

**COMMONWEALTH OF PENNSYLVANIA
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**

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Docket No. P-2012-2302074

**REPLY BRIEF OF
THE JOINT SUPPLIERS**

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Dated: October 19, 2012

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2. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).
3. *Opinion and Order in Re: 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*, Commission Docket No. P-2008-2060309 (entered June 30, 2009).
4. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered August 16, 2012).
5. *Opinion and Order in Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (entered September 27, 2012)
6. *Implementation Order II in Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Commission Docket No. M-00051865 (entered July 18, 2005).

**REPLY BRIEF OF
THE JOINT SUPPLIERS**

I. INTRODUCTION

A. SUMMARY AND STATEMENT OF POSITION

Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (“Constellation”), along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (“NextEra”) (collectively, the “Joint Suppliers”) hereby submit their Reply Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the Default Service Implementation Plan filed by PPL Electric Utilities Corporation (“PPL Electric”) on May 1, 2012¹ (with supporting testimony from PPL Electric circulated on May 16, 2012²) in Docket No. P-2012-2302074, *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* (the filing herein referred to as the “Default Service Plan” or “DSP”).

As the Joint Suppliers submit in more detail in their Main Brief filed on October 5, 2012, PPL Electric’s DSP will be consistent with the Electric Choice Act and the requirements of *Act 129 of 2008* (“Act 129”)³ if revised to incorporate certain limited improvements including, but not limited to, certain important improvements to PPL Electric’s proposed form of Supply Master Agreement (“SMA”). In order to meet the goals of Act 129, all electric distribution

¹ *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*, Commission Docket No. P-2012-2302074 (May 1, 2012).

² *Direct Testimony of PPL Electric Utilities Corporation*, Commission Docket No. P-2012-2302074 (May 16, 2012) (“PPL Electric Direct Testimony”).

³ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity__urges_legislature_to_pass_rate_mitigation_bill.html).

companies' ("EDCs") Default Service plans must be designed in such a way as to encourage the broadest participation by wholesale suppliers. With the Joint Suppliers' limited changes, PPL Electric's proposed design will be more likely to encourage the broadest participation by suppliers, is likely to more effectively meet the goals of Act 129, and will be in the public interest.

III. ARGUMENT

B. THE PROPOSED DEFAULT SERVICE PROGRAM

1. Class Procurements

e) AEPS Procurement

i. Transfer of AECs

The Joint Suppliers proposed that, as laid out in Constellation's testimony in this proceeding, PPL Electric's SMA should be revised to require the transfer of alternative energy credits ("AECs") from the wholesale Default Service supplier ("DS Supplier") to PPL Electric on an annual rather than monthly basis to better reflect the nature of the AEC trading market.⁴ In its Main Brief, PPL Electric argues in favor of its proposed monthly AEC transfer on the basis that it "reduces the risk of [PPL Electric's] non-compliance with the AEPS Act if a [DS Supplier] defaults on its obligation to transfer AECs," that "all suppliers understand their obligations in conjunction with when monthly invoices are issued, reducing confusion and enabling [DS Suppliers] to procure credits closer to the time of delivery," and that the monthly transfer allows PPL Electric to "more appropriately [match] its payment of the cost associated

⁴ See Constellation St. 1 at p.34 (line 17) – 35 (line 19).

with AECs, which are part of the overall price paid to wholesale suppliers each month under the full-requirements contracts, with its actual receipt of credits.”⁵

As these were the same arguments presented by PPL Electric in its testimony in this proceeding, the Joint Suppliers provided responses to each of these arguments in their Main Brief. Specifically, the Joint Suppliers noted that this monthly transfer is a highly unusual practice that causes confusion and administrative burden, and that no other utility in Pennsylvania or elsewhere is known to require such a monthly transfer of AECs pursuant to a Default Service supply agreement.⁶ This practice is not common, because it is not in line with the nature of the market in which AECs trade. In this way, where no other EDC has adopted such a monthly AEC transfer structure, it is difficult for PPL Electric to provide support for the notion that a significant noncompliance risk exists that would warrant such a non-industry standard practice; indeed the PPL Electric Main Brief fails to provide any such support.

In addition, as the Joint Suppliers point out in their Main Brief, because AEC compliance under various states’ alternative energy portfolio standards (“AEPS”) is typically required on a yearly basis, market participants with such AEPS requirements typically manage their AEC portfolios with such timing in mind,⁷ and while market participants may trade AECs regularly throughout the year, they do not typically reconcile their portfolios and transfer/retire AECs for compliance purposes more frequently than yearly, allowing them to most effectively manage their positions on a state-wide and region-wide basis. Therefore, PPL Electric’s monthly AEC transfer structure is likely to cause *greater* confusion rather than *less*, as PPL Electric incorrectly

⁵ PPL Electric Main Brief at p.27 (lines 1-12).

⁶ See Constellation St. 1 at p.40.

⁷ See Constellation St. 1 at p.34 (lines 22-25).

argues. Again, PPL Electric provides no support for its erroneous notion that its structure reduces confusion for DS Suppliers, and the Joint Suppliers – representing two potential DS Suppliers – attest to the fact that PPL Electric’s monthly AEC transfer *increases* confusion.

Finally, PPL Electric has provided no evidence to support its incorrect statement that it is somehow appropriate to match payment of costs associated with AECs to its actual receipt of AECs from DS Suppliers. As PPL Electric readily admits, the costs associated with AECs “are part of the overall price paid to wholesale suppliers each month under the full-requirements contracts.”⁸ Said differently, PPL Electric has no way of knowing the costs specifically related to AECs that are embedded in its prices paid to DS Suppliers. PPL Electric has shown no reason why it would be important to match such *unknown* AEC costs to actual AECs on a *monthly* basis, particularly where PPL Electric does not have to evidence its AEPS compliance until after the *end* of each delivery year.

Therefore, PPL Electric has not offered credible support for its position against the yearly transfer of AECs, which is the industry-standard practice for all other EDCs, and which is more in line with how the AEC market and DS Suppliers operate. Thus, the Joint Suppliers continue to support the following Ordering Paragraph:

PPL Electric is ORDERED to revise the SMA to require the transfer of AECs from the DS Supplier to PPL Electric on an annual rather than monthly basis.

ii. Alternative Compliance Payment

As stated in their Main Brief, based on a review of the Commission’s July 15, 2005 *Implementation Order II* in Docket No. M-00051865, identified by PPL Electric, which explains

⁸ PPL Electric Main Brief at p.40.

that Alternative Compliance Payments (“ACPs”) are not recoverable by an EDC from its customers,⁹ the Joint Suppliers will not pursue any such change to the SMA at this time.

2. Rate Design

h) Recovery of Transmission and Other Related Charges

i. Costs to be Included in the TSC or GSC

PPL Electric in its Main Brief argues against inclusion of new “non-market based charges” (“NMB Charges”) in its Transmission Service Charge (“TSC”) Rider. As the Joint Suppliers stated in their Main Brief, while they continue to support the inclusion of certain new charges for the reasons presented throughout the Constellation Testimony, based on the Commission’s recent August 16, 2012 *Opinion and Order* and September 27, 2012 *Opinion and Order* in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (“FirstEnergy DSP Orders”) – regarding the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs* – the Joint Suppliers are no longer pursuing any such changes to the TSC Rider at this time, and will accept the Commission’s approval of the TSC Rider, and the SMA provisions pertaining to the NMB Charges collected through the TSC Rider, as proposed by PPL Electric.

ii. Non-Bypassable Structure

Similarly, the Joint Suppliers stated that they are no longer pursuing Constellation’s proposal for PPL Electric to assume NMB Charges for all distribution customers, based on the

⁹ See PPL Electric St. 1-R at p.27 (lines 17-24).

Commission's recent FirstEnergy DSP Orders, and that they will accept PPL Electric's position and DSP proposal on this issue.

However, whereas PPL Electric's DSP proposes to continue the successful structure it has utilized in the past through which PPL Electric takes responsibility for and collects certain identified NMB Charges through the TSC Rider for Default Service load only – a practice that the Commission did not reject in the FirstEnergy DSP Orders – the Office of Small Business Advocate (“OSBA”) in its Main Brief proposes that the Commission should instead pass all such costs “currently covered in [PPL Electric's TSC Rider] onto [DS Suppliers],” on the basis that “this change would level the playing field between retail and wholesale suppliers.”¹⁰

The Joint Suppliers strongly oppose the OSBA's proposal on the basis that it will create an unequal playing field, rather than level the playing field, between EGSs and DS Suppliers, and will increase costs for Default Service supply. First, with respect to leveling the playing field, the Joint Suppliers submit that evidence in the record indicates that an EGS has the option of recovering through special terms in its contract costs and/or increases to costs such as those currently included in the TSC Rider.¹¹ DS Suppliers retain no such flexibility to dictate the terms of their contracts after the form of SMA has been approved by the Commission.

Moreover, ‘leveling the playing field’ by placing on DS Suppliers the responsibility for NMB Charges currently included in the TSC Rider will be to the detriment of those customers who remain on Default Service. As Constellation witness Bennett explains, with respect to all NMB Charges:

if DS Suppliers – rather than EDCs – are responsible for these unknown and unpredictable [NMB Charges] that *may* occur, then, in order to

¹⁰ OSBA Main Brief at p.19.

¹¹ See, e.g., Constellation St. 1 at p.25 (lines 12-14).

account for such risk, DS Suppliers will need to factor a premium into their default service bids for such *potential* Charges *regardless* of the frequency and extent to which such [NMB Charges] *actually* occur. Prudent bidders would have to consider the costs that they *could* incur PPL Electric’s consumers may – through costs embedded in default service bids – pay for desired market benefits which were never *actually* realized.¹²

If the Commission were to adopt OSBA’s proposal, PPL Electric’s Default Service consumers may – through costs embedded in Default Service bids – pay for NMB Charges which never *actually* occur. Finally, all other EDCs in Pennsylvania to some extent currently recover certain NMB Charges directly from Default Service customers, rather than passing them through to DS Suppliers, making OSBA’s proposal outside the norm, and potentially placing PPL Electric at a competitive disadvantage to other EDCs, as its RFPs – if OSBA’s proposal is adopted – will be less attractive to potential DS Suppliers and therefore less competitive.¹³

For these reasons, the Joint Suppliers propose the following Ordering Paragraph:

The OSBA’s proposal to pass NMB Charges currently recovered in PPL Electric’s TSC Rider onto DS Suppliers is REJECTED.

¹² Constellation St. 1 at p.21 (lines 18-23).

¹³ See, e.g., *Opinion and Order*, Commission Docket No. P-2008-2062739 (entered June 2, 2009) (approving the *Joint Petition for Settlement* for PECO Energy Company’s DSP, which included at Exhibit C its form of RFP which makes clear at p.77 that “Full Requirements Service” provided by a DS Supplier does not include certain NMB Charges including, but not limited to, “Network Integration Transmission Service, Ancillary Services . . . transmission and distribution losses, congestion management costs”); see, also, West Penn SMA at p.4 (defining that “Full Requirements Service” provided by a DS Supplier does not include certain NMB Charges including, but not limited to, “Network Integration Transmission Service, Ancillary Services . . . transmission and distribution losses, congestion management costs”); see, also, *Opinion and Order*, Commission Docket No. P-2010-2157862 (entered Nov. 17, 2010) (approving the *Joint Petition for Settlement* for PECO Energy Company’s DSP, which included at Exhibit B its form of SMA which makes clear at p.77 that “DS Supply” provided by a DS Supplier does not include certain NMB Charges including, but not limited to, “Network Integration Transmission Service”); see, also, *Opinion and Order*, Commission Docket Nos. P-2009-2093053 and P-2009-2093054 (entered Nov. 6, 2009) (approving the *Joint Petition for Settlement* for PECO Energy Company’s DSP, which included at Exhibit B-1 its form of SMA which makes clear at p.10 that “DS Supply” provided by a DS Supplier does not include certain NMB Charges including, but not limited to, “Network Integration Transmission Service”).

4. Other Default Service Program Issues

a) Supply Master Agreement and RFP Process and Rules

i. Revisions to the Supply Master Agreement

The Joint Suppliers argued in their Main Brief that, subject to three particular additional SMA improvements, PPL Electric’s procurements under the DSP will be consistent with the requirements under Act 129. The Joint Suppliers argued that, “in order to encourage the most robust participation in the DSP’s [requests for proposals (“RFPs”)],”¹⁴ the Commission should order PPL Electric to revise the SMA to: (1) include other EDCs’ more appropriate unsecured credit thresholds or, at a minimum, the thresholds used in the SMA previously approved for use by PPL Electric in its 2011-2013 Default Service Plan (the “2011-13 SMA”); (2) provide for weekly settlements in order to reflect and operate in concert with PJM Interconnection, L.L.C.’s (“PJM”) weekly settlement process; and (3) as agreed to by PPL Electric, allow a DS Supplier three Business Days rather than only two Business Days to replace a Letter of Credit. PPL Electric in its Main Brief opposed the first two of these three proposals, and agreed to the third. The Joint Suppliers maintain that also adopting the first two of these three suggested improvements to the wholesale supply documents will ensure that PPL Electric’s DSP meets the requirements of Act 129, allowing the DSP to solicit and obtain contracts for the least cost generation supply on a long-term, short-term and spot market basis. Note that PPL Electric in its Main Brief addresses a number of other SMA changes proposed by Constellation in its testimony, but the Joint Suppliers elected not to pursue such other SMA changes and instead focused in their Main Brief on – and reiterate herein – three of the most important SMA improvements originally proposed by Constellation.

¹⁴ Constellation St. 1 at p.26 (line 8).

(1) The SMA's Unsecured Credit Thresholds Should Be More in Line with Those Utilized by Other EDCs or, at a Minimum, with Those Previously Used by PPL Electric in its 2011-13 SMA

The Joint Suppliers submitted in their Main Brief that PPL Electric's proposed SMA should be revised to include those Unsecured Credit Thresholds contained in the form of SMA used by the West Penn Power Company ("West Penn") in its current Default Service procurements or, in the alternative, that PPL Electric continue to at the very least use those Unsecured Credit Thresholds that PPL Electric included in its prior 2011-13 SMA.

In its Main Brief, PPL Electric, however, argues that:

PPL Electric reviewed various agreements issued by EDCs to determine what their credit thresholds are compared to those proposed by PPL Electric. *See* Ex. RGY-1R. As seen in that Exhibit, [PPL Electric's] unsecured credit amounts are reasonably aligned with all of the companies reviewed (including Constellation's affiliate PECO). This evidence demonstrates that [PPL Electric's proposed Unsecured Credit Thresholds] are consistent with similar agreements and should not result in a reduction in bidder interest. Furthermore . . . it is in the interest of default service customers to moderate [the risk that a supplier refuses or is unable to pay] by holding the unsecured credit amount to a lower level.¹⁵

The Exhibit referred to includes four other EDCs – "PECO, NSTAR, Duke Energy Ohio, and New Jersey BGS."¹⁶ With respect to PPL Electric's arguments, which are the same as those presented in its testimony, the Joint Suppliers pointed out in their Main Brief that PPL Electric's highest threshold of \$50,000,000 is in fact *lower than* all but one of the four EDCs that PPL Electric reviewed, and is not in line with those EDCs. Only NSTAR – the one utility that PPL Electric reviewed which is *not in PJM*, let alone Pennsylvania – was lower than PPL Electric. In addition, PPL Electric's proposed highest threshold is \$25,000,000 *less* than that which PPL

¹⁵ PPL Electric Main Brief at p.95.

¹⁶ PPL Electric St. 1-R at p.21 (lines 5-10).

Electric used in the 2011-13 SMA, and roughly *half* that currently used by West Penn. Moreover, both West Penn and Duke Energy Ohio currently provide some level of unsecured credit at the BB/BB/Ba2 level (S&P/Fitch/Moody's), and West Penn extends credit down to the BB-/BB-/Ba3 level. In this way, PPL Electric has failed to show how its proposed Unsecured Credit Thresholds are in line with other EDCs in PJM. In addition, PPL Electric fails to identify why it believes that its prior 2011-13 SMA, as well as the SMA currently used by West Penn – both previously approved by the Commission – do not adequately “moderate” the risks that are faced upon a DS Supplier default.

The Joint Suppliers in their Main Brief cite that on June 30, 2009, the Commission entered an order regarding PPL Electric's then proposed procurement structure for Default Service supply (“June 2009 Order”),¹⁷ in which the Commission affirmed that (a) “provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,”¹⁸ (b) “a DSP must include prudent steps necessary to obtain ‘least cost generation supply contracts,’”¹⁹ and (c) provisions of a DSP “must be structured so as to encourage greater competition.”²⁰

Therefore, as explained in greater detail in the Joint Suppliers' Main Brief, in order to be consistent with the Commission's June 2009 Order, because the thresholds in the West Penn SMA will be more attractive to potential bidders, PPL Electric *must* bring its SMAs' Unsecured Credit Thresholds more in line with those included in the West Penn SMA, to be deemed to have

¹⁷ See *Opinion and Order in Re: 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*, Commission Docket No. P-2008-2060309 (entered June 30, 2009) (“June 2009 Order”).

¹⁸ June 2009 Order at p.29.

¹⁹ June 2009 Order at p.30.

²⁰ June 2009 Order at p.30.

“include[d] prudent steps necessary to obtain ‘least cost generation supply contracts,’ and . . . be structured so as to encourage greater competition,”²¹ as required by the Commission. At the very least, PPL Electric should be required to use those thresholds it included in its 2011-13 SMA, because it has not provided good cause to move away from those terms. Thus, the Joint Suppliers continue to support the following Ordering Paragraph:

PPL Electric is ORDERED to adopt the Unsecured Credit Thresholds used in the West Penn SMA, as reflected in Constellation St. 1 at p.29 (lines 19-31).

In the alternative, if it is deemed more appropriate to maintain those thresholds used in PPL Electric’s prior 2011-13 SMA, Joint Suppliers continue to support the following Ordering Paragraph:

PPL Electric is ORDERED to adopt the Unsecured Credit Thresholds used in the PPL Electric 2011-13 SMA, as reflected in Constellation St. 1 at p.29 (lines 19-31).

(2) The SMA Should Define Their Payments Settlement Period by Relying on the Period Utilized by PJM, Which Currently Uses a Weekly Settlement Period

The Joint Suppliers in their Main Brief proposed that the SMA should define its payments settlement period by relying on the period utilized by PJM, which currently uses a weekly settlement period.²² PPL Electric in its Main Brief, however, argued against such a revision, stating that a move to weekly settlements is unnecessary because PPL Electric has “held twelve successful DSP I Program solicitations which included monthly settlement

²¹ June 2009 Order at p.30.

²² See Constellation St. 1 at pp.32 (line 16) – 34 (line 8).

provisions” and may shift working capital costs from suppliers to PPL Electric, leading to PPL Electric needing to recover such costs in customer rates.²³

PPL Electric fails to address, however, that West Penn has appropriately been providing for weekly settlements under its current SMA,²⁴ and that evidence suggests that such a change will only serve to attract bidders and encourage more competitive pricing.²⁵

As the Joint Suppliers pointed out in their Main Brief, their proposed change to the SMA can only help to drive costs down for DS Suppliers, resulting in a higher likelihood for more competitive bids in PPL Electric’s RFPs, to the ultimate benefit of consumers.²⁶ In this way, the Joint Suppliers reiterate that PPL Electric *must* make such a change in order for its DSP to be deemed to have “include[d] prudent steps necessary to obtain ‘least cost generation supply contracts,’ and . . . be structured so as to encourage greater competition,”²⁷ as required by the Commission in the June 2009 Order. The Joint Suppliers therefore propose the following Ordering Paragraph:

PPL Electric is ORDERED to adopt weekly settlements language, as reflected in Constellation St. 1-SR, Exhibit 1-SR-1.

(3) As Agreed to by PPL Electric, the SMA Should Allow a DS Supplier Three Business Days to Replace a Letter of Credit

The Joint Suppliers in their Main Brief proposed that, in SMA Section 14.2(b), it would be reasonable to allow a DS Supplier three Business Days rather than only two Business Days to

²³ See PPL Electric Main Brief at pp.98-99.

²⁴ See Constellation St. 1 at p.33 (lines 11-16).

²⁵ See Constellation St. 1 at pp.32 (line 26) – 33 (line 10).

²⁶ Constellation St. 1 at pp.32 (line 26) – 33 (line 10).

²⁷ June 2009 Order at p.30.

replace a Letter of Credit.²⁸ PPL Electric in its Main Brief agreed to such a change, stating that “[t]his change is minor in nature and is not opposed by the Company.”²⁹ Thus, the Joint Suppliers maintain their support for the following Ordering Paragraph:

PPL Electric is ORDERED to revise SMA Section 14.2(b) to allow a DS Supplier three Business Days rather than only two Business Days to replace a Letter of Credit, as agreed to by PPL Electric.

e) Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

The Joint Suppliers indicated in their Main Brief that, while PPL Electric did not agree in testimony to provide all of the data requested by Constellation, the Joint Suppliers were generally satisfied by certain additional data that PPL Electric agreed to provide, as identified specifically in the Joint Suppliers’ Main Brief. PPL Electric in its Main Brief reiterated its support for these limited additional data provisions.³⁰ Thus, the Joint Suppliers maintain their support for the following Ordering Paragraph:

PPL Electric is ORDERED to make available to DS Suppliers the data agreed to by PPL Electric in PPL Electric St. 1-R at p.33 (lines 14-21), in addition to all data already provided by PPL Electric to DS Suppliers.

IV. CONCLUSION

As explained and supported through great detail in the Joint Supplier’s Main Brief, Constellation’s proposed improvements to PPL Electric’s DSP design are supported by substantial evidence in the record before the Commission. The PPL Electric DSP, with these

²⁸ Constellation St. 1 at p.36 (lines 18-20).

²⁹ PPL Electric Main Brief at p.99.

³⁰ PPL Electric Main Brief at pp.103-105.

limited changes supported by the Joint Suppliers, will encourage more competitive procurements for PPL Electric's DSP and, in turn, will better assure that PPL Electric's customers are able to receive benefits from the least costs for generation supply contracts, whether remaining on Default Service supply from PPL Electric or taking competitive service from an EGS.

A. PROPOSED FINDINGS OF FACT

1. The monthly transfer of AECs is a highly unusual practice which is not in line with the nature of the market in which AECs trade. Constellation St. 1 at p.40.
2. The monthly transfer of AECs causes confusion and administrative burden for DS Suppliers. Constellation St. 1 at p.40.
3. No other EDC in Pennsylvania or elsewhere is known to require a monthly transfer of AECs by a DS Supplier to the EDC pursuant to a Default Service supply agreement. Constellation St. 1 at p.40.
4. PPL Electric has shown no reason why it would be important to match unknown AEC costs to actual AECs on a monthly basis, particularly where PPL Electric does not have to evidence its AEPS compliance until after the end of each delivery year.
5. An EGS has the option of recovering through special terms in its contract costs and/or increases to costs such as those currently included in the TSC Rider. Constellation St. 1 at p.25 (lines 12-14).
6. DS Suppliers retain no flexibility to dictate the terms of their Default Service supply contracts after the form of SMA has been approved by the Commission.
7. If DS Suppliers – rather than EDCs – are responsible for unknown and unpredictable NMB Charges that *may* occur, then, in order to account for such risk, DS Suppliers will need to factor a premium into their default service bids for such *potential* Charges *regardless* of the frequency and extent to which such NMB Charges *actually* occur. Constellation St. 1 at p.21 (lines 18-23).
8. All EDCs in Pennsylvania to some extent currently recover certain NMB Charges directly from Default Service customers, rather than passing them through to DS Suppliers.
9. PPL Electric's highest Unsecured Credit Threshold of \$50,000,000 is in fact *lower than* all but one of the four EDCs that PPL Electric reviewed. PPL Electric St. 1-R at Ex. RGY-1R.

10. Only NSTAR – the one utility that PPL Electric reviewed which is *not in* PJM, let alone Pennsylvania – had an Unsecured Credit Threshold at the top of its limits that was lower than PPL Electric. PPL Electric St. 1-R at Ex. RGY-1R.
11. PPL Electric’s proposed highest threshold is \$25,000,000 *less* than that which PPL Electric used in the 2011-13 SMA, and roughly *half* that currently used by West Penn. Constellation St. 1 at p.29 (lines 19-31).
12. Both West Penn and Duke Energy Ohio currently provide some level of unsecured credit at the BB/BB/Ba2 level (S&P/Fitch/Moody’s), and West Penn extends credit down to the BB-/BB-/Ba3 level. PPL Electric St. 1-R at Ex. RGY-1R; Constellation St. 1 at p.29 (lines 19-31).
13. PPL Electric’s proposed Unsecured Credit Thresholds are not in line with other EDCs in PJM.
14. PPL Electric fails to identify why its prior 2011-13 SMA, as well as the SMA currently used by West Penn do not adequately “moderate” the risks that are faced upon a DS Supplier default.
15. West Penn has appropriately been providing for weekly settlements under its current SMA. Constellation St. 1 at p.33 (lines 11-16).
16. Weekly settlements under the SMA can only help to drive costs down for DS Suppliers, resulting in a higher likelihood for more competitive bids in PPL Electric’s RFPs, to the ultimate benefit of consumers. Constellation St. 1 at pp.32 (line 26) – 33 (line 10).

B. PROPOSED CONCLUSIONS OF LAW

1. It is in the public interest to require the transfer of AECs from the DS Supplier to PPL Electric on an annual rather than monthly basis;
2. It is not in the public interest to pass NMB Charges currently recovered in PPL Electric’s TSC Rider onto DS Suppliers;
3. Provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers;
4. A DSP must include prudent steps necessary to obtain least cost generation supply contracts;
5. Provisions of a DSP must be structured so as to encourage greater competition;
6. DSPs must be structured so as to encourage greater competition and thus the least cost generation supply contracts;

7. It is not in the public interest to adopt PPL Electric's proposed Unsecured Credit Thresholds without revising them to reflect either those utilized in the West Penn SMA or in PPL Electric's prior 2011-13 SMA;
8. It is in the public interest to adopt weekly settlements language in the PPL Electric form of SMA;
9. It is in the public interest to revise SMA Section 14.2(b) to allow a DS Supplier three Business Days rather than only two Business Days to replace a Letter of Credit, as agreed to by PPL Electric;
10. It is in the public interest to make available to DS Suppliers the data agreed to by PPL Electric in PPL Electric St. 1-R at p.33 (lines 14-21), in addition to all data already provided by PPL Electric to DS Suppliers.

C. PROPOSED ORDERING PARAGRAPHS

1. PPL Electric is ORDERED to revise the SMA to require the transfer of AECs from the DS Supplier to PPL Electric on an annual rather than monthly basis;
2. The OSBA's proposal to pass NMB Charges currently recovered in PPL Electric's TSC Rider onto DS Suppliers is REJECTED;
3. Either:
 - (a) PPL Electric is ORDERED to adopt the Unsecured Credit Thresholds used in the West Penn SMA, as reflected in Constellation St. 1 at p.29 (lines 19-31); **or**
 - (b) PPL Electric is ORDERED to adopt the Unsecured Credit Thresholds used in the PPL Electric 2011-13 SMA, as reflected in Constellation St. 1 at p.29 (lines 19-31);
4. PPL Electric is ORDERED to adopt weekly settlements language, as reflected in Constellation St. 1-SR, Exhibit 1-SR-1;
5. PPL Electric is ORDERED to revise SMA Section 14.2(b) to allow a DS Supplier three Business Days rather than only two Business Days to replace a Letter of Credit, as agreed to by PPL Electric; and
6. PPL Electric is ORDERED to make available to DS Suppliers the data agreed to by PPL Electric in PPL Electric St. 1-R at p.33 (lines 14-21), in addition to all data already provided by PPL Electric to DS Suppliers.

Respectfully Submitted,

/s/

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October 19, 2012