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**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
PO Box 3265  
Harrisburg, PA 17105-3265

**Re:** Petition of PPL Electric Utilities Corporation for Approval Of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015: Docket No. P-2012-2302074; **MAIN BRIEF DOMINION RETAIL, INC. AND INTERSTATE GAS SUPPLY, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Main Brief of Dominion Retail, Inc. and Interstate Gas Supply, Inc. This filing has been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact undersigned counsel.

Very truly yours,

Todd S. Stewart  
*Counsel for Dominion Retail, Inc. and  
Interstate Gas Supply, Inc.*

TSS/alh

Enclosures

cc: ALJ Susan D. Colwell

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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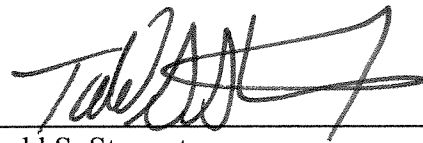
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Date: October 5, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MAIN BRIEF OF  
DOMINION RETAIL, INC. AND INTERSTATE GAS  
SUPPLY, INC.**

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DATED: October 5, 2012

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## **I. Introduction**

### **A. Summary and Statement of Position**

PPL Electric Utilities Corporation's ("PPL") Default Service Plan ("DSP") focuses on two (2) general categories: procuring energy for default service supply for the period June 1, 2013 through May 31, 2015; and, improving the competitiveness of PPL's Retail Markets during that same time period and into the future. These two (2) issue areas are necessarily interrelated, in that the procurement plan itself can have a dramatic and lasting impact upon the competitiveness of the market, while conversely, the competitiveness of the market can have a dramatic impact upon the need to procure default service supply in the first instance.

In its recent (and once definitive) Order on the subject of improving the competitiveness of Pennsylvania's retail electricity markets, *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*"), the Pennsylvania Public Utility Commission ("Commission") recognized the interrelatedness of these elements. In the *IWP Order*, the Commission proposed a number of competitive enhancements that were intended to incentivize significant migration of customers from Default Service to service provided by competitive suppliers such as Dominion Retail d/b/a Dominion Energy Solutions ("DES") and Interstate Gas Supply d/b/a IGS Energy ("IGS") (collectively "EGS Parties"). The *IWP Order* made a number of recommendations including a competitive Retail Opt-In Auction program ("ROA") and a standard offer referral program ("SOR").

The *IWP Order* proposed an ROA that employed an auction process to set the final discount off the Price to Compare ("PTC") that customers would receive, with the minimum discount set at five percent (5%). EGS Parties would thus bid for the right to make offers to tranches of default service customers who are eligible to participate in the program. The

“product” would be a six (6) month offer at a fixed price, established by the bidding process, for the entire six (6) months, with customers that stay on the rate receiving a fifty dollar (\$50.00) bonus or rebate after three (3) billing cycles. The *IWP Order* proposed a standard offer product of one (1) year duration at a minimum seven percent (7%) discount. Neither of these programs would allow for early termination fees or other switching restrictions. In both instances, the Commission proposed that the cost of the programs be recovered from electric generation suppliers participating in the programs.

In an apparent effort to comply with a strict interpretation of the *IWP Order*, PPL proposed an ROA with a six (6) month term at a minimum five percent (5%) discount, including an auction utilizing an RFP methodology, and including the fifty dollar (\$50.00) bonus after three (3) billing cycles. PPL also proposed an SOR at a seven percent (7%) discount off of the effective PTC in the month in which the customer took the service with a six (6) billing cycle product with no early termination fees or other switching restrictions. PPL proposed to recover the “upfront” auction costs from all suppliers bidding in the ROA and to recover any post-auction costs from suppliers that actually win customers. Finally, and critical for suppliers, PPL proposed semi-annual reconciliation of its default service costs.

While the EGS Parties agree with much of what PPL has proposed in this case in a general sense, including support for PPL’s procurement proposal, they do take issue with various important components, including, notably, PPL’s proposal to extend its current quarterly reconciliation method, its cost recovery proposals and other discrete aspects of PPL’s competitive enhancement proposals. Post August 16, 2012, however, it appears that the *IWP Order* is no longer definitive with regard to many aspects of default service plans.

On August 16, 2012, the Commission issued an Order in the matter of *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company*

*and West Penn Power Company for Approval of Their Default Service Programs*; Docket Nos. P-2011-2273650, *et seq.*, (Opinion and Order entered August 16, 2012) (“*FE Order*”). In the *FE Order*, the Commission did away with the auction component of the ROA and instead created a program that looks more like an aggregation or assignment of customers to suppliers that are willing to participate. The product also was changed from a six (6) month product at a minimum of five percent (5%) discount to a one (1) year product with two (2) separate pricing components. The initial component would be a four (4) month product at a fixed five percent (5%) discount off the PTC at the time of the offer, followed by an eight (8) month fixed-price product (no discount or price level specified) and with the Commission reviewing the terms and conditions. The *FE Order* also standardized the standard offer referral program at a seven percent (7%) discount, one year product. Finally, the Commission endorsed FirstEnergy’s proposed continuation of its quarterly reconciliation.

At the time, it was not possible to determine whether the *FE Order* was intended by the Commission as the standard for all yet-to-be decided default service plans, or whether the substantial deviation from the *IWP Order* was specifically related to FirstEnergy’s particular situation. As a consequence, in the rebuttal phase of this case, the EGS Parties’ witness, William L. Barkas, submitted testimony on how to best adapt the *FE Order* to make it acceptable and workable for the PPL service territory. This testimony was offered as an alternative, only if the Commission determined that the *FE Order* was to become the standard default service model for the state.

On September 27, 2012, the Commission removed most doubt, when it conducted a binding poll to aid it in resolving the default service plan of PECO Energy Company, *Petition of PECO Energy Company for Approval its Default Service Program II*, Docket No. P-2012-2283641 (“PECO”). The result of the binding poll and the two motions of Commissioner

Pamela Witmer, was to reinforce the notion that the *FE Order* was indeed to be the standard. That is, through Commissioner Witmer's motion, the Commission converted PECO's proposed ROA into the same sort of aggregation program as required in the *FE Order*, and rejected PECO's attempt to modify its reconciliation to an annual reconciliation model, instead imposing quarterly reconciliation. The Commission again standardized the standard offer referral program at a one (1) year seven percent (7%) discount product. Importantly however, through Commissioner Witmer's motion, the Commission suggested that cost recovery for the retail enhancements could be had from customers as well as from suppliers and left the resolution of that issue to a collaborative to be held among interested parties. In that same vein, however, the Motion reinforced the *FE Orders'* implication that the Commission has serious reservations about recovery of competitive enhancement costs exclusively from suppliers and particularly, as upfront "pay to play" costs.

It would appear therefore, based upon these two (2) points of reference, the *FE Order* and now the impending PECO, that the Commission has drawn a line, which appears to be pointing in the direction of standardization. It also would appear that the Commission intends to use those decisions as the scale against which it will measure the two (2) remaining default service cases, including the instant matter. Consequently, while this brief will reflect the EGS Parties position in the absence of the *FE Order* or PECO and motions, it will also focus on addressing those items where the EGSs believe the result here should differ, if at all, from the *FE Order* and PECO results, based upon Mr. Barkas' Rebuttal and Surrebuttal testimony, in order to make them more palatable to the EGSs Parties.

The EGS Parties offer the following by way of summary of their positions on the issues:

- With regard to PPL's proposal to modify its current quarterly reconciliation to a semi-annual process, Mr. Barkas testified on direct (Dominion/IGS Statement No. 1, p. 4:17-

6:21) that the EGS Parties continue to believe that quarterly reconciliation produces rates that are market responsive and allow for the most accurate comparison of EGS offers and the PTC. Quarterly reconciliation was approved both in the *FE Order*, and was imposed in PECO as well.<sup>1</sup>

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- With regard to PPL's proposal to delay the implementation of the competitive enhancements until the end of 2013, as opposed to the June 2013 time frame, due to some overhanging contracts that result from its current DSP, Mr. Barkas was not convinced that a delay is required and PPL has failed to provide any convincing evidence of any harm that will result from implementing the programs at an earlier date. (Dominion/IGS Statement No. 1, p. 6:3-7:8).
- PPL proposed a six (6) month fixed price ROA program at a minimum five percent (5%) discount, that would begin December 1, 2013 and would continue for six (6) months with customers receiving their fifty dollar (\$50.00) cash payment after three (3) billing cycles. The ROA proposal included a cap on the number of participating customers at fifty percent (50%) of the non-shopping customers and would allow any single supplier to win up to fifty percent (50%) of the eligible customers. PPL also proposed that suppliers be required to pay some portion of the auction costs up front based upon the number of EGS's participating and then require the remainder of the cost to be paid only by the winning bidders. (Dominion/IGS Statement I p. 8:4-10:13). The EGS Parties, through their witness Mr. Barkas', testified that there were a number of problematic components of PPL's proposal, including cost recovery which would require suppliers to pay upfront costs before even obtaining customers in this program. Based upon the *FE Order* (and PECO), it appears that the Commission now agrees that requiring suppliers to pay to

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<sup>1</sup> *FE Order*, slip op., p. 98.

play, by paying program costs upfront could be problematic.<sup>2</sup> The EGS Parties believe that those costs should be shared by customers and the suppliers that actually win customers in the auction. The EGS Parties also are concerned with the six (6) month period of the contract and believe that a one (1) year period would be more effective given the fifty dollar (\$50.00) bonus payment. Likewise, with the standard offer referral program, PPL had also proposed a six (6) month product which was opposed by the EGS Parties who sought a twelve (12) month product at a seven percent (7%) discount. The EGS Parties believe that a one (1) year duration contract for this program would have been more realistic. (Dominion/IGS St. No. 1, p. 12:8). In his rebuttal testimony, Mr. Barkas notes that the Commission has now eliminated the auction concept and believes that costs of the ROA should be minimalized due to the lack of an auction and the simplicity of the program. (Dominion/IGS St. No. 1-R, p. 5:1-14) The EGS Parties do not take issue with the product that now appears to be standard, namely the four (4) month and the eight (8) month components, except that they continue to be concerned that by allowing any supplier to participate, not having been tested in an auction process, creates a very substantial risk of assigning customers to suppliers who may not be financially able to pay the fifty dollar (\$50.00) bonus at the end of four (4) months. (Dominion/IGS St. No 1-R, p. 4:5-20).

- As a consequence, the EGS Parties believe that it is necessary for the Commission to require additional financial security for suppliers participating in the program, in the form of a cash deposit or performance bond, to ensure that the suppliers are able to meet the obligation to pay the fifty dollar (\$50.00) bonus for all of the customers assigned to them under the program. (Dominion/IGS St. No. 1-R, p. 4:5-20). Likewise, Mr. Barkas is

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<sup>2</sup> *FE Order*, slip op., pp. 136-137.

seriously concerned about the lack of transparency for the eight (8) month fixed price component, and believes that participating suppliers should be required to post their price for that component on the Commission's website at the same time they provide that rate to customers as part of the initial terms and conditions. (Dominion/IGS St. No. 1-R, p. 4:5-20). With these posting and notice requirements, customers have the maximum amount of time and transparency as to the price that they will be charged for that eight (8) month component, and will have the ability to review other offers that are available to them in the market place. This type of transparency provides discipline to the market and should prevent suppliers from seeking to impose higher than acceptable market rates for the eight (8) month product.

- Without these protections, Mr. Barkas is concerned that this type of program will have the potential to cause customers to “sour” on competition. It cannot be forgotten that this product will bear the imprimatur of the Commission and the EDC, and if the prices are not somehow disciplined by a transparent market with adequate notice to customers the consequences could be dire. (Dominion/IGS St. No 1-R, p. 4:5-20).
- The recent motion in PECO appears to have left open the opportunity that customers should share some of the costs in these market enhancements. That issue will be addressed in a collaborative process. The EGS Parties continue to believe that the best cost recovery mechanism is a sharing of the costs of the ROA program as between suppliers and customers. For referral programs, however, which are more single customer focused, the EGS Parties could agree to a per-customer switch fee. (Dominion/IGS St. No. 1-R, p. 4:23-5:14).

## **B. Background Information and Procedural History**

On May 1, 2012, PPL filed a Petition with the Commission seeking Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 (“PPL Petition”). On May 19, 2012, a notice of the Petition was published in the *Pennsylvania Bulletin*, 42 Pa. B. 2871, along with Notice of a Prehearing Conference that was scheduled for June 6, 2012. Timely Petitions to Intervene and/or Notices of Appearance were filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Sustainable Energy Fund, and jointly by IGS and DES, among others. The Prehearing Conference was held as scheduled, and a litigation schedule was agreed upon, which included the submission of prepared direct, rebuttal and surrebuttal testimony, and outlines of intended rejoinder.

Three (3) days of hearings were held at which witnesses were cross-examined on their pre-filed testimony. October 5, 2012 was set as the date for Main Briefs to be filed. This Brief is filed in compliance with that requirement.

## **II. Summary of Argument**

The EGS Parties generally supported the program as filed by PPL, with the notable exception of cost recovery, product length and reconciliation. PPL’s positions on these issues (except for reconciliation) were arguably compliant with the specifications of the Commission’s *IWP Order*. However, the world has changed, with the *FE Order*, and the new standard that it appears to have created, and PPL’s plan is now out of synch and is likely to be adjusted in ways that the EGS Parties support, with a few *tweaks*. Importantly, the Commission should reject PPL’s semi-annual reconciliation proposal and modify its cost recovery so that customer share in the costs of the ROA. The Commission also should consider carefully PPL’s proposal to delay

implementation of competitive enhancements. Otherwise, whether the Commission approves the PPL plan as the EGS Parties have proposed that it be modified, or whether it imposes the new standard, with the EGS Parties' tweaks, the EGS Parties are mostly indifferent, except that there are certainly benefits to be had from standardization.

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### **III. Argument**

#### **A. Legal Standards**

##### **1. Burden of Proof**

As the proponent of a rule or order, PPL bears the burden of proving that its proposed default service plan is in the public's best interest, 66 Pa. C.S. § 332(a), and that all of its proposals satisfy the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2807(e), *et seq.*, the Commission's Default Service Regulations 52 Pa. Code § 54.181, *et seq.*, as well as the Commission's recent guidance in its Retail Markets Investigation proceedings. *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*"). More importantly, however, it now appears that the standard for review of such plans has shifted in the course of this proceeding and now includes the *FE Order* and the yet to be formalized results of the binding poll conducted on September 27, 2012 in the PECO default service plan.

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

Due to the complexity of this matter and the diversity of issues, it is not possible to make a blanket statement as to PPL's satisfaction of the burden of proof. In some areas, as identified

herein, PPL has provided sufficient evidence, and in others it has failed to carry its burden of proof.

## **2. Standards Applicable To Default Service**

The legal standards that apply to default service begin with the fundamental tenants of the Pennsylvania Public Utility Code that any rate charged by a public utility be just and reasonable and that service be provided in manner that is reasonable and not unduly discriminatory. (66 Pa. C.S. §§ 1301, 1501 and 1304, respectively). There are requirements specific to default service found at 66 Pa. C.S. §§ 2807(e), *et seq.*, as well as the Commission's Default Service Regulations at 52 Pa. Code § 54.181, *et seq.*. Finally, parties may rely, at least in some respects, upon the Commission's guidance in its Retail Markets Investigation proceedings, and its *IWP Order* in particular. Based upon recent decisions regarding two (2) separate default service plans, however, it now appears that the standard for review of such plans has shifted and now necessarily includes the *FE Order* and the yet to be formalized results of the binding poll conducted on September 27, 2012, in the PECO default service plan.

Taken together these requirements demand default service at prices that are just and reasonable, while still meeting the objective of creating a robust competitive market for retail electricity sales.

### **B. The Proposed Default Service Program**

#### **1. Class Procurements – Residential and Small C&I**

PPL intends to procure its entire incremental load for residential and small commercial customers through fixed-price load following supply contracts. (PPL Statement No. 1, pp. 6-7). PPL has a number of longer term contracts from DSP I that will continue into the DSP II timeframe. (Exhibit JC-1). PPL will bid separately but in a similar process for purposes of its Time of Use ("TOU") load as well. These solicitations will begin on a semi-annual cycle

beginning April 2013 and continue through October of 2014. These contracts will be twelve (12) and nine (9) month contracts with the exception of the last round of contracts in 2014 which will be six (6) and three (3) month contracts in order to lessen the overhang of these contracts after the close of the plan. PPL has a number of contracts that presently overhang into 2015 and in some cases, beyond.

Mr. Barkas, EGS Parties' witness, believes that PPL's proposed procurement plan provides time diversity by procuring power on a semi-annual basis, over the period of the plan. This means there will be a total of four (4) procurements during the DSP II period, with a product mix of twelve (12) and nine (9) month contracts. Mr. Barkas contends that this arrangement will allow the influence of changing market prices to be reflected in the rates while still providing fairly stable rates over the default service period. Mr. Barkas believes that more stable rates will allow suppliers to make competitive offers to customers on a basis that is more relevant to the customer since suppliers typically offer longer term fixed-price contracts in the range of a one (1) year or longer period. This should aid in providing a more comfortable transition for more customers into the competitive market through a more comparable pricing mechanism. Moreover, PPL's proposal will limit any additional overhanging contracts which could potentially impact whatever end state the Commission might design for the period following the 2015 expiration of the DSP II Plan. (Dominion/IGS St. No. 1, p. 3:19-4:9).

Mr. Barkas re-iterated these points in response to the testimony of the OCA's witness, Mr. Hahn, in which he suggested including significant amounts of block and spot power in PPL's procurement plan. Mr. Barkas responded as follows:

Due to the nature of the products being provided through the retail enhancements and the timing of those products, I continue to believe that minimizing contract overhangs and eliminating the volatility that can be associated with block and spot products is the best solution for customers in the PPL market.

(Dominion/IGS St. No. 1-SR, p. 2:5-8). The EGS Parties support PPL's procurement plan and believe that elimination of block and spot purchases are essential to encouraging customers to feel safe about entering the competitive market. The Commission appears to share this view. In the *FE Order*, and as part of the binding poll in PECO, it rejected the attempts of the OCA and others, to force the inclusion of block and spot purchases into the procurement plans.<sup>3</sup> It should do so here as well.

- a) **Residential - Fixed Rate**
  - (1) Product Mixture
  - (2) Procurement Schedule
  - (3) Wholesale Supplier Load Cap
- b) **Small C&I - Fixed Rate**
  - (1) Product Mixture
  - (2) Procurement Schedule
  - (3) Wholesale Supplier Load Cap
- c) **Large C&I - Real-Time Hourly Rate**
  - (1) Product Mixture
  - (2) Procurement Schedule
  - (3) Wholesale Supplier Load Cap
- d) **Contract Terms Beyond May 31, 2015**
- e) **AEPS Procurement**
  - (1) Transfer of AECs
  - (2) Alternative Compliance Payment
- f) **Administrative Costs and Cash Working Capital**

## 2. Rate Design

- a) **Residential and Small C&I Customer Classes - Fixed Rate Option**
  - (1) Frequency of Rate Changes
  - (2) Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW
- b) **Residential and Small C&I – Reconciliation**

PPL has proposed to reconcile its residential and Small C&I rates on a semi-annual basis. This position is contrary to what appears now to be the standard, endorsed in both the *FE Order* and in Commissioner Witmer's Motion in PECO.<sup>4</sup> Importantly, in PECO, the Commission

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<sup>3</sup> *FE Order*, slip op., pp. 24-27.

<sup>4</sup> *FE Order*, slip op., p. 98.

adopted Dominion and IGS's position that quarterly reconciliation is appropriate (PECO had proposed annual reconciliation) and that the goal of smoother default service rates should not trump market reflectiveness. That view is consistent with Mr. Barkas' testimony in this case where he states:

Under the circumstances, I still believe that the quarterly reconciliation process is superior and should continue to be used. The purpose of the quarterly reconciliation is to pass on market price influences to customers through a changing PTC. While it is likely that PPL's new procurement plan may reduce some volatility due to the elimination of block and spot purchases, the wholesale prices for the full requirements products will continue to move up or down in step with the market prices at the time of the solicitations. By switching to a six (6) month reconciliation using a twelve (12) month rolling average, any of these market price influences will almost totally be eliminated. That is, the market tracking effect of having nine (9) and twelve (12) month procurements spread over four procurements during the default service period will largely be absorbed by the twelve (12) month rolling average reconciliation coupled with only two (2) price changes per year, thus eliminating the potential market responsiveness of the PTC. Under PPL's proposal there could be entire six (6) month periods where actual market prices increase significantly but the PTC changes so slowly, if at all, so that some suppliers may be unable to make competitive offers to customers. We find this possible result to be unacceptable. We would prefer to continue the quarterly reconciliation.

(Dominion/IGS St. No. 1, p. 4:17-5:13). What is clear is that the longer the time period over which rates are reconciled, the smoother those rates are likely to become. While this smoothing may seem important in response to PPL's historic inability to reconcile, from an accounting perspective, in a manner that did not inject artificial volatility into the E-Factor, the Commission has initiated a separate process that appears poised to address those issues.<sup>5</sup> There is little room to dispute the idea that absent accounting volatility, shorter term reconciliation produces more market reflective rates, better price signals to customers, and a better basis for rate comparisons with competitive offers. The Commission appears to have recognized these facts. PPL's reconciliation proposal should be rejected in favor of its current quarterly methodology.

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<sup>5</sup> *Default Service Reconciliation Interim Guidelines*, Docket No. M-2012-2314313 (Order entered August 14, 2012).

- e) Large C&I Customer Class – Rates
  - d) Large C&I Customer Class – Reconciliation
  - e) The Green Power Program
  - f) Optional Monthly Pricing Service
  - g) Price to Compare Calculation Date
  - h) Recovery of Transmission and Other Related Charges
- 
- (1) Costs to be Included in the TSC or GSC
  - (2) Non-Bypassable Structure
  - (3) Reconciliation
- 3. Time of Use Rate Option
    - a) Design
    - b) Procurement
  - 4. Other Default Service Program Issues
    - a) Supply Master Agreement and RFP Process and Rules
      - (1) Revisions to the Supply Master Agreement
    - b) Third-Party Manager
    - c) RTO Compliance and Consistency
    - d) Contingency Planning
    - e) Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

### **C. Retail Market Enhancements and Customer Referral Programs**

PPL has proposed to implement a number of competitive enhancements including a new/moving customer referral program in the third quarter of 2012, a customer referral mailing in the second or third quarter of 2013, which is not one of the competitive enhancements suggested by the Commission in the *IWP Order*, the ROA to be conducted in late November or early December 2013 and it proposes to commence an ongoing SOR in early to mid-2014. As a general matter, the EGS Parties support the implementation of these programs, subject of course, to the modifications discussed below.

As Mr. Barkas discusses in his Direct Testimony, such enhancements are needed, even in PPL's territory:

Dominion Retail began to serve customers immediately upon the expiration of the rate caps on January 1, 2010. And while we saw impressive initial customer migration that produced one of the more vibrant competitive markets in the country, in more recent times, as the price differential between PPL's PTC and the market prices has declined, so has the number of customers participating in the competitive market. The migration rates of late are neutral or negative. This

trend has been compounded by the fact that PPL has been aggressively seeking to implement initiatives that will cause customers to return to default service or remain there, including a proposed migration rider and an annual reconciliation proposal. These types of initiatives harm competitive markets by locking customers in to default service and by creating uncertainty for suppliers. At the time the Commission is considering whether to implement enhancements to make the market better, it should also make sure that it eliminates any structural impediments that PPL has sought to put in place prior to the implementation of the competitive enhancements. If competition is to become the standard mode of service for customers and default service is only supposed to be a last resort type service in the future, these types of aggressive EDC customer retention programs must not be tolerated by the Commission. In this filing, however, with the exception of its reconciliation proposal, PPL appears to be more in step with the Commission's goal of moving customers to a competitive market, albeit with a few necessary tweaks along the way.

(Dominion/IGS St. No. 1, p. 2:6-3:2). The record is clear then, competitive enhancements are necessary and should be implemented with all due haste.

### **1. New and Moving Customer Program**

The EGS Parties support the implementation of a new and moving customer referral program at the earliest possible date in order to provide those customers with the opportunity to select competitive supply as a first option. When the Standard Offer program is eventually implemented, and during its existence, it seems that it would be confusing to continue to operate both, and the EGS Parties submit that combining the programs appears to be the most efficient approach. The EGS Parties offer no other position on this issue at this time.

### **2. Customer Referral Mailing**

PPL has proposed a customer referral program that is similar to a program currently underway in the FirstEnergy Service territories where FirstEnergy mails letters on its letterhead, using its envelopes and which contains 5x8 flyers containing offers from a number of suppliers who are willing to participate in the program. The major difference is that PPL initially proposed that the entire cost of this program be borne by the suppliers. This stood in stark contrast to the FirstEnergy case, where FirstEnergy agreed to recover the first \$2.25 million from

customers through its customer education rider. (Dominion/IGS St. No. 1, p. 7:13-23). In his Rebuttal Testimony, however, Mr. Krall conceded that PPL would consider recovery of the cost of this program through its education rider, if additional information regarding choice were also included in the mailing. (PPL St. No. 3-R, pp., 45:11-46:4). The EGS Parties agree that this is the appropriate approach and commend PPL for its compromise on this issue. All customers will benefit from the combination of low intensity education and shopping opportunity that this program will provide. Accordingly, it is appropriate to recover these costs as an education expense.

### **3. Opt-In Auction/Aggregation Program Design**

PPL has proposed to implement an ROA program in late November or early December of 2013 based upon its visibility into the PTC for the period after December 1, 2013. The product would be a six (6) month, fixed price contract at a minimum five percent (5%) discount off of the December 1, 2013 PTC, but the actual discount would be set through a clearly defined price methodology based upon the auction results. Under the proposed program, customers would receive a fifty dollar (\$50.00) cash payment after three billing cycles. PPL also proposed to cap the number of participating customers at fifty percent (50%) of the non-shopping customers. PPL proposes that the program be marketed only to default service customers, that is, customers not presently shopping, but if customers who were shopping wanted to participate, they would be permitted to do so without first having to return to default service, and those customers would not affect the fifty percent (50%) customer participation cap.

PPL has proposed that participating EGSs be required to sign a bidding agreement that would bind them to pay the pre-auction costs upfront based upon the number of EGS participants and that these costs would be nonrefundable under any circumstances. Under the same

agreement, PPL would require only the winning suppliers to pay the post-auction costs, which would be spread over the winning EGSs on a pro-rata basis. PPL also proposed a step up program such that if an insufficient number of bidders actually bid in the auction, any successfully bidding EGSs could be allowed to increase the number of tranches that they would serve, up to the fifty percent (50%) customer cap, at the same clearing price.

Mr. Barkas expressed concern with the six (6) month period for the ROA contract and PPL's insistence on the fifty dollar (\$50.00) bonus payment even though the contracts will be a six (6) month period. Mr. Barkas reasoned that a six (6) month contract period is too short, and gives suppliers precious little time under the initial contract even to attempt to recover the fifty dollar (\$50.00) bonus payment outlay. Mr. Barkas proposed a more reasonable time period as a one (1) year initial contract, if the fifty dollar (\$50.00) bonus payment is to be required. Customers would still be free to migrate if they can find a better offer, but the longer term gives suppliers at least some additional level of certainty that a satisfactory level of customers will remain at the offer price and allow them to recoup their initial investment.

The EGS Parties view appears to have the support of the Commission, at least in terms of the total length of the product. As discussed above, the Commission modified the product in both recently decided DSP cases, to a one (1) year product with two fixed price components: 1) a four (4) month component at a five percent (5%) discount off the PTC at the time of the offer, and an eight (8) month component without a specified price. The Commission retained the fifty dollar (\$50.00) bonus payment but required that a customer remain on the service for the entire four (4) month segment in order to receive it. Perhaps the most dramatic change is the elimination of the auction process. Customers will be assigned to suppliers that are qualified, i.e., licensed in the service territory, and willing to participate. (Dominion/IGS St. No. 1-R, pp.

2:1-3:10). While this process will certainly allow for broader supplier participation and more supplier diversity, it comes with some additional concerns as well. Those concerns relate to the financial ability of suppliers to meet their obligation to pay each customer the fifty dollar (\$50.00) bonus payment, and the need for transparency in the pricing, particularly for the eight (8) month period, since it appears that there will be no regulation of the price of that offering. The market discipline that transparency brings should aid greatly in making sure that the prices are not out of the range of the market.

As discussed above, with the inclusion of some additional safeguards, the EGS Parties are happy to accept the Commission's modifications. The Commission should require suppliers to post additional security up to the total amount of the fifty dollar (\$50.00) bonus payments, and should require the posting of an EGS's eight (8) month price on the PaPowerSwitch.com website and should require that customers be provided with the price at the time they are enrolled. (Dominion/IGS St. No. 1-R, p. 4:4-20). With these modifications, the product and program design should be approved as modified in the *FE Order*.

#### **4. Standard Offer Program Design**

Through the testimony of its witness, Mr. Krall (PPL St. No. 4, pp. 25-32), PPL proposed a Standard Offer Referral Program ("SOR") that would provide customers with a seven percent (7%) discount off the then current PTC for a six (6) month billing cycle contract period. The SOR would be run on a monthly basis through the end of May 2015 and would require EGSs to actively elect to continue on a monthly basis and they would be required to adjust their offers to reflect a seven percent (7%) discount off any new PTC as it would change during the course of the program, but would not be required to adjust offers going forward, once accepted. Customers would be able to choose a particular EGS or could be randomly assigned to a supplier

off the list of EGSs participating in any particular month. The contracts could be canceled anytime with no penalties, and at the end of the program customers would have offers and options similar to any customer today, they would receive the standard two notices and would remain with the EGS on a month to month basis with no cancellation fee if they did nothing.

PPL proposed to notify EGSs once a customer was assigned via an outbound 814 EDI enrollment transaction, with the start date as the next scheduled meter reading date. The EGS would be required to provide the customer with its terms and conditions including the date by which the customer would be required to take action at the end of the program in order to exercise their options. However, as stated above, at the end of the program, absent affirmative action by the customer, they would remain with the EGS on a month to month basis. (Dominion/IGS St. No. 1, pp. 10:18-11:16). The only concern, apart from cost recovery, discussed by the suppliers, was that the program was too short and that a one (1) year program would be more appropriate.

It would appear that the Commission again agreed with the EGS Parties' position, because in the *FE Order*, and in the PECO, it required/approved SOR programs of one (1) year duration. A shorter program reduces the benefits to suppliers by increasing their costs at the end of the program and increasing the risk of migration at the end of the shortened program. The Commission's *IWP Order* proposed a range of program lengths from six (6) months to one (1) year, and the Commission has since endorsed two one (1) year programs, over the objections of a number of parties. The EGS Parties believe that the outcome here should be the same.

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

PPL asserts that because it has a number of fixed-price contracts under its current DSP I Program that do not expire until November of 2013 (indeed it has contracts that extend well past

2015), and because it simply refuses to implement any program that would actively shift customers from default service prior to the expiration of that series of contracts, that such a schedule is necessary. Moreover, PPL argues that its ROA should precede the SOR because the ROA is a one-time program which could, if it were to be conducted after the SOR began, cause customer confusion. Finally, PPL does not believe that it could complete the programming necessary for its SOR until early 2014. (Dominion/IGS St. No. 1, p. 6:16-7:8).

The EGS Parties' witness does not believe that PPL's approach is entirely unreasonable. However, with particular regard to the ROA, Mr. Barkas believes that PPL could conduct the auction earlier if it chose to do so. In the record of this matter, PPL has failed to show that the overhanging contracts would be negatively impacted, even if the program were completely successful and all fifty percent (50%) of the remaining non-shopping customers were transitioned to competitive suppliers. Accordingly, the Commission may wish to consider accelerating the time frames.

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

For the referral program PPL would require that the suppliers pay 100% of the costs. The upfront costs would be paid pro rata by all suppliers who would participate in the auction and the remaining costs by only those suppliers that are awarded customers. The EGS Parties contend that if suppliers were to be required to pay any portion of the costs, the costs should be borne entirely by the winning suppliers on a pro-rata basis. It is only the winning suppliers, that is, suppliers who actually obtain customers through the ROA process, that actually obtain the customer base necessary to recoup the investment in obtaining those customers in the first instance.

It appears, however, that with the standardization evidenced by the *FE Order* and PECO, that the Commission has moved away from high cost auctions and instead opted for an assignment program. Such a program should have much lower upfront costs, thus lessening the burden. Much like the customer referral mailings discussed above, these types of mass marketing programs benefit customers by giving them information about market prices and a safe opportunity to shop. Accordingly, customers should be required to shoulder at least some portion of the costs of these types of programs. A reasonable sharing of costs remains the best means of financing these programs. Even the Commission appears to be reconsidering its stance. (PECO, Witmer Motion). The EGS Parties believe requiring suppliers to pay for all of the costs may dampen participation in the process and accordingly, submit that customers should share in the costs.

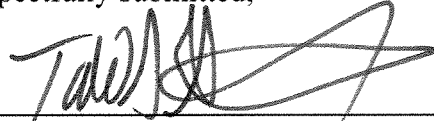
For the SOR, PPL intends to determine the costs on an annual basis, retroactively for the prior year, and to then assign those costs to the suppliers who participated over the year based upon the ratio of the annual total number of participating suppliers over the annual total of monthly supplier participation. PPL has proposed to recover only noncapital costs from participating EGSs, however, and intends to capitalize the approximately \$3 million in programing costs to allow the functionality for this type of program to occur, and recover those dollars from all customers through rate base. The EGS Parties support PPL's cost recovery proposal as reasonable.

7. CAP Customer Participation in the Retail Market Enhancements
- D. Additional Issues
  1. Issues for CAP Customers Currently Served by EGSs
  2. Proposed 5 mils/kWh Charge Added to Default Service Rates
  3. Requested Ruling Pursuant to 66 PA. C.S. § 2102
  4. Requested Waivers

#### IV. Conclusion

The EGS Parties support much of the PPL DSP, except as specifically described herein, and it is Testimony in this matter. If the Commission continues on its expected path, the EGS Parties have provided some tweaks that should make that path smoother and less risky for all. With these changes, the EGS Parties recommend adoption of PPL's proposal as modified.

Respectfully submitted,



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