programs.

III. ARGUMENT

A. Legal Standards

1. Burden of Proof

The Public Utility Code provides in relevant part:

(a) Burden of proof.—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.

66 Pa.C.S § 332(a). As the petitioner for a Commission Order in this matter, PPL has the burden of proof.⁶ In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission.⁷ The Pennsylvania Supreme Court has also provided that the party with the burden of proof has a formidable task before its position can be adopted by the Commission. Even where a party has established a prima facie case, the litigant must establish that:

the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.⁸

In addition to the general burden of proof required of a petitioner as provided in Section 332, the Public Utility Code provides the following as to proceedings specifically involving the rates of a public utility, in relevant part as follows:

⁶ See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227, Order (May 17, 2007). In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.

⁷ 2 Pa.C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

⁸ Burleson v. Pa. P.U.C., 501 Pa. 433, 436, 461 A.2d 1234, 1236 (1983).

§ 315. Burden of proof

- (a) Reasonableness of rates.—In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa.C.S. § 315(a).

The OCA would also note that as the proponent of a proposal for a new rate (the 5 mil/KWh adder discussed in Section III.D.2., below), RESA has the burden of proof with respect to the justness and reasonableness of the its rate proposal.

2. Standards Applicable To Default Service

The General Assembly established the policy goals of Act 129 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated:

Preamble

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

- (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service *at the least cost, taking into account any benefits of price stability over time* and the impact on the environment.
- (2) It is in the public interest to adopt energy efficiency and conservation measures and *to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.*
- (3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.⁹

⁹ See Preamble to Act 129, 2008 Pa. Laws 129 (emphasis added).

As the highlighted portions above demonstrate, the General Assembly determined that essential electricity service must be provided to consumers at the least cost while considering price stability. In addition to the obligation to provide least cost and stable service, the Act specifically requires that default service be adequate, reliable, affordable, efficient, and available.¹⁰ The General Assembly established a series of policy objectives that each EDC must work to achieve through its default service plan. In reviewing PPL's DSP II, the Commission must assure that these legal obligations are met in order to provide customers with service designed to achieve the least cost to default service customers over time.

The Commission has explicitly recognized the goals of Act 129 that must be met in establishing a procurement plan, as follows:

We agree with the majority of parties that the “prudent mix” of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations **to achieve “least cost to customers over time,” ensure price stability, and maintain adequate and reliable service.**

Final Rulemaking Order at 60 (emphasis added).

The legal framework for default service is set forth in detail in Section 2807(e)(3.1-3.9), Obligation to Serve.¹¹ Under Section 2807(e)(3.1), PPL is required to provide electric generation supply service to all of its default service customers through a Commission approved competitive procurement plan.¹² Under Act 129, generation is to be obtained through

¹⁰ Id.

¹¹ 66 Pa. C.S. § 2807(e).

¹² 66 Pa. C.S. § 2807(e)(3.1).

competitive procurement processes, such as auctions, requests for proposals, and bilateral agreements.¹³

As part of a procurement plan, Act 129 requires a mix of power as follows:

The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

- (i) Spot market purchases.
- (ii) Short-term contracts.
- (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.¹⁴

The Act requires that default supply must include a prudent mix of the various types of contracts.

Further, the mix of contracts must be designed to achieve certain goals, as follows:

The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.
- (iii) Compliance with the requirements of paragraph (3.1).¹⁵

Act 129 further requires that the Commission evaluate whether the default supplier's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service

¹³ Id.

¹⁴ 66 Pa. C.S. § 2807(e)(3.2).

¹⁵ 66 Pa. C.S. § 2807(e)(3.4).

provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

(i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.¹⁶

The General Assembly requires each EDC to take affirmative steps to ensure that the goals of the Act are met.

As detailed above, the default service legislative framework requires the default service provider to develop a procurement plan that meets several goals. The default service provider must obtain a prudent mix of supplies designed to provide service at the least cost to customers over time. Default service must be reliable, adequate, and designed to reduce price instability. The OCA submits that the above legal framework provides the foundation upon which PPL's DSP II must be reviewed.

As part of its investigation into Pennsylvania's retail electricity market, the Commission issued guidelines impacting the current filing. In general, the Commission suggested limiting or eliminating contracts extending past the end date of the upcoming default service plan. In addition, the Commission recommended that each EDC limit long-term contracts.¹⁷

In presenting these guidelines, the Commission explicitly recognized that such recommendations were not intended to impede an EDC from meeting its statutory obligations to

¹⁶ 66 Pa. C.S. § 2807(e)(3.7).

¹⁷ December 16 Final Order at 19.

provide default service at least cost to customers over time. The Commission addressed the legal implications of its recommendations, as follows:

Notably, these guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the “least cost to customers over time.” The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements. For this reason, the Commission declines to accept RESA’s and Direct Energy’s recommendations that the Commission direct EDCs to develop portfolios that include a more specific mix of contracts.

OCA remarks that it is impossible to know whether long-term contracts will be necessary for EDCs to meet Act 129 requirements, and thus the Commission should not recommend limiting their use. The Commission reiterates that these recommendations are not intended to constrain an EDC from meeting its statutory obligations.

Further, the Commission will refrain from making recommendations with respect to specific contractual terms and conditions for energy that will be procured for the next phase of default service plans, as suggested by Direct Energy. Providing guidance on specific, contractual provisions is outside the scope of the purpose of these recommendations.¹⁸

The OCA submits that the Commission’s guidance must be considered in light of the requirements of Act 129 to develop a reasonable and appropriate default service plan.

As was mentioned above, two of the recent Orders to come out of the RMI docket have played a large role in shaping the Company’s default service program and proposed retail market enhancements.¹⁹ Directly relevant to PPL’s DSP II here, these Orders provided recommendations for default supply procurements, and the possible use of retail opt-in auctions and customer referral programs. In its December 16 Order regarding default service plans, the Commission provided discretion in implementing its recommendations as follows:

¹⁸ December 16 Final Order at 19-20.

¹⁹ The two Orders that addressed these issues are the December 16 Final Order and the IWP Order.

The Commission clarifies that its intent is to issue recommendations and flexible guidelines with respect to the format and structure of EDCs' upcoming default service plans. The Commission encourages EDCs to view the recommendations as the starting point in developing the next phase of default service plans.²⁰

The Commission also indicated that "the recommendations are intended to provide EDCs with the flexibility to craft default service plan filings in a manner in which they see appropriate."²¹

On March 2, 2012, the Commission issued its Intermediate Work Plan Order (IWP Order) regarding retail market enhancements. The IWP Order provided guidance on the implementation of opt-in auction and customer referral programs. The IWP Order also provided the EDCs with discretion in implementing these programs, noting as follows:

To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC's default service proceeding and supported substantially by interested parties in the default service proceeding.²²

Consistent with the Commission's Orders, PPL has proposed Opt-In Auction and Customer Referral Programs in this proceeding. Both the Company, as well as the OCA and other parties, however, have proposed important variations from some of the Commission's recommendations as contained in the IWP Order. It is also important to note that the Commission recently issued an Order in the FirstEnergy Companies' default service plans. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al*, Order (Aug. 16, 2012) (FirstEnergy DSP Order). PPL's default service procurement plan provides a different design than that of the FirstEnergy Companies and, for residential customers, begins from a

²⁰ December 16 Final Order at 6.

²¹ December 16 Final Order at 4.

²² IWP Order at 6-7.

fundamentally different point than PPL's current sixth default service plan. To the extent necessary, the OCA will discuss the implications of the unique position of PPL and its customers. The OCA discusses the retail market enhancements below in Section III.C. of this Main Brief.

B. The Proposed Default Service Program

1. Class Procurements

a. Residential - Fixed Rate

i. Product Mixture

a. Introduction

As set forth in the testimony of PPL witness Cavicchi, for DSP II, PPL proposes to reduce reliance on supply with spot market pricing to zero, while also intending to refrain from purchasing any new block products.²³ PPL St. No. 2 at 18-19. Regarding the PPL proposed procurement approach, PPL witness Cavicchi testified:

In contrast to the existing DSP I, which procures 12-month and 24-month products each quarter, the proposed DSP II procures supplies for default service semiannually using 12-month or shorter fixed-price full-requirements load-following products. In association with a shift to these shorter-term products, the reliance on spot supply is being substantially eliminated given that default service pricing can be expected to better track market changes using the shorter-term products. Thus, in the proposed DSP II structure, there are no 24-month products and, as a result, products with spot market pricing are not needed to keep default service prices in line with underlying energy market conditions.

PPL St. No. 2 at 18. As to the Company's proposal to refrain from purchasing additional block products, PPL witness Cavicchi testified:

DSP I block product purchases became a much greater percentage of default service load and introduced additional reconciliation adjustments into default service pricing. Thus, DSP II proposes to rely on existing block power purchases which will result in block supply declining to 150 MW as the plan progresses.

²³ Dominion and IGS (Dominion/IGS St. 1 at 3) and FES (FES St. 1 at 3) support the Company's proposed elimination of spot purchases and block purchases.

Id. at 19. As set forth below, the OCA submits that spot and block purchases should be part of PPL's DSP II with a different structure than that used to procure the blocks in DSP I. Both of these products are an important part of a least-cost portfolio and have been demonstrated to work effectively.

b. OCA's Block and Spot Recommendation

As OCA witness Mr. Hahn testified, a properly designed procurement plan should have a mix of products tied to various percentages of expected default service load. OCA St. No. 1 at 9. Mr. Hahn further elaborated:

For example, a procurement plan which targets 5% from spot purchases, 20% from block purchases, and 75% from full requirements purchase is an appropriate mix. Block purchases should also be different amounts in the peak and off-peak periods, so to efficiently shape the block supply to match the total default service load shape. PPL's DSP I used the same level of block purchases in every hour of the year. While this did not appear to result in a bad outcome in DSP I, using different sized blocks in the summer peak hours, the winter peak hours, and the off-peak hours is a more effective manner to deploy block purchases.

Id. Mr. Hahn, therefore, concluded that spot and block purchases should not be phased out, but should be continued in DSP II, albeit differently structured in DSP II so as to be part of a properly designed procurement plan. OCA St. No. 1 at 10. Mr. Hahn then summarized his recommendation:

Block and spot purchases should be part of PPL's DSP II, and should target a fixed % of default service load. These instruments are an important part of a least cost portfolio. They have been demonstrated to work effectively, and no adequate reasons have been offered to discontinue them. PPL should use block purchases that have differing amounts during summer peak hours, winter peak hours, and other hours.

OCA St. No. 1 at 12.

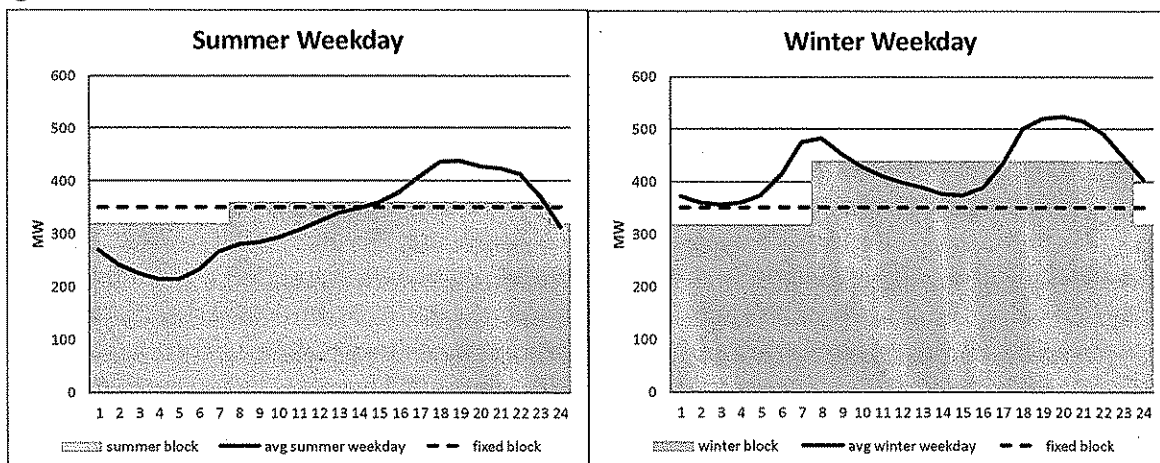
The Company offered several reasons for not continuing with the block and spot procurements that were part of its DSP I plan. As Mr. Hahn testified, the reasons offered by the

Company for eliminating block and spot purchases do not constitute a sufficient basis upon which to exclude these products from the default service supply portfolio. Id. First, the Company voiced concerns regarding reconciliation. Mr. Hahn explained, however, reconciliations will continue to occur even if block and spot purchases are eliminated. OCA St. No. 1 at 10. Therefore, excluding these supply products will not eliminate reconciliation concerns. As Mr. Hahn further explained, the use of block and spot products does not introduce significant complications to the forecasting and reconciliation process. Mr. Hahn testified:

The Company does not need to forecast market conditions in deploying these products. Any forecast of spot market block prices that might be required for a short term projection of the Price to Compare (“PTC”) can be obtained from futures markets, which offers several products for PJM electricity prices.

OCA St. No. 1 at 10-11.

PPL also argued that its current approach to procuring blocks has introduced difficulties as the block became a greater percentage of the default service load when customers switched to EGS supply. PPL St. No. 2 at 12. As Mr. Hahn explained, however, he is recommending a different procurement structure here for the block and spot component to avoid this problem. Mr. Hahn illustrated how using his approach with different levels of block purchases during peak hours can result in a more efficient procurement via the graph below:



The data in these charts compares PPL's approach, which is to have one block amount, i.e., 350 MW for all hours in the year, to Mr. Hahn's approach which provides for different block sizes during the winter and summer peak periods that are adjusted based on the default service load. As the charts demonstrate, shaped blocks with a base amount during all hours (i.e., 320 MW) plus additional blocks during winter peak hours (i.e., 120 MW) and summer peak hours (i.e., 40 MW) will better follow the actual hourly loads and reduce on-peak purchases. The OCA submits that the benefits of block purchases procured in the manner recommended by OCA witness Hahn are clear.

In his Rebuttal Testimony, PPL witness Cavicchi refers to Mr. Hahn's proposal as a "managed portfolio" approach and states that such an approach would unnecessarily introduce risk and uncertainty into PPL's proposed DSP II. PPL St. No. 2-R at 8. However, as Mr. Hahn explained in his Surrebuttal Testimony, he has not recommended active portfolio management, but rather a regularly scheduled procurement of standard products from competitive markets. OCA St. No. 1-S at 4. Mr. Hahn further explained:

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Source: PPL Response to OCA-I-4; workpaper: Block Shaping.xlsx

The product mix that I propose is 75% full requirement contracts and 25% block and spot, which is established in advance. The only adjustment that I propose includes a mechanical procedure to adjust the block sizes to reflect the latest actual shopping statistics at the time of each solicitation. This approach was successfully deployed by PECO Energy and the FirstEnergy Companies of Metropolitan Edison, Pennsylvania Electric, and Pennsylvania Power. There is no reason that PPL could not use a similar approach.

Id. Mr. Hahn continued:

[S]everal Pennsylvania default service providers, including FirstEnergy, PECO Energy, Citizens / Wellsboro, and even PPL itself, have successfully used a procurement plan with block and spot products. Even if this approach did require monitoring and forecasting “market conditions”, these companies have demonstrated that it can be easily done.

OCA St. No. 1-S at 4. The OCA submits, therefore, that Mr. Hahn’s recommendation is reasonable and should be adopted.

Exhibit OCA-RSH-4 provides Mr. Hahn’s recommended procurement schedule, including the block and spot components. As Mr. Hahn explained, it is based upon continuing the layering and laddering of procurements with contracts that extend beyond the end of DSP II. OCA St. No. 1 at 14. This schedule also retains quarterly procurements and is designed to target a default service power supply mix of 5% spot purchases, 20% block purchases, and 75% full requirements purchases. Id. Mr. Hahn also proposes that PPL not procure 50 MW blocks in the procurements that are remaining in DSP I, since such an approach will better shape block purchases to the 20% target portion of default service load. OCA St. No. 1 at 14. Further, Mr. Hahn’s proposed plan uses a maximum of 12 months for a contract term, but if longer terms are desired, the plan can be revised to include such contracts. Id. The OCA submits that Mr. Hahn’s plan should be adopted.

c. OCA Alternative Procurement Proposal

The OCA recognizes that in the FirstEnergy Companies' DSP II Order, the Commission declined to adopt the OCA's recommendation for inclusion of block and spot purchases, stating that it was not intending to establish a precedent. FirstEnergy DSP Order at 26. The OCA continues to support the use of block and spot supply to bring product diversity to the default service plan and better achieve the goals of Act 129. In the event that block and spot is not adopted, Mr. Hahn proposed an alternative.

If the Commission were to decide to eliminate the use of block and spot purchases, the OCA submits that the other recommendations made by Mr. Hahn should still be approved. Specifically, as set forth below, PPL's DSP II should still include: 1) quarterly solicitations using 12-month assignable contracts that extend beyond May 31, 2015; 2) an aggregate supplier load cap of 50%; and 3) semi-annual PTC changes and rolling average reconciliations. Mr. Hahn's Exhibit OCA-RSH-1-S provides an overview of his procurement plan with block and spot products removed. As Mr. Hahn testified:

The elimination of block and spot purchases would increase reliance on full requirements to 100%, but would not affect the remaining elements of my recommended procurement plan. I would still advocate for quarterly solicitations using 12-month assignable contracts that extend beyond May 31, 2015. I would still recommend an aggregate supplier load cap of 50%, and semi-annual PTC changes and rolling average reconciliations. DSP II will still have contracts that were signed in DSP I. The objective should still be to transition to quarterly procurements for 12-month contracts for approximately 25% of default service obligations. In order to successfully make this transition, the procurement percentages require adjustments over time.

OCA St. No. 1-S at 7. As explained above, the OCA submits that PPL's DSP II should contain spot and block supply products. If this recommendation is not adopted, the OCA submits that its alternative plan should be adopted.

d. RESA Proposal

RESA proposed to modify PPL's proposed portfolio mix to 12-month and quarterly fixed price, full requirements contracts where the percentage of quarterly priced contracts increases over time. RESA St. No. 1 at 3. However, as Mr. Hahn explained, RESA's proposal will result in a situation where too much of the portfolio's power supplies are purchased at the same time, or purchases are made too far in advance of the commencement of deliveries. OCA St. No. 1-R at 9. If the former, default service rates will have excessive volatility. If the latter, there will be excessive risk premiums included in default service rates. Id. Instead, as Mr. Hahn explained, layering and laddering of contracts with terms of 12 months procured quarterly will produce a default service power supply portfolio for residential customers that properly reflects market prices while achieving an appropriate level of price stability. Additionally, Mr. Hahn highlighted the differences between RESA's proposals in the DSP proceedings of PECO and FirstEnergy as follows:

In PECO's DSP II, Ms. Williams recommended a residential default service portfolio that includes 10% spot purchases and full requirements contracts with 12-month to 24-month terms, with all contracts terminating by May 31, 2015.²⁵ In FE's DSP II, Ms. Williams accepted the 10% spot component, and recommended using more 12-month contracts and less 24-month contracts.²⁶

OCA St. No. 1-R at 10. Therefore, as Mr. Hahn concluded, in the instant proceeding, RESA is advocating much shorter contract lengths, which could lead to greater price volatility. Id.

ii. Procurement Schedule

For DSP II, PPL has proposed to switch to semi-annual solicitations to procure default service power supplies instead of the quarterly solicitations deployed in DSP I. PPL St. 2 at 18.

²⁵ See page 3 and pages 10-11 of Ms. Williams' direct testimony in P-2012-2283641.

²⁶ See page 4 and pages 10-13 of Ms. Williams' direct testimony in P-2011-2273650.

However, the OCA submits that quarterly solicitations for the full requirements contracts and block products should continue. As Mr. Hahn explained:

The whole concept behind layering and laddering default service purchases is to spread out the timing of purchases throughout the year. Quarterly solicitations result in staggered procurements of approximately 25% of default service load at any one time. This allows the price of the total supply portfolio to better track current market trends while still maintaining a reasonable level of price stability. Quarterly solicitations have been shown to be effective in PPL's DSP I. They are neither difficult nor costly to implement.

OCA St. No. 1 at 12. Further, as stated by Mr. Hahn, under PPL's proposed plan for DSP II, the Company will already need to hold eight solicitations of full requirements contracts over the two-year term of DSP II. *Id.* This is due to the fact that existing contracts from DSP I expire quarterly until February 2015, therefore, PPL will still need to use quarterly solicitations throughout DSP II to adjust to contracts from DSP I that are phasing out. OCA St. No. 1 at 12. As a result, the Company's proposal to use semi-annual solicitations will not be achieved until very late in DSP II and will not reach a steady-state series of semi-annual procurements until the DSP implementation plan subsequent to DSP II is implemented. Mr. Hahn's Exhibit OCA-RSH-3 bears this out. Therefore, the OCA submits that the use of quarterly solicitations should be continued in PPL's DSP II.

iii. Wholesale Supplier Load Cap

At present, PPL has two separate supplier load caps. The first load cap specifies that, as it relates to any given solicitation for each customer group (solicitation cap), the percentage of that particular solicitation that any one supplier can provide is capped at 85%. For DSP II, the Company proposed to maintain this cap. The second cap is an aggregate load cap which applies to each customer class and limits the amount of default service that can be provided by one supplier. OCA St. No. 1 at 16. For residential customers, the aggregate cap is 70%, but PPL proposes to remove that cap in DSP II. The OCA does not agree with the Company's proposal.

Specifically, by removing the aggregate load cap and retaining only the solicitation cap, the Company's proposal could result in one supplier serving 85% of the residential default service load. The OCA submits that a limit of 85% on the amount of default service load that any one supplier can provide is too high. Such limitation would increase the impacts of a supplier bankruptcy or financial default. As such, the OCA submits that the aggregate load cap should not be removed, but should instead be lowered to 50%. OCA St. No. 1 at 17. This will allow for as few as two default service suppliers, but still limit the impacts of a bankruptcy or financial default.

As Mr. Hahn explained, reducing the supplier load cap to 50% from 85% should not have any adverse impact on PPL's default service customers, but will provide the benefit of protection in the event of a supplier default. OCA St. No. 1 at 17. Figure 5 below bears this out. It shows publicly available purchased power data for PPL Electric Utilities for calendar year 2011, which was excerpted from the Company's FERC Form 1 Report. As Mr. Hahn testified, all of the purchases relate to the provision of default service and the largest single supplier provided 26% of the energy at 23% of the total cost. *Id.* at 16. The share of all other PPL default service suppliers was at or below 20%. Consequently, Figure 5 supports the OCA's position that Mr. Hahn's proposal will not adversely impact the Company's default service customers, but will provide the benefit of protection should a supplier default.

seller	MWH	% of MWH	Costs	% of Costs
Exelon Generation Company, LLC	2,855,752	26%	169,855,292	23%
FirstEnergy	1,940,962	17%	142,386,060	20%
Constellation Energy Commodities Group	1,262,135	11%	94,201,695	13%
NextEra Energy Power Marketing, LLC	1,219,023	11%	80,660,497	11%
Hess Corporation	1,112,432	10%	85,996,285	12%
DTE Energy Trading, Inc.	746,666	7%	49,411,109	7%
PPL EnergyPlus, LLC	433,495	4%	23,834,429	3%
PSEG Energy Resources & Trade, LLC	326,975	3%	21,359,160	3%
Shell Energy	291,550	3%	16,822,435	2%
Miscellaneous (Other)	279,937	3%	0	0%
Macquarie Energy	219,000	2%	11,935,500	2%
Duke Energy	99,368	1%	7,311,596	1%
Conoco Phillips	93,749	1%	6,978,424	1%
American Electric Power Service Corp	81,271	1%	5,784,045	1%
Cargill	73,225	1%	3,675,895	1%
The Dayton Power and Light Company	72,195	1%	5,434,131	1%
Energy America	45,548	0%	3,127,155	0%
	11,153,283	100%	728,773,708	100%

RESA also supports the lowering of the aggregate load cap to 50%. RESA St. 2 at 30. The OCA submits that retention of the aggregate load cap set at 50% represents a reasonable approach to better ensure supplier diversity in the provision of residential default service.

b. Small C&I - Fixed Rate

The OCA takes no position on this issue.

- i. Product Mixture
- ii. Procurement Schedule
- iii. Wholesale Supplier Load Cap

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

The OCA takes no position on this issue.

- i. Product Mixture
- ii. Procurement Schedule
- iii. Wholesale Supplier Load Cap

d. Contract Terms Beyond May 31, 2015

PPL has proposed to end all supply contracts on May 31, 2015, *i.e.*, a “hard stop” of all contracts.²⁷ PPL St. 1 at 6-7. As a result, the Company’s residential customers will be fully exposed to market conditions at the time of the procurements for the next default service period. Energy markets have been subject to volatility, and PPL’s plan would fully expose customers to potentially dramatic rate increases on June 1, 2015. The proffered reason is that the Company may not continue as a default service provider after DSP-II has run its course. PPL St. 2 at 6. However, as Mr. Hahn explained, all contracts should not terminate by May 31, 2015 irrespective of whether PPL continues in the default service role. OCA St. No. 1 at 13. Specifically, Mr. Hahn testified that:

If all DSP-II contracts do terminate by May 31, 2015, then some entity, either the Company or the replacement default service provider, would need to procure 100% default service power supplies for delivery commencing on June 1, 2015. The default service provider for DSP-III could then be faced with two choices. One would be to purchase a large amount of default service power supply on a given date, such as buying 100% of DSP-II power supplies on March 15, 2015 for delivery commencing on June 1, 2015. If market prices are high at that particular time, default service rates could be extremely high. The second option would be to commence buying tranches as much as a year in advance.

Id. Although market conditions are currently favorable, they may not be so favorable at the time of PPL’s next default service filing, and customers could be exposed to dramatic price increases if purchases for 100% of default supply must become effective at one time. The OCA submits that with the energy markets subject to volatility at any time, a “hard stop” recommendation would fully expose customers to potentially dramatic rate increases on June 1, 2015.

²⁷ RESA and Dominion and IGS also support the Company’s proposal in this respect. RESA St. 1 at 12-1; Dominion/EGS St. 1 at 4.

The OCA further submits that the Commission's December 16 Order expressly recognized that, "The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements."²⁸ Therefore, the OCA submits that the Company's "hard stop" procurement unnecessarily exposes residential customers to possible price spikes, and should be modified to ladder in purchases.

e. AEPS Procurement

The OCA takes no position on this issue.

i. Transfer of AECs

The OCA takes no position on this issue.

ii. Alternative Compliance Payment

The OCA takes no position on this issue.

f. Administrative Costs and Cash Working Capital

PPL is making a provisional claim to recover cash working capital in its GSC-1 in the event that it is ordered to change its reconciliation method.²⁹ PPL St. 5 at 4. PPL witness Mr. Kleha asserts that PPL has working capital needs of \$54.3 million, which translates to an annual revenue requirement of about \$7.5 million. PPL St. No. 5 at 10. As set forth by Mr. Hahn, working capital is often defined as the difference between current assets (such as cash) and current liabilities (such as bills to pay). OCA St. No. 1 at 27. A positive working capital (assets/cash exceed liabilities / bills) is necessary to meet the operational needs of a company. As explained by Mr. Hahn, Exhibit JMK-4 (sponsored by Mr. Kleha) indicates that PPL has

²⁸ December 16 Final Order at 19.

²⁹ As Mr. Hahn testified, the Company's proceeding at Docket Nos. M-2011-2243137 and C-2011-2245906 (Order entered on July 19, 2012) may have resolved this issue, but PPL does not appear to have adjusted its claim in this proceeding as a result.

\$939.3 million in default service revenue, which on average is paid in 66.7 days. This exhibit also indicates that the Company pays default service costs of \$773.5 million (about \$2.0 million per day), which PPL pays on average in 39.7 days, or 27 days less than when it receives revenue. PPL's exhibit purports to show that the 27 day difference between when PPL pays its default service bills and when it receives its revenue creates a working capital requirement of \$54.3 million. As set forth by Mr. Hahn, using a return on rate base that includes an equity component, as proposed by PPL, yields an annual revenue requirement of \$7.845 million. OCA St. No. 1 at 27. The Company proposes to include this amount in the GSC-1 as an additional administrative cost and about 75% of the \$7.845 million would be paid by residential customers. *Id.* at 28. As set forth below, the OCA opposes PPL's cash working capital claim.

PPL has not adequately demonstrated that it has a legitimate working capital need as the result of the provision of default service. As Mr. Hahn stated:

There are several concerns with the analysis provided by the Company in Exhibit JMK-4. As shown in that exhibit, PPL assumes that residential customers, who are required to pay their bills within 20 days or face late charges of 1.25% per month, pay on average in 63 days. This assumption is unsupported. Other classes of customers, namely those customers on rates with payment due dates of 15 and 30 days, are assumed to pay their bills sooner than they are due. If residential customers were assumed to pay on average by the due date or in 20 days, the Company's average time for receipt of default service revenues would decrease to 34.1 days from 66.7 days. Since the average lag for the receipt of revenues of 34.1 is less than the average lag for the payment of bills of 39.7 days, the working capital requirement under the Company's own methodology would be zero. Given that PPL charges 1.25% per month in late fees for residential bills not paid within 20 days, it is inappropriate to determine a working capital requirement on an assumption of a 63 day lag in the receipt of revenues.

OCA St. No. 1 at 29. Therefore, the OCA submits that the Company's working capital allowance claim be rejected. As Mr. Hahn explained, it is inappropriate to include a working capital allowance in a reconciliation recovery mechanism that is designed to recover specific identified costs. OCA St. No. 1 at 28.

Mr. Hahn testified that, if a working capital allowance is to be considered and it is permitted by statute or regulation, the technical merits of such a request should be examined. OCA St. No. 1 at 28. In particular, as to the Company's proposed equity return on rate base, Mr. Hahn stated:

I disagree with the use of a return on rate base that includes an equity component, which is grossed up for income tax purposes, for determining the annual revenue requirement of the working capital need. Assuming that PPL can demonstrate that it has a legitimate working capital need as a result of the provision of default service, shareholders did not make any investment in PPL for the purpose of providing default service supplies. When determining the annual revenue requirement on a rate base that includes physical assets, such as distribution lines and meters, using a return on rate base that includes an equity component is appropriate because shareholders have invested in the Company by purchasing common stock and those proceeds were used to build the assets. In providing default service, PPL uses no such physical assets and did not require funding from shareholders, so a return with an equity component is not appropriate.

Id. Consequently, as to the appropriate rate to use to determine the revenue requirement associated with a default service working capital requirement (if the Commission considers such an allowance), Mr. Hahn recommended the Company's short-term cost of debt (estimated to be approximately 2% per annum) be used. OCA St. No. 1 at 29. Using this rate, the annual revenue requirement on a \$54.3 million working capital requirement would be \$1.09 million, not \$7.845 million. Id. Under such a scenario, the Company would not unjustly profit.

In his Rebuttal testimony, witness Kleha took issue with Mr. Hahn's position, namely: 1) that Mr. Hahn did not provide any basis to support his recommendation that any working capital allowance, if allowed, be based upon the Company's short-term cost of debt, rather than a weighted cost of debt and equity; 2) that Mr. Hahn's proposal would count short-term debt costs twice; 3) that late fees should not be included in any analysis of working capital needs. PPL St. No. 5-R at 15-18. Mr. Hahn responded to all of these misplaced criticisms in his Surrebuttal testimony. As to use of the Company's short-term, Mr. Hahn responded:

I did provide a basis to support my statement that the Company's default service working capital needs should be based upon the Company's short-term cost of debt. Namely, that the short-term cost of debt establishes the actual cost incurred by the Company in acquiring any working capital that might be needed for default service. Mr. Kleha does not appear to dispute this, but rather argues that use of a mix of debt and equity costs is a long-standing ratemaking practice in Pennsylvania. I do not dispute that a mix of debt and equity has been used to determine a working capital allowance in base rates, where companies are allowed to earn a profit. EDCs should not profit from the provision of reconcilable default service, so any default service working capital needs should be based upon actual costs (i.e., short-term debt) and not include any profits.

OCA St. No. 1-S at 9. Regarding Mr. Kleha's second criticism, Mr. Hahn testified:

[M]y assessment of PPL's working capital request does not count short-term debt twice, as Mr. Kleha claims. I simply state that if the Company has legitimate working capital needs, it will engage in additional short-term borrowing to meet those needs. Short-term debt costs incurred to fund construction projects are separate and distinct from default service working capital needs, so there is no double counting in my proposal.

Id. Finally, in response to Mr. Kleha's last point, Mr. Hahn testified that:

I provide a detailed calculation that shows that the timing of the actual collection of residential late fees causes PPL's actual revenues to exceed the cost of any funds that PPL may need to borrow for working capital. Whether or not some forecasted level of these fees is included in base rates, actual late fees collected will more than offset any working capital needs the Company may claim to have. I am not asking PPL to credit late fees in default service rates. I simply ask that the Company consider the timing and magnitude of these late fees when developing its case for working capital needs.

OCA St. No. 1-S at 8-9. Based on the above, the OCA submits that PPL has not demonstrated any working capital needs in this proceeding and its proposal should be rejected.

In his Direct testimony, OSBA witness Knecht agrees with the Company that cash working capital costs represent legitimate costs incurred by PPL in providing default service and that the Company should be permitted a reasonable opportunity to recover such costs. OSBA St. No. 1 at 13. However, witness Knecht acknowledges that he has not undertaken a detailed analysis as to whether PPL's specific proposed calculations for working capital costs are just and

reasonable. Id. Mr. Knecht also argues that PPL fails to recognize the differences between rate classes with respect to CWC costs. Mr. Knecht then proposes that small C&I default customers should be assigned a cash working capital credit (due to his argument that small C&I customers do not contribute to CWC costs at all), rather than cash working capital cost. OSBA St. No. 1 at 13-14. As explained below, the OCA does not agree with OSBA's position.

As Mr. Hahn explained, it is not clear whether any class of customers should receive a cash working capital credit or charge. As Figure 1-R below indicates, if all customers pay on the due date, the Company's weighted average lag in receipt of operating revenues is 35.2 days. This is close to but slightly less than PPL's estimated lag in paying its default service suppliers of 39.7 days. Therefore, PPL collects money from its default service customers—on average—4.5 days in advance of when the Company pays the default service suppliers. Since revenues arrive before payment is made, PPL does not incur a working capital need. However, as Mr. Hahn states, this difference is close enough to warrant not giving a cash working capital credit. OCA St. No. 1-R at 4.

Figure

1-R

PPL Lag Analysis						
Average Lag in Receipt of operating revenues	amount	billing lag	payment lag	total lag	weighted amount	
<u>with ALL @ due date</u>						
revenue from 15-day customers	\$200,305,818	16	15	31	\$6,209,480,358	
revenue from 20-day customers	\$711,649,577	16	20	36	\$25,619,384,772	
revenue from 30-day customers	\$27,314,430	16	30	46	\$1,256,463,780	
	\$939,269,825			35.2	\$33,085,328,910	
average lag in payment of default service bills				39.7		

Mr. Hahn further testified that:

[T]he implication of Mr. Knecht's testimony is that residential customers should receive a CWC charge because, according to the PPL lag study, they are the cause of the problem. I disagree. The Company's lag analysis ignores late payments from residential customers. So, even if residential customers did pay on average in 63 days, PPL is collecting late fees of 1.25% per month³⁰ on all residential bills not paid within 20 days. These late payments greatly exceed any short term interest costs that PPL might incur in order to pay its Default Service suppliers.

Id. The OCA, therefore, submits that the Company's working capital allowance claim should be rejected as well as the OSBA's argument for a credit to the small C&I customer class.

2. Rate Design

- a. Residential and Small C&I Customer Classes - Fixed Rate Option
 - i. Frequency of Rate Changes
 - ii. Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW
- b. Residential and Small C&I – Reconciliation

PPL proposes to adjust the prospective Price to Compare on a semi-annual basis. PPL St. 2 at 7. As set forth in its Petition, the GSC-I will be separately calculated for the Residential and Small C&I Customer Classes. PPL St. 5 at 4. The GSC-I will be recalculated every six months, beginning June 1, 2013 and adjusted every six months to reflect the then-current default service supply contracts for the upcoming six-month period. At the same time, PPL will reconcile its default service revenues and costs semi-annually using a twelve-month rolling average reconciliation mechanism. PPL proposes to reset the reconciliation component of the GSC-I every six months, based upon a rolling reconciliation of over/under collections calculated over a 12-month period. The Company also proposes to include the 12-month rolling reconciliation in each rate adjustment, with the exception that the last rate to be set December 1, 2014 under the DSP II Program will include a reconciliation calculated on a six-month period, in order to

³⁰ 1.25% per month equates to 16% per year when compounded monthly.

minimize any over/under collections remaining after May 31, 2015. The six-month reconciliation will be done separately for the Residential and Small C&I customers. The OCA agrees with the Company's reconciliation provisions and recommends that they be accepted.

c. Large C&I Customer Class – Rates

The OCA takes no position on this issue.

d. Large C&I Customer Class – Reconciliation

The OCA takes no position on this issue.

e. The Green Power Program

The OCA takes no position on this issue.

f. Optional Monthly Pricing Service

The OCA takes no position on this issue.

g. Price to Compare Calculation Date

The OCA takes no position on this issue.

h. Recovery of Transmission and Other Related Charges

i. Costs to be Included in the TSC or GSC

ii. Non-Bypassable Structure

iii. Reconciliation

OSBA witness Knecht states that an inconsistency in PPL's TSC reconciliation process has resulted in a large reconciliation credit to the residential class and a large reconciliation charge to the small C&I class. OSBA St. No. 1 at 6. However, as Mr. Hahn explained, witness Knecht has provided no analysis or supporting evidence to support his statement that residential customers receive a credit at the expense of small C&I customers. OCA St. No. 1-R at 3.

3. Time of Use Rate Option

a. Design

PPL proposes to require that winning default service suppliers offer TOU default service rates to residential customers. OCA St. 1 at 13. The proposed peak period is noon to 7pm on non-holiday weekdays and this definition of peak period will apply year round. PPL St. 3 at 5-7; Exh. 1 at 7. The Company does not propose a different peak period for summer and non-summer months and the peak and off-peak prices are to be tied to the PTC. Specifically, an on-peak premium and an off-peak discount will be calculated by analyzing three years of actual data for hourly residential loads and Locational Marginal Prices (“LMPs”) for the PPL zone.

As explained by Mr. Hahn, PPL’s proposed design of the summer peak period allows the TOU rate program to achieve the objectives of reducing peak loads, lowering the cost to supply, and lowering customers’ bills. OCA St. No. 1 at 24. The OCA submits, however, that it is inappropriate to use PPL’s definition of the summer peak period in non-summer months. As Mr. Hahn testified:

In the non-summer months, loads and price within PPL’s proposed peak period are generally lower than loads and prices outside of the peak period. If non-summer loads were shifted from within this period to outside of this period, the cost to supply these customers could actually increase. Under the Company’s proposed TOU rates, customers who shift load from peak hours to off-peak hours will still receive the benefit of the off-peak discount, but the suppliers’ cost to serve this load might not be reduced. Also, peak loads may not actually be reduced.

OCA St. No. 1 at 24-25. As a result, Mr. Hahn concluded that PPL should have a different definition of peak period for summer and non-summer months. *Id.* at 25. Therefore, he further concluded that there should also be different on-peak premium and off-peak discount factors for the summer and non-summer months. OCA St. No. 1 at 25. Based on such, the OCA submits

that the Company should use its proposed methodology and apply it to both the summer and non-summer months.

As Mr. Hahn explained:

Setting summer and winter peak periods that coincide with high usage and market price data will align the interests of customers, suppliers, and utilities. The price signals should encourage customers to shift usage and save money. A supplier that serves that load under a properly designed TOU rate program should see a reduction in its cost to supply, commensurate with the reduced revenue paid by the customer. If the definition of the peak periods, the market prices in the peak and off-peak period, the peak premium, and the off-peak discount are not properly determined, then it is possible that customers that shift load will save money, but a supplier of that load may not have reduced costs. In such a situation, suppliers may be reluctant to participate or include higher risk premiums in their default service bids. This is especially true in this proceeding, where PPL will pay suppliers of TOU rates on what PPL receives from TOU customers. A properly designed TOU rate will mitigate these concerns as much as possible.

OCA St. No. 1 at 26. The OCA also submits that PPL should use PJM's holiday schedule in developing its final premium and discount factors. Id. Based on all of the above, the OCA submits that PPL's general design of the TOU rate program is reasonable. Further, the methodology for determining the on-peak premium and the off-peak discount factors is also reasonable. However, the OCA submits that the Company should have different definitions of the peak period and separate on-peak premium and the off-peak discount factors for summer and non-summer months.

SEF recommends two different TOU rate programs for residential customers. SEF St. 1 at 14-15. One program is the EASY TOU, which has TOU rates only during three summer months with a three hour peak period from 3:30 pm to 6:30 pm. The second program is a year-round TOU rate for three winter months and three summer months. The other six months of the year would not have TOU rates, but would pay standard Default Service rates. SEF proposes to

solicit competitive suppliers to provide power supplies to support the TOU rates. Peak and off-peak prices would be determined by the competitive suppliers. SEF St. 1 at 15.

Mr. Hahn identified some concerns regarding SEF's proposal. First, Mr. Hahn expressed a concern that having two TOU rate programs could be confusing to potential participants. Second, Mr. Hahn found that it would be unnecessarily complex to have TOU rate customers switch back and forth between TOU rates and regular default service rates several times per year. As Mr. Hahn explained, peak and off-peak energy costs can be significantly different throughout the year, so there is no reason to preclude a customer that is willing to shift its usage patterns in all months of the year from saving money in six months of the year. OCA St. 1-R at 6. Mr. Hahn further testified:

[D]esigning peak and off-peak differentials based upon historical pricing, while not perfect, ensures that customer savings due to TOU rates are closely aligned with the underlying costs to supply that shifting load.

Id. For these reasons, the OCA recommends that the SEF TOU programs not be adopted.

EXC and CNE propose to revise PPL's approach in implementing its TOU program to allocate a share of the TOU load obligation to all Default Service wholesale suppliers, including those that have signed contracts in DSP I. EXC/CNE St. 1 at 39-40. The OCA does not agree that default service wholesale suppliers from DSP I should be allocated a share of the TOU load obligation. As Mr. Hahn explained:

PPL proposed assigning a portion of the TOU obligation only to certain suppliers, namely those that are awarded 6-month and 12-month contracts. It is my understanding that PPL chose this subset of suppliers such that the effective date of the contracts would coincide with the semi-annual rate changes for the TOU program. Mr. Bennett proposes to assign a TOU obligation not only to all winning suppliers in DSP II, but also suppliers from DSP I. Suppliers who signed contracts from DSP I assuming that they would not need to provide TOU rate options should not be required to amend those contracts now that PPL implements a new TOU rate program in DSP II.

OCA St. No. 2-R at 11-12.

As such, the OCA submits that the general design of PPL's proposed TOU program is reasonable and should not be modified as proposed by SEF and/or EXC and CNE.

b. Procurement

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

i. Revisions to the Supply Master Agreement

The OCA takes no position on this issue.

b. Third-Party Manager

The OCA takes no position on this issue.

c. RTO Compliance and Consistency

The OCA takes no position on this issue.

d. Contingency Planning

The OCA takes no position on this issue.

e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

The OCA takes no position on this issue.

C. Retail Market Enhancements and Customer Referral Programs

The OCA supports the implementation of a retail opt-in program along the lines of PPL's Retail Opt-In Program as a reasonable means to provide further opportunities for ratepayers to engage in the competitive retail market for electricity.³¹ The OCA, however, submits that several modifications should be made to PPL's Retail Opt-In Program in order to ensure a

³¹ The OCA's positions only address residential customers. The OCA takes no position on whether commercial customers should be included. In addition, the OCA will address the participation of CAP customers within Section III.C.7., below.

successful program and to ensure that customers benefit as a result of the adoption of these retail market enhancements.³² Specifically:

- No more than 20% of the total, default residential customers should be allowed to enroll in the program;
- PPL's proposal for a 6-month contract term may be adopted if PPL's proposal for biannual changes in its Price to Compare (PTC) is also adopted and assuming that more robust savings for participating customers can be realized; if not, then a 12-month term should be adopted;
- Customers should be offered a price that is guaranteed to be lower than the Price to Compare (PTC) for the entire contract term;
- Contrary to proposals by RESA, all terms and conditions, including price, should be provided to customers prior to their opting into the program;
- Enrolled customers who do not affirmatively select an option for continued service at the end of the program, should remain with their EGS on a fixed price month-to-month contract;
- EGSs that agree to participate in the auction should pay for all of the costs of implementing the Opt-In Program.

The OCA also made several recommendations with respect to the Standard Offer Customer Referral Program proposed by PPL, including the following:

- Customer calls regarding the Standard Offer Program should be limited to new or moving customers and customers who specifically request information about Choice;
- An "introductory period" of four months should be adopted;
- Whatever term is adopted, the program should guarantee the 7% discount off the PTC during the entire term;
- The default service customer should be returned to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise;
- EGSs should pay the implementation and ongoing costs of PPL's referral program pursuant to the IWP Order.

³² The OCA takes no position at this time, as to whether the Opt-in Program should use an auction format or an aggregation format. Under either approach, the OCA's recommendations set forth herein should be applied.

In addition to recommendations regarding the Opt-In Program and the Standard Offer Customer Referral Program, the OCA also recommended that Customer Assistance Program (CAP) customers should not be enrolled in either program without a more significant evaluation of the results and costs of allowing CAP customers to shop at this time. PPL's method of allowing CAP customers to shop contains many complexities of calculating the CAP customer bill and could greatly add to the administrative costs. In addition, the evidence of record documents that the vast majority of those CAP customers who have selected an EGS have paid more than default service supply provided by PPL, thus contributing to higher costs for CAP customers and the CAP program that other residential customers must support in rates.

The OCA will discuss each of the issues set out above in the following sections.

1. New and Moving Customer Program

PPL states that it intends to participate in the working group comprised of electric distribution companies and other interested parties to develop appropriate call center scripts for residential and small business customers. PPL St. 4 at 13. The OCA supports this proposal.

2. Customer Referral Mailing

PPL proposes a one-time "Customer Referral Mailing" in the second or third quarter of 2013 that would contain offer proposals from any EGS willing to participate and pay its share of the cost of the mailing. PPL St. 4 at 19-20. PPL's offer is contingent upon adoption of the Company's proposals for the timing of the Opt-In and Standard Offer Program and related cost recovery proposals. *Id.* RESA recommended changes to PPL's proposed timeline for retail market initiatives, including a recommendation that in lieu of the customer referral mailing, the EGS offers should instead be combined with an otherwise required educational mailing about customer choice by PPL and mailed no later than March 1, 2013. RESA St. 2 at 13-17. RESA

witness Kallaher opined that these changes would minimize cost, allow EGSs an earlier opportunity to reach customers, and would help to maximize customer participation in, and awareness of, the competitive market prior to the end of PPL's existing default service term. *Id.* at 13-14.

The OCA submits that RESA's suggestion that the customer referral mailing be combined with a required mailing about customer choice is reasonable. OCA St. 2-R at 3; see Section 4 (Timing of the Retail Market Enhancements and Customer Referral Programs), *infra*. The OCA supports PPL's proposed mailing and the timeline recommended by RESA.

3. Opt-In Auction / Aggregation Program Design

In its retail opt-in competitive offer program, PPL proposes to conduct a Request for Proposal (RFP) process for a fixed price, six month contract with a retail service rate from EGSs that is initially priced at least five percent (5%) off of the Price to Compare (PTC) and will be in effect for the six month opt-in auction term. PPL St. 20-23. In order to encourage customers to "opt in," the offer will also include a \$50 bonus payment to customers that will be paid by the EGS if the customer remains with the EGS for three billing cycles. *Id.* at 20-22; OCA St. No. 2 at 8. The winning EGS bidders will be assigned up to 50% of the ten "tranches" of residential customers. PPL St. 2 at 23. These winning EGS bidders will be the EGSs with the highest percentage off the PTC. The proposed six-month Opt-in Program term coincides with PPL's proposal to offer default service with price changes every six months. As a result, the Opt-in customer will be guaranteed at least a 5% savings on their PTC for the entire auction contract term.

OCA witness Barbara Alexander further explained the program:

While PPL will market the Opt-in Auction program to non-shopping customers, any residential customers, including those currently served by an EGS and CAP

customers, will be eligible to enroll up to a load cap of 50% of non-shopping customers. PPL proposes to implement this program rule by randomly assigning customers who enroll in the program after the winning bid price is known to winning suppliers. Customers will be accepted on a first-come, first-served basis until the capped number of customers is met or the 30-day enrollment period ends.

PPL will notify all default service residential customers of their opportunity to opt in to the EGS offer, disclosing the price and terms and conditions of the final auction results. Customers will have 30 days to enroll, after which PPL will assign customers to winning EGSs on a random basis. The EGS will then submit the customer's switch order via the standard electronic means to PPL.

During the term of the EGS contract, participating customers can select a different EGS or return to default service without penalty, but once the customer leaves the Opt-in auction, the customer cannot return. At the end of the 6-month period the customer will not automatically return to default service, but will remain with the EGS unless the customer affirmatively switches to another EGS or contacts PPL to return to default service. The EGS will inform the customer of price options and the right to return to default service or select another EGS. If the customer does not respond to the EGS offers, the customer will be served on a month-to-month rate contract (the terms of which are not established by PPL's proposed terms and conditions) and can leave at any time without early termination fee or penalty. The EGS prices after the 6-month period will not be subject to any EDC or Commission approval. Under PPL's proposal, the participating EGSs will pay the incremental costs associated with the pre-auction costs incurred by PPL unless there are no participating EGSs, in which case PPL seeks to recover those costs from all customers through the Competitive Enhancement Rider. PPL proposes to obtain recovery of all post-auction costs from winning EGSs, but if there are only two winning EGSs, PPL will offer those EGSs the option to withdraw rather than paying all the required costs, thus cancelling the Opt-in Auction.

OCA St. 2 at 9-10.

The OCA made several recommendations as described below regarding eligibility for the program; the composition of the product offer; supplier participation load cap; the customer participation cap; customer options on product expiration and notice requirements; and structure of the Opt-In Program to better serve the Commission's goal of increasing customer interest in the retail market and also to ensure that customers benefit as a result of this program. The OCA submits that its recommended modifications to PPL's proposed program are reasonable and

necessary to ensure that the program does not harm customers, the retail markets or the provision of default service.³³

a. Customer Eligibility (Non-CAP)

Under PPL's plan, all residential customers would be eligible to participate in the Retail Opt-in Program. The marketing for the program would be targeted at non-shopping customers, but shopping customers would be allowed to sign up for the program. PPL St. 4 at 21. The OCA supports PPL's approach. OCA St. 2-R at 9-10. This approach is also consistent with the IWP Order. IWP Order at 42. The Commission captured the importance of allowing all customers – shopping and non-shopping – to participate. The Commission stated:

The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

IWP Order at 42.

RESA witness Kallaher proposed that shopping customers should be ineligible to participate in the Opt-In Program. RESA St. 2 at 28-29. While the OCA agrees that PPL should not directly solicit shopping customers for participation, this does not mean that shopping customers who inquire about the offer should not be allowed to participate. OCA witness Alexander testified:

I cannot agree with his proposal to impose a duty on PPL to implement a program rule to this effect or to incur costs to implement such an approach. It is an

³³ As noted above, the OCA does not take a position, at this time, on the auction or aggregation format. Whichever format is adopted, the OCA recommends that savings be guaranteed for a six-month term as discussed in Section 3.b.2.

unfortunate, but inevitable, result that customers already served by an EGS will hear about this publicized enrollment opportunity and some may seek to enroll. I agree that PPL's enrollment materials should not be targeted to such customers and I agree that PPL's public statements and customer materials should advise customers already served by an EGS to carefully consider their contract terms and price prior to seeking to enroll in this program. Again, the fact that 40% of PPL's residential customers are already shopping suggests that these customers are likely to hear about this program and some may seek to enroll. PPL should not be put in the position of monitoring this development or trying to educate individual customers on the implications of enrollment since they have no knowledge of the customer's EGS terms and conditions.

OCA St. No. 2-R at 9-10. Further, as addressed in Section III.C.3.c., below, the OCA submits that if the OCA's recommendation to limit the Opt-In Program participation to 20% of non-shopping customers is adopted, RESA's concerns regarding participation by shopping customers would be substantially lessened. The enrollment limit allows the program to be presented as a limited, one-time opportunity to non-shopping customers. OCA St. 2-R at 10.

RESA witness Kallaher responded that the main purpose of the program is to give customers, who have not otherwise shopped, additional opportunities to test the market and not to shift customers who are currently shopping. RESA St. 2-SR at 16-17. The OCA agrees about the purpose of the program, but the OCA does not agree that closing the program to shopping customers is the answer. PPL's approach to direct the marketing efforts towards non-shopping customers addresses this issue and carries forward the focus for the program identified in the IWP Order. The IWP Order stated:

However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will also maintain its original position that all marketing, notifications and consumer education efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such, although a shopping customer may become aware of the Retail Opt-In Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

IWP Order at 42.

For the reasons stated above, the OCA submits that all residential customers, both default service and shopping customers, should be eligible to participate in the Opt-In Program. The marketing materials for the program, however, should be specifically directed towards non-shopping customers as PPL has proposed.

b. Composition of Product Offer

OCA witness Alexander discussed several concerns with PPL's product offer including the duration of the contract and the guarantee of savings from the product pricing. OCA St. 2 at 10-15. The OCA addresses each of these issues below.

i. Contract Term Length

PPL has proposed a six (6) month contract term for the Retail Opt-In Program. PPL St. 2 at 20. In the IWP Order, the Commission discussed many of the comments received on this issue, and provided the following:

After considering the comments that were filed on this topic, we recommend that customers receive supply service under the terms of the Retail Opt-In Auctions for a period of six billing cycles. We believe that a term of six billing cycles is not as risky as a longer term, since shorter-term Retail Opt-In Auctions may help protect against the unpredictability of the market and may lessen risk premiums that suppliers incorporate into their prices. Further, a short-term auction may entice more suppliers to participate in the program.

IWP Order at 50.

The OCA has typically recommended the use of a twelve month term for the Retail Opt-in program with guaranteed savings for the 12-month term. OCA St. 2 at 11-12. OCA witness Alexander testified:

I have proposed that the Opt-in Auction contract reflect a 12-month term in prior proceedings and that is still a preferred approach due to my views about the type of contract that customers typically favor and because I view a longer contract with guaranteed savings as a potentially valuable selling point in seeking enrollment, thus contributing to the success of the program.

Id. OCA witness Alexander acknowledged, however, that it may be possible to guarantee more robust customer savings during the entire contract term with a six-month term as proposed by PPL, given the design of PPL's default service plan. OCA St. 2 at 12. She explained:

While I prefer a 12-month term for this program, PPL's proposal for a 6-month contract term may be acceptable in the situation in which its proposal for biannual changes in its Price to Compare (PTC) is also adopted, assuming that more robust savings for participating customers can be realized. I recognize that there is some value in being able to assure that the Opt-in Auction customer will be guaranteed savings compared to a known PTC during the entire contract term with this approach. Even if more frequent PTC changes occur, the Opt-in Auction program should ensure that the Electric Generation Supplier (EGS) bidders guarantee customer savings during the entire term of the contract.

Id. at 5.

The OCA submits that PPL's use of semi-annual adjustments ties nicely to a six-month term with 6-month guaranteed savings.

ii. Price of Product

In the Direct Testimony of PPL witness Krall, PPL proposed the following:

[P]articipating 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 actual amount of the discount will be set by an auction among participating EGSs. Customers participating in the auction also will receive a \$50 cash payment from the EGS who acquires the customer in the auction. The bonus would be issued to the customer after the customer has received electric generation service from the EGS for three consecutive billing cycles.

PPL St. 4 at 20-21. In practical effect, under PPL's proposal, the 5% discount from the PTC could represent guaranteed savings for the 6 month term given PPL's proposal to adjust its PTC semi-annually.

OCA witness Alexander proposed that the price offered to customers should be a guaranteed savings off the PTC during the entire term of the contract. OCA St. 2-R at 5. Ms.

Alexander testified to the importance of guaranteeing the savings for the opt-in program term as follows:

While customers would have the theoretical option to leave the auction contract without penalty, I am concerned that customers may learn about this pricing impact long after the differential has been in effect and I anticipate that these customers will have a negative opinion about the competitive market as a result.

OCA St. 2-SR at 5.

RESA witness Kallaher argues that the guaranteed savings approach should be rejected “...because it exposes EGSs to unreasonable level of risk.” RESA St. 2-R at 8-9. This argument should be rejected because it suggests that the purpose of the market enhancement program is to guarantee an EGS a profit during the contract term and not a program that is designed to guarantee customer benefits. OCA St. 4-S at 4-5. The IWP Order provided a vision of the product offer as something “unique and eye-catching, and as customer-friendly as possible.” IWP Order at 69. In the OCA’s view, the proposed program should lead to the type of outcome or customer experience that the Commission is looking for by guaranteeing savings for the program term. This position regarding purpose was echoed by PPL witness Krall, who stated that “the overarching purpose of the retail market enhancements is to introduce default service customers to shopping in a positive way.” PPL St. 4-R at 15.³⁴

The OCA’s guaranteed savings proposal is intended to ensure that customers have a positive experience and that actual savings that appear to be promised to engage the customer to enroll in the program are, in fact, delivered for the entire contract term. The OCA’s guaranteed

³⁴ In the FirstEnergy DSP II Order, the Commission adopted an opt-in program design that called for a discount of 5% off of the PTC at the time of enrollment for 4 months followed by an 8 month fixed price product. FirstEnergy DSP Order at 117-18. The FirstEnergy Company’s DSP program was structured differently than PPL’s in that the FirstEnergy Plan called for quarterly adjustments to the PTC. With PPL’s proposed semi-annual adjustments and the timing of its retail opt-in program, the potential exists to design a program that can provide guaranteed savings to customers for the six month term. The OCA recommends adoption of this guaranteed savings approach.

percent off discount for the entire term of the contract is the only product offer of record that can accomplish these goals. For all the reasons stated above, the OCA respectfully requests the Commission to adopt the OCA's recommendations as to the product offer for the EGS Opt-In Competitive Offer Program.

c. Key Terms and Conditions

The OCA recommends that the key terms and conditions of service, including price, be disclosed to the customer prior to enrollment in the program. The timing of this and all retail enhancements is discussed in Section III.C.5, *infra*. As to the substance, however, the OCA submits that customers participating in the retail opt-in auction should have the same information as customers in the retail competitive market. OCA St. No. 2-R at 8.

The OCA submits that RESA's suggestion that customers should be asked to enroll in the Retail Opt-In Auction *before* knowing the price, material terms and conditions, or identity of the EGS that will become their generation supplier should be rejected. OCA St. 2-R at 8-9; RESA St. 2 at 22. Ms. Alexander explained:

[Mr. Kallaher's] process would transform the Opt-In Auction into an Opt-Out Auction by requiring customers to take affirmative action to de-enroll after receiving the actual price and terms should they not agree with the results of the auction or for any other reason. Nor is this proposal remotely similar to the retail competitive market in which customers agree to accept a specific EGS offer based on knowledge of the price and other terms of service.

OCA St. 2-R at 8. The IWP Order similarly stated that "it is important that the Commission identify the key elements of the product to be offered to customers." IWP Order at 69.

For the same reason, if OCA witness Alexander's guaranteed pricing recommendation is not adopted, customers should also be fully informed of the potential that the price will exceed the PTC during the course of the program. Otherwise, as noted in the prior section, customers

may not realize that there is a price change until well after the differential has been in effect. OCA St. 2-SR at 5.

d. Customer Participation Cap

i. Summary and Overview of OCA's Position

As proposed by PPL, all residential default service customers should be solicited for participation in the Opt-In Program. The OCA agrees that all default service customers should be informed about the program but submits that the maximum number of customers who should be authorized to enroll in the program should be limited to no more than 20% of the total number of eligible customers. OCA witness Hahn stated that setting the customer participation cap at 20% for the Program will mitigate the increased volumetric risk and, therefore, higher prices for providing default service. See OCA St. 1 at 20.

ii. PPL's Proposal (50% Cap)

PPL's Opt-In Program proposal includes a 50% customer participation cap for Residential non-shopping (Default Service) customers. See PPL St. 4 at 21. While the program will be marketed to all non-shopping customers, shopping customers will be eligible to enroll but their participation will not impact the cap. Id. As discussed below, the OCA submits that a participation cap of 20% should be authorized in this matter and, accordingly, opposes the PPL proposal for a 50% cap.

iii. The OCA's Position (20% Cap)

The OCA agrees with the Commission's concerns as stated in its IWP Order that the lack of any cap would result in an unreasonable level of uncertainty for wholesale suppliers. The OCA also agrees with the proposed method of determining the number of residential customers who can actually enroll in the program. See PPL St. 4 at 21. The OCA submits, however, that a

20% cap on participation will provide the best opportunity for a successful program, while at the same time properly mitigating potential harm to default service customers.

OCA witness Alexander summarized the OCA's general concern about the size of the program as follows:

This program should limit enrollment to 20% of residential default service customers. My position is not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-In Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself.

OCA St. No. 2 at 10-11.

OCA witness Hahn addressed concerns regarding the risk and Default Service cost ramifications of PPL's proposed 50% customer participation cap:

I am concerned about the high potential participation of up to 50% of default service customers. The Retail Opt-in Auction program as proposed by PPL will introduce an additional volumetric risk, over and above the existing volumetric risk, in providing residential default service, which will increase the cost of default service. Competitive suppliers that bid to supply default service will need to assess the risk that up to half of the default service load that they win the right to supply will be taken away from them after they have finalized their prices. Accounting for this risk will require these suppliers to raise their prices through additional risk premiums.

OCA St. 1 at 18-19. Mr. Hahn provided an illustration showing how PPL's proposed Opt-In Program can increase the volatility of residential default service load. *Id.* at 19; OCA Exh. RSH-6. Suppliers' fixed percentage shares of the default service load will decrease by the percentage of load that is instead provided by the Retail Opt-in supplier via the Retail Opt-in Program. Mr. Hahn testified:

The risk of a decrease would have to be embedded in higher default service pricing, which can manifest itself in several ways. The default service suppliers could increase their expected profit margin to lessen the possibility of a loss on this transaction. The default service suppliers could also increase their ability to hedge those obligations through financial instruments such as options or swaps, or physically through other purchases, the cost of which would be included in their bids.

OCA St. 4 at 19. Thus, a very large Retail Opt-in program introduces significant volumetric risk in, and therefore higher prices for, default service. To reduce the volumetric risk and associated higher prices, Mr. Hahn recommended a 20% customer participation cap. See OCA St. 1 at 20.

In addition, Mr. Hahn recommended other measures to further reduce volumetric risk.

Mr. Hahn explained this measure as follows:

One such measure is to set aside a portion of the targeted full requirements contracts and not procure them as part of the initial default service solicitations but leave them unfilled at the beginning of the DSP. After the Retail Opt-in Auction is held, the size of the default service tranches can be adjusted based upon how many Retail Opt-in Auction tranches are actually filled. This approach maintains the megawatts expected to be supplied by each default service supplier at the level in the original default service solicitation, but each supplier's percentage of load served changes. Any tranches not filled during the Retail Opt-in Auction program would be supplied by additional spot purchases or by additional default service solicitations to be held after the conclusion of the Retail Opt-in Auction.

OCA St. 1 at 20.

Witnesses for RESA, Dominion and PPL opposed Mr. Hahn's recommended cap and "hold back" strategies to mitigate risk. RESA St. 2-R at 3-7; Dominion/IGS St. 1-R at 8-9; PPL St. 4-R at 28-29. RESA witness Kallaher argued that customers will benefit more from the development of competitive markets than from preventing incremental impact on default service pricing. RESA St. 2-R at 3-6. None of the parties provide any analysis to show that Mr. Hahn's proposed mitigation measures would not successfully address increased risk. OCA St. 1-SR at 8.

Mr. Kallaher also suggested that OCA witness Alexander's support for a 20% cap was based on her concern that the Opt-in would be successful. RESA St. 2-R at 6-7. In fact, Ms. Alexander's position reflects "the need to ensure that this program is successful, as well as the high shopping rate for PPL's residential customers," not out of any concern for its success.

In summary, the OCA has proposed a 20% cap in order to provide a reasonable platform for success of the Retail Opt-in program, while at the same time ensuring that default service customers are not harmed. OCA witness Hahn has proposed a 20% "hold back" from the general default service procurements in order to effectuate this result. In the OCA's view, adoption of the OCA's 20% cap hold back proposal would provide a level of certainty for EGSs and wholesale suppliers alike. Moreover, the OCA's proposed 20% cap would still allow EGSs to make offers to customers directly, based on the level of interest generated by the Opt-In Program.

The OCA understands and appreciates that there are a variety of opinions on this topic amongst the various parties in this proceeding. The OCA submits, however, that the OCA's 20% cap and hold back provisions provide a reasonable accommodation for all of these interests, and provide protection for consumers. Accordingly, the OCA respectfully requests the Commission to review the substantial evidence provided by the OCA on this issue and adopt the OCA's recommendations as to the customer participation cap.

e. Supplier Participation Load Cap

According to the IWP Order, in order to protect the diversity of the market and with an eye on obtaining a reasonable retail auction price, EGSs participating in the Opt-In Auction Program may not serve more than 50% of the customer class default service accounts for each EDC territory. IWP Order at 63. PPL's proposed Opt-In Auction Program implements a 50%

EGS participation cap in accordance with the IWP Order. See PPL St. 4 at 23; PPL Exh. 1 at 43. RESA noted its support of PPL's EGS participation cap for the Opt-In Auction Program. See RESA St. 2 at 30. The OCA did not object to PPL's proposal. See OCA St. 1 at 18.

f. Customer Options on Product Expiration and Notice Requirements

i. Customer Options on Product Expiration

At the end of the Opt-In Auction program term, PPL proposes that the customer remain with the EGS. PPL St. 4 at 23; PPL St. 4-R at 23. The OCA does not object to customers remaining with the EGS after adequate notice. The OCA submits, though, that PPL's program rules should be clear that customers who have not made an affirmative choice at the end of the auction contract term are placed on a fixed price month-to-month contract. OCA St. 2 at 13-14.

OCA witness Alexander explained:

The EGS contract should require the EGS to disclose to the customer that if the customer fails to respond to any of the options listed in their notice (i.e., the right to return to Default Service or select an EGS option), the customer would be put on a fixed price month-to-month contract without penalty or termination fees. A customer who enters this program with a fixed price contract should not be transferred to a variable priced month-to-month contract without affirmative consent.

OCA St. 2 at 13-14.

The OCA submits that RESA witness Kallaher's perspective that the "competitive suppliers should have maximum flexibility regarding the product offered to customers at the end of the opt-in auction program or any other retail market enhancement program considered by the Commission" is incomplete. RESA St. 2-R at 11-12. The EGSs already have maximum flexibility in what they can offer to customers, but if the customer does not respond, the customer should not be placed on a variable priced rate or other rate that is wholly inconsistent with the program in which they participated. The Opt-In Program is designed to create a positive

experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS. Customers who do not respond to a notice should stay with their current EGS on a fixed price, month-to-month contract if the customer does not affirmatively select another product.

ii. Notice Requirements

The OCA submits that PPL should issue a preliminary notice to Opt-in Program customers about the forthcoming end of the auction contract term and summarize customer options in addition to the two mandatory notices that the EGS must issue. OCA St. 1 at 12-13. OCA witness Alexander recommends that PPL provide participating customers a 90-day notice that will alert the customer to the end of the contract term and their options and explain that they will hear directly from their EGS about rate options in the coming months. Id. at 12. Specifically, she proposes that the notice inform customers of the following:

1. The Retail Opt-in Auction contract is about to come to an end;
2. The customer has several options, alerting the customer to forthcoming notices from the EGS about the offers for continuing with the EGS at the end of the auction term;
3. The customer has the right to select another EGS and referring the customer to the PaPowerSwitch and OCA websites for information on marketer offers and prices;
4. The customer has the right to return to default service and how to compare offers to the PTC in effect at the end of the auction term; and
5. If the customer takes no action, they will remain with their current EGS under a month-to-month contract that, at least under PPL's proposed terms and conditions, could result in a variable rate EGS contract that changes every month.

OCA St. 2 at 12-13.

Most customers who will participate in the Retail Opt-in will not have any previous experience participating in the retail market – this notice is intended to ensure they understand their options. Ms. Alexander testified:

In my opinion, most customers will assume that when the auction term ends they will be returned to default service since they will not be familiar with the “rules”

of the retail market as a result of the unique nature of this Opt-in Auction program.

OCA St. 2 at 13.

PPL objects to the additional notice requirement based on Mr. Krall's belief that customers participating in the Opt-in Program should not be treated differently from other "first time" shoppers, i.e. no added protections. PPL St. 4-R at 30. RESA also argues that the Opt-in Auction is merely another "channel" to market to customers and, as such, no additional requirements should be added to this offer. RESA St. 2-R at 10. This program is unique, however, because customers will have entered this program based on PPL's notices and endorsement. Accordingly, it is important that participating customers be educated in multiple ways and by both PPL and the EGS prior to the end of the auction term about their options and how to exercise those options. OCA St. 2 at 13.

The OCA continues to recommend an additional notice from PPL because it is an important aspect of consumer education. Many of the consumers who will participate in the program will not have previously participated in the retail markets, and the notice will ensure that these consumers are fully informed of their options.

g. Structure of Opt-In Auction - Sealed Bid Format Versus Descending Price Clock Auction

FES witness Banks asserted that a Descending Clock Auction (DCA) would be preferable to a Sealed Bid (SB) process for the Opt-In Auction Program. See FES St. 1 at 18-19. The OCA does not take a position on this issue except to the extent that, regardless of which method is ultimately chosen, EGSs should be responsible for the costs of the Opt-In Program. See Section III.C.6, *infra* for a full discussion of the cost recovery issue. However, the OCA submits the

following information for consideration in this proceeding from the rebuttal testimony of OCA witness Hahn:

Regarding the auction type, I prefer the SBA method, rather than the DCA approach. SBAs are simpler and less expensive to implement, and they require bidders to offer their best price possible, which results in lower prices to consumers.

OCA St. 1-R at 4. In addition, as noted earlier, the OCA takes no position as to whether an auction format or an aggregation format is utilized.

4. Standard Offer Program Design

PPL's Standard Offer Referral Program is a program which allows customers to choose a specific, participating EGS or be randomly assigned to a participating EGS. PPL St. 4 at 26-27. PPL proposes to target Residential customers on Default Service, but non-default service customers will be eligible to participate. PPL's proposal requires participating EGSs to offer a fixed price generation service for 6 months that is 7% off PPL's PTC at the time of customer enrollment. Id. The OCA submits that modifications are needed to PPL's proposed Standard Offer Referral Program so that the program is effective, avoids customer confusion and dissatisfaction, and provides benefits to customers. These modifications, which are discussed below, address customer eligibility, composition of the product offer, customer options upon the termination of referral program contracts and the types of calls that are given Standard Offer information. The OCA submits that a properly designed referral program could serve as a method to further educate customers about choice and facilitate enhanced participation by customers in the retail market.

a. Customer Eligibility (non-CAP)

PPL has proposed that the standard offer program would be open to all residential customers. PPL St. 4-R at 38-39. This is consistent with the Commission's approach in the IWP

Order. IWP Order at 31 (“The standard offer will target/market residential default service customers; however, residential customers will not be excluded if they specifically request to participate”). OCA witness Alexander agreed with PPL’s proposal and recommended that “[t]he Referral program should be affirmatively offered to new customers or those moving within the EDC service territory, but other customer calls to the EDC should not affirmatively require an explanation of the Referral Program unless there is a customer request to do so.” OCA St. No. 2 at 17.

RESA witness Kallaher recommends that no shopping customers be eligible. RESA St. 2 at 37-38. Ms. Alexander opposed this proposal for the same reason she opposed Mr. Kallaher’s proposal to exclude shopping customers from the Retail Opt-In Program. OCA St. 2-R at 10-11.

Ms. Alexander testified:

It is an unfortunate, but inevitable, result that customers already served by an EGS will hear about this publicized enrollment opportunity and some may seek to enroll. I agree that PPL’s enrollment materials should not be targeted to such customers and I agree that PPL’s public statements and customer materials should advise customers already served by an EGS to carefully consider their contract terms and price prior to seeking to enroll in this program. Again, the fact that 40% of PPL’s residential customers are already shopping suggests that these customers are likely to hear about this program and some may seek to enroll. PPL should not be put in the position of monitoring this development or trying to educate individual customers on the implications of enrollment since they have no knowledge of the customer’s EGS terms and conditions.

OCA St. 2-R at 10.

Accordingly, the OCA recommends that the program be open to all residential customers, both shopping and non-shopping customers, but should be specifically targeted towards those new or moving customers who have not selected an alternative provider. Mr. Kallaher makes a different (secondary) recommendation that when an existing shopping customer calls, they will not be provided with information about the Standard Offer options. RESA St. 2 at 37-38. The

OCA will discuss issues relating to which customer callers should be informed of the program in Section III.C.4.d., below.

b. Composition of Product Offer

PPL's proposed Standard Offer Program would be a six month contract with a fixed 7% off PPL's PTC at the time of customer enrollment. PPL St. 4 at 26; OCA St. 2 at 15. Under PPL's proposal, this price term could result in the potential for customers to pay a higher price than PPL's default service price during the program due to the proposed semi-annual price changes for the PPL PTC. OCA St. 2 at 17; PPL Exh. 1 at 29 (the PTC has experienced significant volatility). As OCA witness Alexander explained:

With monthly enrollments coupled with PPL's proposal for a six-month PTC, a customer could enroll during the 5th month of the current PTC and pay a higher price for the Referral program contract if the PTC is lower in the next month, thus eliminating all or some of the 7% discount for the remaining term.

OCA St. 2 at 17. To address this concern, Ms. Alexander recommended that the Standard Offer program contract guarantee the discount off the PTC during the entire term whatever the term.³⁵

Id. In this way, the promised discount off the PTC would result in savings to customers during the contract term and allow customers who are otherwise reluctant to shop a risk-free opportunity to do so.

PPL witness Krall recognized Ms. Alexander's concern regarding the risk to customers if savings are not guaranteed for the entire term. Mr. Krall testified:

[Customers should] not be locked into the possibility of several such changes during the term of what is intended to be an introductory program.

³⁵ Ms. Alexander also suggested that a four month introductory period could be used so that savings can be guaranteed for that period.

PPL St. 4 at 37-38. He disagreed, however, that customers should be entirely sheltered from price changes. *Id.* FES and RESA do not propose to guarantee savings during the contract term. PPL St. 4-R at 36.

The OCA submits that proposals that do not ensure that savings that appear to be promised to customers are, in fact, delivered are not consistent with PPL's assessment of the overarching purpose of the retail market enhancements – to introduce default service customers to shopping in a positive way. *See* PPL St. 4-R at 15.

c. Customer Options Upon Product Expiration

As proposed by PPL, at the termination of the Standard Offer Referral Program contract term, absent affirmative customer action – to enter into a new contract with the EGS, enroll with a different EGS, or return to default service – the customer will remain with the EGS on a month-to-month basis and shall not be subject to any termination fee or penalty. PPL St. 4-R at 41. OCA witness Alexander recommends that, instead, any participating customer who does not affirmatively elect EGS service be returned to default service. This approach is similar to that utilized by the Central Hudson Gas & Electric referral program, called “Energy Switch.”³⁶ OCA St. 2 at 18.

The basis for Ms. Alexander's recommendation is that the purpose of the Referral Program is to expose the customer to the shopping experience with a guaranteed price reduction for the contract term. As Ms. Alexander explained:

Customers who are satisfied with the Referral experience will select an offer that best meets their needs, whether from their own EGS or another EGS. There is

³⁶ Under that program the customer is guaranteed a specific discount for two billing periods, but must then affirmatively agree to the EGS (called an ESCO)'s terms of service to continue being served at the EGS price. OCA St. 2 at 18; *see* http://www.centralhudson.com/energy_choice/energy_switch.html. The OCA notes that the Central Hudson Gas & Electric model is not the same as the “New York” model discussed in RESA witness Kallaher's testimony.

little purpose to be served by allowing the EGS to retain the customer without some indication that the customer who agreed to the experiment has demonstrated a familiarity with the concept of “choice” and made an affirmative choice.

OCA St. 2 at 18.

PPL witness Krall emphasizes that the customer “will make an affirmative choice to join the program, the customer will have the opportunity to choose to leave the program at anytime without penalty, and the customer will receive materials as the end of the term approaches identifying the affirmative choices that are available.” PPL St. 4-R at 41. The fact remains that, for many customers, the only affirmative “choice” was made during a call to the EDC for a specific purposes unrelated to customer choice. OCA St. 2 at 18. Ms. Alexander testified as to the importance of this point:

[Customers who are marketed to “experiment” with an EGS should not be retained by the EGS at the end of the contract term without affirmative customer agreement. This is particularly important because the customers who are calling PPL are seeking a regulated service that is in almost all cases unrelated to learning about customer choice. Further, they are being presented with this offer over the telephone without the opportunity to review printed materials or consider all their options prior to making this selection.

OCA St. 2 at 18.

The OCA submits that the Central Hudson Gas & Electric model is designed to provide an opportunity for a customer to shop with a guaranteed price reduction, for a short period of time, and at no risk. The OCA submits that the adoption of Ms. Alexander’s recommendations would provide a reasonable path for the implementation of a Standard Offer Referral Program that would benefit ratepayers.

For the reasons stated above, the OCA recommends that if an introductory period is used for the program, that the customer return to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise.

d. Types of Customer Calls Eligible for Presentation of Referral Program

PPL proposes that the Referral Program will be promoted during all customer calls other than those regarding emergencies or terminations. PPL St. 4-R at 39-40. OCA witness Alexander recommends that it only be offered during calls that involve establishing service, transferring service to a new location, and calls specifically seeking to discuss customer choice.

OCA St. 2 at 17. Ms. Alexander explained further:

An approach that would require PPL to market the Customer Referral program to customers who call relating to their bills, credit and collection issues, reliability of service, or other calls unrelated to customer choice may result in a degradation of essential consumer protections, as well as increase PPL's costs. Customers should be assured that the service and concern that they initiated relating to their PPL bill or PPL's customer service will be handled with a high priority and without delays.

OCA St. 2 at 17. Indeed, burdening such calls with further unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa. C.S. § 2807(d).

PPL witness Krall agrees generally that some of the situations identified by Ms. Alexander would be "inappropriate" and the Standard Offer Referral program would not be promoted, *i.e.* calls regarding bills, credit and collection issues, reliability of service. PPL St. 4-R at 40. Mr. Krall suggests that Ms. Alexander's concerns are addressed by the Company's intention to first address the customer's reason for calling and satisfy their concern. *Id.* Two problems exist with this approach. First, it is not clear what "satisfied" means in this context and, second, high bills calls and complaints may need several contacts with the customer to complete the utility's response and determine if the customer is satisfied with the investigation and response. OCA St. 2-S at 7. It is unclear when the referral will be offered in such situations.

RESA acknowledges that “there will have to be further discussion about what it might mean for the customer’s high bill complaint to be ‘satisfied.’” RESA St. 2-R at 19.

The OCA submits that these issues present concerns regarding quality of service. At this time, the OCA recommends that the customer calls regarding the Standard Offer Program be limited to new or moving customers, and customers who specifically request information about Choice.

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

PPL proposes the following timeline for the three major retail market enhancements proposed in this proceeding and the New/Moving Customer program directed by the Commission in the IWP Order.

1. Implement the New/Moving Customer program scripts and a New Customer Welcome Package in the third quarter of 2012.
2. Undertake a Customer Referral Mailing in the second or third quarter of 2013.
3. Undertake the Opt-In Auction in late November/early December 2013.
4. Initiate the ongoing Standard Offer Referral Program in mid-2014.

PPL St. 4-R at 12. OCA witness Alexander agrees with the overall timing of these initiatives.

OCA St. 2 at 4.

In response to concerns raised by Dominion/IGS, FES and RESA (Dominion/IGS St. 1 at 7; FES St. 1 at 23; RESA St. 2 at 11, 13, 32), PPL witness Krall explained that PPL’s proposed timing is designed not to disrupt existing supply contracts, to introduce default service customers to shopping in a positive way, to take consideration of the Commission-mandated activities that precede the Retail Opt-In Program and to allow for enhancements to PPL’s customer information and billing systems. PPL St. 4 at 15-18. With regard to a positive shopping experience, PPL witness Krall stated:

The Company's proposed timing is intended to avoid customer confusion that could hinder, rather than help, the development of a robust retail competitive market. It also takes into consideration the fact that large numbers of customers are already shopping in the PPL Electric service territory, which raises two issues. First, "jumpstarting" competition is less critical in the PPL Electric service territory than it may be in other service territories. Second, the large number of shoppers suggests (1) a population that is already more sophisticated in shopping basics than might be found in other service territories and (2) the increased likelihood that those not shopping have done so as the result of a conscious decision; both of which suggest increased attention to careful, objective consumer education.

Consistent with the Company's concern that shopping be introduced in a positive way, the Company concluded that the Opt-In Auction should precede the Standard Offer Program, because the Opt-In Auction will be a one-time introductory program, whereas the Standard Offer Referral Program will be an ongoing program. If the Standard Offer Program were to precede the Opt-In Auction, there could be substantial customer confusion from simultaneous operation of both programs. Such an overlap also runs the risk that participants might inadvertently lose benefits that are contingent upon taking service for a minimum term as they are enticed to join the other program. In the alternative, it would be inefficient, and also confusing to customers, to start the Standard Offer Program, pause the program to run the Opt-In Auction, and then restart the Standard Offer Program after the Opt-In Auction was concluded. This rationale leads to a Retail Opt-In Auction beginning on the earliest practical date with the Standard Offer Referral Program beginning at the conclusion of the Retail Opt-In Auction.

PPL St. 4 at 15-16. Mr. Krall added that:

[C]onsistent with the desire to introduce shopping to customers who have not shopped in a positive, non-threatening, and not confusing way, the Company needs to enhance its customer information and billing systems to properly track and present to Customer Service Representatives ("CSR") and to customers (to the extent the Standard Offer Referral Program will have a web application related to certain self-service contacts) information that, while available, is not consolidated and correlated in a way that will lead to a positive introduction. For example, the fact that a customer has an EGS and that another may be pending following the next meter read date is information currently available to a CSR, but the fact that one may arise from participation in the Retail Opt-In Auction and the second may relate to the Referral Program is important information that must be known by the CSR in order to successfully answer questions the customer might have. Failure to implement such changes to the Company's customer information and billing system will result in customer confusion, enrollment and billing errors and generally detract from the objective of making customers comfortable with shopping.

The Company cannot complete the programming work necessary to assure a successful Standard Offer Program in 2013; further reinforcing that the Standard Offer Program begin in mid-2014 following the completion of the Retail Opt-In Auction.

PPL St. 4-R at 17-18.

In further support of the reasonableness of PPL's proposed timeline, OCA witness Alexander noted that the modest delay in implementing the Opt-In Program in late 2013 "will ensure that the implementation of PPL's program can take advantage of lessons learned from the earlier programs in terms of communications and enrollment details." OCA St. 2-S at 4. Likewise, the 2014 implementation of the Customer Referral Program "will avoid customer confusion and potential for adverse comparisons to the prices and terms of service associated with the Opt-In Auction program." OCA St. 2-S at 6. In contrast, if both programs were implemented at the same time, as suggested by RESA and Dominion, it would "require different customer education about prices and terms of service, thus threatening the overall intent to stimulate customer interest in retail choice." *Id.*; RESA St. 2 at 13; Dominion/IGS St. 1 at 6-7.

Ms. Alexander testified:

[T]he Referral Program [should] be implemented after the Opt-In Auction to avoid customer confusion about the differences in the price discounts, length of contract, the overlapping customer education campaigns, and the nature of the customer commitment associated with both programs.

OCA St. 2-R at 11-12; see also OCA St. 2-S at 6. Accordingly, the OCA recommends that proposals to implement the Standard Offer program by June 2013 should not be adopted in this case.

OCA witness Alexander also testified that RESA's alternative proposal that a mailing be sent to customers that includes EGS offers in combination with an otherwise required educational mailing about customer choice by PPL *if* the incremental costs are paid for by the

participating EGSs has significant merit.³⁷ OCA St. 2-R at 7; RESA St. 2 at 15. Specifically,

Ms. Alexander stated:

It is my understanding that similar mailings to FirstEnergy's customers have proved successful. Therefore, assuming that any incremental costs associated with including these additional materials in the mailing are paid for by the participating EGSs and the current PPL customer education budget reflects the cost of this mailing, I do not object to this proposal.

OCA St. 2-R at 7-8.

Likewise, RESA's suggestion that PPL be required to conduct some outreach to obtain an indication of customer interest in the program at an early stage may be reasonable, assuming that the EGSs pay for the costs of this outreach. OCA St. 2-R at 9; RESA St. 2 at 23.

For the reasons discussed above, PPL's proposed timeline for its retail enhancement initiatives is reasonable. The Standard Offer program should not be implemented at the same time as the Retail Opt-in Program and customers should not be asked to enroll in the Retail Program without knowing the price, material terms and conditions, or identity of the EGS that will become their generation supplier.

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

a. EGS Opt-In Competitive Offer Program

For the Retail Opt-in Program, PPL proposes that pre-auction costs will be shared equally among participating EGSs and that post-auction costs will be shared on a pro rata basis among those EGSs who secure load through the auction. 4-R at 19. If no EGSs participate, however, PPL proposes to spread the pre-auction costs – close to \$1 million – to all customers through a new rider that was proposed in a pending PPL distribution base rate case filed on March 30, 2012. PPL St. 4 at 23-24; OCA St. 2 at 14, n.6.

³⁷ See Section III.C.6. for a complete discussion of the OCA's cost recovery recommendations.

PPL's proposal is not consistent with the IWP Order, wherein the Commission stated that it would be appropriate for EDCs to recover opt-in auction implementation costs from participating EGSs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction. IWP Order at 78. The Commission stated:

As for the costs of the Retail Opt-in Auctions, we agree with UGIES and OCA that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs.

IWP Order at 84-85. OCA witness Alexander recommended that PPL's proposed cost recovery for pre-auction costs be rejected. Ms. Alexander testified:

As with the post-Auction costs, these pre-Auction costs are being undertaken by the regulated distribution utility to support market enhancements that benefit EGSs and that allow EGSs to avoid marketing costs. Such costs should all be borne by the EGSs that participate in the program and that stand to gain customers from the program.

OCA St. 2 at 14.

FES, Dominion and RESA asserted that PPL customers should be responsible for the costs of the Opt-In Auction Program.³⁸ See, e.g., FES St. 1 at 20; Dominion/IGS St. 1 at 9; RESA St. 2 at 25-27. As stated by FES witness Banks, customers should pay for the Program because it is they "who stand to experience significant savings from a robust, competitive retail electricity market." FES St. 1 at 20. RESA witness Kallaher acknowledged, however, that the retail market enhancements also provide benefits to EGSs. RESA St. 2-SR at 25. In fact, he asserts that "[o]ne important justification for the opt-in auction is to allow a certain number of

³⁸ RESA proposes an adder to the default service rate to recover, among other costs, the costs associated with implementing and maintaining the Opt-In Auction and Referral Program. The OCA recommends rejection of this adder, for the reasons discussed in Section III.D, *infra*.

EGSs to increase their scale in the PPL market.” RESA St. 2 at 30. As noted by PPL witness Krall, this seems to confirm that EGSs expect to receive a benefit from their participation. PPL St. 4-R at 47.

OCA witness Alexander provided further reason why the costs associated with these retail market “enhancements” differ from those incurred and paid for by all customers to implement the basic requirements for a retail competitive market. OCA St. 2-R at 14-15. Ms. Alexander explained:

The costs that PPL and the other EDCs will incur to implement the Opt-In Auction and Referral Programs are not necessary to implement retail choice. The Competition Act does not mandate these programs. The costs associated with these programs are significantly different from the costs that Pennsylvania electric customers have already paid to support the EDC’s implementation of billing changes, customer education programs, and electronic data exchange protocols so that customers can switch to an EGS and receive bills from the EDC or the EGS that include EGS charges. Rather, the Opt-in Auction and Customer Referral Programs are “enhancements” that are intended to expand the current level of retail competition that already exists. Therefore, it would not be reasonable to view the costs associated with these “enhancements” as similar to those incurred and paid for by all customers to implement the basic requirements for a retail competitive market.

Furthermore, it would be particularly unfair and unreasonable for default service customers to pay for these costs in the manner suggested by RESA. These costs are incurred by PPL to implement programs that will result in a transfer of default service customers to the EGSs who win the Opt-In Auction or offer Referral Programs that customers select. PPL’s role in these programs is a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market. Therefore, it is only reasonable for the EGSs that directly benefit from these programs by gaining market share to pay for the incremental costs, which are likely to be far less than the incremental costs that each EGS would have to bear to acquire these customers on an individual basis.

Id.

Neither PPL nor the EGSs in this proceeding have provided any compelling evidence to justify a cost recovery method different from that recommended in the IWP Order. The OCA

submits that its proposal to recover all of the costs of the Opt-In Auction Program from participating EGSs (or from all EGSs if there are no participating EGSs) should be adopted.

b. EGS Standard Offer Program

PPL proposes that all non-capital costs of implementing and administering the Standard Offer Program be recovered from the participating EGSs on a pro rata basis, including training and customer communications costs. Service representative call time and capital costs to modify the Company's customer information and billing system – to ensure that customers are properly targeted for this program – would be recovered from customers through a future base rate proceeding. PPL St. 4-R at 35, 44. PPL estimates that these capital costs will be \$3 million. OCA St. 2 at 16.

OCA witness Alexander recommended that PPL should not be allowed to recover these capital costs from distribution customers in a future base rate case. OCA St. 2 at 18-19. Ms. Alexander explained that these costs should be recovered from participating EGSs:

Rather, such costs should be allocated to the EGSs that participate in this program because these are costs properly allocated to the implementation of market enhancement programs that will ensure that EGSs avoid marketing costs and gain customers that will be of value of them. Regulated customers should not subsidize EGSs marketing and customer acquisition costs in the manner proposed by PPL.

Id. The OCA's proposal to recover the costs of the referral program from participating EGSs is consistent with the IWP Order. According to the Commission:

As to [Standard Offer] program costs, we agree with the assertions of OCA and UGIES that the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs. We also find that PECO's proposal to recover program costs through the discount on the POR appears to be acceptable.

IWP Order at 32.

FES witness Banks asserted that all of the costs of the referral program should be recovered from customers. FES St. 1 at 25. Dominion and RESA asserted that EGSs should pay only a portion of the costs of the referral program. Dominion/IGS St. 1 at 11-12; RESA St. 2-SR at 26. No party has provided adequate evidence to justify a cost recovery different from that recommended in the IWP Order. The OCA submits that PPL's proposal to recover any of the costs of the EGS Standard Offer Program from customers should be rejected.

c. Other Enhancements

As discussed above, to the extent that the Commission accepts RESA's proposal that PPL's required educational mailing about customer choice include EGS offers, the associated incremental costs should be paid for by the EGSs. OCA St. 2-R at 7; RESA St. 2 at 15. Likewise, if the Commission adopts RESA's proposal to require some outreach to determine customer interest in the program, the EGSs should pay the costs of this outreach. OCA St. 2-R at 9; RESA St. 2 at 23. The EGSs would be the principal beneficiaries of this mailing and outreach program and should pay the associated costs.

7. CAP Customer Participation in the Retail Market Enhancements

In its filing, PPL did not take a position on whether Customer Assistance Program (CAP) customers should be allowed to enroll in the Retail Enhancement initiatives. PPL St. 4-R at 5. PPL witness Krall initially opined that, because all of the Company's low-income and CAP program customers are eligible to participate in the retail market, "it would be inconsistent to exclude them from these programs." PPL St. 4-R at 5-6.

CAUSE witness Krone recommended that CAP customers not be allowed to participate in the Retail Opt-in or Standard Referral Programs. CAUSE St. 1 at 14-19. He based his recommendation on several compelling points. First, most CAP customers would not experience

the full 5% or 7% decrease in their monthly bills during the term of the programs due to the way that PPL apportions savings obtained by CAP customers who receive service from an EGS. Id. at 14-15. Mr. Krone testified:

Thus, at best, a CAP customer participating in the auction would see only 40% of the 5% savings within the program- or approximately 2% off the price to compare- and then only if their total consumption bill for any given month were to exceed \$100 (non-electric heating) or \$200 (electric heating). This process creates only the illusion of 5% savings for the most vulnerable and least sophisticated customer.

CAUSE St. 1 at 15. On a related matter, CAUSE raised concerns that it is not clear how PPL's customer service representatives will adequately and succinctly explain this complicated percentage savings calculation. Id. at 15. CAUSE also raises the serious concern that data provided by PPL shows that a large majority of its currently shopping CAP customers are paying more than the PTC. Mr. Krone provided the following data:

[M]ore than 73% of its CAP customers who are currently being served by an EGS are being charged a higher price than PPL's price to compare.

CAUSE St. 1 at 16, App. B. This data highlights the concern that at the end of the opt-in program, the EGS will retain the customer and can charge them an unregulated price. CAP customers will bear the entire increase in costs if the price exceeds the monthly thresholds and, below that threshold, non-CAP customers will pay the increased costs. CAUSE St. 1 at 17-18.

As Mr. Krone explained:

If a CAP customer selects a supplier whose price results in a bill that is more than \$5 higher per month for non-electric heating customers and more than \$10 per month for electric heating customers then the CAP customer must pay all of the difference as a part of his or her CAP bill. It is in no one's interest for CAP households to be paying more for energy than they absolutely must pay.

...
Even in the event, however, that post-auction a CAP customer's monthly bill is not in excess of the \$5/\$10 threshold required for the CAP customer to bear the full amount of the increased costs, non-CAP ratepayers would bear these costs by

way of increased costs in the universal service rider. This too is poor public policy.

Id.

The OCA's recommendation is similar to Mr. Krone's, that PPL's proposal to allow CAP customers to participate in the Retail Enhancement Programs requires further analysis. OCA St. 2 at 6-7. OCA witness Alexander explained her position as follows:

First, it is important to determine the results of allowing CAP customers to shop and select an EGS in terms of their ability to afford essential electric service from PPL and the costs associated with the implementation of that program. Second, a significant expansion of CAP customer enrollments through the Opt-in Auction and the Referral Programs will increase administrative costs because of the manual nature of the transactions and the monitoring that PPL is required to undertake pursuant to the settlement that approved shopping for CAP customers. These costs should be estimated and identified prior to a final decision on whether it is cost effective and reasonable to rely on the prior approval to determine the policy in these two retail market enhancement programs.

OCA St. 2 at 14-15, 19.

After further consideration of the data showing that 73% of its currently shopping CAP customers were being charged a higher price than the PTC, PPL witness Krall revised his position and now recommends that, at this time, CAP customers not be allowed to participate in PPL's Retail Enhancement programs. In surrebuttal, he stated:

Since learning, through its response to discovery, that 73% of the Company's OnTrack participants who receive competitive supply were being charged a price that is higher than the PTC, the Company has been exploring the implications of this shopping result. The Company is concerned that the large numbers of "ineffective shoppers" may result in a net increase in program costs and burden to other non-CAP ratepayers that could otherwise be avoided. Mr. Kallaher's suggestion of "standardized" CAP benefits could exacerbate this concern. Further, the billing protocols described above, or some type of "statewide standard" CAP benefit, may cause an "ineffective shopper's" OnTrack payment amount to be increased, and this can result in increased defaults from the program and removal of customers from OnTrack because they have exceeded their annual maximum limit of CAP credits. In addition, alternatives such as "monitoring" for predatory price schemes or education efforts, as suggested by Mr. Kallaher, whose aim

would be to direct OnTrack customers to lower priced EGSs or back to default service, to minimize program costs and avoid CAP program defaults, raise concerns regarding potential impacts on the competitive retail market. Such alternatives need to be more fully evaluated than can be accomplished in the context of this proceeding. This problem relates to the broad issue of OnTrack customers shopping and, as stated earlier, the Company does not believe that this is the appropriate proceeding in which to address this issue. As a practical matter, the Company does not, at this time, have enough understanding of the problem, its implications, and potential solutions to propose a course of action. The Company believes that its next Universal Services review (scheduled for 2013) and the sub-group working within the context of the Retail Markets Investigation to address universal services issues are more appropriate places to address this issue. However, the Company is concerned that encouraging additional shopping among the OnTrack population at this time may be unwise given the problems that have been identified.

PPL St. 4-S at 14-15. The OCA accepts Mr. Krall's modified recommendation. The OCA submits that the issue of CAP customer participation should be referred to the RMI universal service subgroup for further analysis and consideration.

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

The OCA takes no position on this issue.

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

a. RESA's Proposal for a Separate Charge Should be Rejected

In his Direct Testimony, RESA witness Kallaher proposes that a separate charge be implemented by PPL which would only apply to default service customers. RESA St. No. 2 at 40. According to witness Kallaher, such a charge is recommended due to the variability or uncertainty in estimating the currently unrecovered costs of providing default service or implementing retail market enhancements. *Id.* This charge would be 5 mils/kWh and the proceeds would be used as follows: 1) payment of any verifiable costs related to providing default service that have otherwise not been collected by PPL; 2) payment of costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction,

referral programs, and, 3) any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers. RESA St. No. 2 at 40. RESA also proposes that PPL be permitted to retain 10% of the revenues as profit. RESA St. 2 at 40. The OCA opposes this recommendation. As Mr. Hahn testified:

The proposed 5 mil/KWH adder is arbitrary and is not related to any cost for implementing default service or the retail market enhancements. The costs of providing default service are already collected via the GSC. The costs of the retail market enhancements should be paid for by competitive suppliers. So, this proposal simply collects money from default service customers, allows PPL to keep 10%, and flows the rest back to all customers whether they are default service customers or customers of EGSs.

OCA St. No. 2-R at 7. As explained above, the burden of proof as to this proposal rests with RESA and that burden has not been met. As such, the OCA submits that this proposal should be rejected.

The Public Utility Code provides in relevant part:

(a) Burden of proof.—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.³⁹

Because RESA is the party proposing a change which PPL did not propose in its filing, RESA has the burden of proving its proposal is just and reasonable and in the public interest.⁴⁰ In addition to satisfying the burden of proof, RESA must provide substantial evidence in the record as support for its case before the Commission.⁴¹ The OCA submits that RESA has failed in satisfying this burden.

³⁹ 66 Pa. C.S. § 332(a).

⁴⁰ See e.g. Pa. P.U.C. v. Metropolitan Edison Co., Docket No. R-00061366, Order at 117 (Jan. 11, 2007); Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2010-2215623, Order at 14-16 (Mar. 15, 2012).

⁴¹ 2 Pa. C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion

Regarding the revenue from RESA's proposed 5 mil/KWH adder, Mr. Hahn testified:

Using 2011 actual sales and PPL latest shopping statistics, I estimate that Mr. Kallaher's proposal to implement a 5 mil/KWH adder would generate \$49 million per year. Assume that PPL's retail market enhancements cost \$3 million. **If** PPL kept 10% of the balance of \$46 million, PPL would have \$4.6 million in higher profits. \$3.9 million of this amount would be paid by residential customers.

OCA St. No. 1-R at 7. Below, Figure 2-R bears this out.

Figure

2-R

ESTIMATED ANNUAL SURCHARGE REVENUE					
Customer Class	Est'd Annual MWH Sales ^[1]	% Load served by Alternative Supplier ^[2]	Est'd MWH served by Alternative Supplier	Est'd Default Service MWH	Annual Revenue from 5 mils per KWH charge on Default Service
Residential	15,384,087	46.10%	7,092,064	8,292,023	\$41,460,114
Small C/I	11,416,279	89.60%	10,228,986	1,187,293	\$5,936,465
Large C/I	10,141,361	97.30%	9,867,544	273,817	\$1,369,084
	36,941,727	73.60%	27,188,594	9,753,133	\$48,765,663

^[1] Response to I&E-I-9; PPL Energy 2011 FERC Form 1 Report
^[2] July 1, 2012 Electric Shopping Statistics

The OCA submits that such profits are not be justified by any costs or risks. Further, as Mr. Hahn explained, including an arbitrary adder in the cost of default service will result in higher default service rates, and the Company's DSP would no longer be consistent with a least-cost standard. OCA St. No. 1-R at 8. Furthermore, RESA's proposal, if adopted, would increase the Price To Compare, which would, in turn, allow EGSs offering a percentage discount off the PTC to achieve the minimum savings level at a higher price. Id. This would likely increase the costs to customers, including those who participate in the Retail Opt-In Auction or Customer Referral

of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Conn. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

Programs. As a result, the real effect of the RESA proposal would be to increase the power supply costs for both default service customers and customers who take advantage of the retail market. Mr. Hahn further testified that:

I also note that the RESA proposal applies the 5 mil/KWH adder to default service rates, but distributes any amounts remaining, after paying expenses and the PPL incentive, to all customers. Thus, this proposal will cause default service customers to subsidize customers who obtain power supply from an EGS. Default service customers will pay 100% of the costs but receive 60% or less of the remaining funds. This transfer of wealth or economic benefit is unsupported by any cost causation, is extremely inequitable, and discriminatory.

OCA St. No. 1-R at 9. Based on the above, the OCA submits that witness Kallaher's proposal should not be adopted.

PPL witness Yeager also testified that RESA's proposal should not be adopted. PPL St. No. 1-R at 14. Specifically, Ms. Yeager testified:

[I]t is PPL Electric's opinion that all costs of providing default service have been unbundled. Second, in response to Witness Kallaher's proposal for a 5 mills/kWh that would apply only to default service, PPL Electric already includes verifiable costs related to providing default service that have otherwise not been collected by the Company through the administrative charge as a component of the GSC. Also, the Company proposed in its March 2012 distribution rate case filing a Competitive Enhancement Rider which would be reconcilable and applied on a per customer basis to recover non-capital costs associated with consumer education, actions undertaken in response to the Retail Markets Investigation and other activities of a similar nature.

Id. at 14-15. Ms. Yeager, therefore, concluded that:

[T]he Company does not agree with witness Kallaher's proposal for a 5 mill charge as an "adder" to collect costs associated with the recovery of DSP-5 related costs. In the Company's judgment, it will have no costs to be recovered through the proposed 5 mill/kWh charge. As a result, the proposal will simply increase default service charges to provide decreases to distribution charges.

PPL St. No. 1-R at 15.

OSBA witness Knecht also opposed Mr. Kallaher's proposal as he testified:

Mr. Kallaher first claims that PPL Electric continues to include costs related to providing default service in its distribution rates. However, Mr. Kallaher does not identify any such cost items. Moreover, he does not demonstrate that such costs amount to 0.5 cents per kWh for all default service load, nor does he demonstrate that the cost per kWh is exactly the same for Residential, Small C&I and Large C&I customers. As such, Mr. Kallaher's proposal should be rejected as having no cost basis and being inconsistent with cost causation.

OSBA St. No. 2 at 13.

In his Surrebuttal Testimony, witness Kallaher defended RESA's position by stating that the charge may provide an additional incentive for customers to shop and work to create a robust and sustainable competitive market. RESA St. 2-SR at 28. However, these arguments are not persuasive and the OCA submits that they must be disregarded. The statutory basis of Act 129 is the recovery of the reasonable costs of default service, not the recovery of hypothetical adders designed to artificially increase the service rate.

b. RESA's Proposal is Prohibited by Applicable Law

The OCA submits that RESA has failed to carry its burden of proof on this issue, has failed to provide substantial evidence in support of its proposed 5 mil/kWh charge, and has failed to show that the inclusion of the charge in PPL's DSP II would result in just and reasonable rates.⁴² Further the adder is intended to collect illusory costs, which is specifically prohibited by law.⁴³

⁴² ALJ Susan D. Colwell succinctly captured the cost recovery structure of default service in a recent decision, stating: "A default service provider is entitled to full recovery of its costs because it is not permitted to make a profit on the cost of the commodity." Petition of PPL Electric Utilities Corp. for Approval to Implement a Reconciliation Rider for Default Supply Service, Docket No. P-2011-2256365, R.D. at 35 (April 4, 2012).

⁴³ See 66 Pa. C.S. § 2807(e)(3.9); Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985) (The Commission has no authority to permit the inclusion of hypothetical expenses not actually incurred in the ratemaking process); Cohen v. Pa. P.U.C., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983) (A utility may only pass along to customers those expenses it actually incurs; any other approach would permit the

The Public Utility Code provides, in relevant part:

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.⁴⁴

A plain reading of the statute indicates that the default service provider has a right to “recover” all reasonable costs “incurred.” This plain meaning of cost recovery as to a public utility is embedded in a number of significant decisions from the Pennsylvania Courts. Directly on point here, the Supreme Court of Pennsylvania provided that:

Although the Commission is vested with broad discretion in determining what expenses incurred by a utility may be charged to the ratepayers, the Commission has no authority to permit, in the rate-making process, the inclusion of **hypothetical expenses not actually incurred**. When it does so, as it did in this case, it is an error of law subject to reversal on appeal.⁴⁵

On this same issue of illusory costs, the Commonwealth Court of Pennsylvania has held that:

However, a utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customers under the guise of recovering operating expenses.⁴⁶

The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory “costs” are precluded from consideration in the rates that utility customers pay.

utility to gain a profit under the guise of recovering operating expenses). See also Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

⁴⁴ 66 Pa. C.S. § 2807(e)(3.9).

⁴⁵ Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985). (Emphasis added).

⁴⁶ Cohen v. Pa. P.U.C., 468 A.2d 1143, at 1150 (Pa. Commw. Ct. 1983). (Internal citations omitted); see also Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

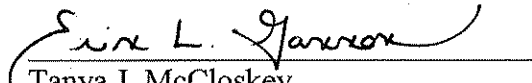
RESA failed to carry its evidentiary burden as to its proposed 0.5¢ per kWh adder. There is no support for the adder in the Public Utility Code or the controlling case law in Pennsylvania. As such, the OCA submits that the proposal must be rejected.

3. Requested Ruling Pursuant to 66 Pa. C.S. § 2102
4. Requested Waivers

IV. CONCLUSION

The OCA submits that, as proposed, PPL Electric Energy Company's Default Service Plan does not provide residential customers with a least cost, reliable and stable "prudent mix" of supplies as required under Pennsylvania law. The OCA submits that the proposed modifications detailed in this Main Brief will ensure that the legal requirements for the provision of default service are met, while increasing the opportunities customers have to receive additional benefits in the retail market. As such, the OCA submits that its proposed modifications should be adopted.

Respectfully submitted,


Tanya J. McCloskey
Pa. Attorney ID. No. 50044
E-mail: tmccloskey@paoca.org
Senior Assistant Consumer Advocate

James A. Mullins
Pa. Attorney ID No. 77066
E-mail: jmullins@paoca.org
Assistant Consumer Advocate

Erin L. Gannon
Pa. Attorney ID No. 84387
E-mail: egannon@paoca.org
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Facsimile: (717) 783-7152

DATE: October 5, 2012
161586

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of September 2012.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Regina L. Matz, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Michael W. Hassell, Esq.
Post & Schell, PC
17 North Second Street, 12th Fl.
Harrisburg, PA 17101-1601

David B. MacGregor, Esq.
Post & Schell, PC
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808

Matthew J. Agen, Esq.
Post & Schell, P.C.
Suite 600
607 14th Street NW
Washington, DC 20005-2006

Todd S. Stewart, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Paul E. Russell, Esq.
PPL Electric Utilities Corp.
2 North Ninth Street
Allentown, PA 18101

Charles E. Thomas III, Esq.
Norman J. Kennard, Esq.
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Daniel Clearfield, Esq.
Deanne O'Dell, Esq.
Carl Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101

Pamela C. Polacek, Esq.
Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Divesh Gupta, Esq.
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503

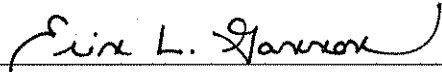
Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Patrick M. Cicero, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Melanie J. Elatieh, Esq.
UGI Corp.
460 North Gulph Rd.
King of Prussia, PA 19406

Amy M. Klodowski
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601


Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066
E-Mail: JMullins@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
156349