

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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I. Introduction and Summary of Reply

The purpose of this proceeding is to put into place a default service plan (“DSP”) for PPL Electric Utilities Corporation (“PPL”) that includes a plan for improving the competitiveness of its retail market. The plan for improving the competitiveness of the markets contains several components that together are referred to as competitive enhancements. PPL’ plan, in broad terms, was largely acceptable to Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) (collectively “EGS Parties”). Importantly, however, the EGS Parties consistently have opposed PPL’s proposal to modify its current quarterly reconciliation mechanism to a semi-annual process, and have consistently contested certain shortcomings in the competitive enhancements proposed by PPL, and/or modifications advocated by other parties.

Based upon the outcomes in recent proceedings, resolving the FirstEnergy Companies¹, and PECO Energy Company’s² default service plans, it would appear that the Pennsylvania Public Utility Commission (“Commission”) now agrees with the EGS Parties’ positions.³ Based upon these recent developments, it appears more certain than before that the Commission has now charted a path that it will expect all EDCs to follow with little deviation. Based upon that premise, the EGS Parties renew their positions, stated in their Main Brief, that with certain modifications as discussed therein, the general outcomes of the *FE Order*, *FE Amended Order* and *PECO Order* are acceptable and workable solutions for the PPL DSP plan, and should be implemented.

¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*; Docket Nos. P-2011-2273650, *et seq.*, (Opinion and Order entered August 16 2012) (“*FE Order*”); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*; Docket Nos. P-2011-2273650, *et seq.*, (Amended Opinion and Order entered October 11, 2012) (“*FE Amended Order*”).

² *Petition of PECO Energy Company for Approval its Default Service Program II*, Docket No. P-2012-2283641, (Opinion and Order Entered October 12, 2012) (“*PECO Order*”).

³ Dominion/IGS Main Brief “MB”, pp. 1-8.

II. Summary of Reply Argument

The EGS Parties support the PPL procurement plan's intention to phase out block and spot purchases and to instead rely on nine-month and twelve-month full requirements contracts to satisfy its default service obligation. In their view, such a product mix will provide a more comparable Price to Compare ("PTC") for customers, and one that is more comfortable for customers as a basis of comparison with EGS offers.⁴ The EGSs also reject, as has the Commission, PPL's effort to modify its reconciliation process to a semi-annual reconciliation on a rolling twelve month basis.

Contrary to PPL's proposal, however, the EGS Parties continue to believe that a six (6) month ROA program is not compliant with the Commission's current view and that a one (1) year program; either a twelve (12) month fixed-price product; or, a two (2) part (4 month plus 8 month) product such as the Commission recently required in the *FE Order* and *PECO Order*, would be acceptable.⁵ The EGS Parties do not take issue with the remainder of the components of the ROA product, since for the most part they are consistent with the *FE Order* and *PECO Order*, namely a fifty dollar (\$50.00) bonus payable after four (4) months and using an assignment rather than an auction process part to provide participating suppliers with customers.⁶

The EGS Parties continue to believe that customers should share at least some of the costs of this program. Likewise, the EGS Parties believe that with regard to the standard offer referral program that PPL's proposed six (6) month product is too short and should be a twelve (12) month product at a seven percent (7%) discount. (Dominion/IGS Statement No. 1, p. 12).⁷

The EGS Parties also continue to believe that it is necessary for the Commission to require financial security for suppliers participating in the retail aggregation program and that

⁴ Dominion/IGS MB, pp. 10-12.

⁵ Dominion/IGS MB, pp. 16-18.

⁶ Dominion/IGS MB, p. 18.

⁷ Dominion/IGS MB, pp. 18-19.

suppliers participating in this program must provide pricing transparency by providing customers with all prices upfront, including the price for the eight (8) month period fixed-price, while at the same time posting those prices on the Commission's website.⁸ The Commission has considered both of these in its Amendment to the *FE Order* and referred resolution of the issues to the collaborative process.⁹

With regard to the other modifications proposed to the competitive enhancements by the OCA and others, the EGS Parties simply point out that the Commission has now made quite clear the direction it intends to go with regard to competitive enhancements. One need only review the recent FirstEnergy and PECO decisions, and the Commission's vision for the competitive enhancements quickly materializes, and it seems inevitable that those Orders will be applied in this case in a similar manner. Regardless, the EGS Parties believe that the OCA's insistence on a lower supplier participation cap for the ROA, guaranteed savings and other changes to these enhancements, simply make no sense in light of the goals of the programs to transfer large numbers of customers to the competitive market. The EGS Parties support the Commission's efforts in this regard with the possible exception of cost recovery where the EGS Parties continue to believe that the customers and suppliers should share in the cost of these programs.

III. Reply Argument

A. Legal Standards

1. Burden of Proof – (*See*, Dominion/IGS Main Brief, pp. 9-10).
2. Standards Applicable To Default Service – (*See*, Dominion/IGS Main Brief, p. 10).

⁸ Dominion/IGS Statement "St." No. 1-R, p. 4.

⁹ *FE Amended Order*, at pp. 17-19.

B. The Proposed Default Service Program

1. Class Procurements – Residential and Small C&I

A number of parties have proposed various competing alternatives for many aspects of PPL's filing and the EGS Parties will address these in turn. Namely with regard to RESA's suggestion to allow PPL's current one (1) year procurements but to steadily increase the amount of shorter term (quarterly) products in the procurement process, and the OCA's competing proposal to include significant portions of block and spot purchases in the residential procurement plan, and to thus limit the use of one (1) year, nine (9) month full requirements contracts that PPL proposed. Both positions are equally unsuitable alternatives for the proposed program.¹⁰ The EGS Parties continue to believe that procuring one (1) year full-requirements contracts, perhaps sprinkled with a few shorter term nine (9) month procurements, is the best way to provide a market responsive and market relevant Price to Compare for customers. Moreover, customers in general are more accustomed to one-year prices, for a whole host of products including cable television and cell phones to name a few. The EGS Parties submit that a more accurate comparison for customers would be had using a one (1) year product and thus recommend its approval.

In short, PPL's procurement proposal, while not optimal in terms of providing default service customers with a market reflective and market relevant price, is far better than the OCA's proposal to introduce spot market volatility into the PTC, and better than RESA's similar proposal to eventually purchase only ninety (90) day full requirements products. Both are simply changing what is now a quasi-regulated longer term price into a similarly quasi-regulated shorter term price. In either case, the customer gets no better price signal and gets no better options. The Commission should either go the whole way and stop regulating the default service

¹⁰ RESA MB, pp. 18-24; OCA MB pp. 13-18.

price, or, as PPL has proposed here, if it is going to mandate the product, at least mandate a product that customers know and understand.

- a) **Residential - Fixed Rate**
 - (1) **Product Mixture**
 - (2) **Procurement Schedule**
 - (3) **Wholesale Supplier Load Cap**
 - b) **Small C&I - Fixed Rate**
 - (1) **Product Mixture**
 - (2) **Procurement Schedule**
 - (3) **Wholesale Supplier Load Cap**
 - c) **Large C&I - Real-Time Hourly Rate**
 - (1) **Product Mixture**
 - (2) **Procurement Schedule**
 - (3) **Wholesale Supplier Load Cap**
 - d) **Contract Terms Beyond May 31, 2015**
 - e) **AEPS Procurement**
 - (1) **Transfer of AECs**
 - (2) **Alternative Compliance Payment**
 - f) **Administrative Costs and Cash Working Capital**
2. **Rate Design**
- a) **Residential and Small C&I Customer Classes - Fixed Rate Option**
 - (1) **Frequency of Rate Changes**
 - (2) **Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW**
 - b) **Residential and Small C&I – Reconciliation**

In their Main Brief, and throughout the testimony of their witness, the EGS Parties have been stalwart in their rejection of attempts to modify the current reconciliation process as proposed by PPL and supported by the OCA.¹¹ PPL has proposed to decrease the frequency of reconciliation from its current quarterly process and to modify the recovery period that is part of

¹¹ PPL MB, pp. 52-57; OCA MB, pp. 28-29.

the reconciliation calculation from its similar present quarterly basis and instead move to a rolling twelve (12) month recovery.

PPL presently reconciles on a quarterly basis. That is, at the end of each quarter it calculates the over or under collection amount and then calculates the per kWh rate (the e-factor) that will recover that over or under collection balance over the succeeding quarter – albeit with a one quarter lag. This recovers default service costs within a fairly close time period to when they were incurred. The new PPL proposal would push recovery of costs out to well over a year in most cases. This lag is simply too long to allow prices to be even close to market reflective, even with one (1) year products. The Commission has, in both the *FE Order* and *PECO Order* agreed, and required quarterly reconciliation¹² and that same result should apply here. In the *PECO Order*, the Commission adopted Dominion/IGS's position in rejecting attempts to elongate or smooth out reconciliation, stating:

On this issue we shall adopt the position of Dominion and RESA, and direct that PECO continue its DSP I quarterly reconciliation methodology for its default service rates during the term of DSP II. We agree with Dominion that it is not clear how a smoothed out PTC will create clear price signals, and that customers do not benefit when they are sheltered from the market forces that are the basis of the prices they will eventually pay. In addition, we agree with RESA on this issue that an annual reconciliation will separate the PTC from underlying wholesale costs thus masking the current cost of retail energy.¹³

Accordingly, the same result and same reasoning should apply here with the same result.

- e) **Large C&I Customer Class – Rates**
- d) **Large C&I Customer Class – Reconciliation**
- e) **The Green Power Program**
- f) **Optional Monthly Pricing Service**
- g) **Price to Compare Calculation Date**
- h) **Recovery of Transmission and Other Related Charges**
 - (1) **Costs to be Included in the TSC or GSC**
 - (2) **Non-Bypassable Structure**
 - (3) **Reconciliation**

¹² *FE Order* at p. 98; *PECO Order* at pp. 52-56

¹³ *PECO Order*, at p. 56.

3. **Time of Use Rate Option**
 - a) **Design**
 - b) **Procurement**

4. **Other Default Service Program Issues**
 - a) **Supply Master Agreement and RFP Process and Rules**
 - (1) **Revisions to the Supply Master Agreement**
 - b) **Third-Party Manager**
 - c) **RTO Compliance and Consistency**
 - d) **Contingency Planning**
 - e) **Additional Information to Wholesale Suppliers Regarding Shopping and Procurements**

C. Retail Market Enhancements and Customer Referral Programs

1. New and Moving Customer Program

The EGS Parties support the implementation of a new and moving customer referral program at the earliest possible date in order to provide those customers with the opportunity to select competitive supply as a first option.¹⁴ The EGS Parties submit that eventually combining the New and Mover referral programs and SOR appears to be the most efficient approach. The EGS Parties are not aware of any serious opposition to these programs and support their adoption.

2. Customer Referral Mailing

PPL proposed a customer referral program that is similar to the FirstEnergy program where it mails letters on its letterhead, using its envelopes that contain 5x8 flyers containing offers from suppliers willing to participate in the program.¹⁵ PPL initially proposed that the entire cost of this program be borne by the suppliers. In his Rebuttal Testimony, however, Mr. Krall conceded that PPL would consider recovery of the cost of this program through its education rider, if additional information regarding choice were also included in the mailing.¹⁶ The EGS Parties agree that this is the appropriate approach and commend PPL for its

¹⁴ Dominion/IGS MB, p. 15.

¹⁵ PPL MB, pp. 108-111.

¹⁶ PPL St. No. 3-R, pp., 45:11-46:4; PPL MB, p. 110.

compromise on this issue.¹⁷ Most other parties agree with this result as well. All customers will benefit from the combination of low intensity education and shopping opportunity that this program will provide. Accordingly, it is appropriate to recover these costs as an education expense.

3. Opt-In Auction/Aggregation Program Design

Most of the parties to this case have recognized that the world has changed with regard to the ROA, since this proceeding began, and the positions that parties took in Direct testimony mostly changed, at least conditionally, in either their rebuttal or surrebuttal. This is because, in its *FE Order* and its *PECO Order*, the Commission replaced the EDC's proposed ROA program with an aggregation program that is discussed more thoroughly in the EGS Parties' Main Brief.¹⁸ With these two (2) decisions, the EGS Parties submit that there now is a separate argument to be made in going that direction here - namely, consistency. So long as the Commission adopts transparency and customer protection measures such as those discussed in the EGS Parties Main Brief,¹⁹ the EGS Parties are comfortable that the Commission's new requirements will reduce costs, increase supplier participation and lower the prices that suppliers would otherwise be able to offer, which are all positive results with no obvious downsides other than those already identified. Consequently, the EGS Parties urge adoption of the *FE Order* – style ROA for PPL also.

4. Standard Offer Program Design

In their Main Brief the EGS Parties support rejection of PPL's six (6) month standard offer product and instead argued that a twelve (12) month product is more reasonable under the circumstances. In the *PECO Order* in particular, the Commission considered and again

¹⁷ Dominion/IGS MB, p. 16.

¹⁸ Dominion/IGS MB, pp.1-8.

¹⁹ Dominion/IGS MB, pp. 16-18.

approved PECO's proposed twelve (12) month standard offer program at a seven percent (7%) discount.²⁰ In this case, as in the PECO case, the EGS Parties argue that a one (1) year product allows customers to obtain the benefits of a competitive offer for a full year, while providing suppliers with more time to cement the relationship. Under PPL's plan, which is also supported by the OCA, suppliers would have to begin sending the required end of term notices only a few months after the service began, which would not be the best optics for newly switched customers.²¹ Fortunately, the Commission appears to have adopted this logic and now supports the twelve (12) month product. PPL's six (6) month plan must be rejected in favor of the, now standard, twelve (12) month product.

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

PPL consistently has failed to provide any factual support for its proposal to delay the implementation of its market enhancement programs until the end of 2014, except to state that otherwise the programs may impinge upon its existing overhanging contracts.²² The EGS Parties' witness, Mr. Barkas, posited that without any substantiation, PPL should be required to move the timetable up to more closely mirror the other EDC DSP plans. Getting the programs out of synch as between EDCs may cause confusion and hamper program effectiveness insofar as any mass advertising and other coordinated activities would be concerned. Accordingly, the EGS Parties urge moving up PPL's timetable as much as possible. Accordingly, PPL's contentions that the timetable must remain firm should be rejected.

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

²⁰ *PECO Order*, at p. 118.

²¹ PPL MB, p. 122; OCA MB, p. 51.

²² PPL MB, pp. 128-131.

For the referral program, PPL would require that the suppliers pay one hundred percent (100%) of the costs of the referral and ROA programs. The upfront costs of the ROA would be paid pro rata by all suppliers who would participate in the auction and the remaining costs by only those suppliers that are awarded customers.²³ The EGS Parties contend that if suppliers were to be required to pay any portion of the costs, the costs should be borne entirely by the winning suppliers on a pro-rata basis.²⁴ The EGS Parties' rationale is simple, it is only the winning suppliers who actually obtain customers through the ROA process that obtain the customer base necessary to recoup the investment in obtaining those customers in the first instance, so they should be the ones to pay the costs.

It appears, however, that with the standardization evidenced by the *FE Order* and *PECO Order* that the Commission has moved away from high cost auctions and instead opted for an assignment program. Such a program should have much lower upfront costs, thus lessening the burden. Customers should still share in these costs, however, and the Commission appears to be moving in that direction.²⁵ Much like the customer referral mailings discussed above, these types of mass marketing programs benefit customers by giving them information about market prices and a safe opportunity to shop. Accordingly, customers should be required to shoulder at least some portion of the costs of these types of programs. A reasonable sharing of costs remains the best means of financing these programs.

For the SOR, PPL intends to determine the costs on an annual basis, retroactively for the prior year, and then to assign those costs to the suppliers who participated over the year, based upon the ratio of the annual total number of participating suppliers over the annual total of monthly supplier participation. PPL has proposed to recover only noncapital costs from

²³ PPL MB, pp. 131-137.

²⁴ Dominion/IGS MB, p. 20.

²⁵ PECO Order, pp. 148-149.

participating EGSs, however, and intends to capitalize the approximately \$3 million in programing costs to allow the functionality for this type of program to occur, and recover those dollars from all customers through rate base.²⁶ The EGS Parties support PPL's cost recovery proposal for the referral program as reasonable if customers are not asked to share the expense.

7. CAP Customer Participation in the Retail Market Enhancements

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs
2. Proposed 5 mils/kWh Charge Added to Default Service Rates
3. Requested Ruling Pursuant to 66 PA. C.S. § 2102
4. Requested Waivers

IV. Proposed Findings of Fact

1. Quarterly reconciliation produces rates that are market responsive and allow for the most accurate comparison of EGS offers and the PTC as opposed to annual reconciliation that produces rates that are not market responsive nor market relevant.²⁷

2. PPL's request to delay the implementation of the competitive enhancements until the end of 2013, due to overhanging contracts is unsupported in the record, as PPL has failed to provide any convincing evidence of any harm that will result from implementing the programs at an earlier date.²⁸

3. PPL proposed a six (6) month fixed price ROA program at a minimum five percent (5%) discount that would begin December 1, 2013 and would continue for six (6) months with customers receiving their fifty dollar (\$50.00) cash payment after three (3) billing cycles. The ROA proposal included a cap on the number of participating

²⁶ PPL MB, pp. 131-137.

²⁷ Dominion/IGS St. No. 1, p. 4:17-6:21.

²⁸ Dominion/IGS St. No. 1, p. 6:3-7:8.

customers at fifty percent (50%) of the non-shopping customers and would allow any single supplier to win up to fifty percent (50%) of the eligible customers. PPL also proposed that suppliers be required to pay some portion of the auction costs up front based upon the number of EGS's participating and then require the remainder of the cost to be paid only by the winning bidders.²⁹

4. The EGS Parties, through their witness Mr. Barkas', testified that there were a number of problematic components of PPL's proposal, including cost recovery, which would require suppliers to pay upfront costs before even obtaining customers in this program. The EGS Parties believe that the costs of the retail enhancements should be shared by customers and the suppliers that actually win customers. The EGS Parties also are concerned with the six (6) month period of the contract and believe that a one (1) year period would be more effective given the fifty dollar (\$50.00) bonus payment. Likewise, with the standard offer referral program, PPL had also proposed a six (6) month product which was opposed by the EGS Parties who sought a twelve (12) month product at a seven percent (7%) discount. The EGS Parties believe that a one (1) year duration contract for this program would have been more realistic.³⁰

5. Because the Commission has now eliminated the auction concept, the cost of the ROA should be minimalized due to the lack of an auction and the simplicity of the program.³¹

6. The new "standard" ROA product, namely the four (4) month and the eight (8) month components, is a workable alternative, except that it creates a very

²⁹ Dominion/IGS St. No. 1, p. 8:4-10:13.

³⁰ Dominion/IGS St. No. 1, p. 12:8.

³¹ Dominion/IGS St. No. 1-R, p. 5:1-14.

substantial risk of assigning customers to suppliers who may not be financially able to pay the fifty dollar (\$50.00) bonus at the end of four (4) months.³²

7. The Commission must require additional financial security for suppliers participating in the ROA program, in the form of a cash deposit or performance bond, to ensure that the suppliers are able to meet the obligation to pay the fifty dollar (\$50.00) bonus for all of the customers assigned to them under the program.³³

8. Suppliers participating in the ROA should be required to post their price for the eight (8) month component on the Commission's website at the same time they provide that rate to customers as part of the initial terms and conditions.³⁴

9. Failure to implement adequate transparency and security requirements for the ROA could produce dire public perception consequences.³⁵

10. The most appropriate cost recovery mechanism is a sharing of the costs of the ROA program as between suppliers and customers. For referral programs, however, the EGS Parties support a per-customer switch fee, because it is not intended to recover the capital costs of the program.³⁶

V. Proposed Conclusions of Law

1. PPL's proposed procurement plan complies with the requirements of Act 129, and is a reasonable approach to procurement for the transitional period. 66 Pa. C.S. §§ 2807(e)(3.1), *et seq.*

³² Dominion/IGS St. No. 1-R, p. 4:5-20.

³³ Dominion/IGS St. No. 1-R, p. 4:5-20.

³⁴ Dominion/IGS St. No. 1-R, p. 4:5-20.

³⁵ Dominion/IGS St. No. 1-R, p. 4:5-20.

³⁶ Dominion/IGS St. No. 1-R, p. 4:23-5:14.

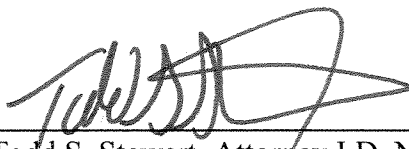
2. PPL's proposal to modify its reconciliation program is contrary to the Commission's Regulations at 52 Pa. Code § 57.181, *et seq.*, and recent Commission precedent and is otherwise not in the public interest.

3. PPL's proposed Retail Market Enhancements, as modified by the proposals of the EGS Parties, are reasonable and should be approved.

VI. Conclusion

Since PPL made its filing, the legal standards by which its DSP II filing will be judged have changed in some rather significant ways. The parties to this proceeding adapted by submitting conditional testimony, just in case the Commission was changing direction, which, as we all know now, it was. It seems likely that for those items that the Commission's *FE Order* and *PECO Orders* address, since they were consistent, the results in those case are now to be the model that the Commission seeks to implement. This result is acceptable to the EGS Parties, with some modifications that the Commission is considering. Accordingly, the EGS recommend approval of the PPL plan, in the same manner, and with its same modifications.

Respectfully submitted,



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October 19, 2012

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

Dear Secretary Chiavetta:

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

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

Very truly yours,

Todd S. Stewart
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Interstate Gas Supply, Inc.*

TSS/jld/150744.1

Enclosures

cc: ALJ Susan D. Colwell

CERTIFICATE OF SERVICE

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

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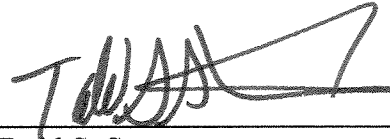
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