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October 5, 2012

VIA E-FILING

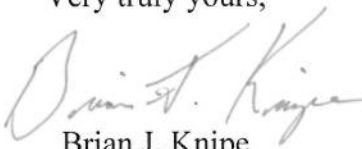
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: *Petition of PPL Electric Utilities Corporation for Approval of 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 FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Main Brief of FirstEnergy Solutions Corp.* Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Susan D. Colwell (via email and regular mail, w/encls.)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
FIRSTENERGY SOLUTIONS CORP.**

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DATED: October 5, 2012

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I. Introduction

A. Summary and Statement of Position

PPL Electric Utilities Corporation ("PPL Electric") proposes its second default service program following the expiration of its generation rate caps ("DSP II"). DSP II will establish the terms and conditions of default service from June 1, 2013 to May 31, 2015, a period during which the Commission intends to transition Pennsylvania to an end-state of electricity default service. In light of this transition, the Commission directed PPL Electric and other electric distribution companies ("EDCs") to file a two-year plan, explaining that "[a] two-year default service plan that incorporates intermediate competitive enhancements allows sufficient time to incorporate long-term changes that affect default service while progressing towards a more competitive market." *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) ("*Upcoming DSP Final Order*"), slip op. at 11. PPL Electric's intermediate competitive enhancements include two retail market enhancement programs, a Retail Opt-In Auction Program ("Opt-In Program") and Standard Offer Referral Program ("Referral Program").

FES, a provider of wholesale and retail energy and related products to customers located primarily in the Mid-Atlantic and Midwest regions, is a licensed electric generation supplier ("EGS"), having been authorized at Docket No. A-110078 to serve all categories of retail customers throughout Pennsylvania, and participates in competitive wholesale power procurements conducted by EDCs to serve their default service customers. FES St. No. 1 at 1. As explained in this Main Brief, FES recommends modifications to DSP II and the proposed Opt-In Program and Referral Program which will promote wholesale and retail electric

competition in PPL Electric's service territory while facilitating the Commission's transition to the end-state of default service.

FES's recommended modifications include, among other things, changes to the lengths of PPL Electric's default supply contracts for Residential and Small Commercial and Industrial ("C&I") customers to include a mix of 12-, 15-, 18-, 21- and 24-month contracts. The evidence of record demonstrates that this is a prudent mix of contracts which is designed to ensure the least cost over time, which is designed to ensure adequate and reliable service to customers, which will maximize price stability for smaller customers, and which will promote shopping within the parameters of the Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 ("Act 129"), codified at 66 Pa. C.S. §§ 2801, et seq. ("Competition Act"). FES's recommended default supply contracts represent a progression from PPL Electric's current default service program ("DSP I"), while affording smaller customers a degree of rate stability as required by Act 129. This stability will enable customers to better evaluate competitive offers against the PPL Electric's price-to-compare ("PTC"), and enable EGSs to better design offers to compete against the PTC. As a result, FES's recommended contract portfolio will create the best platform allowed by Act 129 for the transition to end-state default service. FES also strongly supports PPL Electric's proposal to eliminate its Aggregate Load Cap.

FES supports PPL Electric's proposed retail market enhancement programs, but recommends important modifications to the design of each program. FES's recommendations reflect its belief that in designing such programs to stimulate retail electric competition, the most important consideration is to give customers the lowest available pricing. This will ensure that the outcome of the programs benefit participating customers and leave them with a positive view

of their experience with the Commission-sponsored programs and with retail electric competition in general. Therefore, FES recommends that service under each program be provided through a 12-month contract, rather than the 6-month contracts proposed by PPL, and that no limits on the number of customers an EGS may serve are appropriate. FES also strongly urges that a bidding competition be retained, as well as a product priced "at least 5% below" the PTC. In addition, the Referral Program should begin on or around June 1, 2013, and not be deferred until mid-2014 as PPL Electric proposes. Further, while FES believes that costs of the programs should be recovered from customers, it recognizes that the Commission's preference is for EGSs to bear most of these costs. Any cost recovery methodology should establish that an EGS's cost per customer be a known, capped amount, in order for there to be significant EGS participation. Any under-collection of program costs should be collected from eligible customers.

Accordingly, for the reasons explained below, FES respectfully requests that PPL Electric's DSP II be approved with the modifications recommended by FES.

B. Background Information and Procedural History

On May 1, 2012, PPL Electric filed a Petition for Approval of a Default Service Program and Procurement Plan for the two-year period starting June 1, 2013 ("Petition"). Notice of the Petition was published in the *Pennsylvania Bulletin* on May 19, 2012, 42 Pa.B. 2871, setting a deadline of June 4, 2012 for protests and interventions.

Notices or Petitions to Intervene were filed by the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the PP&L Industrial Customer Alliance, the Sustainable Energy Fund, Eric Joseph Epstein, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Constellation NewEnergy, Inc. and Exelon Generation Company,

LLC (collectively, "Constellation"), Direct Energy Services, Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and Interstate Gas Supply ("IGS;" collectively, "DES/IGS"), FES, NextEra Energy Resources, Noble Americas Energy Solutions, the Retail Energy Supply Association ("RESA"), and UGI Energy Services d/b/a UGI EnergyLink.

On June 6, 2012, the parties participated in a prehearing conference before Administrative Law Judge Susan D. Colwell ("ALJ"). At the prehearing conference, the ALJ granted all requests for intervention, adopted the official service list and litigation schedule for these proceedings, and adopted modifications of the Commission's regulations regarding discovery. The ALJ issued a Protective Order on August 15, 2012.

The parties took discovery and served written direct, rebuttal and surrebuttal testimony. Evidentiary hearings were held on September 10 and 11, 2012, during which certain PPL Electric witnesses presented written rejoinder testimony, and various witnesses were subjected to cross-examination in connection with their written testimony and exhibits.

Pursuant to the Second Prehearing Order issued June 7, 2012 and the common briefing outline approved by the ALJ, FES hereby submits this Main Brief.

II. Summary of Argument

As explained below, FES supports PPL Electric's proposal to procure 100% of its default supply for Residential and Small C&I customers through fixed-price full requirements ("FPFR") contracts. FES's modifications to PPL Electric's proposed default service supply procurement plan focus on the length of the FPFR default supply contracts. PPL Electric proposes to procure supply for Residential and Small C&I customers through 3-, 6-, 9- and 12-month fixed-price, full-requirements contracts, to make the default service PTC more "market-reflective." FES recommends that PPL Electric instead procure supply through a mix of 12-, 15-, 18-, 21- and 24-

month contracts. Initially, FES recommended that PPL Electric continue using 12- and 24-month contracts, similar to what PPL Electric currently purchases in DSP I. A portfolio of contracts between 12 and 24 months will provide smaller customers with price certainty and stability in the PTC, as well as a better guide for evaluating competitive offers during DSP II, and will attract substantial wholesale bidder interest. In response to concerns raised by PPL Electric and RESA, FES modified its recommended portfolio to minimize the amount of default supply that PPL Electric would have under contract beyond May 31, 2015.

FES also supports PPL Electric's proposal to remove its 70% Aggregate Load Cap for Residential and Small C&I customers, and disagrees with the OCA and RESA recommendation that PPL Electric reduce the Residential Aggregate Load Cap to 50%. FES opposes any kind of load cap or other artificial limit on supplier participation. The lower the cap, the higher the likelihood the cap will increase total default service prices. PPL Electric's proposed default service procurement plan already includes numerous protections against supplier default. While FES is cognizant of the Commission's recent rulings imposing 50% default supply load caps, FES strongly urges that the individual facts and circumstances of each EDC's service territory be considered.

FES opposes PPL Electric's proposal to require winning bidders of its 6- and 12-month fixed price products to also provide 6 months of default supply for PPL Electric's Time of Use ("TOU") customers. Inclusion of a TOU obligation in the fixed-price product will create bidder uncertainty, and it is reasonable to conclude that this will impact supplier interest in PPL Electric's procurement, as well as the resulting price. FES recommends that PPL Electric contract with an EGS to provide this service, an arrangement the Commission has recently approved for PECO Energy Company.

With regard to PPL Electric's proposed retail market enhancement programs, FES recommends that PPL Electric's proposed Opt-In Program contract length of 6 months be increased to 12 months, to provide increased savings and a more stable product for participating customers. This is consistent with the Commission's *ME/PN/PP/WP DSP Order*¹ and its *PECO Binding Poll*,² which established a 12-month contract, consisting of a 4-month "set" price 5% below the PTC, followed by an EGS provided fixed-price product for the remaining 8 months. FES recommends that the price of the 8-month EGS-provided product be uniform among participating EGSs and made known to customers before they opt in to the program.

For the same reasons FES is strongly opposed to default supply load caps, FES strongly opposes any artificial limits on the number of tranches on which an EGS can bid in the Opt-In Program. Such caps result in customers not receiving the lowest possible price since the lowest price supplier is barred from choosing to serve all customers who wish to participate in the program. While the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* set a 50% supplier participation cap, FES maintains that there is no reason to believe PPL Electric's proposed program will fail to result in a diverse number of winning suppliers. Further, the circumstances surrounding retail competition in PPL Electric's service territory make it highly unlikely that without a supplier participation cap, the Opt-In Program could create a new marketer with dominant market share in PPL Electric's service territory. FES also opposes RESA's recommendation that the Commission require a minimum number of winning bidders.

¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) ("*ME/PN/PP/WP DSP Order*").

² *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641 ("*PECO Binding Poll*").

The *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* also eliminated the Opt-In Program bidding competition, and instead provided for a "set" price instead of a price "at least 5% below" the PTC. FES strongly believes that it is important for customers and competition that the Opt-In Program retain a bidding competition and a product priced "at least 5% below" the PTC. If there is an Opt-In Program bidding competition, RESA's recommendation that PPL Electric hold customer enrollment before conducting the bidding competition should be rejected. Customers must know the price of the product they are being asked to purchase.

FES also recommends that PPL Electric's proposed standard offer term of 6 months be increased to 12 months, to provide increased savings and a more stable product for participating customers. This result is again consistent with the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*. FES also opposes PPL Electric's proposal to defer its Referral Program until mid-2014, following the conclusion of service to customers participating in PPL Electric's proposed (6-month) Opt-In Program which is scheduled to start at the beginning of 2014. The *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* directed that the Referral Program begin on June 1, 2013. Further, FES disagrees with arguments that beginning the Referral Program on or around June 1, 2013 (which would result in the Referral Program and the subsequent Opt-In Program running concurrently) could create customer confusion.

With regard to PPL Electric's proposal to recover the costs of its retail market enhancement programs, FES believes it is important to the success of these programs to recover costs from customers, but recognizes the Commission's preference that EGSs bear most of the costs. To that end, the *ME/PN/PP/WP DSP Order* and, more recently, the *PECO Binding Poll*, direct that EDCs, EGSs and interested parties submit to the Commission a plan or proposals regarding how EGSs or customers (in the case of the *PECO Binding Poll*) will pay for the Opt-In

Program and Referral Program. If costs of the Opt-In Program are to be recovered from EGSs, it is critical that an EGS's cost per customer be a known, capped amount if there is to be significant EGS participation, and that any under-collection of program costs as a result of the supplier cost cap be recovered from all customers in the classes of customers eligible to participate in the program. FES recommends a similar cost recovery methodology for the Referral Program, with capital costs of the Referral Program allocated equally among all EGSs licensed to serve customers eligible for the program in PPL Electric's service territory, unless an EGS waives participation in the program, and non-capital costs collected from EGSs through a per customer fee based on actual enrollments.

III. Argument

A. Legal Standards

1. Burden of Proof

PPL Electric has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). PPL Electric must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, PPL Electric must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). In this case, PPL Electric requests that the Commission approve the Petition establishing its proposed DSP II. Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

2. Standards Applicable To Default Service

The Competition Act mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the Commonwealth's recognition that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa. C.S. § 2802(5).

The General Assembly amended the Competition Act through Act 129 of 2008. The Competition Act, as amended by Act 129, requires that default service providers acquire electric energy through a "prudent mix" of contracts, including spot market purchases, short-term contracts and long-term contracts of between five and 20 years. 66 Pa. C.S. § 2807(e)(3.2). The prudent mix of resources 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 that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

The General Assembly declared the policy goals of Act 129 in a Preamble, which states that price stability is a key concern that needed to be addressed:

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

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, *taking into account any benefits of price stability over time* and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to *ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic

growth and ensures affordable and available electric service to all residents.

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

Recently, the Commission amended its default service regulations, 52 Pa. Code §§ 54.181-189, and policy statement, 52 Pa. Code §§ 69.1801-1817, to reflect Act 129's amendments to the Competition Act. *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 Final Rulemaking Order"); *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580 (Final Policy Statement entered September 23, 2011). In amending Section 54.186 of its regulations, which concerns default service procurement plans, the Commission recognized the General Assembly's intent to move away from the Competition Act's former "prevailing market price" standard and to instead require each EDC to procure a "prudent mix" of contracts:

Act 129 sets forth different standards from our current regulations that a DSP's procurement plan must adhere to. We propose deleting the old standard and replacing it with the "prudent mix" standard as outlined in Act 129. For example, instead of a plan being "designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs," as specified in Section 54.186, Act 129 now requires the plan "include a prudent mix" of: (a) spot market purchases; (b) short-term contracts; and (c) long-term (5-20 year) contracts. 66 Pa. C.S. § 2807(e)(3.2)(i), (ii), and (iii).

Act 129 Final Rulemaking Order, slip op. at 20.

Further, in amending Section 54.181, the "Purpose" section of its default service regulations, the Commission cautioned that the "least cost over time" standard should not elevate the absolute lowest cost at any particular point in time over the goals of rate stability and relative economy:

Finally, it should be noted that the "least cost over time" standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability as well as other considerations such as ensuring a "prudent mix" of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the "least cost over time" standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

Act 129 Final Rulemaking Order, slip op. at 11-12.

In the *Act 129 Final Rulemaking Order*, the Commission also examined its statutory interpretation of Act 129 requirements and reached tentative conclusions. *Act 129 Final Rulemaking Order*, slip op. at 31-32. The Commission recognized the General Assembly's intent to require each EDC to procure a prudent mix of contracts that achieves price stability to meet the "least cost over time" standard:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Act 129 Final Rulemaking Order, slip op. at 39-40. Echoing its earlier analysis of the need to amend Section 54.181's statement of the "Purpose" of the default service regulations, the Commission again cautioned that the "least cost over time" standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time

frame, or maximization of market timing benefits, "but rather a cost for power that is both relatively stable and also economical relative to other options." *Act 129 Final Rulemaking Order*, slip op. at 40-41.

In addition, the Commission concluded that a general reliance on short term pricing which is reasonably likely to result in a "market reflective and "market-responsive" service rate is inconsistent with Act 129's "least cost" standard and price stability objectives:

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. *We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy market. Price stability benefits are very important to some customer groups, so an interpretation of "least cost" that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives.* This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the "prudent mix" of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

Act 129 Final Rulemaking Order, slip op. at 41 (emphasis added). Accordingly, default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard.

B. The Proposed Default Service Program

1. Class Procurements

a. Residential - Fixed Rate

i. Product Mixture

PPL Electric proposes to acquire default supply for Residential customers through a series of fixed-price load-following supply contracts in 100 MW peak load tranches. Instead of the 12- and 24-month contracts of the current DSP I, PPL Electric proposes in DSP II to procure default supply through 12- and 9-month contracts, with the exception of the October 2014 procurement, in which PPL Electric will procure a fixed percentage of default supply through 6 and 3-month contracts.³ PPL Electric St. No. 1 at 6-7, 18; PPL Electric St. No. 2 at 15-16 and Ex. JC-4A. In addition, PPL Electric proposes to reduce the impact reconciliation can have on the default service price by eliminating spot supply and allowing block supplies to expire without replacement. PPL Electric St. No. 2 at 33. PPL Electric's objective in proposing to procure a larger percentage of supply over shorter contract terms than it used in DSP I is to cause rates to be more "market-reflective" in DSP II. PPL Electric St. No. 1 at 8, 14, 26. PPL Electric believes this structure encourages default service customers to consider competitive offers. PPL Electric St. No. 2 at 34.

FES's Recommended Lengths of Default Supply Contracts

FES disagrees with the lengths of PPL Electric's proposed default supply contracts because its focus on a "market reflective" service rate, see PPL Electric St. No. 1 at 8, 14, 26, is inconsistent with Act 129's "least cost" standard and price stability objectives. *Act 129 Final Rulemaking Order*, slip op. at 41. FES recommends a Residential default supply portfolio of

³ PPL Electric proposes to eliminate spot market purchases, except for a "small amount" needed to fill in a very small future shortfall associated with full requirements supply contracts under DSP I, PPL Electric St. No. 1 at 11-12, and to eliminate the purchase of block products as well, PPL Electric St. No. 2 at 19-20.

products between 12 and 24 months in length. Specifically, FES's recommended portfolio includes 12-, 15-, 18-, 21- and 24-month contracts. See FES Ex. SLN-1. FES's recommended portfolio will benefit customers as well as retail competition.

The evidence shows that customers will benefit because utilizing a portfolio that consists of contracts between 12 and 24 months will result in greater price stability during DSP II than PPL Electric's proposed mix. In this transitional default service period from June 1, 2013 through May 31, 2015, longer term contract lengths⁴ including a measure of 24-month contracts will benefit customers and retail competition by providing price stability which customers can use to evaluate retail offers. Given the Commission's efforts to further promote retail electric competition, customers will begin to experience significant changes in 2013 when the Commission, EDCs, EGSs and other stakeholders will be implementing the various programs recommended in the *IWP Order*.⁵ Default service customers will be receiving voluminous information to educate them about shopping and how to evaluate competitive offers, including offers resulting from the proposed Opt-In Program and Referral Program. Significant changes to the default service PTC would add unnecessary complexity for customers during the transitional period. A PTC that is relatively stable for two years provides customers with a better guide for evaluating retail offers during this transitional period and will reduce customer confusion. FES St. No. 1 at 9-10.

The evidence further shows that retail competition will benefit as well, because a relatively stable PTC will give retail shoppers more certainty to enter into a fixed price retail

⁴ It is important to note that 24-month contracts, just like 12 and 6-month contracts, qualify as "short-term contracts" under the Competition Act, and come nowhere close to the 60 months needed to qualify as a "long-term" contract under Act 129. See 66 Pa. C.S. § 2807(e)(3.2)(iii); 52 Pa. Code § 69.1805; *Act 129 Final Rulemaking Order*, slip op. at 23.

⁵ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

contract and realize savings. Similarly, the longer short-term contracts proposed by FES will give retail suppliers a better defined default service product against which they can develop a wider variety of short- and longer-term products that respond to customer needs and expectations regarding their electric generation service. Contracts of these lengths can promote shopping. In fact, PPL Electric is procuring a portfolio of 12- and 24-month products in DSP I, see, e.g., PPL Electric Ex. JC-1, and PPL Electric's rate of shopping has been relatively high during the term of DSP I, see PPL Electric Ex. JC-2 (46.3% of Residential load served by an EGS as of January 1, 2012). FES St. No. 1 at 10.

In addition, FPFR contracts between 12 and 24 months are very familiar to wholesale bidders. PPL Electric's DSP I procurements of FPFR contracts, which included contracts of 12 and 24 months, enjoyed robust wholesale competition and a high level of supplier participation and diversity. FES St. No. 1 at 11 (citing PPL Electric St. No. 2 at 30) and FES Ex. TCB-3 (PPL Electric Response to RESA-I-2(b), Attachment 1);⁶ FES St. No. 1-S at 7. Combined with the existing block purchases and spot market purchases, short-term contracts between 12 and 24 months are a better mix of products for the transition to end-state default service starting June 1, 2015.

Moreover, FES's recommended portfolio would limit the existence of short-term energy contracts extending past May 31, 2015 consistent with the Commission's recommendations on EDCs' upcoming default service plans.⁷ Initially, FES recommended that PPL Electric continue to procure supply for its Residential customers through a mixture of 12- and 24-month FPFR contracts.⁸ See FES St. No. 1 at 8-11 and Ex. TCB-1. FES adjusted its recommended portfolio

⁶ Also identified in the record as FES Cross Ex. 2.

⁷ *Upcoming DSP Final Order*, slip op. at 19.

⁸ While FES believes the best portfolio for small customers at this time would consist entirely of 24-month fixed-price contracts, procured prior to the default service period, and ending in a "hard stop" on May 31, 2015, FES

in Surrebuttal Testimony, in response to concerns of PPL Electric and RESA that FES's proposed portfolio would require PPL Electric to have too much supply under contract beyond May 31, 2015. See PPL Electric St. No. 1-R at 15; see RESA St. No. 1-R at 4. Specifically, FES's adjustments shortened the terms of three (3) of the 24-month products in FES's recommended portfolio so that they end on May 31, 2015, and extended the terms of three (3) 12-month products by combining them with the originally proposed subsequent 12-month products so that the combined products will end on May 31, 2015 as well. With these adjustments, PPL Electric would have less than 20% of FPR default supply under contract beyond May 31, 2015, while allowing for greater price stability than PPL Electric's proposed portfolio. FES St. No. 1-S at 6. PPL Electric's supply contracts extending beyond May 31, 2015 should be assignable, in the event the Commission designates a new entity as default service provider in the PPL Electric service territory, as part of the new end-state of default service. FES St. No. 1 at 9; FES St. No. 1-S at 7.

Notably, while PPL Electric's Rebuttal Testimony opposed the default supply contract portfolio FES had initially recommended in Direct Testimony, PPL Electric's written rejoinder testimony did not oppose the adjusted contract portfolio FES recommended in Surrebuttal Testimony. Some of PPL Electric's arguments against FES's initial proposal are inapplicable to FES's adjusted proposal. For instance, PPL Electric criticized the portfolio of 12- and 24-month contracts FES initially recommended for being "largely similar" to PPL Electric's DSP I portfolio. PPL Electric argued that due to this similarity to DSP I, FES's initial recommendation could not be expected to encourage further development of retail markets beyond current levels of shopping achieved under DSP I because it does not increase the responsiveness of default

recognizes that due to the existing procurement plan from DSP I, which includes a significant amount of laddered supply contracts that extend into the DSP II period, a portfolio consisting entirely of 24-month contracts and a "hard stop" is not possible.

service rates to underlying changes in energy market conditions. PPL Electric St. No. 2-R at 24. While FES disagrees with this argument,⁹ FES's adjustments to its recommended portfolio in Surrebuttal Testimony adequately respond to PPL Electric's argument, by reducing the percentage of Residential default supply purchased through 24-month contracts from 55% to only 21.25%. Compare FES Ex. TCB-1 with FES Ex. SLN-1. Further, the Commission recently recognized that a default supply portfolio consisting of a mixture of 12- and 24-month contracts, "emphasize[s] the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSs." ME/PN/PP/WP DSP Order, slip op. at 25-26.

One of PPL Electric's arguments against FES's initial proposal that could extend to FES's adjusted portfolio is the assertion that, based on PPL Electric's more recent solicitations, there has been a somewhat less robust market for 2-year products than for 1-year products. PPL Electric St. No. 1-R at 10; PPL Electric St. No. 2-R at 25. Also, PPL Electric explained that it is reducing its reliance on 24-month contracts to zero under DSP II because it believes current and expected retail shopping by Residential and Small C&I customers increases the volumetric risk associated with these longer-term products. PPL Electric St. No. 2 at 17-18. PPL Electric's criticisms of 24-month contracts are misplaced. The evidence demonstrates that there is still a healthy level of interest among wholesale suppliers in PPL Electric's 24-month products. PPL Electric's own Exhibit JC-1-R illustrates that its 24-month tranches have been consistently filled, with more supply offered than was needed. FES St. No. 1-S at 9.

⁹ In addition, PPL Electric's argument is based on the incorrect premise that retail competition could not increase further with the DSP I portfolio. However, PPL Electric has achieved impressive levels of Residential and Small C&I shopping under DSP I's mix of 12- and 24-month contracts, and if PPL Electric were to continue the same portfolio it used in DSP I, the implementation of properly designed retail market enhancement programs in PPL Electric's service territory, including the Opt-In Program, Standard Offer Referral Program and New/Moving Customer Referral Program, as well as the continuing education efforts led by the Commission will cause shopping among its Residential customers, and perhaps Small C&I customers as well, to increase further in DSP II. FES St. No. 1-S at 9.

Accordingly, FES's recommended default supply portfolio for Residential customers is a prudent mix designed to ensure the least cost over time, including the rate stability envisioned by At 129. It represents a transitional step from DSP I to the upcoming end state of default service, and therefore should be approved.

The OCA's Recommended Portfolio Should Include 24-Month Contracts

The OCA proposes a procurement plan which uses a maximum of 12 months for a contract term, but notes that its proposed procurement plan could be revised to include 24-month contracts instead. OCA St. No. 1 at 14 and Ex. OCA-RSH-4. Although FES explained in Rebuttal Testimony that it could agree to the OCA proposal for contract lengths if it incorporated a measure of 24-month contracts, see FES St. No. 1-R at 10, at this time the OCA has not offered a proposal for Residential default supply contracts that incorporates 24-month contracts with the 12-month contracts. FES's support for the OCA's recommendation is conditioned on the inclusion of a measure of 24-month contracts.

The OCA proposal also recognizes the unavailability of some limited contract overhang beyond the end of DSP II. As explained above, FES urges that any contracts that extend beyond May 31, 2015 should be assignable in the event the Commission designates a new entity as default service provider following the DSP II period. See FES St. No. 1 at 9; FES St. No. 1-S at 7.

RESA's Recommended Portfolio Should Be Rejected

RESA proposes a mix of 12-month and 3-month contracts, and recommends that the percentage of the portfolio made up of quarterly priced products increase over time. RESA St. No. 1 at 12 and Ex. AW-1. RESA's proposal is based on the premise that "implementing a more market reflective default service rate (supplemented with the retail market enhancement

initiatives as discussed in Mr. Kallaher's testimony) will maximize the transition to a more robust competitive retail electricity market." RESA St. No. 1 at 12.

FES disagrees with the mix of contract lengths proposed by RESA. While RESA's proposed mix includes 12-month contracts, it lacks any 24-month contracts, and would make PPL Electric's Residential default service largely dependent on 3-month contracts. FES St. No. 1-R at 11. As explained above, 24-month contracts are important to providing customers with relative price certainty and predictability, to facilitating customers' evaluation of any retail offers from suppliers, and to enabling retail suppliers to develop a wider variety of short- and longer-term products to improve upon a defined default service product. They are important to Pennsylvania's transition into a new end-state of default service at the end of PPL Electric's DSP II.

In contrast, RESA's heavy emphasis on 3-month contracts and achieving "market-responsive" rates would result in potentially significant quarterly changes in PPL Electric's Residential default service rates. Under Act 129, the default service provider shall offer residential customers a generation supply service rate that shall change no more frequently than on a quarterly basis. 66 Pa. C.S. § 2807(e)(7). Since RESA is not proposing multiple default service rates for Residential customers, RESA with this proposal appears to be recommending potentially significant changes in Residential default service rates at the maximum frequency allowed under the law. However, there are still approximately 60% of Residential customers on default service in PPL Electric's service territory. See FES Ex. TCB-7 (PPL Electric Response to OCA-II-21).¹⁰ RESA has not explained why it is appropriate to maximize the frequency of default service rate changes in PPL Electric's service territory with many small customers

¹⁰ Also identified in the record as FES Cross Ex. 4.

remaining on default service and in need of further education on the benefits of competitive retail markets, as well as a stable default service price with which to evaluate competitive offers. FES St. No. 1-R at 11-12.

In fact, the Commission's RMI End State Proposal, issued September 27, 2012 via a Secretarial Letter at Docket No. I-2011-2237952, indicates that the end state default service product for Residential and Small C&I customers below 100 kW will be 3-month contracts, that the "[t]ransition is planned to occur on June 1, 2015," and that this end state will be preceded by a statewide consumer education campaign. RESA's proposal would implement the Commission's proposed end state immediately, without the benefit of prior consumer education.

To support its assertion that market responsive default service rates promote retail competition, RESA provided a chart of "Total Type II Load Switching" which uses shopping statistics for Maryland Type II non-residential customers (25kW to 600 kW). RESA contends that this chart "clearly illustrates [that] quarterly procurements result in default service rates that more accurately reflect the underlying wholesale cost of electricity. . . ." RESA further asserts, based on this chart, that shopping levels increased dramatically when Maryland instituted more frequent procurements for these customers, and therefore that these more frequent procurements must have caused the increased shopping levels. RESA also believes this new pricing structure has resulted in shopping that is relatively stable and at a significant level. RESA St. No. 1 at 9, 14.

However, FES explained in its Rebuttal Testimony that the chart of Maryland Type II Switching does not clearly illustrate any relationship between default service rates and the underlying wholesale cost of electricity. FES St. No. 1-R at 13. While RESA insisted in Surrebuttal that the Maryland Type II shopping chart shows a "correlation" between the

underlying wholesale cost of electricity, the resulting default service rates and shopping, RESA St. No. 1-SR at 7, the fact remains that RESA's chart is devoid of any pricing data or analysis.

Further, examining statistics regarding the level of shopping among Maryland Type I customers (non-residential, < 25 kW), FES explained that RESA cannot properly conclude that more frequent procurements caused increased shopping among Maryland Type II non-residential customers. As illustrated in FES Ex. TCB-8, a chart comparing RESA's "Total Type II Load Switching" curve with a curve depicting Total Type I Load Switching, the same spike in shopping in mid-2006 occurred for Type I customers, even though there was no change in the frequency of procurements for Maryland Type I customers. This suggests that the spikes and subsequent stability in shopping levels among both Type I and Type II non-residential customers were caused by something else. FES St. No. 1-R at 13. FES explained that there are many factors that impact customer behavior and a significant increase in shopping among Type I and Type II customers at the time Maryland instituted more frequent procurements for Type II customers cannot be attributed to any one factor with certainty. A March 2006 report prepared by the Maryland Public Service Commission's Staff, see FES Ex. TCB-9, provides a reasonable basis to conclude that high clearing prices resulting in significant total bill increases were the primary driver of customers' shopping behavior in 2006 and not the frequency of price changes. FES St. No. 1-R at 13-14.

In response, RESA provided a new RESA Ex. AW-3, which depicts the same mid-2006 spike in shopping among Maryland Type III customers, which receive hourly priced default service. RESA contends that the increased level of shopping among Type III customers is a result of their more market reflective default service pricing. RESA St. No. 1-SR at 8 and Ex. AW-3. However, the Notes to Ex. AW-3 indicate that the shift from 1-year contracts to hourly

pricing for Type III customers occurred in May 2005 — one year before the spike in shopping. Moreover, even prior to May 2005 the level of shopping among Type III customers was much greater than that of Type II customers, even though default service rates for both customer classes were based on 1-year contracts. Again, Ex. AW-3 suggests that something other than the frequency of price changes caused Type III shopping to exceed Type II shopping from June 2004 onward.

Further, RESA did not present any evidence that if its proposed contract lengths were implemented, wholesale suppliers would have sufficient interest in PPL Electric's default supply procurements. While we have seen 12- and 24-month contracts enjoy robust wholesale competition and a high level of supplier participation and diversity in PPL Electric's DSP I procurements, see PPL Electric St. No. 2 at 30; FES Ex. TCB-3 (PPL Electric Response to RESA-I-2(b), Attachment 1),¹¹ RESA has not provided any evidence indicating that the same can be said for 3-month contracts. FES St. No. 1-R at 12. While RESA alludes to the Maryland PSC's approval of Type II auction results, it qualifies that, "to our knowledge,"¹² other jurisdictions using quarterly procurements have not demonstrated any downturn in interest from wholesale suppliers. RESA St. No. 1-SR at 12. RESA's evidence falls far short of substantial evidence, and therefore its recommended default supply contract portfolio should be rejected.

FES Supports PPL Electric's Use of FPFR Default Supply Contracts

FES agrees with PPL Electric's proposed procurement of default supply for Residential customers through fixed-price, load-following contracts, as well as its decision not to include any

¹¹ Also identified in the record as FES Cross Ex. 2.

¹² The knowledge of RESA's witnesses was never firmly established on the record. As explained below, RESA's witnesses are not aware of whether their testimony reflects the position of any individual RESA member, and on cross-examination, RESA's witness could not recall which RESA member companies had determined that witness's recommendations and testimony in this proceeding. N.T. 226-27, 229-30. Further, the witness could not identify a wholesale supplier referenced in that witness's Surrebuttal Testimony, whose name the witness had drawn from testimony to which the witness was responding in another default service proceeding. N.T. 218.

new purchases of spot market supply or block products. FES St. No. 1 at 3. In an FPFR procurement, bidders compete on the basis of the lowest price to satisfy all aspects of the default service customers' load requirements. The winning suppliers offer service at a fixed-price per MWh that becomes the basis for the retail price for customers, who benefit from competition at the wholesale level. An FPFR procurement enables default service suppliers to insulate the default service customer from various risks relating to price uncertainty, volumetric uncertainty, customer shopping, and other sources. As a result, FPFR procurements provide consumers with price certainty for the duration of the contract. It also gives customers a benchmark price with which customers can more easily evaluate competitive retail offers. FES St. No. 1-R at 8.

FES opposes several proposals of the OCA which would combine to reduce PPL Electric's use of FPFR contracts from 100% to roughly 55% of Residential customer default supply. First, the OCA's proposed procurement plan would reduce PPL Electric's use of full requirements purchases from 100% of Residential customer default supply to 75%, and substitute block and spot purchases for 25% of Residential customer default supply. OCA St. No. 1 at 14. Second, to eliminate perceived volumetric risk created by PPL Electric's proposed Opt-In Program, the OCA proposes to set aside another 20% from PPL Electric's FPFR default service solicitations and leave them unfilled at the beginning of DSP II. OCA St. No. 1 at 18, 20. In addition, the OCA's recommended 50% aggregate load cap on PPL Electric's Residential default service procurements would limit a supplier to just 27.5% of the total load. OCA St. No. 1 at 17.

As explained above, FES supports PPL Electric's use of FPFR supply contracts, which are well-known to bidders and beneficial for customers. FES opposes the OCA's package of proposals, which would dramatically reduce PPL Electric's FPFR supply. Given the level of

Residential shopping in PPL Electric's service territory, which FES hopes will increase as a result of properly designed retail market enhancement programs, the OCA's proposals would substantially reduce the FPFR supply on which default suppliers could bid. The OCA would exacerbate this problem by imposing a 50% aggregate load cap on PPL Electric's default service procurements, an issue FES discusses further below. OCA St. No. 1 at 17. Since the OCA's proposals would result in a supplier being limited to winning 27.5% of the load, the OCA's package of recommendations could substantially diminish wholesale supplier interest in PPL Electric's Residential default service solicitations, and do much more to compromise PPL Electric's ability to procure power at the least cost over time than do the OCA's concerns with the perceived volumetric risk created by PPL Electric's proposed Opt-In Program.¹³ FES St. No. 1-R at 8.

ii. Procurement Schedule

Instead of the quarterly procurements of DSP I, PPL Electric proposes to conduct semiannual solicitations beginning in April 2013 and continuing during DSP II through October 2014. PPL Electric proposes lead times of 4 months for each procurement. PPL Electric states that the shift to semiannual procurements will minimize rate volatility, and significantly simplify the procurement process. PPL Electric St. No. 1 at 8-9, 26. FES supports PPL Electric's proposed shift to semiannual procurements, and agrees with PPL Electric that fewer procurements will result in a simplified process with less administrative cost. FES St. No. 1-R at 14. FES believes semiannual procurements can be implemented consistent with FES's recommended default supply contract portfolio. FES St. No. 1 at 9; FES St. No. 1-S at 8.

¹³ The OCA has not consulted or prepared any studies attempting to quantify this risk, nor consulted any competitive wholesale suppliers in reaching this conclusion. FES Ex. TCB-6 (OCA Responses to FES-I-4 and FES-I-5) (also identified in the record as FES Cross Ex. 6).

FES opposes RESA's proposal that PPL Electric conduct 4 procurements per year, and that PPL Electric reduce the lead times for each procurement to no more than 2 months. RESA St. No. 1 at 14-15. Although RESA explains that procurements that are too far in advance of the delivery date will result in pricing that does not reflect the market price at the time of delivery, RESA St. No. 1 at 14, RESA has not provided any evidence to suggest that the change from a 4-month lead time to a 2-month lead time would result in any material change in prices, much less a change in prices that justifies doubling the number of annual procurements. FES St. No. 1-R at 14-15.

Further, PPL Electric explained that the use of quarterly procurements instead of semi-annual procurements would cost Residential and Small C&I customers approximately \$450,000-\$550,000 a year in procurement costs. PPL Electric St. No. 1-R at 10; PPL Electric St. No. 1-RJ at 1-2.

iii. Wholesale Supplier Load Cap

PPL Electric proposes to maintain its 85% Solicitation Load Cap for all customer groups, which limits an individual bidder to supplying no more than 85% of a customer class's default service load offered in each solicitation. PPL Electric proposes to remove its 70% Aggregate Load Cap for Residential customers. PPL Electric St. No. 1 at 22.

The OCA and RESA recommend that PPL Electric maintain the Residential Aggregate Load Cap and reduce it from 70% to 50%. OCA St. No. 1 at 16-17; RESA St. No. 1 at 21. According to the OCA, allowing one supplier to hold up to 85% of default service obligations creates too great a risk of a supplier bankruptcy or financial default. Similarly, RESA contends that a reduced load cap is necessary to ensure greater supplier diversity, which will protect both PPL Electric and default service customers by limiting PPL Electric's exposure and by mitigating

the impact on default service rates if any single wholesale supplier is not able to meet its contractual obligations. RESA St. No. 1 at 21.

The OCA and RESA recommendations should be rejected. FES is opposed to any kind of load cap or other artificial limit on supplier participation. While FES declined to address PPL Electric's proposed Solicitation Load Cap in testimony, FES strongly opposed the OCA's and RESA's recommendation to reduce the level of the Aggregate Load Cap. Commission precedent recognizes that load caps are "part of the analysis in meeting the 'least cost over time' standard," *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P 2009-2093053, P 2009-2093054 (Opinion and Order entered November 6, 2009) ("*ME/PN/PP/WP 2009 Order*"), slip op. at 18, and that they present a tension between supplier diversity and the lowest price to customers:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

ME/PN/PP/WP 2009 Order, slip op. at 16. Load caps limit supplier competition and are potentially harmful to default service customers. The lower the supplier load cap, the higher the likelihood that the cap will increase the total price customers pay for default service. FES believes that the better policy is to allow natural competition to determine the cost of electric generation service, consistent with the policies supporting the Choice Act. FES St. No. 1-R at 16.

FES recognizes that the Commission recently conducted a Binding Poll in the PECO DSP proceeding, and that in the Binding Poll the Commission upheld the ALJ's recommendation of a 50% load cap in the PECO case, notwithstanding PECO's proposal of a 67% load cap.

While the ALJ found that PECO had met its burden of proving that the load cap should be set at 67%, the ALJ recommended that the cap be reduced to 50% to be consistent with the Commission's recent ruling in its *ME/PN/PP/WP DSP Order*. FES filed an Exception challenging the ALJ's extension of the Commission's load cap determination in the *ME/PN/PP/WP DSP Order* to PECO, but the Commission upheld the ALJ's recommendation. *PECO Binding Poll*, Issue #6. While this could be interpreted as an indication that the Commission intends to set default supply load caps at 50% for all major Pennsylvania EDCs, FES strongly urges the Commission to consider the individual facts and circumstances of each EDC. The 50% load cap in the *ME/PN/PP/WP DSP Order* was based on a perceived situation specific to those four EDCs, and it would not be correct to apply the same basis for a decision here. The record evidence in this proceeding does not support a 50% load cap.

The OCA argues that lowering the Residential Aggregate Load Cap will have no adverse impact on PPL Electric's Residential default service customers. In support of this position, the OCA cited to data taken from PPL Electric's 2011 FERC Form 1 concerning PPL Electric's 2011 purchased power costs. According to the OCA, this data indicates that PPL Electric's largest single supplier provided 26% of PPL Electric's energy, below the recommended 50% cap. OCA St. No. 1 at 17, Figure 5. However, the OCA's witness acknowledged that he did not know the significance of the percentages in PPL Electric's FERC Form 1 Report, explaining "I do not have all of the contractual details for each of these transactions, but I believe that all of these purchases relate to the provision of default service." OCA St. No. 1 at 16. PPL Electric clarified that this data reflects all energy and energy-related contracts in place during the 2011 calendar year, and all contract types, including full requirements, spot, block, and alternative energy credits ("AECs"), with the exception of those contracts with suppliers solely supplying AECs.

FES Ex. TCB-10 (PPL Electric response to FES-III-2).¹⁴ Also, the FERC Form 1 numbers reflect contracts for all procurement groups, including Residential, Small C&I and Large C&I. FES St. No. 1-R at 17.

In short, the OCA's tentative conclusions are based on data not specifically related to any particular customer class or product. Further, the FERC Form 1 numbers are annual numbers that do not reflect the amount of load served by a supplier in any given month or the amount of load served by a supplier in any given procurement or product, amounts which would likely vary. As a result, the OCA cannot reasonably rely on the FERC Form 1 information to support its assertion that its proposed 50% Aggregate Load Cap would not adversely impact PPL Electric's default service customers. Contrary to the OCA's point, if the data in Figure 5 in fact relates to PPL Electric's default supply procurements, it demonstrates that PPL Electric already has a high degree of default supplier diversity and that no additional load cap is necessary. FES St. No. 1-R at 17.

Furthermore, FES disagrees with the OCA's and RESA's argument that a reduced Aggregate Load Cap is necessary to protect against a supplier default. A load cap is not an appropriate means of avoiding the adverse consequences of a supplier default. PPL Electric's proposed default service procurement plan already includes numerous protections against supplier default. Article 4 of PPL Electric's proposed SMA requires prospective bidders to prove they have the financial capability to participate in the transactions, and to make PPL Electric and its customers whole for any losses due to non-performance. Suppliers selected to serve any portion of PPL Electric's default service load must post performance assurance to enable PPL Electric to recover costs arising from a supplier default. The amount of performance assurance

¹⁴ Also identified in the record as FES Cross Ex. 3.

each supplier must provide is based on its credit rating and on the forward prices for energy and capacity to be delivered under their contracts, which are calculated each business day. PPL Electric St. No. 1 at 20. Finally, PPL Electric has addressed the possibility of supplier default in its proposed contingency plan. PPL Electric St. No. 1 at 24-25. These measures protect EDCs and default service customers more directly and appropriately than reducing the amount of load one supplier can win in wholesale procurements. FES St. No. 1-R at 18.

Indeed, neither the OCA nor RESA has provided any details of an instance in which a default service supplier that met creditworthiness requirements like those imposed by PPL Electric defaulted on a supply obligation. In discovery, RESA acknowledged that it is not aware of any publicly available information regarding a wholesale supplier not being able to meet its obligations related to the provision of default service in the past 5 years. FES Ex. TCB-11 (RESA response to FES I-3(c)).¹⁵ In Surrebuttal, RESA noted a statement of a Duquesne Light witness in that EDC's default service proceeding, to the effect that a wholesale supplier once contacted Duquesne Light to advise of a possible future default,¹⁶ RESA St. No. 1-SR at 18, but at hearing the witness professed not to know the supplier's name, N.T. 218. Also, the OCA referred to one instance involving Calpine's 2005 bankruptcy that allegedly affected its service to the Reading Municipal Light Department ("RMLD"), but offered no details regarding Calpine's collateral requirements, the steps RMLD took to procure replacement power, the Calpine contract prices or the costs of replacement power, or whether the collateral was sufficient to

¹⁵ Also identified in the record as FES Cross Ex. 5.

¹⁶ This uncorroborated statement violates the rule against hearsay and is insufficient to support a finding of fact. Under general administrative law, hearsay evidence, properly objected to, is not competent evidence to support a finding; hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Comp. Bd.*, 367 A.2d 366 (Pa. Cmwlth. 1976). There is no other evidence in the record that could support a finding of fact regarding statements made to an unidentified declarant by yet another unidentified declarant regarding a possible future default.

cover the replacement power costs. The OCA also raised Lehman Brothers as an example of supplier default, but had no knowledge or details regarding the alleged default or its impact. FES Ex. TCB-6 (OCA Response to FES-I-2).¹⁷ FES St. No. 1-R at 18-19.

Further, neither RESA nor the OCA can point to any studies, analyses or reports supporting their contentions regarding the claimed risk or impact of a supplier default. See FES Ex. TCB-11 (RESA Response to FES-I-3);¹⁸ FES Ex. TCB-6 (OCA Response to FES-I-2).¹⁹ This lack of supporting information gives no reason to doubt that PPL Electric's proposed default service procurement plan already contains adequate protections for PPL Electric and default service customers against the risk of supplier default. FES St. No. 1-R at 19.

Accordingly, the preponderance of the evidence and the legal standard for default service procurement support rejection the OCA and RESA proposals. PPL Electric's proposal to eliminate its Aggregate Load Cap should be approved, and to the extent the Commission sets a Solicitation Load Cap, it should be set no lower than the 85% cap PPL Electric has proposed.

b. Small C&I - Fixed Rate

i. Product Mixture

PPL Electric's proposed default supply contract portfolio for Small C&I customers is similar to its proposed portfolio for Residential customers. Again, PPL Electric proposes to acquire default supply through a series of fixed-price load-following supply contracts in 100 MW peak load tranches, to shift from the quarterly procurements of DSP I to semiannual solicitations, and to procure fixed percentages of default supply through the same combination of 12- and 9-month contracts (with the exception of the 6 and 3-month contracts of the October

¹⁷ Also identified in the record as FES Cross Ex. 6.

¹⁸ Also identified in the record as FES Cross Ex. 5.

¹⁹ Also identified in the record as FES Cross Ex. 6.

2014 procurement) instead of the 12- and 24-month contracts of DSP I.²⁰ PPL Electric St. No. 1 at 6-7, 18; PPL Electric St. No. 2 at 21 and Ex. JC-4B.

FES Supports PPL Electric's Use of FPFR Default Supply Contracts

For the same reasons explained at length above in connection with PPL Electric's Residential proposal, FES agrees with PPL Electric's proposed procurement of default supply for Small C&I customers through fixed-price, load-following contracts. FES St. No. 1 at 3.

FES's Recommended Lengths of Default Supply Contracts

For the same reasons explained at length above in connection with PPL Electric's Residential proposal, FES disagrees with the lengths of PPL Electric's proposed default supply contracts for Small C&I customers. As with Residential customers, FES recommends a portfolio of contracts between 12 and 24 months in length, including 12-, 15-, 18-, 21- and 24-month contracts. See FES Ex. SLN-2. It differs from FES's proposed Residential portfolio in that there are no block products continuing from DSP I.

As explained above in connection with FES's proposed Residential mix of contracts, this recommended portfolio will result in greater price stability during DSP II than PPL Electric's proposed mix, thereby benefitting customers as well as retail competition during the transition to a new end-state of default service. Also, contracts between 12 and 24 months are very familiar to wholesale bidders and will ensure robust wholesale competition and a high level of supplier participation and diversity in PPL Electric's RFPs. FES St. No. 1 at 9-10.

Similar to FES's recommended mix of contracts for Residential default supply, this recommendation for Small C&I customer default supply will limit the existence of short-term

²⁰ One way in which PPL Electric's Small C&I default supply portfolio differs from its Residential portfolio is that in the Small C&I context, PPL Electric need not contend with block products continuing from DSP I. PPL Electric St. No. 2 at 21 and Ex. JC-4B.

energy contracts extending past May 31, 2015. In Surrebuttal Testimony, FES made adjustments to its recommended contract lengths for this class of customers that are identical to the adjustments made to FES's recommended Residential default supply portfolio.²¹ These adjustments adequately address the concerns raised by PPL Electric and RESA with regard to contract overhang, ensuring that PPL Electric would have less than 20% of FPFR default supply under contract beyond May 31, 2015, without sacrificing the measure of price stability that is important for smaller customers. FES St. No. 1-S at 6. Again, FES believes that PPL Electric's supply contracts extending beyond May 31, 2015 should be assignable, in the event the Commission designates a new entity as default service provider in the PPL Electric service territory, as part of the new end-state of default service. FES St. No. 1 at 9; FES St. No. 1-S at 7.

Again, PPL Electric's Written Rejoinder testimony did not oppose this adjusted contract portfolio. To the extent arguments PPL Electric raised in opposition to FES's initial proposal apply to FES's adjusted proposal as well, FES already responded to these arguments of PPL Electric in Section III.B.1.a.i above.

**The OSBA's Recommended Mix of Contracts Should Not Be Adopted
Absent Inclusion of Some 24-Month Contracts**

The OSBA agrees with PPL Electric's proposal to procure its supply for Small C&I default service through 12-month contracts, but recommends that PPL Electric's "stub" procurements of 3 and 6 months at the end of DSP II be extended to 9 and 12-month contracts. OSBA St. No. 1 at 9-10. In Rebuttal Testimony, FES explained that it could agree to the OSBA proposals for a portfolio generally consisting of 12-month contracts, if it incorporated a measure of 24-month contracts. FES St. No. 1-R at 10. The inclusion of some 24-month contracts would

²¹ FES initially recommended a mix of 12- and 24-month contracts for Small C&I customers which is illustrated in FES Ex. TCB-2.

meet Small C&I customers' need for price stability, a need evidenced by the OSBA's disagreement with the suggestion that DSP I rates resulted in "price stability." OSBA St. No. 1 at 5 fn.5. Since the OSBA did not address FES's position in its Surrebuttal Testimony, it is reasonable to assume that the OSBA is unwilling to incorporate any measure of 24-month contracts. Absent the inclusion of some 24-month contracts, the OSBA's recommended portfolio of contract should be rejected.

The OSBA proposal also recognizes the unavoidability of some limited contract overhang beyond the end of DSP II. As explained above, any contracts that extend beyond May 31, 2015 should be assignable in the event the Commission designates a new entity as default service provider following the DSP II period. See FES St. No. 1 at 9; FES St. No. 1-R at 10.

RESA's Recommended Portfolio Should Be Rejected

RESA recommends that PPL Electric procure its Small C&I default supply entirely through 3-month contracts, with 3-month contracts replacing each existing default supply contract as it expires. RESA St. No. 1 at 19 and Ex. AW-1. FES disagrees with RESA's proposed mix of contract lengths, which would make PPL Electric's Small C&I default service entirely dependent on 3-month contracts.

As explained above in Section III.B.1.a.i, Act 129 recognizes that smaller default service customers require relative price stability. In contrast, RESA's heavy emphasis on 3-month contracts and achieving "market-responsive" rates would result in potentially significant quarterly changes in PPL Electric's Small C&I default service rates. Again, RESA is recommending the maximum frequency for changes in Pennsylvania Small C&I default service rates. 66 Pa. C.S. § 2807(e)(7). There are still approximately 56% of the Small C&I customers on default service in PPL Electric's service territory. See FES Ex. TCB-7 (PPL Electric

Response to RESA-I-17).²² Instead of providing a reasonable transition to a new end state of default service at the end of PPL Electric's DSP II, RESA's proposed portfolio would implement the Commission's end state default service model two years early, without the benefit of prior consumer education. RESA has not explained why it is appropriate to maximize the frequency of default service rate changes in PPL Electric's service territory with many small customers remaining on default service and in need of further education on the benefits of competitive retail markets, as well as a stable default service price with which to evaluate competitive offers. FES St. No. 1-R at 11-12.

Also, as explained above, RESA's chart of "Total Type II Load Switching" to illustrate that quarterly procurements result in default service rates that more accurately reflect the underlying wholesale cost of electricity does not support its conclusion that more frequent procurements cause increased shopping levels.

ii. Procurement Schedule

FES believes PPL Electric can implement FES's recommended proposal through semiannual procurements consistent with PPL Electric's original proposal and its desire to simplify the procurement process and reduce administrative costs associated with default service procurement. FES St. No. 1 at 9; FES St. No. 1-S at 8. As explained above in Section III.B.1.a.ii, FES opposes RESA's recommendation that PPL Electric conduct 4 procurements per year, and that PPL Electric reduce the lead times for each procurement to no more than 2 months. RESA St. No. 1 at 14-15. RESA has not provided any evidence to suggest that its recommendations would result in any material change in prices, while PPL Electric has provided

²² Also identified in the record as FES Cross Ex. 4.

substantial evidence that this recommendation would substantially increase procurement costs for smaller customers.

iii. Wholesale Supplier Load Cap

PPL Electric proposes to maintain its 85% Solicitation Load Cap for all customer groups, which limits an individual bidder to supplying no more than 85% of a customer class's default service load offered in each solicitation. PPL Electric proposes to remove its 65% Aggregate Load Cap for Small C&I customers. PPL Electric St. No. 1 at 22. No party has opposed this proposal, and FES supports it. As explained above in Section III.B.1.a.iii, FES is opposed to any kind of load cap or other artificial limit on supplier participation, since they limit supplier competition and are potentially harmful to default service customers. PPL Electric's proposal to eliminate its Aggregate Load Cap should be approved, and to the extent the Commission sets a Solicitation Load Cap, it should be set no lower than the 85% cap PPL Electric has proposed.

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

i. Product Mixture

FES reserves the right to reply to other parties' arguments on this issue.

ii. Procurement Schedule

FES reserves the right to reply to other parties' arguments on this issue.

iii. Wholesale Supplier Load Cap

FES reserves the right to reply to other parties' arguments on this issue.

d. Contract Terms Beyond May 31, 2015

As explained above in Section III.B.1.a.i, FES has adjusted its recommended portfolio of default supply contracts for Residential and Small C&I customers, so that PPL Electric would have less than 20% of FPFRR default supply under contract beyond May 31, 2015. FES St. No. 1-S at 6 and Exs. SLN-1 and SLN-2. PPL Electric's supply contracts extending beyond May 31, 2015 should be assignable, in the event the Commission designates a new entity as default service provider in the PPL Electric service territory, as part of the new end-state of default service. FES St. No. 1 at 9; FES St. No. 1-S at 7.

e. AEPS Procurement

i. Transfer of AECs

FES reserves the right to reply to other parties' arguments on this issue.

ii. Alternative Compliance Payment

FES reserves the right to reply to other parties' arguments on this issue.

f. Administrative Costs and Cash Working Capital

FES reserves the right to reply to other parties' arguments on this issue.

2. Rate Design

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

i. Frequency of Rate Changes

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

b. Residential and Small C&I – Reconciliation

FES reserves the right to reply to other parties' arguments on this issue.

c. Large C&I Customer Class – Rates

FES reserves the right to reply to other parties' arguments on this issue.

d. Large C&I Customer Class – Reconciliation

FES reserves the right to reply to other parties' arguments on this issue.

e. The Green Power Program

FES reserves the right to reply to other parties' arguments on this issue.

f. Optional Monthly Pricing Service

FES reserves the right to reply to other parties' arguments on this issue.

g. Price to Compare Calculation Date

FES reserves the right to reply to other parties' arguments on this issue.

h. Recovery of Transmission and Other Related Charges

i. Costs to be Included in the TSC or GSC

FES reserves the right to reply to other parties' arguments on this issue.

ii. Non-Bypassable Structure

FES reserves the right to reply to other parties' arguments on this issue.

iii. Reconciliation

FES reserves the right to reply to other parties' arguments on this issue.

3. Time of Use Rate Option

a. Design

FES reserves the right to reply to other parties' arguments on this issue.

b. Procurement

Section 2807(f)(5) of the Competition Act requires a default service provider to establish and provide TOU rates to customers with smart meters. 66 Pa. C.S. § 2807(f)(5). In light of challenges the TOU requirement has presented to EDCs, the Commission recommended that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirements. The Commission did not reject other proposals, such as initiating peak time rebate offers or creating a separate wholesale auction for TOU rates, and allowed EDCs to evaluate these proposals for possible inclusion in their next default service filings. *Upcoming DSP Final Order*, slip op. at 47.

Rather than contracting with an EGS to satisfy its TOU requirement, PPL Electric proposes to procure default supply for TOU load by requiring that winning bidders of the proposed 12-month and 6-month fixed price contracts for Residential and Small C&I customers will also be proportionately responsible for TOU load in addition to their fixed-price tranches of

default service load. The winning suppliers would provide supply to meet the default service load of TOU customers for a 6-month period beginning each June and December (i.e., June-November and December-May). PPL Electric St. No. 1 at 6, 12-13, 18-19; PPL Electric St. No. 3 at 5.

FES disagrees with PPL Electric's proposed approach to procuring TOU supply. FES believes that TOU load should be bid separately from fixed price load. The TOU and fixed-price loads are two completely different wholesale products, with different risk profiles. Combining these two disparate products in one bid for wholesale supply unnecessarily complicates the bid design, and will likely result in higher bids than would be obtained on just the fixed-price full requirements portion of the combined products. FES, as an experienced wholesale supplier, believes that it is reasonable to expect the potential TOU obligation to reduce the overall level of supplier interest in PPL Electric's fixed-price products and/or increase bids on fixed-price default supply. PPL Electric already expresses concerns that there are other barriers that may cause DSP II not to attract enough wholesale suppliers to the solicitations, such as current shopping and RMI initiatives. See PPL Electric St. No. 1 at 22. The addition of the potential TOU obligation could only exacerbate this perceived problem (or, in FES's opinion, create an actual problem). FES St. No. 1 at 12.

Given PPL Electric's insistence that it must not bid out the TOU rate option to an EGS and that PPL Electric itself must provide TOU service directly to retail customers, FES recommended that PPL Electric continue procuring TOU default supply from wholesale suppliers that currently supply PPL Electric's default service spot market energy needs. See FES St. No. 1 at 12 and Ex. TCB-3 (PPL Electric Response to OCA-II-2).²³ PPL Electric opposes

²³ Also identified in the record as FES Cross Ex. 2.

this recommendations, explaining that the specifics surrounding its spot product procurement will not support this method of TOU supply procurement. PPL Electric St. No. 1-RJ at 3-4.

Alternatively, FES recommended that PPL Electric conduct a separate solicitation for TOU service for suppliers who might specialize in TOU products to meet its TOU supply obligations. FES St. No. 1 at 13. This approach would address PPL Electric's desire to be the entity offering TOU service, and is another approach potentially acceptable to the Commission. See *Upcoming DSP Final Order*, slip op. at 47. PPL Electric opposes this approach as well, explaining that it needs a guarantee that the TOU product will be bid by suppliers. See PPL Electric St. No. 1-R at 18. Similarly, the OSBA supports PPL Electric's proposal on the grounds that there are very few customers taking TOU service, although it recognizes that integrating TOU obligations with basic fixed rate default service obligations will increase the risk suppliers face. OSBA St. No. 1 at 10. FES questions the premise underlying the OSBA's position, that there are very few customers taking PPL Electric's TOU service. This will not necessarily remain the case, and the number of customers using TOU products may increase significantly. It is this very uncertainty in the variation of TOU load that causes wholesale suppliers to be concerned with combining TOU load obligations with their fixed price load obligations. FES St. No. 1-R at 20-21.

Other parties proposed that PPL Electric follow the Commission's recommendation to bid out TOU service to an EGS. For example, SEF believes that PPL Electric could bid out its TOU program to an EGS and that customers could enroll through PPL Electric. SEF St. No. 1 at 21. Likewise, RESA asserts that PPL should rely on the competitive market to meet its Act 129 TOU obligation by having one or more EGSs offer a TOU rate. RESA St. No. 2 at 42. FES believes these proposals are also reasonable and, given PPL Electric's opposition to other alternatives,

should be adopted. While PPL Electric may argue that this approach is not legal, the Commission just approved it with respect to PECO Energy Company, which successfully bid its TOU service to an EGS. *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).

In addition, Constellation recommends that PPL Electric allocate a pro-rata percentage share of TOU customer load to each tranche, including those awarded in DSP I's RFPs, rather than revising the price paid to default suppliers under their contracts. Constellation St. No. 1 at 39. While FES urges first and foremost that TOU service be separately bid, FES believes this proposal is also reasonable, FES St. No. 1-R at 20, and PPL Electric has indicated that it would not oppose it, PPL Electric St. No. 1-R at 19. If this proposal is adopted, PPL Electric's proposed SMA should reflect these bidding recommendations. To the extent PPL Electric is required first to attempt to separately bid its TOU service to an EGS or wholesale supplier, consistent with the recommendations above, its SMA should clearly state that any requirement that fixed-price default suppliers be responsible for TOU load is a contingency plan in the event no TOU bids are received in response to separate requests for bids. FES St. No. 1-R at 21.

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

i. Revisions to the Supply Master Agreement

FES reserves the right to reply to other parties' arguments on this issue.

b. Third-Party Manager

FES reserves the right to reply to other parties' arguments on this issue.

c. RTO Compliance and Consistency

FES reserves the right to reply to other parties' arguments on this issue.

d. Contingency Planning

FES reserves the right to reply to other parties' arguments on this issue.

e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

FES reserves the right to reply to other parties' arguments on this issue.

C. Retail Market Enhancements and Customer Referral Programs

Since entering its *IWP Order* on March 2, 2012, the Commission has provided additional guidance on its preferred design for retail market enhancement programs. In its *ME/PN/PP/WP DSP Order*, the Commission provided new guidelines on Opt-In Programs and Referral Programs proposed in default service proceedings. The *ME/PN/PP/WP DSP Order* was based on the results of a Binding Poll the Commission conducted at its Public Meeting of August 2, 2012 to decide issues relating to the default service programs and retail market enhancement programs proposed in that proceeding. In addressing the Opt-In Program and the recovery of costs of retail market enhancement programs, the Commission adopted a Motion of Commissioner Pamela A. Witmer which offered new guidelines for the retail market enhancement programs proposed in default service proceedings:

[B]ecause this is the first ROI [and Standard Offer Customer Referral Program] proposal the Commission has reviewed in the course of a default service proceeding, and in the interest of the programs' success, . . . it is important for the Commission to give

clear direction on our preferred market enhancement program design, with specific emphasis on the ROI [Retail Opt-In] Program.²⁴

The Commission created a new design for Opt-In Programs, which differs from the guidelines set forth in the Commission's March 2, 2012 *IWP Order*. Among other things, the Motion:

- Eliminates any bidding competition prior to customer enrollment in the Opt-In Program;
- Changes the Opt-In Program product, from a price at least 5% below the PTC at the time of enrollment, for the full term of the Opt-In Program, to a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% discount off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months;
- Makes Small C&I customers and CAP customers eligible to participate in the Opt-In Program, as well as the Referral Program.

At its Public Meeting of September 27, 2012, the Commission conducted its *PECO Binding Poll*.²⁵ There the Commission again addressed the Opt-In Program and the recovery of costs of retail market enhancement programs by adopting a Motion of Commissioner Witmer ("*PECO Motion*"). The *PECO Motion* explained that "this Motion will propose minor adjustments to the Company's EGS Opt-In Competitive Offer Program, in order to align it with the [*ME/PN/PP/WP DSP Order*]." With regard to the composition of the Opt-In Program product, the *PECO Motion* explained that "[t]his proposal mirrors the Commission's decision in the FE DSP Final Order" *PECO Motion* at 3 n.7. With respect to PECO's proposed Standard Offer Program, the Commission also adopted a product similar to that adopted in the *ME/PN/PP/WP DSP Order*. *PECO Binding Poll*, Issue #18.

While these actions suggest that the Commission intends for its new preferred market enhancement program design to apply to all EDCs' retail market enhancement programs, below FES will address the new preferred market enhancement program design, and then the designs

²⁴ Motion of Commissioner Pamela A. Witmer (Public Meeting of August 2, 2012), at 2.

²⁵ The parties are awaiting issuance of the PECO DSP Final Order. To the extent the PECO DSP Final Order provides different or additional guidance, FES reserves the right to address this guidance in its Reply Brief.

advocated by the parties in the event the new preferred market enhancement program design does not apply.

Where issues have not already been decided by the *MW/PN/PP/WP DSP Order* or the *PECO Binding Poll*, FES believes that programs to further promote retail electric competition should be developed in consideration of the overarching principle of being responsive to customers' preferences. FES believes that, at this point in time, customers' motivation to shop is driven by a desire to receive the lowest possible price. Thus, the most important consideration in designing customer programs should be to give customers the lowest available pricing. FES St. No. 1 at 13.

1. New and Moving Customer Program

FES reserves the right to reply to other parties' arguments on this issue.

2. Customer Referral Mailing

FES reserves the right to reply to other parties' arguments on this issue.

3. Opt-In Auction / Aggregation Program Design

Length of Supply Contract

PPL Electric proposes that EGSs participating in its Opt-In Program would offer Residential customers a 6-month, fixed-price product, at a minimum 5% discount off PPL Electric's December 1, 2013 PTC. PPL Electric St. No. 4 at 20. PPL Electric proposes to conduct the Opt-In RFP in late November or early December 2013. PPL Electric St. No. 4 at 17.

If the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* apply to this proceeding, the question of contract length has been settled. That is, the PPL Electric Opt-In Program product

would be a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months. FES recommends two further improvements to this product. First, the EGS provided fixed-price product during the last 8 months of the initial Opt-In contract should be a uniform price among participating EGSs. Without that uniform price, some customers may receive better pricing than others during the last 8 months of the Opt-In Program, based solely on their random assignment to an EGS. Customers that believe they have fared worse than their neighbors may blame PPL Electric, the Commission, or the competitive retail market for their misfortune. Second, the EGS provided fixed-price product should be established and made known to customers before they decide whether to participate in the Opt-In Program, and not during the 4-month introductory period in order to avoid concerns about "bait-and-switch" offers. FES St. No. 1-R at 24. In an Opinion and Order entered September 27, 2012 in response to several petitions for reconsideration or clarification of the *ME/PN/PP/WP DSP Order* ("*ME/PN/PP/WP Clarification Order*"),²⁶ the Commission directed the EDCs to resolve questions concerning the uniformity of the 8-month price and the timing of the disclosure of the 8-month price to customers, at least initially, in a collaborative. *ME/PN/PP/WP Clarification Order*, slip op. at 15-18.

If the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* do not control this proceeding, and this case is to be decided under the *IWP Order*, FES disagrees with PPL Electric's proposed 6-month contract term length. While FES is aware of the Commission's six billing-cycle guideline for retail opt-in auctions in the *IWP Order*, FES explained at length in testimony why there are good reasons to deviate from the *IWP Order* guideline and require a contract length of at least 12 months. Participating customers will benefit from extending the availability of a

²⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered September 27, 2012).

favorable program price to 12 months, and from the opportunity to have 12 months of price stability. Any concerns that the PTC might decline more than 5% over the 12-month period are addressed by customers' freedom to leave the program for lower EGS offers, or even default service, without penalty. PPL Electric St. No. 4 at 22-23. Therefore, a 12-month program period will increase the likelihood of maximum customer participation in the program. FES St. No. 1 at 15. Further, there is evidence that a substantial number of EGSs would be interested and able to offer 12-month products at least 5% below PPL Electric's projected PTC for June 1, 2013. See FES Ex. TCB-4.

Other parties express support for a 12-month contract term. Like FES, DES/IGS expresses concern with PPL Electric's proposed initial 6-month period. DES/IGS supports a 12-month initial Opt-In Program contract, if a \$50 bonus payment is to be required. DES/IGS St. No. 1 at 10. The OCA's position is less certain but expresses a general preference for a 12-month term. Indeed, one OCA witness asserts that the term of the Opt-In Program service should be 12 months. OCA St. No. 1 at 22. While the other OCA witness also prefers a 12-month term, that witness explains that given PPL Electric's proposed bi-annual changes to the PTC, it may be possible to guarantee savings during the entire contract term with a 6-month contract, and therefore a 6-month term may be acceptable. OCA St. No. 2 at 11-12. In response to the OCA's position that a 6-month term may be an acceptable term because the Opt-In Program cannot be successful unless "more robust customer savings" are guaranteed during the entire contract term, OCA St. No. 2 at 12, FES explained in detail that while it is not opposed to guaranteed savings, guaranteed savings are not necessary for customers to benefit from the Opt-In Program over a 12-month term. FES St. No. 1-R at 25.

Limits on the Number of Customers a Supplier Can Win

PPL Electric proposes to limit the percentage of participating customers an EGS can win in its Opt-In Program. PPL Electric's proposed bid rules divide the eligible customers into ten tranches, with each tranche equal to 10% of the capped Residential customers plus any participating shopping customers. PPL Electric proposes that an EGS may win only a maximum of 50% of the offered tranches, i.e., 5 of the 10 tranches. PPL Electric St. No. 4 at 23. PPL Electric intends this cap "[t]o ensure a diverse bidding process." PPL Electric St. No. 4 at 23.

If the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* apply to this proceeding, this question has also been decided. In the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*, the Commission adopted a 50% supplier participation cap. Further, the *ME/PN/PP/WP Binding Poll* eliminated any bidding competition in the Opt-In Program. Without a bidding competition, it is unclear how participating customers would be allocated among participating suppliers. The Commission has directed the EDCs to attempt to resolve this issue in collaboratives. E.g., *ME/PN/PP/WP DSP Order*, slip op. at 109. If customers are equally allocated among participating suppliers, it is not clear that a supplier participation cap is necessary.

If the Commission's *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* do not apply to this proceeding, FES maintains that no supplier participation cap is appropriate. While FES is aware of the 50% cap included in the Commission's *IWP Order* guidelines, FES is strongly opposed to any supplier participation caps. FES opposes any artificial limits on supplier participation in retail market enhancement programs. In the *IWP Order*, the Commission expressed its belief that a 50% cap is the appropriate level to strike a balance between ensuring a diverse array of EGSs are able to participate and enjoy the potential benefits of retail opt-in auctions and providing the lowest possible pricing to consumers. *IWP Order* at 63. However, there are numerous offers currently available to Residential customers in PPL Electric's service

territory. The fact that many suppliers already compete in PPL Electric, making fixed price offers, see FES Ex. TCB-4, indicates that the Opt-In Program will attract vigorous EGS competition without the need to impose any supplier participation caps. See FES St. No. 1 at 17.

While supplier diversity is certainly an important factor in building a competitive retail market, another important factor in building a robust retail market is getting customers the best pricing available in the marketplace. This is best accomplished by allowing the markets to work without artificially limiting competition among participants. Artificial supplier participation caps interfere with the natural operation of competitive market forces, which Pennsylvania has recognized to be more effective than regulation in controlling the cost of electric generation service. FES St. No. 1 at 17-18.

FES disagrees with RESA'S assertion that the supplier participation cap "is important to help to ensure that the Commission's competitive enhancements do not result in merely transferring customers from an entity with the majority of market share (the EDC in its role as default provider) to a new marketer with dominant market share." RESA St. No. 2-R at 13. As FES explained in Surrebuttal Testimony, considering the facts and circumstances of PPL Electric's service territory, it is improbable that the Opt-In Program could create a new marketer with dominant market share. As RESA observes, PPL Electric as the default service provider currently has the majority of Residential market share, at 60%. Furthermore, according to PPL Electric, as of March 2012 there were 28 EGSs in the PPL Electric service territory serving the remaining 40% of Residential customers that have chosen an alternative supplier. See PPL Electric St. No. 2 at 10. The proposed customer participation cap limits the entire Opt-In Program to one-half of the customers on default service, or 30% of PPL Electric Residential customers. As a result, even if one EGS were to win all Residential customers participating in

the PPL Electric Opt-In Program, at maximum customer participation levels, they would enroll at most only 30% of PPL Electric's Residential customers. It is highly unlikely that one EGS would win all Residential customers participating in the Opt-In Program, since there are nearly 40 EGSs making offers to Residential customers on PaPowerSwitch.com and at least 12 EGSs offering a product similar to that proposed in the Retail Opt-In Auction Program. See FES St. No. 1-S at 11 and FES Ex. TCB-4.

RESA, in addition to supporting PPL Electric's proposal to limit EGSs to winning no more than 50% of eligible customers, recommends requiring a minimum number of four (4) successful bidders. RESA proposes that the Commission could waive this requirement if, for example, any price-setting auction were conducted before customer enrollment as RESA also recommends (and FES also opposes) below. RESA explains that requiring a minimum number of winning bidders is important to ensure participation by a diverse number of suppliers, each bringing their own "individual strengths and business models" to the auction for the benefit of retail end users. In addition, RESA asserts that requiring at least four winning bidders could enable a 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." RESA St. No. 2 at 30-31.

FES opposes this proposal as well. As an initial matter, the Commission rejected the same RESA proposal in the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*. *ME/PN/PP/WP DSP Order*, slip op. at 115; *PECO Binding Poll*, Issue #16. Further, any artificial limit on the number of customers that a supplier may serve interferes with the natural operation of competitive market forces, and ensures that customers do not receive the lowest price. The best way to ensure customers receive the lowest price is by assuring that there is a

competitive process that includes multiple suppliers rather than by limiting the number of customers a supplier may win in that competitive process. While FES might understand a requirement for a minimum number of *participating* bidders, RESA has provided no factual basis for its minimum winning bidder recommendation. There is no reason to believe that any feature of PPL Electric's proposed Opt-In Program would tend to prevent a diverse number of winning suppliers. The program design appears to assure fair competition among bidders. Also, RESA does not explain or show in any way how requiring at least four winning bidders could enable a number of EGSs "to increase their scale in the PPL market, allowing them to achieve economies of scale that would justify further investment" By way of an illustration, RESA provided an example of sufficient scale which assumed 4 bidders each winning an equal number of 125,000 customers. FES Ex. TCB-12 (RESA Response to FES I-5(c)).²⁷ However, there is no reasonable basis to conclude that a winning bidder will realize such numbers of customers.²⁸ FES St. No. 1-R at 27-28. Therefore, the Commission should reject this recommendation.

Benefits of Competitive Bidding

PPL Electric proposes to conduct the Opt-In Program bidding competition using a sealed-bid auction format. PPL Electric St. No. 4 at 25. While FES's Direct Testimony explained at length why a DCA is the better bidding format to provide a lower price for participating customers and attract more customer participation, FES St. No. 1 at 18-19, the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* subsequently eliminated the bidding competition altogether. Instead of a price "at least 5% below" the PTC at the time of enrollment, the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* establish a price which is "set" 5% below the PTC at the

²⁷ Also identified in the record as FES Cross Ex. 7.

²⁸ Further, RESA's witness does not know whether this recommendation reflects the position of any individual RESA member. FES Ex. TCB-12 (RESA Response to FES I-5(e)) (also identified in the record as FES Cross Ex. 7).

time of enrollment. FES strongly believes that the Opt-In Program should include some form of bidding competition. Without a bidding competition, the price to participating customers will not provide the maximum savings, the program does not deliver any benefits of retail competition, and to date, there is no clear methodology for allocating customers among participating suppliers. Consistent with this position, FES also believes that the product should continue to be priced "at least" 5% below the PTC since there needs to be a clear and sustained benefit to the customer for participation in the program. FES St. No. 1-R at 31.

Sequence of EGS Bidding and Customer Enrollment

FES agrees with PPL Electric's proposal to conduct the bidding competition for its Opt-In Program competition after its default service supply procurement but before customer enrollment. FES St. No. 1 at 3. RESA, however recommends that PPL Electric defer the Opt-In Program's price-setting bidding competition until after the customer enrollment period, so that EGSs will know the total number of participating customers when they participate in the bidding. RESA claims that a deviation from the Commission's *IWP Order* guidelines is justified by the fact that a majority of residential customers are not shopping. RESA further explains that it does not share the Commission's concern that if customers were asked to opt in before the EGS bidding, customers would not have sufficient information about the product they will receive. According to RESA, if enrollment is first, customers would know 1) the price is at least 5% less than the then-current default service price, 2) the product includes a \$50 bonus, and 3) the product could be cancelled at any time without penalty. RESA St. No. 2 at 22-24.

If the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* apply to this proceeding, this question may be moot because the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* eliminated the Opt-In Program bidding competition. If the *ME/PN/PP/WP DSP Order* and

PECO Binding Poll do not apply to this proceeding, RESA's recommendation should be rejected because the Commission's *IWP Order* guidelines advise that EGS bidding precede enrollment and RESA has not presented good cause to deviate from that approach. RESA did not consult, review or prepare any studies or analyses to determine what it calls "the negative effect" the Commission's preferred sequence of bidding and enrollment will have on the ultimate value that is brought to customers through the Opt-In Program, or that putting the price-setting auction before the customer enrollment period will tend to decrease the number of EGSs that will participate in the auction.²⁹ FES Ex. TCB-12 (RESA Response to FES-I-4(a), (b)).³⁰

While RESA asserts that insufficient shopping levels for PPL Electric customers justify a deviation from the Commission's *IWP Order* guidelines, PPL Electric's shopping levels are among the highest in the Commonwealth, and the Commission was aware of shopping levels when it adopted the *IWP Order*. FES St. No. 1-R at 29. In the *IWP Order*, the Commission acknowledged that parties differed in their proposals as to the timing of the EGS auction relative to customer enrollment. However, the Commission emphasized the importance of avoiding a negative perception of competitive retail markets:

One of the underlying goals of the Retail Opt-In Auctions is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission. The Commission is also concerned about a worst-case scenario in which the EGS auction does not fully subscribe all available tranches. Such a scenario could foster a negative perception toward the competitive retail markets if customers who expected auction service were not able to receive service or had to receive a different price and/or product.

IWP Order at 55. The Commission determined that holding the EGS auction before customer enrollment is the appropriate way to address these concerns.

²⁹ Again, RESA's witness is not aware of whether any RESA members support the witness's recommendation. FES Ex. TCB-12 (RESA Response to FES I-4(c)) (also identified in the record as FES Cross Ex. 7).

³⁰ Also identified in the record as FES Cross Ex. 7.

Also, FES disagrees with RESA's speculative assertion that under its proposal, customers would have sufficient information to be attracted to the program. A customer must know the price of the product they are asked to purchase. The portion of the *IWP Order* quoted above reflects this concern. If either party should be expected to proceed with less than perfect information, it is the EGS, not the residential customer. In the sequence recommended by the Commission and proposed by PPL Electric, a customer will know the term, price and supplier — all information the customer would know if making a traditional choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best. Finally, it is unclear how reversing the sequence would resolve RESA's concerns with EGSs knowing the number of participating customers, since a customer who has opted in could subsequently leave the program before the price-setting auction, e.g., for a better EGS offer. While RESA's proposal might provide benefits to suppliers, it would do so at the expense of customers. FES St. No. 1-R at 30. Therefore, the Commission should reject this proposal.

Small C&I Customer Eligibility

PPL Electric proposes to offer participation in the Opt-In Program to Residential customers. PPL Electric St. No. 4 at 21. FES believes that retail enhancement programs should be open to customers in all rate classes. While PPL Electric's proposal is consistent with the *IWP Order*, the Commission's *ME/PN/PP/WP DSP Order* and *PECO Binding Poll* indicate that these customers should be included. *ME/PN/PP/WP DSP Order*, slip op. at 103-04; *PECO Binding Poll*, Issue #12.

Customer Options on Product Expiration

FES agrees with PPL Electric that, absent any affirmative action on behalf of the customer, at the end of the Opt-In Program, should not return to default service. FES St. No. 1 at 3.

4. Standard Offer Program Design

Length of Standard Offer

Under PPL Electric's proposed Referral Program, EGSs would provide participants with a price that reflects a standard 7% discount off the then-current PTC for a term of six billing cycles. PPL Electric St. No. 4 at 26 and Ex. DAK-2 at 1. While FES agrees with PPL Electric's proposal that the Referral Program offer a fixed-price product, FES disagrees with the proposed length of the standard offer. The evidence demonstrates that a 12-month product will provide increased savings and a more stable product for participating customers. A customer may exit the Standard Offer contract at any time, without penalty, either to select another EGS or return to default service. PPL Electric St. No. 4 at 27. DES/IGS also supports a 12-month Standard Offer, and a 12-month product is also consistent with the *IWP Order* guidelines. For these reasons, the Commission has twice approved a 12-month Standard Offer, in the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*.

The OCA advocates a shorter, 4-month Standard Offer which it likens to an "introductory offer" that would guarantee savings for the customer for the entire term of the contract. OCA St. No. 2 at 17-18. FES disagrees with the OCA's recommended 4-month term. FES maintains that a 12-month Referral Program contract will offer customers the discounted program price with stability and certainty for a longer period of time. FES St. No. 1-R at 33. It is important to note that the OCA also advocates that participating customers that do not respond to their EGS's

notices regarding the end of the Standard Offer be returned to default service when the Standard Offer ends. OCA St. No. 2 at 17. The objective should be to create a positive experience with shopping to incent the customer to stay with an EGS, not to go back to default service. FES does not believe that the combination of these two proposals (4-month contract term and returning to default service) is sufficient time for the customer to gain confidence in their supplier and the retail market. Finally, for a program in which the EGSs may be making a significant financial investment, these proposals will likely deter supplier participation. FES St. No. 1-R at 33. Therefore the OCA's recommendation should be rejected.

Small C&I Customer Eligibility

PPL Electric proposes to offer participation in the Opt-In Program to Residential customers. PPL Electric St. No. 4 at 25. FES believes that retail enhancement programs should be open to customers in all rate classes. While PPL Electric's proposal is consistent with the *IWP Order*, the Commission's *ME/PN/PP/WP DSP Order* directs that Small C&I customers be included. *ME/PN/PP/WP DSP Order*, slip op. at 103-04. While the *PECO Binding Poll* does not clearly speak to this specific issue in connection with the Referral Program, see *PECO Binding Poll*, Issue #12, FES reserves the right to address the Commission's Order in that proceeding in its Reply Brief.

Customer Options On Product Expiration

FES agrees with PPL Electric that, absent any affirmative action on behalf of the customer, at the end of the Referral Program, should not return to default service. FES St. No. 1 at 3.

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

FES disagrees with PPL Electric's proposal to initiate the Referral Program in mid-2014. PPL Electric St. No. 4 at 17. PPL Electric wants the Referral Program to follow the Opt-In Program, which would begin following the Opt-In RFP in late November or early December 2013. PPL Electric St. No. 4 at 18-19. The OCA agrees with PPL Electric's proposal. OCA St. No. 2 at 16. The OCA asserts that the Referral Program should not be implemented at the same time as the Opt-In Program, to avoid customer confusion and the potential for adverse comparisons between the discounts offered in each program. OCA St. No. 2-R at 4, 11-12.

FES recommends that the Referral Program begin in June 2013, and not await the conclusion of PPL Electric's Opt-In Program a year later. In fact, implementing the Referral Program ahead of the Opt-In Program may yield information concerning potential customer participation in the Opt-In Program which EGSs participating in the Opt-In Program may find valuable. FES St. No. 1 at 23. FES disagrees with the OCA'S explanation of the need to defer the Referral Program. While each program is sponsored by the Commission and offers customers a discount, the similarities end there. Each offer will be marketed and solicited through different methods. There is no difference between asking a customer to compare the offers available through these two programs and asking a customer to compare any two retail offers in the competitive retail market. FES's position is consistent with the *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*, as well as the position advocated by RESA. RESA St. No. 2 at 13, 36.

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

a. Opt-In Program

PPL Electric's proposed methodology for recovering Opt-In Program costs assumes there will be a bidding competition. Thus, PPL Electric proposes to recover "pre-auction" and "post-auction" costs from EGSs. Prior to the RFP, PPL Electric will issue an estimate of pre-auction and post-auction program costs.³¹ To participate in the RFP, an EGS must agree to pay the pre-auction costs up front, based upon the number of EGS participating. An EGS's payment of pre-auction costs is non-refundable. If no EGSs participate, PPL Electric will spread pre-auction costs to all customers through a Competitive Enhancement Rider proposed in PPL Electric's distribution rate case pending at Docket No. R-2012-2290597. PPL Electric proposes to recover post-auction costs (which PPL Electric anticipates to be the more expensive part of the Opt-In Program), and any true-up of pre-auction costs, evenly from winning EGSs. If there are only two winning EGSs, they may withdraw from the Opt-In Program and avoid the additional costs. PPL Electric St. No. 4 at 23-24.

As FES explained in testimony, FES's preference is for all customers, in any class eligible to participate, to bear the costs of these programs,³² given the substantial ongoing benefits customers will realize as a result of increased retail electric competition, and the likelihood that recovery of program costs from EGSs, combined with the \$50 bonus payment requirement, will discourage EGS participation in the program. FES St. No. 1 at 20. RESA also

³¹ In discovery, PPL Electric provided a "good faith" estimate of the costs of its proposed Opt-In Program at less than \$2.0 million. FES Ex. TCB-5 (PPL Electric Response to FES-I-5) (also identified in the record as FES Cross Ex. 1).

³² According to PPL Electric's estimate, if it recovered the costs of this program from all Residential customers, the cost per customer would be approximately \$1.67. FES Ex. TCB-5 (PPL Electric Response to FES-I-5) (also identified in the record as FES Cross Ex. 1).

recommends that costs of the Opt-In Program be paid by default service customers or all distribution customers. RESA St. No. 2 at 27.

However, in the *ME/PN/PP/WP DSP Order*, the Commission decided that EGSs should pay for the market enhancement programs, and directed the EDCs and EGSs to resubmit a plan or proposals for Commission review regarding how EGSs will pay for the redesigned Opt-In Program and the Referral Program. The Commission reached a similar determination in the *PECO Binding Poll*, except that the *PECO Motion* directs the EDC, EGSs and interested parties "to resubmit a plan or proposals within 60 days for Commission review and approval addressing how participating EGSs *or customers* will pay for the Market Enhancements approved in this DSP proceeding." *PECO Motion* at 4 (emphasis added).

FES recognizes the Commission's preference for EGSs to bear these costs, whether or not the *ME/PN/PP/WP DSP Order* controls this proceeding. If costs are to be recovered from EGSs, it is critical that an EGS's cost per customer be a known, capped amount. Otherwise it is unreasonable to expect significant EGS participation. FES recommends that the costs of the Opt-In Program be allocated based on the number of customers actually enrolled by each EGS. Also, there should be a cap on the amount charged to EGSs for each customer enrolled, and any under-collection of program costs as a result of the supplier cost cap should be recovered from all customers in the classes of customers eligible to participate in the program. All costs should be made known to all qualified bidders prior to the bid proposal due date. This method of cost recovery would provide for a sharing of costs between EGSs and the customers who benefit from the programs, and would give EGSs the certainty they need to determine whether to participate in the program. FES St. No. 1-R at 35-36. DES/IGS recommends that customers be required to

bear some portion of the costs, and that if suppliers are required to pay any portion of costs, that the costs be borne entirely by winning suppliers on a pro-rata basis. DES/IGS St. No. 1 at 9.

If the Commission were to approve the type of cost recovery methodology PPL Electric proposes, FES identified other changes that are needed. If pre-auction costs are underestimated, the true-up is recovered only from winning EGSs. EGSs that participated but did not win any customers would escape responsibility for those additional pre-auction costs. Unfair and disproportionately allocated cost recovery will be harmful to the success of the program. Further, PPL Electric proposes to recover post-auction costs, and any true-up of pre-auction costs, evenly from winning EGSs. The allocation of these costs to each winning EGS should be based on the percentage of customers it enrolls. FES St. No. 1 at 22.

The Commission should reject recommendations that EGSs bear all Opt-In Program costs. For instance, the OCA asserts that all pre-auction costs should be borne by participating EGSs, and recommends that EGSs be responsible for an additional \$1 million in pre-auction costs that PPL Electric proposes to allocate to distribution service customers. OCA St. No. 2 at 14. Similarly, CAUSE-PA supports payment of all costs of the Opt-In Program by participating EGSs. CAUSE-PA St. No. 1 at 22. FES strongly opposes proposals to require EGSs to bear all of the costs of retail market enhancement programs. These proposals exceed the *IWP Order* guidelines, which do not state that all costs must be recovered from participating EGSs. *IWP Order* at 84.

b. Referral Program

PPL Electric intends to recover all non-capital costs of implementing and administering the Standard Offer Program (operation, maintenance and administrative) from participating EGSs. These costs will include training and customer communications costs.³³ PPL Electric intends to seek recovery of service representative call time and capital-related costs in a future base rate proceeding. PPL Electric will publish estimated costs of the program at the time of solicitation. To participate in the program, an EGS must agree to pay a pro rata share of program costs based upon the number of participating EGSs and the months they participate. Final costs will be calculated at the end of the program year and divided among EGSs. If a participating EGS defaults, PPL Electric will pursue legal remedies against the defaulting EGS and, if that fails, recover outstanding costs through the proposed Competitive Enhancement Rider. If this proposed cost recovery methodology is not approved, PPL Electric proposes to recover non-capital costs through the Generation Supply Charge applicable to Residential customers. PPL Electric St. No. 4 at 29-30.

As FES explained in testimony, FES's preference is for all customers, in any class eligible to participate, to bear the costs of the Referral Program,³⁴ given the substantial ongoing benefits customers will realize as a result of increased retail electric competition. FES St. No. 1 at 25. Also, RESA recommends that costs of the Opt-In Program be paid by default service customers or all distribution customers. RESA St. No. 2 at 38.

³³ PPL Electric has provided a "good faith" estimate of the costs of the proposed Standard Offer Program which it would seek to recovery from EGSs, at less than \$500,000, as well as a subsequent estimate of approximately \$1.0 Million in anticipated non-capital costs of implementing and administering the Standard Offer Program. FES Ex. TCB-5 (PPL Electric Response to FES-I-5 and RESA-I-22) (also identified in the record as FES Cross Ex. 1).

³⁴ PPL Electric estimates that if it recovered the costs of this program from all customers, the cost per customer would be approximately \$0.42. FES Ex. TCB-5 (PPL Electric Response to FES-I-5) (also identified in the record as FES Cross Ex. 1).

However, in the *ME/PN/PP/WP DSP Order*, the Commission decided that EGSs should pay for the market enhancement programs, and directed the EDCs and EGSs to resubmit a plan or proposals for Commission review regarding how EGSs will pay for the redesigned Opt-In Program and the Referral Program. The Commission reached a similar determination in the *PECO Binding Poll*, except that the *PECO Motion* directs the EDC, EGSs and interested parties "to resubmit a plan or proposals within 60 days for Commission review and approval addressing how participating EGSs *or customers* will pay for the Market Enhancements approved in this DSP proceeding." *PECO Motion* at 4 (emphasis added).

FES believes that PPL Electric's proposal is a compromise that includes a cost sharing mechanism between EGSs and customers. FES could support PPL Electric's plan with minor modifications. If any portion of costs are to be recovered from EGSs, it is critical that an EGS's cost per customer be a known, capped amount. Otherwise it is unreasonable to expect significant EGS participation. With respect to the Referral Program, FES agrees with PPL Electric's proposal to collect capital costs from customers. However, if capital costs are to be recovered from EGSs, then the capital costs should be divided equally among all EGSs licensed to serve customers eligible for the programs in the PPL Electric service territory. However, EGSs should be given the option to avoid being allocated these capital costs by submitting a signed waiver prior to the program's projected end date. The waiver would state that the EGS will not participate in the program. If EGSs are further required to bear non-capital costs of the Referral Program, then these costs should be collected from EGSs through a per customer fee from each participating supplier based on actual enrollments. To give suppliers the requisite certainty to maximize their participation in the Referral Program, a cap should be imposed on the capital and non-capital costs. Again, there should also be some type of sharing mechanism, whereby at the

end of the default service plan period, any under-collection should be recovered from all customers in any class eligible to participate in the Referral Program. FES St. No. 1-R at 36.

The Commission should reject recommendations that EGSs bear all Opt-In Program costs. For example, while CAUSE-PA supports PPL Electric's initial proposal to recover non-capital costs from participating EGSs, CAUSE-PA St. No. 1 at 24, the OCA recommends that the estimated \$3 million in capital costs which PPL Electric proposed to recover in a future base rate case should be recovered from participating EGSs, in addition to non-capital costs. OCA St. No. 2 at 18. The *IWP Order* does not direct that EGSs must bear 100% of the costs of this program. *IWP Order* at 32.

7. CAP Customer Participation in the Retail Market Enhancements

FES reserves the right to reply to other parties' arguments on this issue.

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

4. Requested Waivers

FES reserves the right to reply to other parties' arguments on this issue.

IV. CONCLUSION

For the foregoing reasons, the 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 should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

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Dated: October 5, 2012

Attorneys for FirstEnergy Solutions Corp.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

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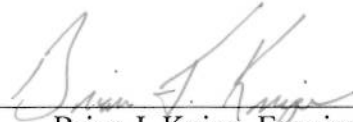
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A handwritten signature in cursive script, appearing to read "Brian J. Knipe", is written above a horizontal line.

Brian J. Knipe, Esquire