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December 5, 2012

**VIA E-FILING**

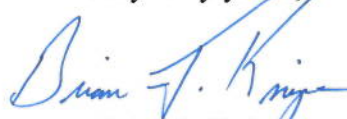
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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 *Exceptions 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)  
Office of Special Assistants (via email only: ra-osa@pa.gov)  
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 :

**EXCEPTIONS OF  
FIRSTENERGY SOLUTIONS CORP.**

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Dated: December 5, 2012

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. EXCEPTIONS .....3

Exception No. 1: The R.D.’s Recommendations to Approve PPL Electric’s Proposed Default Supply Portfolio for Residential Customers and Reject FES’s Proposal Are Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 34, 38, FOF 23, COL 9, Ordering Paragraph 3(a) .....3

Exception No. 2: The R.D.’s Recommendations to Approve PPL Electric’s Proposed Default Supply Portfolio for Small C&I Customers and Reject FES’s Proposal Are Contrary to the Weight of the Evidence. R.D. at 46, Ordering Paragraph 3(c).....7

Exception No. 3: The R.D.’s Recommendation to Approve PPL Electric’s Proposed 6-Month Opt-In Program Product Is Erroneous as a Matter of Law and Not Supported by the Evidence of Record. R.D. at 117-18, FOF 88, Ordering Paragraph 11(a) .....9

Exception No. 4: PPL Electric’s Opt-In Auction Should Not Be Converted to an Aggregation, But Should Retain Some Form of Competitive Bidding Among EGSs to Maximize Savings to Customers. R.D. at 112, 123, 127-28 .....12

Exception No. 5: The R.D.’s Recommendation to Exclude Small C&I Customers From PPL Electric’s Opt-In Program Is Erroneous as a Matter of Law and Not Supported By the Evidence of Record. R.D. at 122, Ordering Paragraph 11(b) .....13

Exception No. 6: To the Extent the R.D. Could Be Construed to Require a Minimum of 4 “Winning” Bidders, It Is Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 124-25, Ordering Paragraph 11(h).....14

Exception No. 7: The R.D.’s Recommendation to Approve PPL Electric’s Proposed 6-Month Standard Offer Is Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 138 .....16

Exception No. 8: The R.D.’s Recommendation to Defer PPL Electric’s Standard Offer Referral Program Until Mid-2014 Is

Erroneous as a Matter of Law and Contrary to the Weight of  
the Evidence. R.D. at 146-47, FOF 86, 101, Ordering ¶ 12.....17

III. CONCLUSION.....19

FirstEnergy Solutions Corp. ("FES"), by its attorneys, files the following Exceptions to the Recommended Decision ("R.D.") of Administrative Law Judge Susan D. Colwell dated November 9, 2012, and issued November 15, 2012, with respect to the default service program ("DSP II") filed by PPL Electric Utilities Corporation ("PPL Electric").

## **I. INTRODUCTION**

FES's first two Exceptions relate to the R.D.'s recommendations that the Commission approve PPL Electric's proposed mix of 9- and 12-month default supply contracts for Residential and Smaller Commercial and Industrial ("C&I") customers. For both classes of customers, FES proposed a mix of contracts between 12 and 24 months, contract lengths substantially similar to those approved by the Commission for Residential customers in the *ME/PN/PP/WP DSP Order*.<sup>1</sup> The evidence of record demonstrates that this mix of contracts will provide an effective platform for additional shopping and for the transition to a new end state of default service beginning June 1, 2015. The R.D. recommended PPL Electric's proposals, and rejected FES's proposals because of their perceived similarity to the mix of contracts in PPL Electric's current default service program ("DSP I"). As explained below, the R.D.'s recommendation is contrary to the weight of the evidence, which shows that FES's proposal is a prudent mix of contracts designed to ensure the least cost to customers over time, and a better balance of price stability and market-responsiveness than PPL Electric's proposal.

FES's third through sixth Exceptions relate to PPL Electric's proposed Retail Opt-In Auction Program ("Opt-In Program"). FES's third Exception challenges the R.D.'s

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<sup>1</sup> *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 Order*").

recommendation to approve a 6-month product for PPL Electric's Opt-In Program rather than a 12-month product, and its sixth Exception challenges the R.D.'s recommendation to exclude Small C&I customers from PPL Electric's Opt-In Program. As explained below, these recommendations are contrary to recent Commission precedent and a preponderance of the evidence.

FES's fourth and fifth Exceptions recommend clarifications of the R.D.'s recommendations concerning the Opt-In Program. While the R.D. accounts for the possibilities that PPL Electric's Opt-In Program may be designed either as an auction with competitive bidding or as an aggregation with a set price, FES strongly urges the Commission to include some form of competitive bidding. Bidding will provide participating customers with some benefit of actual retail competition, maximize savings to participating customers, and facilitate the assignment of customers to electric generation suppliers ("EGSs"). In addition, to the extent the R.D.'s recommendation could be construed to support requiring a minimum of 4 "winning" bidders, this recommendation is contrary to law and a preponderance of the evidence and should be reversed.

FES's seventh and eighth Exceptions relate to PPL Electric's proposed Standard Offer Referral Program ("Standard Offer Program"). FES's seventh Exception challenges the R.D.'s recommendation to approve a 6-month Standard Offer for PPL Electric's Standard Offer Program rather than a 12-month Standard Offer. As in the case of the Opt-In Program, this recommendation for a shortened Standard Offer is contrary to recent Commission precedent and the weight of the evidence. FES's eighth Exception challenges the R.D.'s recommendation to defer the Standard Offer Program until mid-2014, based on PPL Electric's expressed concerns with the need for system modifications and potential customer confusion. As explained below,

the preponderance of the evidence supports initiating the Standard Offer Program in mid-2013, even if it precedes initiation of the Opt-In Program. The concerns expressed with regard to system modifications lack adequate evidentiary support, and concerns about potential customer confusion caused by overlapping retail market enhancement programs have been shown to be unfounded.

For reasons explained further below, FES respectfully requests that its Exceptions be granted and that the referenced portions of the R.D. be reversed or modified consistent with these Exceptions and the arguments in FES's Main Brief ("M.B.") and Reply Brief ("R.B.").

## II. EXCEPTIONS

**Exception No. 1: The R.D.'s Recommendations to Approve PPL Electric's Proposed Default Supply Portfolio for Residential Customers and Reject FES's Proposal Are Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 34, 38, FOF 23, COL 9, Ordering Paragraph 3(a).**

FES takes exception to the R.D.'s recommendations to approve PPL Electric's proposed default supply contract portfolio for Residential customers and reject FES's proposal. R.D. at 34, 38. While FES agrees with PPL Electric's proposal to procure supply through a series of fixed-price load-following supply contracts, to eliminate spot supply, and to allow block supplies to expire without replacement, FES disagrees with PPL Electric's proposed mix of 9- and 12-month contracts. Instead, FES recommended a mix of short-term contracts<sup>2</sup> consisting of 12-, 15-, 18-, 21- and 24-month contracts.

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<sup>2</sup> The R.D. incorrectly suggests that FES raised the need for PPL Electric's portfolio to include a "long-term contract." R.D. at 33. To the contrary, FES has recommended no contract longer than 24 months, which qualifies as a short-term contract under the Competition Act, as amended by Act 129. See 66 Pa. C.S. § 2807(e)(3.2)(iii) (defining a long-term contract to be 5 years or longer); FES M.B. at 14 n.4.

The R.D. concludes that “PPL Electric has proposed a prudent mix of contracts for customers that will provide least cost to customers over time, while taking into account the benefits of price stability for customers,” COL 9, and that PPL has met its burden of proof with respect to its proposed DSP II program, COL 24. The R.D. explains that PPL Electric’s proposal “is superior to the other proposals set forth in this proceeding as it strikes an appropriate balance between being market reflective and providing a level of price stability for default service customers.” R.D. at 38.

However, the weight of the evidence supports FES’s proposal, which includes more laddering of contracts than PPL Electric’s proposal. Under FES’s proposal, PPL Electric would still replace a percentage of its generation contracts every 3 months, but that percentage would never exceed 26.875%. See FES Ex. SLN-1. In contrast, PPL Electric’s proposal would replace 39.375% of its generation contracts on December 1, 2014, and 49.375% of its contracts on June 1, 2014. See PPL Ex. JC-4A. Replacement of nearly half of PPL Electric’s generation contracts increases the likelihood of a significant price swing. Thus, FES’s proposed mix of contracts will result in greater price stability than PPL Electric’s proposal, will strike a better balance between market reflectiveness and price stability than PPL Electric’s, and will include a prudent mix of contracts which is designed to ensure the least cost over time and adequate and reliable service to customers.

Also, the lengths of contracts in FES’s proposal are substantially similar to those in the Residential supply portfolio the Commission recently adopted in the *ME/PN/PP/WP DSP Order*. There the Commission found that a “mixture of twelve and twenty-four month contracts proposed by RESA for residential customers . . . 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. The evidence demonstrates that PPL Electric’s proposed portfolio, by eliminating any contract longer than 12-months, focuses too much on market-reflectiveness and not enough on price stability. Accordingly, the R.D.’s finding (COL 9) that PPL Electric’s proposal will ensure the least cost over time while accounting for the benefits of price stability is erroneous as a matter of law.

Further, the evidence also demonstrates that FES’s proposed mix of contracts will promote shopping. FES explained that a better defined default service product will benefit retail competitors by facilitating the design of competitive offerings, and that it will also benefit customers by facilitating price comparisons of the default service product with competitive offerings. FES M.B. at 14-15. Although the R.D. acknowledges this evidence the R.D. does not discuss it or give it any apparent weight. Instead, the R.D. recommends rejecting FES’s proposal because “a product portfolio so similar to the DSP I would be unlikely to spur additional shopping . . . .” R.D. at 33-34. Putting aside the fact that FES’s proposal is not so similar to DSP I as PPL Electric suggests, the R.D. does not consider evidence of increases in shopping which the Commission expects will result from 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.

In addition, the record demonstrates that FES’s proposed mix of laddered short-term contracts will provide an effective platform for PPL Electric’s service territory to transition to the Commission’s proposed end-state of default service, by allowing the price-to-compare (“PTC”) to change every 3 months while providing greater price stability than PPL Electric’s proposed mix of 9- and 12-month contracts. FES M.B. at 14-15. As explained above, FES submits that

PPL Electric's proposed portfolio focuses too much on market-reflectiveness for the transition to end-state default service beginning June 1, 2015. FES M.B. at 14. Such significant changes to the PTC as PPL Electric is proposing would add unnecessary complexity for customers during a transitional period when default service customers are experiencing significant changes including the implementation of retail market enhancement programs and the distribution of voluminous customer education materials. FES M.B. at 14. While PPL posits that its relatively high shopping levels are a reason to move toward more frequent and significant price changes, FES believes that during this transition to end-state default service, the focus in designing default supply procurement must remain with those who have not yet shopped; those customers must be given relative stability in their default service pricing in order for them to be confident in their choices among the multitude of retail offers available in PPL Electric's territory.

The R.D. also mentions PPL Electric's contention that it has seen evidence of less interest among wholesale bidders in supplying 24-month products than 12-month products. R.D. at 29, FOF 23. While this does not appear to be the basis of the R.D.'s recommendations, it is important to note that there is no evidence of record that supplier interest in 24-month products is in any way insufficient. Rather, the evidence reflects a healthy level of interest among wholesale suppliers in PPL Electric's 24-month products. FES M.B. at 17.

The evidence of record shows that the relative stability of FES's recommended portfolio will ensure that PPL Electric's default service meets the requirements of Act 129 while continuing to promote the growth of retail electric competition and providing a smoother transition to end-state default service that benefits smaller default service customers. Accordingly, the R.D.'s recommendation to approve PPL Electric's default supply portfolio for

Residential customers should be reversed, and FES's proposed default supply portfolio should be adopted.

**Exception No. 2: The R.D.'s Recommendations to Approve PPL Electric's Proposed Default Supply Portfolio for Small C&I Customers and Reject FES's Proposal Are Contrary to the Weight of the Evidence. R.D. at 46, Ordering Paragraph 3(c).**

FES takes exception to the R.D.'s recommendations to approve PPL Electric's proposed default supply contract portfolio for Small C&I customers and reject FES's proposal. R.D. at 46. Both PPL Electric's and FES's proposed default supply contract portfolios for Small C&I customers are similar to their respective proposals for Residential customers, i.e., FES recommended a mix of 12-, 15-, 18-, 21- and 24-month short-term contracts instead of PPL Electric's proposal of mainly laddered 9- and 12-month contracts.

The R.D. recommends that "[t]he Company's proposal is reasonable and should be approved for the reasons given." R.D. at 46. Those reasons include evidence that the Small C&I customers remaining on default service tend to be smaller customers. Indeed, PPL Electric's Small C&I default service customers comprise over 50% of Small C&I customers but less than 12% of the Small C&I load. R.D. at 43. Therefore, PPL Electric argued, its reasons for eliminating not only spot supplies but also 24-month contracts for Residential customers are applicable to Small C&I customers as well. R.D. at 43-44. FES agrees that the same considerations apply in determining the appropriate mix of default supply contracts for PPL Electric's Residential and Small C&I customers, but believes that these considerations recommend adoption of FES's proposed mix of contracts, which offer more market-reflective rates than DSP I but greater price stability than PPL Electric's proposal.

As in the case of PPL Electric's Residential default supply portfolio which is discussed in FES's first Exception, the R.D.'s recommendation is contrary to the weight of the evidence. FES's proposed mix of contracts between 12 and 24 months includes more laddering than PPL Electric's proposal. While both FES's and PPL Electric's proposals will replace a percentage of PPL Electric's generation every 3 months, FES's proposal would not require PPL Electric to replace percentages approaching half of its generation. Compare FES Ex. SLN-2 and PPL Electric Ex. JC-4B. FES's proposed mix of contracts will result in greater price stability during DSP II than PPL Electric's proposed mix, thereby benefitting customers as well as retail competition during the transition to a new end-state of default service. Also, contracts between 12 and 24 months are very familiar to wholesale bidders and will ensure robust wholesale competition and a high level of supplier participation and diversity in PPL Electric's RFPs. FES M.B. at 31.

The R.D. appears to adopt PPL Electric's argument that "the FES proposal . . . reflects essentially no change from the current procurement mix under PPL Electric's DSP I Program," — again a characterization FES disputes — and that "FES has offered no evidence to support a conclusion that continuation of the same procurement plan will provide any further support or encouragement for additional shopping." R.D. at 44. Subsequently, however, the R.D. recommends excluding Small C&I customers from PPL Electric's retail market enhancement programs on the grounds that "the small C&I market is already robust," R.D. at 122, an observation that casts doubt on the validity of PPL Electric's criticism of FES's proposed mix of contracts. In addition, the R.D.'s recommendation to exclude Small C&I customers from retail market enhancement programs confirms that the R.D. is not attributing any increases in Small C&I shopping during DSP II to the implementation of successful retail market enhancement

programs. As discussed below, FES supports the inclusion of Small C&I customers in PPL Electric's retail market enhancement programs, consistent with the Commission's recent rulings on other electric distribution companies' ("EDCs") retail market enhancement programs. These programs, together with customer education, will ensure that PPL Electric's Small C&I shopping continues to grow during DSP II. FES M.B. at 17.

The evidence of record demonstrates that FES's proposed mix of 12-, 15-, 18-, 21- and 24-month contracts represents a transitional step from DSP I to the June 1, 2015 end-state of default service and will promote shopping. PPL Electric's proposal would add unnecessary complexity for PPL Electric's Small C&I customers remaining on default service — its smallest C&I customers — during this transitional period. Accordingly, the R.D.'s recommendation to approve PPL Electric's default supply portfolio for Small C&I customers should be reversed, and FES's proposed default supply portfolio should be adopted.

**Exception No. 3: The R.D.'s Recommendation to Approve PPL Electric's Proposed 6-Month Opt-In Program Product Is Erroneous as a Matter of Law and Not Supported by the Evidence of Record. R.D. at 117-18, FOF 88, Ordering Paragraph 11(a).**

FES supports a 12-month Opt-In Program fixed-price product, and takes exception to the R.D.'s recommendation to approve PPL Electric's proposed 6-month Opt-In product. R.D. at 117-18. The R.D. explained that approving a different Opt-In Program design for PPL Electric than the Commission has approved for other EDCs may provide invaluable guidance:

There is no requirement that all programs offered by the Commonwealth's EDCs be identical. The program proposed by the Company is a reasonable one. The six-month length in this EDC's 29-county territory provides the entire market the opportunity to compare the results of a six-month program to the results of the 12-month program to be offered by the FirstEnergy

companies and PECO for what could be invaluable guidance in future initiatives.

R.D. at 117-18. However, if the preferred Opt-In Program design adopted in the *ME/PN/PP/WP DSP Order* and *PECO DSP Order*<sup>3</sup> applies to this proceeding, the question of contract length has been settled and the Opt-In product should be 12 months. FES M.B. at 44-45.

Indeed, subsequent to the issuance of the R.D., the Commission entered another Order clarifying that its intent in describing the Opt-In Program design in the *PECO DSP Order* was clearly to “mirror” the Opt-In Program design in the *ME/PN/PP/WP DSP Order*, and that the designs of the EDCs’ Opt-In Programs should match.<sup>4</sup> *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered November 21, 2012), slip op. at 30-31. This design includes a 12-month product, comprised of a fixed price for 4 months guaranteed to be 5% off the PTC at the time of enrollment, and an EGS-provided fixed-price product for the remaining 8 months. Therefore, PPL Electric’s Opt-In Program should offer a 12-month product and the recommendation of a 6-month product is contrary to law.

Even if the preferred Opt-In Program design approved in the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order* does not apply to this proceeding, the R.D.’s recommended 6-month term is contrary to the weight of the evidence. The R.D. observes that “[t]he Company’s 6-month term recommendation, combined with its proposed schedule for implementing the auction and changing the PTC on a semi-annual basis, would effectively assure that participants would achieve five months of certain savings off the PTC.” R.D. at 116. The R.D. notes PPL Electric’s

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<sup>3</sup> *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 Order*”).

<sup>4</sup> The R.D. also raises PPL Electric’s “concern that a requirement that customers enter into a one-year term contract is too long for what is intended to be an introduction to shopping.” R.D. at 117. The Commission’s Orders indicate its disagreement with this view.

concern that a 12-month Opt-In Program contract's fixed price will not necessary remain favorable when compared to the PTC, if market prices or the PTC falls after 6 months. R.D. at 114. However, a 6-month product, as approved in the R.D., does not assure savings for the entire term of the program either. In any event, five months of savings will be assured whether the program is for 12 months or 6 months. While FES 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 R.B. at 28. As FES explained, any concerns that the PTC might decline more than 5% over the 12-month period are addressed by customers' freedom to leave the program for lower EGS offers, or even default service, without penalty. Under any circumstances, participating customers will benefit from extending the availability of a favorable program price to 12 months, and from the opportunity to have 12 months of price stability. Therefore, a 12-month program period will increase the likelihood of maximum customer participation in the program. FES M.B. at 45-46. The R.D. does not give adequate weight to this evidence and should be modified to adopt a 12-month Opt-In Program product.

Further, the value of any guidance for future initiatives that could be gained by comparing dissimilar programs is uncertain, given that the EDCs' Opt-In Programs are intended to be one-time initiatives and not ongoing programs. Indeed, the *IWP Order*<sup>5</sup> instructs that Opt-In Programs were always intended to be "an intermediate mechanism to boost shopping." *IWP Order* at 33. As such, the Opt-In Programs of the Commonwealth's electric distribution companies should be designed with the objective of comparing the success rates of identical program designs; the R.D.'s recommendation, if implemented, would prevent a valid comparison of the success of the Opt-In Programs in different EDC territories.

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<sup>5</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

The R.D.'s recommended adoption of a 6-month term for PPL Electric's Opt-In Program should be rejected, and a 12-month term should be ordered, as in the two other EDC DSP proceedings in which the design of the Opt-In Program has been considered to date.

**Exception No. 4: PPL Electric's Opt-In Auction Should Not Be Converted to an Aggregation, But Should Retain Some Form of Competitive Bidding Among EGSs to Maximize Savings to Customers. R.D. at 112, 123, 127-28.**

The R.D. includes several recommendations or observations that are consistent with an Opt-In "auction" Program with a bidding competition among EGSs, but also contains several qualifications or observations that recognize the possibility that the Commission may structure PPL Electric's Opt-In Program as an "aggregation" program with a set price. Perhaps the best example is the R.D.'s recommendation of a sealed bid format over a descending clock auction, R.D. at 128, which is qualified by the observation that this recommendation is irrelevant if an aggregation program is adopted.<sup>6</sup> R.D. at 127 n.43. Another example is the R.D.'s recommendation against one party's proposal to enroll customers prior to holding any auction, with the observation that this proposal is also irrelevant if an aggregation program is adopted. R.D. at 123 n. 40. In addition, the R.D. finds that with small modifications PPL Electric could convert its Opt-In Program's auction design to an aggregation design similar to that adopted in the *ME/PN/PP/WP DSP Order* and the *PECO DSP Order*, R.D. at 112, FOF 87, and that a 6-month aggregation approach would produce a more positive shopping experience than a 5% discount for 4 months followed by a non-standard price among EGSs for a remaining 8-month

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<sup>6</sup> Other examples of recommendations consistent with an "auction" design include, but are not limited to, the R.D.'s recommendation that the Opt-In Program include a minimum 5% discount off the PTC on December 1, 2013, R.D. at 122-23 and Ordering Paragraph 11(e), and the observation that if Small C&I customers were included in the Opt-In Program, and an auction process were used, there would need to be a separate auction for Small C&I customers, R.D. at 121 n.39.

period. R.D. FOF 90. As a result, the R.D. never definitively recommends an auction design or an aggregation design.

FES strongly believes that the Opt-In Program should include some form of bidding competition, so that this retail market enhancement program can provide participating customers with the benefits of actual retail competition. Without a bidding competition, the price to participating customers will not provide the maximum savings. 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. Also, to date there is no clear methodology for allocating customers among participating suppliers. In addition, competitive bidding preserves significant aspects of many months of work by stakeholders in the RMI proceedings, culminating in the Commission's *IWP Order*. Consistent with this position, FES also believes that the product should continue to be priced "at least" 5% below the PTC since there needs to be a clear and sustained benefit to the customer for participation in the program. FES M.B. at 50-51.

Accordingly, the R.D. should be modified to retail some form of competitive bidding in PPL Electric's Opt-In Program.

**Exception No. 5: The R.D.'s Recommendation to Exclude Small C&I Customers From PPL Electric's Opt-In Program Is Erroneous as a Matter of Law and Not Supported By the Evidence of Record. R.D. at 122, Ordering Paragraph 11(b).**

FES takes exception to the R.D.'s recommendation to approve PPL Electric's proposal to exclude Small C&I customers from the Opt-In Program. R.D. at 122, Ordering Paragraph 11(b).

The R.D. explains that it appears there is already robust shopping among Small C&I customers,<sup>7</sup> and therefore the extra cost of including the program to Small C&I customers would be unjustified.<sup>8</sup> R.D. at 122. However, the Commission has twice ruled that Small C&I customers should be included in EDCs' Opt-In Programs, in its *ME/PN/PP/WP DSP Order* and *PECO DSP Order*. See *ME/PN/PP/WP DSP Order*, slip op. at 103; *PECO DSP Order*, slip op. at 85-86. FES and other parties provided ample evidence that retail market enhancement programs should be open to customers in all rate classes. FES M.B. at 53; FES R.B. at 30-31. Accordingly, the R.D.'s recommendation is erroneous as a matter of law and contrary to the weight of the evidence, and should be modified to include Small C&I customers in PPL Electric's Opt-In Program.

**Exception No. 6: To the Extent the R.D. Could Be Construed to Require a Minimum of 4 “Winning” Bidders, It Is Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 124-25, Ordering Paragraph 11(h).**

In the course of recommending a 50% supplier participation cap for the Opt-In Program, the R.D. discusses RESA's recommendation that the Commission also require at least four “successful” EGS bidders in any auction or aggregation. R.D. at 124. FES opposed this recommendation. See FES M.B. at 49-50; FES R.B. at 28-29. The Commission has twice rejected proposals to adopt a minimum four winning bidder requirement. See *PECO DSP Order*, slip op. at 96, *ME/PN/PP/WP DSP Order*, slip op. at 115.

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<sup>7</sup> As explained above, this observation calls into question PPL Electric's argument against FES's proposed default supply portfolio for Small C&I customers on the grounds that it is too similar to DSP I and therefore would not do enough to encourage additional shopping among Small C&I customers. R.D. at 44.

<sup>8</sup> The R.D.'s noted PPL Electric's argument that if an auction process is used, a separate auction for Small C&I customers would be necessary. R.D. at 121 n.39 (citing PPL Electric St. No. 4-R at 27-28). However, the record does not contain evidence suggesting that an additional bidding competition like that proposed by PPL Electric (a sealed-bid RFP with an independent monitor opening additional envelopes) would add significant costs to the program.

The R.D. concludes that “RESA’s goals are consistent with the goals of the Retail Markets Enhancement Programs,” and recommends “that there be a minimum of four bidders in order for the auction or aggregation to occur,” R.D. at 125, and that “four or more electric generation supplier bidders *participate*,” Ordering Paragraph 11(h) (emphasis added). To the extent the R.D. could be construed to recommend requiring a minimum of four “winning” bidders, it is unsupported by the record evidence. As FES explained in briefs, there is no reason to believe that any feature of PPL Electric's proposed Opt-In Program would tend to prevent a diverse number of winning suppliers, and the record does not demonstrate how requiring at least four winning bidders could enable a number of EGSs to achieve economies of scale in the market, as argued by proponents of such a requirement. FES M.B. at 50.

As mentioned above, the Commission has twice rejected a requirement of a minimum number of bidders. In the *PECO DSP Order*, the Commission explained that such a requirement, in addition to a 50% supplier participation cap, is inconsistent with the development of a truly competitive market and could cause the Opt-In Program to fail:

We shall reject RESA’s proposal to adopt a minimum four winning bidder requirement. We agree with FES that such a requirement could create a reason for the Opt-In Program to fail, and that the record does not support the need for such a requirement. Although we anticipate that numerous EGSs will participate in PECO’s Opt-In program, we do not believe that we should establish a mandate that there be a minimum of four winning bidders. By creating opt-in programs, we have taken a major step to encourage the participation of both customers and suppliers in an effort to increase shopping levels. We do not believe that artificial rules, such as a four-bidder minimum, would be consistent with the development of a truly competitive market. We view our proper role to be that of removing, rather than creating, barriers to competition. Given that winning bidders will be required to offer a discount from PECO’s PTC, there is no reason to require a minimum number of winning bids.

*PECO DSP Order*, slip op. at 96. Accordingly, to the extent the R.D. could be read to recommend a minimum number of “winning” bidders, its recommendation is erroneous as a matter of law and contrary to the weight of the evidence, and should be reversed.

**Exception No. 7: The R.D.’s Recommendation to Approve PPL Electric’s Proposed 6-Month Standard Offer Is Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 138.**

FES takes exception to the R.D.’s recommendation to approve a 6-month term for PPL Electric’s Standard Offer Program. The R.D. found that PPL Electric’s proposed 6-month term “is just the right length to provide a compromise among the parties while complying with the *IWP Order* and satisfying the concerns of the Commission expressed therein.” R.D. at 138.

FES respectfully submits that this recommendation is erroneous as a matter of law and contrary to the weight of the evidence. Since the Commission entered the *IWP Order*, it has twice approved 12-month terms for Standard Offers, in its *ME/PN/PP/WP DSP Order* and, most recently, in its *PECO DSP Order*. *ME/PN/PP/WP DSP Order*, slip op. at 146; *PECO DSP Order*, slip op. at 114. In addition, the evidence demonstrates that a 12-month product will provide increased savings and a more stable product for participating customers. A customer may exit the Standard Offer contract at any time, without penalty, either to select another EGS or return to default service. It is important that the Standard Offer allow sufficient time for a customer to gain confidence in their supplier and the retail market. FES M.B. at 54-55. Accordingly, the R.D.’s recommendation should be reversed, and the length of PPL Electric’s Standard Offer should be 12 months, consistent with the Commission’s other Orders.

**Exception No. 8: The R.D.'s Recommendation to Defer PPL Electric's Standard Offer Referral Program Until Mid-2014 Is Erroneous as a Matter of Law and Contrary to the Weight of the Evidence. R.D. at 146-47, FOF 86, 101, Ordering Paragraph 12.**

FES takes exception to the R.D.'s recommendation that PPL Electric defer the initiation of its Standard Offer Referral Program until mid-2014. R.D. at 146-47; Ordering Paragraph 12. FES recommends that the Standard Offer Program begin on or around June 1, 2013.

The R.D. finds that while the "sooner is better" approach to the Standard Offer Program is appealing, "work is needed to implement a Standard Offer Program that avoids marketing to shopping customers, allows 'day one switching' and otherwise allows Customer Service Representatives to properly present the Program to customers that call in." R.D. at 146; FOF 101. While EGS parties to this proceeding did not agree with this explanation for delaying the program, the R.D. posits that PPL Electric "is best able to evaluate and predict the current capabilities of its systems and predict the amount of work and time necessary to create the support system needed to implement these enhancement programs." R.D. at 146. FES submits that this finding is not supported by substantial and credible evidence, and that PPL Electric should complete the necessary work in time to commence the Standard Offer Program in mid-2013.

In addition, the R.D. explains that if PPL Electric were to initiate its Standard Offer Program earlier, "[c]ustomer confusion and negative views of customer choice can be created by presenting multiple different offers to customers in overlapping contexts." FOF 86. The R.D. describes a "confusing telephone call" in which a customer service representative needs "to educate the caller in two separate yet similar programs, and then help the customer evaluate which would be better without being accused of improper implementation." R.D. at 147.

Again, FES submits that this finding is contrary to a preponderance of the evidence. While each program is sponsored by the Commission and offers customers a discount, the similarities end there. Each offer will be marketed and solicited through different methods. The “confusing telephone call” the R.D. describes ought to be rare, since customer representatives will only be educating the customers about the Standard Offer Program over the telephone; the Opt-In Program will be implemented through mailings. FES M.B. at 56.

Also, since the Opt-In Program will be marketed only to default service customers and not to customers who have enrolled in the Standard Offer Program, see PPL M.B. at 111-12, the potential for customer confusion is further 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. FES M.B. at 56.

FES believes that implementing the Standard Offer Program in mid-2013, ahead of the Opt-In Program, may yield information concerning potential customer participation in the Opt-In Program which EGSs participating in the Opt-In Program may find valuable. FES St. No. 1 at 23. The R.D. does not appear to have given any weight to this benefit.

While FES supports a well-coordinated approach, a 12-month delay of the Standard Offer Program is unnecessary. Accordingly, the R.D.’s recommendation to delay the Standard Offer Program is unsupported by credible and substantial evidence, and should be reversed.

**III. CONCLUSION**

For the reasons set forth above and in FirstEnergy Solutions Corp.'s Main Brief and Reply Brief, FirstEnergy Solutions Corp. respectfully requests that the Pennsylvania Public Utility Commission modify the Recommended Decision as requested in these Exceptions.

Respectfully submitted,

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Dated: December 5, 2012

Attorneys for FirstEnergy Solutions Corp.

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).

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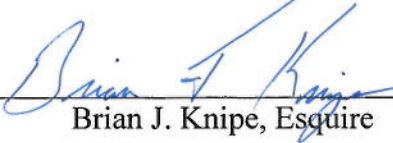
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