

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

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

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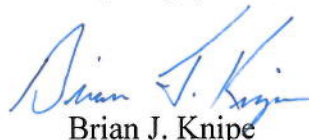
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Replies of FirstEnergy Solutions Corp. to the Exceptions of Other Parties*. Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Susan D. Colwell (via email and regular mail)
Office of Special Assistants (via email only: ra-osa@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES OF FIRSTENERGY SOLUTIONS CORP.
TO THE EXCEPTIONS OF OTHER PARTIES**

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

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

Attorneys for
FirstEnergy Solutions Corp.

Dated: December 17, 2012

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FirstEnergy Solutions Corp. ("FES"), by its attorneys, and in accordance with 52 Pa. Code § 5.535, submits these Replies to the Exceptions filed by PPL Electric Utilities Corporation ("PPL"), the Office of Consumer Advocate ("OCA"), Dominion Retail, Inc. d/b/a Dominion Energy Solutions and Interstate Gas Supply, Inc. (collectively, "DES/IGS"), and the Retail Energy Supply Association ("RESA") to the Recommended Decision ("R.D.") of Administrative Law Judge Susan D. Colwell issued November 15, 2012 with respect to PPL Electric's proposed default service program ("DSP II") and retail market enhancement programs.

I. INTRODUCTION

With respect to PPL Electric's default supply procurement plan, FES proposed portfolios of 12-, 15-, 18-, 21- and 24-month contracts for Residential and Small Commercial and Industrial ("C&I") customers to meet Act 129's "least cost over time" requirement while transitioning PPL Electric customers to the end state of default service starting June 1, 2015. The Commission should deny RESA's Exceptions, which advocate a mix of default supply contracts for these customer classes which includes a significant portion of 3-month contracts. Contrary to RESA's arguments, price stability is part of the Act 129 analysis. RESA's recommendations focus exclusively on achieving market-reflective rates, ignoring the statutory requirements of Act 129. It is important that customers be moved to quarterly default service rates in an orderly transition, after the Commission and stakeholders have prepared them for the new default service end state, and not during DSP II.

Also with respect to PPL Electric's default service procurements, the Exceptions of RESA and the OCA that support the maintenance and reduction of PPL Electric's Aggregate Load Cap, in addition to its 85% Solicitation Cap, should be rejected. The record evidence

shows a high level of supplier diversity in PPL Electric's procurements and the caps will result in increases in PPL Electric's default service rates. In addition, the Commission should deny PPL Electric's Exceptions to the R.D.'s recommendation that PPL Electric's proposal to reduce the unsecured credit threshold in its Supplier Master Agreement ("SMA") be rejected. The R.D. correctly found that PPL Electric's proposed threshold is inconsistent with those of other EDCs in the PJM Interconnection and will limit participation in PPL Electric's default supply procurements, relative to other EDCs' procurements.

With respect to PPL Electric's proposed Opt-In Auction Program ("Opt-In Program"), FES maintains that the term of the Opt-In Program contract should be 12 months, consistent with the Commission's prior orders and a preponderance of the evidence. FES disagrees with the OCA's contention in its Exceptions that guaranteed savings are necessary if the term is longer than 6 months. FES also disagrees with the OCA's proposal to reduce the customer participation cap to 20%, a proposal that the Commission has heard and rejected at least three times. Also, FES agrees with PPL Electric's request in its Exceptions that the Commission not require a minimum of four winning bidders, a requirement the Commission has consistently rejected.

In addition, FES agrees with PPL Electric's request that the Commission structure the Opt-In Program as an auction rather than an aggregation, since an auction will provide greater benefits to participating customers and attract greater customer participation. Regardless of whether the program is structured as an auction or aggregation, customers should know the product and all terms and conditions of service at the time they are solicited to participate, and the Commission should reject any suggestions in the parties' Exceptions to the contrary. Further, FES agrees with RESA and DES/IGS's arguments that customers should share in the cost of the Opt-In Program, and urges rejection of the OCA's contrary arguments.

With respect to PPL Electric's proposed Standard Offer Referral Program ("Standard Offer Program"), FES's Exceptions support a 12-month term. The Commission should deny the OCA's proposal that EGSs be required to guarantee the discount for the entire term. As explained below, FES does not oppose guaranteed savings but believes they are unnecessary for the program to provide value to participating customers. FES also urges the Commission to reject RESA's proposal that the program be structured as an introductory offer, or, in accordance with a new proposal raised by RESA for the first time in its Exceptions, be "coordinated" with the Opt-In Program so their products are nearly identical.

In order to maintain a coordinated approach to retail market enhancements, FES agrees with PPL Electric's request that if either its Opt-In Program or Standard Offer Program is accelerated, it need not undertake its proposed customer referral mailing. With regard to costs, the parties appear to interpret the R.D.'s recommendations differently. FES interprets the R.D. to have approved PPL Electric's proposal, and agrees with DES/IGS and RESA that customers should share in program costs. FES urges the Commission to reject the OCA's recommendation to place all program costs on EGSs, and instead to adopt the language used in the Commission's *PECO October DSP Order*¹ which contemplates customers sharing in some of the costs of retail market enhancement programs.

For the reasons explained herein and in FES's Main Brief ("M.B.") and Reply Brief ("R.B."), the Exceptions of PPL Electric, the OCA, DES/IGS, and RESA to which FES responds below should be resolved consistent with FES's Replies.

¹ *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 October DSP Order*").

II. REPLIES TO EXCEPTIONS

A. Class Procurements

1. RESA's Proposed Mix of Contracts for Residential Default Supply Will Not Meet the Requirements of Act 129 and Is an Inappropriate Transition to End State Default Service (RESA Exception No. 1)

RESA's Exception No. 1 contends that the R.D. erred in rejecting RESA's proposal of 12-month contracts mixed with an increasing percentage of 3-month contracts. RESA faults the R.D. for allegedly elevating "the policy objective of price stability . . . above satisfying the legal requirements actually established in the Competition Act," and cites the Commission's recent *Pike County Light & Power* decision² as support for its contention. According to RESA, the R.D. erroneously focused only on the issue of price stability in rejecting RESA's proposal, and "ignore[d] 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." RESA also appears to dispute that price stability is even a goal of default service. RESA Exceptions at 5.

FES disagrees, and submits that price stability is in fact part of the determination of whether a mix of contracts ensures the "least cost over time," and that it is RESA's proposal which erroneously focuses on the need for a "market-reflective" default service rate, ignoring the statutory requirements of Act 129. In the *Act 129 Final Rulemaking Order*,³ the Commission examined its statutory interpretation of Act 129 requirements and reached tentative conclusions. *Act 129 Final Rulemaking Order*, slip op. at 31-32. Among other things, the Commission

² *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). RESA notes that the Opinion and Order has been appealed to the Pennsylvania Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Case No. 1179 C.D. 2012.

³ *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) ("*Act 129 Final Rulemaking Order*").

concluded that price stability is part of the determination of whether a mix of contracts ensures the "least cost over time:"

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.

Act 129 Final Rulemaking Order, slip op. at 39-40.⁴

Contrary to RESA's contentions, the Commission concluded that a general reliance on short term pricing which is reasonably likely to result in a "market reflective and "market-responsive" service rate is inconsistent with Act 129's "least cost" standard and price stability objectives:

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. *We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy market. 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*

⁴ Further, RESA never explains why the Commission's Order in *Pike County Light & Power*, a case involving a different EDC, a different procurement plan and a different legal analysis by an ALJ, should have any bearing whatsoever on PPL Electric's procurement plan.

pricing is inconsistent with Act 129's objectives. This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the "prudent mix" of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

Act 129 Final Rulemaking Order, slip op. at 41 (emphasis added). Accordingly, RESA is incorrect to disregard price stability as a requirement of Act 129, and incorrect to suggest that a "market-reflective" default service rate is part of the statutory analysis.

RESA contends that even if price stability is a goal of Act 129, the proper method to provide price stability is to develop a competitive market where customers can find it, not to provide price stability through default service. RESA Exceptions at 5-6. While FES agrees that some competitive suppliers offer stable pricing, the General Assembly's intent in amending the Competition Act through Act 129 was to require that default service offers stable pricing as well. FES R.B. at 10.

RESA also contends that its proposal would result in a gradual progression toward quarterly procurements consistent with the Commission's retail markets investigation ("RMI") end state Tentative Order,⁵ which proposes that all default supply for Residential customers be procured exclusively through 3-month contracts for the upcoming quarter. RESA Exceptions at 6. However, the record indicates that 60% of PPL Electric's Residential customers remain on default service. FES agrees that these customers need to be moved to competitive suppliers, but RESA's impatience to phase-in end state default service prior to June 2015 disregards the need to prepare these customers for potentially significant shifts in default service pricing every 3 months. FES M.B. at 19. The end state Tentative Order proposes to provide substantial customer education prior to the introduction of quarterly pricing in June 2015. FES submits that

⁵ *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Tentative Order entered November 8, 2012).

the appropriate way to prepare customers is through the methods being considered by the Commission in the RMI, not through the aggressive and premature introduction of market-responsive default service pricing as RESA proposes. RESA's approach does not balance the need to help suppliers gain smaller customers with the need to orchestrate an orderly transition to end state default service. FES R.B. at 8. Therefore, RESA's Exception No. 1 should be denied.

2. RESA's Proposed Mix of Contracts for Small C&I Default Supply Will Not Meet the Requirements of Act 129 and Is an Inappropriate Transition to End State Default Service (RESA Exception No. 2)

RESA's Exception No. 2 contends that the R.D. erred in rejecting RESA's proposal to replace each expiring contract with a 3-month contract, so the percentage of 3-month contracts increases to 100% by June 2015. RESA's arguments are the same as those raised in support of its Exception No. 1, to which FES responded above.

Thus, RESA again claims the R.D. elevated "the policy objective of price stability" over "the legal requirements actually established in the Competition Act." RESA contends that its proposal for "more market-reflective default service rate pricing" will encourage retail competition and enable customers to find fixed-price choices from alternative suppliers. RESA Exceptions at 7-8. As FES explained above, however, price stability is in fact a part of the Act 129 "least cost over time" analysis, which RESA has ignored while erroneously focusing on the need for a "market-reflective" rate which is inconsistent with Act 129's standards and objectives. FES M.B. at 33-34. Also, as FES explained in briefs, RESA's claim "that there is evidence that shopping increases in circumstances where more market-reflective rates exist," RESA Exceptions at 9, lacks evidentiary support. FES M.B. at 20-22.

In addition, while FES again agrees that some EGSs offer stable pricing, FES disagrees with RESA's argument that Act 129 is satisfied when customers can obtain price stability only through EGSs and not default service. This assertion simply ignores the requirements of Act 129.

RESA again contends that the end state Tentative Order announces the Commission's intent to move to exclusive reliance on 3-month contracts, and that RESA has proposed a gradual progression to get there. In this case as well, RESA ignores the need to prepare PPL Electric's Small C&I default service customers — the smallest of PPL Electric's Small C&I customers — for potentially significant shifts in default service rates every 3 months through the end state Tentative Order's proposed customer education program. The end state Tentative Order understands the need to prepare customers before default service is substantially based on quarterly pricing.

RESA further argues that any rate volatility PPL Electric's Small C&I customers may experience would be no worse than what they have experienced historically. RESA Exceptions at 8. FES wants all customers to shop as well, but submits that RESA's attempt to brush off concerns regarding rate volatility pays insufficient attention to the challenges presented in transitioning to the desired end state of default service. The transition must be made more responsibly than RESA recommends. Accordingly, RESA's Exception No. 2 should be denied.

3. The R.D. Correctly Concluded That a Healthy Level of Supplier Diversity in PPL Electric's Default Supply Procurements Makes PPL Electric's Aggregate Load Cap Unnecessary (RESA Exception No. 4)

The R.D. correctly approved elimination of PPL Electric's 70% Aggregate Load Cap for Residential customers. As FES explained in its briefs, load caps, which are part of the

Commission's "least cost over time" analysis, limit supplier competition and potentially harm default service customers by increasing the total price customers pay for default service. FES M.B. at 26. As the ALJ correctly found, PPL Electric's proposed DSP II includes strong security provisions. R.D. at 43; see FES M.B. at 28-29.

RESA's Exception No. 4 claims the R.D. erred because its recommendation is inconsistent with the *ME/PN/PP/WP DSP Order*,⁶ where the Commission approved a 50% load cap because "ensuring that there is a healthy level of supplier diversity . . . will result in the lowest supply prices over the long run," as well as the *PECO October DSP Order*. FES submits that the load cap determinations in the *ME/PN/PP/WP DSP Order* and the *PECO October DSP Order* should be limited to the facts of those cases. The Commission should consider the individual facts and circumstances of each case. The record evidence in this proceeding does not support a 50% Aggregate Load Cap, in addition to PPL Electric's 85% Solicitation Cap. The record evidence, including but not limited to data taken from PPL Electric's 2011 FERC Form 1, see OCA St. No. 1 at 17, Figure 5, demonstrates a high level of supplier diversity in PPL Electric's procurements, and that PPL Electric's largest supplier provided 26% of PPL Electric's energy for all customer classes. FES M.B. at 27-28. As a result, there is no need to bolster supplier diversity through artificial supplier load cap limitations. Further, the conclusion in the *ME/PN/PP/WP DSP Order* that ensuring supplier diversity through a reduced load cap "will result in the lowest supply prices over the long run" is inconsistent with the Commission's prior

⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) ("*ME/PN/PP/WP DSP Order*").

recognition that increasing supplier diversity through a reduced load cap “would necessarily increase the total average cost to serve default load.”⁷

RESA also argues that a reduced Aggregate Load Cap will not discourage suppliers who could offer a lower price, based upon the level of supplier participation in the New Jersey BGS auction. RESA Exceptions at 10-11. As explained above, the concern with load caps is not that they will discourage suppliers who could offer a low price. Rather, it is that they will limit those suppliers from offering that lower price for as much load as they could, potentially increasing the default service price.

For the reasons explained in the R.D., FES’s briefs and the arguments set forth above, RESA's Exception No. 4 should be denied, and PPL Electric’s Aggregate Load Cap for Residential customers should be eliminated.

4. The R.D. Correctly Rejected PPL Electric’s Proposal to Reduce Unsecured Credit Amounts (PPL Exception No. 1)

PPL Electric Exception No. 4 challenges the R.D.’s rejection of PPL Electric’s proposal to revise its SMA by reducing the unsecured credit for even the most creditworthy of wholesale suppliers down to \$50 million — a reduction of \$25 Million. PPL M.B. at 29. The R.D. correctly agreed with Constellation’s recommendation that PPL Electric’s SMA should include the unsecured credit threshold used in West Penn Power Company’s SMA or, in the alternative, the same unsecured credit threshold that PPL Electric included in its SMA during DSP I.

In its Exceptions, PPL Electric contends that its proposed unsecured credit threshold is reasonable compared to those of other EDCs, and that Constellation failed to quantify the higher

⁷ *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053, P-2009-2093054 (Opinion and Order entered November 6, 2009), slip op. at 18.

costs it claims will result from the reduction in the unsecured credit threshold. PPL Electric Exceptions at 5-7. To the contrary, Constellation demonstrated that PPL Electric's proposed unsecured credit threshold is out of line with those of other EDCs in PJM, is roughly half that of West Penn Power Company, and is even lower than all but one of the four EDCs identified in PPL Electric's own testimony. As Constellation explained, PPL Electric failed to identify why it believes its prior DSP I SMA does not adequately moderate the risk of supplier default, and its proposed reduction will be less attractive to potential bidders. Constellation M.B. at 15-16.

PPL Electric also argues that "although PPL Electric has not experienced an event of default with any suppliers under its current DSP I Program, wholesale supplier defaults under default service programs have occasionally occurred," and cites to testimony of RESA's witness regarding an alleged near-default. PPL Electric Exceptions at 7. At hearing, however, PPL Electric challenged this very testimony, establishing that it was hearsay, that the RESA witness had drawn the assertion from testimony submitted by another person in another proceeding, and that the witness had no knowledge of the basis for the testimony. Tr. 216-218. Under general administrative law, hearsay evidence, properly objected to, is not competent evidence to support a finding; hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.⁸ PPL Electric's assertion that supplier defaults have occasionally occurred is based on no competent evidence, and does not even accurately reflect the cited hearsay which purported to identify a near-default. It cannot support PPL Electric's reduction in its unsecured credit threshold.

For these reasons, the R.D. correctly recommended that PPL Electric's performance assurance requirements should be in line with West Penn Power Company's, or at a minimum,

⁸ *Walker v. Unemployment Comp. Bd.*, 367 A.2d 366 (Pa. Cmwlth. 1976).

should maintain the levels of PPL Electric's DSP I SMA, and PPL Electric's Exception No. 4 should be denied.

B. Retail Opt-In Auction

1. Even Without Guaranteed Savings, a Twelve-Month Program Will Provide Greater Benefits to Customers and Attract Greater Interest from Suppliers (OCA Exception No. 3; DES/IGS Exception No. 2)

DES/IGS's Exception No. 2 challenges the R.D.'s recommendation of a 6-month term for PPL Electric's Opt-In Program, and instead supports a 12-month Opt-In Program contract. DES/IGS explains that a 6-month term will discourage EGSs from participating, given the significant costs of the program. DES/IGS's Exception No. 2 should be granted and the term should be extended to 12 months, for the reasons explained in FES's Exceptions and briefs.

The OCA's Exception No. 3 contends that if the term of the ROI is longer than 6 months, the Opt-In Program must guarantee savings for the entire period. As FES explained in its Exceptions and briefs, it is not opposed to guaranteed savings, but does not believe they are necessary for participating customers to benefit from participating in the Opt-In Program. See FES Exception No. 3. Therefore, OCA Exception No. 3 should be denied.

2. The R.D. Correctly Rejected the OCA's Proposed 20% Customer Participation Cap (OCA Exception No. 2)

The OCA's Exception No. 2 argues that customer participation in PPL Electric's Opt-In Program should be capped at 20%, in order to mitigate the increased volumetric risk in providing default service and to better ensure a successful program. OCA Exceptions at 6-8. The R.D. correctly rejected this proposal. FES submits that the OCA's concerns with the increased

volumetric risk are not adequately supported by a preponderance of the evidence, and disagrees that limiting customer participation in the program can better ensure its success. The Opt-In Program will succeed by moving more participating customers off of default service, not by turning them away. Imposing such a low customer participation cap would also discourage EGSs from participating in the Opt-In Program. In addition, as FES explained in briefs, the OCA's proposal has been rejected at least three times, in the *IWP Order*, the *ME/PN/PP/WP DSP Order* and the *PECO October DSP Order*. *IWP Order*, slip op. at 59; *ME/PN/PP/WP DSP Order*, slip op. at 112; *PECO October DSP Order*, slip op. at 95. For the reasons explained in the R.D., FES's briefs and the arguments set forth above, the OCA's Exception No. 2 should be denied.

3. No Minimum Number of Winning Bidders Should Be Required in the Opt-In Program (PPL Exception No. 7)

PPL Electric's Exception No. 7 challenges the R.D.'s recommendation to require a minimum of four winning bidders in PPL Electric's Opt-In Program. PPL Electric Exceptions at 19-20. As FES explained in FES Exception No. 6, to the extent the R.D. could be construed to recommend requiring a minimum of four "winning" bidders, its recommendation is contrary to the weight of the evidence and inconsistent with the Commission's prior determinations. FES Exceptions at 14-16. Therefore, PPL Electric's Exception No. 7 should be granted.

4. An Auction Design Will Deliver Greater Benefits to Customers Than an Aggregation Design (PPL Exception No. 6)

PPL Electric's Exception No. 6 correctly observes that the R.D. includes recommendations that are consistent with either an auction approach as well as an

aggregation approach. PPL Electric encourages the Commission to use an auction approach instead of an aggregation, to increase the likelihood of a lower price that may increase customer participation. PPL Electric Exceptions at 18-19. As explained in FES's Exception No. 4, FES agrees that the Opt-In Program should include some form of bidding competition, to deliver the benefits of actual competition among retailers, provide participating customers with maximum savings, and provide a clear methodology for allocating customers among participating suppliers. FES Exceptions at 12-13. Therefore PPL Electric's Exception No. 6 should be granted.

5. Customers Should Know the Price and All Terms and Conditions of Service Under the Program, Regardless of Program Design (RESA Exception No. 11; DES/IGS Exception No. 3)

RESA's Exception No. 11 takes issue with the R.D.'s conclusion that "all material terms and conditions should be given to the customer prior to asking the customer to accept them." RESA contends that if the Commission structures the Opt-In Program as an aggregation rather than an auction, it is reasonable to notify customers of the material terms and conditions at the time they are solicited to participate. RESA Exceptions at 27. This argument's omission of an auction scenario implies that if the Commission structures the Opt-In Program as an auction, which FES and PPL Electric encourage as explained above, then RESA would oppose requiring EGSs to notify customers of the material terms and conditions at the time they are solicited. Similarly, DES/IGS's Exception No. 3 appears to prefer an aggregation to an auction, because an aggregation would avoid a scenario in which customers opt in only after they are provided with the exact amount of the discount, i.e., after an auction. DES/IGS Exceptions at 5.

As explained above, FES believes an auction design will significantly improve the likelihood that the Opt-In Program will succeed. As FES explained at length in briefs, regardless of whether the program is structured as an auction or an aggregation, and regardless of the product, customers always need to know the product and all terms and conditions of service at the time they are solicited to participate. FES M.B. at 51-53; FES R.B. at 30. Customers solicited for this Commission-sponsored program should receive all the information they would have if they were considering an offer in the open market.

6. To the Extent EGSs Must Pay Costs of the Opt-In Program, Program Costs Should Be Shared Between EGSs and Customers (OCA Exception No. 6; RESA Exception No. 14; DES/IGS Exception No. 4)

RESA's Exception No. 14 sets forth various methodologies for PPL Electric to recover the costs of the Opt-In Program. Above all else, RESA urges the Commission to reject any proposal to put all costs on EGSs. FES agrees with this point, which is consistent with the Commission's November Order in PECO's DSP proceeding.⁹ FES submits that the Commission's Order in this proceeding should adopt the language used in its *PECO October DSP Order*, where the Commission directed the parties to submit a proposal "addressing how participating EGSs *or customers* will pay for the costs of market enhancements approved in this DSP proceeding." *PECO October DSP Order*, slip op. at 148.

DES/IGS's Exception No. 4 contends that the R.D. would put *all* costs of the Opt-In Program on EGSs. DES/IGS asserts that customers should share in these costs, especially if there is a "high cost auction." While FES does not read the R.D. to place all costs on EGSs, and questions whether the incremental costs of including the bidding competition proposed by PPL

⁹ *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered November 21, 2012) ("*PECO November DSP Order*").

Electric are really “high,” FES agrees with DES/IGS that customers should share in the program costs.

In contrast, the OCA’s Exception No. 6 challenges the R.D.’s recommendation to adopt PPL Electric’s proposal to recover costs of the Opt-In Program. The OCA argues that if there is an auction, EGSs should pay all pre- and post-auction costs, and that if no EGSs participate in the auction, it is not appropriate to make customers bear pre-auction costs. According to the OCA, EGSs should bear all Opt-In Program costs because the *IWP Order* recognizes that they are the primary beneficiaries. OCA Exceptions at 12-13. As an initial matter, the OCA’s theory that costs should be allocated to the program’s “beneficiaries” cannot possibly result in the allocation of costs to EGSs if no EGSs participate in the program. In any case, the OCA’s position should be rejected, for reasons explained at length in FES’s briefs. FES M.B. at 57-59; FES R.B. at 38-42.

Accordingly, Opt-In Program costs should be shared between EGSs and customers consistent with RESA’s Exception No. 14 and DES/IGS’s Exception No. 4, and the OCA’s Exception No. 6 should be denied.

C. Standard Offer Program Design

1. Even Without Guaranteed Savings, Customers Will Benefit from a Twelve-Month Program (OCA Exception No. 8)

In its Exception No. 7, FES took exception to the R.D.’s recommendation of a 6-month standard offer, and urged the Commission to adopt a 12-month standard offer. The OCA’s Exception No. 8 does not challenge the R.D.’s recommendation of a 6-month term, but asserts that EGSs should have to guarantee the discount for the entire term. FES explained in briefs that while it is not opposed to guaranteed savings, guaranteed savings are not necessary for customers

to benefit from a 12-month Standard Offer. Even if the PTC changes during the standard offer, a 12-month contract does not preclude customers from enjoying savings. Even if the PTC were to decline more than 7% over the 12-month period, customers are free to leave the program for lower EGS offers, or even default service, without penalty. FES R.B. at 34. Under any circumstances, participating customers will benefit from extending the availability of a favorable program price to 12 months, and from the opportunity to have 12 months of price stability. Therefore, a 12-month program period will increase the likelihood of maximum customer participation in the program. Therefore, the OCA's Exception No. 8 should be denied.

2. The R.D. Correctly Rejected RESA's Proposal That the Standard Offer Be an Introductory Offer (RESA Exception No. 13)

RESA's Exception No. 13 urges the Commission to redesign PPL Electric's standard offer as a 4-month introductory offer followed by either an 8-month variable priced offer or an 8-month fixed price selected by the EGS. RESA Exceptions at 31. As FES explained in its Reply Brief, RESA's proposal was rejected in the Commission's *IWP Order*, its *ME/PN/PP/WP DSP Order* and its *PECO October DSP Order*. FES R.B. at 34-35. RESA has raised no valid reason to depart from this precedent.

Further, RESA's proposal that the length of the discount should be less than the length of the standard offer is unsupported by a preponderance of the evidence and contrary to the intent of the Standard Offer Program. The program is not intended to cause customer confusion and frustration with the shopping experience. It is reasonable to expect that most participating customers will be in the program because they contacted PPL Electric for some reason other than shopping. RESA's recommendation would require participating customers, who have little or no

experience with shopping and are less than four (4) months removed from utility default service, to understand that their price will change after four (4) months in the Standard Offer Program. FES believes these customers should be free to make another shopping decision and leave the Standard Offer Program at any time, but not compelled by their dissatisfaction to leave it after only a few months. Therefore, RESA's Exception No. 13 should be denied. Instead, FES's Exception No. 7 should be granted and PPL Electric's standard offer should be a discounted rate fixed for 12 months, consistent with the Commission's prior orders.

RESA's Exception No. 13 also suggests — “as an aside” and for the first time in this proceeding — that there should be “coordination” of the Opt-In Program and the Standard Offer Program so that their products are as “consistent” as possible. Specifically, RESA proposes an Opt-In Program offer consisting of a set 5% discount and a \$50 bonus, and a redesigned 6-month standard offer that also provides a 5% discount but no bonus. RESA Exceptions at 31-32 n.112. FES strongly opposes this new proposal. There is no legal or logical basis, nor any procedure consistent with due process, for abandoning the Standard Offer Program design developed by stakeholders over the course of a year and a half and approved in two other DSP proceedings, and adopting a new proposal improperly raised by a party months after the record has closed. Nor is there any support in the evidentiary record for this proposal.

For these reasons, RESA's Exception No. 13 urging that the 7% discount off the PTC in the Standard Offer Program be for only the first four months of a 12-month service contract should be denied, and its belated proposal to redesign the standard offer to make it nearly identical to an Opt-In Program aggregation product should be denied as well.

3. FES Agrees That PPL Electric's Proposed Customer Referral Mailing Is Unnecessary if the Standard Offer Program Begins on June 1, 2013 (PPL Exception No. 5)

PPL Electric's Exception No. 5 seeks confirmation that it only needs to undertake its proposed customer referral mailing if the Commission approves its proposed timing for the Opt-In Program and Standard Offer Program. If the Commission accelerates either program to begin in or around June 2013, as FES has requested in the case of the Standard Offer Program, PPL Electric requests that the Commission conclude that the customer referral mailing is unnecessary. PPL Electric Exceptions at 16-18. While FES appreciates PPL Electric's willingness to undertake a customer referral mailing similar to what ME/PN/PP/WP have done, FES agrees that if either program is accelerated, there would likely be insufficient time to conduct the customer referral mailing prior to June 2013. FES has maintained throughout the RMI that retail market enhancements should be implemented through a well-coordinated approach. For this reason, FES supports this Exception and urges the Commission to grant it. FES would also note that PPL Electric's Exception No. 5 acknowledges that PPL Electric could in fact accelerate the Standard Offer Program. See PPL Electric Exceptions at 17. While the implementation of the program might not be ideal from PPL Electric's perspective, it could nonetheless initiate the program earlier than mid-2014. This is consistent with FES's Exception No. 8 which challenges the R.D.'s finding that "work is needed to implement a Standard Offer Program that avoids marketing to shopping customers, allows 'day one switching' and otherwise allows Customer Service Representatives to properly present the Program to customer that call in." R.D. at 146.

4. The R.D. Correctly Approved PPL Electric’s Proposal That Costs of the Standard Offer Program Be Shared By EGSs and Customers (OCA Exception No. 10; DES/IGS Exception No. 4; RESA Exception No. 14)

There appear to be differences in the parties’ interpretation of the R.D.’s recommendation for PPL Electric’s method of recovering the costs of its Standard Offer Program. RESA’s Exception No. 14 observes that Ordering Paragraph 14 of the R.D. approves PPL Electric’s proposal. RESA Exceptions at 32. This is also FES’s interpretation of the R.D. However, DES/IGS’s Exception No. 4 contends that the R.D. would put *all* costs of the Standard Offer Program on EGSs, and instead urges the Commission to approve PPL Electric’s proposal. DES/IGS Exceptions at 6. In addition, the OCA’s Exception No. 10 attempts to contrast Ordering Paragraph 14, which recommends approving PPL Electric’s proposal to put \$3 Million in capital costs in a future base rate case, with page 154 of the R.D., which says, “unrecovered costs should be assessed accordingly to the EGSs.”

Regardless of how the parties interpret the R.D., FES strongly agrees with DES/IGS that customers should share in the program costs. RESA likewise urges the Commission to reject any proposal to put all costs on EGSs, in RESA Exception No. 14. As explained above, the sharing of costs between participating EGSs and customers is consistent with the Commission’s recent determination in PECO’s DSP proceeding, and FES again submits that the Commission’s Order in this proceeding should adopt the language used in its *PECO October DSP Order*, where the Commission directed the parties to submit a proposal “addressing how participating EGSs *or customers* will pay for the costs of market enhancements approved in this DSP proceeding.” *PECO October DSP Order*, slip op. at 148.

FES disagrees with the OCA’s Exception No. 10, and does not perceive the same internal contradiction in the R.D. The OCA urges the Commission to impose all Standard Offer Program

costs on EGSs. According to the OCA, customers have already paid the significant costs of setting up a competitive market. OCA Exceptions at 18-19. This argument ignores or discounts EGSs' contributions to setting up competitive markets, such as their own customer education, marketing campaigns, product development, research, etc. The OCA's position should be rejected, for reasons explained at length in FES's briefs. FES M.B. at 60-62; FES R.B. at 38-42.

Accordingly, the costs of PPL Electric's Standard Offer Program should be shared between EGSs and customers consistent with RESA's Exception No. 14 and DES/IGS's Exception No. 4, and the OCA's Exception No. 10 should be denied.

III. CONCLUSION

For the foregoing reasons, as well as those set forth in FirstEnergy Solutions Corp.'s Exceptions, Main Brief and Reply Brief, the above referenced Exceptions of PPL Electric Utilities Corporation, the Office of Consumer Advocate, Dominion Retail, Inc. and Interstate Gas Supply, Inc., and the Retail Energy Supply Association to which FirstEnergy Solutions Corp. responds in these Replies to Exceptions should be decided consistent with these Replies to Exceptions.

Respectfully submitted,

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

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

Dated: December 17, 2012

Attorneys for FirstEnergy Solutions Corp.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

Via First Class Mail and E-Mail

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

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

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

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

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

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

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

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

Eric J. Epstein
4100 Hillsdale Road
Harrisburg PA 17112

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


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

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

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

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLC
100 North Tenth Street
Harrisburg, PA 17101

Date: December 17, 2012



Brian J. Knipe, Esquire