



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

October 19, 2012

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265


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

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,


Steven C. Gray
Acting Small Business Advocate
Attorney ID #77538

Enclosures

cc: Parties of Record
Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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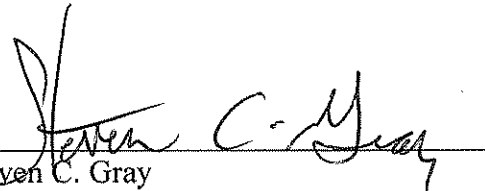
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Date: October 19, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF
ON BEHALF OF THE
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I. Introduction

A. Statement of Position

The OSBA supports the procurement of supplies for small commercial and industrial customers through the use of a portfolio of laddered, fixed-price, full requirements, load-following products.

The OSBA supports the procurement of supplies for small commercial and industrial customers through auctions conducted every six months, with the resulting contracts having a duration of one year.

The OSBA does not support the use of a retail opt-in auction for small commercial and industrial customers.

B. Procedural History

On May 1, 2012, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 13, 2015 (“Petition”).

On June 4, 2012, the Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention against the Petition.

On June 6, 2012, a prehearing conference was held before Administrative Law Judge (“ALJ”) Susan D. Colwell.

On June 7, 2012, ALJ Colwell issued her Scheduling Order.

On July 20, 2012, the OSBA served the direct testimony of Robert D. Knecht. On August 17, 2012, the OSBA served the rebuttal testimony of Mr. Knecht. On August 31, 2012, the OSBA served the surrebuttal testimony of Mr. Knecht.

An Evidentiary hearing was held telephonically on September 7, 2012. Evidentiary hearings were also held in Harrisburg on September 10 and 11, 2012.

On October 5, 2012, the OSBA submitted an initial brief.

The OSBA submits this reply brief pursuant to the procedural schedule set forth in ALJ Colwell's June 7, 2012, Scheduling Order.

II. Summary of Argument

The OSBA does not support RESA's proposal for 100% fixed price, full requirements contracts each quarter, with the PTC being adjusted quarterly. The RESA procurement proposal does not reduce risk by laddering the full requirements contracts. Furthermore, the RESA proposed quarterly procurement schedule will simply complicate the process, raise default service prices for small commercial and industrial customers, and provide no demonstrable benefit in comparison to a semiannual procurement schedule.

The OSBA supports PPL's proposed reconciliation mechanism for the Company's small commercial and industrial customers for the purposes of this proceeding. Refinements to the Company's reconciliation mechanism are better left to the generic proceeding regarding default service reconciliation.

The OSBA does not support the use of a retail opt-in auction for the Company's small commercial and industrial customers. PPL's small commercial and industrial customers already have the highest shopping rate in the Commonwealth. Furthermore, there is no credible evidence that including the Company's small commercial and industrial customers in retail opt-in auctions will incentivize the default service suppliers to participate in any such auctions.

RESA's proposal for an arbitrary 5 mils/kWh default service cost markup charge should be rejected as it violates principles of cost causation, and would serve to enrich electric generation suppliers at the expense of default service ratepayers and very possibly shopping customers as well. The OSBA simply does not agree with RESA that arbitrarily raising rates on all electric customers is a reasonable means to allow customers to achieve the economic benefits from competition.

III. Argument

B. The Proposed Default Service Program

1. Class Procurements

b. Small C&I – Fixed Rate

i. Product Mixture

In its initial brief, RESA recommended that procurement product mixture for the Company's Small C&I customers consist of "100% fixed price, full requirements contracts each quarter, with the PTC being adjusted quarterly." RESA Initial Brief, at 31.

The OSBA observes that RESA's ill-conceived procurement proposal will have deleterious impact upon the Company's Small C&I customers. OSBA witness Robert D. Knecht explained the OSBA's position, as follows:

[RESA's] recommendation is not consistent with Commission guidelines for default service procurement, which specify laddered contracts. As the Commission recognized, laddering of contracts reduces the amount of load that 'turns over' at any one point in time, and thereby provides some rate stability. [RESA's] approach contains no contract laddering. Therefore, at least in theory, [RESA's] approach will result in less stable default service rates than the Company's proposal. With the entire default service load turning over quarterly, rates will likely be less stable than they would be with laddered contracts of 9-month and 12-month durations.

OSBA Statement No. 2, at 2-3 (footnote omitted).

The Commission's regulations state, as follows:

(1) Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load. Initially, the DSP should acquire electric generation supply for these customers using a prudent mix of resources as described in the introductory paragraph to this section. ***Contracts should be laddered to minimize risk***, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a

year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

52 Pa. Code Section 69.1805(1) (emphasis added). In addition:

(2) Nonresidential customers with 25 -- 500 kW in maximum registered peak load. The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. *Fixed-term contracts may be laddered to minimize risk*, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

52 Pa. Code Section 69.1805(2) (emphasis added).

RESA's proposed procurement mix, which lacks any laddering of the contracts, must be rejected. The Commission's desire to "minimize risk," as forth in its Regulations, will have been thwarted by RESA's proposal.

As set forth in the OSBA's initial brief, the OSBA supports the procurement product mixture proposed by PPL. *See OSBA Initial Brief, at 6-7.*

ii. Procurement Schedule

As set forth above, in its initial brief, RESA proposed that the Small C&I procurements be conducted quarterly. RESA Initial Brief, at 31-34. Altering the procurement schedule for the Company's Small C&I customers to a quarterly basis will provide little benefit in exchange for a host of additional problems. Mr. Knecht testified, as follows:

[T]he need to conduct quarterly procurements will increase administrative costs, to the detriment of both default service and shopping customers. In light of the fact that the default service

load for Small C&I customers has shrunk to only about 11 percent of overall Small C&I load, it would be needlessly expensive to conduct complicated and expensive full requirements contract procurements on a quarterly basis for this rate class.

OSBA Statement No. 2, at 3.

PPL reached the same conclusion as Mr. Knecht. The Company initially testified that moving the procurements from a quarterly to a semiannual basis would both simplify the process and reduce rate volatility. *See* PPL Statement No. 1, at 8-9, 26. First Energy Solutions Corporation (“FES”) agreed with PPL: “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 Initial Brief, at 24.

In contrast, RESA has proposed quarterly procurements. RESA argued that such quarterly procurements will “make retail power prices more market-reflective.” RESA Initial Brief, at 32. The OSBA would like to believe that RESA’s position is motivated by a desire to establish default service rates that closely match actual market conditions. Unfortunately, the balance of RESA’s argument requires that a much different conclusion be reached. First, as starkly exhibited by Mr. Knecht’s Table IEC-1, the primary cause in the distortion of Small C&I default service rates away from market conditions is the wild fluctuations in reconciliation charges and credits. *See* OSBA Statement No. 1, Table IEC-1, at 4.¹ Even though it is nearly three years after the expiration of rate caps, Mr. Knecht demonstrated that the E-Factor reconciliation charge on Small C&I customers for prior period service is now 2.28 cents per kWh, more than 33 percent of PPL’s estimated cost of providing supply in the current period. As RESA offers no credible alternative to the reconciliation debacle, and in fact gamely supports continuation of the Company’s existing and hopelessly failed methodology, one must conclude

¹ Note that Table IEC-1 was updated during the evidentiary hearings. *See* Transcript, Friday, September 7, 2012, page 31, line 21 through page 33, line 10.

that RESA has no real interest in setting the PTC for Small C&I customers at market levels. This conclusion is necessarily confirmed by RESA's advocacy of an arbitrary 5 mil per kWh cost markup (discussed further *infra*) on Small C&I default ratepayers. As explained further *infra*, RESA's proposed charge is not reflective of any market conditions or identifiable cost factor associated with providing default service, and is therefore hopelessly inconsistent with any real desire to align default service rates with actual market prices. It is therefore apparent that RESA's desire for quarterly default service procurements for the very small amount of Small C&I load that remains on default service is not motivated by a desire to establish market-based rates, but is in fact a cynical effort to impose additional administrative costs on these customers with no recognizable benefit to any market participant except retail energy suppliers.

Furthermore, as Mr. Knecht noted above, quarterly adjustments will burden the consumer with more costs. PPL calculated that moving from semiannual to quarterly procurements would add an additional \$450,000 to \$550,000 to procurement costs. PPL Statement No. 1-R, at 10. *See also* PPL Statement No. 1-RJ, at 1-2.

As set forth in the OSBA's initial brief, the OSBA generally agrees with the Company's proposed procurement schedule for the Small C&I customer classes. OSBA Initial Brief at 7, 10. RESA's proposal to subject Small C&I customers to volatile rates that change quarterly must be rejected. Quarterly procurements may satisfy some avaricious notion of "competition" to RESA, but it will simply result in less stable rates, increased costs, and turmoil for the Company's small business customers.

iii. Wholesale Supplier Rate Cap

The Company proposes "that the maximum amount of Small C&I default service load be no more than 85 percent of the load retained in any particular default service procurement." For

the reasons expressed in the OSBA's initial brief, the OSBA believes that this provides sufficient protection for the relatively small amount of Small C&I customer load that remains on default service. *See OSBA Initial Brief*, at 8-10.

However, in his direct testimony, OCA witness Mr. Hahn advocated that a further restriction be placed on Small C&I procurement, namely that there be an aggregate supplier cap of 50 percent. *See id.*, at 8. For the reasons presented in the OSBA initial brief, the OSBA concludes that any such additional protection is unnecessary and could be costly to ratepayers. The OSBA observes that the OCA has implicitly withdrawn Mr. Hahn's proposal as it applies to Small C&I customers, by taking no position on this issue. *See OCA Initial Brief*, at 21.

Similarly, while RESA supports OCA's position in favor of a lower aggregate rate cap for the residential class, it agrees with the OSBA that such a cap is not necessary for Small C&I customers due to the fact that "a significant amount of load has migrated to competitive suppliers." *RESA Initial Brief*, at 28-31, 34.

The OSBA respectfully submits that Mr. Hahn's proposal to establish an overall rate cap for Small C&I default service procurement is not supported by any party and should be rejected.

2. Rate Design

b. Residential and Small C&I – Reconciliation

In this proceeding, PPL proposed changes to the Company's reconciliation mechanism for the generation component of the PTC for Small C&I customers. Specifically, PPL proposed to continue the existing methodology, except that the generation charge ("GSC-1") will be updated every six months (rather than quarterly), and the reconciliation amount will be recovered on a "rolling" 12-month basis. *PPL Statement No. 5*, at 4-10.

RESA opposed the PPL proposal, and recommends that the Company “maintain its “current quarterly reconciliation.” RESA Initial Brief, at 41.

As the ALJ and the Commission are well aware, the OSBA has spent considerable effort recently trying to bring order out of the chaos that is PPL’s reconciliation mechanism. One need only glance at page 4 of Mr. Knecht’s direct testimony to see how reconciliation charges and credits have swung up and down in a haphazard manner for the Company’s Small C&I customers. *See* OSBA Statement No. 1, Table IEC-1, at 4.

Fortunately, the Commission has ordered a generic proceeding on the topic of default service reconciliation. In addition, once the procurement mix and schedule have been determined in this proceeding, knowing what type of reconciliation methodology is best will be easier to determine. *See* OSBA Initial Brief, at 15-16.

Therefore, the question before the Commission in this proceeding is, pending the results of the generic investigation, whether PPL should continue its existing quarterly reconciliation methodology (as advocated by RESA) or whether PPL should adopt the proposal that it advanced in this proceeding (supported by the OCA and OSBA). RESA’s argument in favor of the existing mechanism boils down to the simple point that a more prompt recovery or refund of the lagging variances will better align default service rates with actual market prices. *See* RESA Initial Brief, at 41-42. This argument would be very credible except for two minor problems. It is wrong conceptually, and it is hopelessly inconsistent with the facts. RESA’s argument is wrong conceptually because including any reconciliation charge or credit in the PTC will cause default service rates to depart from current market conditions. By definition, the reconciliation charge or credit relates to a prior period, and therefore cannot possibly relate to current market conditions. Conceptually, it does not matter whether that charge/credit is recovered over a 3-

month period or a 12-month period – it still does not relate to current period market costs. Furthermore, RESA’s argument that quarterly reconciliation will result in PTCs that are more in line with market conditions is absurd when the actual results are considered. Even RESA cannot really be contending that the 4.15 cent per kWh reconciliation charge, a 51.8 percent markup on estimated current period costs, imposed on Small C&I customers in the summer of 2011 reflected market conditions that summer. Or that the 1.53 cent per kWh credit (a more than 20 percent discount off the current period costs) in the winter of 2011/2012 reflected market conditions. Or that the current 2.28 cent per kWh markup reflects current market conditions. RESA offers no credible explanation as to how or why these huge fluctuations in reconciliation charges or credits are in any way consistent with matching default service rates with market prices. Again, the OSBA is forced to conclude that RESA has no interest in actually setting market-based rates, but is interested only in preserving a methodology that produces volatile and ugly default service rates.

The OSBA is the first to recognize that the approach proposed by PPL in this proceeding will not address the underlying problems with its reconciliation methodology. Nevertheless, the Company’s proposal will at least smooth out the fluctuations and thereby reduce the distortion associated with the previous mechanism. As demonstrated by Mr. Kleha, had a 12-month rolling mechanism for recovery of prior period variances been in place for the past two years, the distortions associated with the reconciliation charges/credits would have been substantially smaller. *See* PPL Initial Brief, at 54-55. No party has presented any evidence which contradicts that analysis. Consequently, for purposes of this proceeding, the OSBA supports the Company’s proposal. What methodology is ultimately the “best” choice for reconciliation will be better

decided once this proceeding is concluded and the parties address the issue in more detail in the Commission's generic proceeding.

C. Retail Market Enhancements and Customer Referral Programs

3. Opt-In Auction

On March 2, 2012, the Commission entered an Order at Docket No. I-2011-2237952, wherein the Commission concluded that Small C&I customers would not be included in retail opt-in auctions. *See Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012) ("IWPF Order"), at 42.

In *Joint Petition of Metropolitan Edison Company, et al., for Approval of Their Default Service Program*, at Docket No. P-2011-2273650, *et al.* (Order entered August 16, 2012) ("*FirstEnergy Order*"), the Commission reversed its March decision and decided that Small C&I customers should be eligible to participate in retail opt-in auctions. *See FirstEnergy Order*, at 103-104.

As explained in the OSBA's initial brief, the Commission's logic in the *FirstEnergy Order* appears to be based upon a two-prong test: the first prong is that there is "relatively low levels of current shopping" in an EDC's service territory; the second prong is that "over half of the small commercial customers in [an EDC's] service territories are not participating in the competitive market."

The OSBA's view is that the shopping statistics for PPL's service territory demonstrate that there is no need to have Small C&I customers participate in retail opt-in auctions. *See OSBA Statement No. 3*, at 5-6 ("PPL Electric has the highest level of Small C&I shopping of any EDC in Pennsylvania.").

RESA stated the statistics, as follows:

In PPL's service territory, the shopping numbers reflect that, as of September 11, 2012, 64% of the Peak Load Capacity ('PLC') of small commercial customers (under 25 kW) and 68% of the PLC of small industrial customers (under 25 kW) are shopping.

RESA Initial Brief, at 68.

Both RESA and FES recommend that PPL's Small C&I customers be included in the retail opt-in auctions. RESA Initial Brief at 67-68; FES Initial Brief at 53.

The OSBA disagrees with the recommendations of RESA and FES, and not just for the fact that Small C&I shopping has been so much more successful in the PPL service territory. Retail opt-in ("ROI") auctions add risk to the procurement of Small C&I supply. Mr. Knecht explained, as follows:

The ROI auction will increase shopping risk faced by both DSP I and DSP II wholesale suppliers. Because the ROI auction is a mechanism that is unique to Pennsylvania, there is simply no way for wholesale suppliers to develop reasonable estimates for how many customers will enroll in the auction and how many customers will return to default service during or after the auction period. Pennsylvania will therefore be perceived as a relatively riskier place for wholesale suppliers to do business, at least during the period in which the ROI auction will take place.

This increased risk will manifest itself in higher default service bid prices. Moreover, this increased risk comes with zero benefit for default service ratepayers, such as more stable default service rates. Thus, from an economic standpoint, adopting this approach will increase the cost of default service supply above what it would otherwise be. I therefore conclude that this approach would be inconsistent with a cost minimization strategy for default service supply

OSBA Statement No. 2, at 5.

Furthermore, there is record evidence that demonstrates that increased supplier risk does, in fact, drive default service rates higher:

It is a tenet of modern financial economics that increased risk will require an increase in expected return. Thus, if greater risk is imposed on wholesale suppliers, they will increase their prices in response to that risk.

However, in addition to basic economics, PPL Electric's DSP I experience with Small C&I default service procurements shows just such a pattern.

In Exhibit IEC-R1 (attached to this testimony), I summarize the information presented by PPL Electric witness Mr. Cavicchi in his Exhibit JC-6, which compares market clearing prices for each of PPL Electric's DSP I procurements with a built-up cost estimate for those supplies at the time of the procurement.

As I indicated in my direct testimony, in the summer of 2011, PPL Electric's default service rates for Small C&I customers went through the roof, when PPL Electric imposed a massive E-Factor charge of over 4 cents per kWh. Such a huge rate jump necessarily increases the shopping risk faced by default service suppliers, and should therefore be expected to result in higher risk premiums. And, in fact, Mr. Cavicchi's analysis shows exactly that. Prior to July 2011, the winning wholesale bids for Small C&I customers were priced almost exactly equal to the built-up costs (i.e., no risk premium) and were priced slightly below the winning bids for residential service. From July 2011 forward, however, after it became apparent that PPL Electric's Small C&I E-Factor was both enormous in absolute value and wildly volatile, the winning wholesale Small C&I bid prices have averaged nearly 13 percent above built-up costs and nearly 4 percent above residential prices. Thus, the increased shopping risk related to E-Factor volatility resulted in, or at least substantially contributed to, an increase in the average risk premium for Small C&I default service customers of up to 13 percent.

In effect, PPL Electric's E-Factor problems not only resulted in high E-Factor charges to default service customers, but also resulted in higher C-Factor charges due to the increased shopping risk perceived by default service suppliers

OSBA Statement No. 2, at 5-6 (footnotes omitted).

Finally, in addition to the increased risk to default service suppliers, there is the ultimate question whether including the Company's Small C&I customers in an ROI auction would

actually serve to make the opt-in auction more or less attractive to EGSs. Mr. Knecht explained, as follows:

First, the load in question is relatively small, so any benefit to EGSs associated with having a larger load to bid on is minimal. For the June 2011 to April 2012 period, the entire Small C&I 'fixed' default service load was only 23 percent of the Residential fixed default service load. While it is certainly possible that a significant share of the non-shopping load is related to under-25 kW customers, expanding the ROI Auction eligibility to include Small C&I customers can still have only a relatively small impact on the potential load for the auction.

Second, unlike residential customers, the customers in the Small C&I default service rate classes are heterogeneous, with loads and load factors ranging substantially from customer to customer. Even limited to only under-25 kW customers, this group will include customers whose load ranges from a few hundred kWh per month to more than 10,000 kWh per month. Moreover, this group of customers is likely to include a large number of entities that are not businesses at all, but are utility stations, ATM kiosks, etc. It is therefore likely that many of these customers consume only a few hundred kWh per month, and have relatively unattractive load profiles. It is unlikely that EGSs would be interested in paying \$50 to attract these customers, given the relatively few kWh over which they would need to recover this subsidy.

Third, this is a group of customers that is demonstrably uninterested in shopping. Given the fact that these customers remained on default service throughout a period in which PPL Electric was imposing massive E-Factor charges that could have been avoided by shopping, it is likely that they will not be particularly interested in the ROI Auction.

OSBA Statement No. 2, at 9-10 (footnotes omitted).

Thus, the OSBA concludes that there is no basis for including the Company's Small C&I customers in any retail opt-in auction. Shopping is sufficiently strong in the PPL service territory such that the *FirstEnergy Order* prongs are satisfied. In addition, the composition of the remaining non-shopping Small C&I customers is such that their inclusion in the ROI auction will

do nothing to enhance supplier interest in these auctions. PPL's proposal to exclude the Company's Small C&I customers from the retail opt-in auctions should be approved.

D. Additional Issues

2. Proposed 5 mils/kWh Cost Markup Charge

In its initial brief, RESA proposed the adoption of a 5 mils/kWh charge that would only be imposed only on default service customers. *See* RESA Initial Brief, at 97-102. RESA proposes that revenues from such a charge be used to (a) offset some vague and unidentified default service costs that somehow would not otherwise be recovered from default service customers, (b) be used in contravention of an explicit Commission order to offset costs for retail market enhancements, and (c) be carried forward for some indefinite period of time and eventually returned to all distribution customers, including shopping customers who did not pay the charge in the first place and who have no reasonable claim on these funds. While the OSBA commends RESA for its chutzpah, it disagrees with this proposal.

In the recently concluded First Energy default service proceedings, the Companies advanced a similar proposal, except that they proposed that they as default service providers should be entitled to retain all of the funds as profit. In those proceedings, RESA offered a counter-proposal that is very similar to the one that it has advanced in this proceeding. The Commission summarily rejected both proposals in the *FirstEnergy Order*. *See FirstEnergy Order*, at 62-63.

The OSBA concurs with the arguments presented by PPL and the Office of Consumer Advocate ("OCA") in their respective initial briefs. PPL and the OCA essentially argued that no actual costs would be recovered by the proposal charge, resulting in an unlawful mismatch in cost causation. *See* PPL Initial Brief, at 144-145; OCA Initial Brief, at 67-73. RESA's proposed

charge “would be to simply increase default service charges to provide decreases to distribution charges.” PPL Initial Brief, at 144. Mr. Knecht summarized the OSBA conclusion, as follows:

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

OSBA Statement No. 2, at 13.

However, the OSBA has offered into evidence a different basis for rejecting RESA’s proposal, if such an additional basis is needed. Mr. Knecht testified that RESA’s 5 mil charge would “result in an increase in what economists call deadweight loss (‘DWL’), which represents an overall net reduction in economic value.” *Id.*, at 10. Mr. Knecht goes on to illustrate and explain the economic impact of the RESA proposal. While it is probably not for the faint of heart, Mr. Knecht’s testimony does provide a rational, economic basis for the rejection of RESA’s 5 mil charge proposal. *See Id.*, at 11-13. In essence, Mr. Knecht’s argument is as follows. The 5 mil per kWh charge will raise default service rates, making EGS service more competitive. This will allow EGSs who were not previously competitive to begin to offer service to customers at their previously non-competitive prices. Thus, not only will the price paid by default service customers increase under RESA’s proposal, but so also will the average rate paid by shopping customers. While these higher prices may be partly offset by the return of excess revenues to ratepayers under RESA’s proposal (if there are any left after they are used to fund RESA’s myriad of market enhancement programs), ratepayers and the economy in general will be substantially worse off.

Finally, as noted *supra*, RESA's proposal is inconsistent with the oft-stated philosophy in its initial brief that default service rates should reflect market prices. As this proposed 5 mil per kWh adder is unrelated to any market conditions that RESA can identify, and it is unrelated to any cost associated with providing default service that RESA can identify, the OSBA concludes that RESA's proposal fails to meet RESA's own criteria for default service rates.

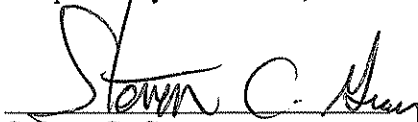
Consequently, RESA's proposed 5 mil charge must be rejected. Not only does it violate basis cost causation principles, there is no basis for enriching EGSs by charging the 5 mils to PPL's default service customers.

IV. Conclusion

Wherefore, based upon the arguments set forth herein and in the OSBA initial brief, the OSBA respectfully requests that the Commission:

- 1) Adopt PPL's proposed procurement product mixture for the Company's Small C&I customers;
 - 2) Adopt PPL's proposed procurement schedule for the Company's Small C&I customers but eliminate the use of "stub" contracts;
 - 3) Adopt PPL's proposed supplier load cap for the Company's Small C&I customers;
 - 4) Defer the PPL issue of including Cash Working Capital costs in the default service rates to the Commission's proceeding on reconciliation of default service costs;
 - 5) Adopt PPL's proposed reconciliation mechanism for the Company's Small C&I customers for the purposes of this proceeding, to be further refined and improved in the generic reconciliation proceeding;
 - 6) Order PPL to pass transmission costs currently recovered in the Company's Transmission Service Charge along to the default service wholesale suppliers;
 - 7) Adopt PPL's proposal to include Time of Use service in the default service procurement for the Company's Small C&I customers;
 - 8) Reject the use of a retail opt-in auction for the Company's Small C&I customers;
- and
- 9) Reject RESA's proposal for a 5 mils/kWh charge on default service customers.

Respectfully submitted,



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APPENDIX

Proposed Findings of Fact

- 1) There is no need to address PPL's Cash Working Capital issue in this proceeding. OSBA Statement No. 3, at 7.
- 2) PPL's reconciliation of Small C&I rates has, to date, resulted in wild rate swings, a highly distorted price to compare, and customer gamesmanship. OSBA Statement No. 1, at 4-5.
- 3) At present, there is little interest from the Company's Small C&I customer class in PPL's Time of Use product. OSBA Statement No. 1, at 11.
- 4) Small C&I customer shopping rates at PPL are the highest in the Commonwealth. OSBA Statement No. 3, at 5-6.
- 5) RESA's proposal for a 5 mils/kWh adder to default service rates is not needed to recover any identifiable default service costs. OSBA Statement No. 2, at 13.

Proposed Conclusions of Law

- 1) PPL has the burden of proof in this proceeding to establish that the Company is entitled to the relief that it is seeking. 66 Pa. C.S. § 332(a).
- 2) PPL must establish its cases 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).
- 3) To meet its burden of proof, PPL must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
- 4) 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.*, requires that default service providers acquire electric energy through a “prudent mix” of resources that are 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).
- 5) The Competition Act does not, however, require a specific default service rate design methodology.
- 6) 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 legislative finding that “competitive market forces are more effective than economic

regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

8) A fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

9) The Commission has enacted default service regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1802 to 69.1817, addressing default service plans. The regulations first became effective in 2007 and recently have been amended to incorporate the Act 129 amendments to the Competition Act. *See, 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).

10) The Commission also entered its Order in the *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011). In that Order, the Commission directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market.

11) The Company's proposed procurement product mixture for the Small C&I customer classes complies with the Competition Act and the Commission's Default Service Regulations.

12) The Company's proposed procurement schedule for the Small C&I customer classes complies with the Competition Act and the Commission's Default Service Regulations.

13) The elimination of "stub" contracts is permissible under the Competition Act and the Commission's Default Service Regulations.

14) Exclusion of Small C&I customer classes from any retail opt-in auction is permissible under the Competition Act and the Commission's Default Service Regulations.

Proposed Ordering Paragraphs

IT IS RECOMMENDED:

- 1) That PPL's proposed product mixture for the Company's Small C&I customers has been approved.
- 2) That PPL's proposed procurement schedule for the Company's Small C&I customers shall be approved with the following modification:
 - a. That "stub" contracts will be eliminated and replaced with contracts of 9 and 12 month duration.
- 3) That PPL's proposed supplier load cap for the Company's Small C&I customers be adopted.
- 4) That the issue of including Cash Working Capital costs in the default service rates be deferred to the Commission's proceeding on reconciliation of default service costs.
- 5) That PPL's proposed reconciliation mechanism for the Company's Small C&I customers be approved for the purposes of this proceeding.
- 6) That PPL shall pass transmission costs currently recovered in the Company's Transmission Service Charge along to the default service wholesale suppliers.
- 7) That PPL's proposal to include Time of Use service in the default service procurement for the Company's Small C&I customers is approved.
- 8) That the Company's Small C&I customers will be excluded from any retail opt-in auctions.

9) That RESA's proposal for a 5 mils/kWh charge on default service customers shall be rejected.