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October 19, 2012

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

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

Dear Secretary Chiavetta:

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

Sincerely,

Daniel Clearfield

DC/lww
Enclosure

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

CERTIFICATE OF SERVICE

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION AND PROCEDURAL HISTORY

On behalf of the Retail Energy Supply Association ("RESA")[1] this Reply Brief is submitted in response to the main briefs ("MBs") of several of the parties to the above-captioned proceeding. While RESA anticipated and responded to many of the arguments set forth in the MBs and incorporates those arguments herein, RESA offers this Reply Brief to respond to several specific points of the parties.

Several "big picture" issues must remain at the forefront when considering the proposal of PPL to implement a default service plan and various retail market enhancements for the period of June 1, 2013 through May 31, 2015. The framework for resolving these "big picture" issues has been laid out in the FE[2] and PECO[3] DSP II cases. But, even if those case details remain unfinalized and will be resolved in collaborative processes ordered by the Commission, they still provide important guidance.

Even when informed with the results of the other DSP II cases, the following key points should not be lost when resolving these issues for PPL. First, the structure of the default service procurement plans is critically important for the 2013-2015 transition period. Second, the intent

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

2 *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et. seq., Opinion and Order entered August 16, 2012 ("*FE DSP II Order*"), *reconsideration granted in part*, Opinion and Order entered September 27, 2012, and amended on October 11, 2012 ("*FE DSP II Reconsideration Order*").

3 *Petition of PECO Energy Company for Approval Of Its Default Service Program*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012 ("*PECO DSP II Order*").

and purpose of the retail market enhancement programs to encourage default service customers to shop must remain in preeminent focus. Finally, the Commission should reject attempts by parties to make the competitive enhancements less "enhancing" to competition.

For the reasons stated herein and in its MB, RESA submits that the record in this proceeding does not support adoption of PPL's proposed default service procurement plan (for the period of June 1, 2013 through May 31, 2015) and its proposed RME programs as consistent with the Electricity Generation Customer Choice and Competition Act ("Competition Act")[4] or the Commission's articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the competitive market.

To remedy a number of shortcomings, RESA has recommended modifications to PPL's default service plan, consistent with the goals of the Commission to further promote the development of robust, sustainable retail electric competition in PPL's service territory. These modifications will make PPL's plan consistent with the Commission's clear directives on improving the competitive retail market to ensure customers are empowered to take advantage of all the benefits associated with this evolved market design. The modifications proposed by RESA are supported by the substantial evidence presented by Aundrea Williams and Christopher H. Kallaher. Both are experienced and expert in competitive markets, including Pennsylvania's competitive markets. Adopting all of RESA's proposed modifications recommended by these experts will lead to a default service plan that is: (a) legally required by the Competition Act; (b) consistent with the goals articulated by the Commission; and, (c) the best transition of the PPL

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[4] 66 Pa. C.S. § 2801, *et. seq.*

market to the 2015 end-state articulated by the PUC in its recent Secretarial Letter, designed to move towards the development of a properly functioning, robust, sustainable and workable competitive retail electric market in the PPL service territory.

II. Summary of Argument

RESA's recommended changes to PPL's proposed default service procurement plan and the retail market enhancements ("RMEs") are summarized in Section II of RESA's MB.

III. Argument

A. Legal Standards

The legal standards applicable in this case are described in detail in Section III. A. of RESA's MB.

B. The Proposed Default Service Program

1. Class Procurements

a. Residential - Fixed Rate

i. *Product Mixture*

RESA continues to believe that the Commission should direct PPL to adopt a default service product portfolio that progressively relies on greater amounts of 3-month fixed-price, full-requirements, load-following products.[5] RESA's proposal is consistent with the Commission's recently-issued RMI End State Proposal, where the default service product for

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[5] RESA St. No. 1 at 18.

residential and small C&I customers reflects a "90-day full requirements load following price resulting from quarterly auctions."[6]

RESA disagrees with PPL's unsupported contentions that RESA's proposal would "immediately expose residential customers to substantial rate swings and rate instability."[7] PPL presented no evidence to support its contention, even though default customers in Pike County Pennsylvania have been served via hourly priced energy for many years.[8] If PPL's contention were more than rhetoric, one would expect that it would have presented empirical evidence of "substantial rate swings and rate instability," from such a procurement. It has not. Further, RESA believes that PPL's continued reliance on the amorphous concept of "price stability" is misguided and should be rejected.

FES articulates similar "price stability" concerns in its MB. FES recommended a portfolio that includes 12-, 15-, 18-, 21- and 24-month contracts in the hope that such a portfolio would result in greater "price stability" or "price certainty."[9] As discussed below, these proposals are misguided and may be harmful to the retail electricity market in PPL territory because they divorce the retail price of supply from the underlying wholesale market prices. In addition, FES's proposal to rely on long-term contracts is at odds with the Commission's RMI

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6 *Re Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Secretarial Letter issued Sept. 27, 2012) (RMI End State Proposal at 2.c.).

7 PPL MB at 21.

8 *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012 ("*PCL&P 2012 Default Service Order*"). On June 22, 2012, OCA filed an appeal of this order to the Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Commonwealth Court Docket No. 1179 C.D. 2012.

9 FES MB at 14-15.

End State Proposal, where the Commission is proposing the use of 90-day contracts procured quarterly.[10]

Although it is true that "prevailing market prices" is no longer the standard for evaluating default service procurement strategies, it is equally true that Act 129 does not establish a new "price stability" standard. Instead, the law requires default service procurements that result in "least cost to customers over time."[11] RESA respectfully submits that Act 129's "least cost over time" standard is met when default service procurement plans ensure that the resulting default service rate is as close as possible to the market price for energy at the time of delivery. This outcome satisfies the requirements of the statute because it results in a default service procurement plan that will establish and sustain a robust competitive retail market. A fully competitive market will produce the lowest prices possible for electric generation, as retailers vigorously compete to win customers. This also allows the collective decisions of empowered customers to determine what constitutes "least cost" with respect to their own personal decisions regarding electricity supply.[12] It is legally incorrect and wrong from a policy standpoint to elevate this concept of "price stability" over the "least cost over time" formulation in the statute. The reference to "stability" is not even in the default service procurement portion of the law (and only part of the Preamble to recent amendments). In fact, the Commission has already concluded that "[t]he rules of statutory construction dictate that the findings and declarations found in the Preamble of a statute *do not take precedence over the specific statutory provisions*

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10 *Re Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Secretarial Letter issued Sept. 27, 2012) (RMI End State Proposal at 2.c.).

11 66 Pa. C.S. §2807(e).

12 This contention is supported by evidence in the record: RESA St. No. 1 at 7-8.

contained in the law, but the rules of statutory construction provide that the Preamble may be considered in the construction of a statute."[13]

Even if the Preamble is considered, the benefits of rate stability can best be achieved by ensuring that default service prices reflect market prices for electric supply, creating a robust competitive market with many competitive rate offers that provide stable rates of one year, two years or longer as alternatives for customers

Based on the foregoing, the Commission should adopt RESA's proposal to adjust PPL's procurement program to include a superior supply mix that moves the Company closer to shorter term products procured on a quarterly basis.

ii. *Procurement Schedule*

RESA opposes PPL's proposed switch to semi-annual procurements and recommends instead that the Company retain its current approach of holding four solicitations per year. This position is wholly consistent with the Commission's RMI End State Proposal, where the Commission advanced the use of 90-day products resulting from quarterly auctions.[14] PPL believes it has done enough to shorten the time between procurements by eliminating two-year contracts in the DSP II Program.[15] According to PPL, its proposal would result in 12-month contracts being entered into approximately one month from the start date of delivery, and 9-month contracts having a lead time of four months. As stated in its MB, RESA is seeking to have lead times that are as short as possible, so there is no objection from RESA to the one-month lead times. However, as Ms. Williams explained in her testimony, lead times of four

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13 *PCL&P 2012 Default Service Order* at 29.

14 *Re Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Secretarial Letter issued Sept. 27, 2012) (RMI End State Proposal at 2.c.).

15 PPL St. No. 1-R at 10-11; PPL MB at 27.

months are not sufficiently market-reflective and should be shortened so that no contract has a lead time exceeding two months.[16]

PPL also makes the dubious claim that RESA's proposal for quarterly solicitations would add significant costs to the Company's procurement program. However, even if PPL is correct that adoption of its semi-annual procurement proposal would save $550,000 in procurement costs, (a questionable assertion, to say the least)[17] the benefits of quarterly procurements to competition and to customers should not be ignored. First, it is important to recall that PPL is *currently* using quarterly procurements; so RESA's position would maintain the *status quo* – not impose additional costs. Moreover, as RESA demonstrated in the course of hearings and in its MB, the incremental costs of keeping the current quarterly procurements are minimal ($0.83 per customer per year)[18] in relation to the benefits of a more robust competitive retail market that would lead to better electricity prices for customers over time. Also, if PPL's figures are taken at face value, this is a relatively modest cost to accomplish the Commission's stated goal of making default service rates more closely reflect wholesale market prices.

FES also disagrees with RESA's proposals to have PPL retain its current quarterly procurements and argues that a move toward greater reliance on 3-month contracts would lead to price uncertainty and a lack of predictability.[19] In addition, FES argues that RESA "appears to be recommending potentially significant changes in Residential default service rates at the

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16 RESA St. No. 1 at 14.

17 RESA witness Williams testified that the cost asserted by PPL was out of line with the procurement costs incurred by similarly situated EDCs in other states. RESA St. No. 1-SR at 13-14. PPL's only response was to reassert that its numbers were right. See, Tr. 151.

18 Tr. 151.

19 FES MB at 19-20.

maximum frequency allowed by law."[20] FES goes on to assert that "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 in default service."[21] FES also opposed RESA's proposal for four solicitation per year on the basis that the proposed changed would not result in any material change in prices.[22]

As an EGS that owns a considerable amount of physical generation assets, FES is just advancing the procurement mix that best fits its own business interests. But, FES is also wrong in alleging that RESA has failed to explain the justification for its quarterly procurement proposal. RESA has presented extensive evidence in the form of the testimony of Ms. Williams who testified as an expert in competitive markets, to show that procurements that produce default service rates that more closely reflect underlying wholesale market prices encourage retail electric competition and bring the benefits of competition to customers in a more sustained and consistent manner.[23] As RESA argued in its MB, Maryland presents a graphic example of a transition to quarterly procurements that resulted in materially increased levels of shopping for certain types of customers.[24] Based on this evidence it is clear that utilizing quarterly procurements produces more market-reflective default service rates that, in turn, encourage competition and shopping.

FES is critical of RESA's evidence and claims that the chart of Maryland Type II Switching that RESA presented as Exhibit AW-1 does not illustrate a relationship between

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20 FES MB at 19.

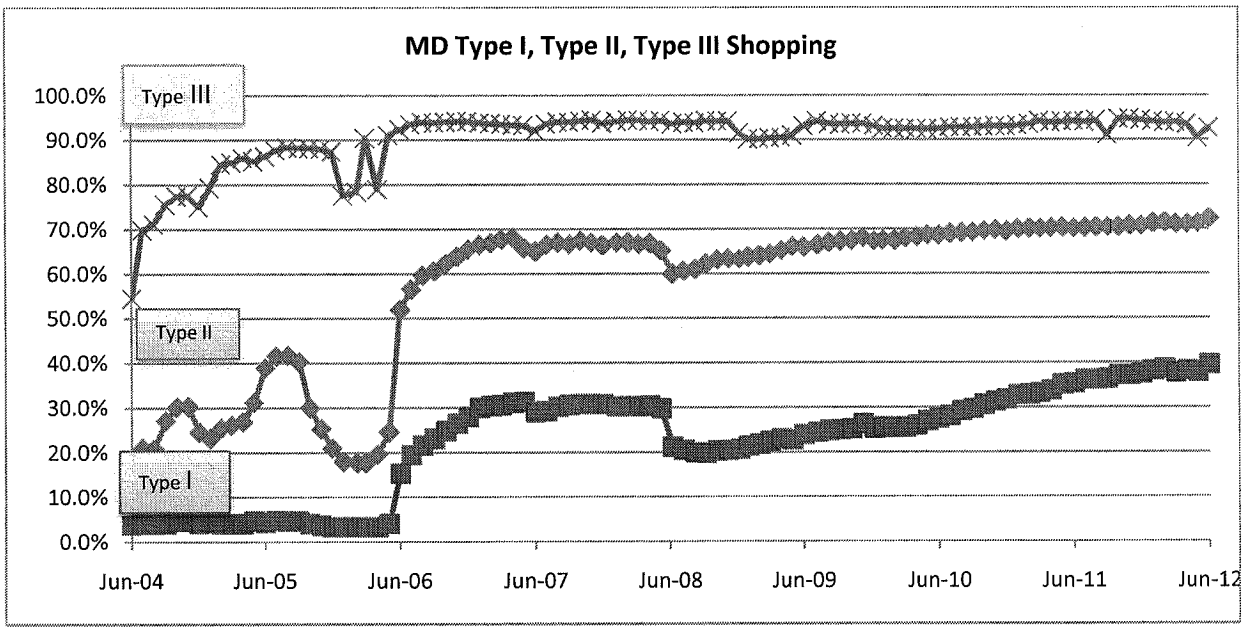
21 FES MB at 19-20.

22 FES MB at 25.

23 RESA St. No. 1 at 9-10.

24 RESA MB at 24-25.

default service rates and the underlying wholesale cost of electricity.[25] FES goes on to argue that increased shopping occurred in Maryland whether a quarterly procurement or some other procurement schedule was used, suggesting to FES that some other factor must have been at play to create the results observed in Maryland.[26] These criticisms are misplaced and should be rejected by the Commission. A fair reading of the evidence presented proves RESA's point that customers with more market reflective default service prices experience more robust sustainable access to the competitive retail market and shop in greater numbers. The chart below (RESA Ex. AW-3) illustrates this point:



Notes:

- Data reflects percentage of load shopping with a competitive supplier
- Type I SOS Procurement: (June '04 - June '08: combination of 1 & 2 year contracts);
- (June '08 to present: rolling 2 year contracts)
- Type II SOS Procurement: (June '04 - June '06: 1 year contracts);
- (June '06 – May '07: Type IIA - 6 month contracts; Type IIB - 12 mo contract);
- (June '07 to present: All Type II customers on 3 month contracts)
- Type III SOS Procurement: (June '04 - May '05: bridge plans differ by utility - 1 yr contracts w/HPS option);

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25 FES MB at 20.

26 FES MB at 21.

- (May '05 to present: hourly pricing)
- Type I & II: June '08 new definition of Type I – includes all non-residential customers up to PLC 25 kW

As Ms. Williams testified, comparing the shopping statistics between these customer groups illustrates the magnitude difference in shopping between customers who receive laddered 24 month contracts (Type I), semi-annual and 3 month contracts (Type II), and hourly priced default service (Type III). From 2006 forward, 30% - 40% more Type II customers shopped than Type I customers. Similarly, 50% - 77% more Type III customer shopped than Type I customers.[27] In Maryland, customers exposed to more frequent solicitation shopped more. Consequently, for purposes of this proceeding, a procurement schedule that has been shown to encourage shopping should be preferred over the alternatives.

Maryland is also an instructive example of the ability of a default service program with more frequent procurements to attract default load suppliers. Evidence from Maryland offered by Ms. Williams directly contradicts FES's incorrect assertion that RESA has failed to show that wholesale suppliers will not be interested in PPL's default supply procurements if quarterly procurements are adopted.[28] As explained above, the load for Type II customers in Maryland is procured quarterly, and the Maryland PSC has consistently approved the auction results for all of its Type II auctions since June 2007, affirming that the auctions were competitive.[29] If FES were correct that more frequent procurements discourage wholesale supplier participation, the auctions for Type II customers in Maryland could not be certified as competitive by the

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27 RESA St. No. 1-SR at 8.

28 *See*, FES MB at 22.

29 RESA St. No. 1-SR at 12, fn. 10.

Maryland PSC. FES's arguments against quarterly procurements, therefore, are wholly unconvincing and should be rejected by the Commission.

iii. *Wholesale Supplier Load Cap*

RESA has consistently advocated that the wholesale supplier load cap should be reduced from 70% to 50%. PPL proposed to remove the aggregate load cap for residential customers.[30] FES opposed any kind of load cap or any other reasonable limit on supplier load.[31] The positions of PPL and FES are inconsistent with the Commission's latest pronouncements on the wholesale supplier load issue. By contrast, RESA is proposing exactly the type of wholesale load cap that the Commission has ordered in the FE and PECO DSP II cases.[32] In both cases, the Commission adopted RESA's proposal of a 50% supplier load cap, and neither PPL nor FES have offered a defensible rationale for departing from the Commission's directives on the matter. For these reasons, the Commission should order a 50% supplier load cap in this case.

b. Small C&I - Fixed Rate

i. *Product Mix*

As discussed above in connection with RESA's proposal to move PPL's residential procurement closer to the Commission's goal of having default service rates that are more market-reflective, it is important that RESA's recommendation regarding the small C&I class be adopted. Unladdered products with three-month terms are clearly justified for this group, a position that PPL mischaracterizes as "extreme."[33] There is nothing extreme about a proposal that is intended to produce more market-reflective default service rates and to facilitate the

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30 PPL St. No. 1 at 22.

31 FES MB at 26.

32 *See, FE DSP II Order* at 33-34; *PECO DSP II Order* at 41.

33 PPL MB at 31.

transition to hourly prices for C&I customers.[34] RESA's proposal, as detailed in its MB, is a reasonable and gradual step toward an end state where default service rates more closely mirror the underlying wholesale prices for electricity.

PPL erroneously contends that "RESA has offered no reason for eliminating contract laddering at this time, which is a natural byproduct of its procurement proposal."[35] In fact, RESA has offered ample justification for its proposal. As stated previously in RESA's MB, the purpose of RESA's procurement proposal is to encourage the development of a more robust retail market for electric supply and to achieve the Commission's stated goal of having default rates that mirror wholesale market prices.[36] RESA's proposal is designed to achieve these objectives and should, therefore, be adopted by the Commission.

PPL goes on to claim that its proposed procurement mix, which includes laddered, longer-term contracts, somehow protects customers from "extreme price spikes, and the potential of substantial uncovered load in the event of procurement failure."[37] PPL's claims of extreme risk are unfounded and are completely unsupported by the Company's experience with DSP I. As OSBA witness Mr. Knecht pointed out, any rate volatility that may be experienced by C&I customers would not be any worse than what these customers have experienced historically.[38] In other words, there is no evidence that RESA's proposal would expose customers to price spikes, but only speculative claims by the Company. On the other hand, there is evidence, as set forth above, that shopping increases in circumstances where more market-reflective rates exist, and the

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34 RESA St. No. 1-SR at 9.

35 PPL MB at 32.

36 RESA MB at 34.

37 PPL MB at 33.

38 OSBA St. No. 2 at 3.

benefits of a robust retail market accrue to customers under the scenario proposed by RESA. Therefore, the Commission should adopt RESA's product mix proposal for small C&I customers in the PPL service territory.

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

RESA continues to support PPL's proposal to use the spot market to secure supply for large C&I customers.

d. Contract Terms Beyond May 31, 2015

RESA has explained in its MB the reasons it supports PPL's proposal to put in place a "hard stop" procurement end date of May 31, 2015 for non-block supply contracts.[39] OCA, OSBA and FES continue to advocate for allowing the Company to retain some contracts beyond May 31, 2015 allegedly to protect customers from hypothetical future price spikes.[40] In addition to the fact that these parties' proposals are counter to the Commission's latest pronouncements on the issue,[41] they are based on speculation and conjecture. There is no evidence that a "hard stop" would somehow lead to unpredictable, severe price increases. There is only a fear that prices might rise at the most inopportune time more than two years from now. This is not a proper basis for contradicting the Commission's findings on the contract end-date issue, and as such, PPL's proposal to end all non-block contracts by May 31, 2015 should be accepted by the Commission.

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39 RESA MB 35-37.

40 *See, e.g.,* OCA MB at 23.

41 *See, FE DSP II Order* at 24-27 (the Commission ruled that there should be no requirement that procurements extend beyond May 31, 2015), and *PECO DSP II Order* at 31 (the Commission approved a contingency plan that contemplates contracts ending on May 31, 2015).

e. AEPS Procurement

i. *Transfer of AECs*

RESA did not take a position on this issue.

ii. *Alternative Compliance Payment*

RESA did not take a position on this issue.

f. Administrative Costs and Cash Working Capital

RESA's position with the regard to PPL's CWC proposal is set forth in detail in Section III.B.1.f. of its MB.

2. Rate Design

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

i. *Frequency of Rate Changes*

RESA has not wavered from its position that default service rates must reflect wholesale energy prices if the competitive market is to be robust and sustainable in the Commonwealth. Quarterly rate changes along with a plan that relies increasingly on quarterly procurements is a formula that is more likely to lead to a more competitive market that produces substantial benefits for customers. PPL's proposal to change the current price-change mechanism from quarterly to semi-annual adjustments is incongruent with the goals of developing a more robust market, and as such, it should be rejected.

PPL claims that semi-annual price changes align with the Company's proposals for six-month contract terms for the Opt-in and Standard Offer programs, and that limiting the frequency of changes to twice yearly gives customers greater assurance that the offers they

consider will result in real savings off of the PTC.[42] RESA respectfully submits that, regardless of the contract terms for the Opt-in and Standard Offer programs, PTC adjustments should happen quarterly so that default service rates are more reflective of wholesale market prices. The bottom line remains that the mechanism used to adjust the PTC to account for prices changes must reflect wholesale markets and send the proper signal to customers, a signal that encourages competition and shopping and does not create a significant divergence between default rates and underlying wholesale market prices. If the reconciliation process produces price changes, that is a consequence of the current EDC-provided default service supply construct. Consistent with RESA's position on related issues, the Commission should adopt quarterly price changes and should reject PPL's proposed change to semi-annual adjustments.

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

RESA supports PPL's proposal to transition small C&I customers with loads over 100 kW, and there is no opposition to the proposal from any party.

b. Residential and Small C&I – Reconciliation

RESA opposes PPL's proposal to change the reconciliation methodology for residential and small C&I customers. PPL seeks to shift from the current quarterly reconciliation mechanism to semi-annual adjustments using a 12-month rolling average of projected GSC-1 sales.[43] RESA opposes the use of a 12-month rolling average as a basis for semi-annual reconciliations, and advocates for the use of the current quarterly reconciliation so as to maintain a PTC that is more market responsive.

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42 PPL MB at 50.

43 PPL MB at 52-53.

In its MB, PPL asserts that the E-Factor calculations that are part of the reconciliation process do not ensure that default service rates reflect current market prices and that the resulting charges or credits to customers have nothing to do with the market price for electricity.[44] However, the E-Factor is only a relatively small part of the reconciliation calculation because, as Ms. Yeager acknowledged in her hearing testimony, the bulk of the costs that PPL incurs in providing default service is the generation supply charge.[45] So, although the E-Factor may not be the decisive variable in reflecting wholesale market prices in the PTC, the reconciliation calculation will be affected significantly by market prices, and the PTC should reflect those prices accurately and in a timely manner.

PPL continues to claim that its reconciliation methodology would "smooth out" large swings in over/under collections that, according to the Company, "distort" the PTC. PPL's position with regard to reconciliation is misguided and its proposed solution to the alleged problems with reconciliation is ill-advised and should be rejected.

Consistent with the positions set forth herein and in its MB, RESA believes strongly that the Commission should adopt measures to ensure that default service rates are more market-reflective in order to encourage the development of a robust and sustainable retail market for electric supply in the Commonwealth. One important aspect of this effort to encourage competition in accordance with the Competition Act is to make certain that default service rates accurately reflect EDC costs associated with the provision of default service. Ideally, if these costs are properly reflected in the EDC's Price to Compare, alternative suppliers will be encouraged to compete with the EDC with the confidence that the PTC is not distorted. Semi-

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44 PPL MB at 53.

45 Tr. 158.

annual reconciliations based on a 12-month rolling average of projected sales will discourage EGS participation in PPL's territory and will end up subverting the goals of the Competition Act.

Moreover, a purported attempt to smooth out swings is bound to obscure the true costs of providing default service, and therefore will skew the PTC in a way that discourages competition. RESA respectfully submits that the PTC should accurately reflect the costs of providing default service, and using a 12-month rolling average as a basis for semi-annual reconciliations fails to accomplish this important function. The generation supply charge is the most significant variable in the reconciliation calculation, and the PTC should reflect these costs in addition to other changes that affect the E-Factor. If, as PPL argues, the E-Factor and the charges or refunds for over/under collections are affected in some way by market prices, migration rates, weather events, misprojections and other variables,[46] then it is important that the PTC reflect those variances is as timely a manner as possible. It is antithetical to the development of a robust competitive retail market to have a reconciliation mechanism that obscures or distorts these changes in costs to default service and pushes back the timeline for reflecting these costs by a year. If PPL's proposal is accepted, EGSs will be in the untenable position of competing against a phantom price that is not reflective of PPL's true costs of providing default service.[47] Because such an outcome would stymie competition and deny customers the benefits of a properly functioning market, the Commission should reject the Company's reconciliation proposal and order that quarterly reconciliations continue as before.

c. Large C&I Customer Class – Rates

RESA did not take a position on this issue.

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46 PPL MB at 53-54.

47 RESA St. 1 at 23-24.

d. Large C&I Customer Class – Reconciliation

RESA did not take a position on this issue.

e. The Green Power Program

RESA incorporates its positions and recommendations from its MB.[48] Since PPL is willing to include EGS offers in the mailing at the expense of the EGSs,[49] RESA's recommendation should be adopted so that EGSs that desire to participate can have marketing material distributed as a part of this program.

f. Optional Monthly Pricing Service

RESA did not take a position on this issue.

g. Price to Compare Calculation Date

RESA's position with regard to the PTC calculation is set forth in detail in Section III.B.2.g. of its MB.

h. Recovery of Transmission and Other Related Charges

i. *Costs To Be Included In The TSC Or GSC*

RESA did not take a position on these issues.

ii. *Non-Bypassable Structure*

RESA did not take a position on these issues.

iii. *Reconciliation*

RESA did not take a position on these issues.

3. Time of Use Rate Option

a. Design

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48 RESA MB at 8, 44-46.

49 PPL MB at 60-61.

i. *PPL Design (As Filed)*

PPL has recognized that its current TOU "proposal is the same, in all relevant aspects, as the TOU program rejected by the ALJ and the Commission in PPL's 2012 TOU proceeding."[50] Nevertheless, PPL believes that the most prudent course of action would be to approve PPL's as-filed TOU plan as an interim, transitional measure.[51] The OCA submits that the general design of PPL's proposed TOU program is reasonable.[52] But, both PPL and the OCA are wrong.

The Commission[53] and others[54] do not believe that TOU prices should be offered as a default service, or developed from fixed-price default service rates. PPL's efforts to show unique facts and circumstances[55] do not justify a departure from the conclusion reached in the Commission Opinion and Order in PPL's 2012 TOU proceeding. Therefore, PPL's current TOU proposal should be rejected, and the Commission should require PPL to rely on the competitive market to comply with its TOU rate obligation, as articulated by the Commission in the *RMI Default Service Order*.

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50 PPL MB at 88; *PUC v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771, Opinion and Order of August 30, 2012 at 18.

51 PPL MB at 75. The OSBA's acquiesce shows little true support for PPL's TOU program. OSBA MB at 4, 21- 22. OSBA has taken the position that the TOU product proposed by the Company would not be a popular, nor viable, rate offering. Because it would have little impact on either EGSs or customers, OSBA dos not object to the inclusion of TOU products in the Small C&I procurement.

52 OCA MB at 30-33.

53 *Id.*

54 OSBA and FES assert that TOU supply should be bid out separately from fixed-price default service load.

55 PPL argued that TOU rates should be derived from fixed price default service rates for several reasons: PPL MB at 78-80. First, the Commission has now definitively held that TOU service is a default service. Second, establishing the two default service rate options on a consistent basis will promote retail competition. Third, history has provided a clear lesson as to the dangers of detaching TOU rates from fixed default service rates. Fourth, the Company's proposal to maintain the status quo is consistent with the transitional nature of this filing and the uncertainty surrounding EDCs future as the default service provider.

ii. *RESA Recommendation: Certification Process*

PPL has opposed simply certifying that such a rate is available from an EGS on both legal and policy grounds.[56] Similarly, it has opposed bidding out the rate service to an EGS. First, PPL argued that the statute requires the default service provider (not an EGS) to submit time of use rates to the Commission and requires the default service provider (not an EGS) to "offer" time of use rates. According to PPL, the obligation to offer TOU rates lies with the DSP. Second, PPL opined that this proposal would split the default service function into two or more pieces: the regular default service rate option and the TOU default service rate option. PPL speculates that the presence of two DSPs may cause customer confusion. Third, PPL concluded that the burden of proof has not been satisfied on this issue. PPL has contended that the existence of unresolved "issues" showed that there is no basis to adopt this proposal in this proceeding.

From a policy perspective, it should be clear that satisfying the TOU/dynamic pricing requirement through offerings by EGSs is a superior alternative to an EDC dictated, one size fits all, rate. In addition to avoiding the "command and control" nature of an EDC-offered rate, other advantages of relying on EGSs include:

- Innovation and wider selection for customers. One EGS (Direct Energy) is offering a "Free Saturdays" rate which has proven to be highly popular.[57] Satisfying this Act 129 obligation through EGSs could prompt further innovation.

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56 PPL MB at 85-88.

57 Tr. 149-150.

- No reconciliation. EGSs by nature have no right to bill customers for under/over recovery if they project costs or revenues incorrectly, while PPL has a legal right to such reconciliation.
- Spurs additional competitive activity.
- Given PPL's lack of previous success in crafting a TOU/dynamic pricing rate, turning the service over to EGSs would likely provide better results in terms of customer participation and satisfaction.

PPL's most pressing argument against this innovative approach is its pronouncement that, as far as it is concerned, the approach is not permitted under Act 129. PPL has misread Act 129. Section 2807(f)(5) of the Code provides that default service providers must submit one or more TOU rates and real-time price plans to the Commission in their default plans. That Section states:[58]

> By January 1, 2010, or at the end of the applicable generation rate cap, whichever is later, a default service provider shall submit to the commission **one or more** proposed time-of-use rates and real-time price **plans**. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to [sic] the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices. (emphasis added).

Act 129 defines a time-of-use **rate** as a "rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour."[59] Act 129 defines a real-time **price** as a "rate that directly reflects the different cost of

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58 66 Pa. C.S. § 2807(f)(5).

59 *See,* 66 Pa. C.S. § 2806.l(m).

energy during each hour."[60] Neither definition specifies that the rate or price may only come from the EDC or default service.

Moreover, Section 2807 provides that one or more "**plans**" may be used. Plans can also consist of a certification process or bid out. Contrary to PPL's position, nothing in Section 2807 mandates a TOU **rate** only from the DSP. If the General Assembly had intended to only permit the DSP to offer TOU rates as part of its default service, it could have said so; it did not. Instead, the General Assembly gave the DSP flexibility and directed the submission of "plans" – which may or may not include the rates or prices themselves.

Moreover, the Commission has determined that a DSP can satisfy its TOU requirement by using real-time price **plans**. Such plans could consist of contracts with EGSs. This conclusion was reached in the RMI,[61] and again in PECO's recent petition seeking approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement.[62]

Contrary to PPL's position, there is nothing inherently wrong with division of the default service into different classes or the existence of more than one TOU provider. There is no legal requirement that "regular" default service be consolidated with TOU service for all functions and customer classes. The Code clearly permits the establishment of reasonable differences in classes of service.[63] In fact, in a different context, the Commission has indicated that default

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60 *Id.*

61 As part of the Investigation, the Commission issued the Retail Market Order, in which it recommended that "EDCs contemplate contracting with an EGS in order to satisfy their [Act 129] TOU requirement." *See RMI Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011 ("*RMI Default Service Order*") at 47-48.

62 *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.

63 66 Pa. C.S. § 1304.

service obligations may be separated by specific customer classes or allocated to one or more alternative DSPs when it finds it to be necessary for the accommodation, safety and convenience of the public.[64]

Further, nothing in the record clearly shows that the presence of more than one TOU provider or more than one default service rate class would "confuse" the public. Different rates classes have existed for decades without undue customer confusion, and undue confusion should not result from any such separation. The TOU plans are only available to customers who have smart meter technology. Those customers are being given technology and information so that they can make informed decisions about their energy use. Since these customers are being trusted to make decisions on energy use, they should be trusted to be able to understand the simple differences created by more than one TOU service provider or by more than one TOU plan.

RESA's has satisfied its burden. RESA (and other parties) have shown that PPL's TOU proposal should be rejected, and that the Commission should require PPL to rely on the competitive market to comply with its TOU rate obligation. Valid and viable options exist as to how PPL can satisfy its TOU obligation using the competitive market. RESA's primary proposal would have PPL certify that the market has provided the required TOU service. But, RESA also supports the "bid-out" approach, which was proposed by other parties. PPL should be directed by the Commission to implement one of these methods (certification or bid out), or some other mechanism that relies on the competitive market, and any remaining "unresolved issues" should be worked out in a collaborative or working group of interested parties.

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[64] 52 Pa. Code § 54.183(c).

iii. *TOU Bid Out*

PPL opposes bidding out the TOU service on both legal and policy grounds.[65] These legal and policy grounds are discussed above. RESA's responses apply equally to bidding out the TOU service, and the bid out of TOU service remains a viable option for PPL.

iv. *PPL Alternative Design: Summer TOU*

In its MB, PPL modified the proposal by SEF to create a new, summer only TOU proposal ("Summer TOU").[66] This alternative proposal is modeled after the Easy TOU rate proposal presented by SEF in this proceeding with two changes:[67] First, the on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding week-ends and PJM holidays, is intended to target the highest peak periods during the summer months. Second, TOU customers will be billed on their normal billing cycles and not on a calendar month basis.

PPL has argued that this Summer TOU Program responds to the concerns and criticisms raised by other parties to this proceeding. RESA acknowledges that PPL's Summer TOU program may be an improvement over PPL's original TOU program. But, there is simply no reason to believe that the Summer TOU program will be effective and, certainly, no reason to expect it to be as effective as an EGS designed and delivered product that customers really want, and that would not raise the specter of reconciliation and additional charges to customers if PPL's load and energy price predictions are incorrect (as they are virtually certain to be).[68] RESA continues to believe that a market-based solution should be used because it encourages

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65 PPL MB at 85.

66 PPL MB at 88-91.

67 PPL MB at 90.

68 RESA St. No. 2 at 43.

innovation and creativity.[69] Historically, PPL's approach has resulted in TOU plans that few customers have actually selected. The Summer TOU program is likely to be more of the same. Accordingly, RESA recommends rejection of the Summer TOU program and the adoption of either RESA's "certification" proposal or the "EGS bid-out" approach.

b. Procurement

RESA did not take a position on the procurement issues raised by PPL's TOU program proposal and is not taking a position on the procurement issues raised by PPL's Summer TOU program.

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

RESA did not take a position on these issues.

b. Third-Party Manager

RESA did not take a position on these issues.

c. RTO Compliance and Consistency

RESA did not take a position on these issues.

d. Contingency Planning

RESA did not take a position on these issues.

e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

RESA did not take a position on these issues.

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[69] RESA St. No. 2 at 43.

C. Retail Market Enhancements and Customer Referral Programs

1. New and Moving Customer Program

The record does not support a finding that PPL is actually implementing the Commission's new and moving customer directives. In its MB, PPL admits that these directives are a separate initiative.[70] It also admits that this proceeding does not offer any details on its new and moving customer program.[71] To show compliance, PPL has relied on the existence of "scripts" that PPL intended to implement by end of September 2012.[72] But, these scripts are not a part of the record in any form (draft or otherwise). Thus, the Commission lacks substantial evidence upon which to base its evaluation of this initiative.

RESA supports efforts to educate customers. But, the mechanics of the new and moving customer initiative must move beyond mere education. New and moving customers should be able to make choices so that default service is not the first (or only) option for generation supply. Stated otherwise, reliance on scripts alone does not track the Commission's new and moving customer directives.[73] RESA believes that a reasonable new/moving customer referral program must have the ability to implement a "day-one switch."

The "switching" offered by PPL (which is explained in PPL MB at 108) does not make EGS service available immediately to a customer, does not avoid an additional step to get competitive service and it does not permit a customer who already knows the EGS from which he or she would like to take service to do so without being placed on default service for any period of time. Such switching, therefore, falls short of the Commission's goals and directives.

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70 PPL MB at 107.

71 *Id.*

72 *Id.*

73 RESA MB at 55-57.

Accordingly, RESA continues to recommend that the Commission include within this default service plan a provision that requires PPL to design this "day-one switch" capability for implementation as soon as practicable after the proposed retail enhancements are in place.[74] If PPL can implement the Commission's envisioned "new/move" interim program without interfering with the development of such capability, or any of other RMEs, then RESA, of course, supports taking that step.[75] But, RESA does not desire to have the implementation of a real and permanent solution to the problem of new and moving customers, or any other RMEs delayed by efforts to implement the new/moving customer program planned by PPL.[76]

2. Customer Referral Mailing

None of the parties has opposed RESA recommendations on this issue.[77] In fact, Dominion/IGS noted that all customers will benefit from the combination of low intensity education and shopping opportunity that this program will provide.[78] Therefore, PPL should be directed to send education mailings with offers from EGSs to residential customers, and to send a similar education mailings with offers from EGSs to small C&I customers, as recommended by RESA.

PPL's expressed the (unwarranted) concern that this mailing not take place "around the same time as the Opt In or Standard Offer Programs."[79] With RESA's timing proposals, the mailing would occur in March 2013, and would be followed in June 2013 by the opt-in program

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74 RESA St. No. 2-SR at 32.

75 RESA MB. at 56-57.

76 *Id.*

77 PPL MB at 108-111; OCA MB at 35-36; Dominion/IGS MB at 15-16.

78 Dominion/IGS MB at 16.

79 PPL MB at 110.

(whether auction or aggregation) and the initiation of the standard offer program. There is no evidence that timing of mailing and the commencement of the other RME programs would confuse customers.

3. Opt-In Auction / Aggregation Program Design

a. Sequencing Of The Auction (if ordered)

PPL, FES and OCA oppose RESA's recommendation on the sequencing of the auction (if ordered).[80] If an auction is ordered, RESA submits that it has presented good cause to deviate from the prior approaches approved by the Commission.[81]

b. Additional Communications

RESA recommended that the retail opt-in program be structured so that to ensure maximum customer awareness.[82] RESA focused on providing information to customer so that they can make an informed choice at the beginning of the program.[83] In contrast, OCA is focused on providing information to customers on the end of the program. OCA witness Barbara Alexander recommended that there be three (3) notices prior to the expiration of the program, and that the first notice – a 90-day notice – come from the EDC rather than the EGS serving the customer.[84] CAUSE-PA fully supports this recommendation from the OCA.[85]

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80 PPL MB at 121; OCA MB at 43-44; FES MB 50-51.

81 *See,* RESA MB at 63.

82 RESA MB at 63-64.

83 *Id.*

84 OCA MB at 49-50.

85 CAUSE MB at 13.

RESA submits that customers should be adequately informed about the program term and what will happen upon expiration at the time they make their choice to participate.[86] But, consistent with the Commission's renewal guidelines, only two additional notices should be provided at the end of the term.[87] There is no apparent reason to add additional regulatory requirements to the opt-in program when the same requirements are not imposed elsewhere.[88] Moreover, in the FE and PECO DSP II cases, the Commission has rejected this identical OCA demand for additional notices.[89] OCA's demand for additional mailings would be unnecessarily expensive and onerous and should similarly be rejected. It would be far better – as RESA has recommended – to inform customers by way of additional pre-enrollment mailings and communications and/or enhanced means of enrollment.[90]

c. Shopping Customer Participation

PPL and the OCA support the position that shopping customers be permitted to participate in the opt-in program (whether auction or aggregation), but that marketing efforts not be targeted to shopping customers.[91] This position is consistent with the *Intermediate Work Plan Final Order*, and the results in the FE and the PECO DSP II cases.

RESA agrees that shopping customers should not be presented with the terms of the Program unless they ask about the offer. But, RESA would go further - as RESA has advocated during the RMI, it would counterproductive to allow existing shopping customers to participate

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86 RESA St. No. 2-R at 10-11.

87 *RMI Intermediate Work Plan Final Order*, Docket No. I-2011-2237952, Opinion and Order entered March 2, 2012 ("Intermediate Work Plan Final Order" or " IWP Order") at 73.

88 RESA St. No. 2-R at 10-11.

89 *See*, FE DSP II Order at 129; PECO DSP II Order at 100.

90 *See* RESA MB at 63-64.

91 PPL MB at 117-118; OCA MB at 38-40.

in the retail opt-in auction/aggregation.[92] Good cause exists to justify RESA's position as noted in RESA's MB.[93] Customers in PPL's service territory have been exposed to many, many offers and yet numerous default service customers have not taken advantage of these offers to save money or obtain other benefits. This presents a unique risk that a large number of shopping customers could leave their existing contracts to participate in the RMEs. Excluding shopping customers would ensure the "space" is available for default service customers in the program.

To further the objectives of the Competition Act, it is reasonable to exclude shopping customers from participating in the RMEs. However, if this recommendation is rejected, then RESA supports what it understands PPL's approach to be: the aggregation offer will be sent only to default customers and any additional publicity will attempt to target non-shoppers as much as possible. If a customer hears about the offer and calls PPL customer service to enroll that customer will not be turned away.

d. Small Business Participation

The OSBA recommended the Commission reject the use of a retail opt-in program (whether auction or aggregation) for small C&I customers.[94] The OSBA submitted that there is no basis for including the Company's Small C&I customers in any opt-in program because the shopping level of PPL's small C&I customers (under 25 kW) exceeds the threshold set forth in the *FE DSP II Order*.[95] The OSBA has reached the wrong conclusion.

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92 RESA MB at 117-118.

93 *Id.*

94 OSBA MB at 22-24.

95 OSBA MB at 23.

It is true that many of the "larger" small C&I customers (under 25 kW) have taken advantage of competitive opportunities. This is shown by the fact that 64% of the load of all small C&I customers (under 25 kW) is represented by the shopping small C&I customers who are less than half (44%) of the total number of small C&I customers.[96] This shows that more than half (57%) of PPL's small C&I customers – with loads in the lower end of the 25 kW and below category – are more "sticky" and are not shopping.[97] This is a substantial number of small C&I customers (under 25 kW) who have not switched[98] – even if they are paying higher prices for default service electricity than they could obtain from a competitive supplier. Moreover, the numbers of small commercial and industrial customers (under 25 kW) who have switched (by load – 64%) is materially lower than the figures for all commercial customer load (88.3%)[99] or all industrial customer load (98.6%).[100]

Competition for these sticky small C&I customers (under 25 kW) should be "jumpstarted" for the reasons expressed in RESA's MB. Moreover, adopting RESA's proposal to include small C&I customers (under 25 kW) in the retail opt-in auction/aggregation will further the objectives of the Competition Act by inducing more customers to shop and ultimately reduce the costs of electric generation.

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96 PPL MB at 120.

97 RESA MB at 68-69.

98 This satisfies the standard used by the OSBA. OSBA argued that if the percentage of customers who shop is less than 50 percent, then the commercial class should be included in the retail opt-in auction. OSBA MB at 23. PPL has stated that 44% of the small C&I customers (under 25 kW) are shopping. PPL MB at 120.

99 RESA MB at Appendix A.

100 *Id.*

e. Minimum Number of Winning Bidders or Participants

PPL and FES have objected to RESA's recommendation that there be a minimum of four (4) EGS participants in a retail opt-in program (whether auction or aggregation).[101] They both stated that RESA did not present justification to deviate from the Commission's prior actions. Not so.

The goal of RESA's recommendation is to enhance supplier diversity, and thus enhance the long term competitiveness of the market.[102] If implemented, this recommendation has the potential to increase the number of suppliers achieving sustainable scale, and increase their ability to offer more diverse products and services to their customers. This is especially important in PPL's market where many EGSs are already engaged in competition. If few of the (current or future) EGSs are able to achieve a sustainable scale in PPL's territory, they may be forced to leave that competitive market – which, in turn, may result in less competitive prices.

In the PECO DSP II case, the Commission anticipated that, if structured as an aggregation, numerous EGSs would participate in PECO's opt-in program.[103] If that is also the case in PPL, the Commission need not require a minimum number of winning bids/participants. But, to the extent that the Commission desires to *ensure* the EGS diversity will exist in the opt-in program, it should establish a mandate that there be a minimum of winning bidders/participants.

f. Customer Participation Cap

RESA is willing to accept a 50% customer participation cap in either an opt-in program (whether auction or aggregation), if that is the Commission's policy conclusion, as appears to be

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101 PPL MB at 120; FES MB at 47-50.

102 RESA MB at 70-72.

103 PECO DSP II at 98.

the case. RESA agrees with PPL that OCA has offered no new arguments, not previously considered by the Commission to justify lowering this 50% cap.[104]

RESA notes that a lower customer participation cap translates into fewer available "open" positions. Assuming arguendo that shopping customers are eligible to participate in the opt-in program, their participation would foreclose participation by non-shopping customers.[105] To avoid having a non-shopping customer be precluded from participation because of a "full" enrollment,[106] the customer participation cap should not be lowered below 50%.

g. Product Term and Composition

RESA does not take issue with the product that now appears to be standard, namely the four (4) month and the eight (8) month components. PPL has proposed an alternative product: 6 month term (with a stated discount of 5%.) for the aggregation program.[107] To justify its deviation, PPL has expressed concerned that the use of non-standard prices during the final 8 months of the term could lead to criticisms or complaints.[108] Dominion/IGS has raised similar concerns.[109] RESA could accept a 6 month term, so long as it is properly structured.

Importantly, if a 6 month term is adopted, RESA opposes a price guarantee for the entire contract term. The OCA has stated that customers should be offered a price that is guaranteed to

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104 *See,* PPL MB at 118; RESA MB at 72.

105 RESA MB at 66-67.

106 RESA submits that "full" enrollment is not necessarily an indicator of success of the opt-in program. Rather, a better indicator of success would be the number of non-shopping customers who elect to participate in the opt-in program.

107 PPL MB at 116-117.

108 PPL MB at 117.

109 Dominion/IGS MB at 18.

be lower than the PTC for the entire contract term.[110] RESA has explained its opposition to a price guarantee in Section III.C.4.b of its MB, and in its testimony.[111] With a quarterly reconciling PTC EGSs would be forced to guarantee at the time they make their offer that their price to customers will remain 5% below an unknown number. And, simply put, the OCA has not presented good cause to deviate from the Commission's prior directives, which provide that the discount is off of the PTC *at the time of enrollment.*[112]

h. Returning Customers To Default Service Upon Expiration Of The Opt-In Program

Upon expiration of the opt-in program (whether auction or aggregation), the OCA does not object to customers remaining with the EGS after adequate notice.[113] Two notices are sufficient to provide adequate notice, as discussed in Section III.C.3.b. (above). Absent any affirmative action on behalf of the customer, at the end of the opt-in program, the customer should remain with the EGS and not return to default service.

OCA recommends that such customers must be placed on a fixed price contract that is cancellable without a cancellation fee.[114] CAUSE agrees.[115] But, this recommendation is contrary to the Commission's directives. The Commission correctly concluded in the *FE DSP II Order* that "a fixed price may not be fair to either the customer or the EGS if market prices change significantly and the fixed rate is significantly above or below market rates."[116] And, it

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110 OCA MB at 41-43.

111 RESA St. No. 2-SR at 29-31.

112 *FE DSP II Reconsideration Order* at 15.

113 OCA MB at 48.

114 OCA MB at 48-49.

115 CAUSE MB at 14.

116 *FE DSP II Order* at 129.

concluded that the use of a variable contract rate at the end of the program is not "unreasonable since customers are free to leave the EGS at any time without penalty."[117] Good cause has not been presented to deviate from such directives.

i. Security for Bonus Payment

RESA does not believe that there needs to be security posted to secure the $50 payment. Each EGS already posts security with the Commission. As the aggregation program is not materially different than other EGS marketing efforts, no justification exists for additional security.

j. Sealed Bid Format Versus Descending Price Clock Auction

RESA has not taken a position on this issue. But, notes that if the opt-in aggregation program is ordered, there will be no need for PPL to procure any product and, in turn, there is no need for a sealed-bid or a descending price clock auction.

4. Standard Offer Program Design

PPL has stated that a sufficient framework exists for the standard offer program, and that there is no need for the parties to work together on the details.[118] RESA disagrees. RESA acknowledges that the order in this proceeding are taking place after the major policy pronouncements in both the FE and the PECO DSP II cases. But, the sequence of these proceedings does not mitigate the need for PPL and EGSs serving customers in PPL's territory to work together to develop the binding terms and conditions that will govern their relationship consistent with the finally determined elements. RESA also notes that, in the recently completed

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117 *FE DSP II Order* at 129.

118 PPL MB at 127-128.

PECO DSP II case, the Commission ordered just such a workshop to cooperatively establish the specifics of the terms and conditions of the aggregation as well as the standards offer.[119] So, RESA continues to recommend that parties be directed to work together in a workshop to attempt to achieve a consensus on both the standard offer and aggregation program design, and operative terms and conditions.[120]

a. Length of Discount

RESA has consistently taken the position that the standard offer referral program should be a true introductory program, with a discount provided for a four-month period,[121] followed either by the EGS moving to a month-to-month variable rate or, as suggested by others, a fixed price for the remaining eight months of the initial term.[122] The recommendations for a longer[123] discount period should be rejected for the reasons stated in Section III.C.4.a of RESA's MB.

b. Calculation Of The Discount From The PTC

RESA opposes a price guarantee for the entire contract term. The OCA has recommended, that, whatever term is adopted, the standard offer program should guarantee the discount off the PTC during the entire term. RESA has explained its opposition to a price guarantee in Section III.C.4.b of its MB, and in its testimony.[124] And, simply put, the OCA has

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119 *PECO DSP II Order* at 155-156.

120 *See,* RESA MB at 7, 73.

121 The OCA supports a 4-month term for the standard offer program. OCA MB at 34.

122 RESA MB at 73-74.

123 *See,* PPL MB at 122-125 (6 months); Dominion/IGS MB at 19 (one year); FES MB at 3, 45-46 (12 months).

124 RESA St. No. 2-SR at 29-31.

not presented good cause to deviate from the Commission's prior directives, which provide that the discount is off of the PTC *at the time of enrollment.*[125]

c. Customer Participation

Both RESA and the Commission disagree with OCA's proposal to limit the standard offer program to only new and moving customers, and customers who specifically request information about Choice. RESA has explained its opposition to this proposal in Section III.C.4.c of its MB. OCA's limiting request should be rejected.

d. Inclusion of Small Commercial and Industrial Customers

The standard offer program should be available to small business customers for all of the reasons stated in Section III.C.3.d of this Brief and Section III.C.4.d of its MB.

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

The OCA recommends that the customer return to default service after the expiration of the standard offer term, unless the customer affirmatively chooses otherwise.[126] CAUSE has made a similar recommendation for low-income customers.[127] These proposals should be rejected for the reasons stated in Section III.C.4.e of RESA's MB.

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

RESA continues to submit that the timing proposed by PPL should be modified so that all three of the major competitive enhancements are implemented by June 1, 2013. FES and

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125 *FE DSP II Reconsideration Order* at 15.

126 OCA MB at 54-55.

127 CAUSE MB at 13-14.

Dominion/IGS agree that the opt-in program (whether auction or aggregation) and the standard offer program should begin in June 2013.

PPL's desire for increased attention to a careful, non-confusing program design is consistent with RESA's observation that the opt-in program should be coordinated with the standard offer program.[128] But, such concerns do not justify the delay of implementation of these programs for the reasons stated in Section III.C.5 of RESA's MB.

The OCA and CAUSE supports the delayed timeline proposed PPL.[129] RESA disagrees with the reasons for delay presented by those parties. The OCA has suggested that the opt-in program (whether auction or aggregation) and the standard offer product cannot be offered at the same time. This is not the case. The programs do not materially overlap, and can be coordinated in a way that does not create customer confusion.[130] CAUSE has suggested that the delay is warranted because more time is needed for PPL to work with OCMO, the low-income advocacy community, and the OCA to develop an effective means of permitting CAP customers to receive electric service from an EGS without diminution of their CAP benefits. Again, this is not the case. PPL's CAP customers have the right to shop without threatening their benefits and there is no need to delay these important programs in their entirety to allow more evaluation of the impact of permitting CAP customers "to shop" and of the cost impact of their participation in the RMEs.[131] Moreover, in the PECO DSP II case, the Commission has ordered a plan to make CAP

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128 *Cf.* PPL MB at 131 *with* RESA MB at 74.

129 OCA MB at 57-60; CAUSE MB at 14.

130 RESA MB at 80.

131 *See*, RESA MB at 94-96.

benefits portable by January, 2014.[132] So it should be clear that the Commission is committed to making the RME programs available to CAP customers.

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

It is the position of PPL that identifiable costs associated with the opt-in program (whether auction or aggregation) and the standard offer program should be paid by EGSs that participate in the Programs.[133] That position is supported by others, such as OCA, CAUSE and PPLICA. But, it is not just and reasonable, and should be rejected for the reasons stated in Section III.C.6 of RESA's MB.

In the alternative PPL has agreed that, if the Commission were to conclude that all or a portion of the opt-in auction program cost should be recovered from customers, the cost should be charged to all customers in eligible customer classes.[134] This is generally consistent with the main positions of RESA and FES and the alternative position of PPLICA. Rather than having EGSs bear all of the RME costs, RESA urges that the costs of RMEs should be paid only by default service customers, or through a non-bypassable charge applied to all customers.[135] In both cases the charges should only be directed at the customer classes that are subject of the RME program.

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132 *PECO DSP II Order* at 131-132, 156.

133 PPL MB at 131-137.

134 PPL MB at 133-134. But, PPL has continued to disagree with positions where customers would pay a portion of the costs of an opt-in aggregation program. PPL MB at 133-134. No reasons for this distinction are offered by PPL, and this distinction should be rejected for the reasons stated in Section III.C.6 of RESA's MB.

135 RESA MB at 91-93.

Dominion/IGS has correctly noted that the recent motion in PECO appears to have left open the opportunity that customers should share some of the costs in these market enhancements.[136] That issue will be addressed in a PECO collaborative process.[137] Importantly, that Motion reinforced the *FE DSP II Order*'s implication that the Commission has serious reservations about recovery of competitive enhancement costs exclusively from suppliers and particularly, as upfront "pay to play" costs. The reasons offered in support of customers bearing all or some of the costs of the RMEs constitute good cause to deviate from the directives in the *Intermediate Work Plan Final Order*, and to have eligible customers pay all or some of the RME costs.

It is important to make clear that RESA's call for (at least) a cost sharing approach is based upon evidence in the record that raises serious concerns about the inability of the RMEs if 100% of the costs of these programs are assigned to EGSs. RESA witness Kallaher, who testified as an expert witness in competitive markets, stated that there was a serious risk that EGSs would decide not to participate if the participation costs were so high that the benefit of the programs were outweighed by the costs.[138] It makes little sense to spend time and money creating RME programs but to ignore the fact that EGSs may well elect not to participate if the costs are higher than the costs of other opportunities. On the other side of the spectrum, OCA and CAUSE have asserted that in no instance should costs associated with either RMEs be charged to customers.[139] Such positions are not just and reasonable, and should be rejected for

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136 Dominion/IGS MB at 3-4, 7.

137 *Id.*

138 Direct Energy St. No. 2 at 22-23; Direct Energy St. No. 2-SR at 25-26.

139 OCA MB at 60-64; CAUSE MB at 14-15.

the reasons stated in Section III.C.6 of RESA's MB. Simply put, such positions fail to recognize that customers do benefit from the RMEs.[140] PPL also recommends that such positions be rejected because their adoption would preclude the recovery from customers and could force PPL to bear the risk of non-recovery of incurred costs that are not paid (for whatever) by EGSs and should, therefore, be paid by eligible customers.[141]

7. CAP Customer Participation in the Retail Market Enhancements

PPL has proposed that CAP customers be eligible to participate in the RMEs.[142] However, PPL will not market opt-in program (whether auction or aggregation) or the standard offer program to CAP customers.[143] That position is generally consistent with RESA's position that it is not appropriate to exclude CAP customers from participation in the RMEs.[144] Simply put, RESA has taken the position that it would be far better to allow low-income customers to participate in the competitive market and work cooperatively for a future redesign of the CAP program so that they can take advantage of opportunities to save money on their bills. However, to eliminate ambiguity, RESA believes that CAP customers can and should be able to participate in each of the RME programs. This means that CAP customers should receive any aggregation program offer and should be offered the standard offer (when otherwise appropriate). Neither PPL nor CAUSE has raised any valid reason for not doing so.

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140 RESA MB at 87-93.

141 PPL MB at 136-137.

142 PPL MB 137- 141.

143 *Id.*

144 RESA MB at 95-97.

CAUSE claims that CAP customers who have participated in the PPL CAP shopping model have been tangibly harmed. This is completely untrue. CAUSE's claim is deeply rooted in the mindset that CAP customers should be prevented from making choices about their electricity supply –because they could make "bad" economic decisions. All Pennsylvania residents have the right to choose their electric supplier.[145] This includes CAP customers. And, it should not be forgotten (as explained by Chairman Powelson and Commissioner Witmer) that "CAP customers make hundreds of choices each week about how to spend their money, whether it be on where to buy food, clothing, gasoline, telecommunications services or any other necessity. These customers are equally equipped to make informed choices regarding their electric supplier."[146]

Specifically, CAUSE's claim is based on a comparison between prices paid by CAP who are shopping and the PTC **at a single point in time**.[147] That comparison does not show that CAP customers were paying a higher price for the entire term of their contract with EGSs or that they have not or will not obtain savings over the life of the term of their contract. Importantly, the point of time used for the comparison occurred at a time when the PTC and EGS prices were dropping significantly.[148] Thus, the point of time used for the comparison is most certainly not reflective of the conditions experienced by shopping CAP customers over their entire shopping experience. In fact, it should be obvious, that the CAP customers – when they first chose their

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145 66 Pa. C.S. § 2806(a) ("... all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.").

146 RESA MB at 98, *citing*, FE DSP II, at Joint Statement by Chairman Powelson and Commissioner Witmer entered September 27, 2012, at 1-2.

147 PPL St. No. 4-R at 8.

148 PPL St. No. 4-R at 8.

EGS – obtained some benefit or incentive for switching (such as a lower price, a gift card, or energy audit). If that point of time was chosen, the comparison would have yielded entirely different results – and would directly counter the foundation of CAUSE's claim.

Moreover, customers have always retained the ability to make new choices in response to changes in the market price. The same is true for the CAP customers who were shopping at the time of the comparison. The fact that CAP customers who were shopping did not respond to the price change by the point of time used for the comparison does not mean that nothing was done. Following that point in time, they (a) could have received a lower price from their incumbent EGS, (b) could have switched to default service or to another EGS, (c) could have decided that other benefits or incentives being received by them outweighed the price being paid. CAUSE incorporates none of these probable subsequent events/decisions into its claim – because it cannot. Such subsequent events/decisions entirely mitigate the foundation of CAUSE's claim.

Simply put, the point of time comparison does not justify the exclusion of CAP customers from the RMEs. At best, the point of time comparison shows the need for making CAP benefits more portable so that they CAP customers can enjoy the benefits of the competitive market, and so that they can make choices regarding electric supply in the same ways that non-CAP customers can make choices regarding their electric supply.[149] It would also justify – as recommended by RESA – Commission monitoring of the experience of low-income customers in such a redesigned system and to ensure that they are not being subjected to predatory marketing or pricing schemes.

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

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

It has been recommended that CAP customers who are currently being served by an EGS be (gradually) transitioned back to default service.[150] That recommendation should be rejected for the reasons given in Sections III.C.4.e and III.D of RESA's MB, which has an extensive quote from the Joint Statement (entered September 27, 2012) by Chairman Powelson and Commissioner Witmer in the FE DSP II case.[151]

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

Various parties have opposed RESA's recommendation of a 5 mils/kWh charge.[152] But, as stated in RESA's MB, the record supports the adoption of this mechanism.

Contrary to the views expressed by the other parties, there is a rational relationship between the proposed charge and the anticipated costs. The amount was determined to permit recovery of (a) costs related to implementing and maintaining competitive market enhancements, such as the opt-in program (whether auction or aggregation) and standard offer programs), (b) any other verifiable costs incurred by PPL, (c) a carry-forward balance, and (d) a small level of profit (to create a positive incentive for action by PPL).[153] These are legitimate costs. And, if it is determined that one or more of these costs elements is not appropriate, the mils/kWh charge could be adjusted by the Commission.

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150 CAUSE MB at 24.

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

152 PPL MB at 144-145; OCA MB at 67-73; CAUSE MB at 25-26; PPLICA MB at 22-24.

153 RESA MB at 97, 99-100.

Simply put, the 5 mils/kWh charge is a method for customers to pay their share of costs for the RMEs. Failing to recognize the true nature of the charge, various parties have argued these costs are artificial, hypothetical or illusory.[154] But, they fail to acknowledge that many of them also argue that the costs of the RMEs – the primary cost to be recovered by the proposed mils/kWh charge – should be borne by the EGSs. They also fail to acknowledge that, if the Commission were to conclude that all or a portion of the opt-in auction program cost should be recovered from customers, it would be just and reasonable to recover those costs by way of a mils/kWh charge. Thus, the opposition to RESA's proposed mils/kWh charge completely misses the mark.

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

RESA did not take a position on these issues.

4. Requested Waivers

RESA did not take a position on these issues.

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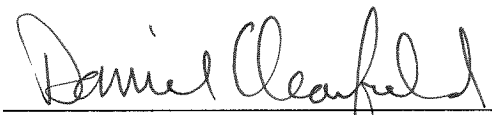
154 *See, e.g.,* PPL MB at 144-145; OCA MB at 71-73; CAUSE MB at 25-26; PPLICA MB at 22-24.

IV. CONCLUSION

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

Respectfully submitted,



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Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

Findings of Fact

1. RESA is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, whose members at the time of filing included: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed represent the position of RESA as an organization, but may not represent the views of any particular member of RESA.

2. PPL Electric Utilities Corporation ("PPL" or "Company") is an electric distribution company ("EDC") providing service to approximately 1.4 million customers in its certificated service territory over about 10,000 square miles in 29 counties of the Commonwealth.

3. PPL is currently the default service provider ("DSP") in its service area.[1] A DSP is responsible for the provision of default service to retail customers who do not choose to

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

receive generation service from an Electric Generation Supplier ("EGS"), or whose EGS has failed to deliver electric energy.

4. On May 1, 2012, PPL filed a petition ("Petition") with the Pennsylvania Public Utility Commission ("Commission") requesting approval, *inter alia*, of a default service program and procurement plan for the period June 1, 2013 through May 31, 2015 ("DSP II"). Notice of the Petition was published in the *Pennsylvania Bulletin* on May 19, 2012.[2]

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

6. The active parties conducted discovery prior the start of the evidentiary hearing, which began on Friday, September 7, 2012 and ended on Tuesday, September 11, 2012. The record was closed on September 11, 2012.

7. PPL's Petition proposes a default service program and procurement plan to be implemented as part of the DSP II in accordance with the Electricity Generation Customer Choice and Competition Act ("Competition Act"),[3] and the orders and regulations of the Commission.

8. RESA has recommended the following changes to PPL's proposed default service procurement plan:

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2 42 Pa.B. 2871 (May 19, 2012).

3 66 Pa. C.S. § 2801, *et. seq.*

Residential Portfolio

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

Non-Hourly Priced Commercial Procurement Portfolio

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

Residential Wholesale Supplier Load Cap

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

Reconciliation

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

9. PECO's Petition proposes a variety of retail market enhancements ("RMEs") to be implemented as part of DSP II in accordance with the orders of the Commission in its Investigation of Pennsylvania's Retail Electricity Market (the Retail Markets Investigation). These programs include a New and Moving Customer Program, a Customer referral mailing, an GS Opt-In Competitive Offer Program and a "Standard Offer" Customer Referral Program.

10. RESA's recommendations on the RMEs, which should be implemented in this proceeding, are as follows:

New and Moving Customer Program

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

PPL's Proposed Customer Referral Mailing

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

Retail Opt-in Auction / Aggregation Program[4]

- RESA can accept a retail opt-in Aggregation Program in lieu of an Auction, if the Commission determines that an Aggregation is the appropriate policy
- Implement the retail opt-in program – auction or aggregation – by June 1, 2013.
- Apply to all non-shopping residential and small business default customers.

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

- If an auction is ordered, the auction should be conducted after the enrollment so that the total number of customers participating will be known.
- Additional communications and enhanced means of enrollment should be used to provide customers ample opportunity to indicate an expression of interest.
- Have a load cap so that no EGS (or set of affiliated EGSs) can serve more than 50% of the aggregation load, in addition to a minimum of four winning bidders or participants.
- The parties should be directed to work together to develop the binding terms and conditions that will govern their relationship consistent with the finally determined elements.

Standard Offer Referral Programs

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

Cost Recovery For RMEs

- Costs of the RMEs should be paid for by all default service customers.

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

Time-of-Use

- Adopt a TOU plan that more fully relies on market forces.
- PPL should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory; Alternatively (if no competitive offers exist), PPL should bid out the provision of the service so that it will be provided at the retail level by one or more winning EGS bidders.
- PPL should submit a report on the number of EGSs actually providing TOU services.

Green Power Program

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

11. RESA has satisfied its burden of proving that additional changes should be made to PPL's proposals, and that RESA's recommendations are in the public interest pursuant to Chapter 28.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. The Company 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).

3. The degree of proof required to establish a case before the Commission is by a preponderance of evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992).

4. The procurement plan set forth in PPL's DSP II, as modified in this Recommended Decision, are in the public interest and should be approved as reasonable.

5. The competitive market enhancements set forth in PPL's DSP II, as modified in this Recommended Decision, are in the public interest and should be approved as reasonable.

Ordering Paragraphs

THEREFORE, IT IS RECOMMENDED:

1. That the Petition of PPL for approval of its Default Service Program for the period from June 1, 2013 to May 31, 2015 be approved and adopted subject to the recommended modifications contained within this Recommended Decision.

2. That PPL's Default Service Program, as modified in this Recommended Decision, shall become effective after entry of the final Commission Order in this matter.

3. That the competitive market enhancements set forth in the Petition of PPL be approved as modified in this Recommended Decision.

4. That PPL shall file appropriate tariff supplements in accordance with its Commission-approved Default Service Program.