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October 22, 2012

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Erin L. Gannon
Assistant Consumer Advocate
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Enclosures
cc: Honorable Susan D. Colwell, ALJ
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| 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 |

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REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On October 5, 2012, the Office of Consumer Advocate (OCA) filed its Main Brief in this proceeding. Main Briefs were also filed by PPL Electric Utilities Corporation (PPL or the Company); the Bureau of Investigation and Enforcement (I&E); Office of Small Business Advocate (OSBA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); FirstEnergy Solutions Corp. (FES); Retail Energy Supply Association (RESA); PP&L Industrial Customer Alliance (PPLICA); and Dominion Retail, Inc.; Sustainable Energy Fund (SEF); NextEra Energy Services Pennsylvania, LLC, NextEra Energy Power Marketing, and Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (Joint Suppliers); and Interstate Gas Supply, Inc. (Dominion/IGS). The OCA submits that nothing argued in the Main Briefs of the parties changes the positions detailed in the OCA's Main Brief.

## II. SUMMARY OF REPLY ARGUMENT

In its Main Brief, the OCA supported the use of a prudent mix of energy products designed to achieve residential default service rates at the least cost over time as required by Act 129 of 2008. See OCA M.B. at 12-17. Under the OCA proposal, the Company would meet 75% of its residential default service load through Fixed Price Full Requirements (FPFR) contracts, and 25% through a mix of 80% forward purchases of energy blocks and 20% purchases from the PJM spot market. The parties opposed to the OCA's proposed block and spot purchase mix argue that it would result in risks to customers and rate volatility – but the success of PPL's existing default supply plan (DSP I) shows that is not the case. As a result, the OCA submits that including a diverse mix of products in the residential supply mix as recommended by the OCA is the prudent and reasonable approach that should be adopted in this proceeding. If the OCA's recommendation for continuing the use of block and spot purchases is not adopted, the OCA's alternative recommendation to utilize PPL's proposed FPFR contracts with more frequent solicitations should be adopted. The OCA also submits that its procurement schedule that calls for some contracts extending beyond May 31, 2015 should be adopted.

The OCA further argued in its Main Brief that RESA's proposed 0.5¢ per kWh adder to the Price to Compare must be soundly rejected. See OCA M.B. at 67-73. The adder represents an unprecedented profit adder for PPL – despite the fact that the Company agrees that it is recovering all of its reasonable costs of default service on a dollar for dollar basis pursuant to a Commission-approved reconcilable rate mechanism. RESA has advanced a wide range of goals, rationales, and principles to support implementation of this 0.5¢ per KWh adder. The OCA submits, however, that all of these arguments must fail. The adder does not reflect any cost, nor is there any reasonable relationship between the adder and any valid efforts to enhance retail

competition. The adder is simply an unjustified addition to the Price to Compare that will increase the price of electricity to both switching and non-switching customers. The adder must be totally rejected as contrary to law and contrary to sound public policy.

The OCA also addressed in detail the issues related to the retail market enhancement proposals included in PPL's proposed DSP II. See OCA M.B. at 33-67. The OCA submits that the modifications to these programs contained in its Main Brief will help ensure their success, while at the same time ensuring that important consumer protections are in place. Additionally, the OCA's modifications help ensure that a successful default service procurement can go forward. The parties opposed to the OCA's modifications at times point to the Commission's decisions regarding the FirstEnergy and PECO's Default Service Programs. The Commission has consistently recognized, however, the need to develop its decision on record evidence for the individual utility at issue. The OCA submits that its positions are fully reflective of substantial evidence adduced in this proceeding that reflects PPL's specific situation as well as the needs of the Company's customers and should be adopted.

For the reasons set forth in the OCA's Main Brief, and those detailed below in this Reply Brief, the OCA submits that the Company should be directed to amend its DSP II Plan as recommended by the OCA. The OCA further submits that its Main Brief provides a comprehensive statement of its positions, and the OCA will not repeat all of those arguments here. To the extent an argument is not addressed in this Reply Brief, the OCA relies on those positions already advanced in the OCA Main Brief. In this Reply Brief, the OCA will respond to specific arguments advanced by other parties, referring to relevant sections of its Main Brief as appropriate.

III. ARGUMENT

A. The Proposed Default Service Program

1. Class Procurements

a. Residential - Fixed Rate

i. Product Mixture

(a) OCA's Block and Spot Recommendation

In this case, the OCA recommended that the Company continue to use block energy purchases and spot market purchases when securing supply for its residential default service customers. OCA M.B. at 13-15. The OCA recognizes that the Commission has not adopted the use of block and spot products for the residential default service plans of the FirstEnergy Companies and PECO Energy Company in its recent Orders. Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of their Default Service Programs, Docket Nos. P-2011-2273650, *et al*, Order (Aug. 16, 2012) (FirstEnergy Order); Petition of PECO Energy Co. for Approval of its Default Service Program II, Docket No. P-2012-2283641, Order (Oct. 12, 2012) (PECO Order). The OCA will briefly address the arguments raised against the use of bloc and spot in this Reply Brief as those arguments are misplaced.

In its Main Brief, PPL argues that the OCA's proposal will: 1) require that the Company actively manage its procurements, 2) increase the likelihood of greater reconciliation adjustments, 3) further layer into reconciliation the risk of excess power being sold at a loss, and 4) cause the Company to incur additional DSP II costs. PPL M.B. at 22-24. The Company's arguments are misplaced and should not be adopted in this proceeding.

First, as Mr. Hahn explained in his Surrebuttal Testimony, he has not recommended active portfolio management, but rather a regularly scheduled procurement of standard products from competitive markets. OCA St. No. 1-S at 4. Mr. Hahn further explained:

> The product mix that I propose is 75% full requirement contracts and 25% block and spot, which is established in advance. The only adjustment that I propose includes a mechanical procedure to adjust the block sizes to reflect the latest actual shopping statistics at the time of each solicitation. This approach was successfully deployed by PECO Energy and the FirstEnergy Companies of Metropolitan Edison, Pennsylvania Electric, and Pennsylvania Power. There is no reason that PPL could not use a similar approach.

Id. Mr. Hahn continued:

> [S]everal Pennsylvania default service providers, including FirstEnergy, PECO Energy, Citizens / Wellsboro, and even PPL itself, have successfully used a procurement plan with block and spot products. Even if this approach did require monitoring and forecasting "market conditions", these companies have demonstrated that it can be easily done.

OCA St. No. 1-S at 4. The OCA's proposal here was not intended to require the Company to engage in active portfolio management or to engage in any additional procedures beyond what has been commonly used.

Second, regarding the likelihood of greater reconciliation, Mr. Hahn explained that reconciliations will continue to occur even if block and spot purchases are eliminated. OCA St. No. 1 at 10. As Mr. Hahn explained, it is not the use of block and spot products that introduces variability in the reconciliation process. Mr. Hahn testified:

> The Company does not need to forecast market conditions in deploying these products. Any forecast of spot market block prices that might be required for a short term projection of the Price to Compare ("PTC") can be obtained from futures markets, which offers several products for PJM electricity prices.

OCA St. No. 1 at 10-11. There was no evidence submitted in this proceeding that showed any impact on the reconciliation mechanism from the inclusion of the block and spot purchases as recommended by Mr. Hahn here.

Third, regarding the Company's position that Mr. Hahn's proposal will further layer into reconciliation the risk of excess power being sold at a loss (to the extent that actual default service load shapes do not match actual load shape and result in excess supplies), Mr. Hahn illustrated how using his approach with different levels of block purchases during peak hours can result in a more efficient procurement that more closely matches load. See OCA St. 1 at 11. Mr. Hahn also demonstrated that including block and spot purchases can produce savings, not costs as PPL asserts. OCA St. 1 at 10-11.

Finally, the Company's argument that additional costs would be necessary to employ persons with the expertise needed to implement Mr. Hahn's proposal is misplaced. As previously set forth, several default service providers have used similar procurement methods without claims of increased costs.

RESA also argues in its Main Brief that the use of block and spot supply contributes to a separation between default service rates and market prices. RESA M.B. at 21. This argument is also incorrect and is belied by RESA's own recommendations. Under the OCA's proposal, the block products and spot products are procured from the wholesale competitive markets on the same procurement schedules as the fixed price full requirements contracts. These purchases fully reflect the wholesale competitive markets. Indeed, RESA recommended consideration of the inclusion of spot market purchases by PPL in this proceeding to better reflect market prices if its proposals in the proceeding were not adopted. RESA M.B. at 20-21.

As OCA witness Mr. Hahn testified, a properly designed procurement plan should have a mix of products tied to various percentages of expected default service load. OCA St. No. 1 at 9. The OCA's proposal to include some block and spot procurement would achieve this goal.

While recognizing that the Commission has expressed concern with the use of block and spot for this procurement plan period, OCA witness Hahn also provided an alternative proposal.

(b) OCA's Alternative Procurement Proposal

If the Commission were to decide to eliminate the use of block and spot purchases, the OCA submits that the other recommendations made by Mr. Hahn should still be approved. Specifically, as set forth below, PPL's DSP II should still include: 1) quarterly procurements of 12-month assignable contracts that extend beyond May 31, 2015; 2) an aggregate supplier load cap of 50%; and 3) semi-annual PTC changes and rolling average reconciliations. Mr. Hahn's Exhibit OCA-RSH-1-S provides an overview of his procurement plan with block and spot products removed. As Mr. Hahn testified:

> The elimination of block and spot purchases would increase reliance on full requirements to 100%, but would not affect the remaining elements of my recommended procurement plan. I would still advocate for quarterly solicitations using 12-month assignable contracts that extend beyond May 31, 2015. I would still recommend an aggregate supplier load cap of 50%, and semi-annual PTC changes and rolling average reconciliations. DSP II will still have contracts that were signed in DSP I. The objective should still be to transition to quarterly procurements for 12-month contracts for approximately 25% of default service obligations. In order to successfully make this transition, the procurement percentages require adjustments over time.

OCA St. No. 1-S at 7. As explained above, the OCA submits that PPL's DSP II should contain spot and block supply products. If this recommendation is not adopted, the OCA submits that its alternative plan should be adopted.

(c) RESA Proposal

RESA proposed to modify PPL's portfolio mix to 12-month and 3-month fixed price, full requirements contracts where the percentage of 3-month priced contracts increases over time. RESA M.B. at 18. As Mr. Hahn explained, RESA's proposal will result in a situation where too much of the portfolio's power supplies are purchased at the same time, or purchases are made

too far in advance of the commencement of deliveries. OCA St. No. 1-R at 9. If the former, default service rates will have excessive volatility. If the latter, there will be excessive risk premiums included in default service rates. Id. Instead, as Mr. Hahn explained, layering and laddering of contracts with terms of 12 months procured quarterly will produce a default service power supply portfolio for residential customers that properly reflects market prices while achieving an appropriate level of price stability.

In its Main Brief, RESA asserted that the inclusion of quarterly procurements of 3-month supply contracts in PPL's residential default service portfolio will produce default service rates that more closely reflect underlying wholesale electricity costs which, in turn, will enable customers to reap the benefit of a more competitive retail market. RESA M.B. at 20-24. RESA further asserts that, in that robust competitive marketplace, customers can choose the product that provides the level of price certainty and predictability that meets their individual needs. Customers have different preferences when it comes to price certainty and predictability, i.e. the procurement plan should prioritize market responsiveness rather than price certainty. RESA M.B.at 23-24.

The OCA's submits that RESA's proposal to introduce 3 month supply contracts into PPL's procurement plan, will bring about considerable price instability for the customers who remain on default service, not price stability as called for in Act 129. The Act 129 Preamble states:

> It is in the public interest to...implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability...

Preamble to Act 129, cl. 2. Simply put, the Preamble calls for default service that reduces price instability, not default service that adds to it as RESA proposes. Moreover, Act 129 directs the

default service provider to meet the goals and obligations of the Act, not the retail competitive market as RESA argues. RESA's arguments must be rejected.

Another of RESA's arguments in favor of its proposal for three month contracts is that it is in accord with the Commission's recently issued RMI End State Proposal in which the Commission envisions that default service for residential customers will be supplied through 90-day FRCs. RESA M.B. at 19-20. RESA asserts that its proposal to utilize more three month contracts provides a reasonable transition to the end state the Commission is contemplating for 2015 and beyond. Id. The OCA submits that the use of three month contracts during the period of this procurement plan is not necessary or desirable regardless of the possible transition to a different default service model.

OCA witness Hahn also highlighted the differences between RESA's proposals here and in the DSP proceedings of PECO and FirstEnergy. Mr. Hahn testified as follows:

> In PECO's DSP II, Ms. Williams recommended a residential default service portfolio that includes 10% spot purchases and full requirements contracts with 12-month to 24-month terms, with all contracts terminating by May 31, 2015. In FE's DSP II, Ms. Williams accepted the 10% spot component, and recommended using more 12-month contracts and less 24-month contracts.

OCA St. No. 1-R at 10 (footnotes omitted). The Commission adopted RESA witnesses proposal for a mix of 12-month and 24-month contract terms in the FirstEnergy case and the Commission adopted PECO's proposed procurement plan rather than RESA's proposal. FirstEnergy Order at 25-26; PECO Order at 19-20. As Mr. Hahn concluded, in the instant proceeding, RESA is advocating much shorter contract lengths, which could lead to greater price volatility than what was proposed or accepted for FirstEnergy and PECO. Id.

The OCA submits that RESA's proposed procurement approach introduces unnecessary instability into the default service price that neither satisfies Act 129 nor is it needed to achieve a

strong competitive marketplace. RESA's proposal for increasing the percentage of three month contracts for residential default service should be rejected.

ii. Procurement Schedule

For DSP II, PPL has proposed to switch to semi-annual solicitations to procure default service power supplies instead of the quarterly solicitations deployed in DSP I. PPL M.B. at 26. According to the Company, procurement costs can be reduced if semi-annual solicitations are employed. Id. at 28. However, the OCA submits that quarterly solicitations should continue. As Mr. Hahn explained:

> The whole concept behind layering and laddering default service purchases is to spread out the timing of purchases throughout the year. Quarterly solicitations result in staggered procurements of approximately 25% of default service load at any one time. This allows the price of the total supply portfolio to better track current market trends while still maintaining a reasonable level of price stability. Quarterly solicitations have been shown to be effective in PPL's DSP I. They are neither difficult nor costly to implement.

OCA St. No. 1 at 12. The OCA submits that the use of quarterly procurements for the 12-month full requirements contracts should be continued in PPL's DSP II to continue the layering and laddering of the supply contracts.

iii. Wholesale Supplier Load Cap

No Reply Needed.

b. Small C&I - Fixed Rate

The OCA takes no position on this issue.

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

The OCA takes no position on this issue.

d. Contract Terms Beyond May 31, 2015

PPL has proposed to end all supply contracts on May 31, 2015, i.e., a "hard stop" of all contracts. PPL M.B. at 36-38. As a result, the Company's residential customers will be fully exposed to market conditions at the time of the procurements for the next default service period. Energy markets have been subject to volatility, and PPL's plan would fully expose customers to potentially dramatic rate increases on June 1, 2015. The proffered reason is that the Company may not continue as a default service provider after DSP-II has run its course. PPL St. 2 at 6. RESA supports PPL's proposal also arguing that there should be no contract overhang because there may be significant changes in the nature or procurement process for default service. RESA M.B. at 35-36. RESA and PPL also point to the Commission's December 16th RMI Order and RESA cites to the Commission's Order in FirstEnergy. PPL M.B. at 36; RESA M.B. at 36.

As Mr. Hahn explained, it would not be reasonable to have all contracts terminate on May 31, 2015 irrespective of whether PPL continues in the default service role. OCA St. No. 1 at 13. Specifically, Mr. Hahn testified that:

> If all DSP-II contracts do terminate by May 31, 2015, then some entity, either the Company or the replacement default service provider, would need to procure 100% default service power supplies for delivery commencing on June 1, 2015. The default service provider for DSP-III could then be faced with two choices. One would be to purchase a large amount of default service power supply on a given date, such as buying 100% of DSP-II power supplies on March 15, 2015 for delivery commencing on June 1, 2015. If market prices are high at that particular time, default service rates could be extremely high. The second option would be to commence buying tranches as much as a year in advance.

Id. Although market conditions are currently favorable, they may not be so favorable at the time of PPL's next default service filing, and customers could be exposed to dramatic price increases if purchases for 100% of default supply must become effective at one time. Moreover, the concern regarding the potential for a new default service model to be implemented in 2015 can

be readily addressed by making certain any overhanging contracts are assignable to a new default service provider if a new model is adopted. The OCA submits that with the energy markets subject to volatility at any time, a "hard stop" recommendation would fully expose customers to potentially dramatic rate increases on June 1, 2015.

The OCA further submits that arguments that rely on the Commission's December 16 Order to support a "hard stop" are misplaced. PPL M.B. at 36-38; RESA M.B. at 35-36. The express language of the Order makes clear that the Commission does not prohibit overhanging contracts. Rather, the Commission states:

> In consideration of the fact that the majority of commenters support the Commission's recommendation pertaining to energy contract durations, the Commission continues to recommend the following: (1) that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period;...

December 16 Final Order at 19 (emphasis added). The Commission recommends, but does not mandate, that EDCs limit or eliminate energy contracts that extend past the end date of the default service plan time period. The Commission's December 16 Order also expressly recognized that, "The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements." The OCA submits that the Company's "hard stop" procurement is not required under the Commission's Order.

RESA offers an additional argument in support of PPL's hard stop proposal in its Main Brief. RESA M.B. at 37. RESA notes the Commission's recent FirstEnergy DSP Order in which it did not adopt arguments to allow contracts to extend beyond the end of the default service period. Id. The OCA submits that the FirstEnergy case is distinguishable from the instant case. Here, PPL will continue to make purchases in 2014 and 2015 for DSP II, unlike

FirstEnergy. See OCA St. 1, Exh. OCA-RSH-3. Further, in a more recent case involving PECO Energy Company, the Commission approved the limited use of contracts that extended beyond the end of the default service period. PECO Order. In its Order in the PECO case, the Commission stated:

> We shall adopt PECO's procurement plan as recommended by the ALJ. We believe that PECO's use of laddered contracts of various durations creates a viable contingency plan that can be redesigned if changes in PECO's default service responsibility do arise. Further, with several of the procurements scheduled for 2014, we believe there is adequate time to address the continued use of contract terms longer than twelve or twenty-four months for default service.

PECO Order at 31.

The OCA submits that its recommendation to include a limited number of contracts that overhang May 31, 2015 should be adopted to provide the proper layering and laddering of supply and to avoid the potential for price spikes and volatility between default service periods.

e. AEPS Procurement

The OCA takes no position on this issue.

f. Administrative Costs and Cash Working Capital

PPL is making a provisional claim to recover cash working capital in its GSC-1 in the event that it is ordered to change its reconciliation method.[1] PPL M.B. at 43. The Company asserts that it has working capital needs of $54.3 million, which translates to an annual revenue requirement of about $7.5 million. As set forth in the OCA's Main Brief, and as testified to by OCA witness Hahn, PPL has not adequately demonstrated that it has a legitimate working capital need as the result of the provision of default service. As Mr. Hahn demonstrated, the

[1] As noted in the OCA's Main Brief, the Commission ruled on PPL' reconciliation proceedings at Docket Nos. M-2011-2243137 and C-2011-2245906 that led to this provisional claim. The Commission ruled in PPL's favor. In its Main Brief, PPL states that it is not yet withdrawing its claim because the Commission has opened a generic investigation into reconciliation mechanisms. The OCA will provide a response to PPL's substantive arguments since PPL continues to pursue this provisional claim.

assumptions in PPL's analysis were unsupported and failed to consider such things as the payment of late fees by customers. OCA St. No. 1 at 29.

Mr. Hahn also testified that if the Commission were to consider a cash working capital allowance for PPL, the appropriate return rate to use to determine the revenue requirement associated with a default service working capital requirement should be the Company's short-term cost of debt (estimated to be approximately 2% per annum), not its authorized cost of capital. OCA St. No. 1 at 29. In this case, when PPL's claim is adjusted to use the short term debts rate, the annual revenue requirement of PPL's proposed $54.3 million in working capital requirement would be $1.09 million, not $7.845 million. Id. If cash working capital is to be considered at all, its allowance should not unjustly enrich the Company.

In its Main Brief, the Company took issue with Mr. Hahn's position, namely: 1) that Mr. Hahn did not provide any basis to support his recommendation that any working capital allowance, if allowed, be based upon the Company's short-term cost of debt, rather than a weighted cost of debt and equity; 2) that Mr. Hahn's proposal would count short-term debt costs twice; 3) that late fees should not be included in any analysis of working capital needs. PPL M.B. at 44-45. These criticisms have previously been responded to by Mr. Hahn. As to use of the Company's short-term, Mr. Hahn responded:

> I did provide a basis to support my statement that the Company's default service working capital needs should be based upon the Company's short-term cost of debt. Namely, that the short-term cost of debt establishes the actual cost incurred by the Company in acquiring any working capital that might be needed for default service. Mr. Kleha does not appear to dispute this, but rather argues that use of a mix of debt and equity costs is a long-standing ratemaking practice in Pennsylvania. I do not dispute that a mix of debt and equity has been used to determine a working capital allowance in base rates, where companies are allowed to earn a profit. EDCs should not profit from the provision of reconcilable default service, so any default service working capital needs should be based upon actual costs (i.e., short-term debt) and not include any profits.

OCA St. No. 1-S at 9. Regarding the second criticism, Mr. Hahn testified:

> [M]y assessment of PPL's working capital request does not count short-term debt twice, as Mr. Kleha claims. I simply state that if the Company has legitimate working capital needs, it will engage in additional short-term borrowing to meet those needs. Short-term debt costs incurred to fund construction projects are separate and distinct from default service working capital needs, so there is no double counting in my proposal.

Id. Finally, in response to the last criticism, Mr. Hahn testified that:

> I provide a detailed calculation that shows that the timing of the actual collection of residential late fees causes PPL's actual revenues to exceed the cost of any funds that PPL may need to borrow for working capital. Whether or not some forecasted level of these fees is included in base rates, actual late fees collected will more than offset any working capital needs the Company may claim to have. I am not asking PPL to credit late fees in default service rates. I simply ask that the Company consider the timing and magnitude of these late fees when developing its case for working capital needs.

OCA St. No. 1-S at 8-9.

The OCA submits that PPL's provisional claim for cash working capital should be denied. If it is allowed, the cash working capital requirement should be properly calculated and the short term cost of debt should be used to establish the revenue requirement.

2. Time of Use Rate Option

a. Design

In its Main Brief, PPL proposes that its TOU program be approved as-filed as an interim, transitional measure. PPL M.B. at 75-91. The OCA proposed some minor modifications to PPL's proposal but was in general agreement with PPL's plan. OCA M.B. at 30-33. In its Main Brief, PPL supports its TOU program but provides an alternative if the Commission determines not to adopt PPL's approach. PPL recommends that a modified version of SEF's recommended "Easy TOU" program be further developed through a collaborative process. PPL. M.B. at 88.

The OCA continues to support the adoption of PPL's proposed TOU program with the minor modifications recommended by OCA witness Hahn. If an alternative program is to be developed, the OCA agrees with PPL that a collaborative process should be established to work on the implementation details of such a program.

B. Retail Market Enhancements and Customer Referral Programs

In this portion of its Reply Brief, the OCA addresses the Retail Market Enhancements related to PPL's proposed New and Moving Customer Program, Customer Referral Mailing, Opt-In Program, Standard Offer Referral Program, timing of program implementation, cost recovery and CAP customer participation in the programs. For a complete discussion of these issues, see OCA M.B. at 33-67. In the following sections, the OCA will respond to the arguments of the other parties as discussed in their Main Briefs.

1. New and Moving Customer Program

As stated in its Main Brief, page 35, the OCA supports PPL's proposal to participate in the working group comprised of electric distribution companies and other interested parties to develop appropriate call center scripts for residential and small business customers. PPL St. 4 at 13. The OCA does not take a position on RESA's proposal that PPL's program must have the ability to implement a "day-one switch." RESA St. 2-SR at 29; RESA M.B. at 55-57.

2. Customer Referral Mailing

PPL proposed a one-time "Customer Referral Mailing" in the second or third quarter of 2013 that would contain offer proposals from any EGS willing to participate and pay its share of the cost of the mailing. PPL St. 4 at 19-20. RESA proposed that the mailing be combined with an otherwise required educational mailing about customer choice and mailed no later than March 1, 2013. The OCA found RESA's proposal to be reasonable. OCA St. St. 2-R at 3. PPL does

not oppose the proposal but discussed, inter alia, reasons why – if its proposed timeline is altered – the mailing should not occur around the same time as the Opt In or Standard Offer Programs. PPL M.B. at 110; PPL St. 4-R at 21. Consistent with the OCA's position regarding PPL's proposed schedule for implementation of retail market enhancements, the OCA agrees with PPL. See OCA St. 2-S at 4-6; OCA M.B. at 57-60; see Investigation of Pennsylvania's Retail Electricity Market: Revised Schedule for Statewide Consumer Education Mailings, Docket No. I-2011-2237952, Order at 3 (June 21, 2012).

3. Opt-In Auction / Aggregation Program Design

The OCA made several recommendations regarding the Opt-In Program in the Testimonies of Barbara R. Alexander and Richard S. Hahn. Specifically, the OCA has made recommendations regarding eligibility for the program; the composition of the product offer; the customer participation cap; supplier participation load cap; customer options on product expiration and notice requirements; and structure of the Opt-In Program to better serve the goal of increasing customer interest in the retail market and to ensure that customers benefit as a result of the program. The OCA discusses its recommendations at pages 36-51 of its Main Brief and responds here to the issues raised by other parties in their Main Briefs about the issues. As noted therein, the OCA takes no position at this time, as to whether the Opt-In Program should use an auction format or an aggregation format. Under either approach, the OCA's recommendations set forth herein should be applied.

a. Customer Eligibility (Non-CAP)

Under PPL's plan, all residential customers would be eligible to participate in the Opt-In Program. PPL St. 4 at 21. This approach is also consistent with the Intermediate Work Plan Order. Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan,

Docket No. I-2011-2237952, Order at 42 (Mar. 2, 2012) (IWP Order). The OCA agrees that all residential customers, both default service and shopping customers, should be eligible to participate in the Opt-In Program. OCA St. 2-R at 9-10. The OCA agrees that the marketing materials for the program, however, should be specifically directed towards non-shopping customers as PPL has proposed. Id. RESA proposes that shopping customers should be ineligible to participate in the Opt-In Program. RESA M.B. at 64-67. The OCA submits that excluding shopping customers who otherwise hear of the program could be discriminatory and could result in customer dissatisfaction. See OCA M.B. at 38-40.

In its Main Brief, RESA has offered no reasons for preventing shopping customers from participating in the program that have not been addressed in the OCA's Main Brief and the IWP Order, FirstEnergy Order and PECO Order. RESA M.B. at 64-67; see OCA St. 2-R at 9-10; IWP Order at 42; FirstEnergy Order at 107; PECO Order at 86. The Commission succinctly responded to the problems with RESA's approach in its IWP Order and captured the importance of allowing all customers – shopping and non-shopping – to participate. The Commission stated:

> The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

IWP Order at 42. RESA's proposal should not be adopted.

b. Contract Length and Price of Product

PPL has proposed a six (6) month contract term for the Retail Opt-In Program. PPL St. 2 at 20. The OCA has typically recommended the use of a twelve month term for the Retail Opt-In

program with guaranteed savings for the 12-month term but recognized that, given the design of PPL's default service plan, it may be possible to guarantee more robust customer savings during the entire contract term with a six-month term as proposed by PPL,. OCA St. 2 at 11-12; OCA M.B. at 40-41. The OCA submits that PPL's use of semi-annual adjustments ties nicely to a six-month term with 6-month guaranteed savings. If the PTC semi-annual adjustment and the Opt-In Program term are aligned, the savings can be guaranteed for six months. Id. FES is not opposed to guaranteed savings, but does not believe they are necessary for customers to benefit from the Opt-In Program over a 12-month term. FES St. 1-R at 25; FES M.B. at 46. RESA has indicated unwillingness to guarantee savings because, it argues, it would expose the EGSs to unreasonable risk. RESA St. 2-R at 8; RESA M.B. at 75. This argument should be rejected because it suggests that the purpose of the market enhancement program is to guarantee an EGS a profit during the contract term and not a program that is designed to ensure customer benefits. OCA St. 4-S at 4-5.

As discussed in the OCA's Main Brief, pages 40 to 43, the OCA's guaranteed savings proposal is intended to ensure that customers have a positive experience and that actual savings that appear to be promised to engage the customer to enroll in the program are, in fact, delivered for the entire contract term. With PPL's proposed semi-annual adjustments and the timing of its retail opt-in program, the potential exists to design a program that can provide guaranteed savings to customers for the six month term.[2] The OCA recommends adoption of an approach that will deliver the savings promised to the customer. The OCA has submitted substantial evidence on this issue, and for the all the reasons stated above and in the OCA's Main Brief, the

[2] In the FirstEnergy Order, the Commission adopted an opt-in program design that called for a discount of 5% off of the PTC at the time of enrollment for 4 months followed by an 8 month fixed price product. FirstEnergy Order at 117-18. The FirstEnergy Company's DSP program was structured differently than PPL's in that the FirstEnergy Plan called for quarterly adjustments to the PTC.

OCA respectfully requests the Commission to adopt the OCA's recommendations as to the product offer for the Opt-In Program.

c. Key Terms and Conditions

The OCA recommends that the key terms and conditions of service, including price, be disclosed to the customer prior to enrollment in the program. See OCA M.B. at 43-44. The timing of this and all retail enhancements is discussed in Section III.B.5, *infra*. As to the substance, however, the OCA submits that customers participating in a retail opt-in auction should have the same information as customers in the retail competitive market. OCA St. No. 2-R at 8. FES also supports providing customers with full information, arguing that:

> A customer must know the price of the product they are asked to purchase. . . In the sequence recommended by the Commission and proposed by PPL Electric, a customer will know the term, price and supplier – all the information the customer would know if making a traditional choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best.

FES M.B. at 53; see also OCA St. 2-R at 6, OCA St. 2-S at 2.

The OCA submits that even if more EGSs participate in the program, the likelihood is that fewer customers would accept the offer if they do not know the pricing terms. This would defeat the purpose of the Opt-In Program. PPL should provide to the customer in advance of enrollment all key terms and conditions, including price.

d. Customer Participation Cap

PPL's Opt-In Program proposal includes a 50% customer participation cap for Residential non-shopping (Default Service) customers. See PPL M.B. at 111, PPL St. 4 at 21. PPL and RESA support this proposal in their Main Briefs. PPL M.B. at 118; RESA M.B. at 72. The OCA submits that the maximum number of customers authorized to enroll in the program should be limited to no more than 20% of the total number of non-shopping customers. The

OCA proposes to set the customer participation cap at 20% for the Program to mitigate the volumetric risk for wholesale suppliers of default service power related to this unique, first of its kind program. See OCA St. 1 at 18-19. The OCA more fully discusses this issue at pages 44 to 47 of its Main Brief. In the following section, the OCA will respond to the arguments of the other parties on this issue.

RESA argues that the OCA is attempting to impose a limit that would lead to the rejection of customers who want to participate in the Opt-In Program. RESA M.B. at 72. PPL similarly argues that it would prefer not to have to turn customers away because the program is full. PPL M.B. at 118. Contrary to the implications of these arguments, the OCA is not attempting to limit the number of customers who can participate in the retail market for generation service. The OCA is recommending a pragmatic, reasoned approach for this unique, untested program that should enable a successful Opt-In Program. OCA witness Alexander summarized OCA's concern as follows:

> This program should limit enrollment to 20% of residential default service customers. My position is not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-In Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself.

OCA St. No. 2 at 10-11.

RESA also argues that the size of the enrollment cap has nothing to do with the one-time nature of the program. RESA M.B. at 72. The OCA disagrees: this is a unique program

designed to move a large number of customers into the competitive market at one time. OCA witness Hahn expressed his concern regarding the 50% customer participation cap:

> Competitive suppliers that bid to supply default service will need to assess the risk that up to half of the default service load that they win the right to supply will be taken away from them after they have finalized their prices. Accounting for this risk will require these suppliers to raise their prices through additional risk premiums.

OCA St. 1 at 18-19. OCA witness Hahn concluded that a 20% customer participation cap is essential to reducing the volumetric risk that the Opt-In Auction Program poses to default service suppliers. See OCA St. 1 at 20.

As discussed in OCA's Main Brief and above, the OCA has proposed the 20% cap in order to provide both a reasonable platform for success and to ensure that default service is not harmed. The OCA submits that the combination of current migration levels along with a 20% participation level should result in very robust overall shopping numbers, while still mitigating unnecessary premiums for default service.

e. Customer Options on Product Expiration and Notice Requirements

PPL has proposed that customers remain with their EGS at the end of the Opt-In Program. PPL St. 4 at 23; PPL St. 4-R at 23. The OCA submits, however, that if a customer does not affirmatively select a pricing product, the customer should remain with the EGS but be placed on a fixed price, month-to-month product without any penalties or fees. OCA M.B. at 48-49; OCA St. 2 at 13-14. The OCA recommends that three notices be provided to customers prior to the end of the Opt-In Program – one from the EDC stating that the program is coming to an end and two from the EGSs as required by the Commission's regulations. OCA M.B. at 49-50; OCA St. 2 at 12-13.

In response to both OCA proposals, PPL argues that customers in the Opt-In Program should not be given additional protections just because this program might be their first experience with shopping. PPL M.B. at 119. The OCA submits that there is an important distinction between this program and customers responding to a typical direct mail solicitation. This is a program that is being implemented by PPL and approved by the Commission. OCA St. 2 at 13. It will be presented to customers with these representations to encourage their participation. Therefore, it is appropriate and necessary that there be additional safeguards at the conclusion of the Program beyond those afforded to other shopping customers.

Due to the special nature of this Opt-In Program, customers should be clearly informed that the program is coming to an end. OCA St. 2 at 13. PPL should be involved in the end-of-contract notice because it is the sponsor of the program. The purpose of the Opt-In Program is to create a positive experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS.

In the OCA's view, these protections are important consumer safeguards and should be ordered by the Commission in this matter.

4. EGS Standard Offer Program.

In the following sections, the OCA will respond to the arguments of the other parties as found in their Main Briefs.

a. Customer Eligibility (non-CAP)

PPL proposes that its Standard Offer Customer Referral Program target residential default service (excluding CAP) customers, but be open to shopping customers as well. PPL M.B. at 122. The OCA agrees that all residential customers should be eligible. OCA St. 2 at 17.

In its Main Brief, RESA agrees that it is not necessary to explicitly prohibit shopping customers from participating if PPL does not affirmatively offer this program to a shopping customer unless asked. RESA M.B. at 76. Accordingly, the matter of shopping customer participation in the Standard Offer Program, as PPL proposes to implement it, is not contested by any party.

The OCA will discuss issues relating to which customer callers should be affirmatively informed of the program in Section III.B.4.d, below.

b. Contract Length and Price of Product

PPL proposes a 6-month term and that the offer be a fixed price of 7% below the PTC at the time of customer enrollment. PPL M.B. at 122; PPL St. 4 at 26-27. Dominion and FES recommend a 12-month contract. Dominion M.B. at 19; FES M.B. at 54. The OCA and RESA both recommend a 4-month introductory offer.[3] OCA M.B. at 53-54; RESA M.B. at 73-74. OCA witness Alexander explained her concerns with PPL's proposal:

> With monthly enrollments coupled with PPL's proposal for a six-month PTC, a customer could enroll during the 5th month of the current PTC and pay a higher price for the Referral program contract if the PTC is lower in the next month, thus eliminating all or some of the 7% discount for the remaining term.

OCA St. 2 at 17. Whatever the contract term, Ms. Alexander recommended that the program should guarantee the discount off the PTC during the entire term. Id.

RESA argues that a mandate for guaranteed savings would deter EGS participation because the EGSs cannot hedge effectively against changes in the PTC and, particularly, large fluctuations caused by the reconciliation process. RESA M.B. at 74-75. RESA's position assumes that the purpose of the market enhancement program is to guarantee an EGS a profit

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[3] RESA also states that a 6-month term with the semi-annual PTC change proposed by PPL would not be "unworkable" although RESA does not support PPL's proposal to change from a quarterly-changing PTC to a semi-annually changing PTC. RESA M.B. at 74, n. 303; RESA St. 2-SR at 30.

during the contract term. Instead, the Standard Offer Referral Program should be designed to ensure customer benefits.

Dominion agrees that "[t]he objective should be to create a positive experience with shopping to incent the customer to stay with an EGS," but suggests that customers will benefit from stability and certainty of a longer, 12-month contract term. Dominion M.B. at 54. The OCA submits that a positive experience is best achieved by ensuring that customers actually receive the price reduction they are led to believe they will achieve for enrolling in the program. OCA St. 2S at 6.

In its Main Brief, RESA also argues that the offers for the Opt-In and Standard Offer Programs should be "as consistent as possible" and, specifically, that the Commission should consider decreasing the Standard Offer Program discount from 7% to 5%. RESA M.B. at 74. RESA goes further to state that without this consistency, customers might be confused. Id. By that logic, the Opt-In program discount could be raised to 7% with a $50 bonus rather than the opposite. RESA's proposal to reduce customers' savings is not the way to avoid customer confusion. Rather, the way to avoid customer confusion is to assure that the Opt-In Program and Standard Offer programs are not overlapping in time. See Section III.B.5, *infra*.

As discussed herein and in the OCA's Main Brief, pages 53 to 54, the OCA's objective is to allow customers to experience the competitive retail market, but to enable that experience to be positive by producing savings. The OCA submits that for the reasons stated above and in its Main Brief, an "introductory period" with a guaranteed discount off the PTC should be adopted for the Standard Offer Program.

c. Customer Options Upon Product Expiration.

PPL, RESA and FES propose that if a customer does not affirmatively choose to receive service from a different EGS or elect default service after receiving the required notices, the customer will remain with the Standard Offer Supplier on a month-to-month contract. PPL M.B. at 126; RESA M.B. at 78-79; FES M.B. at 54-55. PPL and RESA aver that these customers should be treated no differently than other shopping customers. PPL M.B. at 126; RESA M.B. at 79. The OCA submits, though, that these customers have not entered the retail market in the same way as other shopping customers. Moreover, they are being presented with this offer over the telephone without the opportunity to review printed materials or consider all their options prior to making this selection. Id. Also, a large percentage of customer calls to PPL will be from new/moving customers who are calling for a purpose unrelated to Choice. Id. For all of these reasons, these customers are different from other shopping customers.

d. Types of Customer Calls Eligible for Presentation of Referral Program.

PPL adopts the Commission's guidelines that Standard Offer Program be presented during customer contacts to the EDC call centers, "other than calls for emergencies, terminations or similar circumstances where it might be deemed inappropriate" including high bill calls after the customer concerns are satisfied. PPL M.B. at 123, 127. RESA witness Kallaher agreed with PPL's proposal. RESA M.B. at 76-77. The OCA proposes that the Standard Offer Program be offered only during calls in which the customer is seeking to "establish service, transfer service to a new location, or is specifically seeking to discuss customer choice and/or the referral program." OCA St. 2-S at 7; OCA M.B. at 56-57. OCA witness Alexander testified:

> An approach that would require PPL to market the Customer Referral program to customers who call relating to their bills, credit and collection issues, reliability of service, or other calls unrelated to customer choice may result in a degradation of

essential consumer protections, as well as increase PPL's costs. Customers should be assured that the service and concern that they initiated relating to their PPL bill or PPL's customer service will be handled with a high priority and without delays.

OCA St. 2 at 17.

The OCA addresses this issue more fully at pages 56 to 57 of its Main Brief. Nothing contained in PPL's or RESA's Main Briefs has caused the OCA to reconsider, nor requires the OCA to submit a further reply here on the topic.

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

PPL proposes the following timeline for the three major retail market enhancements proposed in this proceeding and the New/Moving Customer program directed by the Commission in the IWP Order.

1. Implement the New/Moving Customer program scripts and a New Customer Welcome Package in the third quarter of 2012.
2. Undertake a Customer Referral Mailing in the second or third quarter of 2013
3. Undertake the Opt-In Auction in late November/early December 2013.
4. Initiate the ongoing Standard Offer Referral Program in mid-2014.

PPL St. 4-R at 12. The OCA agrees with the overall timing of these initiatives. OCA M.B. at 57-60.

In its Main Brief, RESA recommends that the Opt-In Program and the Standard Offer Program commence at the same time. RESA M.B. at 79-85. FES suggests that the Standard Offer Program could even be implemented before the Opt-In Program. FES M.B. at 56; FES St. 1 at 23. The OCA agrees with PPL that the Standard Offer Program be implemented only after the conclusion of the Opt-In Program. OCA M.B. at 57-60; OCA St. 2-R at 11-12. Overlapping programs could create customer confusion and the potential for adverse comparisons to the

prices and terms of service associated with the various options, thus threatening the overall intent to stimulate interest in retail choice. Id.; see also PPL M.B. at 129-130.

RESA argues, in the alternative, that if the Commission is concerned that customers could be confused about "dueling offers," it may be appropriate to suspend this part of the Standard Offer Program during the month that the Opt-In program is outstanding. RESA M.B. at 85. PPL's witness Krall has explained, however, that programming changes are necessary to its customer information and billing systems, before the Standard Offer Program rolled out, to prevent customer confusion and enrollment and billing errors. PPL M.B. at 131; PPL St. 4 at 31; PPL St. 4-R at 15, 18.

FES argues that there will be no more confusion for customers in distinguishing between the Retail Enhancement programs than for a customer to compare any two retail offers in the competitive market. FES M.B. at 56. These offers are different, however, because the program is approved by the Commission and implemented by the EDC.

The OCA fully addresses the timing issue at pages 57 to 60 of its Main Brief. Nothing contained in RESA's or FES's Main Briefs has caused the OCA to reconsider its position, nor requires the OCA to submit a further reply here on the topic.

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

The Commission has consistently held that the costs of the Retail Market Enhancement Programs should be recovered from EGSs, given that EGSs are the entities reaping the possible customer acquisition benefits resulting from the programs. IWP Order at 78; FirstEnergy Order at 136-37; PECO Order at 148. The Commission stated in the most recent DSP proceeding:

> our position articulated in the [IWP] Order was and continues to be that EGSs should be responsible for these costs.

PECO Order at 148; see also FirstEnergy Order at 136-37.

PPL agrees that all direct, assignable costs of the Opt-In and Standard Offer Programs should be recovered from the EGSs. PPL M.B. at 136. PPL argues, however, that costs that cannot be directly assigned or of which the EGSs fail to pay their full share must be recoverable – and proposes to recover them from customers. Id. at 136-37. RESA, FES and Dominion generally recommend that some or all costs of the Retail Enhancement Programs should be borne by customers. RESA M.B. at 91-93; Dominion M.B. at 20-21; FES M.B. at 57-62.

Consistent with the Commission's position and for the reasons discussed below and in the OCA's Main Brief, the OCA opposes any cost recovery proposals that would impose retail enhancement costs on customers rather than the EGSs. OCA M.B. at 60-64; see also CAUSE-PA M.B. at 15; PPLICA M.B. at 19-21. The Programs are a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market and should, therefore, be paid for by the EGSs.

a. Retail Opt-In Program

In its filing, PPL proposed that pre-auction costs will be shared equally among participating EGSs and that post-auction costs will be shared on a pro rata basis among those EGSs who secure load through the auction. PPL M.B. at 132; PPL St. 4-R at 19. If no EGSs participate, however, PPL proposes to spread the pre-auction costs – close to $1 million – to all customers through a new rider that was proposed in a pending PPL distribution base rate case filed on March 30, 2012. PPL M.B. at 132; PPL St. 4 at 23-24; OCA St. 2 at 14, n.6. OCA witness Alexander recommended that PPL's proposed cost recovery for pre-auction costs be rejected. Ms. Alexander testified:

> As with the post-Auction costs, these pre-Auction costs are being undertaken by the regulated distribution utility to support market enhancements that benefit

> EGSs and that allow EGSs to avoid marketing costs. Such costs should all be borne by the EGSs that participate in the program and that stand to gain customers from the program.

OCA M.B. at 61; OCA St. 2 at 14.

In its Main Brief, PPL also discusses an alternative proposal to operate an Opt-In Aggregation Program that would not involve an auction process. PPL M.B. at 133. Under this alternative, PPL proposes that all costs would be borne by the EGSs. Id.; PPL St. 4-SR at 9. The OCA, thus, does not oppose PPL's cost recovery proposal for an Opt-In Aggregation Program.

The EGS parties primarily recommend that all costs of an Opt-In Auction Program should be recovered from Default Service customers but, in the alternative, recommend that all customers pay the costs of the Opt-In Program through a non-bypassable surcharge.[4] FES St. 1 at 19-20; Dominion St. 1 at 9; RESA St. 2 at 27-28. If the Commission adopts an Opt-In Aggregation Program, Dominion recommends that customers be required to bear "at least some portion of the costs." Dominion M.B. at 21. The common argument by the EGS parties is that PPL customers should be responsible for the costs because they will benefit from a robust retail electricity market and from the opportunity these programs provide for a "safe" shopping opportunity. RESA M.B. at 91-92; Dominion M.B. at 21; FES M.B. at 57. For the reasons stated by the Commission in the IWP Order, the OCA disagrees. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs, and as such, should be responsible for the costs.

Moreover, as discussed in the OCA's Main Brief, the costs associated with these retail market "enhancements" differ from those incurred and paid for by all customers to implement

[4] RESA proposes an adder to the default service rate to recover, among other costs, the costs associated with implementing and maintaining the Opt-In Auction and Referral Program. The OCA recommends rejection of this adder, for the reasons discussed in Section III.C.2, *infra*, and the OCA's Main Brief at 67-73.

the basic requirements for a retail competitive market. OCA St. 2-R at 14-15. Ms. Alexander explained:

> The costs that PPL and the other EDCs will incur to implement the Opt-In Auction and Referral Programs are not necessary to implement retail choice. The Competition Act does not mandate these programs. The costs associated with these programs are significantly different from the costs that Pennsylvania electric customers have already paid to support the EDC's implementation of billing changes, customer education programs, and electronic data exchange protocols so that customers can switch to an EGS and receive bills from the EDC or the EGS that include EGS charges. Rather, the Opt-in Auction and Customer Referral Programs are "enhancements" that are intended to expand the current level of retail competition that already exists. Therefore, it would not be reasonable to view the costs associated with these "enhancements" as similar to those incurred and paid for by all customers to implement the basic requirements for a retail competitive market.

OCA St. 2-R at 14-15.

In summary, the OCA submits that the EGSs have not demonstrated any good cause to deviate from the Commission's prior orders on this issue. OCA M.B. at 62-63; CAUSE-PA M.B. at 15; PPLICA M.B. at 20-21. The OCA submits that the costs of the Opt-In Program should be recovered from participating EGSs (or from all EGSs via a POR discount if there are no participating EGSs).

b. Standard Offer Program

As discussed on page 135 of its Main Brief, PPL proposes that all non-capital costs of implementing and administering the Standard Offer Program be recovered from the participating EGSs on a pro rata basis, including training and customer communications costs. Service representative call time and capital costs to modify the Company's customer information and billing system would be recovered from customers through a future base rate proceeding. PPL M.B. at 135; PPL St. 4-R at 35, 44. PPL estimates that these capital costs will be $3 million. OCA St. 2 at 16. Dominion supports PPL's cost recovery proposal as reasonable. Dominion

M.B. at 21. FES would prefer that all customers eligible to participate bear the costs of the Standard Offer Program but, in light of the Commission's position in the prior DSP cases, believes that PPL's proposal is a reasonable cost-sharing mechanism between EGSs and customers. FES M.B. at 61.

As with PPL's proposal that customers pay pre-auction costs for the Opt-In Auction Program, PPL's proposal to recover the costs of the Standard Offer Program from customers is not consistent with the IWP Order. OCA M.B. at 63-64. The IWP Order stated:

> As for the costs of the Retail Opt-In Auctions, we agree with UGIES and OCA the bulk of the costs, including costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs. We also find that PECO's proposal to recover program costs through the discount on the POR appears to be acceptable.

IWP Order at 32. As noted above, the Commission reaffirmed in the FirstEnergy Order and recent PECO Order that EGSs should be responsible for retail enhancement program costs. Consistent with those decisions, the OCA and CAUSE-PA oppose PPL's proposal to recover referral program costs from customers. OCA M.B. at 63-64; CAUSE-PA M.B. at 15.

RESA opposes PPL's cost recovery proposal for costs related to the Standard Offer Program because it would not recover all costs from Default Service or, alternatively, all customers. RESA M.B. at 91-92. RESA acknowledges that EGSs will benefit "to some degree" if they obtain a certain amount of customers through the program, but argues that the main justification for the retail market enhancements is the benefits they will make available to all customers. RESA M.B. at 92. RESA equates the costs at issue to the original restructuring costs that were borne by all customers. Id. This position was refuted by the testimony of OCA witness Alexander, which was quoted above. The costs at issue are neither necessary nor mandated to implement the basic requirements for a retail competitive market. By definition,

they are intended to expand the market share of EGSs. OCA St. 2R at 14-15. Moreover, Ms. Alexander pointed out that customers have *already paid* the significant costs of setting up a competitive market. Id.; see also CAUSE-PA M.B. at 15. It is not reasonable to require them to pay for programs that are intended to increase the marketers' scale in the existing retail market. See RESA St. 2 at 30.

The OCA submits that PPL and RESA have failed to provide evidence to justify a cost recovery mechanism different from that recommended in the IWP Order.

The OCA takes no specific position on which form of cost recovery is utilized, as long as the costs are recovered from EGSs as recommended in the IWP Order and subsequent DSP orders by the Commission. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs and as such, should be responsible for the costs.

7. CAP Customer Participation in the Retail Market Enhancements

In its Main Brief, PPL stated that it has concerns about allowing CAP customers to participate in the Opt-In Program and Standard Offer Programs. Specifically, PPL stated:

> [A]fter learning, through responses to discovery, that 73% of the Company's OnTrack participants who receive competitive supply were being charged a price higher than the PTC, the Company explored the implications of this result. The Company is concerned that such a large number of "ineffective" shoppers may signal that CAP customers' shopping decisions are increasing the program costs borne by non-CAP residential customers. Further, because OnTrack customers bear the burden of bill increases from shopping above $10 per month under the billing protocols, this could result in increased defaults under the OnTrack program and removal of customers from OnTrack because they have exceeded their annual maximum limit of CAP credits. If these concerns are demonstrated to be a long-term issue with OnTrack customers, them the policy objectives of CAP, explained above, will not be met.
>
> The Company emphasizes that it has not reached a definitive conclusion that OnTrack customers are making decisions that increase costs to non-CAP customers, or that are resulting in increased OnTrack program defaults. However, OnTrack customers receive many offers, such as inducements for airline miles, gift cards and other benefits. If these benefits are offered in exchange for higher

EGS prices, non-CAP customers who pay the cost of OnTrack shortfalls pay the cost of higher prices but do not receive the benefit of these other inducements.

PPL M.B. at 139-140 (citations omitted); PPL St. 4-SR at 14; Tr. 105-06. Based on these concerns, PPL recommends that CAP customers be permitted to participate in the Opt-In and Standard Offer Programs but PPL would not market the programs to them until there has been further examination – either in the CAP working group in the RMI investigation proceeding or PPL's next universal services program review – of whether shopping by CAP customers produces net benefits for CAP and non-CAP customers. PPL M.B. at 140; PPL St. 4-RJ at 2. The OCA agrees that the issue of CAP customer participation should be referred to the RMI universal service subgroup for further analysis and consideration. In the interim, however, the OCA submits that CAP customers should not be permitted to enroll in the Opt-In or Standard Offer Programs for all of the reasons set forth in the OCA's Main Brief at pages 64 to 67.

In its Main Brief, RESA argues that CAP customers should not be prevented from taking advantage of opportunities to save money on their bills. RESA M.B. at 95. RESA's position does not address the evidence presented in this proceeding that the great majority of CAP customers being served by an EGS are paying higher-than PTC prices. See CAUSE-PA St. 1 at 16, App. B.

RESA also argues that a re-design of the CAP program would address concerns raised by CAUSE-PA regarding the complications of applying a set percentage-off program to PPL's existing CAP program. RESA M.B. at 94-95. In the meantime, RESA argues that the complications can be addressed by increasing efforts to educate low income customers so they fully understand their options and how those options interface with the CAP program. Id. at 95. As CAUSE-PA explained in detail, however, application of a fixed discount to CAP customers' bills is "complex to a degree which renders informed shopping virtually impossible." CAUSE-

PA M.B. at 17; CAUSE-PA Cross Examination Exhibit # 6. Further, OCA witness Alexander discussed the outstanding questions regarding the cost effectiveness of allowing CAP customers to participate in the retail enhancement programs. OCA St. 2 at 14-15, 19. Ms. Alexander testified:

> First, it is important to determine the results of allowing CAP customers to shop and select an EGS in terms of their ability to afford essential electric service from PPL and the costs associated with the implementation of that program. Second, a significant expansion of CAP customer enrollments through the Opt-in Auction and the Referral Programs will increase administrative costs because of the manual nature of the transactions and the monitoring that PPL is required to undertake pursuant to the settlement that approved shopping for CAP customers. These costs should be estimated and identified prior to a final decision on whether it is cost effective and reasonable to rely on the prior approval to determine the policy in these two retail market enhancement programs.

Id. at 14-15. The OCA's concerns about cost effectiveness are echoed by PPL witness Krall, who stated:

> Since learning, through its response to discovery, that 73% of the Company's OnTrack participants who receive competitive supply were being charged a price that is higher than the PTC, the Company has been exploring the implications of this shopping result. The Company is concerned that the large numbers of "ineffective shoppers" may result in a net increase in program costs and burden to other non-CAP ratepayers that could otherwise be avoided. Mr. Kallaher's suggestion of "standardized" CAP benefits could exacerbate this concern. Further, the billing protocols described above, or some type of "statewide standard" CAP benefit, may cause an "ineffective shopper's" OnTrack payment amount to be increased, and this can result in increased defaults from the program and removal of customers from OnTrack because they have exceeded their annual maximum limit of CAP credits.

PPL St. 4-S at 14-15. Mr. Krall also noted that RESA's proposed education efforts bear on the broader issue of CAP shopping generally. He stated:

> [A]lternatives such as "monitoring" for predatory price schemes or education efforts, as suggested by Mr. Kallaher, whose aim would be to direct OnTrack customers to lower priced EGSs or back to default service, to minimize program costs and avoid CAP program defaults, raise concerns regarding potential impacts on the competitive retail market. Such alternatives need to be more fully evaluated than can be accomplished in the context of this proceeding. This

> problem relates to the broad issue of OnTrack customers shopping and, as stated earlier, the Company does not believe that this is the appropriate proceeding in which to address this issue. As a practical matter, the Company does not, at this time, have enough understanding of the problem, its implications, and potential solutions to propose a course of action. The Company believes that its next Universal Services review (scheduled for 2013) and the sub-group working within the context of the Retail Markets Investigation to address universal services issues are more appropriate places to address this issue. However, the Company is concerned that encouraging additional shopping among the OnTrack population at this time may be unwise given the problems that have been identified.

PPL St. 4-S at 14-15.

For all of these reasons, and as discussed in the OCA's Main Brief on pages 64 to 67, the OCA submits that RESA's objections to PPL's proposal should be rejected and the issue of CAP customer participation should be referred to the RMI universal service subgroup for further analysis and consideration.

C. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

The OCA takes no position on this issue.

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

a. RESA's Proposal for a Separate Charge Should be Rejected

In its Main Brief, RESA proposes that a separate charge be implemented by PPL which would only apply to default service customers to pay for the costs if implementing the retail market enhancements and to cover unspecified unrecovered costs of default service. RESA also proposes that PPL be permitted to retain a share of these sums before then returning any remaining amount to all customers, shopping and non-shopping. RESA M.B. at 97-102. As it discussed in its Main Brief, the OCA is strongly opposed to RESA's proposal that, if it were to be implemented, would result in the Company collecting an additional $49 million per year from default service customers over the two-year period. OCA M.B. at 67-73. After paying for the

costs of the retail market enhancements PPL would also receive approximately $4.6 million per year in higher profits. OCA St. 1-R at 7.

A number of parties, including the Company, oppose RESA's proposal. See PPL M.B. at 144-45, PPLICA M.B. at 22-24. The OCA submits that the adder is in conflict with the Public Utility Code in several respects, particularly since the Company will receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge. See PPL M.B. at 144; PPLICA M.B. at 23. The proposed adder would also impact shopping customers in the Companies' service territories, and an artificially inflated default service rate will result in increased EGS' charges for consumers who accept a percent-off-the-default price offering.

There are numerous reasons why RESA's adder must be rejected. First, a plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred." 66 Pa.C.S. § 2807(e)(3.9); see also Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985); Cohen v. Pa. P.U.C., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983); Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997). The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory "costs," such as RESA's proposed adder, are precluded from consideration in the rates that utility customers pay.

Additionally, the fact that RESA's proposal includes a potential profit handed over to PPL that might be tied to whether or not EGSs are successful in obtaining new customers is inappropriate and cannot be justified. PPL is providing statutorily required Default Service and will recover all of its costs on a reconcilable, dollar for dollar basis. PPL testified that it will be

recovering all of its costs for this DSP period and that RESA's proposal should not be adopted.

PPL St. No. 1-R at 14. Specifically, Ms. Yeager testified:

> [I]t is PPL Electric's opinion that all costs of providing default service have been unbundled. Second, in response to Witness Kallaher's proposal for a 5 mills/kWh that would apply only to default service, PPL Electric already includes verifiable costs related to providing default service that have otherwise not been collected by the Company through the administrative charge as a component of the GSC. Also, the Company proposed in its March 2012 distribution rate case filing a Competitive Enhancement Rider which would be reconcilable and applied on a per customer basis to recover non-capital costs associated with consumer education, actions undertaken in response to the Retail Markets Investigation and other activities of a similar nature.

Id at 14-15. See also, PPL M.B. at 144. Ms. Yeager, therefore, concluded that:

> [T]he Company does not agree with witness Kallaher's proposal for a 5 mill charge as an "adder" to collect costs associated with the recovery of DSP-5 related costs. In the Company's judgment, it will have no costs to be recovered through the proposed 5 mill/kWh charge. As a result, the proposal will simply increase default service charges to provide decreases to distribution charges.

PPL St. No. 1-R at 15.

OSBA witness Knecht also opposed Mr. Kallaher's proposal as he testified:

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

OSBA St. No. 2 at 13.

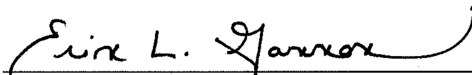
Especially troubling is that although the PTC adder will apply only to default service customers under RESA's proposal, any remaining balance after payment of retail program costs and 'uncollected' default service costs would be refunded to a much larger, different group of customers – distribution customers, including those shopping with an EGS. Thus, RESA's proposal would result in cross-subsidization of shopping customers by default service customers.

For these reasons, and those detailed in its Main Brief, the OCA submits that RESA failed to carry its evidentiary burden as to its proposed 5 mil/kWh adder. There is no support for the adder in the Public Utility Code or the controlling case law in Pennsylvania. As such, the OCA submits that the proposal must be rejected.

## IV. CONCLUSION

For the reasons detailed in this Reply Brief, and those contained in the OCA's Main Brief, the OCA submits that the Company should be directed to modify its default service plan, consistent with the recommendations of the OCA. The OCA's proposed modifications are needed to ensure that default service is provided through a prudent mix of contracts designed to be the least cost to customers over time, recognizing the benefits of price stability, and without any unjustified profit adders. The OCA also submits that the OCA's proposed modifications to the competitive enhancement programs should be adopted to further ensure that retail competition continues to grow in the Company's service territory through successful retail enhancement programs. The OCA respectfully requests that its positions on the issues addressed in its Main Brief and this Reply Brief be adopted.

Respectfully submitted,



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DATE: October 22, 2012
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# APPENDIX A:

## OCA Proposed Findings of Fact and Conclusions of Law

## OCA PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Findings of Fact**

1. Block and spot purchases have been demonstrated to work effectively as part of a least cost procurement plan. OCA St. 1 at 9-10.
2. Shaped blocks with a base amount during all hours plus additional blocks during winter peak hours and summer peak hours will better follow the actual hourly loads and reduce on-peak purchases. OCA St. 1 at 9, 11.
3. Reconciliations will occur even if block and spot purchases are eliminated. OCA St. 1 at 10.
4. If all DSP-II contracts do terminate by May 31, 2015, then some entity, either the Company or the replacement default service provider, would need to procure 100% default service power supplies for delivery commencing on June 1, 2015. OCA St. 1 at 13-14. Whether the default service provider purchases a large amount of default service power supply on a given date or commences buying tranches as much as a year in advance, it is likely that default service costs would be increased. Id.
5. A twelve-month rolling average reconciliation performed at the time of each PTC update is a reasonable approach and performs better than other types of reconciliation methodologies, such as quarterly or annual. OCA St. 1 at 15; Exhibit OCA-RSH-5.
6. By removing the aggregate supply cap while retaining the 85% solicitation supply cap, this proposal could result in one supplier serving 85% of the residential default service load. OCA St. 1 at 16. Allowing one supplier to hold such a high share of default service obligations results in a highly concentrated market, and the risk of a supplier bankruptcy or financial default would become too large. Id.
7. An aggregate supplier load cap for each customer class should be established at no more than 50%. OCA St. 1 at 15. This will allow as few as two default service suppliers, but will still limit somewhat the risk of a bankruptcy or financial default. Id.
8. PPL's methodology for determining the on-peak premium and the off-peak discount factors for the proposed TOU rate is reasonable. OCA St. 1 at 22-26. PPL should

have different definitions of the peak period and separate on-peak premium and the off-peak discount factors for summer and non-summer months in order to align the interests of customers, suppliers, and utilities. Id. at 23-26.

9. Shareholders did not make any investment in PPL for the purpose of providing default service supplies, so cash working capital allowance with a return on equity component is not appropriate. OCA St. 1 at 28. PPL's default service working capital needs, if any, should be based upon the Company's short-term cost of debt because the short-term cost of debt establishes the actual cost incurred by the Company in acquiring any working capital that might be needed for default service. OCA St. 1-S at 9.

10. Shopping customers are likely to hear about PPL's Retail Opt-In Program. OCA St. 2-R at 9-10. It is not reasonable to require PPL to monitor this development or educate individual customers about the implications of enrollment. Id.

11. There is some value in being able to assure that the Opt-In Program customer will be guaranteed savings compared to a known PTC during the entire contract term. OCA St. 2 at 12.

12. PPL's use of semi-annual adjustments works well with a 6-month term with 6-month guaranteed savings for the Opt-In Program. OCA St. 2 at 12.

13. The OCA's guaranteed savings proposal for the Opt-In Program will help to ensure that actual savings that appear to be promised to engage the customer to enroll are, in fact, delivered for the entire contract term. OCA St. 2-R at 5; OCA St. 2-S at 4-5.

14. Guaranteeing savings for the entire Opt-In Program term will avoid the situation where customers learn about price changes long after the differential has been in effect and have a negative opinion about the competitive market as a result. OCA St. 2-S at 5.

15. Customers participating in the Retail Opt-In Program should have the same information as customers in the retail competitive market, *i.e.* know the price, material terms and conditions, and identity of the EGS that will become their generation supplier. OCA St. 2-R at 8-9.

16. A 20% cap on customer participation in the Retail Opt-in Auction program will help mitigate excessive risk premiums on default service rates. OCA St. 1 at 20-21.

17. The Opt-In Program is designed to be a positive experience for customer who otherwise have chosen not to shop and a fixed price month-to-month product after the end of the program will help to maintain customer' comfort level with continuing to receive supply from an EGS. Id.

18. Marketing the Customer Referral Program to customers who call relating to their bills, credit and collection issues, reliability of service of other calls unrelated to customer choice may result in a degradation of essential consumer protections, as well as increase PPL's costs. OCA St. 2 at 17.

19. PPL's proposed timeline for its Retail Market Enhancement Programs will help avoid customer confusion that could result from implementing programs at the same time. PPL St. 4 at 15-16; OCA St. 2-S at 4, 6; OCA St. 2-R at 11-12.

20. Costs for PPL's Retail Market Enhancement Programs benefit EGSs and allow EGSs to avoid marketing costs and should be borne by the EGSs that participate in the program. OCA St. 2 at 14, 18-19; OCA St. 2-R at 7, 9, 14-15.

21. The costs that PPL will incur to implement the Opt-In and Standard Offer Programs are not necessary to implement retail choice or otherwise required by the Competition Act. OCA St. 2-R at 14-15.

22. The great majority of CAP customers being served by an EGS are paying higher-than PTC prices. See CAUSE-PA St. 1 at 16, App. B.

23. It is important to determine the results of allowing CAP customers to shop and select an EGS in terms of their ability to afford essential electric service from PPL and the costs associated with the implementation of that program. OCA St. 2 at 14-15.

24. A significant expansion of CAP customer enrollments through the Opt-in and Referral Programs will increase administrative costs because of the manual nature of the transactions and the monitoring that PPL is required to undertake pursuant to the settlement that approved shopping for CAP customers. Id.

25. RESA's proposed adder to default service rates would result in PPL collecting an additional $49 million per year from default service customers over the two-year period. OCA St. 1-R at 7.

26. RESA's proposed adder is not justified by any costs or risks. OCA St. 1-R at 8.

27. RESA's proposed adder would increase the Price to Compare, which would – in turn – allow EGSs offering a percentage discount off the PTC to achieve the minimum savings level at a higher price. OCA St. 1-R at 8. The effect of RESA's proposal would be to increase the power supply costs for both default service customers and customers who take advantage of the retail market. Id.

**Conclusions of Law**

1. PPL Electric Utilities Corporation has the burden of demonstrating that its proposed default service plan is in compliance with Act 129. 66 Pa. C.S. § 332(a); 66 Pa. C.S. § 2807(e)(3.1-3.9).
2. Block and spot purchases should be part of PPL's default service plan to achieve least cost to customers over time and should target a fixed percentage of default service load. OCA St. No. 1 at 12.
3. The procurement schedule provided in Exhibit OCA-RSH-4 that continues the layering and laddering of procurements with contracts that extend beyond the end of DSP II and is designed to target a default service power supply mix of 5% spot purchases, 20% block purchases, and 75% full requirements purchases meets the requirements of Act 129. Exh. OCA-RSH-4; OCA St. 1 at 10-12; OCA St. 1-S at 4.
4. PPL's methodology for determining the on-peak premium and the off-peak discount factors for the proposed TOU rate will result in rates that are just and reasonable. OCA St. 1 at 22-26.
5. PPL has not met its burden of demonstrating any working capital needs in this proceeding. OCA St. 1-S at 9-10.
6. PPL's Retail Opt-in Auction Program requires modification to provide necessary consumer protections. OCA St. 2 at 12-13, 17, 20-21.
7. PPL's proposed Standard Offer Referral program requires modification to provide necessary consumer protections. OCA St. 2 at 17-18.
8. PPL's proposed timeline for the Retail Market Enhancements is reasonable and will avoid customer confusion. PPL St. 4-R at 12.

9. PPL's proposal to recover costs for its Retail Market Enhancement Programs from customers is not reasonable nor in accord with Commission guidance. OCA St. 2 at 14, 18-19; OCA St. 2-R at 7.

10. Significant issues regarding the reasonableness of participation of CAP customers in the Retail Market Enhancement Programs have been raised in this proceeding. OCA St. 2 at 6-7, 14-15, 19.

11. RESA's proposal to add a 5 mils/kWh charge to default service rates is inconsistent with the Public Utility Code and sound public policy. OCA St. 2-R at 7.

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CERTIFICATE OF SERVICE

| 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 |
|---|---|---|

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of October 2012.

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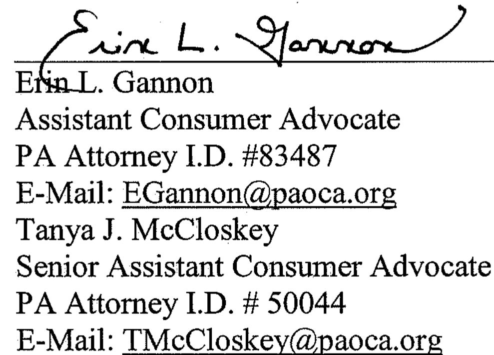

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