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December 5, 2012

**Via Electronic Filing**
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 the Retail Energy Supply Association ("RESA") enclosed please find its Exceptions which have been electronically filed today with the Public Utility Commission with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Susan Colwell, w/enc.
Office of Special Assistants w/enc. (via email only ra-osa.pa.gov
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of RESA's Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: December 5, 2012

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{L0483079.1}

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015 | : : : : : | Docket Nos. P-2012-2302074 |

# EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION


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## I. INTRODUCTION

In this proceeding, the Commission must determine whether the proposed default service procurement plan offered by PPL Electric Utilities ("PPL" or "Company") meets the requirements of the Electricity Generation Customer Choice and Competition Act ("Competition Act")[1] and is consistent with the Commission's policy directives designed to produce a robust competitive retail electric market in the PPL service territory. The position of the Retail Energy Supply Association ("RESA")[2] is that – in large part – the November 9, 2012 Recommended Decision ("RD") of Administrative Law Judge ("ALJ") Susan D. Colwell does not satisfy these requirements.

The two overall major elements of this case are: (1) the default service procurement plan; and, (2) the Retail Market Enhancement ("RME") initiatives. The default service procurement plan sets forth how PPL will acquire supply for its default service customers (those who do not elect to receive generation service from an alternative supplier) effective June 1, 2013. The Competition Act sets forth the statutory requirements regarding plan design which PPL is required to satisfy. The RME initiatives address how default service customers will be incented to participate in the competitive retail market consistent with the objectives of the Competition Act to foster the development of a robust retail market. Importantly, if the default service procurement plan does not result in a default service rate that is reflective of the market, then

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1 66 Pa. C.S. § 2801, *et. seq.*

2 RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain, Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

alternative electric generation suppliers ("EGSs") will not be able to offer service and consumers will not have the option of choosing to shop. Likewise, and assuming the default service procurement plan is reasonable, if the RME initiatives are not properly structured, then EGSs will not be able to participate so that the programs meaning that they would not be made available to consumers.

Starting with PPL's procurement plan, the ALJ's recommendation misses an excellent opportunity for the Commission to approve a structure that is consistent with its expressed "end state" market design goals. In the Retail Markets Investigation ("RMI"), the Commission has proposed a default service model that is intended to more closely resemble market conditions to go into effect on June 1, 2015.[3] This model would rely on quarterly procured supply contracts with a quarterly changing Price-to-Compare ("PTC").[4] Adopting RESA's recommended modifications to PPL's proposed procurement plans for the residential and small commercial and industrial ("C&I") customers would transition to this type of model over the next two years so that it could be easily implemented consistent with the Commission's determinations in June 2015. As explained below in Exception Numbers 1-7, the ALJ's recommendations on various issues related to the procurement plan undermine achievement of this goal and, in some cases, would even change the customers' current experience to one that would have to change yet again in June 2015. For example, the ALJ recommends that the currently quarterly changing PTC be revised to change on a semi-annual basis. In 2015, however, this would need to be revised back to quarterly changes consistent with the RMI decision. Rather than take a step back regarding the default service procurement plan (as would occur with adoption of the ALJ's

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3 *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Tentative Order entered November 8, 2012 ("*RMI End State Tentative* Order") at 12.

4 *Id.* at 16-18.

recommendations), RESA urges the Commission to adopt its proposed modifications which pave the way for a smooth transition to the June 2015 market design envisioned by the Commission.

Regarding the RME initiatives, their undisputed purpose is to incent default service customers to participate in the competitive market. These programs are currently necessary in Pennsylvania because a significant number of mass market customers remain on default service despite all the efforts in recent years to encourage them to shop. While PPL's service territory has experienced more significant shopping in the mass market than in other areas of the Commonwealth, there is still a significant number of customers who remain on default service and these customers are the targets of the RME initiatives. The RME initiatives must be properly designed to insure successful implementation which will occur if EGSs want to participate and customers choose to participate. Although some of the proposals and modifications to the RME initiatives that could have undermined this result were rightly rejected by the ALJ (and not proposed by PPL), there are significant design features recommended by the ALJ that, if implemented, could have a negative impact on implementation. Perhaps two of the most important issues that the Commission needs to satisfactorily address are: (1) the timing of the initiatives (discussed in Exception Number 9); and, (2) cost recovery (discussed in Exception Number 14). Generally, RESA recommends that the RME initiatives all be implemented on or before June 1, 2013 and that the Commission consider a cost sharing mechanism to reasonably allocate the program costs among EGSs and customers. RESA also recommends that once the Commission determine the core program elements, PPL be required to provide concrete cost elements and the parties be directed to work together to develop fair and balanced binding terms that will govern their relationship. All of RESA's recommendations for the RME initiatives are discussed more fully in Exception Numbers 9-14.

## II. EXCEPTIONS

### A. Exception No. 1: The ALJ Erred In Rejecting RESA's Proposed Modifications To The Procurement Plan Contract Mix For The Residential Customers (RD at 27-38, 165, Ordering ¶3a)

For residential customers, the ALJ recommended that the Commission adopt PPL's proposal to obtain a portfolio of primarily 12-, 9-, and 6-month fixed-priced full-requirement, load-following products procured semiannually.[5] The ALJ rejected RESA's proposed modification that the contract mix be revised to include a portfolio mix of 12-month and quarterly fixed-priced full-requirements products, where the percentage of the portfolio made up of quarterly priced products increases over time.[6] The ALJ appears to have agreed with PPL that RESA's modifications "would immediately expose residential customers to substantial rate swings and rate instability" and, based on this, erroneously concluded that "RESA has failed to sustain its burden of proving entitlement to its recommendations."[7] The ALJ's recommendation is flawed and must not be accepted.

From a legal perspective, there is no dispute that the default service procurement plan approved by the Commission must comply with the statutory requirements set forth in the Competition Act. This includes the requirement that the procurement plan comply with the product design elements set forth in 66 Pa.C.S. § 2807(e) as well as the legal requirement that the approved default service plan be reasonably calculated to promote the development of a competitive retail generation market.[8] While the ALJ correctly identified these requirements, she

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5 PPL St. No. 2 at 15-16, PPL Exh. JC-4A. There is one proposed 3-month contract procurement. *Id.*

6 RESA St. No. 1 at 12-13 and RESA Exhibit AW-1.

7 RD at 34- 35.

8 66 Pa. C.S. § 2087(3); 66 Pa. C.S. § 2802(3) and (5). *See Green Mountain Energy Company, et al. v. Pa. PUC,* 812 A.2d 740, 742 (Pa. Commw. 2002)

incorrectly failed to address the competitive retail market issues raised by RESA and cited only to avoiding rate swings and rate instability as her justification for rejecting RESA's proposal.

As the Commission has already recognized, the policy objective of price stability cannot be elevated above satisfying the legal requirements actually established in the Competition Act.[9] For example, in the PCL&P default service case, the Commission rejected a proposal offered by OCA, whose sole purpose was to address default service rate volatility.[10] Similarly, in the FirstEnergy default service case, the Commission concluded that two-year long procurements "would [not] best meet the least cost over time criteria and presents a considerable risk that default service rates would not remain economical relative to other electric supply options."[11]

In this case, the ALJ appears to have erroneously focused only on the issue of price stability as a reason to reject RESA's proposal. This myopic view ignores the fact that RESA's modification would lead to a more market-reflective default service rate which would foster the development of the competitive retail market consistent with the Competition Act. Moreover, even assuming that price stability should be the goal (a contention that RESA would dispute), the proper method to achieve price stability is to develop a robust competitive retail market where any customer who wants a more stable, fixed price option can get it from any number of different

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[9] *See* RESA Reply Brief ("RB") at 5-6.

[10] "[T]he creation of a supply portfolio for default service need not be burdened with the cost of financial hedge [OCA's proposal] for the sole purpose of adding an envisioned stability to the default service rate. Accordingly, we find that the ALJ relied too heavily upon the Preamble to Act 129 in recommending [adoption of OCA's proposal]." *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012. On June 22, 2012, OCA filed an appeal of this order to the Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Commonwealth Court Docket No. 1179 C.D. 2012.

[11] *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 No. P-2011-2273650, et. seq., Opinion and Order entered August 16, 2012 (*"FE DSP II Order"*) at 25.

suppliers. RESA's proposed modifications, therefore, would promote a more competitive market, which, in turn, will permit consumers who want price stability to be able to receive it.[12]

In addition, RESA's proposal also has the added benefit of advancing the goals of the Commission established in the RMI proceeding for the benefit of consumers.[13] In its recent *RMI End State Tentative Order*, the Commission announced that its "main goal" regarding default service procurement contracts is "to create a more market-based PTC."[14] The Commission proposed to achieve this for residential and small commercial and industrial customers through quarterly auctions that will procure all default service load via tranches of full requirements, load-following contracts for the upcoming quarter.[15] Adopting RESA's modification would result in a gradual progression toward quarterly procurements consistent with the *RMI End State Tentative Order*. Pursuant to RESA's approach, in September 2014, the percentage of 3-month products procured quarterly will be less than 23% of the total procurement for this customer class. However, the portion of the residential load that will be procured quarterly through 3-month contracts will rise to just over 45% in December 2014, to 68% by March 2015, until 100% of the power for this segment of customers is procured quarterly using 3-month contracts at the end of the DSP II period (June 2015).[16] This gradual movement toward short-term contracts procured quarterly is designed to make retail power prices more market-reflective and allows a smooth transition to the environment anticipated by the Commission in the RMI

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12 RESA RB at 6.

13 RESA Main Brief ("MB") at 19-20.

14 *RMI End State Tentative* Order at 15.

15 *RMI End State Tentative Order* at 17.

16 *See* RESA MB at 19; RESA Exhibit AW-1.

proceeding. The ALJ's failure to take this into consideration should be rejected in favor of RESA's proposal.

## B. Exception No. 2: The ALJ Erred In Rejecting RESA's Proposed Modifications To The Procurement Plan Contract Mix For Non Hourly Priced Commercial and Industrial Customers (RD at 43-46, 165, Ordering ¶¶3c, 3i)

The ALJ recommended adoption of PPL's proposal for non-hourly priced commercial customers that PPL obtain a portfolio of 12-, 9-, 6-and month fixed-price full-requirements load-following products procured semiannually.[17] The ALJ rejected RESA's recommendation that, as PPL's existing default service procurement contracts expire, they should be replaced with fixed-price full-requirements contracts procured on a quarterly basis accompanied by quarterly PTC price adjustments so that by May 31, 2015, 100% of the non-hourly priced commercial customers taking default service are served with fixed-price full-requirements contracts procured quarterly, with quarterly PTC price adjustments.[18] As justification for her rejection of RESA's proposal, the ALJ noted with approval PPL's claims that: (1) "RESA's proposal does not reflect a reasoned balance between market reflective pricing and rate stability;" and, (2) decreasing the reliance on laddering contracts could lead to the potential of substantial uncovered load in the event of a procurement failure.[19] The ALJ erred in her conclusions for several reasons and, therefore, her recommendation should be rejected.

First, as explained in Exception Number 1, the policy objective of price stability cannot be elevated above satisfying the legal requirements actually established in the Competition Act. Here the ALJ did not address the fact that RESA's proposal would lead to more market-reflect

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17 RD 43-46; RD at 165, Ordering Paragraph No. 3(c); RD at 166, Ordering Paragraph No. 3(i).

18 RESA St. No. 1 at 19.

19 RD at 45.

default service rate pricing which would encourage a more robust competitive retail market consistent with the requirements of the Competition Act. More choices will mean more fixed rate choices for customers giving them far more options and flexibility than the "one size fits all" that the ALJ's approach would impose.

Second, as also explained in Exception Number 1, the Commission has announced in *RMI End State Tentative Order* a desire to move to exclusive reliance on quarterly procurement contracts and RESA's recommendation here would further that goal. RESA's recommendation would result in a gradual progression toward quarterly procurements that more closely reflect market prices for the fixed-price small commercial and industrial customers. Thus, in June 2013, the percentage of 3-month products procured quarterly will be less than 27% of the total procurement for this customer class. However, the portion of the small C&I load that will be met with 3-month contracts will rise to just over 60% in December 2013, to 83% by June 2014, until 100% of the power for this segment of customers is procured quarterly using 3-month contracts at the end of the DSP II period (June 2015).[20] This gradual movement toward short-term contracts procured quarterly is designed to make retail power prices more market-reflective and satisfy the Commission's expressed desire to have the prices paid by customers more closely mirror market prices.

Third, PPL's claims of extreme risk are unfounded and are completely unsupported by the Company's experience with the current default service plan. As OSBA witness Mr. Knecht pointed out, any rate volatility that may be experienced by C&I customers would not be any worse than what these customers have experienced historically.[21] In other words, there is no

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20 RESA St. No. 1 at 19.

21 OSBA St. No. 2 at 3.

evidence that RESA's proposal would expose customers to price spikes – only speculative assertions by the Company. On the other hand, there is evidence that shopping increases in circumstances where more market-reflective rates exist, and the benefits of a robust retail market accrue to customers under the scenario proposed by RESA.[22] Therefore, the Commission should adopt RESA's product mix proposal for small C&I customers in the PPL service territory and reject the ALJ's recommendation to the contrary.

## C. Exception No. 3: The ALJ Erred By Adopting PPL's Proposal To Shift To Semi-Annual Procurement (RD at 39-41; RD at 166, Ordering Paragraph No. 3(i))

The ALJ erred in recommending that the Commission approve PPL's proposal to transition from current quarterly procurements to semi-annual procurements.[23] According to the ALJ, "semi-annual procurements would simplify and lessen the cost of default service procurements" and is a reasonable approach.[24] The ALJ is incorrect for several reasons.

First, PPL currently utilizes four procurements per year and RESA's recommendation is a continuation of that approach.[25] There is no reason to lessen the amount of procurements now which will only lead to less market reflective default service rates.

Second, the record supports the fact that quarterly procurements result in default service rates that more accurately reflect the underlying wholesale cost of electricity and, in turn, enable customers to reap the benefits of a more competitive retail market.[26] Moreover, as explained in the above sections, RESA's recommendations are consistent with the Commission's long term

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[22] *See* RESA MB at 33; RESA RB at 12-13. PPL's claim that decreasing the reliance on laddering contracts could lead to the potential of substantial uncovered load in the event of a procurement failure is also incorrect.

[23] RD at 39-41; RD at 166, Ordering Paragraph No. 3(i).

[24] RD at 41.

[25] Tr. at 150-151.

[26] *See* RESA MB at 24-26.

vision for default service, as reflected in its recent *RMI End State Tentative Order*. Based on this evidence, RESA strongly disagrees with PPL's claims in testimony that using four solicitations each year somehow results in higher costs with little improvement in default service rates.[27]

Finally, even if one were to assume that PPL's cost estimates are accurate, and that using quarterly procurements would increase costs by as much as $550,000, it is a relatively manageable cost that produces significant benefits for customers overall. The cost increases claimed by PPL would be borne by some 600,000 customers, and therefore, the per-customer cost for the implementation of quarterly procurements would amount to about $0.83 per customer per year.[28] The ALJ was plainly wrong to recommend adopting this proposal.

## D. Exception No. 4: The ALJ Erred In Not Adopting RESA's Proposal To Reduce The Aggregation Load Cap For Residential Customers For 70% to 50% (RD 41-43, 165, Ordering ¶ 3b)

The ALJ recommended adopting PPL's proposal to eliminate the Aggregate Load Cap of 70% for residential customers while maintaining the Solicitation Load Cap of 85% for all customers groups.[29] RESA recommended that the aggregate supplier load cap be reduced to 50% for residential customers.[30] The ALJ cited to PPL's argument that there could be an increase in default service rates "if an otherwise successful low bid would be disallowed because a supplier otherwise would exceed the applicable load cap" and rejected RESA's modification

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27 *See* PPL St. No. 2 at 13-14.

28 Tr. 151; RESA RB at 7-11.

29 RD 41-43, 165, Ordering ¶ 3b

30 RESA did not recommend a wholesale supplier load cap for non-hourly priced commercial and industrial customers because, in this customer segment, a significant amount of load has migrated to competitive suppliers. However, RESA if the current migration statistics reverse at some future point in time, the Commission should consider imposing a wholesale supplier load cap to ensure supplier diversity. *See* RESA MB at 35; RESA St. No. 1 at 21-22.

"in light of the strong security provisions in effect."[31] The ALJ's recommendation is inconsistent with the Commission's latest pronouncements on the wholesale supplier load issue in the FirstEnergy and PECO default service proceedings and must be rejected.[32]

In the FirstEnergy default service proceeding, the Commission adopted RESA's proposal of a 50% supplier load cap, based on the conclusion that "ensuring that there is a healthy level of supplier diversity . . . the competitive auctions will result in the lowest supply prices over the long run."[33] Similarly, RESA's load cap proposal is in line with the resolution of this issue in the PECO default service proceeding, where the Commission approved a 50% load cap unanimously.[34] The record does not support a deviation from these determinations in this case.

PPL's assertion, as adopted by the ALJ, that a lower supplier load cap may discourage participation by wholesale power suppliers who could offer customers lower prices was successfully refuted on the record.[35] RESA Witness Williams noted that a 33 1/3% load cap is consistent with the historical statewide load cap for New Jersey's Basic Generation Service Auction process and that process has not suffered from a lack of interested suppliers.[36] As the record does not support the position relied upon by the ALJ to support her recommendation, it must be rejected and the Commission should adopt RESA's proposal to reduce the aggregate supplier load cap for residential customers to 50%.

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31 RD at 43.

32 *See, FE DSP II Order* at 33-34; *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 II Order*") at 41.

33 *FE DSP II Order* at 33-34.

34 *PECO DSP II*, Issue 5 of Binding Poll conducted on September 27, 2012.

35 RESA MB at 29-31.

36 RESA St. No. 1 at 21.

E. **Exception No. 5: The ALJ Erred By Adopting PPL's Proposal To Implement A Semi-Annual PTC Price Change (RD at 56-57. 165 at Ordering ¶ 3)**

The ALJ recommended adoption of PPL's proposal to revise the current approach of changing the PTC on a quarterly basis to a PTC that changes on a semi-annual basis.[37] RESA does not support this recommendation. According to the ALJ's mistaken beliefs, such a change will give "further encouragement to shopping" as customers will have "greater assurances" that their decision to shop (or participate in one of the retail market enhancement programs) will result in savings.[38] Putting aside the fact that the ALJ's musings are not based on any record evidence and represent simply her personal opinion, the problem with the ALJ's recommendation is that the semi-annual price changes will not accurately reflect the true market price of energy and such result in inconsistent with the goals expressed by the Commission in its recent *RMI End State Tentative Order*.[39]

RESA does not support shifting from the current quarterly PTC changes to semi-annual adjustments and such change would not be necessary under RESA's proposed procurement structure where an increasing amount of the load will be procured through quarterly contracts.[40] Even if the Commission chooses not to adopt RESA's proposed portfolio mix, the PTC still needs to be updated quarterly because, pursuant to the procurement plan proposed by PPL, delivery of a significant portion of the load (which has been priced separately) begins each quarter.[41] As such, the price must be adjusted to reflect the prices established for that portion of the load. RESA submits that this will ensure that the prices experienced by customers in a given

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37 PPL St. No. 2 at 7.

38 RD at 57.

39 *RMI End State Tentative Order* at 15.

40 RESA MB at 38-39.

41 RESA St. No. 1 at 16.

service period more accurately reflect the cost of the wholesale energy supply secured by PPL for that service period. Such market reflective default service pricing is a critical component of fostering the development of a robust competitive retail market and is consistent with the Commission's goals expressed in the *RMI End State Tentative Order*.

### F. Exception No. 6: The ALJ Erred By Rejecting RESA's Proposal That PPL Be Required To Publish Its PTC With More Advance Notice (RD at 70-72; RD at 166, Ordering ¶ 3o)

The ALJ erroneously rejected RESA's proposal that PPL provide a final new PTC price 45 days in advance of effective date. Although she acknowledged RESA's concern that publishing the PTC only 15 days before the start of the effective period means that both customers and EGSs have very little time to react to the new PTC price signal, she still erroneously accepted PPL's position that the PTC will be more accurate if PPL provides it 15 days prior to its effective date.[42] The ALJ erred in her recommendation to give greater importance to accuracy over the benefit to the competitive market. Publishing the PTC with more advance notice will better allow EGSs to educate customers about upcoming changes in the PTC and will allow customers to make better informed shopping decisions.[43] Requiring PPL to provide more advance notice of its final PTC is a reasonable recommendation and the Commission should reject ALJ's recommendation to not adopt it.

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[42] RD at 72.

[43] RESA MB at 47.

G. **Exception No. 7: The ALJ Erred In Adopting PPL's Proposal To Shift To An Annual Reconciliation Mechanism For Residential And Non Hourly Priced Commercial Customers (RD at 59-66; RD at 166, Ordering ¶ No. 3k)**

The ALJ recommended that the Commission adopt PPL's proposal to revise its current method of reconciliation so that the amount to be reconciled would be calculated on a six month basis based upon a rolling 12-month average of projected GSC-1 sales. As the ALJ acknowledged, the problem with PPL's reconciliation method has been well-documented in a number of different Commission proceedings.[44] Given this, the ALJ concluded that PPL should be permitted to "try" its new proposed method.[45] The ALJ unfairly dismissed concerns raised by RESA and other EGSs regarding PPL's proposal as nothing more than their preference for continuing a PTC that is "higher than it needs to be" rather than "attempt[ing] a method which could result in accurate and fair prices for default customers."[46]

The issue of reconciliation is a complicated one that the Commission is currently grappling with in a pending generic investigation – where RESA has presented a number of various options for the Commission's consideration.[47] The difficulty is trying to square an EDC's right to full cost recovery (which results in the need to have a reconciliation) with the need to make the PTC more market reflective. Inaccurate PTCs distorted by reconciliations harm the market and the ALJ's view that EGSs prefer them (presumably when they make the

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44 *Petition of PPL Electric Utilities Corporation For Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011-2256365, Opinion and Order entered July 19, 2012 (The Commission properly rejected PPL's proposal to recover the costs of default service reconciliations from all customers.); *PPL Electric Utilities Corporation Proposed Generation Supply Charge—1 For the period June 1, 2011 Through August 31, 2011*, Docket No. M-2011-2243137, Opinion and Order entered July 19, 2012 (The Commission rejected efforts to modify the accounting method utilized by PPL to calculate the reconciliation amount).

45 RD at 66.

46 RD at 62.

47 *Default Service Reconciliation Interim Guidelines*, Docket No. M-2012-2314313, Order entered August 14, 2012 (The Commission's proceeding opened to consider default service reconciliation issues more broadly.)

PTC higher)[48] has no basis in fact – and is simply wrong. EGSs want and need PTCs that best reflect the market and the costs of providing default service.[49] PPL's annual reconciliation proposal simply moves away from this fundamental requirement of competitive markets. Rather than "try" a new method in this case to address a broader problem that is currently undergoing scrutiny by the Commission, RESA supports maintaining the status quo pending the outcome of the Commission's broader proceeding addressing reconciliation.

### H. Exception No. 8: The ALJ Erred In Rejecting Both Of RESA's Proposed Time-Of-Use Alternatives (RD at 83-91, 166, Ordering ¶ 5)

The ALJ appropriately rejected the Company's proposed TOU program. She, however, erroneously dismissed the alternative proposals set forth by RESA.[50] RESA's primary recommendation was that PPL would meet it TOU obligation by certifying that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory.[51] If the Commission declines to adopt RESA's certification proposal, RESA alternatively recommended an "EGS bid-out" approach similar to the one that has recently approved for PECO.[52] From a policy perspective, the ALJ correctly concluded that RESA's proposals relying on the competitive market to provide TOU programs are "an ideal market-based alternative to having the EDC offer a TOU plan. . . and . . . would be a wonderful way for the industry to support the goals of the legislature by shifting peak load at critical times."[53] Nonetheless, the ALJ felt

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48 RD at 62.

49 RESA MB at 50-51; RESA RB at 20-23.

50 RD at 91.

51 RESA St. No. 2 at 42.

52 *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.

53 RD at 89.

compelled to recommend rejecting RESA's proposals based on the flawed conclusions that: (1) RESA's primary approach was "complicated, confusing, and requir[ing] actions on the part of the Company clearly outside the scope of a distribution company's normal activities;" and, (2) they did not satisfy "the statutory requirement that the TOU program be administered by the default service provider as default service."[54] As explained further below, each of these conclusions is flawed and must be rejected.

As a threshold matter, RESA's proposals are consistent with the law and the ALJ's decision to the contrary is incorrect. Fundamentally, the ALJ erred in concluding that an EDC's legal requirement to "submit a TOU plan" (or in the ALJ's words "administer a TOU program") is equivalent to a requirement to actually provide the service. The Competition Act is not so narrowly worded. Section 2807(f)(5) of the Competition Act provides that default service providers must submit one or more TOU rates and real-time price plans to the Commission in their default plans.[55] Neither the definition of "time of use rate" or "real time price" specifies that the rate or price may only be provided directly by the EDC; nor, does it equate administering a plan with providing the service as the ALJ erroneously concluded.

Moreover, Section 2807 provides that one or more "**plans**" may be used. There is no legal or logical bar prohibiting a plan from consisting of a certification process or bid out process consistent with RESA's recommendation. Nothing in Section 2807 mandates that a TOU **rate** can only be provided directly from the DSP. If the General Assembly had intended to only permit the DSP to offer TOU rates as part of its default service, it could have said so; but, it did not. Instead, the General Assembly gave the DSP flexibility and directed the submission of

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[54] RD at 88-89.

[55] 66 Pa. C.S. § 2807(f)(5).

"plans" – which may or may not include the rates or prices which will actually be provided by the EDC or other suppliers.

This legal conclusion is consistent with the Commission's determinations in other proceedings that an EDC can satisfy its TOU requirement by using real-time price **plans** which could consist of contracts with EGSs.[56] RESA's proposals here are consistent with these determinations and, as such, the ALJ's conclusion that there is a legal bar prohibiting the Commission from directing PPL to implement them is inconsistent with the this higher authority and is plainly wrong.

Likewise, the ALJ's conclusion that RESA's primary certification approach is too "complicated, confusing, and requires actions on the part of the Company . . . outside the scope of [PPL's] normal activities" should be rejected.[57] Contrary to the ALJ's opinion, RESA's certification proposal relies on data from the competitive suppliers and places minimal burdens on PPL. Each year, PPL would survey EGSs and determine whether they are or intend to offer a time-differentiated rate and whether the EGS intends to offer the product for at least 12-months. If PPL finds one or more EGSs offering such rates, it would post that information on a clearinghouse website (and refer customers to the information upon inquiry) and certify this information to the Commission. After the end of the year, PPL would submit a report on the number of EGSs actually providing the service.[58] Implementing this part of the proposal would

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56 As part of the RMI proceeding, the Commission recommended that "EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. *See Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Opinion and Order entered March 2, 2012 ("*Intermediate Work Plan Final Order*" or "*IWP Order*") at 47-48. *See also 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.

57 RD at 88.

58 RESA St. No. 2 at 42.

only require PPL to solicit and gather information from EGSs. This should be neither complicated nor burdensome for PPL.[59] RESA's proposal also has the added benefit of providing, as the ALJ noted, "an ideal market-based alternative" to continuing to expect PPL to devise a successful TOU program which is something PPL has not able to do.[60]

Finally, there is no rational basis to reject RESA's primary proposal on the basis that details would need to be further worked out in a collaborative basis. The Commission has used a post order collaborative process on numerous occasions and even the ALJ's recommended TOU plan would require PPL to convene collaborative to provide a complete plan for staff review.[61]

## I. Exception No. 9: The ALJ Erred In Recommending Adoption Of PPL's Proposal For The Timing Of The Retail Market Enhancement Initiatives (RD at 143-147, 165, Ordering ¶¶ 1 and 2)

The ALJ accepted the Company's proposal for the timing of the RME initiatives which would implement the opt-in program late November/early December 2013 and the standard offer customer referral program in mid-2014.[62] In doing so, the ALJ rejected RESA's recommendation that all the RME initiatives be implemented by June 2013.[63] According to the ALJ, implementing the opt-in program and the standard offer customer referral at the same time is "difficult to imagine," would confuse customers, and would be "unfair and unwise."[64]

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59 To address the statutory requirement that PPL provide a report detailing "the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices," RESA recommended that this data – which would be available from the EGSs providing the programs – be compiled and analyzed by either the Commission's Bureau of Conservation, Economics and Energy Planning ("CEEP") or by a consultant hired by PPL. RESA St. No. 2 at 42. As proposed, RESA's proposal is a reasonable, efficient and not overly burdensome way to address the statutory requirements for TOU programs.

60 RD at 89.

61 RD at 95.

62 RD at 143-147; RD at 165, Ordering Paragraphs Nos. 1 and 2.

63 RESA MB at 79-86; RESA RB at 37-38.

64 RD at 147.

Interestingly, the ALJ's recommendation is flatly at odds with the Commission's direction on this issue and is not supported by the record.

Importantly, having all of the RME initiates begin on or before June 2013 would be consistent with the Commission's conclusion in the *Intermediate Work Plan Final Order*, the *FE DSP II Order*, and the *PECO DSP II Order*. The Commission originally established a start date of June 1, 2013 for all the RME initiatives,[65] and maintained this position in the *Intermediate Work Plan Final Order.*[66] In the *FE DSP II Order*, the Commission concluded that the standard offer customer referral program for the FirstEnergy EDCs should be implemented beginning in June 2013 notwithstanding potential overlap with other RME initiatives.[67] In fact, the Commission concluded that: (1) there was very little overlap between the retail opt-in auction/aggregation and the standard offer customer referral program; (2) customer confusion should be minimal; and, (3) even if overlap would occur, 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.[68] RESA agrees and submits that the standard offer program and the retail opt-in program (whether auction or aggregation) can be coordinated in a way that does not create customer confusion. Likewise, in the *PECO DSP II Order*, the Commission directed that PECO's standard offer customer referral program commence on June 1, 2013 and specifically stated that "we are not persuaded that having the two programs in effect at the same time is a

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[65] *Investigation of Pennsylvania's Retail Electricity market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered December 16, 2011 at 31.

[66] *Intermediate Work Plan Final Order* at 20, 54.

[67] RESA St No. 2-R at 2; *FE DSP II Order* at 150.

[68] *FE DSP II Order* at 150.

concern."[69] The record in this proceeding fully supports a June 1, 2013 implementation date for the RME programs and the ALJ's contrary recommendation must be rejected.

Notwithstanding the ALJ's recommended deviation from the Commission's clearly expressed pronouncements on timing, the ALJ appears to have been persuaded by PPL's arguments that: (1) earlier (and successful) implementation resulting in more shopping could negatively impact existing full-requirements load-following contracts by requiring the sale of supplies at a loss that would be passed on to a smaller set of remaining default service customers; and, (2) there is not enough time for PPL to implement "proper system modifications."[70] However, neither of these reasons is supported by the record.

The record shows categorically that implementing the opt-in auction/aggregation in June 2013 would not significantly disrupt existing wholesale contracts to the extent that the start date of the program should be delayed as recommended by the ALJ. According to PPL's analysis of the default service load that could be impacted if the auction/aggregation commenced on June 1, 2013, four (4) wholesale default suppliers of 24-month contracts will be impacted for a total load of 11.25%.[71] Using the peak load value from the Company's RFP documents, this equates to a peak load of approximately 403 MW out of 3,585 MW (11.25%).[72] Even by PPL's reckoning only around 11% of the total supply would be impacted in any way.

Most importantly, the great majority of these supply contracts are full-requirements, load-following contracts, which means that the wholesale supplier has <u>already accepted</u> the risk of

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69 *PECO DSP II Order* at 121.

70 RD at 145-147.

71 RESA St. No. 2-SR at 3.

72 RESA St. No. 2-SR at 3.

load fluctuations.[73] Full-requirements load-following contracts, such as those PPL is concerned about, by definition, do not guarantee any particular level of load for winning suppliers.[74] In fact, PPL's Request for Proposals ("RFP") explicitly notified the potential wholesale bidders that the amount of default load they will have to serve may be affected by a variety of factors, including customer migration to EGSs.[75] So, the winning bidders were aware that if customers migrated to EGSs (for any reason), the wholesale supplier would be responsible for less than the peak load stated in the RFP documents (and, vice versa).[76] As for the 350 MW (10% of peak load) that PPL acquired in block energy contracts, there is little chance that an opt-in auction/aggregation held in June of 2013 would so reduce default load to have any impact on these block energy contracts for more than one month.[77] Moreover, even if in a month when demand is very low, shopping was so great as to make 350 MW of default supply contracts greater than the default load (a very good problem to have!) all that would happen is that PPL would sell the block contracts into the market and reflect the gain or loss in the default service reconciliation. The contracts themselves would not be affected. Accordingly, PPL's claim that "there is a potentially large effect" if these programs successfully accomplish their goal of encouraging default service customers to receive competitive supply is simply not supported by the record and does not justify delaying the start date for the RME initiatives on this basis.

Finally, ALJ's apparent agreement with PPL's claim that it needs to introduce customer information and billing systems that will not be ready until mid-2014 also lacks evidentiary

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73 RESA St. No. 2 at 12.

74 RESA St. No. 2 at 11.

75 RESA St. No. 2-SR at 3; RESA St. 2 at 12, fn. 16.

76 RESA St. No. 2 at 11-12; RESA St. No. 2-SR at 3.

77 Tr. 291-292.

support. A careful reading of Mr. Krall's testimony reveals that PPL's customer service representatives already have the most important information needed to provide the standard offer, which is whether or not the customer is a default service customer.[78] Although Mr. Krall may be allowing the perfect to be the enemy of the good with respect to the standard offer program, RESA believes the focus should be on starting the program as soon as possible and adding enhancements when they are available.[79]

### J. Exception No. 10: The ALJ Erred In Not Making Any Specific Recommendation Regarding PPL's One-Time Direct Mail (Customer Referral) Program (RD 107-108)

PPL proposed to undertake a one-time direct mailing of EGS offers to residential default service customers in the second or third quarter of 2013.[80] This proposal is similar to the direct mail program that is on-going for the Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") service territories.[81] RESA supported PPL's proposal and offered three changes.[82] As the ALJ correctly noted, PPL did not object to RESA's proposals if its schedule for implementing the opt-in program and standard offer customer referral program was adopted.[83] Although the ALJ recommended adoption of PPL's schedule (which RESA does not support as discussed in Exception No. 9), the RD lacks any disposition of

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[78] PPL St. No. 4-R at 17; RESA MB at 83.

[79] RESA St. No. 2-SR at 6.

[80] PPL St. No. 4 at 19-20.

[81] *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs* Docket Nos. P-2009-2093053 and P-2009-2093054, Opinion and Order entered November 6, 2009 at 20-21.

[82] First, RESA recommended that this mailing be combined with the Commission-directed RMI consumer mailing. Second, RESA recommended that the combined mailing should be implemented by no later than March 1, 2013. Third, RESA recommended that PPL perform a separate mailing for small commercial and industrial customers. *See* RESA St. No. 2 at 13, 16, 17; RESA St. No. 2 SR at 9; RESA MB at 57-60; RESA RB at 27-28.

[83] RD 107-108.

the direct mail customer referral proposal of PPL. Consequently, RESA recommends adoption of the program – with RESA's modifications – regardless of what decision the Commission makes on timing of the RME initiatives.

## K. Exception No. 11: The ALJ Erred In Failing To Recommend Adoption Of RESA's Proposed Revisions To PPL's Retail Opt-In Program (RD at 167-168; Ordering ¶ 11)

The ALJ directed that the Retail Opt-In Auction **or** Aggregation shall:[84]

- be six months in length;
- be open to residential customers;
- be limited to 50% of default service customers:
- be available to but not advertised to customers already shopping;
- be offered at a minimum 5% discount off the Price To Compare on December 1, 2013;
- include a $50 cash bonus to customers remaining with the electric generation supplier for three billing cycles;
- include disclosure of all terms of service, including the identity of the electric generation supplier, to the customers prior to the beginning of the service;
- that the auction or aggregation will be canceled unless four or more electric generation supplier bidders participate;
- include a provision that each participating customer will remain with the electric generation supplier under a month-to-month contract absent affirmative action on the part of the customer;
- be conducted in sealed bid format; and
- be open to low-income customer participation.

Notably, the ALJ never made a recommendation as to whether a retail opt-in auction or aggregation program should be adopted. RESA can accept a retail opt-in aggregation program in

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[84] RD at 167-168, Ordering Paragraph No. 11.

lieu of an auction to the extent the Commission continues to believe such program is the appropriate policy. However, RESA excepts to several of the ALJ's recommended program design issues as discussed below in addition to supporting implementation of the program by June 1, 2013 (discussed in Exception Number 9) and requiring a different method of cost recovery (discussed in Exception Number 14). Once the Commission determines the program approach it prefers and the elements to be included, it should direct the parties to work together to develop fair and balanced binding terms that will govern their relationship and to work out the details of the customer allocation and other issues created by the aggregation approach not resolved by the Commission.

### 1. Shopping Customers Should Not Be Permitted To Participate In the Retail Opt-In Program

The ALJ accepted the Company's proposal to permit participation in the opt-in program by customers already shopping if they make an affirmative inquiry.[85] RESA opposed permitting shopping customers to participate in the retail opt-in program on the basis that the primary intent of the program is to introduce those customers who have been reluctant to shop (i.e. existing default service customers) to competitive alternatives,[86] and continues to do so. However, if the Commission determines to maintain this program element it is crucially important that the aggregation offer is sent only to default service customers. This is consistent with PPL's intent. Nonetheless, it is important to emphasize this condition.

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85 RD at 119-120; RD at 167, Ordering Paragraph No. 11(d).

86 RESA MB at 64-67; RESA RB at 29-30.

### 2. Small C&I Customers Should Be Permitted To Participate In the Retail Opt-In Program

The ALJ erroneously recommended accepting the Company's proposal to exclude small C&I customers from the Opt-In Program on the basis that: (1) the retail market for small C&I customers "is already robust;" and, (2) the "cost of extending this program to small C&I customers would be unjustified."[87] Both of these conclusions are wrong and must be rejected.[88]

First, RESA does not agree with the ALJ's definition of "robust" competition which is based on the fact that 64% of the peak load capacity of non-residential customers under 25 kW is served by an EGS. By comparison, the numbers of small commercial and industrial customers (under 25 kW) who have switched (by load – 64%) is materially lower than the figures for all commercial customer load (88.3%)[89] or all industrial customer load (98.6%).[90] There is no reason why the Commission should be satisfied with lower amount of shopping for small C&I customers than exists for their larger counterparts. Moreover, the focus on peak load capacity ignores the fact that, according to PPL, 56% of the small C&I customers (under 25 kW) are not shopping.[91] Therefore, based on numbers of customers, small C&I shopping is deficient and these customers would benefit from participation in the retail opt-in program consistent with the Commission's determinations in other proceedings.[92]

Second, the record does not support the conclusion that the costs of extending the program to small C&I customers is outweighed by the benefits. On the contrary, the

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87 RD at 121-122.

88 RESA MB at 67-70; RESA RB at 30-32.

89 RESA MB at Appendix A.

90 *Id.*

91 PPL MB at 120.

92 *Intermediate Work Plan Final Order* at 18, 42; *FE DSP II Order* at 103-104; *PECO DSP II* at 85-86.

Commission's primary goal is to create a robust retail competitive market, and competitive enhancements such as the opt-in auction/aggregation are steps in this direction. It is irrefutable, and clearly recognized by the Commission, that the best and most certain way to provide customer benefits and electric service at least cost over time is to create a robust and sustainable competitive market. The opt in auction/aggregation will assist in doing that for small commercial and industrial customers.[93] There is no reason to deny them of that opportunity.

### 3. RESA's Proposal To Enhance The Potential Success Of An Opt-In Aggregation Mailing With An Additional Customer Mailing Should Be Adopted

The ALJ recommended rejecting RESA's proposal that the retail opt-in program be structured to ensure maximum customer awareness.[94] RESA indicated that if done as a true aggregation, in which the utility, the Commission, and EGSs aggressively promoted the opportunity to opt-in to a program that would save customers money, the program should garner greater customer responses than an auction.[95] The success of the any retail opt-in program may be enhanced with: (a) additional mailings and other communications; or, (b) enhanced means of enrollment.[96] Rather than the one mailing proposed by PPL, RESA has recommended that, at least, one additional mailing be conducted by PPL and that PPL develop an enhanced means of enrolling customers. For example, (a) if the first mailing by PPL generates less that a 10% response rate by a date certain, PPL should be required to mail out a similar letter in an effort to generate more customer responses; and/or, (b) customers should be able to notify PPL by mail, phone or web that they are opting-in to the program. It is RESA's position that any additional

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93 RESA St. No. 2-SR at 22.

94 RESA St. No. 2 at 14.

95 RESA MB at 63-64; RESA RB at 28-29.

96 RESA St. No. 2 at 22-24; RESA St. No. 2-SR at 12-13.

costs incurred for these additional communications or enhanced enrollment capabilities would be reasonable and would be exceeded by the benefits from these offers and from a more competitive market.[97] Instead of dismissing these recommendations outright as recommended by the ALJ, RESA urges the Commission consider how they will enhance the chance of success for the aggregation program and adopt them.

#### 4. Disclosure Of Material Terms And Conditions

The ALJ concluded that "all material terms and conditions should be given to the customer prior to asking the customer to accept them."[98] If the Commission chooses to implement a retail opt-in aggregation program wherein a uniform product is offered (rather than an auction where the product is not known at the time of auction), then notifying customers of the material terms and conditions of the program at the time they are solicited to participate is reasonable.

### L. Exception No. 12: The ALJ Erred In Failing To Direct PPL To Implement A "Day-One Switch" Process (RD at 110)

The ALJ appears to have rejected RESA's proposal that PPL implement a "day-one switch" component in its New and Moving Customer program based on PPL's position that: (1) it did not want to sign a customer for service absent implementation of the standard offer customer service program; and, (2) it would need to develop systems to enable the "day one switch" process to occur.[99] RESA believes that a reasonable new/moving customer referral

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[97] RESA St. No. 2-SR at 13.

[98] RD at 123-124.

[99] RD at 110.

program must have the ability to implement a "day-one switch" and that the ALJ erred in rejecting this proposal[100]

A true "day-one switch" means that a customer must be able to set up service with an EGS at the same time, and in the same way as it does for distribution service. In order to be on an equal footing with bundled utility service, EGS service must be available immediately for new and moving customers who identify the EGS from which they would like to take service. Forcing customers who know they want service from a specific EGS to take commodity service from the monopoly delivery company – even for a single billing cycle – is inconsistent with fostering the development of a robust competitive retail market. While the ability to implement a "hot transfer" may be a reasonable interim solution, it is not an acceptable long term solution. Simply put, a hot transfer does not make EGS service available immediately to a customer, does not avoid an additional step to get competitive service, and it does not permit a customer who already knows the EGS from which she would like to take service to do so without being placed on default service for any period of time.[101]

The opposition to this proposal offered by PPL, and accepted by the ALJ, has no merit. There is no practical reason for requiring the standard offer program to be in place prior to offering a "day-one switch." RESA's proposal does not require that the customer-specified EGS provide a specific offer of service as that issue would be addressed directly between the customer and the EGS. The only purpose of RESA's proposal is to enable a customer who knows which EGS he or she wants to provide his or her service to receive service from that EGS upon initiating new service or moving within the PPL territory. Likewise, the operational capabilities

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[100] RESA St. No. 2-SR at 29.

[101] RESA St. No. 2-SR at 29-32.

that PPL claims need to be developed are consistent with those already in place to enable a customer (who is not a new or moving customer) to switch to a selected EGS. PPL has not presented any basis upon which to conclude that those already existing processes could not be utilized in the situation of a new or moving customer as recommended by RESA. Rather than outright reject RESA's proposal, at a minimum, the Commission should – consistent with its determination in the PECO DSP II proceeding – direct PPL to initiate a collaborative with interested stakeholders to develop a plan to implement this process.[102]

## M. Exception No. 13: The ALJ Erred In Failing To Recommend Adoption Of RESA's Proposed Revisions To PPL's Standard Offer Customer Referral Program (RD at 138-140)

The ALJ recommended that the Commission adopt PPL's proposed standard offer customer referral program without modification.[103] In doing so, the ALJ erroneously rejected RESA's proposed modifications to shorten the length of the introductory discount to four billing cycles rather than six months as proposed by PPL with the discount off the PTC to be effective with the date of contract initiation only; and, to include small C&I customers in the program. In addition to correcting these errors, the Commission should also direct the parties to work together to develop a set of fair and balanced binding terms that will govern their relationship consistent with the finally determined elements.[104]

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102 *PECO DSP II Order* at 141.

103 RD at 134-143.

104 RESA St. No. 2 at 38-39.

### 1. The Term Of The Standard Offer Should Be Four Billing Cycles With The Discount Off The PTC To Be Guaranteed Only On The Date of Contract Enrollment

The ALJ recommended that the standard offer customer referral product term be six months as "just the right length to provide a compromise among the parties."[105] The ALJ also recommended that the 7% reduction from the PTC "should be for the term of the offer, whatever the offer is."[106] The ALJ's recommendation is flawed and must be rejected. The longer the period of time an EGS is required to provide a specified level of savings off the PTC in existence, the less likely an EGS will decide to participate in the standard offer program thereby decreasing the likelihood of a successful program. The two ways to address this reality are to: (1) shorten the term of the offer; and/or, (2) remove the requirement that the price be guaranteed through the program term.

The mandate of a guarantee of savings versus the PTC over a longer period of time would seriously deter EGS participation.[107] Requiring a guaranteed savings off the PTC when the PTC will be adjusted during the contract term would be problematic. EGSs are generally comfortable providing a truly fixed 12-month price, as such offers can be hedged at the time they are made. The same is not true of a price that might change over time, as would an offer of a percentage below the PTC regardless of how the PTC might change. This arrangement would be especially risky for EGSs where the reconciliation process can result in large variations in the PTC that are far beyond those attributable solely to changes in the underlying market price for power. These unpredictable fluctuations caused by the reconciliation process are beyond an EGS's control and

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105 RD at 138.

106 RD at 138.

107 RESA St. No. 2-SR at 30.

cannot be hedged effectively.[108] The Commission cited this particular risk as a justification for its proposed price of five percent off the then-current PTC for the retail opt-in action program: "[T]he utility's default service rate is not fully reflective of the market because it is also impacted by the reconciliation process. Predicting market prices in advance is always challenging; we think that adding to this the vagaries of the reconciliation process is asking too much."[109] Therefore, rather than a guarantee of savings (which is recommended by the ALJ), the discount should be applied based on the PTC in effect at the time of contract initiation and EGSs should not be required maintain the same level of discount throughout the contract term if the PTC changes in that time period.

Regarding the term of the offer, RESA has consistently taken the position that the standard offer referral program should be a true introductory program, with a discount provided for a four-month period, followed either by the EGS moving to a month-to-month variable rate or, as suggested by others, a fixed price for the remaining eight months of the initial term.[110] Therefore, RESA advocates a 7% discount from the then-existing PTC for a four-month term – with a fixed rate for the remaining eight months.[111] This balances consumer value with a program in which EGSs will be willing to participate. It is also a reasonable approach, especially considering that customers are not "locked in." Rather, in response to market conditions – or for any reason – they can leave at any time without penalty.[112]

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108 RESA St. No. 2-R at 8.

109 *Intermediate Work Plan Final Order* at 70.

110 RESA St. No. 2-SR at 30.

111 However, a six-month program term with a PTC that only changes every six months is not unworkable, although RESA does not support PPL's proposal to change from a quarterly changing PTC to a semi-annually changing PTC. RESA St. No. 2-SR at 30.

112 RESA St. No. 2-SR at 30. As an aside, the Commission should also recognize the need to coordinate the offer to be made via the aggregation program and the offer to be extended as part of the Standard Offer

### 2. Small C&I Customers Should Be Included In The Standard Offer Customer Referral Program

For all the reasons stated above in Exception Number 11, in RESA's view, there is no reason not to extend the standard offer program to small business customers. The definition of small commercial and industrial customers should be either 25 kW and below or the smallest general service rate class, whichever is more practically feasible. Indeed, the Commission should make clear that it wishes the standard offer customer referral program to be available to small C&I customers on a statewide basis.

## N. Exception No. 14: The ALJ Erred In Adopting PPL's Cost Recovery Mechanisms for the Retail Market Enhancements and Customer Referral Programs (RD at 147-154, 168, Ordering ¶ 14.

While the ALJ concluded that "PPL's proposal for split payment of auction costs are reasonable and should be adopted," she also recommended that "unrecovered costs" are to be assessed to EGSs based on her flawed determination that "the Commission has been clear that the costs of these programs should be borne by the EGSs."[113] In her ordering paragraphs, the ALJ approved PPL's proposals for cost assessment and recovery.[114] Under PPL's proposals, the costs of the RME programs would be paid by customers (in base rates), by EGSs, or by a combination of these methods. To the extent the ALJ accepted PPL's cost recovery approach for the auction which splits the costs into pre-auction and post-auction costs, her recommendation must be rejected. Likewise, to the extent the ALJ is recommending that EGSs should be required

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Program. RESA believes that, to the greatest extent possible, the two offers should be as consistent as possible. Specifically, if the opt-in program offer is to be a 5% discount from the price to compare with a $50 bonus, then the Commission should seriously consider making the standard offer customer referral program product a 5% discount for 6 months (but without a bonus). Without this consistency there exists the real potential that customers might sign up for one program and then re-sign for the next, or simply be confused by the marketing information concerning such similar programs.

113 RD at 152, 154.

114 RD at 168, Ordering Paragraph No. 14.

to bear all costs of the RME programs (notwithstanding PPL's proposal), her recommendation must be rejected.

Regarding the opt-in program costs, if the Commission orders an aggregation, then PPL's pre-auction and post-auction cost approach is moot. If, however, the Commission orders an auction, then it must reject PPL's proposed cost recovery approach as unreasonable and likely to create a barrier to participation by the EGSs.[115]

As a threshold matter, the Commission should order PPL to submit (for both the retail opt-in program and the standard offer customer referral program) a careful accounting of: (1) the projected costs of implementing the programs consistent with the program design elements directed by the Commission; and, (2) a projected "per customer" cost, based on a projecting of the number of customers that are likely to accept an offer through this program. Those costs should then be evaluated from the standpoint of whether that level of costs will be so high as to discourage EGS participation. Once the appropriate level of costs are determined and they are found not to be too high to discourage EGS participation, then the Commission should make a determination regarding the cost assignment between distribution customers and EGSs. This is generally consistent with the Commission's approach in both the FirstEnergy and PECO default service proceeding whereby the Commission directed the parties to collaborate regarding the program details and make a recommendation regarding the allocation of costs.

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[115] This is because PPL's proposal would require any participant in the bidding process to pay for the pre-auction costs as a condition of bidding or participation. The costs that PPL has estimated are substantial ($720,000 to $1 million). This cost recovery structure could be a "poison pill" that could mean low supplier participation as EGSs decide that the cost just to submit a bid (with no guarantee of receiving any customers) is unworkable. Even if there were 10 qualified and interested suppliers, this would create a $72,000 to $100,000 cost per supplier, simply to submit a bid. If the Commission directs an opt-in auction program, this significant barrier to potential EGS participation must not be accepted. *See* RESA MB at 87-88; RESA RB at 40-41.

While RESA believes that allocating all of the costs of the RME programs to all customers through a non-bypassable charge is a reasonable result, as an alternative, however, RESA strongly urges the Commission to consider ordering an equal sharing of the costs (between EGSs and customers) despite the ALJ's flawed conclusion that all "unrecovered costs" (which appears to include costs that even PPL did not propose to recover from EGSs) should be assessed to the EGSs.[116] Importantly, in the two most recent default service proceedings, the Commission has not specifically ruled that <u>only EGSs</u> should be assigned the costs of these programs, and indeed stated plainly that "[i]f an agreement on the allocation of these costs is not reached within the allotted time period, the Commission may order an allocation of costs that comes from one of the proposals submitted by the stakeholders."[117] The Commission reinforced its openness to a cost recovery approach for RME programs that "include consideration of the possibility that customers as well as EGSs may be responsible for some program costs" in its most recent order in the PECO default service proceeding.[118] Therefore, the ALJ's belief that the Commission has already concluded that EGSs must pay for all costs related to the RME programs is mistaken. PPL's proposals that would recover some costs in base rates are just and reasonable and should be both accepted and expanded to include all program costs.[119]

A third reasonable approach to addressing cost recovery would be to collect the costs of the RME initiatives from default service customers only. RESA offered a proposal to effectuate this approach through a separate charge. The proposed charge would not only address RME cost

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[116] RD at 154.

[117] *Id.* at 137, n. 30.

[118] *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket Number P-2012-2283641, Opinion and Order (on reconsideration) entered November 21, 2012 at 16.

[119] They are also consistent with the *Intermediate Work Plan Final Order* provides that costs for the "new/mover" program will be absorbed by the EDC and "normal EDC cost center cost recovery mechanism[s]." *Intermediate Work Plan Final Order* at 17-19.

recovery but, more importantly, establish a way to ensure that all the direct and contingent costs incurred by the EDC or to which the EDC is exposed in its role as default service provider are recovered from default service customers. RESA recommended that the proceeds for this new charge would be used as follows:

- Payment of any verifiable costs related to providing default service that have otherwise not been collected by the EDC;
- Payment of costs related to implementing and maintaining competitive market enhancements, such as the opt-in auction, referral programs; and,
- Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.[120]

The ALJ rejected this proposal based on her belief that it "would increase the cost of default service where there is no need to do so, and then return those charges to all distribution customers."[121] For the reasons explained in the record of this case, the ALJ erred in her recommendation and RESA urges the Commission should give serious consideration to this approach here despite its lack of interest in other cases.[122]

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120 RESA St. No. 2 at 40.

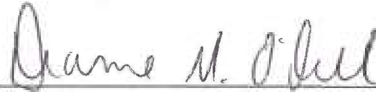
121 RD at 156.

122 *See* RESA MB at 97-102; RESA RB at 44-45.

## III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission grant these exceptions and issue a consistent decision which substantially rejects the ALJ's November 9, 2012 Recommended Decision.

Respectfully submitted,



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