

COMMONWEALTH OF PENNSYLVANIA



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December 17, 2012

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Exceptions to the Recommended Decision of Administrative Law Judge Susan D. Colwell in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Erin L. Gannon".

Erin L. Gannon  
Assistant Consumer Advocate  
PA Attorney I.D. # 83487

Enclosures

cc: Honorable Susan D. Colwell, ALJ  
Office of Special Assistants  
Certificate of Service

156348

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

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DATED: December 17, 2012

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## **I. INTRODUCTION**

On November 15, 2012, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell in the Default Service Plan (DSP) proceeding of PPL Electric Utilities Corporation (PPL or the Company). Exceptions were filed on December 5, 2012. The OCA's positions in this proceeding are fully addressed in its Main Brief, Reply Brief, and Exceptions. The OCA files these Reply Exceptions to certain Exceptions filed by PPL, Retail Energy Supply Association (RESA), FirstEnergy Solutions (FES) and Dominion Retail, Inc./Interstate Gas Supply, Inc. (Dominion/IGS).

## **II. REPLY EXCEPTIONS**

### **A. The OCA's Reply As To Default Service Procurement Issues**

#### **1. Product and Procurement**

**Reply to RESA Exception 1:** The ALJ Correctly Rejected RESA's Proposed Procurement Plan For Residential Customers. (R.D. 33-34; RESA Exc. at 4-7; OCA M.B. at 18; OCA R.B. at 7-10)

In its Exceptions, RESA argues that the ALJ erred in rejecting RESA's proposal to modify PPL's proposed portfolio of products so that the 12-month, 9-month and 6-month full requirements contracts are eventually replaced by 3-month full requirements contracts. RESA Exc. at 4-7. RESA argues that adopting its approach would advance the goals of the Commission established in the Commission's Retail market Investigation proceeding. RESA Exc. at 6-7. RESA also argues that the ALJ "erroneously focused only on the issue of price stability as a reason to reject RESA's proposal." RESA Exc. at 5. The OCA submits that RESA's Exceptions are must be denied. The ALJ properly rejected RESA's proposal.

The OCA submits that the ALJ properly rejected RESA's proposal and its arguments in support of its proposal. As the ALJ properly recognized, the RESA proposal would expose residential customers to substantial rate swings and rate instability, a result directly contrary to the statute and the Commission's default service regulations. R.D. at 34. While RESA argues that the ALJ "improperly focused" on rate stability in her recommendation, the ALJ properly recognized that rate stability is a key component of the Commission's default service regulations as well as the statutory framework of Act 129 of 2008 that governs the provision of default service. The Act 129 Preamble states:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

(2) It is in the public interest . . . to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.

Preamble to Act 129, 2008 Pa. Laws 129. The Commission's regulations provide:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Implementation of Act 129 of October 15, 2008, Docket No. L-2009-2095604, *slip op.* at 39-40 (Oct. 4, 2011) (Final Rulemaking Order). The Commission further recognized the benefits of rate stability as it relates to the "least cost over time" standard, as follows:

In our view, a default service plan that meets the “least cost over time” standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both relatively stable and also economical relative to other options. In this regard, we agree with those points raised by both PECO and PPL. To reiterate our prior point, the “least cost over time” standard should not be viewed as synonymous with maximizing market timing benefits at the expense of **price stability** and economy.

Final Rulemaking Order at 40-41 (emphasis added). The Commission elaborated on the importance of price stability, noting that the reliance on short term pricing is not consistent with Act 129:

Price stability benefits are very important to some customer groups, so **an interpretation of “least cost” that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129’s objectives.**

Final Rulemaking Order at 41 (emphasis added).

Contrary to the objectives set forth in the statutory and regulatory framework, RESA’s proposal would introduce significant volatility in the residential rate for default service. As PPL witness Cavicchi stated, RESA’s proposal which moves to an unlayered product procured at a single point in time increases the risk on customers and increases the risk that a solicitation will occur at a time of unusual market conditions. PPL St. 2-R at 20. OCA witness Hahn also testified that RESA’s procurement strategy would introduce excessive rate volatility. OCA St. 1-R at 9. As OCA witness Hahn explained, a proper layering and laddering of contracts will properly reflect market price and will achieve an appropriate level of price stability. OCA St. 1-R at 9.<sup>1</sup>

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<sup>1</sup> OCA witness Hahn also highlighted the differences between RESA witness Williams’ proposal here and her proposal in PECO’s default service proceeding where she recommended the use of 12-month and 24-month contract terms, with 10% spot market pricing, for the residential customer class. OCA St. 1R at 10. RESA witness Williams also recommended 12-month and 24-month contract terms, with 10% spot market pricing in the FirstEnergy case which

The ALJ gave proper consideration to the statute, the Commission's regulations, and the evidence of record in making her recommendation. The Preamble of Act 129 calls for default service that reduces price instability, not default service that adds to it as RESA proposes. Moreover, Act 129 directs the default service provider to meet the goals and obligations of the Act, not the retail competitive market as RESA argues.

RESA's reliance on the Commission's proposed end state model in the RMI proceeding in support of its proposal is similarly misplaced. In its Tentative Order, the Commission was clear that its end state proposal required a legislative change. Investigation of Pennsylvania's Retail Electricity Market: End State Default Service, Docket No. I-2011-2237952, Tentative Order at 12-13 (Nov. 8, 2012) (Tentative Order). The current statute supports the ALJ's recommendation to utilize the layered and laddered approach proposed by PPL. Moreover, the use of three month contracts is not necessary or desirable in this default service period regardless of the possible transition to a different default service model. Any possible transition would require a myriad of issues to be addressed including proper method of implementing a transition.

The OCA submits that the ALJ properly rejected RESA's proposed procurement approach. RESA's proposal introduces unnecessary instability into the default service price that neither satisfies Act 129 nor is needed to achieve a strong competitive marketplace.

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the Commission adopted. Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650 *et al.*, Order at 25-26 (Aug. 16, 2012); Petition of PECO Energy Co. for Approval of its Default Service Program II, Docket No. P-2012-2283641, Order at 19-20 (Oct. 12, 2012).

## 2. Price To Compare

**Reply to RESA Exception 5, Dominion/IGS Exception 1: The ALJ's Recommendation To Adopt PPL's Proposal To Adjust The Price To Compare On A Semi-Annual Basis Should Be Adopted.** (R.D. at 56-57; RESA Exc. at 12-13; Dominion/IGS Exc. at 2-4; OCA M.B. at 28-29, 40-41, 53-54; OCA R.B. at 18-19)

In the R.D., ALJ Colwell adopted PPL's proposal to adjust the price to compare (PTC) on a semi-annual basis. R.D. at 56-57. The OCA had accepted PPL's proposal. OCA St. 1 at 15. As discussed in more detail with regard to the retail competitive enhancement programs, the OCA found that this semi-annual price adjustment combined with PPL's proposed program design allowed for a robust level of guaranteed savings to be provided to customers through the programs. *See, e.g.*, OCA M.B. at 40-41. RESA and Dominion/IGS except to the ALJ's recommendation arguing that quarterly price changes should be adopted to produce market reflective default service pricing. RESA Exc. at 12-13; Dominion/IGS Exc. at 2-3.

The OCA submits that the ALJ's recommendation is reasonable and should be adopted. The semi-annual price change allows for proper coordination and alignment between the competitive retail market enhancement programs and the price to compare. R.D. at 57; OCA M.B. at 40-41; OCA R.B. at 18-20. In addition, the OCA agrees with the ALJ that the semi-annual price change will facilitate customer shopping. As the ALJ stated:

In addition, as more and more Residential and Small C&I customers move to EGSSs, a semi-annual procurement and price change mechanism will simplify the default service process, giving further encouragement to shopping. As will be seen in the discussion to follow, semi-annual changes in default service prices align with the Company's proposals for six month contract terms for the Opt-In and Standard Offer Referral Programs. Limiting the frequency of PTC changes to twice per year will give Residential default service customers greater assurance that the offers they consider under these Opt-In and Standard Offer Referral Programs will result in real savings off of the PTC rates. This should encourage more of the remaining default service customers to try shopping and provide them with a positive experience to continue shopping after their initial contract terms end. In other words, the proposal is suited to the needs of all parties – the Company's, the customers', and the EGSSs'.

R.D. at 57.

The OCA submits that the ALJ's recommendation to adopt PPL's proposed semi-annual PTC adjustment should be accepted.

### 3. Reconciliation

**Reply to RESA Exception 7:** The ALJ's Recommendation To Allow PPL To Utilize A 12-Month Rolling Average Reconciliation Mechanism For Residential Customers Is Reasonable And Should Be Adopted. (R.D. 59-66; RESA Exc. at 14-15; OCA M.B. at 28-29)

RESA excepts to the ALJ's recommendation that PPL's proposed 12-month rolling average reconciliation mechanism be adopted for use in this default service period. RESA Exc. at 14-15. In this case, PPL proposed to reset the reconciliation component of the GSC-1 every six months based upon a rolling reconciliation of over/under collections calculated over a 12-month period. OCA witness Hahn reviewed this methodology and compared it to other approaches. Mr. Hahn's analysis concluded that the 12-month rolling average approach worked best. OCA St. 1 at 15, Exh. OCA-RSH-5. PPL also provided an analysis that showed that the 12-month approach will smooth reconciliation adjustments and allow the price to compare to more accurately reflect changes in market prices resulting from default service procurements. PPL St. 5, Exhs. JMK-5 and JMK-6.

As the ALJ correctly concluded, the shortened reconciliation period supported by RESA has actually created a PTC that is more volatile and higher than it needs to be. R.D. at 62. The OCA submits that the record here demonstrates that the longer reconciliation period would reduce unnecessary volatility and result in a price to compare that is more reflective of the market price. PPL's proposal should be adopted.

#### 4. Miscellaneous

**Reply to PPL Exception 3:** The ALJ Correctly Rejected PPL's Provisional Claim For Cash Working Capital. (R.D. at 55; PPL Exc. at 9-10; OCA M.B. at 23-28; OCA R.B. at 13-15)

In her R.D., ALJ Colwell determined that PPL's provisional claim for cash working capital not be decided in this case. R.D. at 55. The OCA agrees with the ALJ. As the ALJ stated:

In other words, the Company is seeking an insurance policy against regulatory uncertainty in the form of a binding decision from the regulator on an event that *might* end in a result that *may or may not* require the utility to change its behavior in some undetermined way. This request should be unequivocally denied.

R.D. at 55 (emphasis in original).

PPL excepts to the ALJ's recommendation arguing that its provisional claim for cash working capital should be decided in this case. PPL made its provisional claim in this case based on its concern that it may be directed to change its reconciliation method in its then pending proceeding at Docket Nos. M-2011-2243137 and C-2011-2245906. PPL St. 5 at 4; OCA St. 1 at 27. During the pendency of this proceeding, the cases at M-2011-2243137 and C-2011-2245906 were decided in PPL's favor, thus rendering the basis of PPL's request moot. PPL seeks to continue its claim in case changes to its reconciliation method are directed in the future based on future cases. The OCA submits that the ALJ properly rejected such speculative claims.

If PPL is required in a future proceeding to adjust its reconciliation methodology, the Commission can properly consider any arguments regarding cash working capital needs at that time based on the facts in that proceeding. There is no need for the Commission to consider such a claim at this time in a vacuum.

In addition, the OCA submits that PPL's claim for cash working capital was seriously flawed, as set forth in the OCA's testimony and briefs. See, OCA M.B. at 23-28; OCA R.B. at

13-15; OCA St. 1 at 27-30; OCA St. 1-S at 8-10. As the OCA demonstrated, PPL failed to show that it had a legitimate cash working capital need as the result of the provision of default service. The OCA also demonstrated that PPL's calculation of default service cash working capital would result in the Company unjustly profiting from the provisions of default service. OCA St. 1 at 29.

The OCA submits that the ALJ correctly determined that PPL's provisional claim for cash working capital should not be decided by the Commission in this case. The ALJ's recommendation should be adopted.

## **B. The OCA's Reply As To Retail Market Enhancement Issues**

### **1. Timing**

**OCA Reply to RESA Exception 9, FES Exception 8:** RESA's And FES's Exceptions Regarding Timing Of The Retail Market Initiatives Should Be Rejected. (R.D. at 143-47; RESA Exc. at 18-22; FES Exc. at 17-18; OCA M.B. at 57-60; OCA R.B. at 27-28)

In its Exceptions, RESA recommends that all the RME initiatives be implemented by June 2013. RESA Exc. at 18-22. FES suggests that the Standard Offer Program could even be implemented before the Opt-In Program. FES Exc. at 17-18. The ALJ adopted PPL's proposed schedule, which would implement the Opt-In program in late 2013 and the Standard Offer program in mid-2014. R.D. at 143-47. The ALJ agreed with PPL's assessment that starting these programs sooner would disrupt pre-RMI contracts and that work and time are necessary to implement the programs properly. R.D. at 146. She also found that implementing the Opt-In and Standard Offer programs simultaneously would be unfair and unwise based on the facts of this proceeding. Id. at 147. The OCA supports the ALJ's recommendation.

RESA does not dispute that if substantial numbers of customers participate in the RME programs, during many hours, default load would drop below 350 MW and, during those hours, suppliers with full-requirements load-following contracts will have no load to supply, and, as a

consequence, block supplies will need to be sold and likely at a loss. RESA Exc. at 21; PPL M.B. at 71-72. Instead, RESA argues that, whatever the losses, they will not affect the contracts themselves and they will be reflected in the default service reconciliation. RESA Exc. at 21. The ALJ was persuaded, however, that avoiding potentially large losses on existing contracts, which would be passed through to a substantially smaller default service customer base, supports PPL's proposal to delay implementation of the RME programs. R.D. at 145; PPL R.B. at 70-72. The OCA submits that avoiding disrupting contracts entered into under PPL's DSP I program and avoiding the losses associated with those disruptions, outweighs any benefit of starting the Opt-In and Standard Offer programs 6 and 12 months sooner. This is particularly true in light of PPL's offer to undertake a Customer Referral Mailing in June 2013 to offset the delayed start of the other RME programs and to continue the momentum of the customer education mailing and the New/Moving Customer programs that will be implemented some time in late 2012 or early 2013. PPL M.B. at 108; PPL R.B. at 71.

FES and RESA argue that PPL has not shown adequate cause or need for a delay in implementation of the Standard Offer program. FES Exc. at 17; RESA Exc. at 21-22. RESA argues, further, that PPL's customer service representatives already have the information necessary to implement the Standard Offer program and that other enhancements can be added when they are available. RESA Exc. at 22. PPL witness Krall explained why programming changes are necessary to further the goals of the programs:

[T]he Company needs to enhance its customer information and billing systems to properly track and present to Customer Service Representatives ("CSR") and to customers (to the extent the Standard Offer Referral Program will have a web application related to certain self-service contacts) information that, while available, is not consolidated and correlated in a way that will lead to a positive introduction. For example, the fact that a customer has an EGS and that another may be pending following the next meter read date is information currently available to a CSR, but the fact that one may arise from participation in the Retail

Opt-In Auction and the second may relate to the Referral Program is important information that must be known by the CSR in order to successfully answer questions the customer might have. Failure to implement such changes to the Company's customer information and billing system will result in customer confusion, enrollment and billing errors and generally detract from the objective of making customers comfortable with shopping.

PPL St. 4-R at 17-18. The OCA agrees with the ALJ and PPL that implementing the program before PPL and its CSRs have the tools to do it well will not ensure a positive shopping experience. R.D. at 146; PPL M.B. at 131.

For similar reasons, RESA and FES's arguments that the Opt-In and Standard Offer programs should be operated simultaneously should be rejected. RESA Exc. at 19-20; FES Exc. at 17-18. Those parties argue that there will be no more confusion for customers in distinguishing between the Retail Enhancement programs than for a customer to compare any two retail offers in the competitive market. RESA Exc. at 19; FES Exc. at 17. These offers are different, however, because the program is approved by the Commission, will be the subject of consumer education and will be implemented by the EDC. Further, PPL's situation and its customers are distinguished by the relatively high level of shopping that already exists in its service territory:

PPL Electric believes that the comparatively larger number of shoppers in PPL Electric's service area supports the conclusion that PPL Electric's customers are already more sophisticated in shopping basics than may be found in other service territories. Thus, increased attention to careful, non-confusing program design may be very important to encourage meaningful numbers of these remaining non-shopping customers to enter the retail competitive market. (PPL Electric St. 4-R, p. 15). Rolling out both programs at or near the same time will lead to confusion, as customers are asked to decide between a 5% discount and \$50 bonus or 7% discount.

PPL M.B. at 131.

For all of these reasons, the OCA submits that the recommendation of the ALJ to approve PPL's proposed timeline for its retail enhancement initiatives is reasonable. The Standard Offer program should not be implemented at the same time as the Retail Opt-In Program.

## 2. Opt-In Program

**OCA Reply to Dominion/IGS Exception 2, FES Exception 3:** The ALJ Correctly Recommended An Opt-In Program Term With Guaranteed Savings For The Entire Term. (R.D. at 113-18; Dominion/IGS Exc. at 4-5; FES Exc. at 9-12; OCA M.B. at 40-43; OCA R.B. at 18-20)

The ALJ recommended a six-month contract term for the Retail Opt-In Program and a semi-annual adjustment to the price to compare, as recommended by PPL. R.D. at 56-57, 117; PPL St. 2 at 20. If the PTC semi-annual adjustment and the Opt-In Program term are aligned, the savings can be guaranteed for up to six months. R.D. at 116; OCA M.B. at 40-41. The ALJ recognizes that the Commission has approved longer terms in other proceedings but notes that the program proposed by PPL is reasonable and the ability to compare the results of a 6-month and 12-month program could provide guidance in future initiatives. R.D. at 117-18.

FES and Dominion/IGS argue that the ALJ should have recommended a 12-month program with a 4-month 5% savings component and an 8-month, non-specified, fixed price component to be consistent with the programs directed in the FirstEnergy DSP and PECO DSP Orders. FES Exc. at 9-12; Dominion/IGS at 5-6; Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650 *et al.*, Order (Aug. 16, 2012) (FirstEnergy DSP II); Petition of PECO Energy Co. for Approval of its Default Service Program II, Docket No. P-2012-2283641, Order (Oct. 12, 2012) (PECO DSP II).

In the case of FirstEnergy and PECO, however, the utilities' DSP programs are structured differently than PPL's program. With PPL's proposed semi-annual adjustments and

the timing of its retail opt-in program, the potential exists to design a program that can provide guaranteed savings to customers for the program term. The OCA submits that this program design can assure benefits to customers and result in a positive experience.

The IWP Order provided a vision of the product offer as something “unique and eye-catching, and as customer-friendly as possible.” Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order at 69 (Mar. 2, 2012) (IWP Order). In the OCA’s view, the proposed Opt-In program should lead to the type of outcome or customer experience that the Commission is looking for by guaranteeing savings for the program term. This position regarding purpose was echoed by PPL witness Krall, who stated that “the overarching purpose of the retail market enhancements is to introduce default service customers to shopping in a positive way.” PPL St. 4R at 15.

PPL’s program ensures that customers have a positive experience and that actual savings that appear to be promised to engage the customer to enroll in the program are, in fact, delivered for the entire contract term. The OCA respectfully requests the Commission to adopt the ALJ’s recommendation.

**OCA Reply to RESA Exception 11.1:** The ALJ Correctly Recommended That Shopping Customers Be Eligible For The Opt-In Auction Program. (R.D. at 139-40; RESA Exc. at 24; OCA M.B. at 38-40; OCA R.B. at 23-24)

The ALJ correctly declined to adopt RESA’s proposal to exclude shopping customers from the Opt-In Program and Standard Offer Program. R.D. at 139-40. The ALJ recommended that all residential customers be eligible to participate in the programs. Id. at 167. In Exceptions, RESA argues that the main purpose of the programs is to introduce default service customers to the competitive market, and that customers who are currently shopping are already experiencing the benefits of the competitive market. RESA Exc. at 24.

The OCA submits that RESA's Exception regarding the participation of shopping customers should be denied. The OCA submits that excluding shopping customers who otherwise hear of the program could be discriminatory and could result in customer dissatisfaction. See OCA M.B. at 38-40.

PPL's proposal would target the marketing for the program to non-shopping customers, but shopping customers would not be precluded from signing up for the program. R.D. at 139. PPL's approach is consistent with both the Commission's IWP Order and the Commission's FirstEnergy DSP II and PECO DSP II Orders. IWP Order at 42; FirstEnergy DSP II, Order at 107; PECO DSP II, Order at 86. The Commission succinctly responded to the problems with RESA's approach in its IWP Order and captured the importance of allowing all customers – shopping and non-shopping – to participate. The Commission stated:

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

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

The OCA does not oppose RESA's alternative request, that the Commission merely clarify that the Opt-In offer will be sent only to default service customers. RESA Exc. at 24. As noted by RESA, this is consistent with PPL's intent and with the IWP Order. RESA Exc. at 24; IWP Order at 42.

**OCA Reply to Dominion/IGS Exception 3, RESA Exception 11.4: The ALJ Correctly Required Customers To Have All Terms And Conditions Prior To Entering Opt-In Program.** (R.D. at 123-24; Dominion/IGS Exc. at 5; RESA Exc. at 27; OCA M.B. at 43-44; OCA R.B. at 20)

The ALJ rejected RESA's suggestion that customers should be asked to enroll in the Retail Opt-In Program before knowing the price, material terms and conditions, or identity of the EGS that will become their generation supplier if an auction format is used. R.D. at 123; RESA St. 2 at 22. Dominion/IGS raised the same exception. Dominion/IGS Exc. at 5. Specifically, the ALJ stated:

It is not reasonable to expect customers to enter a contract without first knowing the terms. All material terms and conditions should be given to the customer prior to asking the customer to accept them.

R.D. at 124. The OCA supports the ALJ's recommendation.

The OCA submits that regardless of the method – auction or aggregation – participating customers should have full information about the program before they enroll. OCA St. No. 2-R at 8. FES also supports providing customers with full information, arguing that:

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

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

The OCA submits that asking customers to enroll in any program without full information is unreasonable. Such an approach will result in far fewer customers electing to participate. The ALJ's recommendation should be adopted.

### 3. Standard Offer Program

**OCA Reply to RESA Exception 13.1:** RESA's Exception Regarding Savings To Customers During The Introductory Period Of The Standard Offer Should Be Denied. (R.D. at 136-38; RESA Exc. at 30-31; OCA M.B. at 53-54; OCA R.B. at 24-25)

RESA and the OCA interpreted the ALJ's decision regarding the 7% discount aspect of the Standard Offer Referral program differently. See OCA Exc. at 15-16. The OCA supports a recommendation that guarantees a 7% reduction from the PTC for the term of the offer even if the PTC changes during the term of the introductory period. RESA argues that the 7% discount should be from the PTC at the time of enrollment only. RESA Exc. at 31. RESA's proposal could result in the potential for customers to pay a higher price than PPL's default service price during the program. OCA St. 2 at 17; PPL Exh. 1 at 29. The OCA submits that this is inconsistent with the goals of the Standard Offer program: to allow customers to experience the competitive retail market, but to enable that experience to be positive by producing savings. PPL's witness agreed that "the overarching purpose of the retail market enhancements is to introduce default service customers to shopping in a positive way." PPL St. 4-R at 15. In contrast, if savings can quickly evaporate, there is risk that the goal of the program will not be achieved. As OCA witness Alexander explained:

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

OCA St. 2 at 17; OCA M.B. at 53. This is particularly problematic in PPL's situation where the PTC has experienced significant volatility. PPL Exh. 1 at 29.

For these reasons, the OCA submits that the Commission should require the 7% reduction from the PTC to be re-calculated for each PTC adjustment during the entire term of the introductory offer.

#### 4. Cost Recovery

**OCA Reply to RESA Exception 14.1, Dominion/IGS Exception 4: RESA's And Dominion/IGS's Exceptions Regarding Recovery Of Costs Of The Retail Enhancement Programs Should Be Rejected.** (R.D. at 147-54; RESA Exc. at 32-34; Dominion/IGS Exc. at 6-7; OCA M.B. at 60-64; OCA R.B. at 28-36)

In its Exceptions, RESA argues that all of the costs of the RME programs should be allocated to all customers through a non-bypassable surcharge or, in the alternative, that there be an equal sharing of costs between EGSs and customers.<sup>2</sup> Dominion/IGS supports splitting the program costs so that customers pay the capital costs associated with the Standard Offer Referral program, with participating EGSs paying the operational costs of both programs – as long as the Commission requires an aggregation instead of an auction to lower the costs of the Opt-In program. Dominion/IGS at 6. Consistent with both the Commission's IWP Order and the FirstEnergy DSP II and PECO DSP II decisions, the OCA submits that all of the costs of the Retail Market Enhancement Programs should be recovered from EGSs and, as such, the Exceptions of RESA and Dominion/IGS on this issue should be denied. IWP Order at 32, 84-85; FirstEnergy DSP II, Order at 136; PECO DSP II, Order at 148-49.

With regard to the Retail Opt-In program specifically, RESA argues that if the Commission orders an auction, then the ALJ's approval of PPL's proposal to allocate pre-auction costs among participating EGSs would create a barrier to competition. RESA Exc. at 33; R.D. at 152, 147-52. RESA claims that, based on PPL's cost estimates, the substantial cost to submit a bid with no guarantee of receiving any customers could deter supplier participation. RESA Exc.

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<sup>2</sup> RESA proposes a third alternative, a 0.5¢ per kWh adder. RESA Exc. at 34-35. The OCA addresses RESA's proposal separately in its Reply Exception to RESA Exception 7 but would note here that recovery of these costs solely from default service customers is particularly unfair since the remaining default service customers are the very individuals who, by definition, are not participating in these programs.

at 33, n.115. The OCA submits, instead, that it is appropriate for EGSs to pay for pre-auction costs. As explained by OCA witness Alexander:

[T]hese pre-Auction costs are being undertaken by the regulated distribution utility to support market enhancements that benefit EGSs and that allow EGSs to avoid marketing costs. Such costs should all be borne by the EGSs that participate in the program and that stand to gain customers from the program.

OCA St. 2 at 14. This is consistent with the Commission's finding in the IWP Order. The Commission stated:

The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs.

IWP Order at 84-85. As noted by RESA's witness:

[o]ne important justification for the opt-in auction is to allow a certain number of EGSs to increase their scale in the PPL market.

RESA St. 2 at 30. For the same reason, if the Commission directs an aggregation, then the Commission should also adopt the ALJ's recommendation that all costs of the Opt-In program be recovered from the EGSs, as proposed by PPL. R.D. at 154, 168 (Ordering ¶14); PPL M.B. at 133; PPL St. 4-SR at 9.

RESA and Dominion/IGS have not demonstrated any good cause to deviate from the Commission's IWP Order on this issue. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs, and as such, should be responsible for the costs.

RESA argues, that as a threshold matter, with regard to both the Retail Opt-In and Standard Offer Referral program that the Commission should order PPL to submit an accounting of the projected implementation costs consistent with the program elements directed by its Order and a projected "per customer" cost based on an estimate of the number of customers likely to

accept the offer. RESA Exc. at 33. RESA argues that these costs should be evaluated to determine whether the costs will discourage EGS participation. Id. If not, then RESA submits that the Commission should make a determination on the allocation of costs. Id. RESA then recommends a collaborative to work out the details. RESA argues that its recommendations are “generally consistent” with the FirstEnergy and PECO Orders. RESA Exc. at 33-34.

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

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

PECO DSP II, Order at 148; see also FirstEnergy DSP II, Order at 136-37.<sup>3</sup>

Further, the costs associated with all of the proposed retail market “enhancements” differ from those incurred and paid for by all customers to implement the basic requirements for a retail competitive market. OCA St. 2-R at 14-15. Ms. Alexander explained:

The costs that PPL and the other EDCs will incur to implement the Opt-In Auction and Referral Programs are not necessary to implement retail choice. The Competition Act does not mandate these programs. The costs associated with these programs are significantly different from the costs that Pennsylvania electric customers have already paid to support the EDC’s implementation of billing changes, customer education programs, and electronic data exchange protocols so that customers can switch to an EGS and receive bills from the EDC or the EGS

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<sup>3</sup> RESA also argues that the Commission has indicated that it would consider alternative proposals. To be clear, as to the FirstEnergy reference cited by RESA, the Commission stated that it would consider different proposals for allocating costs among the EGSs, not as between EGSs and customers. FirstEnergy DSP II, Order at 137. In the PECO DSP reconsideration order that RESA cites, the Commission stated that the parties consider cost responsibility of EGSs and possibly customers in a collaborative process. PECO DSP II, Reconsideration Order at 15-16 (Nov. 21, 2012). This was not a determination of cost responsibility as RESA asserts.

that include EGS charges. Rather, the Opt-In Auction and Customer Referral Programs are “enhancements” that are intended to expand the current level of retail competition that already exists. Therefore, it would not be reasonable to view the costs associated with these “enhancements” as similar to those incurred and paid for by all customers to implement the basic requirements for a retail competitive market.

...

PPL’s role in these programs is a substitute for the individual marketing efforts that would otherwise be incurred by the EGSs and that are incurred by sellers in any competitive market. Therefore, it is only reasonable for the EGSs that directly benefit from these programs by gaining market share to pay for the incremental costs, which are likely to be far less than the incremental costs that each EGS would have to bear to acquire these customers on an individual basis.

Id.

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

#### **5. Creation Of A 0.5¢ Per kWh Adder**

**OCA Reply to RESA Exception 14.2:** The ALJ Correctly Rejected The Creation Of A 0.5¢ Per kWh Adder To The Price Of Default Service. (R.D. at 155-56; RESA Exc. at 34-35; OCA M.B. at 67-73; OCA R.B. at 36-39).

RESA proposed to add a 0.5¢ per kWh adder to the price of default service for PPL’s default service customers that would serve to increase the Price to Compare (PTC). According to RESA, the proceeds from the adder would be used as follows: 1) payment of any verifiable costs related to providing default service that have otherwise not been collected by PPL; 2) payment of costs related to implementing and maintaining competitive market enhancements,

such as the opt-in auction, referral programs, and 3) any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers. RESA St. No. 2 at 40. RESA alleged that the 0.5¢ per kWh adder would compensate the Company for currently unrecovered costs of providing default service in addition to paying for the implementation and maintenance of competitive market enhancements. RESA St. 2-SR at 27. OCA witness Hahn, however, concluded that RESA's proposed adder would artificially increase default service rates substantially and increase PPL's annual profits by approximately \$4.6 million. OCA St. No. 1-R at 7. It is important to note that despite this increased profit opportunity, PPL itself opposes RESA's proposed adder. See PPL M.B. at 144-45; PPL St. 1R at 17.

In the Recommended Decision, the ALJ rejected RESA's 0.5¢ per kWh adder proposal stating that:

This program would increase the cost of default service where there is no need to do so, and then return those charges to all distribution customers. This proposal simply defies logic and is unequivocally denied.

R.D. at 156. The ALJ's recommendation is consistent with the Commission's rejection of a similar adder proposed in the FirstEnergy and PECO DSP II proceedings. FirstEnergy DSP II, Order at 62-63; PECO DSP II, Order at 76. RESA has submitted an Exception on this issue. The OCA submits that the ALJ's decision is consistent with the law and sound public policy, and accordingly should be upheld.

In its Exception, RESA acknowledged the Commission's failure to adopt its proposal in other cases, but asked the Commission to reconsider it in this proceeding. RESA Exc. at 35. RESA asserted that ALJ was wrong in recommending rejection of its adder for the reasons it argued in briefs, namely that (1) the 0.5¢ per kWh adder would not artificially inflate the PTC and (2) collecting the 0.5¢ per kWh adder from default service customers and returning

remaining amounts to all customers would not amount to cross-subsidization of shopping customers by non-shopping customers. RESA Exc. at 35 citing RESA M.B. at 97-101. The OCA submits that the Commission should reject these arguments and adopt the ALJ's recommendation.

First, RESA's proposed adder would increase the PTC, which would, in turn, allow EGSs offering a percentage discount off the PTC to achieve the minimum savings level at a higher price. OCA St. No. 1-R at 8; OCA M.B. at 69-70. This would likely increase the costs to customers, including those who participate in the Retail Opt-In or Customer Referral Programs. As a result, the real effect of the RESA proposal would be to increase the power supply costs for both default service customers and customers who take advantage of the retail market.

Second, although the PTC adder will apply only to default service customers under RESA's proposal, any remaining balance after payment of retail program costs, "uncollected" default service costs and PPL's profit share would be refunded to a much larger, different group of customers – distribution customers, including those shopping with an EGS. Thus, RESA's proposal would result in cross-subsidization of shopping customers by default service customers. OCA witness Hahn explained the inappropriate subsidy as follows:

Default service customers will pay 100% of the costs but receive 60% or less of the remaining funds. This transfer of wealth or economic benefit is unsupported by any cost causation, is extremely inequitable, and discriminatory.

OCA St. 1-R at 9.

Third, the OCA submits that there are legal prohibitions against the adder. As discussed in the OCA's briefs, a plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred." 66 Pa.C.S. § 2807(e)(3.9); see also Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985); Cohen v. Pa. P.U.C., 468 A.2d 1143, 1150 (Pa.

Commw. Ct. 1983); Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997); OCA M.B. at 71-72; OCA R.B. at 37. The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory “costs,” such as RESA’s proposed adder, are precluded from consideration in the rates that utility customers pay.

The OCA further submits that RESA’s adder proposal would permit PPL to recover a profit on the provision of default service because it is pre-tax money that PPL is permitted to retain without any added risk. Pennsylvania law does not permit a profit on the provision of reconcilable default service. The Public Utility Code provides, in relevant part:

The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

66 Pa. C.S. § 2807(e)(3.9); see also OCA M.B. at 72.

Additionally, the fact that RESA’s proposal includes a potential profit handed over to PPL that might be tied to whether or not EGSs are successful in obtaining new customers is inappropriate and cannot be justified. PPL is providing statutorily required Default Service and will recover all of its costs on a reconcilable, dollar for dollar basis. PPL testified that it will be recovering all of its costs for this DSP period and that RESA’s proposal should not be adopted. PPL St. No. 1-R at 14.

For all of these reasons, the OCA submits that there is no basis for RESA’s proposed 0.5¢ per kWh adder as a cost recovery mechanism. Since it is more correctly classified as a wholly unjustified profit adder to the provision of default service, the ALJ’s decision on this issue is in accord with the law and should be upheld.

### III. CONCLUSION

For the reasons detailed in these Reply Exceptions, and its Main Briefs and Reply Briefs, the OCA submits that the Exceptions of PPL, RESA, FES and Dominion/IGS on the issues discussed herein should be denied and the ALJ's recommendations adopted.

Respectfully Submitted,



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Dated: December 17, 2012  
163635

CERTIFICATE OF SERVICE

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

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

Dated this 17th day of December 2012.

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