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Via Electronic Filing

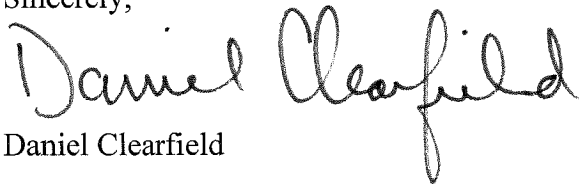
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") attached please find its Main Brief which was electronically filed today with the Public Utility Commission with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/lww
Enclosure

cc: Hon. Susan Colwell, w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Summary and Statement of Position

This case is extremely important for a number of reasons. First, as the Commission is well aware, the outcome here will impact a significant number of consumers in the Commonwealth. PPL Electric Utilities Corporation's ("PPL" or "Company") service territory has a high level of competitive activity but, despite this, a material number of customers, and a majority of residential customers and significant number of small business customers, still are not shopping. The persistence of significant numbers of customers remaining on default service – even in the service territory where shopping has been the most robust – shows that the heightened efforts are required by the Commission “to ensure that a properly functioning and workable competitive retail electricity market exists in [the PPL service territory].”¹

Second, this proceeding is the first that will be reviewed by the Commission after its major policy pronouncements in both the FirstEnergy² (“FE”) and PECO Energy Company³ (“PECO”) DSP cases as well as the Commission’s release of its long awaited RMI End-State directives.⁴ Thus this case takes on special significance because it becomes the vehicle to both

¹ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011. at 2. For ease of reference this proceeding is referred to as the “Investigation” or “RMI.”

² *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 No. P-2011-2273650, et. seq. , Opinion and Order entered August 16, 2012 (“*FE DSP II Order*”), *reconsideration granted in part*, Opinion and Order entered September 27, 2012 (“*FE DSP II Reconsideration Order*”).

³ *Petition of PECO Energy Company for Approval Of Its Default Service Program*, Docket No. P-2012-2283641, Statement of Commission Witmer on Issue 11, Motion of Commissioner Witmer on Issues 14, 26 and 27, Motion of Commissioner Witmer on Issue 22, and Binding Poll entered and conducted on September 27, 2012 (“*PECO DSP IP*”).

⁴ Office of Competitive Market Oversight (“OCMO”) plans to submit a Tentative Order for the November 8, 2012 Public Meeting, setting forth a proposal for the end state of default service and addressing various related issues such as those identified in the RMI Secretarial Letter of September 27, 2012. RESA does not

launch the array of PUC-ordered retail market enhancements (“RMEs”) and transition to the Commission’s newly articulated end-state vision for 2015, intended to help bring fully robust and sustainable competitive markets to the electric customers of the Commonwealth.

The Retail Energy Supply Association (“RESA”),⁵ a trade association of electric generation suppliers (“EGSs”), submits that the record in this proceeding does not support adoption of PPL’s proposed default service procurement plan (for the period of June 1, 2013 through May 31, 2015) and its proposed RME programs as consistent with the Electricity Generation Customer Choice and Competition Act (“Competition Act”)⁶ or the Commission’s articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the competitive market.

PPL’s default service plan must be implemented in a manner that promotes and encourages the development of a fully competitive retail electricity market, as mandated by the Public Utility Code AND fully transitions the PPL market to the new end state for 2015 declared by the Commission. As submitted, PPL’s plan does not do this. To remedy this, RESA has recommended modifications to PPL’s default service plan, consistent with the goals of the Commission to further promote the development of robust, sustainable retail electric competition

necessarily agree that the steps announced by the PUC on September 27 should be the ultimate “end-state” for retail competition, but RESA accepts them as the PUC’s tentative view of the structure of default service and the retail markets starting in June, 2015.

⁵ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁶ 66 Pa. C.S. § 2801, *et. seq.*

in PPL's service territory. These modifications will make PPL's plan consistent with the Commission's clear directives on improving the competitive retail market to ensure customers are empowered to take advantage of all the benefits associated with this evolved market design. Adopting all of RESA's proposed modifications will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and, (c) the best transition of the PPL market to the 2015 end-state articulated by the PUC, designed to move towards the development of a properly functioning, robust, sustainable and workable competitive retail electric market in the PPL service territory.

B. Background Information and Procedural History

On May 1, 2012, PPL filed a Petition for Approval of its Default Service Program for the period beginning June 1, 2013 through May 31, 2015 ("Petition"). PPL is an electric distribution company ("EDC") and is currently the default service provider ("DSP") in its respective service area.⁷ Notice of the Petition, which sets forth proposals for its next default service procurement plan, was published in the *Pennsylvania Bulletin* on May 19, 2012.⁸

The Petition was assigned to Administrative Law Judge ("ALJ") Susan D. Colwell. On June 6, 2012, a prehearing conference was held by ALJ Colwell. At that time, *inter alia*, RESA's timely Petition for Intervention was granted.

The active parties conducted discovery prior the start of the evidentiary hearing, which began on Friday, September 7, 2012 and ended on Tuesday, September 11, 2012. In addition to

⁷ PPL currently provides default service pursuant to a Commission-approved default service plan that will expire on May 31, 2013. See *Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Docket No. P-2008-2060309 (Order entered June 30, 2009) ("PPL DSP I Order").

⁸ 42 Pa.B. 2871 (May 19, 2012).

PPL, the following parties submitted testimony on their behalf or otherwise participated in this proceeding: RESA; Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); Constellation NewEnergy, Inc. (“CNE”) and Exelon Generation Company, LLC (collectively “Constellation”), Direct Energy Services, LLC (“Direct Energy”); Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”), and Interstate Gas Supply (“IGS”) (collectively, “Dominion/IGS”); Eric Joseph Epstein; FirstEnergy Solutions (“FES”); the Commission’s Bureau of Investigation and Enforcement (“I&E”); NextEra Energy Resources (“NextEra”); Noble Americas Energy Solutions (“Noble”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the PP&L Industrial Customer Alliance (“PPLICA”); Sustainable Energy Fund (“SEF”) and UGI Energy Services d/b/a UGI EnergyLink (“UGIES”).

The record was closed on September 11, 2012.⁹ The Competition Act mandates that the Commission issue a decision on PPL’s Petition by February 1, 2013.¹⁰

⁹ 52 Pa. Code § 5.431(a); Tr. 322.

¹⁰ 66 Pa. C.S. § 2807(e)(3.6).

II. Summary of Argument

Adopting all of RESA's positions and proposed modifications will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and, (c) the best transition of the PPL market to the 2015 end-state recently articulated by the PUC, designed to move toward the development of a properly functioning, robust, sustainable and workable competitive retail electric market in the PPL's service territory.

RESA recommends the following changes to PPL's proposed default service procurement plan:

Residential Portfolio

- Modify PPL's proposal of mostly 12-month and 9-month contract portfolio mix to 12-month and quarterly fixed price, full requirements contracts where the percentage of quarterly priced contracts increases over the course of the DSP II.
- Modify PPL's proposal of semi-annual PTC price changes to maintain the current quarterly changing PTC.

Non-Hourly Priced Commercial Procurement Portfolio

- Modify PPL's proposed mostly 12, 9 and 6-month contract portfolio mix to 100% fixed price, full requirements contracts procured each quarter.
- PTC would be adjusted quarterly.

Residential Wholesale Supplier Load Cap

- Lower the residential wholesale supplier load cap that can be served by any single wholesale supplier to 50%.

Reconciliation

- Reject PPL's proposed changes to reconciliation and instead maintain the quarterly reconciliation mechanism.

RESA's main positions and recommendations on the RMEs, which should be implemented in this proceeding, are as follows:

New and Moving Customer Program

- Parties should concentrate on implementing the standard offer referral program and the opt-in auction rather than the Commission's suggested, interim "new mover program" to the extent the latter program would slow down the implementation of other programs.
- PPL should implement a means to allow new and moving customers who already know the EGS they would like to take service from to begin service with the EGS without the need to make any additional calls or be transferred away from the PPL customer service representative (i.e., "day-one switch" capability) as soon as practicable after the proposed retail enhancements are in place.

PPL's Proposed Customer Referral Mailing

- Conduct one-time direct mailing no later than March 1, 2013.
- Include EGS offers with RMI EDC letter and FAQs.
- Use a separate mailing (with EGS offers) for small commercial and industrial customers.

Retail Opt-in Auction / Aggregation Program¹¹

- RESA can accept a retail opt-in Aggregation Program in lieu of an Auction, if the Commission determines that an Aggregation is the appropriate policy
- Implement the retail opt-in program – auction or aggregation – by June 1, 2013.
- Apply to all non-shopping residential and small business default customers.
- If an auction is ordered, the auction should be conducted after the enrollment so that the total number of customers participating will be known.
- Additional communications and enhanced means of enrollment should be used to provide customers ample opportunity to indicate an expression of interest.

¹¹ Unless otherwise noted herein, RESA's recommendations directed towards the opt-in auction would apply equally to a opt-in aggregation program.

- Have a load cap so that no EGS (or set of affiliated EGSs) can serve more than 50% of the aggregation load, in addition to a minimum of four winning bidders or participants.
- The parties should be directed to work together to develop the binding terms and conditions that will govern their relationship consistent with the finally determined elements.

Standard Offer Referral Programs

- Coordinate the Standard Offer Referral Program and the Aggregation Program so that the products do not create customer confusion
- Implement the Standard Offer Referral Program (which may reflect PPL's proposed terms) by June 1, 2013.
- Shopping customers should not be presented with the terms of the Program unless they ask about the offer.
- Program should apply to small commercial and industrial customers.
- Program should apply to all new, move, customer inquiries and high bill calls.
- The parties should be directed to work together to develop the binding terms that will govern their relationship consistent with the finally determined elements.

Cost Recovery For Retail Market Enhancements ("RME").

- Costs of the RMEs should be paid for by all default service customers.
- Alternatively, the costs of RMEs should be paid through a non-bypassable charge applied to all customers.
- RESA has recommended a separate charge of 5 mils/kWh with the proceeds to be used as follows: (i) Payment of any verifiable costs related to providing default service that have otherwise not been collected by the EDC; (ii) Payment of costs related to implementing and maintaining competitive market enhancements, such as the retail opt-in auction, customer referral programs; and, (iii) Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.

Time-of-Use

- Adopt a TOU plan that more fully relies on market forces.
- PPL should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory; Alternatively (if no competitive

offers exist), PPL should bid out the provision of the service so that it will be provided at the retail level by one or more winning EGS bidders.

- PPL should submit a report on the number of EGSs actually providing TOU services.

Green Power Program

- PPL's Green Power Program should be permitted to expire.
- PPL should send two notices to each customer. At least one notice should contain offers (prepared at the EGS's expense) describing alternative green products offered in the competitive market.
- Any Pennsylvania licensed EGS should be eligible to participate.

III. Argument

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Public Utility Code ("Code") provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.¹² It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."¹³ A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.¹⁴ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial

¹² 66 Pa. C.S. § 332(a).

¹³ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹⁴ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

evidence.¹⁵ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹⁶

PPL has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

2. Standards Applicable to Default Service

a. *The Competition Act*

The Competition Act addresses the requirements that PPL, as the EDC providing default service, must meet.¹⁷ The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider, acquire electric energy through a “prudent mix”¹⁸ of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.¹⁹

The Competition Act also mandates that customers have direct access to a competitive retail generation market.²⁰ This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating

¹⁵ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

¹⁶ *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

¹⁷ See 66 Pa. C.S. § 2807(e).

¹⁸ 66 Pa. C.S. § 2807(e)(3.2).

¹⁹ 66 Pa. C.S. §§ 2807(e)(3.1).

²⁰ 66 Pa. C.S. § 2802(3).

electricity.”²¹ Thus, a fundamental policy underlying the Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.²²

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations²³ and a policy statement²⁴ addressing default service plans. The regulations first became effective in 2007 and recent amendments to the regulations to incorporate statutory changes to the Competition Act as a result of the implementation of Act House Bill 2200, Act 129 of 2008 (“Act 129”) which became effective in November 2008, are pending.²⁵

In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability²⁶ as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service.²⁷ The Commission has clarified that default service providers must consider price stability and reliability when developing a procurement plan that meets the “least cost over time” standard.²⁸ It is irrefutable, and clearly recognized by

²¹ 66 Pa. C.S. § 2802(5). See *Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

²² 66 Pa. C.S. § 2802(5).

²³ 52 Pa. Code §§ 54.181 to 54.189.

²⁴ 52 Pa. Code §§ 69.1802 to 69.1817.

²⁵ *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011; *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order entered October 4, 2011 (“Act 129 Rulemaking”). The Act 129 Rulemaking was approved by the Independent Regulatory Review Commission (“IRRC”) on May 17, 2012.

²⁶ 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. See Preamble to Act 129, 2008 Pa. Laws 129.

²⁷ See *Act 129 Final Rulemaking* at 40; 66 Pa. C.S. §2807(e)(3.7).

²⁸ *Id.*

the Commission, that the best and most certain way to provide customer benefits and electric service at least cost over time is to create a robust and sustainable competitive market.²⁹

b. The Intermediate Work Plan Final Order

In its order entered April 29, 2011, the Commission initiated an investigation into Pennsylvania's retail electricity market.³⁰ With the input of stakeholders, the Commission entered a Tentative Order (on December 16, 2011) that issued for public comment the intermediate work plan, which identified issues, tasks and goals to be resolved and implemented prior to the expiration of the EDCs' next round of default service plans, in an effort to improve the retail electricity market.³¹ The Commission entered its *Intermediate Work Plan Final Order* on March 2, 2012.³²

In its *Intermediate Work Plan Final Order*, the Commission correctly concluded that, while the shopping statistics are encouraging, "there is definite room for improvement to achieve the robust competitive market envisioned by the General Assembly."³³ The Commission stated that measures should be used to "kick-start" retail competition.³⁴ These measures include a plan for an opt-in auction and customer referral programs.³⁵ The Commission also directed that a

²⁹ The Commission is charged with taking measures to develop a competitive retail market so that the market can function to drive the price of electricity down as low as possible for the benefit of consumers. See 66 Pa. C.S. § 2802(3), (5); *Green Mountain Energy Company v. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

³⁰ *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011.

³¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered December 16, 2011 ("*Intermediate Work Plan Tentative Order*").

³² *RMI Intermediate Work Plan Final Order*, Docket No. I-2011-2237952, Opinion and Order entered March 2, 2012 ("*Intermediate Work Plan Final Order*" or "*IWP Order*").

³³ *Id.* at 3 quoting with approval *Investigation of Pennsylvania's Retail Electricity Market*, Opinion and Order entered July 28 Order at 7.

³⁴ *Id.* at 32.

³⁵ *Id.* at 13-14, 33-34.

“new/mover” referral program be created pursuant to which each new or moving customers would be informed of the options for taking service from a competitive supplier and be “hot transferred” to a specific EGS, if, at the time of initiation of distribution service, the new or moving customer has identified an EGS from which the customer wished to receive generation service.³⁶ The *Intermediate Work Plan Final Order* also set forth the Commission’s view of the structure and timing of the previously endorsed “Standard Offer” referral programs as well as retail opt-in auctions.³⁷

c. The FE and PECO DSP Orders

The Commission has voted on two default service procurement cases since PPL filed its proposed DSP plan: the FE DSP II plan³⁸ and, last week, the PECO DSP II plan.³⁹ While some of the details remain unfinalized, it appears that the Commission is looking to its decision in the FE DSP II proceeding as setting forth its policy on “RMEs.” With that in mind, RESA presents its views on the details of PPL’s procurement plan and its proposed RMEs as informed by the results of the FE and PECO DSP II decisions.

B. The Proposed Default Service Program

PPL is proposing a Default Service Plan that requires some adjustment to ensure that it achieves the goals of the Competition Act and complies with the Commission’s regulations and orders regarding default service as well as to facilitate a transition to the PUC’s recently announced end-state modifications. For residential and small commercial and industrial

³⁶ *Id.* at 14-20.

³⁷ *Id.* at 30-78.

³⁸ *FE DSP II Order.* The Commission also recently issued its Opinion and Order on Reconsideration providing further clarification of its position, *See* footnote, 2 *supra*.

³⁹ *PECO DSP II Order.* *See* footnote, 3 *supra*.

customers, PPL proposes a combination of mostly 9-month and 12-month full-requirements, fixed-price load-following laddered contracts (and a few 6-month and 3-month contracts at the end of the term) procured semiannually.⁴⁰ The Plan gradually reduces reliance on 24-month products. As the 24-month products purchased under DSP I expire, they will be replaced with shorter-term contracts.

In its default service plan, PPL substantially reduces or eliminates reliance on spot supply and instead intends to rely on other products for its overall portfolio. The spot supply purchased under DSP I is added to the 12-month supply product in DSP II's first & third solicitations. According to PPL, spot market purchases are not necessary to keep default service rates in line with market price and their inclusion would only impact reconciliation negatively.⁴¹

PPL does not propose to purchase any new block products for its residential customers, but block products procured under DSP I will continue to provide supply which will result in block supply eventually declining to 150 MW (or 15-20% of the load).⁴² PPL maintains that reducing reliance on block supply will reduce reconciliation adjustments arising from forecasting default service load and align default service prices more closely with market prices.⁴³

Under the plan, the 12-month and 6-month products will be procured approximately one month prior to delivery while the 9- and 3- month products will be procured approximately four months prior to delivery. PPL's procurement is scheduled to end on May 31, 2015, but the final

⁴⁰ PPL St. No. 2 at 15.

⁴¹ PPL St. No. 2 at 18-19, 33.

⁴² PPL St. No. 2 at PPL Exh. JC-5.

⁴³ PPL St. No. 2 at 20, 34.

procurement could be adjusted to include 12 and 9 month contracts to enable a transition of laddered 12-month contracts that carry over to next period if necessary.⁴⁴

If the PPL proposal is accepted, the Price to Compare (“PTC”) will change on a semi-annual basis, instead of quarterly as is done currently. Reconciliation of over or under-collections of default service costs will occur on a semi-annual basis based on 12-month rolling average.⁴⁵

For mid-size commercial customers, PPL is not proposing hourly-priced service, but plans to make modifications to its internal systems to begin to provide the service in time for the next Default Service Plan.⁴⁶ For large C&I customers, the current approach of obtaining supply based on spot market will continue. PPL will solicit contracts to administer the provision of this spot market supply.⁴⁷

RESA recommends the following changes to PPL’s proposed default service procurement plan:

Residential Portfolio

- 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 the course of the DSP II.
- Modify PPL’s proposed semi-annual PTC price changes to maintain the current quarterly changing PTC

Non-Hourly Priced Commercial Procurement Portfolio

- Modify PPL’s proposed portfolio to 100% fixed price, full requirements contracts procured each quarter

⁴⁴ PPL St. No. 2 at 20.

⁴⁵ PPL St. No. 2 at 21.

⁴⁶ PPL St. No. 4 at 32-33.

⁴⁷ PPL St. No. 2 at 22.

- PTC would be adjusted quarterly

Residential Wholesale Supplier Load Cap

- Lower the residential wholesale supplier load cap that can be served by any single wholesale supplier to 50%

Reconciliation

- Reject PPL's proposed changes to reconciliation and instead maintain the quarterly reconciliation mechanism.

RESA's recommendations are designed to enhance the market responsiveness of the underlying supply mix which better supports sustainable retail competition and ultimately benefits consumers.⁴⁸ A robust, sustainable retail model is the only mechanism that will ensure all customers are afforded the opportunity to make individual determinations about which electricity product and pricing attributes are most important to them and make purchasing decisions based on those personal determinations. To the extent that consumers want "stable" pricing, such products will be available in a robust and sustainable competitive retail electricity market, and as such, promoting a competitive market is the best way to provide the benefits of stability to customers.

RESA's recommendations are also consistent with the Commission's just announced RMI competitive market reforms. The Commission is proposing to require quarterly procurement for residential and small commercial customers (under 100 kW) beginning in June, 2015.⁴⁹ RESA's proposal represents a perfect transition to such a procurement mix because it gradually phases out 12 month contracts and replaces them with 3 month contracts. Similarly,

⁴⁸ RESA St. No. 1 at 18.

⁴⁹ RMI Secretarial Letter of September 27, 2012, at RMI End State Proposal, ¶ 2.a.

RESA's proposal for the (current) non-hourly priced commercial and industrial customers to make the procurements more market responsive also facilitates a transition to full hourly priced default service in 2015.

1. Class Procurements

a. *Residential - Fixed Rate*

For residential customers, PPL proposes to obtain a portfolio of primarily 12-, 9-, and 6-month fixed-priced full-requirements load-following products procured semiannually.⁵⁰ PPL would also include one three-month solicitation just prior to the end of the default service procurement plan term. PPL does not propose to solicit any new contracts that would extend beyond the May 31, 2015 expiration of the procurement plan period; however, there are block purchases made by PPL during the current default service plan that would continue to provide supply to default service customers into DSP II.⁵¹ PPL proposes to solicit the default service products two times per year with the 12-month products being solicited approximately one month prior to delivery while the 9- and 3-month products procured approximately four months prior to delivery.⁵²

PPL's proposal differs in a number of significant ways from the Company's current Default Service Plan. First, PPL proposes to reduce and ultimately eliminate reliance on 24-month products replacing the prior expiring contracts with shorter-term contracts.⁵³ Second, PPL proposes not to purchase separate spot market supply in DSP II on the basis that eliminating these purchases removes the need to forecast the quantity and price of spot supply which,

⁵⁰ PPL St. No. 2 at 15-16, PPL Exh. JC-4A. There is one proposed 3-month contract procurement. *Id.*

⁵¹ PPL St. No. 2 at 19-20.

⁵² PPL St. No. 2 at 16, PPL Exh. JC-4A.

⁵³ PPL St. No. 2 at 17-18.

according to PPL, results in reconciliation.⁵⁴ According to PPL, reconciliation is necessary to address the differences between an estimated default service price and the actual cost of default service.⁵⁵ RESA will offer recommendations regarding PPL's reconciliation proposals below.

Finally, PPL proposes to not purchase any new block products during DSP II as block but those procured during DSP I will continue to provide supply in DSP II with PPL estimating that the reliance on block supply will decline to about 150 MW or 15-20% of the residential default service load in DSP II.⁵⁶ According to PPL, block supply became a larger percentage of the default service supply, and significant reliance on block products for default service supply could cause PPL to sell excess supply into the spot market, possibly at a loss, while increasing the volumetric risk borne by wholesale suppliers of load-following products.⁵⁷ Presumably, reducing PPL's reliance on block supply will reduce reconciliation adjustments arising from forecasting default service load and align default service prices more closely with market prices.⁵⁸

Although the changes PPL proposes to residential procurement can be fairly characterized as a step in the right direction, RESA respectfully submits that these minor tweaks to the Company's current Default Service Plan do not go far enough. Residential customers shopping in PPL's service territory have made significant progress since 2010. Approximately

⁵⁴ PPL St. No. 2 at 18-19, 32-34.

⁵⁵ PPL St. No. 2 at 12-13.

⁵⁶ PPL St. No. 2 at 18-20.

⁵⁷ PPL St. No. 2 at 12.

⁵⁸ PPL St. No. 2 at 20.

41.3% of PPL's residential customers have switched to a competitive retail supplier.⁵⁹ These statistics indicate that PPL customers are willing to become informed and take action to choose a supplier that is more suitable for their needs. For the 58.7% of customers who remain on default service, implementing a more market-reflective default service rate (supplemented with the RME initiatives as discussed below) will maximize the transition to a more robust and sustainable competitive retail electricity market. To that end, the Commission must require PPL to do more to make default service rates more reflective of market prices of energy over time in order to fulfill the statutory requirement of the Competition Act. Moreover, and as noted, now that the Commission has announced its long term market reforms in its RMI, it should adopt a plan that facilitates a reasonable transition to the quarterly procured three-month contracts that it has announced it intends to utilize starting in 2015.

i. *Product Mixture*

In order to move closer to market-reflective prices for energy, and to facilitate a reasonable transition to the Commission's announced 2015 default service procurement mix, RESA proposes a portfolio mix of 12-month and quarterly fixed-priced full-requirements products, where the percentage of the portfolio made up of quarterly priced products increases over time.⁶⁰ Similar to PPL's proposal, the term of both the 12-month and quarterly products would end on May 31, 2015 under RESA's proposal. The recommended mix of 12 month and 3 month contracts would look like this:

⁵⁹ See, Weekly Pennsylvania Power Switch Update, Customers Switching to an Electric Generation Supplier (as of September 26, 2012), available at <http://www.papowerswitch.com/> and attached hereto as Appendix A.

⁶⁰ RESA St. No. 1 at 12-13 and RESA Exhibit AW-1.

RESA Proposal

	2013												2014												2015											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
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Commission's proposed changes to default service is "to remove barriers to competition so that default service prices more closely mirror actual market prices instead of being distorted by long-term contracts and our electric distribution companies' inability to accurately project default service costs, which leads to large under and over-collections."⁶² RESA's proposal is, therefore, a reasonable way to transition default service from the current mode to the more market responsive model that the Commission is contemplating. As illustrated in the diagram above, RESA has proposed a gradual progression toward quarterly procurements that more closely reflect market prices for fixed-price residential customers. Thus, in September 2014, the percentage of 3-month products procured quarterly will be less than 23% of the total procurement for this customer class. However, the portion of the residential load that will be procured quarterly through 3-month contracts will rise to just over 45% in December 2014, to 68% by March 2015, until 100% of the power for this segment of customers is procured quarterly using 3-month contracts at the end of the DSP II period (June 2015). This gradual movement toward short-term contracts procured quarterly is designed to make retail power prices more market-reflective and satisfy the Commission's expressed desire to have the prices paid by customers more closely mirror market prices.

With regard to PPL's proposal to not purchase separate spot market supply in DSP II, RESA could support this approach if the residential portfolio mix recommended by RESA is accepted. RESA respectfully submits that PPL's procurement plan should approximate the real time market price as much as possible, and one way to achieve this result is through the inclusion of a significant amount of spot market purchases in the mix. A greater proportion of spot market

⁶² *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Statement of Chairman Robert F. Powelson, issued Sept. 27, 2012).

pricing in all customer classes contributes to a least-cost portfolio by reducing overall hedging costs and allowing wholesale suppliers to more effectively manage the likely migration of customers on and off of default service.⁶³ However, in the case of PPL, if the portfolio mix is comprised of shorter term contracts on a continuing basis, then the need to “approximate” the market through spot market purchases is not necessary. This is because an increasing number of the default service supply contracts will be shorter term and the PTC will change quarterly thus ensuring that the resulting default service rate is more likely to reflect the market price for energy at the time of delivery. Accordingly, RESA can support the elimination of the spot market component *only if* such elimination is combined with the recommendation to shorten an ever-increasing portion of the full requirements contract terms and ensure that the procurement of supply occurs no more than 60 days prior to delivery. If RESA’s proposal is not adopted, then – at a minimum – PPL should be required to add 10% spot market purchases into its portfolio mix.

For its part, the OCA recommended a number of modifications to PPL’s proposed procurement plan for residential customers. First, OCA witness Mr. Hahn opposed PPL’s proposal to phase out the current block and spot purchases. While he recommended that block purchases continue, he suggested that they be procured using different sized blocks in the summer peak hours, the winter peak hours, and the off-peak hours. This differs from PPL’s current approach which uses the same level of block purchases in every hour of the year.⁶⁴ He also recommended that PPL not procure 50 MW blocks in the procurements that are remaining in DSP I.⁶⁵

⁶³ RESA St. No. 1 at 15-16.

⁶⁴ OCA St. No. 1 at 9-11.

⁶⁵ OCA St. No. 1 at 14.

RESA opposes Mr. Hahn's recommendation that PPL continue with block and spot purchases for DSP II. RESA submits that including block and spot contracts is inconsistent with establishing default service rates in a manner that promotes the development of a robust and sustainable competitive retail market.⁶⁶ A procurement plan that includes block and spot contracts would contribute to a further separation between default service rates and market prices, and as such, the design of such a plan will not result in default service prices that reflect the underlying wholesale market over time. Thus, this approach is inconsistent with the Competition Act and should be rejected.

Mr. Banks, on behalf of FES, proposed a procurement mix of 12 and 24 month contracts claiming that they "will result in greater price stability and certainty."⁶⁷ Mr. Banks opined that this is especially important to avoid any "unnecessary complexity for customers" during this particular default service plan period based on expectations about structural changes to the market that may occur as a result of the Commission's Retail Markets Investigation.⁶⁸ According to Mr. Banks "a PTC that is relatively certain for two years provides customers with a better guide for evaluating retail offers during this transitional period and will reduce customer confusion."⁶⁹

RESA disagrees with Mr. Banks' recommendation and the alleged "price stability" rationale for this ill-advised proposal. The Commission has provided guidance to the EDCs to utilize a competitive procurement process designed to obtain a prudent mix of long-term, short-

⁶⁶ RESA St. No. 1-R at 3.

⁶⁷ FES St. No. 1 at 9-10.

⁶⁸ FES St. No. 1 at 9-10.

⁶⁹ FES St. No. 1 at 10-11.

term and spot market supply contracts.⁷⁰ That “prudent mix” should be designed to produce the least cost to customers over time.⁷¹ Mr. Banks ignores this guidance, instead suggesting that 100% reliance on 12 and 24 month contracts provides “price certainty and predictability.” Mr. Banks did not propose to eliminate reconciliations, thus the argument that his procurement plan will provide customers price certainty and predictability is a red herring. Moreover, the desire for “price certainty” differs from customer to customer – there is no “one-size-fits-all” level of price certainty and predictability that meets the needs of all customers. Customers have different preferences when it comes to price certainty and they can choose the product that provides the level of price certainty and predictability that meets their individual needs from EGSs that offer a wide array of pricing and product options that are available in a robust and sustainable competitive electricity market.⁷²

Mr. Banks also is wrong with regard to his claim that the use of longer term contracts reduces customer confusion and unnecessary complexity. Masking the mechanics of how electricity prices change over time with artificial gimmicks that produce supposedly “stable” prices does not contribute to the Commission’s efforts to educate customers. The Commission has invested, and continues to invest, significant resources to make customers aware of their options in a competitive retail market for electricity since well before the expiration of rate caps. Ensuring that default service rates accurately reflect the underlying wholesale market changes is an integral part of this on-going consumer education process. Market reflective default service prices are also necessary to facilitate the development of a robust sustainable competitive retail

⁷⁰ See *RMI Default Service Order*.

⁷¹ RESA St. No. 1 at 5.

⁷² RESA St. No. 1-R at 9.

market that will provide the myriad of product and service offerings – including those that offer various levels of price certainty and predictability – from which customers can choose.

RESA submits that the procurement plan offered by Mr. Banks is substantially similar to the one that was proposed by the FE EDCs in the *FE DSP II Order*, which was rejected because the Commission was “not convinced that the Companies’ proposal would best meet the least cost over time criteria and [it] presents a considerable risk that default service rates would not remain economical relative to other electric supply options . . . [as] two-year procurement contracts create a potential risk that the default service rates may become inconsistent with competitive rates over an extended period of time.”⁷³

The Commission should reject the proposal to rely on long-term contracts as Mr. Banks proposes and should, instead, adopt RESA’s recommendations to use shorter term arrangements that better reflect market prices and produce least cost procurement over time.

ii. *Procurement Schedule*

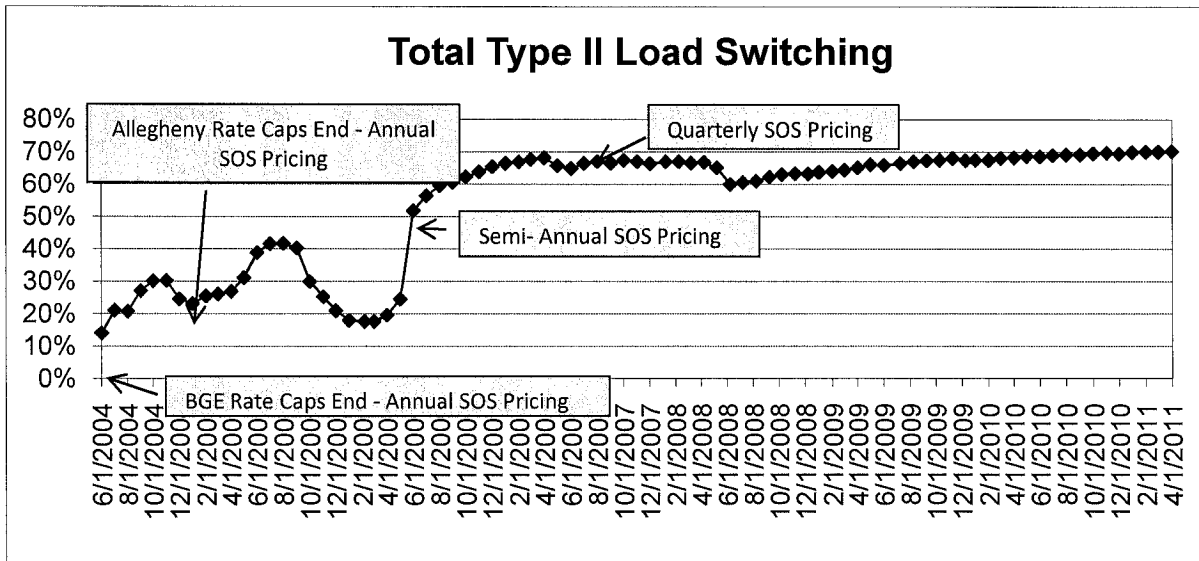
RESA proposes that, to the extent PPL is not already using quarterly procurement, the Company move toward quarterly procurements for the DSP II period.⁷⁴ This proposed approach would result in the continuation of the current practice of four procurements per year for the period in question.⁷⁵ RESA submits that quarterly procurements will result in default service rates that more accurately reflect the underlying wholesale cost of electricity and, in turn, enable customers to reap the benefits of a more competitive retail market. Evidence of this includes the fact that the Maryland utilities have conducted quarterly procurements since 2006 and, as the

⁷³ *FE DSP II Order* at 25-26.

⁷⁴ RESA St. No. 1 at 13-14.

⁷⁵ Tr. 150-51.

Maryland switching chart illustrates, customers shopping has improved and remained at a consistently high level.⁷⁶



Based on this evidence, RESA strongly disagrees with PPL’s claims in testimony that using four solicitations each year somehow results in higher costs with little improvement in default service rates that are market reflective.⁷⁷ The development of retail competition for mid-sized commercial customers in Maryland illustrates the value market-responsive default pricing has on retail competition. As shown above, once Maryland instituted market responsive (first semi-annual and then quarterly adjusted) pricing for Type II non-residential customers (25 kW to 600 kW), shopping levels increased dramatically at the onset of this new pricing structure and has remained not only relatively stable but also at a significant level.⁷⁸ This clear evidence contradicts PPL’s assertions and insinuations that quarterly solicitations somehow depress shopping.

⁷⁶ RESA St. No. 1 at 9-10.

⁷⁷ See, PPL St. No. 2 at 13-14.

⁷⁸ RESA St. No. 1 at 9.

The criticism of FES witness Mr. Banks against the use of the Maryland example also is misplaced. Mr. Banks claims that the chart does not clearly illustrate any relationship between default service rates and the underlying wholesale cost of electricity.⁷⁹ In fact, the MD Type II Shopping chart demonstrates how various procurement approaches support the development of a robust and sustainable market. As default service rates more closely reflect underlying wholesale prices – in this example, moving from annual to quarterly pricing – more robust sustainable competition ensues.⁸⁰ RESA respectfully submits that more market reflective default service pricing will eliminate the “boom-bust” cycles that naturally occur when default service prices are set for long periods of time. The MD Type II chart provided above illustrates this point.

PPL and OSBA objected to RESA’s proposal to continue quarterly procurements on the ground that the proposal would be costly to default service customers. According to PPL witness Yeager, the move from quarterly to semi-annual procurements would save residential and small commercial and industrial customers approximately \$450,000-\$550,000 a year.⁸¹ Similarly, OSBA Witness Knecht expressed concern that the use of quarterly solicitations would be a needless cost burden for the approximate 11% of small commercial customers continuing to take default service.⁸² These objections are misplaced and should be rejected by the Commission.

Even assuming that PPL’s costs estimates are correct, and that using quarterly procurements would increase costs by as much as \$550,000, it is a relatively manageable cost that produces significant benefits for customers overall. First, it is important to note that RESA’s

⁷⁹ FES St. No. 1-R at 13.

⁸⁰ RESA St. No. 1-SR at 7.

⁸¹ PPL St. No. 1-R at 10.

⁸² OSBA St. No. 2 at 3.

proposal would simply continue the present procurement schedule, not increase it. Second, quarterly procurements are consistent with the Commission's long term vision for default service, as reflected in its recent RMI decision.⁸³ Further, the cost increases claimed by PPL would be borne by some 600,000 customers, and therefore, the per-customer cost for the implementation of quarterly procurements would amount to about \$0.83 per customer per year.⁸⁴ Most importantly, the quarterly procurements and other modifications that RESA is proposing are intended to produce a more robust and sustainable competitive retail market for electricity and lower overall prices for customers over time. This represents a fair trade off, and the added costs claimed and assumed by PPL should not serve as an obstacle to improving the retail market in the Commonwealth and bringing greater benefits to customers.

In addition to recommending quarterly procurements, RESA has proposed a procurement plan that provides for lead times of no more than two (2) months for each procurement.⁸⁵ This is in contrast to PPL's proposal, where some procurements are close in time to delivery and others have lag times of up to four (4) months. RESA's proposed two-month lead times would allow PPL 7 to 10 business days to calculate the new Price to Compare, and provide EGSs 45 days to adjust to the new PTC.⁸⁶ In any event, procurement lead times proposed by PPL should be shortened so that no procurement is conducted more than 60 days prior to delivery of any product.⁸⁷ Again, RESA's proposal is designed to make default service rates more market-

⁸³ RMI Secretarial Letter of September 27, 2012, at RMI End State Proposal, ¶¶ 2.b & c.

⁸⁴ Tr. 151.

⁸⁵ RESA St. No. 1 at 14, RESA Exhibit AW-1.

⁸⁶ RESA St. No. 1 at 14-15.

⁸⁷ RESA St. No. 1 at 15.

reflective in order to encourage retail competition and foster the availability of an array of electric power options for customers.

OCA witness Mr. Hahn recommended the rejection of PPL's proposal to phase out quarterly solicitations in favor of semi-annual solicitations.⁸⁸ RESA agrees with the OCA on this point. This recommendation is consistent with RESA's proposal of a portfolio mix of 12 month and quarterly fixed priced full requirements products, where the percentage of the portfolio made up of quarterly priced products increases over time and where PTC adjustments and reconciliations occur on a quarterly basis.⁸⁹

iii. *Wholesale Supplier Load Cap*

PPL has proposed to eliminate the "Aggregate Load Cap" of 70% for residential customers while maintaining the Solicitation Load Cap of 85% for all customers groups.⁹⁰ PPL justified this change by claiming that supplier diversity was not an issue during DSP I, and therefore, there was no need for an Aggregate Load Cap in DSP II. Also, PPL maintained that keeping the Aggregate Load Cap may prevent some wholesale suppliers from participating in the solicitations in light of other "barriers" such as shopping in PPL territory and RMI initiatives, etc.⁹¹

RESA opposes the removal of the Aggregate Load Cap for residential customers and proposes to lower the residential wholesale supplier load cap to fifty percent (50%).⁹² RESA recommends lowering the amount of supply that can be served by any single wholesale supplier

⁸⁸ OCA St. No. 1 at 12-13.

⁸⁹ RESA St. No. 1 at 12-13.

⁹⁰ PPL St. No. 1 at 22.

⁹¹ *Id.*

⁹² RESA St. No. 1 at 20-21.

to 50% because greater supplier diversity will protect default service customers by mitigating the impact on default service rates should any single wholesale supplier not be able to meet its contractual wholesale supply obligations.⁹³ By preventing the wholesale supply agreements from being concentrated in a few large suppliers and reducing the potential replacement costs associated with a single wholesale supplier, load caps ensure a variety of wholesale suppliers can ultimately provide the underlying supply for default service.⁹⁴ A lower cap would result in a higher number of suppliers who could readily take over a failed supplier's obligations in case of contract breach or default. Therefore, RESA's proposal is consistent with the Competition Act and the identification of "adequate and reliable" service as an objective of a default service portfolio under the statute.⁹⁵

This recommendation also is consistent with the Commission's Order in the FE DSP II proceeding where the Commission adopted RESA's 50% load cap proposal based on the conclusion that "ensuring that there is a healthy level of supplier diversity . . . the competitive auctions will result in the lowest supply prices over the long run."⁹⁶ Similarly, RESA load cap proposal is in line with the resolution of this issue in the PECO Default Service Proceeding, where the Commission approved a 50% load cap unanimously.⁹⁷

In response to PPL's assertion that a lower supplier load cap may discourage participation by wholesale power suppliers, RESA's witness Ms. Williams offered evidence that refuted this claim. Ms. Williams noted that a 33 1/3% load cap is consistent with the historical

⁹³ RESA St. No. 1 at 21.

⁹⁴ RESA St. No. 1 at 21.

⁹⁵ See, 66 Pa. C.S. §§ 2807(e)(3.3), (3.4)(i) and (3.7).

⁹⁶ *FE DSP II Order* at 33-34.

⁹⁷ *PECO DSP II*, Issue 5 of Binding Poll conducted on September 27, 2012.

statewide load cap for New Jersey's Basic Generation Service Auction process, and that process has not suffered from a lack of interested suppliers.⁹⁸ Based on this evidence, PPL's proposal to implement a 75% supplier load cap should be rejected and RESA's 50% cap recommendation should be adopted by the Commission.

FES witness Mr. Banks also opposes a lower supplier load cap for residential procurement. He stated that: (1) a lower wholesale supplier load cap "could harm default service customers;" (2) PPL's proposed Supply Master Agreement ("SMA") already requires wholesale suppliers to provide their financial capability and post performance assurance; and, (3) PPL has already addressed the possibility of supplier default in its proposed contingency plan.⁹⁹ These arguments are insufficient to overcome the benefits of a 50% supplier load cap and Commission precedent approving such a cap.¹⁰⁰ Mr. Banks has presented nothing to support his claim that a lower supplier load cap will increase the total price customers pay for default service. Wholesale load caps are a competitive safeguard because they limit the EDC's (and its customers') exposure to contract failure of any particular wholesale supplier. Furthermore, the Commission has recognized the benefits of a reasonable load cap in the context of the RMI,¹⁰¹ as well as in its recent *FE DSP II Order* where it states that a wholesale supplier load cap of 50% is important to ensure a "healthy level of supplier diversity."¹⁰²

⁹⁸ *Id.*

⁹⁹ FES St. No. 1-R at 16-19.

¹⁰⁰ *See, also FE DSP II Order* at 33-34.

¹⁰¹ The Commission recommended a 50% supplier participation cap for the retail opt-in auction/aggregation on the basis that such a cap is a reasonable balance to ensure "a diverse array of EGSs are able to participate." *See, Intermediate Work Plan Final Order* at 63-64.

¹⁰² *FE DSP II Order.*

For these reasons, the arguments of PPL and FES in opposition of RESA's proposed 50% load cap should be rejected.

b. Small C&I - Fixed Rate

i. Product Mix & Procurement Schedule

For non-hourly priced commercial customers, PPL has proposed to obtain a portfolio of 12-, 9-, 6- and month fixed-price full-requirements load-following products procured semiannually.¹⁰³

In response to PPL's proposal, RESA recommends that PPL be directed to modify its proposed portfolio to procure 100% fixed price, full requirements contracts each quarter, with the PTC being adjusted quarterly.¹⁰⁴ This recommendation makes sense in light of the fact that more than 88% of the commercial load has switched to alternative suppliers.¹⁰⁵ As PPL's existing contracts expire, these agreements should be replaced with quarterly contracts as illustrated in the following chart (RESA Exhibit AW-1).¹⁰⁶

¹⁰³ PPL St. No. 2 at 21-22, PPL Exh. JC-4B. PPL has proposed one 3-month contract in the mix of the end of the term. *Id.*

¹⁰⁴ RESA St. No. 1 at 19.

¹⁰⁵ *See*, Appendix A, attached hereto.

¹⁰⁶ RESA St. No. 1, Exh. AW-1.

RESA Proposal																																			
2013												2014												2015											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Spot (10%)				3-Mo Product (26.875%)				3-Mo				3-Mo				3-Mo				3-Mo				3-Mo				3-Mo							
Fixed (11.25%)				P																															
Fixed (5.625%)																																			
Fixed (11.25%)				P				3-Mo Product (16.875%)				3-Mo				3-Mo				3-Mo				3-Mo											
Fixed (5.625%)												P				3-Mo (5.625%)				3-Mo				3-Mo											
Fixed (5.625%)																P				3-Mo				3-Mo											
Fixed (11.25%)				P				3-Mo Product (16.875%)				3-Mo				3-Mo				3-Mo				3-Mo											
Fixed (5.625%)																																			
Fixed (5.625%)				Fixed (11.25%)				P				3-Mo Product (16.875%)				3-Mo				3-Mo				3-Mo											
Fixed (5.625%)																P				3-Mo (5.625%)				3-Mo											
Fixed (5.625%)				Fixed (5.625%)																P				3-Mo (5.625%)											

Phase in of Quarterly Priced Default Service															
				28.875% Quarterly											
				43.75% Quarterly											
				60.625% Quarterly											
				77.5% Quarterly											
				83.125% Quarterly											
				88.75% Quarterly											
				94.375% Quarterly											
				100% Quarterly											

As shown in the chart above, RESA is proposing a gradual progression toward quarterly procurements that more closely reflect market prices for the fixed-price small commercial and industrial customers. Thus, in June 2013, the percentage of 3-month products procured quarterly will be less than 27% of the total procurement for this customer class. However, the portion of the small C&I load that will be procured quarterly through 3-month contracts will rise to just over 60% in December 2013, to 83% by June 2014, until 100% of the power for this segment of customers is procured quarterly using 3-month contracts at the end of the DSP II period (June 2015). This gradual movement toward short-term contracts procured quarterly is designed to make retail power prices more market-reflective and satisfy the Commission’s expressed desire to have the prices paid by customers more closely mirror market prices.

OSBA witness Mr. Knecht supported PPL’s proposal to eliminate spot market purchases from the procurement mix and PPL’s proposed transition toward a procurement approach in which approximately half the default service load is procured every six month with contract

durations of one year.¹⁰⁷ However, similar to OCA's position regarding the residential customers, Mr. Knecht "encourages" the Commission to consider extending the final two, three and six month proposed procurements to nine and twelve month procurements "to retain the rate stability advantages of contract laddering."¹⁰⁸ According to Mr. Knecht, retaining this approach may be "particularly appropriate" for this customer group given the relatively high shopping levels.¹⁰⁹

RESA opposes Mr. Knecht's recommendation and the reasoning behind his misguided proposals. As is discussed in more detail herein, for the non-hourly priced commercial customers, RESA recommends that, as PPL's existing default service procurement contracts expire, they should be replaced with fixed-price full-requirements contracts procured on a quarterly basis accompanied by quarterly PTC price adjustments so that by May 31, 2015, 100% of the non-hourly priced commercial customers taking default service are served with fixed-price full-requirements contracts procured quarterly with quarterly PTC price adjustments.¹¹⁰ RESA's proposal will provide default service prices that are increasingly market-reflective over time. Implementing more market reflective default service rates will ensure that non-hourly priced commercial customers continue to have access to a myriad of product and service offerings, including those that offer the level of price stability that best meets these customers' individual needs and preferences from the competitive marketplace.¹¹¹ Furthermore, adopting RESA's proposal to make default service rates more market-reflective dovetails perfectly with the

¹⁰⁷ OSBA St. No. 1 at 9-10.

¹⁰⁸ OSBA St. No. 1 at 10.

¹⁰⁹ *Id.*

¹¹⁰ *See*, RESA St. No. 1 at 19.

¹¹¹ RESA St. 1-R at 7.

Commission's stated goal to ensure that default service prices more closely "mirror" actual market prices.¹¹²

iii. *Wholesale Supplier Load Cap*

PPL is recommending the elimination of the Aggregate Load Cap of 65% for non-hourly priced commercial and industrial customers while maintaining the Solicitation Load Cap of 85% for all customer groups.¹¹³ RESA is not recommending a wholesale supplier load cap for non-hourly priced commercial and industrial customers because, in this customer segment, a significant amount of load has migrated to competitive suppliers. Based on the latest statistics from the Commission, more than 88% of the load, and almost half of the customers in these classes, are receiving service from non-utility suppliers.¹¹⁴ Under these circumstances, RESA believes that a load cap may not be necessary for this segment of the customer base. However, if the current migration statistics reverse at some future point in time, the Commission should consider imposing a wholesale supplier load cap to ensure supplier diversity.¹¹⁵

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

For hourly-priced commercial and industrial customers, PPL has proposed to maintain the current approach of securing supply based on the spot market.¹¹⁶ PPL proposes to solicit contracts to administer the provision of spot market supply for these types of customers. Also,

¹¹² See, September 27, 2012 Statement of Chairman Powelson in the RMI proceeding, *supra*.

¹¹³ PPL St. No. 1 at 22.

¹¹⁴ See, Appendix A, attached hereto.

¹¹⁵ RESA St. No. 1 at 21-22.

¹¹⁶ PPL St. No. 2 at 22.

PPL recommends the elimination of the optional monthly pricing service that was developed as part of the last Default Service Plan.¹¹⁷

RESA supports these proposals by PPL and has not offered an alternative to the Company's approach.¹¹⁸

d. Contract Terms Beyond May 31, 2015

PPL has not proposed to solicit any new contracts that would extend beyond the May 31, 2015 expiration of the procurement plan period. However, there are block purchases made by PPL during the current default service plan that would continue to provide supply to residential default customers into DSP II.¹¹⁹ PPL proposes to not purchase any new block products during DSP II as block, but those block products procured during DSP I will continue to provide supply in DSP. The reliance on block supply will eventually decline to about 150 MW or 15%-20% of the residential default service load in DSP II.¹²⁰

RESA is not opposed to this aspect of PPL's procurement proposal. As discussed above, RESA proposes a portfolio mix of 12-month and quarterly fixed-priced full-requirements products, where the percentage of the portfolio made up of quarterly priced products increases over time.¹²¹ In line with PPL's proposal, the term of both the 12-month and quarterly products proposed by RESA would end on May 31, 2015.

OCA witness Mr. Hahn recommended rejection of PPL's proposal that all DSP II procurement contracts expire by May 31, 2015, and instead, recommended that PPL continue to

¹¹⁷ PPL St. No. 1 at 10.

¹¹⁸ RESA St. No. 1 at 20.

¹¹⁹ PPL St. No. 2 at 19-20.

¹²⁰ PPL St. No. 2 at 18-20.

¹²¹ See, RESA St. No. 1 at 11-13 and RESA Exhibit AW-1.

use the layering and laddering strategy with termination of some contracts extending beyond that date.¹²² OSBA witness Mr. Knecht offered a similar recommendation.¹²³ RESA opposes Messrs. Hahn and Knecht's recommendation to extend any procurement contracts beyond May 31, 2015. If the Commission determines that the then-effective default service plans on June 1, 2015 should continue for some period beyond that date, then all non-block default supply could be procured on a quarterly fixed-price full-requirements basis going forward.¹²⁴ In a few years, the Commission's Retail Markets Investigation should be further along in the process (or completed) and may lead to an outcome where there will be significant changes in the nature or procurement process for default service. Given the on-going review of the current market structure and the potential for significant market changes, the prudent course is to adopt a default service plan that ends with the current planning year end date. RESA does not support the use of any default service contracts, regardless of the term, that extend beyond the expiration date of the default service plan term. In its *RMI Default Service Order*, the Commission recommended as follows:

...that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period; and . . . that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolios, and consider using already existing long-term contracts from previous or presently effective default service plans.¹²⁵

¹²² OCA St. No. 1 at 13-14.

¹²³ OSBA St. No. 1 at 10.

¹²⁴ RESA St. No. 1 at 13.

¹²⁵ *RMI Default Service Order* at 19.

In the recent FE DSP II proceeding, the Commission maintained this position by rejecting a similar proposal by the OCA and others in that case.¹²⁶ PPL has rightly not proposed any such contracts in its filing and Messrs. Hahn and Knecht's recommendations to procure contracts that extend beyond the two year date are directly counter to the clear objective outlined by the Commission in its *RMI Default Service Order* and reaffirmed in the *FE DSP II Order*.

e. AEPS Procurement

i. Transfer of AECs

RESA did not take a position on this issue.

ii. Alternative Compliance Payment

RESA did not take a position on this issue.

f. Administrative Costs and Cash Working Capital

PPL made a provisional request to recover cash working capital ("CWC") associated with generation supply acquisition costs if the Recommended Decision from docket Nos. C-2011-2245906 and M-2011-2243137 is adopted.¹²⁷ According to PPL, it currently recovers a CWC allowance related to its default service generation supply costs through the GSC-1 reconciliation methodology. However, depending on the Commission's resolution of another proceeding (docket number C-2011-2245906) regarding PPL's accounting methodology, PPL is concerned that it may not be able to recover a CWC allowance through its current GSC-1 reconciliation methodology. To prevent the loss of costs it should recover, PPL is making a provisional claim

¹²⁶ *FE DSP II Order* at 27-28.

¹²⁷ PPL St. No. 5 at 9-10.

in this proceeding to recover the CWC allowance as another administrative cost through the proposed GSC-1.¹²⁸

Although RESA would not oppose PPL's CWC proposal, the issue is now moot as the Commission has entered an order approving PPL's current accounting methodology.¹²⁹ PPL's provisional request for inclusion of CWC as a default service cost in this proceeding is no longer necessary.

2. **Rate Design**

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

i. *Frequency of Rate Changes*

PPL proposed to change the current approach of changing the PTC on a quarterly basis, and instead changing the PTC semi-annually during the DSP II period.¹³⁰ This position is supported by the OCA.¹³¹ PPL attempted to justify this unwarranted departure from its current practice by claiming that the change will somehow ensure that customers are protected against "excessive price volatility."¹³²

RESA is strongly opposed to a change from quarterly PTC changes to semi-annual adjustments. First, under RESA's proposed procurement structure, an increasing amount of the load will be procured on a quarterly basis and, as such, the PTC should adjust quarterly to reflect the new pricing established during each procurement. In the event that RESA's proposed

¹²⁸ PPL St. No. 5 at 9.

¹²⁹ *PPL Electric Utilities Corporation Proposed Generation Supply Charge-1 for the Period June 1, 2011 through August 31, 2011*, Docket No. M-2011-2243137 (Order entered July 19, 2012).

¹³⁰ PPL St. No. 2 at 7.

¹³¹ OCA St. No. 1 at 15-16.

¹³² *Id.*

portfolio mix is not adopted, it is still necessary to update the PTC quarterly because, pursuant to the procurement plan proposed by PPL, delivery on a significant portion of the load (which has been priced separately) begins each quarter.¹³³ As such, the price must be adjusted to reflect the prices established for that portion of the load. RESA submits that this will ensure that the prices experienced by customers in a given service period more accurately reflect the cost of the wholesale energy supply secured by PPL for that service period.

Furthermore, with regard to the claim by PPL that its proposal is necessary to guard against excessive price volatility, RESA respectfully disagrees that the focus of PPL's default service plan should be price stability or that semi-annual PTC changes will achieve this hoped-for stability. Even assuming that price stability should be the goal (a contention that RESA would dispute), the proper method to achieve price stability is to develop a robust competitive retail market where any customer who wants a fixed price option can get it from any number of different suppliers. RESA's proposed modifications would result in a default service structure that would promote the development of a robust competitive retail market. Unlike PPL, RESA's proposals not only address how consumers who want price stability would be able to receive it, but it paves the way for consumers with other desires and objectives with respect to their electric service to receive those products and services.¹³⁴

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

PPL has proposed that, if it remains the default service provider after May 31, 2015, it will change the current 500 kW demarcation point between non-hourly priced commercial and

¹³³ RESA St. No. 1 at 16.

¹³⁴ *Id.*

industrial customers and hourly priced commercial and industrial customer groups to 100 kW.¹³⁵ Further, PPL is in the process of establishing the capability to offer hourly pricing to its non-hourly priced commercial and industrial customers larger than 100 kW beginning in June 2015.¹³⁶

In general, RESA supports PPL's proposal to lower the hourly price threshold for these customers to 100 kW. In addition to its appropriateness from a policy standpoint, the lowering of the spot market price threshold is consistent with the Commission's recent directive in its Secretarial Letter describing its envisioned end-state for 2015. To the extent that PPL is able to provide hourly-priced service to certain segments of this customer class sooner, RESA supports the transition of those customers to hourly priced service prior to May 31, 2015.¹³⁷ For example, if PPL develops the capability to provide hourly-priced service to customers in the 300-500 kW segment sometime in 2014, PPL should discontinue the procurement of quarterly-priced contracts for that segment of their load and switch those customers to hourly-priced service. PPL should continue to expand that hourly-priced service to the other non-hourly priced commercial customers as they become capable of doing so. RESA submits that PPL should reassess its capability to provide hourly-priced service each quarter in order to forgo a quarterly procurement for each new segment of customers capable of receiving hourly-priced service.

¹³⁵ PPL St. No. 2 at 21.

¹³⁶ PPL St. No. 2 at 41-42; PPL St. No. 4 at 32-33.

¹³⁷ RESA St. No. 1 at 19-20.

b. Residential and Small C&I – Reconciliation

PPL recovers the default service costs associated with the residential customers and non-hourly priced commercial and industrial customers through its GSC-1.¹³⁸ PPL is proposing to reconcile GSC-1 costs on a semi-annual basis, instead of using the current quarterly reconciliation methodology.¹³⁹ The impact of the reconciliation will be applied over the subsequent 12-month period.¹⁴⁰

RESA opposes PPL's reconciliation proposal for a number of reasons. First, RESA submits that the best mechanism to ensure robust sustainable retail competition is market-reflective default pricing. Administrative mechanisms like reconciliations that are done after the fact, regardless of frequency, have the potential to impair development of a retail market that will deliver the best products and services to customers.¹⁴¹ For this reason, RESA is proposing that PPL maintain its current quarterly reconciliation.

In addition, by making the reconciliation adjustment period longer than the initial price application period where the over/under recovery occurred, PPL will be further divorcing the actual default service rates from actual underlying wholesale costs. Default service rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop and customers can benefit. RESA respectfully submits that a semi-annual reconciliation will create a distorted pricing structure that will stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately

¹³⁸ PPL St. No. 5 at 4-5.

¹³⁹ PPL St. No. 5 at 5.

¹⁴⁰ *Id.*

¹⁴¹ RESA St. No. 1 at 23.

reflect market prices and costs. Ultimately this may limit the number of retail suppliers in the market thus minimizing a customer's ability to choose from a broad portfolio of products and services designed to best meet their individual needs. Default service rates must be market-responsive and must reflect all of the relevant costs incurred by the EDC in providing default service. Both of these factors are required so that competitive suppliers can compete on an equal footing with the EDC's default service rates and customers can have ongoing access to myriad products and service offered by numerous EGS's competing to meet their needs. If default service rates do not accurately track changes in market prices over time, then the default service rate will become "out-of-market." This creates, at best, intermittent opportunities for customers to access the product and service offerings of competitive suppliers. Similarly, if default rates do not fully reflect all of the costs of providing generation service, then EGSs are at an unfair competitive disadvantage compared to the EDC's default service rate, and customers are harmed as their access to the plethora of competitive products and service diminishes.¹⁴² Both need to occur to the greatest extent possible.

Lastly, PPL's proposal to extend the reconciliation period is misguided because it adds to carrying costs and further distorts the true cost of default service for customers. Even assuming that PPL's reconciliation proposal has the desired effect of smoothing out the price variances over the course of a year, the impact of increased carrying costs should be of concern to the Commission. More specifically, if at the end of the semi-annual reconciliation period proposed by PPL, customers are due a credit, PPL proposed to return that credit to the customer over the next 12-month period, *with interest*. That is, the balance due to the customer at the end of the

¹⁴² RESA St. No. 1 at 23-24.

annual cycle will accrue interest over a longer period, and the longer the time period that PPL carries that balance, the more interest the Company will owe to the customers. Because PPL is entitled to full cost recovery, it will necessarily recoup the cost of these higher interest payments from customers. Therefore, from a customer perspective, reducing the interest that will be paid is better because it ultimately costs the customer less. The same concerns are present even if at the end of the annual period the reconciliation is an over-collection because in this scenario, PPL is holding a credit that is due to customers.¹⁴³ Because of its potential to distort prices and add to carrying costs, PPL's reconciliation change proposal should be rejected.

Mr. Knecht, on behalf of OSBA, analyzed how – over the current default service period – the reconciliation component has distorted price signals to non hourly priced default service customers because it has “been wildly unstable” and has caused significant swings in the PTC.¹⁴⁴ Mr. Knecht concluded that customers “who were shrewd enough to game the system” have been switching back and forth between the competitive market and default service primarily due to the reconciliation effect. To avoid what he terms “customer gamesmanship,” Mr. Knecht reiterated his support for implementation of a migration rider which would require all customers to pay for the costs of default service reconciliation and his support of a different accounting method that matches earned revenues and incurred costs.¹⁴⁵

RESA agrees that administrative mechanisms like reconciliations, regardless of frequency, have the potential to impair development of a thriving retail market that will deliver the best products and services to customers. However, RESA disagrees with Mr. Knecht's

¹⁴³ RESA St. No. 1 at 24.

¹⁴⁴ OSBA St. No. 1 at 4-5.

¹⁴⁵ OSBA St. No. 1 at 12-13.

assertion that customers switching competitive suppliers or returning to default service are engaging in “gamesmanship” or that this justifies even more anti-competitive administrative solutions like a migration rider.¹⁴⁶ The Commission properly rejected PPL’s proposal to recover the costs of default service reconciliations from all customers in a recent decision.¹⁴⁷ Further, the Commission recently opened a new proceeding to consider default service reconciliation issues more broadly.¹⁴⁸ Regarding the accounting methodology utilized for reconciliation, the Commission recently rejected OSBA’s recommendations and deferred the issue to the broader proceeding.¹⁴⁹ Consequently, pending the outcome of the Commission’s broader proceeding addressing reconciliation, PPL’s current reconciliation mechanism should be continued consistent with RESA’s recommendations set forth above.¹⁵⁰

c. Large C&I Customer Class – Rates

RESA did not take a position on this issue.

d. Large C&I Customer Class – Reconciliation

RESA did not take a position on this issue.

e. The Green Power Program

PPL has decided to allow its Green Power Program to expire. Under the Green Power Program, participating customers (who can only be default service customers) are charged a monthly fee by PPL to “cover” the added expense of delivering renewable energy to the electric

¹⁴⁶ RESA St. 1-R at 11.

¹⁴⁷ *Petition of PPL Electric Utilities Corporation For Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011-2256365, Opinion and Order entered July 19, 2012.

¹⁴⁸ *Default Service Reconciliation Interim Guidelines*, Docket No. M-2012-2314313, Order entered August 14, 2012.

¹⁴⁹ *PPL Electric Utilities Corporation Proposed Generation Supply Charge—1 For the period June 1, 2011 Through August 31, 2011*, Docket No. M-2011-2243137, Opinion and Order entered July 19, 2012.

¹⁵⁰ *See*, RESA St. No. 1 at 22-24.

grid. PPL uses the revenue collected to purchase Alternative Energy Credits (“AECs”) from Community Energy, Inc.¹⁵¹ PPL’s contract with Community Energy, Inc. will terminate on May 31, 2013. PPL believes that this type of “optional” service should not continue to be provided by a default service provider, but rather offered in the competitive market.¹⁵² PPL proposes to send participating customers a notice of the expiration of the Green Power Program prior to the contract termination date.

RESA agrees that PPL’s Green Power Program should be permitted to expire. Such “optional” generation programs should be provided by the competitive market – rather than default service providers.¹⁵³ In fact, there are many EGSS that can and do provide “Green Power Programs” in PPL’s service territory.¹⁵⁴ There is absolutely no reason why any Green Power rate option needs to be offered as part of default service.¹⁵⁵ Accordingly, RESA does not agree with SEF Witness Costlow that PPL’s Green Power Program should be continued.¹⁵⁶

However, RESA has several recommendations to insure that PPL’s Green Power customers will have the opportunity to obtain similar “green” products from the competitive market. RESA recommends that PPL send two notices to each of the customers subscribing to this product, rather than just one.¹⁵⁷ At least one, if not both of the notices should contain offers (prepared at the EGS’s expense) describing alternative green products offered in the competitive

¹⁵¹ PPL St. No. 4 at 33-34.

¹⁵² PPL St. No. 4 at 34.

¹⁵³ RESA St. No. 2 at 44; RESA St. No. 2-R at 23.

¹⁵⁴ RESA St. No. 2-R at 23.

¹⁵⁵ RESA St. No. 2-R at 23.

¹⁵⁶ RESA St. No. 2-R at 23.

¹⁵⁷ RESA St. No. 2 at 44.

market.¹⁵⁸ Any Pennsylvania EGS should be eligible to participate and they should be able to discuss in their marketing material any alternative energy product that satisfies Pennsylvania's Alternative Energy Portfolio Standards Act ("AEPS Act").¹⁵⁹

PPL indicated that it was not adverse to RESA's recommendation of an EGS-sponsored mailing, as long as all costs are paid by the entities whose marketing material is being distributed by the mailing.¹⁶⁰ Since PPL is willing to include EGS offers in the mailing at the expense of the EGSs, RESA recommendation should be adopted so that EGSs that desire to participate can have marketing material distributed as a part of this program.¹⁶¹

f. Optional Monthly Pricing Service

RESA did not take a position on this issue.

g. Price to Compare Calculation Date

PPL has proposed to file the PTC for the GSC-1 customer segment ten (10) days prior to the effective date of the rates for each computation period.¹⁶² RESA submits that this PPL proposal needs to be adjusted. RESA recommends that the PTC and its various components be calculated in a timely way after the procurement in order to provide customers with accurate information needed to make informed shopping decisions.¹⁶³ Under RESA's proposed procurement structure, the default service RFP would take place approximately 60 days in advance of the applicable effective period. This should permit PPL to calculate the new PTC 45

¹⁵⁸ RESA St. No. 2 at 44.

¹⁵⁹ RESA St. No. 2 at 44.

¹⁶⁰ PPL St. No. 4-R at 52.

¹⁶¹ RESA St. No. 2-SR at 33.

¹⁶² PPL Exh. No. JMK-2.

¹⁶³ OCA St. No. 1 at 15.

days in advance. RESA's proposal is intended to ameliorate the negative effects of a significant divergence between the PTC and the underlying wholesale market prices at the time of delivery, and the Commission should adopt the recommendation in order to improve condition for market participants and retail customers.

PPL witness Yeager opposed RESA's recommendation, saying that the E-factor piece of the PTC is not finalized until about 15 days prior to the effective date of the new Generation Supply Charge ("GSC") rate, and that PPL must wait until the month in which the PTC is calculated because it receives updated load forecast information monthly.¹⁶⁴ She also testified that semi-annual PTC changes would be less confusing to customers than quarterly changes.¹⁶⁵

PPL's approach is problematic for RESA because publishing the PTC only 15 days before the start of the effective period means that both customers and EGSs have very little time to react to the new PTC price signal.¹⁶⁶ Although RESA would much prefer a default service model that placed less emphasis on the EDC's default service product and its associated price, the fact is that under the current paradigm, the PTC is widely used as a benchmark for price comparisons by customers. Publishing the PTC with more advance notice will better allow EGSs to educate customers about upcoming changes in the PTC and will allow customers to make better informed shopping decisions. As PPL notes, the E-factor is currently calculated with only a 15 day lead time before the effective date in order to allow PPL to use updated load forecast data in its calculation of the PTC. Although PPL currently waits for this updated load data to calculate the PTC, there is no reason why it could not use estimated or projected load data

¹⁶⁴ PPL St. No. 1-R at 13-14.

¹⁶⁵ PPL St. No. 1-R at 13.

¹⁶⁶ RESA St. 1-SR at 14.

to calculate the E-factor. These estimates would need to be trued up to actual data through the reconciliation process. However, even under the current model, PPL must estimate its anticipated level of kWh consumption for default service customers in order to derive the denominator for its E-factor calculation and set the \$/kWh PTC for the upcoming period.

In terms of the customer confusion issue raised by PPL, RESA disagrees that this is a convincing justification for rejecting its proposal that PTC changes be calculated in a timely manner. PPL's customers have been experiencing quarterly PTC price changes since January 1, 2010 and will continue to do so through May 31, 2013 and, therefore, have had a significant amount of time to become adjusted to the quarterly changes. The levels of migration from PPL default service indicates that a significant number of customers have experienced no confusion about changes to the PTC or their frequency.

h. Recovery of Transmission and Other Related Charges

i. Costs To Be Included In The TSC Or GSC

RESA did not take a position on these issues.

ii. Non-Bypassable Structure

RESA did not take a position on these issues.

iii. Reconciliation

RESA did not take a position on these issues.

3. Time of Use Rate Option

a. Design

i. PPL's Proposal

PPL proposed a time of use (“TOU”) rate option,¹⁶⁷ which would be open for residential and small commercial and industrial default service customers only. Load for this rate option would be procured as part of the 6- and 12-month products that PPL will be procuring for default service supply and wholesale suppliers will be paid based on the amount PPL bills to TOU customers exclusive of gross receipts tax (“GRT”), administrative charges and E-factor amounts.¹⁶⁸ As proposed, TOU rates will be fixed for 6-months and linked with each energy auction, with an adder included in the on-peak periods and a discount in the off-peak periods. The rates are proposed to be determined using the ratio of historic (3 years) load weighted average hourly on- to off-peak PJM PPL zonal energy prices to the historic load weighted average hourly PJM PPL Zonal energy prices.¹⁶⁹ Customers must “affirmatively elect” to participate in this rate option and there will be no cap on the number of customers who can participate.¹⁷⁰

ii. *RESA’s Recommendation*

PPL’s TOU proposal should be rejected and the Commission should require PPL to rely on the competitive market to comply with its TOU rate obligation, as articulated by the Commission in the *RMI Default Service Order*,¹⁷¹ wherein the Commission concluded as follows:

the Commission will maintain its recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. The Commission does wish to clarify that this recommendation is not, in and of itself, a rejection of the other proposals

¹⁶⁷ PPL St. No. 3 at 5.

¹⁶⁸ PPL St. No. 3 at 5.

¹⁶⁹ PPL St. No. 3 at 5-7.

¹⁷⁰ PPL St. No. 3 at 10.

¹⁷¹ *RMI Default Service Order* at 47-48.

raised, such as instituting peak time rebate offers or creating a separate wholesale auction for TOU rates. Such ideas may indeed have merit, and we will allow the EDCs to evaluate these proposals for possible inclusion in their next default service filings.¹⁷²

Specifically, RESA's primary recommendation is that PPL be required to certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territories.¹⁷³ To comply with the Act 129 requirement that the "default service provider shall submit to the Commission one or more proposed time-of-use rates and real-time price plans,"¹⁷⁴ each year, PPL would survey EGSs and determine whether they are or intend to offer a time-differentiated rate and whether the EGS intends to offer the product for at least 12-months.¹⁷⁵ If PPL finds one or more EGSs offering such rates, it would post that information on a clearinghouse website (and refer customers to the information upon inquiry) and certify this information to the Commission.¹⁷⁶ After the end of the year, PPL would submit a report on the number of EGSs actually providing the service.¹⁷⁷ Act 129 also provides that the default service supplier should prepare a report [presumably to the Commission] detailing "the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices."¹⁷⁸ Rather than have PPL compile these data and provide these opinions (which could require PPL to review competitively sensitive information), this data could be compiled and

172

Id.

173

RESA St. No. 2 at 42.

174

66 Pa. C.S. § 2807(f)(5).

175

RESA St. No. 2 at 42.

176

Id.

177

Id.

178

Id.

analyzed by either the Commission's Bureau of Conservation, Economics and Energy Planning ("CEEP") or by a consultant hired by PPL.¹⁷⁹

Alternatively, if the Commission declines to adopt RESA's "certification" proposal, RESA recommends that it adopt an "EGS bid-out" approach. This approach would require PPL to conduct a process whereby interested EGSs would submit proposals to provide a retail TOU rate to PPL customers. PPL would select the proposal that provided the best value and innovation to customers. Customers choosing to switch to this TOU rate would become customers of the EGS winning the bid; the service would be billed as being provided by the EGS (if the Commission thought it appropriate, it could also indicate that it was being provided in conjunction with PPL under Act 129). The service would also be subject to the standard end of contract terms, meaning that, if a customer did not make an affirmative election at the end of the contract term, the serving EGS would continue to serve that customer under a new TOU offer. This approach, which has recently been proposed by PECO and accepted by the Commission,¹⁸⁰ has the advantage of utilizing the competitive market to secure the TOU rate required by Act 129. Thus, the TOU bid-out approach is a "win-win-win," in that it: 1) satisfies PPL's Act 129 obligation; 2) will likely result in a more innovative and attractive rate that will provide value to customers; and 3) further enhances the competitive market.¹⁸¹

¹⁷⁹ RESA St. No. 2 at 42.

¹⁸⁰ *Petition of PECO Energy Company for expedited approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Opinion and Order entered September 26, 2012.

¹⁸¹ Additionally, it should be noted that if there was a bid out of TOU, PPL has stated that it would expect that EGSs bidding on the TOU offering would be subject to the same solicitation load cap that is in place for wholesale suppliers to ensure a competitive process of at least two EGSs. Generally speaking, RESA does not oppose reasonable restrictions on ability of EGS(s) to bid on the provision of TOU service. RESA does not object to these proposed conditions, assuming that the size and nature of the load to be served is such

Nothing in Act 129 would prohibit RESA's recommended approach to TOU service. As it stands, Act 129 imposes the obligation to ensure the TOU rates are available.¹⁸² As such, it can be fulfilled by the default service provider bidding out the service (as was proposed by PECO)¹⁸³ or by certifying that such services are being provided by EGSs (as was proposed by RESA in this proceeding). The intent behind this section of Act 129 was to ensure that such options were available to customers with smart meters to ensure that this substantial upgrade in infrastructure would be used and useful.¹⁸⁴ Both the spirit and letter of the law are met where PPL's plan demonstrates that such rate options are available while relying on EGSs to provide TOU rate options. Since these rates would only be available through the efforts of PPL, they are being "provided" by PPL, in any reasonable interpretation of that term.

RESA's recommended approach to TOU service offers advantages over PPL's TOU rate option. RESA's proposed alternative approach would be a more efficient and customer friendly.¹⁸⁵ Time-differentiated products from EGSs are increasingly available to customers with smart or interval meters (which includes all of customers in the PPL service territory).¹⁸⁶ In fact, Direct Energy, offers several such products.¹⁸⁷ One reason RESA consistently urges the

that EGSs would actually bid to provide the TOU service. If those conditions are too restrictive, modifications may be necessary to ensure that EGSs will bid.

¹⁸² 66 Pa. C.S. § 2807(f). RESA would fully support a revision of the provision to eliminate any default service provider involvement; but that is not the present status of the law. *Id.*

¹⁸³ *RMI Default Service Order* at 47-48; *Petition of PECO Energy Company for expedited approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Opinion and Order entered September 26, 2012 (which approved – consistent with the Joint Motion – PECO's plan to use a vendor to provide TOU service).

¹⁸⁴ RESA St. No. 2 at 42-43.

¹⁸⁵ RESA St. No. 2 at 42.

¹⁸⁶ RESA St. No. 2 at 43, *citing*, RESA Exhibit CHK-2 (PPL Discovery Response to RESA, Set I question number 9).

¹⁸⁷ RESA St. No. 2 at 43.

Commission to use EGSs to deliver those services already available on a competitive basis is that there is simply no reason to believe that the regulated utility will be as effective as EGSs in designing and delivering a product that customers really want, or that the time and money invested in those EDC programs would be spent more wisely.¹⁸⁸

Rather than the “one size fits all” approach proposed by PPL, RESA’s approach to TOU service would promote a market-based solution and encourage the innovation and creativity that comes from robust competitive markets.¹⁸⁹ Historically, PPL’s approach has resulted in TOU plans that few customers have actually selected. As explained by PPL Witness Woodruff, PPL’s TOU programs have not had the best track record of success.¹⁹⁰ In contrast, an EGS offering would have several advantages. Most importantly, EGS offerings are competitive, and do not include a reconciliation to recover under-collections, or confusing credits to return over-collections.¹⁹¹ Moreover, smart meter technology will allow EGSs to offer innovative products or even permit customers to design their own rates (within parameters).¹⁹² Encouraging market development of time-differentiated rates will spur innovation.¹⁹³ In contrast, PPL’s proposed TOU rate option offers no potential for innovation.

Contrary to the opinion expressed by PPL witness Yeager, RESA’s TOU proposal does not create “winning” EGS(s) that would have an advantage over other EGSs.¹⁹⁴ RESA’s primary

¹⁸⁸ RESA St. No. 2 at 43.

¹⁸⁹ RESA St. No. 2 at 43.

¹⁹⁰ PPL St. No. 3 at 3-4.

¹⁹¹ RESA St. No. 2 at 43.

¹⁹² RESA St. No. 2 at 43.

¹⁹³ RESA St. No. 2 at 43.

¹⁹⁴ PPL St. No. 1-R at 17.

proposal would have PPL certify that the market has provided the required TOU service. With the certification process, any EGS could decide to offer TOU service. If the Commission chose the “bid-out” approach, there would be one or more successful EGSs, but all EGSs would be given the opportunity to participate and to submit a bid. This process would be no different than PPL’s proposal to obtain TOU power via a wholesale auction. Ms. Woodruff never explained why a wholesale auction is fair to wholesale power suppliers while a bid out or certification process at the retail level would not be fair to all EGSs.

b. Procurement

If RESA’s recommended approach to TOU service is adopted, there is no need for procurement of wholesale electricity by PPL. RESA did not take a position on the procurement issues raised by PPL’s TOU program proposal.

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

RESA did not take a position on these issues.

b. Third-Party Manager

RESA did not take a position on these issues.

c. RTO Compliance and Consistency

RESA did not take a position on these issues.

d. Contingency Planning

RESA did not take a position on these issues.

e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

RESA did not take a position on these issues.

C. Retail Market Enhancements and Customer Referral Programs

1. New and Moving Customer Program

PPL is not making a specific proposal for an actual new/moving customer referral program. Instead, PPL contemplates implementing – no later than the third quarter of 2012 – the call center scripts being developed in the RMI Working Group.¹⁹⁵ These scripts are intended to make new and moving customers aware of the opportunity to select a competitive generation supplier.¹⁹⁶ PPL witness Krall further testified that, in conjunction with the scripts, PPL will have the ability to transfer phone calls from customers to EGSs and the ability to assign a customer number in real-time in order to implement a switch.¹⁹⁷

In RESA’s opinion, PPL’s intention to rely on call center scripts, while not an unreasonable policy decision, nonetheless does not track the Commission’s proposal in the *Intermediate Work Plan Final Order*.¹⁹⁸ The Commission specifically directed program elements¹⁹⁹ – beyond call center scripts – to be incorporated in a new/moving customer referral program in its *Intermediate Work Plan Final Order* and stated that it expected the “new/mover” program would be merged into the “Standard Offer Referral Program.”²⁰⁰

¹⁹⁵ PPL St. No. 4 at 13.

¹⁹⁶ PPL St. No. 4 at 13.

¹⁹⁷ PPL St. No. 4-R at 43.

¹⁹⁸ PPL witness Krall suggests that call center script modifications are beyond the scope of this proceeding. PPL St. No. 4-R at 42-43. To the extent that PPL is using the call center scripts to show compliance with the required program elements in the *Intermediate Work Plan Final Order*, the scripts are clearly within the scope of this proceeding.

¹⁹⁹ *Intermediate Work Plan Final Order* at 17-20.

²⁰⁰ RESA St. No. 2 at 31; RESA St. No. 2-SR at 28-29.

RESA believes that a reasonable new/moving customer referral program must have the ability to implement a “day-one switch.”²⁰¹ The steps outlined by Mr. Krall fall short of the day-one “switch” capability that RESA is advocating. A true “day-one switch” means that a customer must be able to set up service with an EGS at the same time, and in the same way as it does for distribution service.²⁰² The ability to implement a “hot transfer” may be a reasonable interim solution, but it is not an acceptable long term solution.²⁰³ Simply put, a hot transfer does not make EGS service available immediately to a customer, does not avoid an additional step to get competitive service and it does not permit a customer who already knows the EGS from which she would like to take service to do so without being placed on default service for any period of time.²⁰⁴

Thus, RESA submits that PPL should concentrate on implementing the standard offer referral program and the opt-in aggregation rather than the new/moving customer program to the extent that this latter program would delay the implementation of any of the RME programs.²⁰⁵ In addition, RESA submits that PPL should devise a means to allow new and moving customers who already know the EGS from which they would like to take service to begin service with that EGS, without the need for a transfer away from PPL’s customer service representative.²⁰⁶ In order to be on an equal footing with bundled utility service, EGS service must be available immediately for new and moving customers who identify the EGS from which they would like to

²⁰¹ RESA St. No. 2-SR at 29.

²⁰² RESA St. No. 2-SR at 29, 32.

²⁰³ RESA St. No. 2-SR at 29.

²⁰⁴ RESA St. No. 2-SR at 32.

²⁰⁵ RESA St. No. 2-SR at 32.

²⁰⁶ RESA St. No. 2-SR at 32.

take service.²⁰⁷ Forcing customers who know they want service from a specific EGS to take commodity service from the monopoly delivery company – even for a single billing cycle – should be anathema to any entity that claims to support competition.²⁰⁸

Accordingly, RESA recommends that the Commission include within this default service plan a provision that requires PPL to design this “day-one switch” capability for implementation as soon as practicable after the proposed retail enhancements are in place.²⁰⁹ Building this functionality now (which based on the experience of ConEdison’s new and moving customer referral program should be relatively straightforward) will set the stage for a more complete new and moving customer program later, which would be available even to customers who may not yet know which EGS with which they would like to begin service.²¹⁰ If PPL can implement the Commission’s envisioned “new/move” interim program without interfering with any of the steps discussed above, then RESA, of course, supports taking that step.

2. Customer Referral Mailing

PPL has proposed to undertake a one-time direct mailing of EGS offers to residential default service customers in the second or third quarter of 2013.²¹¹ This proposal is similar to the

²⁰⁷ RESA St. No. 2-SR at 32.

²⁰⁸ RESA St. No. 2-SR at 32.

²⁰⁹ RESA St. No. 2-SR at 32.

²¹⁰ RESA St. No. 2-SR at 33.

²¹¹ PPL St. No. 4 at 19-20.

direct mail program that is on-going for the Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“Penelec”)²¹² service territories.²¹³

RESA applauds PPL’s proposal to implement a one-time direct mailing of EGS. The Met-Ed and Penelec program offered significant flexibility to participating suppliers and allowed them to present a wide range of offers to customers.²¹⁴ The participating suppliers designed marketing inserts that were included in the mailers.²¹⁵ Undertaking a similar mailing in PPL’s service territory is a good and efficient way to provide consumers concrete information about the competitive options available in their area.²¹⁶

RESA has made two recommended changes to PPL’s proposal. First, RESA has recommended that this mailing be combined with the Commission-directed RMI consumer mailing.²¹⁷ This will minimize cost, allow EGSs an earlier opportunity to reach customers, and help to maximize customer participation in, and awareness of, the competitive market prior to the end of PPL’s existing default service term.²¹⁸

In order to consolidate the EGS offers with the educational mailings, RESA has submitted that the combined mailing should be implemented by no later than March 1, 2013. But, to be clear, there is no reason to abandon this mailing program based on the timing of the

²¹² *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs* Docket Nos. P-2009-2093053 and P-2009-2093054, Opinion and Order entered November 6, 2009 at 20-21.

²¹³ PPL St. No. 4 at 19-20.

²¹⁴ RESA St. No. 2 at 16.

²¹⁵ RESA St. No. 2 at 16.

²¹⁶ RESA St. No. 2 at 16.

²¹⁷ RESA St. No. 2 at 13-14, 16-17.

²¹⁸ RESA St. No. 2 at 14.

other RME programs.²¹⁹ RESA's recommendation to combine the direct mail with the Commission-mandated consumer education mailing could go forward regardless of how the Commission decides to restructure the timeline for the other programs or how it addresses the cost recovery issues. The mailing of EGS offers fits perfectly with the Commission-mandated education piece, and merging these two mailing program presents the opportunity to maximize the value of both mailings through the inclusion of PPL territory-specific EGS mailings at the same time education about retail choice is being provided.²²⁰ This value is separate and apart from the timing issue for the other RME programs.²²¹

The OCA supported RESA's proposal to combine EGS offers with the educational mailings.²²² OCA witness Alexander opined that RESA's proposal is reasonable, provided that 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 costs of this mailing.²²³ It is her understanding that similar mailings to FE's customers have proved successful.²²⁴

Second, RESA recommends that a separate referral mailing for small commercial and industrial customers be made by PPL.²²⁵ PPL objected to a consolidated mailing for both

²¹⁹ RESA St. No. 2 at 17-18.

²²⁰ RESA St. No. 2 at 17-18.

²²¹ RESA St. No. 2 at 18.

²²² OCA St. No. 2-R at 3.

²²³ OCA St. No. 2-R at 7-8, 11-12.

²²⁴ OCA St. No. 2-R at 7.

²²⁵ RESA St. No. 2 at 16; RESA St. No. 2-SR at 9.

residential and small commercial customers.²²⁶ But, PPL indicated that it would not be adverse to a separate mailing to small commercial and industrial customers – if the participating EGSs would share the cost of the mailing.²²⁷ Since RESA and PPL are in agreement on this issue²²⁸ RESA’s recommendation should be adopted.

3. Opt-In Auction / Aggregation Program Design

PPL proposed to implement a retail opt-in auction program in late November, early December 2013.²²⁹ As proposed, participating EGSs will offer residential customers a 6-month, fixed-price product, at a minimum 5% discount off PPL Electric’s December 1, 2013 PTC.²³⁰ Customers participating in the auction also will receive a \$50 cash payment from the EGS who acquires the customer in the auction with the bonus being issued to the customer after the customer has received electric generation service from the EGS for three consecutive billing cycles.²³¹ In recognition of the Commission’s decision in the FE DSP II proceeding,²³² PPL also indicated that it would be willing, if directed by the Commission, to implement the Opt-in Program as an aggregation, rather than as an auction.²³³ In PPL’s view, the opt-in aggregation program (“OIA”) should have the same terms and conditions as it had proposed for the auction. Since the policy pronouncements set forth in the *FE DSP II Order* have now been confirmed in

²²⁶ PPL St. No. 4-R at 19-20.

²²⁷ PPL St. No. 4-R at 19-20.

²²⁸ RESA St. No. 2-SR at 9.

²²⁹ PPL St. No. 4 at 20-25; PPL St. No. 4-R at 22-33.

²³⁰ PPL St. No. 4 at 20-25; PPL St. No. 4-R at 22-33. The actual amount of the discount would be set by the auction among participating EGSs. *Id.* If the auction is not held, the discount would be set by the approved aggregation plan.

²³¹ PPL St. No. 4 at 20-25; PPL St. No. 4-R at 22-33.

²³² *FE DSP II Order* at 108.

²³³ PPL St. No. 4-SR at 6.

the PECO DSP binding poll,²³⁴ it appears clear that the Commission has decided that an opt-in aggregation should be among the set of elements for the RMEs that it will follow, absent good cause shown to the contrary. RESA can accept an OIA program in lieu of an auction if the Commission continues to believe that an OIA is the appropriate policy.

Unless otherwise noted herein, RESA's positions and recommendations that are directed towards the retail opt-in auction would apply equally to a retail OIA program. Instead of the auction, the Commission directed the FE EDCs to implement OIA programs, consisting of a one-year product, with a discount of five percent off the PTC at the time of enrollment for four months, a fixed price for the remaining eight months and inclusion of a fifty dollar bonus, to be paid at the conclusion of the initial four-month period.²³⁵ If a similar OIA program is considered for PPL, RESA submits that PPL's proposed six month term, with a discount of 5% from the PTC at the time of enrollment, and a \$50 bonus is reasonable and has certain advantages compared to the structure which appears to be the approach adopted in FE.²³⁶ Moreover, RESA's respectfully requests that several of its recommendations directed towards the retail opt-in auction be applied and considered with respect to the OIA program.

In that regard, RESA has made seven recommendations concerning the implementation of the retail opt-in auction/aggregation program. RESA intends to discuss in detail only those that would or may apply to the aggregation program. In addition to requiring PPL to implement the retail opt-in auction/aggregation sooner than it proposes (as discussed in Section III.C.5) and

²³⁴ *PECO DSP II*, at Commissioner Witmer Motion (Issues 14, 26, 27) entered on September 27, 2012 (which changed PECO's opt-in competitive offer program to align it with the retail opt-in aggregation program set forth in the Commission's Order in the *FE DSP II Order*).

²³⁵ *FE DSP II Order* at 108. The Commission used the implementation period proposed by the FE EDCs (June 2013 through May 2014). *Id.* at n. 26.

²³⁶ *FE DSP II Order* at 108-109; *FE DSP II Reconsideration Order* at 14-17.

requiring a different method of cost recovery (as discussed in Section III.C.6), RESA recommends that the following key program elements of the retail opt-in auction/aggregation program be modified to ensure maximum success of the program: (i) the eligibility of shopping customers, (ii) inclusion of small business customers; and, (iii) requiring a minimum number of winning bidders/participants.²³⁷

RESA also recommends that, once the program details for the retail opt-in auction/aggregation are decided, the parties should be directed to work together to develop fair and balanced binding terms that will govern their relationship consistent with the finally determined elements.²³⁸ In addition, RESA would gladly participate in a collaborative to work out the details of the customer allocation and other issues created by the aggregation approach but not heretofore resolved by the Commission. In the FE DSP II Order, the Commission recognized a need for the details to be worked out,²³⁹ and RESA is ready, willing and able to participate in that process.

To begin, it must be noted that PPL's service territory has a high level of competitive activity but, despite this, a material number of customers, and a majority of residential customers, still are not shopping.²⁴⁰ RESA believes that if the retail opt-in auction or aggregation is going to be successful in incenting PPL's default service customers to shop, then

²³⁷ RESA has also made proposals concerning the order of the auction and customer enrollment (See RESA St. 2 at 22-24). Since that recommendation only applies to an auction, RESA will not discuss it extensively in this brief.

²³⁸ RESA supports permitting all EGSs, even those who offer dual billing, to participate in the retail opt-in auction/aggregation.

²³⁹ *FE DSP II Order* at 160 (Ordering Paragraph No. 13).

²⁴⁰ RESA St. No. 2 at 22.

the auction/aggregation parameters need to be revised in specific ways compared to PPL's preferred approach to make it more likely that there will be a positive response to the program.²⁴¹

a. Sequencing Of The Auction (if ordered)

If the Commission decides to order an opt-in auction, RESA has recommended that enrollment occur prior to the auction.²⁴² Given the nature of this program, the ability to determine participation is difficult.²⁴³ The only direct way to alleviate this concern would be to give customers the ability to enroll first and then conduct the auction.²⁴⁴ RESA has explained its reasons for its sequencing proposal in its direct and surrebuttal testimony.²⁴⁵

b. Additional Communications

RESA recommended that the retail opt-in program be structured so that to ensure maximum customer awareness.²⁴⁶ RESA indicated that if done as a true aggregation, in which the utility, the Commission, and EGSs aggressively promoted the opportunity to opt-in to a program that would save customers money, the program should garner greater customer responses than an auction.²⁴⁷ The success of the any retail opt-in program may be enhanced with (a) additional mailings and other communications or (b) enhanced means of enrollment.²⁴⁸ Rather than the one mailing proposed by PPL, RESA has recommended that, at least, one additional mailing be conducted by PPL and that PPL develop an enhanced means of enrolling

²⁴¹ RESA St. No. 2 at 22.

²⁴² RESA St. No. 2 at 23-24. This recommendation would not apply to the OIA program.

²⁴³ RESA St. No. 2 at 24.

²⁴⁴ RESA St. No. 2 at 24.

²⁴⁵ RESA St. No. 2 at 22-24; RESA St. No. 2-SR at 14-16.

²⁴⁶ RESA St. No. 2 at 14.

²⁴⁷ RESA St. No. 2 at 23.

²⁴⁸ RESA St. No. 2 at 22-24; RESA St. No. 2-SR at 12-13.

customers. For example, (a) if the first mailing by PPL generates less than a 10% response rate by a date certain, PPL should be required to mail out a similar letter in an effort to generate more customer responses; and/or (b) customers should be able to notify PPL by mail, phone or web that they are opting-in to the program. It is RESA's position that any additional costs incurred for these additional communications or enhanced enrollment capabilities would be reasonable and would be exceeded by the benefits from these offers and from a more competitive market.²⁴⁹

c. Shopping Customer Participation

As RESA has advocated during the RMI, it is not appropriate to allow existing shopping customers to participate in the retail opt-in auction/aggregation.²⁵⁰ All Pennsylvanians have the right to choose their electric supplier.²⁵¹ And they can, subject to the terms of their contracts, switch suppliers.²⁵² But, it does not necessarily follow that shopping customers have a "right" to participate in the PUC-ordered auction/aggregation or the other RMEs.²⁵³ Customers are well aware that, whether it is a competitive offer or a utility program like an energy efficiency rebate, not all customers are eligible for every program.²⁵⁴ And, RESA is not aware of any existing statutory or constitutional provision that a shopping customer could argue would be violated if he or she were prevented from participating in the opt-in auction.

²⁴⁹ RESA St. No. 2-SR at 13.

²⁵⁰ RESA St. No. 2 at 28.

²⁵¹ RESA St. No. 2-SR at 17.

²⁵² RESA St. No. 2-SR at 17.

²⁵³ RESA St. No. 2-SR at 17.

²⁵⁴ RESA St. No. 2 at 18.

The primary intent of the retail opt-in auction/aggregation and other RMEs is to introduce default service customers to competitive alternatives.²⁵⁵ Accordingly, only default service customers should be eligible for the retail opt-in auction/aggregation.²⁵⁶ Many EGSs that are already serving mass market customers have invested significant financial resources in attracting these customers.²⁵⁷ These EGSs should not face the risk of losing that investment as a result of an retail opt-in auction/aggregation program whose stated intent is to encourage default service customers to shop.²⁵⁸ It is not enough to simply limit education and marketing about the program to default service customers.²⁵⁹ The EDCs, in developing messaging about the program, call center scripts and other materials and protocols, should inform customers that they are not eligible for the opt-in auction/aggregation if they are already being served by an EGS.²⁶⁰ This limitation is also important from a customer perspective.²⁶¹ Some EGSs impose early termination fees on customers who cancel their contract early.²⁶² Limiting eligibility to non-shopping customers will eliminate the risk that existing shopping customers will be subject to such penalties from their existing supplier should they chose to enroll in the opt-in auction/aggregation.²⁶³

²⁵⁵ RESA St. No. 2 at 28.

²⁵⁶ RESA St. No. 2 at 28.

²⁵⁷ RESA St. No. 2 at 28.

²⁵⁸ RESA St. No. 2 at 28.

²⁵⁹ RESA St. No. 2 at 28.

²⁶⁰ RESA St. No. 2 at 28.

²⁶¹ RESA St. No. 2 at 28.

²⁶² RESA St. No. 2 at 28.

²⁶³ RESA St. No. 2 at 28.

PPL need not undertake complex systems changes to implement this recommendation.²⁶⁴ PPL already has the ability to identify shopping versus non-shopping customers. PPL Customer Service Representatives (“CSRs”) already have the real time ability to know whether or not a calling customer is a customer of an EGS.²⁶⁵ In fact, PPL witness Krall has stated that “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...”²⁶⁶ So, when a shopping customer contacts PPL to inquire about the opt-in auction/aggregation or to elect to participate in the auction/aggregation, PPL’s customer service representative would inform the customer that eligibility is limited to default service customers only. If this is done, PPL has expressed concern that it may be placed in the “awkward position” of telling a customer who is currently shopping that they are not eligible to participate in the program.²⁶⁷ This may happen. But, it will not cause material problems for PPL because, customers are well aware that they may not be eligible for every offer or program.²⁶⁸ Moreover, it would be reasonable to make clear that, if the RESA recommendation is adopted, PPL would not be subject to liability or sanction if a shopping customer did find a way to sign up for the OIA.

The exclusion of shopping customers would depart from the Commission’s guidelines and recent pronouncements in FE and PECO. But, good cause exists to justify a departure. As noted above, customers in PPL’s service territory have been exposed to many, many offers and yet numerous default service customers have not taken advantage of these offers to save money

²⁶⁴ RESA St. No. 2 at 28.

²⁶⁵ RESA St. No. 2 at 18.

²⁶⁶ PPL St. No. 4-R at 17.

²⁶⁷ PPL St. No. 4-R at 38-39.

²⁶⁸ RESA St. No. 2 at 18.

or obtain other benefits.²⁶⁹ This presents a unique risk that a large number of shopping customers could leave their existing contracts to participate in the RMEs.²⁷⁰ In fact, OCA Witness Alexander has suggested that the shopping customers in PPL's territory are likely to hear about this program and some may seek to enroll.²⁷¹ Moreover, unlike the other EDCs, PPL admittedly has the ability to differentiate between shopping and non-shopping customers when a customer calls the Service Center.

Moving customers from one EGS to another through this program simply does not further the objectives of the Competition Act.²⁷² Participation by shopping customers also forecloses participation by non-shopping customers. Excluding shopping customers would ensure the "space" is available for default service customers in the program. To further the objectives of the Competition Act, it is reasonable to exclude shopping customers from participating in the RMEs in the manner set forth above.

d. Small Business Participation

PPL would limit the retail opt-in auction/aggregation program to residential customers. RESA recommends that small C&I customer be eligible to participate in the opt-in auction/aggregation. In RESA's view, there is no reason not to extend the auction/aggregation to

²⁶⁹ RESA St. No. 2-SR at 12.

²⁷⁰ RESA St. No. 2-SR at 18.

²⁷¹ OCA St. No. 2-R at 10.

²⁷² RESA ST. No. 2-SR at 17.

small business customers.²⁷³ That conclusion was reached in the FE DSP II proceeding,²⁷⁴ and the PECO default service proceeding²⁷⁵ and should also be implemented here.

Small business customers in many ways have similar characteristics to residential customers.²⁷⁶ In PPL's service territory, the shopping numbers reflect that, as of September 11, 2012, 64% of the Peak Load Capacity ("PLC") of small commercial customers (under 25 kW) and 68% of the PLC of small industrial customers (under 25 kW) are shopping²⁷⁷

This is evidence that a significant number of small business customers – particularly those in the lower-end of 25 kW and below category – still lag behind all commercial and industrial customers, where 88 to 97% of the load is shopping.²⁷⁸ The large PLC of the small business customers (under 25 (kW) is likely to consist of small business customers who are at the higher end of the 25 kW and below category, and less "sticky." The PLC of the small business customers who are not shopping (140,070 for small commercial and 4,606 for small industrial)²⁷⁹ are likely made up of many customers in the lower end of the 25kW and below category, and more "sticky." Small business customers at those usage levels in the lower end of the 25 kW and below category frequently have knowledge and sophistication levels similar to residential customers.²⁸⁰ And, the reasons for these customers not shopping are similar to those for residential customers. Thus, adopting RESA's proposal to include small business customers in

²⁷³ RESA St. No. 29-30.

²⁷⁴ *FE DSP II Order* at 103-104.

²⁷⁵ *PECO DSP II* at Issue 12 of the Binding Poll conducted on September 27, 2012.

²⁷⁶ RESA St. No. 2 at 29-30; RESA St. No. 2-SR at 20-21.

²⁷⁷ Tr. at 320-321.

²⁷⁸ RESA St. No. 2-SR at 20; RESA MB, App A .

²⁷⁹ Tr. At 320-321.

²⁸⁰ RESA St. No. 2-SR at 20.

the retail opt-in auction/aggregation will further the objectives of the Competition Act by inducing more customers to shop and ultimately reduce the costs of electric generation.

Mr. Knecht for OSBA claimed that including small business customers is inconsistent with a cost minimization strategy for default service supply.²⁸¹ But, this conclusion is based on rampant speculation on top of a faulty premise – that the ultimate goal of the customer is to preserve the existing default service structure.²⁸² Indeed default service is just that – a default if a customer does not utilize the competitive market.²⁸³ The Commission’s primary goal is to create a robust retail competitive market, and competitive enhancements such as the opt-in auction/aggregation steps in this direction.²⁸⁴ It is irrefutable, and clearly recognized by the Commission, that the best and most certain way to provide customer benefits and electric service at least cost over time is to create a robust and sustainable competitive market.²⁸⁵ The opt in auction/aggregation will assist in doing that for small commercial and industrial customers.²⁸⁶

Taken to its logical conclusion, Mr. Knecht’s position would mean that any policy that resulted in any migration away from default service or even any reduction in default load should be viewed with suspicion.²⁸⁷ That could include the use of self supply, net metering, energy efficiency programs (such as those mandated by Act 129), consumer education about competitive choice, and even the absence of measures that constrain movement away from

²⁸¹ OSBA St. 2-R at 5.
²⁸² RESA St. No. 2-SR at 22.
²⁸³ RESA St. No. 2-SR at 22.
²⁸⁴ RESA St. No. 2-SR at 22.
²⁸⁵ RESA St. No. 2-SR at 22.
²⁸⁶ RESA St. No. 2-SR at 22.
²⁸⁷ RESA St. No. 2-SR at 23-24.

default service, such as minimum stay provisions. In that sense, Mr. Knecht has it exactly backwards on policy grounds. Rather than limit migration away from default service in order to prevent any incremental impact on default service pricing, RESA believes the Commission has rightly focused its efforts on decreasing the primacy of utility default service; this is an approach which will benefit all customers in the long run.

RESA's position has been that the definition of small commercial and industrial customers should be 25 kW and below. However, it has also supported using the smallest commercial rate class category if separating commercial and industrial customers based on peak load would be impossible or difficult. Most recently, the Commission has ordered that the demarcation point for participation in the RME programs for West Penn and Penn Power should be the smallest existing commercial rate class.²⁸⁸ If PPL does not believe it would be appropriate or feasible to separate out the 25 kW and below customers than RESA supports offering the RME programs to commercial customers in PPL's smallest existing rate class.

e. Minimum Number of Winning Bidders or Participants

RESA has recommended that there be a requirement of at least four (4) successful EGS bidders in any auction.²⁸⁹ RESA submits that there should similarly be a requirement for a minimum of four EGS participants in any aggregation. Imposing a requirement for a minimum number of winning bidders/participants is important to ensure participation by a diverse number of suppliers each bringing their own individual strengths and business models to the

²⁸⁸ FE DSP II Reconsideration Order at 13.

²⁸⁹ RESA St. No. 2 at 30.

auction/aggregation for the benefit of retail end users.²⁹⁰ One important justification for the retail opt-in auction/aggregation is to allow a certain number of EGSs to increase their scale in the PPL market, allowing them to achieve economies of scale that would justify further investment that would benefit customers and the Commonwealth generally.²⁹¹ This goal is best served by having a minimum number of four winning bidders or participants (again subject to RESA's other recommendations).²⁹²

PPL concerns about having a minimum number of winning bidders/participants are not justified. PPL expressed concern that: (a) it might not find four EGSs interested in participating in the auction; and (b) adding a requirement of a minimum of four winning bidders/participants complicates the process of selecting the winning bidders.²⁹³ While RESA believes that it is much less likely that there will be less than four participants in any aggregation program, as the Commission has ordered it in FE and PECO, RESA nonetheless believes that it would be reasonable to set a minimum participation requirement of four EGSs.

The goal of RESA's recommendation is to enhance supplier diversity, and thus enhance the long term competitiveness of the market.²⁹⁴ Specifically, if implemented, this recommendation has the potential to increase the number of suppliers achieving sustainable scale, and increase their ability to offer more diverse products and services to their customers.²⁹⁵

²⁹⁰ RESA St. No. 2 at 30. Participation below a certain number of customers might justify a smaller number of winning bidders. *Id.*

²⁹¹ RESA St. No. 2 at 30.

²⁹² RESA St. No. 2 at 30.

²⁹³ PPL St. No. 4-R at 31.

²⁹⁴ RESA St. No. 2-SR at 10-11.

²⁹⁵ RESA St. No. 2-SR at 11.

This will make the market more competitive.²⁹⁶ This greater level of competition will, in turn, result in more and more varied offers, enhanced and value-added products and services, and more competitive prices.²⁹⁷ Further, the rules should be structured so that if only two or three EGSs bid or elect to participate, the Commission could nonetheless approve the results, if it verifies that the lack of multiple bidders/participants does not reflect some underlying market distortion or problem and that the retail offers to be made to customers will be beneficial to customers.²⁹⁸

f. Customer Participation Cap

It should be noted that the size of the enrollment cap has nothing to do with the one-time nature of the program.²⁹⁹ The larger the enrollment cap, the less likely it is that an interested customer will be denied participation in the program because it is “full.” And, if shopping customers are allowed to participate in these programs, the enrollment caps should be large to avoid the potential situation where participation by shopping customers forecloses participation by non-shopping customers. RESA is willing to accept a 50% customer participation cap in either an opt-in auction or aggregation, if that is the Commission’s policy conclusion, as appears to be the case.

²⁹⁶ RESA St. No. 2-SR at 10-11

²⁹⁷ RESA St. No. 2-SR at 11.

²⁹⁸ RESA St. No. 2-SR at 11.

²⁹⁹ RESA St. No. 2-SR at 19.

4. Standard Offer Program Design

PPL has proposed to implement a “standard offer” customer referral program in mid-2014.³⁰⁰ As proposed by PPL, participating EGSs will provide participating customers a 7% reduction relative to the PTC in effect at the time the offer is made for a term of six billing cycles with no termination penalty or fee. PPL has proposed that this program will target residential customers on default service, but shopping customers will be eligible to participate.

RESA has four recommendations concerning the implementation of the standard offer program. In addition to requiring PPL to implement the standard offer program sooner than it proposes (as discussed in Section III.C.5) and requiring a different method of cost recovery (as discussed in Section III.C.6), RESA recommends that the length of the discount should be for four billing cycles, not six. Additionally, RESA submits that the program should apply to small commercial and industrial customers, just as the Opt-in Aggregation program, and once the program details for the standard offer program are decided, the parties should be directed to work together to develop a set of fair and balanced binding terms that will govern their relationship consistent with the finally determined elements.³⁰¹

a. Length of Discount

RESA has consistently taken the position that the standard offer referral program should be a true introductory program, with a discount provided for a four-month period, followed either by the EGS moving to a month-to-month variable rate or, as suggested by others, a fixed price

³⁰⁰ PPL St. No. 4 at 25-32; PPL St. No. 4-R at 33-43.

³⁰¹ RESA St. No. 2 at 38-39. RESA supports permitting all EGSs to participate in the customer referral program even those that offer dual billing. *Id.* at n. 33.

for the remaining eight months of the initial term.³⁰² So, RESA advocates a 7% discount from the then-existing PTC for a four-month term – with a fixed rate for the remaining eight months.³⁰³ This balances consumer value with a program in which EGSs will be willing to participate.³⁰⁴ It is also a reasonable approach, especially considering that customers are not “locked in.” In response to market conditions – or for any reason – they can leave at any time without penalty.³⁰⁵

i. *Coordination with OIA Program*

Additionally, the Commission should recognize the need to coordinate the offer to be made via the aggregation program and the offer to be extended as part of the Standard Offer Program. RESA believes that, to the greatest extent possible, the two offers should be as consistent as possible. Specifically, if the OIA offer is to be a 5% discount from the price to compare with a \$50 bonus, then the Commission should seriously consider making the SOR Program a 5% discount for 6 months (but without a bonus). Without this consistency there exists the real potential that customers might sign up for one program and then re-sign for the next, or simply be confused by the marketing information concerning such similar programs.

b. *Calculation Of The Discount From The PTC*

RESA agrees with PPL that the standard offer discount cannot be a “guarantee” of savings. The mandate of a guarantee of savings versus the PTC would seriously deter EGS

³⁰² RESA St. No. 2-SR at 30.

³⁰³ However, a six-month program term with a PTC that only changes every six months is not unworkable, although RESA does not support PPL’s proposal to change from a quarterly changing PTC to a semi-annually changing PTC. RESA St. No. 2-SR at 30.

³⁰⁴ RESA St. No. 2-SR at 30.

³⁰⁵ RESA St. No. 2-SR at 30.

participation.³⁰⁶ Requiring a guaranteed savings off the PTC when the PTC will be adjusted during the contract term would be problematic.³⁰⁷ EGSs are generally comfortable providing a truly fixed 12-month price, as such offers can be hedged at the time they are made.³⁰⁸ The same is not true of a price that might change over time, as would an offer of a percentage below the PTC regardless of how the PTC might change.³⁰⁹ This arrangement would be especially risky for EGSs where the reconciliation process can result in large variations in the PTC that are far beyond those attributable solely to changes in the underlying market price for power.³¹⁰ These unpredictable fluctuations caused by the reconciliation process are beyond an EGS's control and cannot be hedged effectively.³¹¹ The Commission cited this particular risk as a justification for its proposed price of five percent off the then-current PTC: "[T]he utility's default service rate is not fully reflective of the market because it is also impacted by the reconciliation process. Predicting market prices in advance is always challenging; we think that adding to this the vagaries of the reconciliation process is asking too much."³¹² Therefore, rather than a guarantee of savings (which has been suggested by OCA),³¹³ the discount should be applied at the time of contract initiation and should not be required to continue throughout the contract term if the PTC changes in that time period.

³⁰⁶ RESA St. No. 2-SR at 30.

³⁰⁷ RESA St. No. 2-R at 8.

³⁰⁸ RESA St. No. 2-R at 8.

³⁰⁹ RESA St. No. 2-R at 8.

³¹⁰ RESA St. No. 2-R at 8.

³¹¹ RESA St. No. 2-R at 8.

³¹² *Intermediate Work Plan Final Order* at 70.

³¹³ OCA Witness Alexander has recommended that the guaranteed percent discount off the PTC should remain throughout the contract term even if the PTC changes during the contract term. OCA St. No. 2 at 17.

c. Customer Participation

RESA remains concerned about the participation of shopping customers in a program designed to “un-stick” default service customers. But, for the standard offer program, RESA’s concerns can be adequately addressed without an explicit prohibition for shopping customers.³¹⁴ PPL need only implement the program such that when an existing shopping customer calls, she is not provided with information about the standard offer options (unless they request same).³¹⁵ Thus, RESA’s position is that shopping customers should not receive information about the standard offer program when contacting PPL and should only be eligible to participate if they affirmatively request to participate. This is fully consistent with the Commission’s direction.³¹⁶ RESA understands PPL’s position to be consistent with this: it intends to affirmatively make the SOP offer only to customers that its records indicate are default customers; but if a shopping customer asks for the Standard Offer he/she will receive information about it.³¹⁷

OCA Witness Alexander proposed that only new and moving customers contacting PPL should be offered information about the standard offer program.³¹⁸ Likewise, CAUSE-PA Witness Krone has proposed to specifically prohibit PPL from providing information about the customer referral program to customers calling about high bill complaints.³¹⁹ RESA disagrees with these proposals,³²⁰ and so does the Commission. The Commission specifically addressed

³¹⁴ RESA St. No. 2 at 37-38.

³¹⁵ RESA St. No. 2 at 38.

³¹⁶ RESA St. No. 2 at 38.

³¹⁷ Tr. 82-84.

³¹⁸ OCA St. No. 2 at 17.

³¹⁹ CAUSE-PA St. No. 1 at 23-24.

³²⁰ For clarification, RESA’s position regarding application of the standard offer to high bill complaint calls (as well as general inquiry calls) should apply to default service customers only consistent with the

this issue and ruled that the standard offer customer referral should apply to general inquiry calls as well as high bill complaints, but “only and explicitly after the customer’s [high bill] concerns are satisfied.”³²¹ This position was recently affirmed in the FE DSP II proceeding wherein the Commission agreed with RESA that “customers calling with high bill complaints are likely those customers that can most directly benefit from becoming informed about competitive offers such as the Customer Referral Program.”³²² This position was similarly affirmed in the PECO DSP II case.³²³

d. Inclusion of Small Commercial and Industrial Customers

For all the reasons stated when discussing the issue in the context of the Opt-In Auction/Aggregation, in RESA’s view, there is no reason not to extend the standard offer program to small business customers. That conclusion was reached in the FE DSP II proceeding,³²⁴ and the PECO default service proceeding³²⁵ and should also be reached here for the reasons explained above. The definition of small commercial and industrial customers should be either 25 kW and below or the smallest general service rate class, whichever is more practically feasible.

Intermediate Work Plan Final Order. PPL must determine whether a calling customer is already shopping, in which case that customer should not be provided information about the standard offer customer referral program. Only if a shopping customer raises or inquires about the customer referral program should the customer service representative discuss that offer. As explained in the direct testimony of RESA witness Kallaher, this limitation is important because shopping customers are already participating in the competitive market (and therefore do not need the further incentive provided by the customer referral program) and they are being served by EGSs who have already invested in acquiring those customers. RESA St. No. 2 at 28, 37-38; RESA St. No. 2-R at 19-20.

³²¹ *Intermediate Work Plan Final Order* at 32.

³²² *FE DSP II Order* at 129.

³²³ *PECO DSP II* at Issue 19 of the Binding Poll conducted on September 27, 2012.

³²⁴ *FE DSP II Order* at 103-104.

³²⁵ *PECO DSP II* at Issue 12 of the Binding Poll conducted on September 27, 2012.

e. Returning Customers To Default Service Upon Expiration Of The Standard Offer Contract Term

OCA Witness Alexander also has proposed that SOP customers should be returned to default service at the end of the SOP term, unless the customer affirmatively elects to stay with the EGS.³²⁶ This proposal should be rejected. The standard offer program is only offered to customers on a voluntary (opt-in) basis. The selection of standard offer is an affirmative choice. Because they are opting in to a program where service is being provided by an EGS, those customers should not be automatically returned to the default service without an affirmative action by the customer. Automatically returning customers to default service at the end of the standard offer program would be “forcing” them back to default service, which would be contrary to the standard in 66 Pa. C.S. § 2807(d)(1).

The Commission correctly and definitively rejected the concept of “automatically” transferring an EGS’s customers back to default service at the end of a Commission approved RME program as such a result would completely undermine the program. This concept was rejected in *Pike County*,³²⁷ wherein this Commission found that if the aggregation customers were automatically returned to the default service without affirmative action by the customer, such an action would fail to give effect to their initial choice and would be contrary to 66 Pa. C.S. § 2807(d)(1). Later, in the *Intermediate Work Plan Final Order*, the Commission specifically rejected forcing customers back to default service who choose to participate in the

³²⁶ OCA St. No. 2 at 17-18.

³²⁷ *Petition for Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered July 26, 2010.

retail opt-in auction/aggregation and take no further action.³²⁸ There is no reason to create a different standard for customers voluntarily choosing to participate in the standard offer customer referral program.³²⁹

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

The timing proposed by PPL should be modified so that all three of the major competitive enhancements are implemented by June 1, 2013.³³⁰ Notably, PPL should not wait until “mid-2014” to initiate one of the most important steps – the standard offer referral program.³³¹

Having all of the RMEs begin in June 2013 would be consistent with the Commission’s conclusion in the *Intermediate Work Plan Final Order* and the *FE DSP II Order*. The Commission originally established a start date of June 1, 2013,³³² and maintained this position in the *Intermediate Work Plan Final Order*.³³³ Recently, in the *FE DSP II Order*, the Commission concluded that the standard offer customer referral program for the FE EDCs should be implemented beginning in June 2013 notwithstanding potential overlap with other RME

³²⁸ *Intermediate Work Plan Final Order* at 73-75; *FirstEnergy DSP II Order* at 129.

³²⁹ *See Petition of PECO Energy Company for expedited approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Opinion and Order entered September 26, 2012 (Customers in PECO’s TOU program should remain with Reliant unless they affirmatively choose to receive service from an alternative EGS or to return to PECO’s default service offering).

³³⁰ RESA St. No. 2 at 10-13; RESA St. No. 2-SR at 2-8. FES Witness Banks agrees with RESA that the referral program should begin on June 1, 2013. FES St. No. 1-R at 32. Dominion/IGS Witness Barkas states that “PPL has taken a reasonable approach” but he “believes that PPL could conduct the auction earlier if it chose to do so.” Dominion/IGS St. No. 1 at 7.

³³¹ RESA St. No. 2-SR at 8.

³³² *Intermediate Work Plan Tentative Order* at 31.

³³³ *Intermediate Work Plan Final Order* at 54.

initiatives.³³⁴ In that proceeding, the Commission concluded that there was very little overlap between the retail opt-in auction/aggregation and the standard offer customer referral program. It further concluded that customer confusion should be minimal. It stated, that even if overlap would occur, that the comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market. RESA agrees, and submits that the standard offer program and the retail opt-in program (whether auction or aggregation) can be coordinated in a way that does not create customer confusion.

Here, PPL has attempted to justify the delay of the retail opt-in auction/aggregation until late November, early December 2013 and to delay the standard offer” customer referral program until mid-2014. PPL must justify these deviations “by good cause shown ... [or] by evidence produced during an EDC’s default service proceeding and supported substantially by interested parties in the default service proceeding.”³³⁵ PPL has done neither.

PPL expressed concern that having the retail opt-in auction/aggregation start prior to the end of certain wholesale default service contracts in October 2013 would risk “disrupting” those contracts.³³⁶ This is not the case. Implementing the opt-in auction/aggregation in June 2013 does not disrupt the overhanging contracts.³³⁷ The great majority of these supply contracts are full-requirements, load-following contracts, which means that the wholesale supplier has already accepted the risk of load fluctuations.³³⁸ Full-requirements load-following contracts, such as those PPL is concerned about, by definition, do not guarantee any particular level of load for

³³⁴ RESA St No. 2-R at 2; *FE DSP II Order* at 150.

³³⁵ *Id.* at 6-7.

³³⁶ PPL St. No. 4 at 18.

³³⁷ RESA St. No. 2-SR at 3.

³³⁸ RESA St. No. 2 at 12.

winning suppliers.³³⁹ In fact, PPL's Request for Proposals ("RFP") explicitly notified the potential wholesale bidders that the amount of default load they will have to serve may be affected by a variety of factors, including customer migration to EGSs.³⁴⁰ So, the winning bidders were aware that if customers migrated to EGSs (for any reason), the wholesale supplier would be responsible for less than the peak load stated in the RFP documents (and, vice versa).³⁴¹

PPL's analysis of the default service load that could be impacted if the auction/aggregation commenced on June 1, 2013³⁴² showed that four (4) wholesale default suppliers of 24-month contracts will be impacted for a total load of 11.25%.³⁴³ Using the peak load value from the Company's RFP documents, this equates to a peak load of approximately 403 MW out of 3,585 MW (11.25%).³⁴⁴ Even by PPL's reckoning only around 11% of the total supply would be impacted in any way and, as noted above, the impact would be completely consistent with the risk that the wholesale supplier has already agreed to bear when it entered into the contract in the first place.³⁴⁵ Certainly, all of these suppliers will continue to have load to supply; indeed depending upon the structure of the auction/aggregation, this competitive enhancement may have only a minor effect.³⁴⁶

³³⁹ RESA St. No. 2 at 11.

³⁴⁰ RESA St. No. 2-SR at 3; RESA St. 2 at 12, fn. 16.

³⁴¹ RESA St. No. 2 at 11-12; RESA St. No. 2-SR at 3.

³⁴² PPL St. No. 1-R at 30-31.

³⁴³ RESA St. No. 2-SR at 3. This analysis negates OSBA witness Knecht's opinion that all procurements, which involve providing default service in June 2013 and at least the following six months, will be affected by advancing the timing of the RMEs. (OSBA St. No. 2-R at 7.)

³⁴⁴ RESA St. No. 2-SR at 3.

³⁴⁵ RESA St. No. 2-SR at 3.

³⁴⁶ RESA St. No. 2-SR at 3.

PPL also points out that it has 350 MW (10% of peak load) in block energy contracts. But there is little chance that an opt-in auction/aggregation held in June of 2013 would so reduce default load to have any impact on these block energy contracts for more than one month.³⁴⁷ If that occurs, PPL can sell the excess block supply into the market and recover any loss via its GSA (or credit customers if the sales price exceeds the purchase price).

Additionally, it should be noted that the premise underlying PPL's claims is wrong. PPL is concerned about shifting customers from default service to shopping.³⁴⁸ PPL does not "own" default service customers.³⁴⁹ Under PPL's logic, any number of perfectly sound and beneficial policies could not be implemented because of their potential to materially impact on migration.³⁵⁰ On the contrary, during the course of PPL's Competitive Bridge Plan and its current default service plan ("DSP I"), PPL implemented many such programs, including creating a Purchase of Receivables ("POR") program, enhanced EDI protocols for obtaining customer usage data, eligible customer lists, budget billing options for EGS customers, and a continued customer education campaign to inform customers about retail choice.³⁵¹ PPL is to be commended for its diligent work in implementing these retail choice initiatives.³⁵² However, all of these programs are designed in one way or another to, using PPL's words, "shift customers

³⁴⁷ Tr. 291-292.

³⁴⁸ PPL St. No. 4 at 18.

³⁴⁹ *Petition of PECO Energy Company for expedited approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Joint Motion of Chairman Powelson and Commissioner Witmer entered September 13, 2012 at 3 ("Lastly, we feel compelled to state once again that the Commonwealth's EDCs do not 'own' their customers. We feel strongly that our EDCs must rid themselves of this mindset, which is a relic from the pre-competition days of vertically integrated service provided by a single entity.").

³⁵⁰ RESA St. No. 2 at 12.

³⁵¹ RESA St. No. 2 at 12.

³⁵² RESA St. No. 2 at 12.

from default service to shopping.”³⁵³ Therefore, RESA does not believe that steps to attempt to increase shopping constitute a sufficient reason to delay implementation of the opt-in auction/aggregation or other RMEs.³⁵⁴

PPL has also attempted to justify the delay of the standard offer referral program to mid-2014 on the ground that PPL needs to introduce customer information and billing systems that will not be ready until then.³⁵⁵ But a careful reading of Mr. Krall’s testimony reveals that PPL’s CSRs already have the most important information needed to provide the standard offer, which is whether or not the customer is a default service customer.³⁵⁶ Although Mr. Krall may be allowing the perfect to be the enemy of the good with respect to the standard offer program, RESA believes the focus should be on starting the program as soon as possible and adding enhancements when they are available.³⁵⁷

The relatively higher shopping levels in the PPL service territory do not obviate the need for greater efforts to move the remaining customers into the competitive market, since the customers least subject to status quo bias have already switched. PPL has claimed that it took into consideration the fact that large numbers of customers are already shopping in the PPL service territory; and, therefore, there is allegedly no need to “jumpstart” competition.³⁵⁸ Without any support, Mr. Krall suggests that since some 40% of residential customers are already shopping, the remainder may well have “consciously” decided to stay with default

³⁵³ RESA St. No. 2 at 12.

³⁵⁴ RESA St. No. 2 at 12.

³⁵⁵ PPL St. No. 4 at 18, 31-32; PPL St. No. 4-R at 17-18.

³⁵⁶ PPL St. No. 4-R at 17.

³⁵⁷ RESA St. No. 2-SR at 6.

³⁵⁸ PPL St. No. 4-R at 15.

service. This, in turn, suggests to Mr. Krall the need for “careful, objective consumer education” before the competitive enhancement programs are initiated.

RESA is a strong advocate for educating consumers about the benefits of the competitive market – but RESA cannot agree with Mr. Krall’s speculation that the greater number of customers are shopping in PPL’s service territory is evidence that the remaining non-shopping customers may be consciously staying with default.³⁵⁹ The available survey and focus group evidence is to the contrary to Mr. Krall’s opinions. Surveys of Pennsylvania residential retail customers (including PPL customers) conducted for Direct Energy, showed that those customers who indicated that they had not considered switching to an electric supplier cited reasons that were either based on faulty facts (e.g. “I didn’t know you could”) or reflected a lack of knowledge of the process (“it’s too complicated and takes too long; can’t save money”).³⁶⁰ These responses show that it is more likely that default customers are staying on default because of “status quo” or “default” bias, which is a well-accepted concept in consumer marketing behavior that explains why consumers many times do not make rational buying decisions even when it is in their best interest to do so.³⁶¹ Since the customers least subject to status quo bias have already switched, more – not less – must be done to encourage customers stuck by status quo bias to switch.³⁶²

To support a delay in the start of the key RMEs, PPL has argued that customers could be “confused” if they are exposed to both the retail opt-in auction/aggregation and the standard offer

³⁵⁹ RESA St. No. 2 at 6.

³⁶⁰ RESA St. No. 2-SR at 7.

³⁶¹ RESA St. No. 2-SR at 7.

³⁶² RESA St. No. 2-SR at 7.

referral program at the same time.³⁶³ This argument is mere conjecture. RESA is sensitive to ensuring that the timing of customer education is effectively leveraged to produce the most benefit, but PPL has not presented any reason why RESA's proposed timing for these RME initiatives would lead to such a result.³⁶⁴ And, PPL's concern misses the fact that the two programs are directed at different subsets of default customers, with the former focused on existing default customers and the latter directed at *new* and *moving* customers.³⁶⁵ Since, because of existing systems constraints a new or moving customer must be placed on default service when he or she applies for service, they will, by definition, not be participating in either the opt-in auction/aggregation or the standard offer customer referral program (even if they previously participated that transfer to an EGS would not be valid any longer).³⁶⁶ The only potential material overlap would be with respect to existing customers who would be presented with the opportunity to participate in the standard offer customer referral program when they call PPL with a question.³⁶⁷ If the Commission is concerned that these customers could be confused about "dueling offers," it may be appropriate to suspend this part of the standard offer program during the month that the opt in auction/aggregation is outstanding.³⁶⁸ That is a much more reasonable response then delaying the whole auction/aggregation for months.³⁶⁹

³⁶³ PPL St. No. 4 at 18; PPL St. No. 4-R, at 16-17.

³⁶⁴ RESA St. No. 2-SR at 6.

³⁶⁵ RESA St. No. 2-SR at 5.

³⁶⁶ RESA St. No. 2-SR at 5.

³⁶⁷ RESA St. No. 2-SR at 5.

³⁶⁸ RESA St. No. 2-SR at 5-6.

³⁶⁹ RESA St. No. 2-SR at 6.

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

a. PPL's Proposals

Under PPL's proposals, the costs of the RMEs would be paid by customers (in base rates), by EGSs or by a combination of these methods. Specifically, base rates would be used for the costs of: (1) customer education mailings; (2) new/moving customer program scripts; (3) customer service representative ("CSR") call time; and (4) costs to modify the Company's customer information and billing system for the standard-offer program.³⁷⁰ Costs to be paid by the participating EGSs include: (a) the customer referral mailing;³⁷¹ (b) the pre-auction/aggregation and post-auction/aggregation costs of the retail opt-in auction/aggregation; and (c) the non-capital costs related to the standard-offer program (other than those discussed above).³⁷²

PPL's proposals that would recover costs in base rates are just and reasonable, and should be accepted. These proposals are consistent with RESA's belief (which is discussed in greater detail below) that the costs of RMEs should be paid only by default service customers, or through a non-bypassable charge applied to all customers.³⁷³

In contrast, PPL's proposal that would recover costs from EGSs are not just and reasonable, and should be rejected. The auction/aggregation and other market enhancements are designed to promote greater participation in the market by customers who are remaining on

³⁷⁰ PPL St. No. 4-R at 43-44.

³⁷¹ PPL St. No. 4-R at 43.

³⁷² PPL St. No. 4-R at 43.

³⁷³ They are also consistent with the *Intermediate Work Plan Final Order* provides that costs for the "new/mover" program will be absorbed by the EDC and "normal EDC cost center cost recovery mechanism[s]." *Intermediate Work Plan Final Order* at 17-19.

default service and have been reluctant to explore competitive alternatives.³⁷⁴ Therefore, the issue of cost recovery is not a matter of whether the EGSs benefit and should therefore pay.³⁷⁵ Rather, the question is whether default service customers (through their default service rates) or EGS customers (through their EGS contract prices) should bear the costs of these RME programs.³⁷⁶ Viewed in this proper light, recovery of these costs from default service customers is the optimal way in which to pay for these programs because the retail opt-in auction/aggregation is targeting default service customers to incent them to participate in the competitive market.³⁷⁷ To the extent there are on-going costs of the programs, those customers who continue to remain on default service and continue to remain the target audience for the programs may be reasonably assessed the program costs.³⁷⁸

Specifically, PPL's proposals to recovery of the pre-auction/aggregation³⁷⁹ and post-auction/aggregation³⁸⁰ costs of the retail opt-in auction/aggregation are unreasonable. The opt-in

³⁷⁴ RESA St. No. 2 at 26.

³⁷⁵ RESA St. No. 2 at 26.

³⁷⁶ RESA St. No. 2 at 26.

³⁷⁷ RESA St. No. 2 at 26.

³⁷⁸ RESA St. No. 2 at 26.

³⁷⁹ For the pre-auction/aggregation costs, EGSs participating in the auction/aggregation would be required to sign a binding bid agreement prior to the auction in which they agree to pay the pre-auction/aggregation costs up front based on the number of EGS participants. PPL St. No. 4 at 23. The pre-auction/aggregation costs would not be refunded to EGSs regardless of how many participate. If no EGSs participate, then the pre-auction/aggregation costs would be recovered from all customers through the Competitive Enhancement Rider ("CER") as proposed in PPL's currently pending distribution rate case. *Pennsylvania Public Utility Commission v. Petition of PPL Electric Utilities Corporation*, Docket Number R-2012-2290597, PPL Supplement No. 118 to Tariff Electric – Pa. PUC No. 201 filed March 30, 2012.

³⁸⁰ Post-auction/aggregation costs, and any true-up of pre-auction/aggregation costs, will be shared equally by all winning EGSs following the conclusion of the auction/aggregation process. However, if only two suppliers are winning bidders, these suppliers will be notified of that result and given the option of choosing not to participate further in the auction/aggregation. If either of these two EGSs choose not to participate further, the auction/aggregation program would be canceled for lack of EGS participation. PPL St. No. 4 at 24.

auction/aggregation will be a success if there is a robust EGS response as well as a robust customer response.³⁸¹ PPL’s proposal will impose costs solely on the EGSs before the EGSs know the number of customers at stake.³⁸² This could discourage EGSs from participating in the opt-in auction/aggregation.³⁸³ The payment of costs by auction/aggregation participants as a condition of participation will be a barrier to participation by some EGSs and is unusual in the electric markets.³⁸⁴ For example, there is no “participation cost” with the wholesale RFPs and auction used to procure supply for default service in Pennsylvania and other states, the costs of which are typically socialized in some manner, either to default service customers or all distribution customers.³⁸⁵

This problem of “participation costs” is exacerbated by PPL’s proposal to require any participant in the bidding process to pay for the pre-auction/aggregation costs as a condition of bidding or participation.³⁸⁶ The costs that PPL has estimated are substantial (\$720,000 to \$1 million).³⁸⁷ This cost recovery structure could be a “poison pill” that could mean low supplier participation.³⁸⁸ Even if there were 10 qualified and interested suppliers, this would create a \$72,000 to \$100,000 cost per supplier, simply to submit a bid.³⁸⁹

³⁸¹ RESA St. No. 2 at 25.

³⁸² RESA St. No. 2 at 25.

³⁸³ RESA St. No. 2 at 25.

³⁸⁴ RESA St. No. 2 at 25.

³⁸⁵ RESA St. No. 2 at 25-26.

³⁸⁶ RESA St. No. 2 at 26.

³⁸⁷ RESA St. No. 2 at 26, *citing*, RESA Exhibit CHK-1 (PPL Discovery Responses to OCA, Set II, question numbers 25 and 26).

³⁸⁸ RESA St. No. 2 at 26.

³⁸⁹ RESA St. No. 2 at 26.

PPL’s cost recovery proposals (while better than some EDC proposals) are not reasonable merely because they attempt to be a “middle ground” position – by allocating some costs to customers (in base rates) and other costs to EGSs.³⁹⁰ Mr. Krall’s contention is based on the fact that PPL is proposing to recover in base rates alleged increased costs associated with CSR call time and the cost of modifying the information and billing system to be able to offer the standard offer program.³⁹¹ But Mr. Krall failed to provide any indication of what percentage of the total these costs represent.³⁹² Also, interestingly, Mr. Krall stated that these steps are being recovered in base rates because they are either impractical to recover otherwise or because they are likely to provide benefits to customers beyond the implementation of these programs.³⁹³ In other words, these costs could not be quantified or identified as relating to these programs and are apparently going to be incurred anyway.³⁹⁴

PPL witness Krall testified against allocation of costs between customers and EGSs because, in his opinion, shopping customers will derive no benefit from the retail market competitive enhancements.³⁹⁵ There are two problems with this line of thought. First, and importantly, both shopping and non-shopping customers benefit from steps that are designed to create a robust and sustainable market.³⁹⁶ The Commission plainly has ruled that “enhancements” need to be implemented to try to move the market closer to the goal of full,

³⁹⁰ See PPL St. No. 4-R at 48.

³⁹¹ RESA St. No. 2-SR at 24.

³⁹² RESA St. No. 2-SR at 24-25.

³⁹³ PPL St. No. 4-R at 45-46, 47.

³⁹⁴ RESA St. No. 2-SR at 25.

³⁹⁵ PPL St. No. 4-R at 46.

³⁹⁶ RESA St. No. 2-SR at 25.

vibrant and sustainable competition, and that the status quo is not acceptable.³⁹⁷ As competition becomes more robust and sustainable, EGSs are likely to make more competitive offers with value added and other benefits.³⁹⁸ These offers will be available not just to non-shopping customers but to those who have already shopped as well.³⁹⁹ PPL recognizes (to its credit) that these efforts do not just benefit EGSs – but all customers.⁴⁰⁰

Further, it is simply wrong to conclude (as both OCA⁴⁰¹ and OSBA⁴⁰² do) that RME must only “benefit” EGSs.⁴⁰³ One need only consider the vigorous competition that took place in the long distance phone market after the AT&T divestiture and the vigorous efforts engaged to “win” customers back and forth between and among competitors.⁴⁰⁴ Plainly all customers – both currently shopping and non-shopping – will benefit if the Commission’s competitive enhancements have their intended effect and to force only EGSs, and their customers, to bear most of this cost is wrong and counterproductive.⁴⁰⁵ There is no question that RESA’s cost sharing proposal will have the effect of attracting more EGSs to participate in these programs.⁴⁰⁶

³⁹⁷ RESA St. No. 2-SR at 26.

³⁹⁸ RESA St. No. 2-SR at 25.

³⁹⁹ RESA St. No. 2-SR at 25.

⁴⁰⁰ RESA St. No. 2-SR at 25-26.

⁴⁰¹ See OCA St. No. 2-R at 9, 15.

⁴⁰² See OSBA St. No. 2-R at 15.

⁴⁰³ RESA St. No. 2-SR at 26.

⁴⁰⁴ RESA St. No. 2-SR at 25.

⁴⁰⁵ RESA St. No. 2-SR at 25-26.

⁴⁰⁶ RESA St. No. 2-SR at 26.

Again, in the long run this will benefit not only all customers but the Commonwealth in general.⁴⁰⁷

Second, PPL would allocate all of the quantifiable costs of certain programs to EGSs.⁴⁰⁸ But, even if PPL is correct (which it is not) that shopping customers would not benefit from the RMEs, PPL fails to allocate any costs to the non-shopping customers. If 4 out of 10 residential customers are shopping, 6 out of 10 are not.⁴⁰⁹ So, PPL would give the non-shopping customers a “free ride” – when PPL recognizes (as noted above) that all customers (in addition to the EGSs) benefit from these enhancements.

b. RESA’s Recommendations

Rather than adopt PPL’s cost recovery proposals, RESA believes that the costs of RMEs should be paid only by default service customers, or through a non-bypassable charge applied to all customers.⁴¹⁰

It is just and reasonable for the costs of RME to be paid only by default service customers (via a Default Service Cost Recovery Charge). One of the principal purposes of the auction/aggregation is to provide a way to encourage “sticky” default service customers to take their first venture into the competitive market.⁴¹¹ In fact, in terms of traditional cost allocation, the costs of the RMEs RESA advocates are caused by the existence of default service, without which customers would all be on competitive supply, eliminating the need for measures to

⁴⁰⁷ RESA St. No. 2-SR at 26.

⁴⁰⁸ RESA St. No. 2-SR at 25.

⁴⁰⁹ RESA St. No. 2-SR at 25.

⁴¹⁰ RESA St. No. 2 at 27-28, 38, 39-41.

⁴¹¹ RESA St. No. 2 at 27.

encourage them to move away from the utility.⁴¹² Thus, it is appropriate that the cost be collected from default service customers. To do this, RESA has proposed a 5 mils/kWh charge, which is discussed in Section III.D.2.

Alternatively, it is just and reasonable for the costs of these market enhancements to be borne by all customers through non-bypassable charges.⁴¹³ These market enhancements are intended to move Pennsylvania closer to what the Commission may consider to be an optimal structure.⁴¹⁴ This process can be viewed as a natural continuation of the transition to restructured markets that began in the late '90s – where all costs of initially opening retail markets were recovered from all electric customers (since there were no EGSs on which to impose the costs).⁴¹⁵

In the *Intermediate Work Plan Final Order*, the Commission indicated that it thought it was “only fair” for the EGSs to pick up the associated costs, since they were the “prime beneficiaries” of the program. While EGSs will certainly benefit to some degree if they are successful in gaining a critical mass of customers to make the process worthwhile, the primary – if not sole – justification for these enhancements should be the benefits they will bring – or at least make available – to all customers.⁴¹⁶ Therefore, it is appropriate that the costs be borne by all customers, as were the costs of the original restructuring in the '90s.⁴¹⁷

⁴¹² RESA St. No. 2 at 27.

⁴¹³ RESA St. No. 2 at 27.

⁴¹⁴ RESA St. No. 2 at 27.

⁴¹⁵ RESA St. No. 2 at 27.

⁴¹⁶ RESA St. No. 2 at 27-28.

⁴¹⁷ RESA St. No. 2 at 28.

OCA witness Alexander has argued that RESA's cost sharing proposals should not be adopted because the retail market competitive enhancements are a substitute for the individual marketing efforts of EGSs.⁴¹⁸ This argument assumes that EGSs can not only survive, but thrive, based on these enhancements. This is not so. Individual EGSs will need to continue their own marketing efforts.⁴¹⁹ The Commission-directed programs are intended to "jump-start" and encourage more shopping.⁴²⁰ Customers obtained through these programs may or may not choose to continue with the winning EGS at the conclusion of the applicable program.⁴²¹ Without continued marketing efforts, a winning EGS will not be in a position to retain its existing customers or obtain new customers (either from default service or from other EGSs).⁴²²

c. Dominion/IGS Recommendation

Dominion/IGS Witness Barkas expresses his preferred approach that "these types of programs benefit customers and that customers should be required to shoulder at least some portion of the costs" but notes that if suppliers are going to be required to pay for these costs then: (1) the costs for the opt-in auction/aggregation should be borne entirely by the winning suppliers on a pro-rata basis; and, (2) PPL's proposal for the customer referral program is appropriate.⁴²³ RESA supports Dominion's view, but only as an alternative to RESA's primary view that the costs should be recovered from default customers or all distribution customers.

⁴¹⁸ OCA St. No. 2-R at 15

⁴¹⁹ RESA St. No. 2-SR at 26.

⁴²⁰ RESA St. No. 2-SR at 26.

⁴²¹ RESA St. No. 2-SR at 26-27.

⁴²² RESA St. No. 2-SR at 27.

⁴²³ Dominion/IGS St. No. 1 at 9, 12.

7. CAP Customer Participation in the Retail Market Enhancements

PPL currently permits its CAP customers to select an EGS and has proposed to permit these customers to participate in the RMEs.⁴²⁴ PPL's circumstances and PPL's proposal are similar to circumstances of, and the proposal made by the FE EDCs, which also recommended that CAP customers – who are eligible to receive competitive supply – be permitted to participate in their RMEs.⁴²⁵ In the FE DSP II proceeding, the Commission ultimately concluded that CAP customers would be permitted to participate in the RME programs.⁴²⁶ There is no reason to reach a different result here,⁴²⁷ and, contrary to the opinion of the OCA,⁴²⁸ there is no need for more evaluation of the impact of permitting CAP customers “to shop” and of the cost impact of their participation in the RMEs.

CAUSE-PA Witness Krone⁴²⁹ opposed CAP customer participation in PPL's RMEs. Application of the existing CAP program to a program that offers a set percentage off the PTC would produce some complications.⁴³⁰ But, this is not a reason to exclude CAP customers – who are already eligible to receive competitive supply – from participation in the RMEs. Rather than foreclosing their participation in the competitive market, the CAP customers and all stakeholders would benefit from increased efforts to customer education to low income customers so that they fully understand their options and how those options interface with the

⁴²⁴ See, e.g., OCA St. No. 2 at 14.

⁴²⁵ RESA St. No. 2-R at 14.

⁴²⁶ FE DSP II Order at 143.

⁴²⁷ RESA St. No. 2-R at 14.

⁴²⁸ OCA St. No. 2 at 14-15.

⁴²⁹ CAUSE-PA St. No. 1 at 14-21, 23.

⁴³⁰ RESA St. No. 2-R at 15.

CAP program.⁴³¹ Simply put, excluding participation of CAP customers is not the appropriate solution.⁴³² Moreover, the Commission has made quite clear in both the FE and the PECO DSP cases that it not only intends that CAP customers participate in the RME programs to the greatest extent possible but that CAP benefits be made portable so that they may continue to enjoy the benefits of the competitive market.⁴³³

The majority of the reasons underlying Mr. Krone's opposition to allowing CAP customer participation would be mitigated by such a re-designed program.⁴³⁴ His remaining reasons for opposing the participation of CAP customers appear to arise from his experience dealing directly with low-income individuals and families and his resulting belief that keeping them from participating in the competitive electricity market is a form of protection that will ultimately benefit these customers.⁴³⁵ RESA has taken the position that it would be far better to allow low-income customers to participate in the competitive market and work cooperatively for a future redesign of the CAP program, as RESA has suggested, so that they can take advantage of opportunities to save money on their bills.⁴³⁶ Additionally, RESA has also recommended that it would be appropriate for the Commission to monitor the experience of low-income customers in such a redesigned system and to ensure that they are not being subjected to predatory

⁴³¹ RESA St. No. 2-R at 16.

⁴³² RESA St. No. 2-R at 16.

⁴³³ *FE DSP II Reconsideration Order* at 22-24; *PECO DSP II* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012.

⁴³⁴ RESA St. No. 2-R at 16.

⁴³⁵ RESA St. No. 2-R at 16.

⁴³⁶ RESA St. No. 2-R at 16.

marketing or pricing schemes.⁴³⁷ This appears to be exactly the position of the Commission, as expressed in the FE and PECO DSP cases.⁴³⁸

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

Since RESA's position is that CAP customers should be able to participate fully in the competitive market, it is similarly opposed to the PULP proposal to somehow switch customers currently served by an EGS back to default service just because the current default rate appears to be lower than the current rate the CAP customer is paying. RESA's position is supported by the Commission which has rejected this identical demand by CAUSE in the FE DSP II case.

There Chairman Powelson and Commissioner Witmer stated:

There are several fatal flaws in CAUSE's thinking. First, looking at the language of the [Competition] Act, it states simply that the Commission must maintain the level of low-income support that existed at the time of the [Competition] Act. For the record, the Commission has clearly done this and, in fact, low-income support programs have greatly expanded since that time.

Second, CAUSE ignores the fact that in the IWP Order, we defined "subject to harm" as being a loss of benefits. Realizing that the [FE] Companies' CAP benefits are portable, there is no risk that customers will lose their benefits as a result of participating in any of the retail enhancement programs.

Third, and most egregious, is that implicit in CAUSE's arguments is that CAP customers do not have the ability to make informed decisions regarding their electric suppliers. This is a theme that has reoccurred throughout the RMI regarding both low-income and older customers. We find this attitude not only misplaced, but incredibly offensive. CAP customers make hundreds of choices each week about how to spend their money, whether it be on where to buy food, clothing, gasoline, telecommunications services or any other necessity. These

⁴³⁷ RESA St. No. 2-R at 16.

⁴³⁸ *FE DSP II Reconsideration Order* at 22-24; *PECO DSP II* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012.

customers are equally equipped to make informed choices regarding their electric supplier.⁴³⁹

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

Due to their variability or the uncertainty in estimating the currently unrecovered costs of providing default service or implementing RMEs, RESA has recommended the use of a separate charge that would apply only to default service.⁴⁴⁰ It has recommended an initial amount of 5 mils/kWh with the proceeds to be used as follows:

- Payment of any verifiable costs related to providing default service that have otherwise not been collected by the EDC;
- Payment of costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction/aggregation, referral programs; and,
- Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.⁴⁴¹

To begin, RESA acknowledges that the Commission recently rejected FE's proposal to recover the costs of these programs from all customers in favor of shifting the costs to EGSs. At that time, the Commission also directed the FE EDCs to "eliminate" their proposed retail opt-in auction/aggregation and replace it with a an opt-in aggregation program which will necessarily impact the costs of the program.⁴⁴² Further, the Commission directed the FE EDCs and EGSs to come to agreement on how to minimize these costs and allocate them in a cost-effective manner.⁴⁴³ In addition, Commissioner Witmer acknowledged that proposals such as the ones

⁴³⁹ FE DSP II, at Joint Statement by Chairman Powelson and Commissioner Witmer entered September 27, 2012, at 1-2.

⁴⁴⁰ RESA St. No. 2 at 40-41; RESA St. No. 2-SR at 27-28.

⁴⁴¹ RESA St. No. 2 at 40.

⁴⁴² *FE DSP II Order* at 131.

⁴⁴³ *FE DSP II Order* at 136.

RESA is advocating have “merit.”⁴⁴⁴ While Commissioner Witmer stated that this type of proposal deserves more vetting in a statewide proceeding, RESA submits that the record in this case supports adoption of the mechanism here.⁴⁴⁵

The implicit assumption of those who wish to impose 100% of the costs of these programs on EGSs – is that only EGSs benefit from the competitive enhancements.⁴⁴⁶ This is plainly wrong.⁴⁴⁷ These programs benefit the customers themselves, who experience the savings and have the opportunity to participate in the competitive market.⁴⁴⁸ It is thus incongruous to impose the costs only on EGSs.

All customers, through their distribution rates, are paying the now-bundled costs of default service that are only being used by default service customers.⁴⁴⁹ In Pennsylvania, there has been no full unbundling of generation, transmission and distribution charges as required by the Competition Act.⁴⁵⁰ This means that there are costs of providing non-shopping customers default generation service that are embedded in the distribution rates paid by all customers (whether or not they are receiving default service).⁴⁵¹ Because generation, transmission and distribution costs continue to be bundled, all customers – to some extent – are paying the costs of

⁴⁴⁴ *FE Default Service Proceeding*, Docket Nos. P-2011-2273650; P-2011-2273668; P-2011-2273669; P-2011-2273670, Statement of Commissioner Pamela A. Witmer adopted August 2, 2012.

⁴⁴⁵ RESA St. No. 2-SR at 17-18.

⁴⁴⁶ RESA St. No. 2-SR at 18.

⁴⁴⁷ RESA St. No. 2-SR at 18.

⁴⁴⁸ RESA St. No. 2-SR at 18.

⁴⁴⁹ RESA St. No. 2 at 39-40.

⁴⁵⁰ 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa. Cmwlth. 2006).

⁴⁵¹ RESA St. No. 2 at 39.

default service even those who are not receiving default service (i.e. shopping customers).⁴⁵² If RESA's proposal is not adopted and there is no full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates.⁴⁵³

Requiring default service customers – on whose behalf the costs are being incurred – to pay the costs with the remainder credited to all distribution customers is fair and equitable.⁴⁵⁴ The goal is to move default service customers into the competitive market. Therefore, the default service customer who pays the charge today is likely to be a shopping customer tomorrow.⁴⁵⁵ By limiting the payment of the charge to default service customers while crediting remaining funds to all customers assures the that the “newly shopping” customer will not be deprived of his or her credit for paying some portion of the costs of default service through his or her distribution rates because he or she chose to shop.⁴⁵⁶ Any crediting back to default customers only would create a shopping disincentive, and would clearly be inappropriate.⁴⁵⁷

RESA has stated that it would be appropriate for PPL to retain a relatively small percentage (no more than 10%) of any amounts remaining after service costs and the costs of implementing the RMEs are paid.⁴⁵⁸ This has the potential to create negative incentives.⁴⁵⁹ But,

⁴⁵² RESA St. No. 2 at 39.

⁴⁵³ RESA St. No. 2 at 39.

⁴⁵⁴ RESA St. No. 2 at 40.

⁴⁵⁵ RESA St. No. 2 at 40.

⁴⁵⁶ RESA St. No. 2 at 40.

⁴⁵⁷ RESA St. No. 2 at 40.

⁴⁵⁸ RESA St. No. 2 at 40.

⁴⁵⁹ Retention of anything other than a modest amount of recovery that is tied explicitly to the achievement of migration benchmarks, runs the risk of creating an incentive (however subconsciously it might operate) on the part of EDC personnel to frustrate the goals of the Commission in building a robustly competitive retail market in the PPL service territory that will stand the test of time. RESA St. No. 2 at 40-41.

it can create positive incentives.⁴⁶⁰ By tying EDC retention of any amounts to the achievement of certain benchmarks for migration away from default service, it is possible to create positive incentives for enhanced efforts by the EDC to implement market enhancements in a robust manner.⁴⁶¹ It is also possible that such a retention could be justified on the grounds that some indirect costs incurred by the EDC could not be identified without an unreasonable level of transaction costs.⁴⁶²

PPL is concerned that this proposal will simply increase default service charges to provide decreases to distribution charges.⁴⁶³ According to PPL, this will reduce the number of customers taking default service and, thereby, reduce the number of customers from whom the cost can be recovered.⁴⁶⁴ Because, according to PPL, the proposal acts as an additional incentive for customers to shop, PPL is also concerned that the mechanics of reconciliation will magnify the impact of the charge over a decreasing number of customers.⁴⁶⁵ OCA⁴⁶⁶ and OSBA⁴⁶⁷ expressed similar concerns.

These concerns are misplaced for two reasons. First of all, PPL should not be concerned with keeping a certain number of customers on default service.⁴⁶⁸ The “end state” envisioned by

⁴⁶⁰ RESA St. No. 2 at 40.

⁴⁶¹ RESA St. No. 2 at 40.

⁴⁶² RESA St. No. 2 at 40.

⁴⁶³ PPL St. No. 1-R at 15.

⁴⁶⁴ PPL St. No. 4-R at 47.

⁴⁶⁵ PPL St. No. 4-R at 47.

⁴⁶⁶ OCA St. No. 2-R at 7-9, 16.

⁴⁶⁷ OSBA St. No. 2-R at 10-14.

⁴⁶⁸ RESA St. No. 2-SR at 28.

the Choice Act is a market where competitive suppliers – and not the monopoly EDCs – are providing generation service to a significant number of consumers in all customer classes.⁴⁶⁹

Second, the proposed 5 mils/kWh charge will not be magnified by reconciliation.⁴⁷⁰ As the number of customers on default service decreases, the verifiable costs related to providing default service that have otherwise not been collected by the EDC should also decrease.⁴⁷¹ The costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction/aggregation, referral programs, should also decrease.⁴⁷² In turn, this means that the remaining balance will be larger and that more money will be returned to the distribution customers, including those on default service.⁴⁷³

PPL has further indicated that the 5 mils/kWh charge is not necessary. In PPL's judgment, it will have no costs to be recovered through the proposed 5 mill/kWh charge.⁴⁷⁴ According to PPL Witness Yeager this is because PPL 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.⁴⁷⁵ Even if PPL lacks costs to be recovered (at this time), the proposed charge would still provides an additional incentive for customers to shop, and would still work to create a robust and sustainable competitive market, which is the

⁴⁶⁹ RESA St. No. 2-SR at 28.

⁴⁷⁰ RESA St. No. 2-SR at 28.

⁴⁷¹ RESA St. No. 2-SR at 28.

⁴⁷² RESA St. No. 2-SR at 28.

⁴⁷³ RESA St. No. 2-SR at 28.

⁴⁷⁴ PPL St. No. 1-R at 15.

⁴⁷⁵ PPL St. No. 1-R at 15.

best and most certain way to provide customer benefits and electric service at least cost over time.⁴⁷⁶

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

RESA did not take a position on these issues.

4. Requested Waivers

RESA did not take a position on these issues.

IV. CONCLUSION

RESA respectfully requests that the ALJ issue a Recommended Decision consistent with RESA's positions and recommendations in this proceeding.

Respectfully submitted,



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Date: October 5, 2012

Attorneys for Retail Energy Supply Association

⁴⁷⁶ RESA St. No. 2-SR at 28.

APPENDIX A

Weekly PAPA Power Switch Update

Pennsylvania Public Utility Commission

www.PAPowerSwitch.com

CUSTOMERS SWITCHING TO AN ELECTRIC GENERATION SUPPLIER

WEDNESDAY, SEPTEMBER 26, 2012

Electric Utility	Date Updated	Total Switching Customers			Residential Switching Customers			Commercial Switching Customers			Industrial Switching Customers		
		#	%	% of Load	#	%	% of Load	#	%	% of Load	#	%	% of Load
Duquesne	9/22/12	244,495	41.6	77.0	217,588	41.5	45.0	26,147	42.3	83.1	760	66.4	97.0
Met-Ed	9/26/12	142,963	25.9	58.3	120,074	24.7	21.0	22,145	33.8	60.9	744	84.6	97.1
PECO	9/25/12	474,280	30.0	60.0	394,609	28.0	30.0	76,857	48.0	67.0	2,814	90.0	96.0
Penelec	9/26/12	169,166	28.7	64.3	137,194	27.2	25.3	31,246	37.1	61.5	726	82.1	96.4
Penn Power	9/26/12	44,632	27.9	61.7	37,306	26.6	25.6	7,165	36.0	68.9	161	97.6	97.6
Pike County	9/24/12	2,916	63.0	61.0	2,357	65.0	69.0	556	58.0	58.0	3	43.0	43.0
PPL	9/22/12	598,579	42.5	74.1	507,916	41.3	45.5	87,745	50.3	88.3	2,918	66.7	98.6
UGI	9/22/12	952	1.5	20.7	3	0.0	0.0	874	10.6	38.3	75	39.3	76.4
West Penn Power	9/26/12	172,399	23.5	55.8	141,040	23.0	20.7	30,784	26.1	59.5	575	90.4	85.9
Statewide Total	9/26/12	1,850,382	32.7*	59.2**	1,558,087	31.3	31.3	283,519	37.9	65.1	8,776	73.3	87.6

* Percentage based on the total number of customers of regulated electric utilities in Pennsylvania as of 12/31/10.
(4,970,057 Residential + 680,045 Commercial/Industrial = 5,650,102 Total Customers).

** Percentage represents megawatt hours currently delivered by alternative suppliers.