

Brian J. Knipe
717 237 4820
brian.knipe@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.bipc.com

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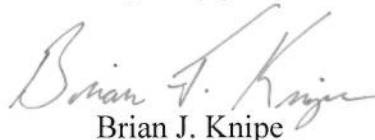
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Reply Brief of FirstEnergy Solutions Corp.* Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Susan D. Colwell (via email and regular mail, w/encls.)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF
FIRSTENERGY SOLUTIONS CORP.**

Amy M. Klodowski, ID No. 28068
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
aklodow@firstenergycorp.com

Brian J. Knipe, ID No. 82854
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Telephone: (717) 237-4800
Facsimile: (717) 233-0852
brian.knipe@bipc.com

Attorneys for
FirstEnergy Solutions Corp.

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I. Introduction

A. Summary and Statement of Position

In its Main Brief, FirstEnergy Solutions Corp. (“FES”) explained why the Petition of PPL Electric Utilities Corporation (“PPL Electric”) for approval of its Default Service Program and Procurement Plan for the period June 1, 2013 through May 31, 2015 (“DSP II”) should be approved only with modifications recommended by FES. During the term of DSP II, the Pennsylvania Public Utility Commission (“Commission”) intends to transition Pennsylvania to an optimal end-state of electricity default service. The evidence of record demonstrates that FES’s recommended modifications to DSP II will ensure that it results in default service pricing that enables PPL Electric to continue promoting retail electric shopping during the transition to end-state default service, and yet is stable and economical relative to other options, consistent with the requirements of the Electricity Generation Customer Choice and Competition Act (“Competition Act”), as amended by Act 129 of 2008, 66 Pa. C.S. §§ 2801, et seq.

FES’s recommended modifications include replacement of PPL Electric’s proposed 9- and 12-month default service supply procurement contracts for Residential and Small C&I customers with a portfolio of 12-, 15-, 18-, 21- and 24-month contracts. The record evidence demonstrates that FES’s recommended portfolio constitutes a prudent mix of contracts for smaller default service customers which is designed to ensure the least cost over time, is designed to ensure adequate and reliable service, and will enable PPL Electric to continue promoting retail electric shopping and support Pennsylvania’s transition toward the Commission’s desired end-state of default service starting June 1, 2015, without sacrificing the price stability required by Act 129 of 2008. FES’s recommended mix of contracts between 12 and 24-months is consistent with the portfolio the Commission adopted for Residential

customers in its *ME/PN/PP/WP DSP Order*.¹ In addition, FES recommends that PPL Electric procure supply for TOU default service separately from its procurement of supply for fixed price load. One aspect of PPL Electric's proposal that FES strongly supports is the elimination of its Aggregate Load Caps for Residential and Small C&I customers.

During DSP II, PPL Electric proposes to enable smaller default service customers to move to the competitive market through Commission-sponsored, customer-friendly retail market enhancement programs, specifically the Retail Opt-In Auction Program ("Opt-In Program") and the Standard Offer Referral Program ("Referral Program"). In its Main Brief, FES proposed modifications to these programs which will provide increased savings and a more stable product for participating customers, and enable these customers, who are new to purchasing electricity from alternative retail suppliers, to better compare the Opt-In Program rate with PPL Electric's price-to-compare ("PTC").

FES's Main Brief also addressed the recent guidance provided by the Commission through its *ME/PN/PP/WP DSP Order* and *PECO Binding Poll*.² Since the parties filed their Main Briefs, the Commission has entered its *PECO DSP Order*.³ The two DSP Orders identify certain components of the Commission's preferred design for the Opt-In Program, including a 12-month term, consisting of a 4-month fixed price which is either established through competitive bidding to be at least 5% below the PTC at the time of enrollment, or administratively set at 5% below the PTC, followed by an 8-month fixed price provided by the

¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) ("*ME/PN/PP/WP DSP*" or "*ME/PN/PP/WP DSP Order*").

² *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Binding Poll conducted September 27, 2012) ("*PECO Binding Poll*").

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

EGS. The more recent *PECO DSP Order* provides for the 4-month price to be established through competitive bidding, which FES strongly recommends over an administratively set price because it maximizes savings for participating customers and facilitates the allocation of customers to winning EGSs. The DSP Orders also identify certain components of a preferred design of Referral Program, including a 12-month Standard Offer priced at a constant 7% discount below the PTC. Also, while these Orders require EGSs to be responsible for costs of the Opt-In Program and Referral Program, the more recent *PECO DSP Order* provides for a sharing of these costs between EGSs and customers.

To the extent various aspects of the design of PPL Electric's retail market enhancement programs are not controlled by the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order*, FES recommended further modifications to the retail market enhancement programs in its Main Brief. FES's recommendations are designed to ensure competition among a high number of participating electric generation suppliers ("EGSs"), while maximizing benefits for customers participating in the programs so they feel good about what is likely their first experience with the competitive retail electric market. FES also opposed certain modifications to the programs proposed by other parties. Some of these modifications are too aggressive for a Commission-sponsored starter program for customers with no prior shopping experience, while others are unlikely to allow the programs to succeed.

Pursuant to the Second Prehearing Order issued June 7, 2012, as amended at the evidentiary hearings held in this matter on September 11, 2012, and the common briefing outline approved by Administrative Law Judge Susan D. Colwell ("ALJ"), FES hereby submits this Reply Brief. While FES's Main Brief adequately addressed most of the positions and arguments of the other parties, and set forth the evidence and arguments that recommend the Commission

approve PPL Electric's proposed DSP II, Opt-In Program and Referral Program only with the modifications proposed by FES, and reject modifications proposed by other parties, this Reply Brief will further respond below to certain arguments raised in other parties' main briefs. For the reasons detailed below and in FES's Main Brief, PPL Electric's DSP II and retail market enhancement programs should be approved only with the modifications recommended by FES.

Pursuant to the ALJ's directive, FES also submits proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs, which are attached to this Reply Brief as **Appendices A, B and C**, respectively.

B. Background Information and Procedural History

This section intentionally left blank.

II. Summary of Argument

FES has summarized its recommended modifications to PPL Electric's default service program, Opt-In Program and Referral Program in Section I.A., above, as well as in Section II of its Main Brief.

III. Argument

A. Legal Standards

1. Burden of Proof

This section intentionally left blank.

2. Standards Applicable To Default Service

This section intentionally left blank.

B. The Proposed Default Service Program

1. Class Procurements

a. Residential - Fixed Rate

i. Product Mixture

FES has recommended that PPL Electric procure default supply for Residential customers through a portfolio of 12-, 15-, 18-, 21- and 24-month contracts. As FES explained in its Main Brief, this mix of short-term contracts will continue to provide a platform for PPL Electric's service territory to transition to the Commission's proposed end-state of default service, while providing greater price stability than PPL Electric's proposed mix of 9- and 12-month contracts, see PPL Electric M.B. at 15. The relative stability of FES's recommended portfolio will ensure that PPL Electric's procurement plan meets the requirements of Act 129 while continuing to promote the growth of retail electric competition and providing a smoother transition that benefits smaller default service customers. In addition, FES's recommended portfolio will result in PPL Electric having less than 20% of FPFR default supply under contract beyond May 31, 2015, as a result of adjustments FES made to its initial proposed mix of contracts, to respond to concerns raised by PPL Electric and RESA. FES M.B. at 13-18. FES notes that while the OCA's Main Brief opposes the portfolios proposed by PPL Electric and RESA, see OCA M.B. at 12-19, it does not oppose FES's recommended portfolio.

PPL Electric and RESA's Main Briefs do not address the correct mix of contracts recommended by FES, although PPL Electric acknowledges FES's adjusted portfolio in a footnote.⁴ Rather, PPL Electric and RESA's Main Briefs focus on opposing FES's initial

⁴ PPL Electric only acknowledge FES's revised proposal with shortened terms in a footnote in PPL Electric's discussion of Contract Terms Beyond May 31, 2015. PPL Electric M.B. at 36 n. 43.

proposal of a mix of 12- and 24-month contracts, notwithstanding FES's adjustments made in Surrebuttal Testimony to address concerns raised by PPL Electric and RESA regarding contract overhang. For instance, PPL Electric argues that FES's initial proposal is largely similar to the DSP I portfolio and could not encourage development of retail markets beyond their current level. PPL Electric M.B. at 20. Even if this argument addressed the correct recommended portfolio, FES explained in its Main Brief that it fails to recognize the effects of the retail market enhancement programs that PPL Electric will implement during DSP II, as well as extensive consumer education and other initiatives resulting from the Commission's Retail Markets Investigation ("RMI"). FES M.B. at 16-17.

PPL Electric attempts to position its proposal as a reasonable middle ground between two "opposite extremes." To this end, it mistakenly asserts that FES's proposal (or rather, FES's initial proposal from its Direct Testimony) would result in a PTC that responds to market conditions more slowly. PPL Electric M.B. at 21. FES's initial proposal was hardly an "extreme proposal," given that it not only is similar to PPL Electric's DSP I portfolio, but is consistent with the portfolio the Commission recently adopted for Residential customers in the *ME/PN/PP/WP DSP Order*. In the *ME/PN/PP/WP DSP Order*, the Commission found that a "mixture of twelve and twenty-four-month contracts proposed by RESA for residential customers . . . emphasize the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSs." *ME/PN/PP/WP DSP Order*, slip op. at 25-26.

Given that it was RESA which proposed the mix of 12- and 24-month contracts in the *ME/PN/PP/WP DSP* matter, it is surprising and factually incorrect for RESA to argue in this proceeding that FES's initial proposed mix of 12- and 24-month contracts is substantially similar

to the proposal of the EDCs which the Commission rejected in the *ME/PN/PP/WP DSP Order*. RESA M.B. at 24. All FPFR contracts proposed by the EDCs in the *ME/PN/PP/WP DSP* matter would have been for 24 months. If the *ME/PN/PP/WP DSP Order* set the standard for Residential default supply portfolios as RESA suggests, it would support adoption of the portfolio of 12- and 24- month contracts that FES initially recommended in this proceeding. Indeed, in the Residential portfolio that RESA proposed and the Commission adopted in the *ME/PN/PP/WP DSP Order*, 45% of the procurements are comprised of 24-month fixed price contracts. *ME/PN/PP/WP DSP Order*, slip op. at 25-26. Since FES's adjusted portfolio in this proceeding would procure only 21.25% of default supply through 24-month contracts, FES's recommendation is more market-responsive than what RESA successfully proposed in *ME/PN/PP/WP DSP* case. See FES M.B. at 17.

PPL Electric also contends that it has seen evidence of less interest in supplying 24-month products than 12-month products. PPL Electric M.B. at 15-16. However, FES's Main Brief responds to this argument by pointing to the record evidence of a healthy level of interest among wholesale suppliers in PPL Electric's 24-month products. FES M.B. at 17.

RESA's Main Brief, again focusing incorrectly on FES's initial proposed mix of 12- and 24-month contracts, asserts without any explanation that FES's initial proposal fails to observe the legal requirement that PPL Electric procure a prudent mix of long-term, short-term and spot market supply contracts designed to produce the least cost to customers over time, and instead touts the price stability its recommended mix of contracts offers. RESA M.B. at 22-23. Recognizing that RESA is addressing the wrong proposed mix of contracts, FES disagrees with any suggestion that price stability and a prudent mix are mutually exclusive. To the contrary, the Preamble to Act 129 indicates that the General Assembly's intent was to consider price stability

as a component of the Act 129 “least cost over time” determination. The Commission reached the same conclusion in its *Act 129 Final Rulemaking Order*.⁵ *Act 129 Final Rulemaking Order*, slip op. at 11-12.

RESA further contends that the price stability the General Assembly contemplated in passing Act 129 is an “artificial gimmick” that will mask the mechanics of how electricity prices change over time, and therefore does not contribute to the Commission’s customer education efforts. RESA M.B. at 23. As FES explained in its Main Brief, this argument again shows RESA’s impatience to commence with the Commission’s proposed end-state of default service in June 2013 rather than June 2015. FES M.B. at 19-20. FES submits that the appropriate way to educate customers is through the methods being considered by the Commission in the RMI, not through the aggressive introduction of market-responsive default service pricing as RESA proposes. RESA’s approach does not balance the need to help suppliers gain customers with the need to orchestrate an orderly transition for smaller default service customers.

In addition, RESA argues that FES’s assertion that its proposal will provide customers with price stability is a red herring, since FES did not propose to eliminate reconciliations. RESA M.B. at 23. This assertion is also questionable, since there is no record evidence to suggest that reconciliation (as opposed to, say, generation) constitutes a majority of the PTC. RESA’s flawed premise aside, while 12 to 24-month contracts will not guarantee price stability and certainty, they will provide more stability than RESA’s proposed 3-month contracts.

RESA also attempts to characterize contracts of 12- to 24-months as “long-term contracts.” RESA M.B. at 24. However, the Competition Act, as amended by Act 129, plainly

⁵ *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011) (“*Act 129 Final Rulemaking Order*”).

defines a long-term contract to be 5 years or longer. 66 Pa. C.S. § 2807(e)(3.2)(iii). Indeed, FES is not aware of any party that has proposed a long-term contract in this case.

With regard to its own proposed mix of contracts, PPL Electric, in discussing how its proposal meets the least cost over time standard, asserts that its mix supports such policy objectives of Act 129 as the need to protect default service customers, over time, from the potentially costly risk that could arise from the absence of laddered supplies, and to support retail competition through default service rates that reasonably track changes in wholesale electric prices. PPL Electric M.B. at 19. However, PPL Electric nowhere mentions price stability as one of the objectives of Act 129.

The OCA, in its Main Brief, continues to advocate a package of recommendations that will substantially reduce the percentage of PPL Electric Residential load supplied with FPFR contracts. These recommendations include supplying 25% of PPL Electric's Residential load through block and spot purchases, OCA M.B. at 13, and setting aside 20% of the targeted FPFR contracts and leaving them unfilled at the beginning of DSP II, OCA M.B. at 46.⁶ FES explained in its Main Brief that these recommendations must be rejected because they could substantially diminish wholesale supplier interest in PPL Electric's Residential procurements and compromise PPL Electric's ability to procure power at the least cost over time. FES M.B. at 23-24.

In its Main Brief, FES also opposed RESA's proposal that PPL Electric procure Residential default supply through a mix of 3-month and 12-month contract, with expiring 12-month contracts being replaced with 3-month contracts. FES M.B. at 18-22. RESA's Main Brief explains that its recommendations are designed "to move closer to market-reflective prices for energy, and to facilitate a reasonable transition to the Commission's announced 2015 default

⁶ While the OCA omits to include FES among the parties opposing the OCA's "hold back" recommendation, together with PPL Electric, DES/IGS and RESA, OCA M.B. at 46, FES does in fact oppose a "hold back."

service procurement mix” RESA M.B. at 18. RESA argues that quarterly procurements are consistent with the Commission’s long term vision for default service, and cites to the Commission’s September 27, 2012 Secretarial Letter in the RMI. RESA M.B. at 27. That Secretarial Letter, however, describes what may be the appropriate mix of contracts for PPL Electric’s *next* default service program, not this DSP II. FES M.B. at 20.

RESA maintains that its chart of Maryland switching statistics in arguing that “market-responsive” default pricing is the source of robust sustainable retail electric competition. RESA M.B. at 25-26. FES’s Main Brief already explained at length why RESA cannot properly conclude from this chart that more frequent procurements of shorter contracts caused increased shopping among Maryland Type II non-residential customers. FES M.B. at 20-22. Further, despite RESA’s insistence that its chart shows how robust competition ensues when default service rates more closely reflect underlying wholesale prices, its chart is devoid of any pricing data.

RESA also explains that “[t]o the extent that consumers want ‘stable’ pricing, such products will be available in a robust and sustainable competitive retail electricity market” RESA M.B. at 15. While FES agrees that competitive suppliers offer stable pricing, the General Assembly’s intent in amending the Competition Act through Act 129 was to require that default service offer stable pricing as well. Preamble to Act 129.

RESA argues in the alternative that if its proposed mix of contracts is not adopted, then PPL Electric, at a minimum, should be required to add 10% spot market purchases into its portfolio mix. RESA M.B. at 21. As FES explained in its Main Brief, FES supports PPL Electric’s proposal to eliminate spot market purchases from DSP II, since FPFPR procurements give customers the benefits of vigorous wholesale competition, insulates them from various

risks, provide a measure of price stability, and give customers a benchmark for evaluating competitive offers. See FES M.B. at 22-23.

ii. Procurement Schedule

FES explained in its Main Brief that it agrees with PPL Electric's proposed shift to semi-annual solicitations, which can be implemented consistent with FES's recommended mix of default supply contracts. FES M.B. at 24. Therefore, FES opposes the OCA's and RESA's recommendation that PPL Electric continue to conduct quarterly solicitations. OCA M.B. at 19; RESA M.B. at 26. As FES explained in its Main Brief, quarterly solicitations will cost smaller PPL Electric customers an estimated \$450,000-\$550,000 annually. FES M.B. at 25. FES disagrees with RESA's assertion that these estimated annual incremental costs are "relatively manageable" given the significant overall benefits to customers, and represent "a fair trade off." RESA M.B. at 26-27.

iii. Wholesale Supplier Load Cap

As FES explained in its Main Brief, FES is opposed to any kind of load cap or other artificial limit on supplier participation, which limit supplier competition and are potentially harmful to customers.⁷ As FES explained in its Main Brief, a reduced wholesale supplier load

⁷ In its Main Brief, PPL Electric recognizes that FES "supports a complete elimination of any wholesale supplier load cap," but adds that "FES acknowledged it did not oppose PPL Electric's proposal to retain the 85% Solicitation Load Cap," and references page 16 of FES's Rebuttal Testimony. PPL Electric M.B. at 29 n. 37. FES submits that its position is more accurately stated in the actual testimony:

FES is opposed to any kind of load cap or other artificial limit on supplier participation. While FES declined to address PPL Electric's proposed load caps in my Direct Testimony, FES strongly opposes the OCA's and RESA's recommendation to impose a reduced Aggregate Load Cap.

cap will limit the amount of load a least cost bidder can serve, resulting in a higher clearing price. FES M.B. at 26.

The OCA contends that continuation and reduction of the Aggregate Load Cap to 50% is necessary because maintaining only the 85% Solicitation Load Cap “could result in one supplier serving 85% of the residential default service load,” and that the 50% Aggregate Load Cap is necessary to limit the impacts of a supplier bankruptcy or financial default. OCA M.B. at 20. RESA also argues that the Aggregate Load Cap should be reduced to 50% because greater supplier diversity which will protect default service customers, and because a lower cap would result in a higher number of suppliers who could readily take over a failed supplier’s obligations in case of contract breach or default. RESA M.B. at 29. FES’s Main Brief already responded to these speculative arguments. FES M.B. at 28-30. In addition, FES’s Main Brief already responded to the OCA’s attempt, at pages 20-21 of its Main Brief, to use purchased power data from PPL Electric’s FERC Form 1 to argue that the reduced Aggregate Load Cap will not adversely impact PPL Electric default service customers. FES M.B. at 27-28.

RESA argues that FES has presented nothing to support this assertion that a lower cap will increase the total price customers pay for default service. RESA M.B. at 30. To the contrary, the Commission has already found this to be the case:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

FES St. No. 1-R at 16. While FES has focused its advocacy in this proceeding on opposing the OCA and RESA’s recommendation to maintain and reduce the Aggregate Load Cap to 50%, and declines to address the Solicitation Load Cap, to be perfectly clear, there is no load cap that FES does not oppose.

ME/PN 2009 Order,⁸ slip op. at 16.

While RESA's Main Brief points to the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*, instances where the Commission adopted 50% default supply load caps, RESA M.B. at 29, the Commission, at least in the *ME/PN/PP/WP DSP Order*, reached its conclusions regarding load caps based on specific facts and beliefs related to those particular EDCs. *ME/PN/PP/WP DSP Order*, slip op. at 30-34. As FES explained in its Main Brief, facts and beliefs concerning other EDCs have no logical relationship to PPL Electric. FES M.B. at 27. RESA has not explained any such relationship, and its reliance on these Orders is misplaced.

Further, RESA alludes to the 50% supplier participation cap the Commission has preferred to adopt in retail opt-in auction programs, an artificial cap on retail competition with which FES respectfully disagrees. RESA M.B. at 30. The Commission's motivation in adopting a 50% retail cap has no applicability here, however, since the Commission has not identified any need, or articulated any goal, of trying to kick-start already robust wholesale competition.

Accordingly, PPL Electric's proposed elimination of the Aggregate Load cap for its procurements of Residential default service supply should be approved.

b. Small C&I - Fixed Rate

i. Product Mixture

FES has recommended that PPL Electric procure default supply for Small C&I customers through a portfolio similar to FES's recommendation for Residential customers, i.e., a mix of 12-, 15-, 18-, 21- and 24-month contracts, rather than PPL Electric's proposed portfolio of mainly laddered 12-month contracts. PPL Electric M.B. at 15, 30, 36. FES's Main Brief explained that

⁸ *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053, P-2009-2093054 (Opinion and Order entered November 6, 2009) ("*ME/PN 2009 Order*").

its recommended portfolio will provide greater price stability than PPL Electric's proposal, providing Small C&I default service customers and retail electric competition with the same benefits as FES's proposed mix of Residential supply contracts. FES M.B. at 31-32.

The OSBA supports PPL Electric's proposed portfolio, explaining that PPL Electric's proposal will make its PTC more reflective of actual market conditions. However, the OSBA would replace PPL Electric's proposed 3- and 6-month "stub" contracts with 9- or 12-month contracts. OSBA M.B. at 6, 10. FES submits that the OSBA's assessment puts too little weight on price stability. PPL Electric points out that while 50% of Small C&I customers are shopping, these shopping customers represent 88% of the Small C&I load. PPL Electric M.B. at 30. So the 50% of Small C&I customers remaining on default service represent only 12% of Small C&I load. In fact, PPL Electric explains that there are 85,000 Small C&I customers under 25 kW receiving default service. PPL M.B. at 32. As FES explained in its Main Brief, they are among PPL Electric's smallest Small C&I customers, and require a steady but careful transition to the new end state of default service, with a measure of price stability during the transition. FES M.B. at 33.

PPL Electric, recognizing the heavy reliance on 12-month contracts in its proposal, argues that the Commission has previously approved the use of a single product to provide default service to a single customer class, and references its default service supply procurement for Large C&I customers under DSP I. PPL Electric M.B. at 30 n. 38. However, the use of a single product portfolio is not free from doubt, as this subject is on appeal before the Commonwealth Court.⁹ RESA's proposal raises the same concerns regarding a single-product portfolio. RESA proposes that as each existing PPL Electric procurement contract expires, it be

⁹ *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, No. 1179 C.D. 2012 (Pa. Cmwlth. Petition for Review filed June 22, 2012).

replaced with a 3-month contract, so that eventually 100% of Small C&I default supply will be procured through 3-month contracts. RESA M.B. at 31-32. In the last quarter of DSP II, *i.e.*, starting March 1, 2015, default supply for PPL Electric's Small C&I customers would consist of 100% 3-month contracts. RESA M.B. at 32.

Again, RESA seeks to make default service rates "more market-reflective," since these rates will ensure that Small C&I customers access products with price stability from the competitive marketplace. RESA M.B. at 32-33. As FES explained in its Main Brief, RESA's proposal should be rejected because Act 129 recognizes that smaller default service customers require relative price stability. FES M.B. at 33-34.

PPL Electric — which advances arguments against FES's initial proposal without accounting for adjustments FES made on the record — characterizes FES's initial proposal as one of two "opposite extremes," the other being RESA. PPL Electric M.B. at 31. However, there is nothing extreme about 24-month contracts, which are short-term contracts under the Competition Act. 66 Pa. C.S. § 2807(e)(3.2). Addressing FES's prior recommendation, PPL Electric points to similarities between FES's initial recommendation and PPL Electric's DSP I default supply portfolio, and contends that FES has offered no evidence that a continuation of the DSP I default supply contract portfolio could provide further support for additional shopping during DSP II. PPL Electric M.B. at 31. As FES explained in its Main Brief, DSP I has allowed a relatively high level of shopping, and a continuation of DSP I (which FES is *not* proposing) would provide an excellent platform for the Commission's RMI initiatives, including retail market enhancement programs in which the Commission has recently included Small C&I customers, to increase shopping further. FES M.B. at 17. And FES's adjusted proposal of fewer

24-month contracts, with additional 12-, 15-, 18-, 21- and 24-month contracts, represents a further transitional step from DSP I to the end-state of default service.

For these reasons and those set forth in FES's Main Brief, FES's recommended default supply contract mix for Small C&I customers should be adopted.

ii. Procurement Schedule

FES explained in its Main Brief that it agrees with PPL Electric's proposed shift to semi-annual solicitations, which can be implemented consistent with FES's recommended mix of default supply contracts. FES M.B. at 34. The OSBA also generally agrees with PPL Electric's proposed schedule of semi-annual procurements. OSBA M.B. at 7. However, RESA recommends that PPL Electric continue to conduct quarterly solicitations. RESA M.B. at 32. FES opposes RESA's recommendation, for the reasons discussed above in Section III.B.1.a.2, which FES also addressed at pages 34-35 of its Main Brief.

iii. Wholesale Supplier Load Cap

FES supports PPL Electric's proposal to eliminate its 65% Aggregate Load Cap for Small C&I customers. FES M.B. at 35. The OSBA also supports PPL Electric's proposal to eliminate the cap, and opposes any reduction of the Aggregate Load Cap due to the resulting higher cost to ratepayers. OSBA M.B. at 8. In its Main Brief, the OSBA explains that Small C&I default service load will likely not exceed 400-500 MW, and PPL Electric's procurements for this class will likely involve only 2-4 tranches. OSBA M.B. at 9. Given the relatively small amount of load for this customer class, FES submits that the relatively limited impact of a potential supplier default does not justify increasing rates for the smallest of PPL Electric's Small C&I customers.

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

i. Product Mixture

This section intentionally left blank.

ii. Procurement Schedule

This section intentionally left blank.

iii. Wholesale Supplier Load Cap

This section intentionally left blank.

d. Contract Terms Beyond May 31, 2015

As explained in FES's Main Brief, FES's recommended procurement plan would cause PPL Electric to have less than 20% of FPFRR default supply under contract beyond May 31, 2015. FES also proposed that PPL Electric's supply contracts be assignable. FES M.B. at 36. The OSBA also recommends substituting 9- to 12-month contracts for the 3- and 6-month contracts PPL Electric proposes to solicit in its final DSP II procurement, to avoid a "hard stop" and to retain the rate stability advantages of contract laddering. OSBA M.B. at 10.

PPL Electric raises concerns with contract overhang, arguing that assignability alone is insufficient for the Commission's end-state determination to manage contracts that extend beyond May 31, 2015. PPL Electric asserts that the challenge presented by the Commission's end-state is not with who is the default service provider, but with how default service requirements will be met. According to PPL Electric, "substantial amounts" of default service load that are tied up in contracts that extend beyond May 31, 2015 will delay the Commission's implementation of its end-state structure. PPL Electric M.B. at 37. FES submits that its proposal

to have 20% of FPFR default supply under contract at the end of DSP II does not rise to the level of a “substantial amount” of default service load.

RESA does not support the use of any default service contracts, regardless of the term, that extend beyond the expiration date of the default service plan term. RESA cites as authority the Commission’s *Upcoming DSP Final Order*,¹⁰ where the Commission directed EDCs to “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” RESA M.B. at 36. It is important to note that the Commission’s Order contemplated “limiting” contract overhang, not solely eliminating it. In some instances, a reasonable amount of load under contract beyond May 31, 2015 is necessary to meet other objectives of the Competition Act and Act 129. Indeed, the Commission clarified that its guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the least cost to customers over time. *Upcoming DSP Final Order*, slip op. at 19.

The Commission’s RMI End State Proposal, issued September 27, 2012 via a Secretarial Letter at Docket No. I-2011-2237952, presently contemplates an end state for EDCs’ Residential and Small C&I customers below 100 kW which consists of 3-month contracts. The transition is planned to occur on June 1, 2015, and to be preceded by a statewide consumer education campaign. As the Commission’s *Upcoming DSP Final Order* explains, a flash-cut to this end-state is unnecessary, particularly at the expense of price stability for smaller default service customers. Moreover, implementing 3-month contracts now would deprive small customers of the additional education which the Commission views as a necessary precondition to this end state. Since FES has proposed a portfolio with very limited overhang beyond the DSP II period,

¹⁰ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) ("*Upcoming DSP Final Order*").

PPL Electric, or an alternative default service provider, can easily phase in 3-month contracts for tranches served by overhanging contracts.

e. AEPS Procurement

i. Transfer of AECs

This section intentionally left blank.

ii. Alternative Compliance Payment

This section intentionally left blank.

f. Administrative Costs and Cash Working Capital

This section intentionally left blank.

2. Rate Design

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

i. Frequency of Rate Changes

This section intentionally left blank.

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

This section intentionally left blank.

b. Residential and Small C&I – Reconciliation

This section intentionally left blank.

c. Large C&I Customer Class – Rates

This section intentionally left blank.

d. Large C&I Customer Class – Reconciliation

This section intentionally left blank.

e. The Green Power Program

This section intentionally left blank.

f. Optional Monthly Pricing Service

This section intentionally left blank.

g. Price to Compare Calculation Date

This section intentionally left blank.

h. Recovery of Transmission and Other Related Charges

i. Costs to be Included in the TSC or GSC

This section intentionally left blank.

ii. Non-Bypassable Structure

This section intentionally left blank.

iii. Reconciliation

This section intentionally left blank.

3. Time of Use Rate Option

a. Design

This section intentionally left blank.

b. Procurement

In its Main Brief, FES explained the need for PPL Electric to bid TOU separately from fixed price load. FES recommends instead that PPL Electric separately procure TOU default supply from suppliers which might specialize in TOU products, or that PPL Electric follow the Commission's recommendation to bid out TOU service to an EGS. FES M.B. at 39-41.

PPL Electric explains that while it does not object conceptually to a separate TOU procurement, it is concerned that it will not receive adequate bids if the TOU product is bid separately. PPL Electric M.B. at 83. While the OSBA recognizes that integrating TOU default supply with fixed rate default supply will increase the risk faced by wholesale suppliers, resulting in higher bid prices, the OSBA speculates that wholesale suppliers will perceive very little risk associated with TOU service because PPL Electric customers have shown a low level of interest in TOU rates. Therefore, the OSBA "does not object" to PPL Electric's proposal. OSBA M.B. at 21-22. As FES explained previously, it is the possibility that customer interest in TOU service will increase that causes FES concern. FES M.B. at 40.

Other parties similarly recommended alternatives to PPL Electric's proposed approach. As FES explained in its Main Brief, Constellation recommended that PPL Electric allocate a pro rata percentage share of TOU customer load to each tranche, including tranches awarded to

suppliers in PPL Electric's prior default service program's RFPs, and that the price paid to default service suppliers under their contracts would not change. FES M.B. at 41. PPL Electric advises that it would not oppose Constellation's recommendation. PPL Electric M.B. at 84. Also, RESA recommended two alternatives which would enable PPL Electric to avoid procuring TOU default supply. One alternative would have PPL Electric certify to the Commission that one or more EGSs have agreed to offer a TOU rate to PPL Electric Residential customers. The other alternative is an "EGS bid-out approach" in which EGSs interested in providing a retail TOU rate to PPL Electric Residential customers would submit proposals and PPL Electric would select "the proposal that provided the best value and innovation to customers," RESA M.B. at 51-53. FES prefers any of these alternatives to PPL Electric's proposal.

PPL Electric opposes recommendations that it bid out its TOU program to one or more EGSs. PPL Electric explains that it would still retain some level of backstop default service responsibility. Further, PPL Electric insists that Section 2807(f)(5) of the Competition Act requires PPL Electric as the default service provider, and not some EGS, to offer TOU rates. 66 Pa. C.S. § 2807(f)(5). Therefore, PPL Electric asserts, if an EGS were providing this service, PPL Electric would be in violation of the Competition Act's mandate. PPL Electric M.B. at 84-86. Further, PPL Electric argues that the Competition Act does not permit "bifurcation" of the default service function. PPL Electric M.B. at 87. In addition, PPL Electric identifies a "long list of open issues" that it believes would need to be resolved for a TOU "bid out" to be implemented. PPL Electric M.B. at 88. PPL Electric also argues that any proposal for TOU service to be bid out must be considered and implemented on a statewide basis. PPL Electric M.B. at 88 n. 70.

FES submits that PPL Electric's legal argument, as well as its concerns regarding implementation details and the need for consideration of an EGS bid out on a statewide basis, were resolved by the Commission's recent approval of a similar program for PECO Energy Company. *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012) ("*PECO Dynamic Pricing Order*"). The details PPL Electric identifies could be addressed in a collaborative, much like PPL Electric proposes for its own alternative Summer TOU proposal. PPL Electric M.B. at 90.

Alternatively, PPL Electric introduces in its Main Brief the aforementioned default service Summer TOU proposal, which it describes as SEF's alternative proposal with modifications. In this program, PPL Electric would offer Residential and Small C&I customers summer TOU rates for an on-peak period of June through August, from 3-6 p.m., excluding weekends and PJM holidays. During the remainder of the year, Summer TOU customers would receive the same rates as standard default service customers. The default service summer TOU load would be bid out separately from fixed-price supply, but at the same time as the fixed-price default service load. In the event wholesale suppliers are unwilling to bid on a separate TOU product where the amount of load is likely to be small, PPL Electric would not offer the Summer TOU rate option and would return to the Commission with a new proposal. If the Commission finds this Summer TOU program to be acceptable, PPL Electric suggests a collaborative to work out the details. PPL Electric M.B. at 89-91. Because PPL Electric proposes to bid out TOU load separately from fixed-price supply, FES believes this proposal is also acceptable.

4. Other Default Service Program Issues

a. Supply Master Agreement and RFP Process and Rules

i. Revisions to the Supply Master Agreement

PPL proposes to revise its Supply Master Agreement (“SMA”) by reducing the unsecured credit for even the most creditworthy of wholesale suppliers down to \$50 million — a reduction of \$25 Million. PPL M.B. at 29. In its Main Brief, Constellation recommends that PPL Electric’s SMA should include the unsecured credit threshold used in the West Penn Power Company’s SMA or, in the alternative, the same unsecured credit threshold that PPL Electric included in its SMA during DSP I. As Constellation explains, PPL Electric’s proposal is inconsistent with the industry standard in the PJM Interconnection, and will limit default supplier participation in PPL Electric’s procurements, relative to participation in other EDCs’ procurements. Constellation M.B. at 15-16. For these reasons, FES supports Constellation’s recommendation that PPL Electric’s performance assurance requirements should be in line with West Penn Power, or at a minimum, maintain the levels of PPL Electric’s 2011-2013 SMA.

b. Third-Party Manager

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c. RTO Compliance and Consistency

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d. Contingency Planning

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e. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

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C. Retail Market Enhancements and Customer Referral Programs

In its Main Brief filed on October 5, 2012, FES described at length the additional guidance the Commission had recently provided on retail market enhancement programs since the entry of the *IWP Order*¹¹ on March 2, 2012. FES M.B. at 42-44. This included the Commission's August 16, 2012 *ME/PN/PP/WP DSP Order*, the October 11, 2012 *ME/PN/PP/WP Amended Clarification Order*,¹² and the *PECO Binding Poll*.

The *ME/PN/PP/WP DSP Order* described a different design for the Opt-In Program, which eliminated any bidding competition prior to customer enrollment in the Opt-In Program, and instead used an opt-in "aggregation" approach. Under the opt-in aggregation approach, the Opt-In Program product changed, from a price "at least 5% below" the PTC at the time of enrollment, for the full term of the Opt-In Program, to a 12-month product, comprised of a \$50 bonus, a 4-month guaranteed 5% discount off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining 8 months. *ME/PN/PP/WP DSP Order*, slip op. at 117-18.

Since the parties submitted their Main Briefs in this proceeding, the Commission entered its *PECO DSP Order* on October 12, 2012. According to a Motion of Commissioner Pamela A. Witmer adopted at the Commission's Public Meeting of September 27, 2012 ("*PECO*

¹¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

¹² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Amended Opinion and Order entered October 11, 2012) ("*ME/PN/PP/WP Amended Clarification Order*").

Motion”),¹³ the opt-in program design the Commission directed PECO to use "mirrors the Commission's decision in the FE DSP Final Order" *PECO Motion* at 3 n.7. Accordingly, the *PECO DSP Order* adopts a 12-month opt-in product, comprised of a fixed price for 4 months, followed by an EGS provided fixed-price product for the remaining 8 months. However, the *PECO DSP Order* provides that the 4-month fixed price will be “equal to a discount of *at least* 5% off the PTC at the time of enrollment . . . ,” and retains the EGS bidding competition, in the form of a sealed-bid RFP. *PECO DSP Order*, slip op. at 90 (emphasis added), 103.

Accordingly, while the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order* identified certain common components of EDCs’ opt-in programs, such as the 4-month/8-month split in pricing, the Commission did *not* eliminate an EGS bidding competition for all EDCs’ opt-in programs. Out of an abundance of caution, FES’s testimony and Main Brief attempted to address scenarios in which the *ME/PN/PP/WP DSP Order* might, or might not, create a standard “aggregation” program design for all Pennsylvania EDCs. In any circumstances, however, FES strongly recommends the auction design adopted in the *PECO DSP Order* over the aggregation program design adopted in the *ME/PN/PP/WP DSP Order*. The retention of competitive EGS bidding is consistent with FES’s belief that the most important consideration in designing customer programs should be to give customers the lowest available pricing. FES St. No. 1 at 13. Competitive bidding also resolves questions regarding how customers are assigned to EGSs, and preserves significant aspects of many months of work by stakeholders in the RMI proceedings, culminating in the Commission’s *IWP Order*.

¹³ *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer, adopted at Public Meeting of September 27, 2012 (“PECO Motion”).

1. New and Moving Customer Program

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2. Customer Referral Mailing

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3. Opt-In Auction / Aggregation Program Design

Length of Supply Contract

In its Main Brief, FES recommended PPL Electric's proposed 6-month contracts to 12 months. FES M.B. at 44-46. DES/IGS also support a 12-month contract. DES/IGS M.B. at 17. This view is now supported by the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*. While PPL Electric opposes a 12-month contract as inconsistent with the Commission's March 2, 2012 *IWP Order*, PPL Electric M.B. at 116, FES submits that the common elements of the program designs adopted in the aforementioned default service proceedings supersede the *IWP Order* guideline. Given the Commission's recent DSP Orders, PPL Electric's argument that a 6-month contract is a reasonable middle ground between the OCA's preference for a 4-month contract and the preference of those advocating a 12-month contract, PPL Electric M.B. at 116, carries little weight.

PPL Electric also expresses concerns with customers being required to enter into a 12-month contract for what is intended to be an introduction to shopping. PPL Electric M.B. at 116. As FES previously explained, however, customers can leave the Opt-In Program at any time without penalty. FES M.B. at 46.

PPL Electric also expresses concern with the fact that if the Commission's Opt-In Aggregation Program design were adopted, the price for the 8-month term would be unspecified.

PPL Electric M.B. at 116. FES submits that PPL Electric’s concerns can be addressed in collaboratives, as is being done as a result of the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order*. See, e.g., *ME/PN/PP/WP Amended Clarification Order*, slip op. at 15-17.

The OCA’s Main Brief notes that while it has typically recommended a 12-month term, it may be possible to guarantee more robust customer savings during the entire contract term with a 6-month term, given the design of PPL Electric’s DSP II. OCA M.B. at 40-41. As FES explained in its Main Brief, while it is not opposed to guaranteed savings, guaranteed savings are not necessary for customers to benefit from the Opt-In Program over a 12-month term. FES M.B. at 46.

Limits on the Number of Customers a Supplier Can Win

In response to FES’s continuing opposition to caps on supplier participation, PPL Electric argues that a cap is necessary to encourage EGS participation, and to assure that no single entity can dominate. As FES explained in its Main Brief, there is reason to expect healthy participation in a properly designed Opt-In Program in PPL Electric’s service territory. FES M.B. at 48. Also, FES explained that domination by a single entity is improbable given the facts and circumstances of PPL Electric’s service territory. See FES M.B. at 48.

RESA further proposes a requirement of at least four (4) winning EGSs in any Opt-In Program auction. RESA M.B. at 70. Alternatively, if the Commission structures the Opt-In Program as an “aggregation” with no competitive bidding, as it did in the *ME/PN/PP/WP DSP Order*, RESA introduces a recommendation that there be a requirement of a minimum of four (4) EGS participants in any aggregation. RESA M.B. at 70. FES strongly opposes these recommendations, for reasons explained at length in its Main Brief. FES M.B. at 49. Further,

the Commission recently rejected RESA's recommended requirement of a minimum of four (4) winning EGSs in the *PECO DSP Order*, explaining that it could cause the Opt-In Program to fail and that such rules are inconsistent with the development of a truly competitive market. *PECO DSP Order*, slip op. at 98.

Benefits of Competitive Bidding

PPL Electric opposes FES's initial recommendation to conduct the EGS bidding via a descending clock auction rather than a sealed-bid format. PPL Electric M.B. at 121. The OCA takes no position on the mechanism but asserts that sealed-bid formats are simpler and less expensive, and that EGSs should be responsible for the costs of whichever mechanism is chosen. OCA M.B. at 50-51. While FES recommended a DCA in Direct Testimony that preceded the Commission's *ME/PN/PP/WP DSP Order*, which eliminated *any* bidding process, FES continues to believe that conducting a competitive bidding process is important to maximize savings for customers and facilitate the assignment of customers to EGSs, and strongly encourages the Commission to follow the approach of its recent *PECO DSP Order*.

Limits on the Number of Customers That Can Participate

The OCA argues that customer participation in PPL Electric's Opt-In Program should be capped at 20%. OCA M.B. at 44-45. FES opposes artificial limits on participation in competitive programs in general, and strongly opposes the OCA's low customer participation cap. This proposal has been rejected at least three times, in the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order*, as well as the *IWP Order*. *ME/PN/PP/WP DSP Order*, slip op. at 112; *PECO DSP Order*, slip op. at 95; *IWP Order*, slip op. at 59.

Timing of Disclosure of Terms and Conditions Including Price

With regard to the timing of the disclosure of terms and conditions of service, including the EGS's 8-month fixed price, DES/IGS and the OCA recommend that this should occur prior to the customer's enrollment in the Opt-In Program. DES/IGS M.B. at 18; OCA M.B. at 43. FES strongly agrees with these recommendations, and urges that the disclosure include the full terms and conditions of service.

Sequence of EGS Bidding and Customer Enrollment

If the Commission includes an EGS bidding competition in PPL Electric's Opt-In Program, RESA recommends that customer enrollment occur prior to the bidding competition. RESA argues that it is important for EGSs to determine the level of customer participation. RESA M.B. at 63. In its Main Brief, FES explained at length why RESA's proposal should be rejected, and why the Commission should approve PPL Electric's proposal that EGS bidding precede customer enrollment. FES M.B. at 51-53. Further, the Commission has twice rejected RESA's recommendation, in the *IWP Order*, *IWP Order*, slip op. at 55, and more recently in the *PECO DSP Order* where the Commission adopted the ALJ's recommendation on this subject. Accordingly, RESA's recommendation should be denied.

Small C&I Customer Eligibility

In its Main Brief, FES explained that retail enhancement programs should be open to customers in all rate classes, and that eligibility of Small C&I customers is consistent with the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*. FES M.B. at 53. RESA also

recommends that Small C&I customers be eligible to participate in the Opt-In Program. RESA M.B. at 67. This is consistent with the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*. *ME/PN/PP/WP DSP Order*, slip op. at 103; *PECO DSP Order*, slip op. at 85-86. The OSBA opposes inclusion of Small C&I customers in the Opt-In Program, explaining that the Commission's *ME/PN/PP/WP DSP Order* set a 50% level of shopping as the threshold for excluding Small C&I customers from the Opt-In Program, and that the current level of Small C&I shopping in PPL Electric's service territory exceeds 50%. OSBA M.B. at 23. FES submits that the OSBA overemphasizes the Commission's statement in the *ME/PN/PP/WP DSP Order*, and that the Commission was merely making an observation that Small C&I shopping was below 50%, not setting a legal threshold for all EDCs.

Customer Options on Product Expiration

While the OCA does not object to customers remaining with the EGS after adequate notice, the OCA recommends that customers who do not respond to a notice should stay with their current EGS on a fixed price, month-to-month contract if the customer does not affirmatively select another product. OCA M.B. at 48-49. FES opposes this proposal, which the Commission rejected in the *PECO DSP Order*. *PECO DSP Order*, slip op. at 99-100. FES believes that with regard to the end of the retail market enhancement programs, participating customers should be treated the same as any other shopping customers. Further, these customers will have received terms and conditions of service and other notices required by Commission regulations to explain their options at the end of each program.

Security and Posting of EGS 8-Month Price

In its Main Brief, DES/IGS expressed concerns that if the auction process is eliminated, participating suppliers may lack the financial ability to meet their obligation to pay the \$50 bonus payment. DES/IGS M.B. at 17-18. As an initial matter, even if there were no competitive bidding, FES does not believe additional financial assurance is necessary. However, the *PECO DSP Order*, entered subsequent to the submittal of the parties' Main Briefs in this matter, indicates that the Commission is willing to retain competitive bidding in the form of a sealed-bid RFP. Bidder qualification requirements for the EGS bidding competition should address DES/IGS's financial ability concerns.

DES/IGS is also concerned that without competitive bidding, there will be no regulation of the 8-month pricing offered by participating EGSs, and nothing to keep the 8-month price within range of the market. Therefore, DES/IGS proposes that the Commission require EGSs to post their 8-month prices on the PaPowerSwitch.com Web site. DES/IGS M.B. at 17-18. FES disagrees with this recommendation. The *ME/PN/PP/WP Amended Clarification Order* provides that the Commission will review the terms and conditions of participating EGSs' 8-month product offerings, including pricing. *ME/PN/PP/WP Clarification Order*, slip op. at 18-19. This process makes it unnecessary to post 8-month prices on-line, a procedure that FES fears could lead to price discovery by non-participating EGSs who can avoid any potential obligation for Opt-In Program costs while undercutting the participating EGSs' price offerings.

Further, this recommendation creates risk of customer confusion and frustration and bad impressions of retail electric competition. Customers enrolled with an EGS through the Opt-In Program should already know their own 8-month fixed-price, and will not benefit from viewing the prices they could have had with other EGSs if the Commission and PPL Electric had

assigned them to any of those EGSs. Default service customers not participating in the Opt-In Program who visit the Web site may not enroll in the program later. And shopping customers not participating in the Opt-In Program may be inadvertently attracted to the fixed-price offers, even if they are posted in a separately delineated section of PaPowerSwitch.com. Since the Opt-In Program is only a one-time initiative conducted via an EDC mailing, the risks of posting EGS 8-month fixed-price products on PaPowerSwitch appear to outweigh the benefits. Therefore, DES/IGS's recommendation should be rejected.

4. Standard Offer Program Design

Length of Standard Offer

FES recommends that PPL Electric's Referral Program include a Standard Offer term of 12 months, rather than PPL Electric's proposed 6-month term. FES M.B. at 54-55; FES St. No. 1 at 23. DES/IGS also supports a 12-month term. DES/IGS M.B. at 19. This view is now supported by the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*. The OCA, in contrast, proposes a 4-month term, or any term length during which a discount off the PTC can be guaranteed. OCA M.B. at 53 n. 35.

In its Main Brief, PPL Electric continues to support a 6-month term. PPL Electric relies on the March 2, 2012 *IWP Order*, and characterizes its proposal as a "reasonable middle ground" between the positions of the OCA (described below) and certain EGSs. PPL Electric M.B. at 124. In addition, PPL Electric maintains that customers should not be locked into the possibility of several changes in the PTC during the term of what is intended to be an introductory program. PPL Electric M.B. at 125. However, since the Commission entered the *IWP Order*, it approved 12-month terms for Standard Offers in its *ME/PN/PP/WP DSP Order* and, most recently, in its

PECO DSP Order, notwithstanding quarterly changes in the PTC in each case. Therefore, PPL Electric's 6-month term and the OCA's 4-month term should be rejected.

With regard to the OCA's recommendation that regardless of the term of the Standard Offer, the Referral Program should guarantee the discount off the PTC during the entire term, OCA M.B. at 53, FES explained in connection with the Opt-In Program that it is not opposed to guaranteed savings. However, guaranteed savings are not necessary for customers to benefit from a 12-month retail market enhancement program contract term. As FES explained, even if the PTC changes every 6 months as PPL Electric has proposed, a 12-month contract term does not preclude participating customers from enjoying savings. Customers will receive guaranteed savings at the outset of the Standard Offer. When the PTC is reset for another 6 months, any of 3 things may happen. If the PTC increases, participating customers will enjoy even greater savings. If the PTC decreases but stays above the level of the Standard Offer, participating customers will still enjoy savings. If the PTC decreases below the level of the Standard Offer, participating customers will no longer enjoy continued savings as compared to the PTC. However, in this third scenario, the customer may switch to another EGS offer or return to default service without penalty. Also, even if the customer remains with the Standard Offer EGS for the last 6 months in this third scenario, the customer may still have enjoyed net savings over the course of a 12-month contract. FES St. No. 1-R at 25.

RESA advocates a 7% discount from the PTC for only the first 4 months, with an EGS-provided fixed rate for the remaining 8 months. RESA M.B. at 73-74. RESA's proposal ignores the *IWP Order* guidelines, which provide for a constant price during the term of the Standard Offer. *IWP Order*, slip op. at 31. RESA's proposal would force participating customers, who likely have no prior experience with EGSs and contacted PPL Electric for some reason other

than shopping, to make another shopping decision after only a few months. For these and other reasons, the Commission rejected this recommendation twice, in the *ME/PN/PP/WP DSP Order* and more recently in the *PECO DSP Order*, where the Commission succinctly stated its reasons for rejecting RESA's proposal:

We agree with the ALJ's adoption of PECO's proposal. EGSs participating in the Standard Offer Program will be required to offer a fixed price equal to 7% below the PTC in effect at the time of customer enrollment. While the discounted rate is fixed for twelve complete billing cycles, we realize that the PTC may be adjusted upward or downward on a quarterly basis which may impact the customers benefit to enrolling in the Program. However, enrolled customers are free to return to default service, should the PTC fall below the discounted rate, or may switch to a different alternate provider. Further, we agree with the OCA and FES that RESA's proposal would lead to customer confusion, would not provide any limits or protections on what a customer could be charged, and would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk. We shall deny RESA's Exception on this issue and adopt the ALJ's recommendation.

PECO DSP Order, slip op. at 114. For the same reasons, RESA's proposed standard offer should be rejected in this proceeding as well.

Small C&I Customer Eligibility

In its Main Brief, FES recommended opening PPL Electric's Referral Program to Small C&I customers. FES M.B. at 55. RESA also recommends including Small C&I customers. RESA M.B. at 77. Including Small C&I customers is consistent with the Commission's *ME/PN/PP/WP DSP Order*¹⁴ and should be approved here as well. *ME/PN/PP/WP DSP Order*, slip op. at 103-04.

¹⁴ The eligibility of Small C&I customers for the Referral Program is less clear in the *PECO DSP Order*. Footnote 15 of the *PECO DSP Order* states, in the middle of discussing customer eligibility for the Opt-In Program, "RESA's Exception No. 8 also argues that small commercial customers should be included in the Customer Referral Program.

Customer Options on Product Expiration

The OCA recommends that any participating customer who does not affirmatively elect EGS service should be returned to default service. The OCA argues that for many customers, the only affirmative choice they made was during a call to the EDC for a specific purpose unrelated to customer choice. OCA M.B. at 54-55. FES and RESA oppose this recommendation, FES M.B. at 55; RESA M.B. at 78, and it is inconsistent with the Commission's *ME/PN/PP/WP DSP Order* and *PECO DSP Order*.

In addition, the OCA's position is inconsistent with the Commission's recent *PECO Dynamic Pricing Order*. In that proceeding, the Commission considered whether a customer participating in a default service TOU pilot program in which an EGS is providing the service, at the end of the program, should be returned to the EDC's standard default service, or should remain with the EGS on a TOU product. The Commission concluded that returning the customer to default service is tantamount to slamming, since the customer had selected an EGS by participating in the program. FES believes that the Referral Program presents even more compelling circumstances for keeping the customer with the EGS than PECO's default service TOU pilot program, since the very purpose of the Referral Program is to match a customer with an EGS. Therefore, the OCA's recommendation should be denied.

RESA's Proposal to Conform the Opt-In and Referral Program Products

Toward the end of its Main Brief, RESA introduces a recommendation to conform the Opt-In Program product and the Standard Offer Referral Program product so that they have

That aspect of RESA's Exception will be addressed elsewhere in this Opinion and Order." *PECO DSP Order*, slip op. at 83. However, it appears this specific issue is not expressly addressed elsewhere in the *PECO DSP Order*.

nearly identical terms. This recommendation appears to assume that the Commission adopts a no-bid “aggregation” approach for the Opt-In Program. Under RESA’s proposal, both programs would offer a 6-month fixed price equal to a 5% discount off the PTC. The only difference is that the Opt-In Program product would include a \$50 bonus. RESA M.B. at 74. Putting aside the differences between the design of the retail market enhancement programs under RESA’s proposal and the design of the programs approved by the Commission in the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order*, such as contract length, this recommendation to make the programs nearly identical disregards the work of the Commission and numerous stakeholders over the course of a several months to find consensus on two different retail market enhancement program designs. Indeed, the *IWP Order* explains that an important objective of the Opt-In Program is to give customers a product that is “unique and eye-catching.” *IWP Order*, slip op. at 69. Making the Opt-In Product and Referral Program product nearly identical would defeat this objective.

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

FES does not oppose PPL Electric’s proposal to delay the Opt-In Program until November 2013. However, FES *is* opposed to PPL Electric’s proposal to delay the Standard Offer Referral Program until mid-2014. FES M.B. at 56. PPL Electric and the OCA argue that the Opt-In Program and Standard Offer Referral Program should not operate simultaneously because substantial customer confusion may result. PPL Electric M.B. at 129, 131; OCA M.B. at 59. However, the assertion that overlap between the programs will create customer confusion is not actual evidence of such confusion. Because the Opt-In Program will be marketed only to default service customers and not to customers who have enrolled in the Referral Program, see

PPL M.B. at 111-12, the potential for customer confusion is diminished. To the extent some customers experience overlap in the two programs, comparing prices and terms of service of the two programs is no different than comparing any two limited time offers available in the competitive retail market. For this reason, the Commission has rejected arguments that having the two programs in effect at the same time is a concern., in the *ME/PN/PP/WP DSP Order*, slip op. at 150 (“even if some overlap would occur, we agree with the position of FES that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market”) and the *PECO DSP Order*, slip op. at 121. CAUSE-PA argues that if the Commission is inclined to follow its precedent in the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order* and include CAP customers in the retail market enhancement programs, both programs should be delayed until at least January 1, 2014. CAUSE-PA M.B. at 23. For the same reasons, FES strongly opposes this recommendation.

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

As FES explained in its Main Brief, its preference is for customers in classes eligible to participate in the program to bear the costs of these programs, since the programs will benefit customers as well. FES M.B. at 57, 60. In recognition of the Commission’s preference for EGSs to be responsible for these costs, as explained in the *ME/PN/PP/WP DSP Order* and *PECO DSP Order*, FES has proposed a cost recovery methodology for the Opt-In Program in which EGSs would pay an amount per enrolled customer that was capped and known by the EGS up front, with any under-collection to be recovered from customers. FES M.B. at 58, 61-62. The *IWP Order* recognized the possibility of cost sharing between EGSs and customers. *IWP Order*, slip

op. at 32, 84-85. This was recently re-affirmed in the Commission's *PECO DSP Order*, where the Commission stated:

PECO, EGSs and interested parties are directed to resubmit a plan or proposal within sixty (60) days of the date of entry of this Opinion and Order, for Commission review and approval, addressing how participating EGSs *or customers* will pay for the costs of market enhancements approved in this DSP proceeding.

PECO DSP Order, slip op. at 148 (emphasis added).

While PPL Electric, the OCA and PPLICA acknowledge FES's preference that customers pay for retail market enhancement programs, PPL Electric M.B. at 133, 135; OCA M.B. at 61; PPLICA M.B. at 2-3, 20-21, these parties ignore FES's acknowledgement that the Commission's *ME/PN/PP/WP DSP Order* expressed a preference that EGSs bear the costs of these programs. Thus, these parties never discuss FES's proposed cost recovery methodology if EGSs are to pay for these programs. However, PPL Electric urges the Commission, if all or a portion of Opt-In Program costs are to be recovered from customers, to charge the costs to all customers in eligible customer classes. PPL Electric M.B. at 133. FES supports this qualification for recovering a customer share of costs.

PPL Electric also states that if it implements an Opt-In Aggregation Program with no competitive auction, the costs of the program, which will be reduced by the cost of the auction and one customer mailing, should be recovered from participating EGSs on a pro rata basis. PPL Electric M.B. at 133-34. Again, FES supports this approach if costs are capped and known to EGSs, with any under-collection recovered from customers (again, for reasons explained above, FES strongly urges that an EGS bidding competition be retained, consistent with the *PECO DSP Order*).

FES identified other necessary changes to details of PPL Electric's proposal to recover costs of its Opt-In Program from EGSs. FES M.B. at 59. However, PPL Electric attempts to combine FES's concerns with concerns raised by DES/IGS, and in doing so, states FES's concerns incorrectly. For instance, PPL Electric argues that it disagrees with FES's recommendation that only EGSs that actually win tranches in the Opt-In auction should pay the costs of the auction (a recommendation FES never made). In responding to this perceived recommendation, PPL Electric explains that as a result of its plan to conduct pre-auction and post-auction mailings, it will have incurred approximately \$1 million in pre-auction costs before the auction even takes place and winning EGSs are identified. PPL Electric is concerned that if no EGSs actually even participates in the auction, there will be no winning EGSs from which PPL Electric can recover its costs. PPL Electric M.B. at 134 (citing FES St. No. 1 at 22).

However, the referenced FES testimony agreed that "participating" EGSs, not merely winning EGSs, should be responsible for pre-auction costs. In fact, FES recommended that if pre-auction costs are underestimated, the true-up be recovered from all participating EGSs, not merely winning EGSs. While PPL Electric argues that a participating EGS that was not selected in the auction would have not motivation to pay costs after the fact, PPL Electric M.B. at 134, any licensed EGS that fails to pay its share of costs for a Commission-sponsored program such as this will presumably be held accountable not only by PPL Electric, but by the Commission as well.

The point in the referenced FES testimony to which PPL Electric may have been attempting to respond is FES's objection to PPL Electric's proposal to recover "post-auction" costs, and any true-up of pre-auction costs, evenly from winning EGSs. In the testimony PPL

Electric references, FES contends that the allocation of these costs to each winning EGS should be based on the percentage of customers it enrolls, and not evenly allocated. FES St. No. 1 at 22.

As for PPL Electric's concern that if no EGSs actually participate in the auction, there will be no winning EGSs from which PPL Electric can recover its costs, FES submits that it was PPL Electric which proposed to conduct a pre-auction mailing. Therefore, it is up to PPL Electric to ensure it has sufficient EGS participation before it conducts the mailing and incurs nearly \$1 million in expenses. This cautious approach would also serve PPL Electric's customers well, since PPL Electric does not want to send its customers a pre-auction mailing, only to later discover it has no EGSs to support its Opt-In Program.

The OCA, CAUSE-PA and PPLICA (which submitted no testimony and is relying on OCA testimony applicable only to the Residential customer class) oppose *any* sharing of costs by customers, citing the Commission's *IWP Order* and the *ME/PN/PP/WP DSP Order*. OCA M.B. at 63; CAUSE-PA M.B. at 14-15; PPLICA M.B. at 19-20. CAUSE-PA cites to the *PECO Motion*, CAUSE-PA M.B. at 15, but omits to mention the Commission's inclusion of the critical words "or customers." FES submits that, notwithstanding the *IWP Order* guideline that EGSs bear the bulk of the costs of these programs, the *IWP Order* supports the sharing of costs between EGSs and customers, and the Commission's above-quoted *PECO DSP Order*, which was entered since the parties submitted their Main Briefs in this proceeding, supports cost sharing as well.

The OCA and PPLICA contend that PPL Electric should recover Referral Program costs of service representative call time, as well as capital costs, from EGSs rather than from customers in a future base rate case. OCA M.B. at 63; PPLICA M.B. at 18. Similarly, CAUSE-PA argues that EGSs should bear all the costs of the Referral Program. CAUSE-PA M.B. at 14-

15. Again, the Commission's *PECO DSP Order*, entered subsequent to the filing of Main Briefs in this proceeding, directs the parties to that proceeding to determine how the costs of the program will be allocated to EGSs "or customers." *PECO DSP Order*, slip op. at 148. While the *PECO DSP Order* does not remove from EGSs the responsibility for paying for the costs of these programs, it contemplates circumstances in which it may be appropriate for customers, who will benefit from the programs, to pay a share of the costs, such as FES's under-collection proposal.

Accordingly, FES's recommended cost recovery methodologies should be adopted for each program.

7. CAP Customer Participation in the Retail Market Enhancements

In its Main Brief, PPL Electric has modified its position to allow OnTrack customers to participate in the retail market enhancement programs, but not to market the programs to these customers until there has been a further examination of whether shopping by OnTrack customers has produced net benefits for both OnTrack customers and the non-CAP customers that pay the costs of the OnTrack program. PPL Electric M.B. at 139-40. The OCA and CAUSE-PA recommend that further analysis is necessary before determining whether CAP customers be allowed to participate in the retail market enhancement programs, and recommend referring the issue to the RMI universal service subgroup or OCMO. OCA M.B. at 66-67; CAUSE-PA M.B. at 23.

Like CAP customers in the service territories at issue in the *ME/PN/PP/WP DSP Order*, PPL Electric's OnTrack customers are currently permitted to shop. PPL Electric St. No. 4-R at 5. They will receive a price lower than the PTC at the time of enrollment or referral, and can switch to another EGS or return to default service without penalty. They are included in retail

market enhancement programs under the *ME/PN/PP/WP DSP Order*, and PPL Electric's OnTrack customers should be included in its retail market enhancement programs as well. To the extent any changes to PPL Electric's OnTrack program are necessary to prevent complications in implementing the programs, the Commission has not regarded the need for changes as an obstacle to including CAP customers in retail market enhancement programs. Rather, the Commission has required the EDC to develop a plan to allow CAP customers to participate in the programs. The Commission directed this course of action for PECO Energy Company, where CAP customers are not even allowed to shop, see *PECO DSP Order*, slip op. at 131-32, and if necessary could impose a similar requirement on PPL Electric, whose treatment of its OnTrack customers is more advanced than PECO's.

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

This section intentionally left blank.

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

This section intentionally left blank.

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

This section intentionally left blank.

4. Requested Waivers

This section intentionally left blank.

IV. Conclusion

For the foregoing reasons, as well as those set forth in FirstEnergy Solutions Corp.'s Main Brief, the Petition of PECO Energy Company for Approval of Its Default Service Program should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

Amy M. Klodowski, ID No. 28068
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
Telephone: (724) 838-6765
Facsimile: (234) 678-2370
aklodow@firstenergycorp.com

By: 

Brian J. Knipe, ID No. 82854
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Telephone: (717) 237-4820
Facsimile: (717) 233-0852
brian.knipe@bipc.com

Dated: October 22 2012

Attorneys for FirstEnergy Solutions Corp.

APPENDIX A

PROPOSED FINDINGS OF FACT

1. It is appropriate for PPL Electric to procure default supply for Residential and Small C&I customers through fixed-price, load-following contracts. FES St. No. 1 at 3.

2. PPL Electric's Residential default supply portfolio should contain contracts between 12 and 24 months in length that includes 12-, 15-, 18-, 21- and 24-month contracts. FES Ex. SLN-1.

3. PPL Electric's Small C&I default supply portfolio should contain contracts between 12 and 24 months in length, including 12-, 15-, 18-, 21- and 24-month contracts. FES Ex. SLN-2.

4. Utilizing a portfolio that consists of contracts between 12 and 24 months will result in greater price stability during DSP II than PPL Electric's proposed mix. *Id.*

5. In the transitional default service period from June 1, 2013 through May 31, 2015, longer term contract lengths, including a measure of 24-month contracts, will benefit customers and retail competition by providing price stability which customers can use to evaluate retail offers. *Id.*

6. A Price to Compare ("PTC") that is relatively stable provides customers with a better guide for evaluating retail offers during this transitional period and will reduce customer confusion. FES St. No. 1 at 9-10.

7. A relatively stable PTC will give retail shoppers more certainty to enter into a fixed price retail contract and realize savings. FES St. No. 1 at 10.

8. A mix of products between 12 and 24 months will give retail suppliers a better defined default service product against which they can develop a wider variety of short- and

longer-term products that respond to customer needs and expectations regarding their electric generation service. FES St. No. 1 at 10.

9. PPF contracts between 12 and 24 months are very familiar to wholesale bidders. FES St. No. 1 at 11 (citing PPL Electric St. No. 2 at 30) and FES Cross Ex. 2 (PPL Electric Response to RESA-I-2(b), Attachment 1).

10. There is a healthy level of interest among wholesale suppliers in PPL Electric's 24-month products. PPL Electric Exhibit JC-1-R; FES St. No. 1-S at 9.

11. RESA's proposed mix lacks any 24-month contracts, and would make PPL Electric's Residential default service largely dependent on 3-month contracts. FES St. No. 1-R at 11.

12. 12- and 24-month contracts have enjoyed robust wholesale competition and a high level of supplier participation and diversity in PPL Electric's DSP I procurements. PPL Electric St. No. 2 at 30; FES Cross Ex. 2 (PPL Electric Response to RESA-I-2(b), Attachment 1).

13. PPL Electric's proposed procurement of default supply for Residential customers through fixed-price, load-following contracts, as well as its decision not to include any new purchases of spot market supply or block products procurements, provides consumers with price certainty for the duration of the contract and also gives them a benchmark price against which they can more easily evaluate competitive retail offers. FES St. No. 1 at 3; FES St. No. 1-R at 8.

14. PPL Electric's proposal to conduct semiannual solicitations beginning in April 2013 and continuing during DSP II through October 2014 will result in fewer procurements and in a simplified process with less administrative cost than quarterly procurements. FES St. No. 1-R at 14.

15. The use of quarterly procurements instead of semi-annual procurements would cost Residential and Small C&I customers approximately \$450,000-\$550,000 a year in additional procurement costs. PPL Electric St. No. 1-R at 10; PPL Electric St. No. 1-RJ at 1-2.

16. Under FES's recommended Residential and Small C&I default supply portfolios, PPL Electric would have less than 20% of FPFR default supply under contract beyond May 31, 2015. FES St. No. 1-S at 6 and Exs. SLN-1 and SLN-2.

17. It is appropriate that any contracts extending beyond May 31, 2015 be assignable in the event the Commission designates a new entity as default service provider following the DSP II period. FES St. No. 1 at 9; FES St. No. 1-R at 10.

18. By advocating that PPL Electric procure its Small C&I default supply entirely through 3-month contracts, RESA is recommending the maximum frequency for changes permitted by law in Pennsylvania Small C&I default service rates. 66 Pa. C.S. § 2807(e)(7).

19. It is not appropriate to maximize the frequency of default service rate changes in PPL Electric's service territory with many small customers remaining on default service and in need of further education on the benefits of competitive retail markets, as well as a stable default service price against which to evaluate competitive offers. FES St. No. 1-R at 11-12.

20. It is appropriate to remove PPL Electric's 70% Aggregate Load Cap for Residential Customers and its 65% Aggregate Load Cap for Small C&I customers. PPL Electric St. No. 1 at 22.

21. Because default supply load caps limit supplier competition and are potentially harmful to default service customers, and the lower the supplier load cap, the higher the likelihood that the cap will increase the total price customers pay for default service, the better policy is to allow natural competition to determine the cost of electric generation service,

consistent with the policies supporting the Competition Act, 66 Pa. C.S. § 2801, et seq. FES St. No. 1-R at 16.

22. PPL Electric's proposed default service procurement plan, and PPL Electric's proposed contingency plan, already include numerous protections against supplier default, and protect EDCs and default service customers more directly and appropriately than reducing the amount of load one supplier can win in wholesale procurements. FES St. No. 1-R at 18; PPL Electric St. No. 1 at 24-25.

23. PPL Electric's TOU default supply load should be bid separately from PPL Electric's fixed price load. FES St. No. 1 at 12.

24. TOU and fixed-price loads are two completely different wholesale products, with different risk profiles. FES St. No. 1 at 12.

25. Combining TOU and fixed-price products in one bid for wholesale supply unnecessarily complicates the bid design, and will likely result in higher bids than would be obtained on just the fixed-price full requirements portion. FES St. No. 1 at 12.

26. It is appropriate for PPL Electric to conduct a separate solicitation for TOU service for wholesale suppliers who might specialize in TOU products to meet its TOU supply obligations, to contract with an EGS to provide TOU service, or to allocate a pro-rata percentage share of TOU customer load to each tranche, including those awarded in DSP I's RFPs, rather than revising the price paid to default suppliers under their contracts. FES St. No. 1 at 13; Constellation St. No. 1 at 39; FES St. No. 1-R at 20.

27. PPL Electric's SMA should include the unsecured credit threshold used in the West Penn Power Company's SMA or, in the alternative, the same unsecured credit threshold that PPL Electric included in its SMA during DSP I. Constellation St. No. 1 at 28-30.

28. The most important consideration in designing market enhancement programs should be to give customers the lowest available pricing. FES St. No. 1 at 13.

29. If the Commission bases the design of PPL Electric's Opt-In Program on the *ME/PN/PP/WP DSP Order* and *PECO DSP Order*, the Opt-In Program's 8-month EGS provided fixed-price product should be established and made known to customers before they decide whether to participate in the Opt-In Program, and not during the 4-month introductory period in order to avoid concerns about "bait-and-switch" offers. FES St. No. 1-R at 24.

30. An Opt-In Program contract length of at least 12 months is appropriate since participating customers will benefit from extending the availability of a favorable program price to 12 months and experience price stability, both of which will increase the likelihood of maximum customer participation in the program. FES St. No. 1 at 15.

31. If the Commission does not base the design of PPL Electric's Opt-In Program on the *ME/PN/PP/WP DSP Order* and *PECO DSP Order*, no supplier participation cap in the Opt-In Program is appropriate. FES St. No. 1 at 17.

32. The fact that many suppliers already compete in PPL Electric, making fixed price offers, indicates that the Opt-In Program will attract vigorous EGS competition without the need to impose any supplier participation caps. FES St. No. 1 at 17; FES Ex. TCB-4.

33. Artificial supplier participation caps interfere with the natural operation of competitive market forces. FES St. No. 1 at 17-18.

34. Notwithstanding the *ME/PN/PP/WP DSP Order* aggregation form of Opt-In Program which eliminates a bidding competition altogether, the Opt-In Program should

nevertheless include a bidding competition, as was recently ordered in the *PECO DSP* proceeding. FES St. No. 1-R at 31; *PECO Order* at 101-103.

35. Notwithstanding the *ME/PN/PP/WP DSP Order* aggregation form of Opt-In Program which eliminates a bidding competition altogether, the product in the Opt-In Program should continue to be priced "at least" 5% below the PTC in order to provide a clear and sustained benefit to the customer for participation in the program as was recently ordered in the *PECO DSP* proceeding. FES St. No. 1-R at 31; *PECO Order* at 90.

36. It is appropriate to conduct the bidding competition for the Opt-In Program after PPL Electric's default service supply procurement but before customer enrollment. FES St. No. 1 at 3.

37. Absent any affirmative action on behalf of the customer, at the end of the Opt-In Program, a customer should not return to default service but should remain with the EGS on a month-to-month contract. FES St. No. 1 at 3.

38. It is not appropriate to require additional financial assurance for EGSs to participate in the Opt-In Program. FES R.B. at 32.

39. The length of the Referral Program standard offer should be 12 months since a 12-month product will provide increased savings and a more stable product for participating customers than a short length product. FES St. No. 1 at 23.

40. A 12-month Referral Program contract will offer customers the discounted program price with stability and certainty for a longer period of time. FES St. No. 1-R at 33.

41. Absent any affirmative action on behalf of the customer, at the end of the Referral Program, the customer should not return to default service but should remain with the EGS on a month-to-month contract. FES St. No. 1 at 3.

42. It is not appropriate to conform the Opt-In Program product and the Standard Offer Referral Program product so that they have nearly identical terms. *PECO DSP Order*, slip op. at 114.

43. The Referral Program should begin in June 2013, and not await the conclusion of PPL Electric's Opt-In Program a year later. FES St. No. 1 at 23.

44. Small C&I customers should be eligible to participate in the Opt-In Program and the Referral Program, consistent with the Commission's ME/PN/PP/WP DSP Order, slip op. at 103-04, and PECO DSP Order, slip op. at 83, 85-86.

45. PPL Electric's OnTrack customers can shop for electric generation service, and should be eligible to participate in the Opt-In Program and Standard Offer Referral Program. PPL Electric St. No. 4-R at 5.

46. All customers, in any class eligible to participate, should bear the costs of the Opt-In Program and Referral Program, given the substantial ongoing benefits customers will realize as a result of increased retail electric competition, and the likelihood that recovery of program costs from EGSs, combined with the \$50 bonus payment requirement for the Opt-In Program, will discourage EGS participation in the programs. FES St. No. 1 at 20, 25.

47. If the Commission's preference is for EGSs to bear costs of the Opt-In Program and Referral Program, the costs should be allocated based on the number of customers actually enrolled by each EGS; there should be a cap on the amount charged to EGSs for each customer enrolled; any under-collection of costs as a result of the supplier cost cap should be recovered from all customers in the classes of customers eligible to participate in the programs; and all costs should be made known to EGSs prior to the deadline for their decision whether or not to participate in the programs. FES St. No. 1-R at 35-36.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. PPL Electric has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).

2. PPL Electric must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

3. To meet its burden of proof, PPL Electric must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

5. The Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 ("Act 129"), codified at 66 Pa. C.S. §§ 2801, et seq. ("Competition Act") mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3).

6. The Competition Act, as amended by Act 129, requires that default service providers acquire electric energy through a "prudent mix" of contracts, including spot market purchases, short-term contracts and long-term contracts of between five and 20 years. 66 Pa. C.S. § 2807(e)(3.2).

7. General reliance on short term pricing which is reasonably likely to result in a "market reflective and "market-responsive" service rate is inconsistent with Act 129's "least

cost" standard and price stability objectives. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) ("Act 129 Final Rulemaking Order"), slip op. at 41.

8. Default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard. 66 Pa. C.S. § 2807(e)(3.2); *Act 129 Final Rulemaking Order*, slip op. at 39-40.

9. A default supply portfolio consisting of a mixture of 12- and 24-month contracts, "emphasize[s] the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSs." *ME/PN/PP/WP DSP Order*, slip op. at 25-26.

10. The Commission has recommended that EDCs file default service plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period, or May 31, 2015. *Upcoming DSP Final Order*, slip op. at 19.

11. EDCs should procure default supply through a minimum of two competitive bid solicitations per year. 52 Pa. Code § 69.1805(1).

12. The level at which any default supply load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load. *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of*

Their Default Service Programs, Docket Nos. P-2009-2093053, P-2009-2093054 (Opinion and Order entered November 6, 2009), slip op. at 16.

13. Section 2807(f)(5) of the Competition Act requires a default service provider to establish and provide TOU rates to customers with smart meters. 66 Pa. C.S. § 2807(f)(5).

14. The Commission has recommended that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirements. *Upcoming DSP Final Order*, slip op. at 47; see *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012).

15. The Commission has approved an Opt-In Program design consisting of a twelve-month product, comprised of a fixed price for four months equal to a discount of at least 5% off the PTC at the time of enrollment, to be determined through a bidding competition, and an EGS-provided fixed-price product for the remaining eight months. *PECO DSP Order*, slip op. at 90.

16. The Commission has directed that EDCs hold the Opt-In Program bidding competition before the customer enrollment. *IWP Order*, slip op. at 55.

17. The Commission has rejected requiring a minimum number of four (4) successful bidders in customer referral programs. *ME/PN/PP/WP DSP Order*, slip op. at 115; *PECO DSP Order*, slip op. at 98.

18. The Commission has directed that EGSs participating in EDCs' Standard Offer Referral Programs offer customers a fixed price equal to 7% below the PTC in effect at the time of customer enrollment, for a term of twelve complete billing cycles. *ME/PN/PP/WP DSP Order*, slip op. at 146; *PECO DSP Order*, slip op. at 114.

19. Retail market enhancement programs should include small commercial customers. *ME/PN/PP/WP DSP Order*, slip op. at 103-04; *PECO DSP Order*, slip op. at 83, 85-86.

20. Retail market enhancement programs should include CAP customers. *ME/PN/PP/WP DSP Order*, slip op. at 143; *PECO DSP Order*, slip op. at 131-32.

21. The Commission has approved the commencement of EDCs' Standard Offer Referral Programs on June 1, 2013. *ME/PN/PP/WP DSP Order*, slip op. at 150; *PECO DSP Order*, slip op. at 121.

22. The Commission has expressed its belief that EGSs should be responsible for the bulk of the costs of the retail market enhancement programs, *IWP Order*, slip op. at 32, 84, and directed EDCs, EGSs and interested parties to participate in collaboratives to determine how participating EGSs or customers will pay for the costs of retail market enhancement programs, *PECO DSP Order*, slip op. at 148.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. PPL Electric shall procure default supply for Residential and Small C&I customers through fixed-price, load-following contracts.
2. PPL Electric's Residential default supply portfolio shall contain products between 12 and 24 months in length, and include 12-, 15-, 18-, 21- and 24-month contracts.
3. For Small C&I customers, PPL Electric shall utilize a portfolio of contracts between 12 and 24 months in length, including 12-, 15-, 18-, 21- and 24-month contracts.
4. PPL Electric shall conduct semiannual solicitations beginning in April 2013 and continuing during DSP II through October 2014.
5. All contracts PPL executes that extend beyond May 31, 2015 shall be assignable in the event the Commission designates a new entity as default service provider following the DSP II period.
6. PPL Electric shall remove its 70% Aggregate Load Cap for Residential customers.
7. PPL Electric shall remove its 65% Aggregate Load Cap for Small C&I customers.
8. PPL Electric shall separately bid TOU default supply from its fixed price load,
9. PPL Electric shall conduct a separate solicitation for TOU service for wholesale suppliers who might specialize in TOU products to meet its TOU supply obligations, contract with an EGS to provide TOU service, or allocate a pro-rata percentage share of TOU customer load to each tranche, including those awarded in DSP I's RFPs.
10. PPL Electric's SMA should include the unsecured credit threshold used in the West Penn Power Company's SMA or, in the alternative, the same unsecured credit threshold that PPL Electric included in its SMA during DSP I.

11. The length of PPL Electric's Opt-In Program contract shall be 12 months.
12. If the Commission bases the design of PPL Electric's Opt-In Program on the *ME/PN/PP/WP DSP Order* and *PECO DSP Order*, the Opt-In Program's 8-month EGS provided fixed-price product shall be established and made known to customers before they decide whether to participate in the Opt-In Program, and not during the 4-month introductory period.
13. EGSs serving customers through PPL Electric's Opt-In Program shall provide a price "at least" 5% below the price to compare ("PTC") and determined through a bidding competition among EGSs.
14. The bidding competition for PPL Electric's Opt-In Program shall be conducted after PPL Electric's default service supply procurement but before customer enrollment.
15. Absent any affirmative action on behalf of the customer, at the end of PPL Electric's Opt-In Program, a customer shall not return to default service but shall remain with the EGS on a month-to-month contract.
16. The length of PPL Electric's Referral Program standard offer shall be 12 months.
17. EGSs participating in PPL Electric's Standard Offer Referral Program shall offer customers a fixed price equal to 7% below the PTC in effect at the time of customer enrollment.
18. Absent any affirmative action on behalf of the customer, at the end of PPL Electric's Referral Program, the customer shall not return to default service but shall remain with the EGS on a month-to-month contract.
19. PPL Electric's Referral Program shall begin in June 2013, and not await the conclusion of PPL Electric's Opt-In Program a year later.
20. Small C&I customers shall be eligible to participate in the Opt-In Program and the Referral Program.

21. PPL Electric's OnTrack customers shall be eligible to participate in the Opt-In Program and the Referral Program.

22. Costs of PPL Electric's retail market enhancement programs, if borne by EGSs, shall be allocated to EGSs based on the number of customers actually enrolled by each EGS; there should be a cap on the amount charged to EGSs for each customer enrolled; any under-collection of costs should be recovered from all customers in the classes of customers eligible to participate in the programs; and all costs shall be made known to EGSs prior to the deadline for their decision whether or not to participate in the retail market enhancement programs.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

Via First Class Mail and E-Mail

Michael W. Hassell Esquire
Post & Schell PC
12th Floor
17 North Second Street
Harrisburg PA 17101-1601

James Mullins Esquire
Office Of Consumer Advocate
555 Walnut Street
Forum Place 5th Floor
Harrisburg PA 17101-1923

Regina Matz Esquire
PA PUC BI&E Legal Technical
Second Floor West
400 North Street
Harrisburg PA 17120

Steven C. Gray Esquire
Office Of Small Business Advocate
300 North Second Street
Suite 1102
Harrisburg PA 17101

Patrick M. Cicero, Esquire
Pennsylvania Public Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Charles E. Thomas, III, Esquire
Thomas Long Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108-9500

Adeolu Bakare, Esquire
McNees Wallace & Nurick
100 Pine Street
PO Box 1166
Harrisburg PA 17108-1166

Eric J. Epstein
4100 Hillsdale Road
Harrisburg PA 17112

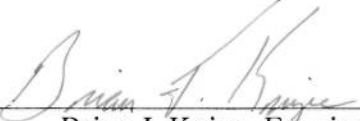
Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111

Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Melanie J. Elatieh, Esquire
UGI Corp.
460 North Gulph Road
King of Prussia, PA 19406

Divesh Gupta, Esquire
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202

Date: October 22, 2012



Brian J. Knipe, Esquire