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September 12, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017
Docket No. P-2014-2417907

Dear Secretary Chiavetta:

Enclosed please find the Initial Brief of PPL Electric Utilities Corporation for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/skr
Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: September 12, 2014

Michael W. Hassell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017	:	Docket No. P-2014-2417907

INITIAL BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

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Dated: September 12, 2014

Counsel for PPL Electric Utilities Corporation

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I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric") herein submits this Initial Brief on the specific issues reserved for litigation in the above-captioned proceeding. In this proceeding, PPL Electric requests Pennsylvania Public Utility Commission ("Commission") approval of its third Default Service Program and Procurement Plan ("DSP III Program") to establish the terms and conditions under which PPL Electric will acquire and supply Default Service or provider of last resort service ("Default Service"), from June 1, 2015 through May 31, 2017 (the "DSP III Program Period"). PPL Electric's proposed DSP III Program, *inter alia*, consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits ("AECs") during the DSP III Program Period; an implementation plan; a proposed rate design, including a Time-of-Use ("TOU") rate option for Default Service during the DSP III Program Period; a proposal to continue and expand the Company's current Standard Offer Referral Program ("SOP"); and a contingency plan for the DSP III Program.

Contemporaneously with the filing of Initial Briefs, a Joint Petition for Partial Settlement ("Settlement") is being filed by PPL Electric, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), PP&L Industrial Customer Alliance ("PPLICA"), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), the Sustainable Energy Fund ("SEF"), Citizens for Pennsylvania's Future ("PennFuture"), NextEra Energy Power Marketing, LLC ("NEPM"), Retail Energy Supply Association ("RESA"), Direct Energy Services, LLC ("Direct Energy"), and Exelon Generation Company, LLC ("ExGen"), all parties to the above-captioned proceeding (hereinafter, collectively

"Signatory Parties").[1] This Settlement represents a partial settlement to resolve certain of the issues and concerns raised in the instant proceeding and, therefore, the Signatory Parties request that Administrative Law Judge Susan D. Colwell ("ALJ") and the Commission approve the proposals set forth in PPL Electric's proposed DSP III Program subject to the terms and conditions of the partial settlement and a decision on the issues reserved for litigation. (*See* Settlement ¶¶ 20-21)

The Settlement reserves two discrete issues for litigation. The first issue is PPL Electric's proposal to reduce the peak demand limitation for the Small Commercial and Industrial ("Small C&I") Customer Class from 500 kW to 100 kW. If adopted, PPL Electric's Small C&I Customer Class would only include customers with a peak demand of less than 100 kW. The second issue is the cost responsibility for Non-market-based Transmission Service Charges ("NMB Charges"). Consistent with all of its prior Commission-approved Default Service plans, PPL Electric proposes that PPL Electric and its default service customers pay NMB Charges for all Default Service load, and that EGSs pay the NMB Charges for their respective shopping customers. RESA and ExGen, on the other hand, propose that PPL Electric bear the responsibility for NMB Charges for Default Service and shopping customer load, and that these costs be recovered from all retail customers through a non-bypassable surcharge.

Pursuant to Sections 5.501 and 5.502 of the Commission's regulations, 52 Pa. Code §§ 5.501 and 5.502, and the ALJ's June 6, 2014 Scheduling Order, PPL Electric herein submits this Initial Brief on the two issues reserved for litigation. For the reasons explained below, PPL

[1] The Bureau of Investigation and Enforcement ("I&E") for the Commission, FirstEnergy Solutions Corp. ("FES"), and Noble Americas Energy Solutions LLC ("Noble") are not parties to the Settlement but have indicated that they do not object.

Electric's Small C&I demand split proposal should be adopted, and RESA's and ExGen's NMB Charges proposal should be rejected.

II. STATEMENT OF THE CASE

On April 18, 2014, PPL Electric filed a Petition requesting Commission approval of its proposed DSP III Program. (PPL Electric Exhibit No. 1) Copies of a *pro forma* Default Service Supply Master Agreement ("Default Service SMA") and a pro forma Request for Proposals ("RFP") Process and Rules were included with the Petition. (PPL Electric Exhibit No. 1, Attachments A through C, respectively) The Petition also contained *pro forma* tariff pages for the Generation Supply Charge-1 ("GSC-1), the Generation Supply Charge-2 ("GSC-2), and the Transmission Service Charge ("TSC") to implement rates under the DSP III Program. (PPL Electric Exhibit No. 1, Attachment D)

On April 25, 2014, PPL Electric filed the following prepared direct testimony, with related exhibits in support of the DSP III Program: PPL Electric Statement No. 1, Direct Testimony of James R. Rouland; PPL Electric Statement No. 2, Direct Testimony of A. Joseph Cavicchi; and PPL Electric Statement No. 3, Direct Testimony of Bethany L. Johnson.

On May 1, 2014, the Commission issued a notice scheduling a prehearing conference in the above-captioned matter on June 5, 2014. On May 10, 2014, notice of PPL Electric's DSP III Petition was published in the *Pennsylvania Bulletin*, 44 Pa.B. 2832, along with notice of the prehearing conference scheduled for June 5, 2014.

A Notice of Appearance was filed by I&E on May 20, 2014. Notices of Intervention and Answers were filed by the OCA on May 8, 2014, and by the OSBA on May 28, 2014. Timely Petitions to Intervene were filed by: PPLICA, SEF, CAUSE-PA, FES, PennFuture, NEPM, Noble, RESA, Direct Energy, and ExGen.

An initial prehearing conference was held before the ALJ on June 5, 2014. The active parties filed prehearing memoranda identifying potential issues and witnesses. A litigation schedule was established at the prehearing conference.

On July 1, 2014, the parties other than PPL Electric served direct testimony. The OCA served the Direct Testimony of Richard S. Hahn, OCA Statement No. 1, and the Direct Testimony of Barbara R. Alexander, OCA Statement No. 2. The OSBA served the Direct Testimony of Robert D. Knecht, OSBA Statement No. 1. SEF served the Direct Testimony of John M. Costlow, SEF Statement No. 1. NEPM served the Direct Testimony of Sean Cheslock, NEPM Statement No. 1. PennFuture served the Direct Testimony of Eric Thumma, PennFuture Statement No. 1. ExGen served the Direct Testimony of Lael E. Campbell, ExGen Statement No. 1. RESA served the Direct Testimony of Richard J. Hudson, Jr., RESA Statement No. 1. On July 11, 2014, OSBA served the Supplemental Direct Testimony of Robert D. Knecht, OSBA Statement No. 2. No other party served direct testimony.

On July 28, 2014, PPL Electric served the following rebuttal testimony with related exhibits: PPL Electric Statement No. 1-R, Rebuttal Testimony of James R. Rouland; PPL Electric Statement No. 2-R, Rebuttal Testimony of A. Joseph Cavicchi; and PPL Electric Statement No. 3-R, Rebuttal Testimony of Bethany L. Johnson. Also, on August 6, 2014, PPL Electric served the Supplemental Rebuttal Testimony of James M. Rouland, PPL Electric Statement No. 4-R. The following rebuttal testimony also was served by parties other than PPL Electric: the OCA served the Rebuttal Testimonies of Richard S. Hahn and Barbara R. Alexander, OCA Statement Nos. 1-R and 2-R, respectively; the OSBA served the Rebuttal Testimony of Robert D. Knecht, OSBA Statement No. 3; and RESA served the Rebuttal

Testimony of Richard J. Hudson, Jr., RESA Statement No. 1-R. No other parties served rebuttal testimony.

The parties other than PPL Electric served surrebuttal testimony on August 8, 2014. The OCA served the Surrebuttal Testimony of Richard S. Hahn, OCA Statement No. 1-SR, and the Surrebuttal Testimony of Barbara R. Alexander, OCA Statement No. 2-SR. The OSBA served the Surrebuttal Testimony of Robert D. Knecht, OSBA Statement No. 4. RESA served the Surrebuttal Testimony of Richard J. Hudson, Jr., RESA Statement No. 1-SR. SEF served the Surrebuttal Testimony of John M. Costlow, SEF Statement No. 1-SR. NEPM served the Surrebuttal Testimony of Sean Cheslock, NEPM Statement No. 1-SR. PennFuture served the Surrebuttal Testimony of Eric Thumma, PennFuture Statement No. 1-SR. No other parties served surrebuttal testimony.

As a result of extensive settlement discussions, the active parties were able to achieve a partial settlement in principle prior to the August 18-19, 2014 evidentiary hearings. The active parties agreed to waive cross examination and, as a result, the August 18 hearing date was canceled. An evidentiary hearing was held on August 19, 2014. At the evidentiary hearing, the active parties moved their respective testimonies and exhibits into the record.

The Settlement is being filed by the Signatory Parties contemporaneously with the filing of Initial Briefs. This Settlement represents a resolution of all of the issues and concerns among the parties, except for two discrete issues that were reserved for litigation. The first issue is PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. The second issue is RESA's and ExGen's proposal that PPL Electric bear the responsibility for NMB Charges for both Default Service and shopping customer load and

recover these costs from retail customers through a non-bypassable surcharge. Each of these issues is addressed separately below.

III. QUESTIONS INVOLVED

1. Whether PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW should be adopted?

   Suggested answer: *In the affirmative.*

2. Whether RESA's and ExGen's proposal that PPL Electric pay the NMB Charges incurred to serve all customers, both Default Service and shopping customers, and recover these costs from all retail customers through a non-bypassable surcharge should be adopted?

   Suggested answer: *In the negative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Section 332(a) of the Public Utility Code ("Code"), 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pa. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614, n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *McDonald v. Pa. Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (1940). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission produce additional evidence in order to sustain its burden of proof. *District of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (1941); *Application of Pennsylvania-American Water Company for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pennsylvania*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Opinion and Order entered Oct. 29, 2008).[2]

In this proceeding, PPL Electric requests Commission approval of the proposals set forth in its DSP III Program. All of PPL Electric's proposals set forth in its DSP III Program have been resolved by the Settlement except the proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. Therefore, PPL Electric bears the burden of proof on its unsettled proposal regarding the demand split for the Small C&I Customer Class.

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[2] In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Although substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established," *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Board*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

The only other issue that has not been resolved by the Settlement is the issue of cost responsibility for NMB Charges. Under PPL Electric's current Default Service Program and Procurement Plan for the period of June 1, 2013 through May 31, 2015 ("DSP II Program"), electric generation suppliers ("EGSs") are responsible for the market-based and non-market based costs for their shopping customers, and PPL Electric is responsible for the market-based and non-market based costs for its default service customers. (PPL Electric Statement No. 1-R, p. 42) PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program. Notwithstanding, RESA and ExGen proposed that PPL Electric pay the NMB Charges incurred to serve all customers, both Default Service and shopping customers, and recover these costs from all retail customers through a non-bypassable surcharge. Because this proposal is entirely outside the proposals set forth in PPL Electric's proposed DSP III Program, RESA and ExGen bear the burden of proof on their proposed change to the cost responsibility for NMB Charges.[3]

B. STANDARDS APPLICABLE TO DEFAULT SERVICE

The requirements for a Default Service plan appear in Section 2807(e) of the Public Utility Code. 66 Pa.C.S. § 2807(e). These requirements include: that the Default Service Provider follow a Commission-approved competitive procurement plan; that the competitive procurement plan include auctions, requests for proposals, and/or bilateral agreements; that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term

[3] A party that offers a proposal not included in the original filing bears the burden of proof for such proposal. *See Brockway Glass Co. v. Pa. PUC.*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. PUC v Duquesne Light Company*, Docket Nos. R-2013-2372129, et al. (Opinion and Order entered Apr. 23, 2014); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2010-2215623, *et al.*, 2012 Pa. PUC LEXIS 420 (Opinion and Order entered Ma. 15, 2012); *Pa. PUC v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Opinion and Order entered Jan. 11, 2007); *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 (Opinion and Order entered Sept. 28, 2007).

purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time; and that the Default Service Provider shall offer a TOU program for customers who have smart meter technology. 66 Pa. C.S. §§ 2807(e), 2807(f).

Section 2802 of the Public Utility Code states that it is in the public interest to permit retail customers to have direct access to a competitive retail generation market. 66 Pa.C.S. § 2802(3). This policy is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa.C.S. § 2802(5). Thus, a fundamental policy in this Commonwealth is that the Default Service Plan not prevent direct access to competitive generation supplies. *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, et al., 2012 Pa. PUC LEXIS 1348 at *12 (Opinion and Order entered Aug. 16, 2012).

Also applicable to the review of a Default Service Plan are the Commission's Default Service Regulations, 52 Pa. Code §§ 54.181-54.189, and a Policy Statement addressing Default Service Plans, 52 Pa. Code §§ 69.1802-69.1817. Finally, the Commission has directed EDCs to consider incorporating certain program changes into their default service plans in order to foster a more robust retail competitive market. *See Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, 2011 Pa. PUC LEXIS 65 (Final Policy Statement entered Sept. 23, 2011) (hereinafter "*DSP Policy Statement*"); *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, 2013 Pa. PUC LEXIS 306; 303 P.U.R.4th 28 (Final Order entered Feb. 15, 2013) (hereinafter "*End State Order*").

Under the Settlement, the Signatory Parties agree that PPL Electric's DSP III Program, as modified by the terms and conditions of the Settlement, includes and/or addresses all of the elements prescribed by Section 2807 of the Public Utility Code, the Commission's regulations, and the Commission's policies for a Default Service plan. (*See* Settlement ¶ 21) In PPL Electric's Statement in Support submitted with the Settlement, PPL Electric explains how the DSP III Program satisfies these requirements. (*See* Section III.A of Appendix B to the Joint Petition for Partial Settlement) In addition, the findings required for Commission approval of the DSP III program are detailed in the Findings of Fact attached hereto as Appendix A. PPL Electric herein requests that the ALJ and the Commission adopt these Findings of Fact and approve the proposals set forth in the DSP III Program as modified by the terms and conditions of the Settlement and a decision on the issues reserved for litigation.

V. SUMMARY OF ARGUMENT

Consistent with its prior commitment, adopted by the Commission in the DSP II Program proceeding, PPL Electric proposes in its DSP III Program to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. The only party to oppose the change in the demand level split between Small C&I Customers and Large C&I Customers was OSBA.

PPL Electric's proposal to change the Commercial & Industrial demand split from 500 kW to 100 kW is consistent with PPL Electric's commitment in the DSP II Program proceeding and the Commission's *End State Order*. A significant number of commercial and industrial customers with a demand of 100 kW or higher currently are shopping (88% of customers with a demand between 100 kW and 500 kW are shopping and over 90% of customers with a demand

greater than 500 kW are shopping).[4] It therefore is clear that commercial and industrial customers with a demand of 100 kW or greater are, as a general matter, well-equipped and educated to manage their commodity costs in an hourly spot market default service environment. Further, there are only a relatively few number of Default Service customers with a demand between 100 kW and 500 kW that would be impacted and these customers can still obtain fixed-price electric generation supply from the competitive market. For these reasons, PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW should be adopted.

The issue of cost responsibility for NMB Charges was specifically litigated in PPL Electric's DSP II Program proceeding. Under the Commission approved DSP II Program, EGSs currently are responsible for the market-based and NMB costs for the customers they serve, and PPL Electric is responsible for the market-based and NMB costs for its default service customers. PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program.

RESA and ExGen propose that PPL Electric assume cost responsibility for NMB Charges associated with shopping customers and recover these costs from all distribution customers through a non-bypassable surcharge, which would apply to both Default Service and shopping customers. However, RESA and ExGen overlook that EGSs are the load serving entities ("LSEs") for shopping customers, not PPL Electric. Under the rules of PJM Interconnection, LLC ("PJM"), each LSE is charged market based and NMB costs based on the LSE's share of the load served. This means that EGSs bear the costs for the customers they serve, and PPL Electric bears the costs for customers it serves through Default Service. Therefore, it would not

[4] (*See* PPL Electric Statement No. 1, p. 31)

be appropriate to make PPL Electric establish a non-bypassable charge to recover costs properly paid for by EGSs.

Moreover, RESA's and ExGen's NMB Charge proposal was previously rejected by the Commission in PPL Electric's DSP II Program proceeding. Further, as explained below, the Commission very recently considered and rejected the same arguments raised by RESA and ExGen in this proceeding. The continued re-litigation of clearly decided issues should be not be sanctioned by the Commission.

RESA and ExGen have failed to proffer any credible evidence to suggest that anything has changed from DSP II to DSP III that would justify a change in the cost responsibility for NMB Charges previously approved by the Commission. RESA and ExGen therefore have failed to meet their burden to demonstrate that the Commission should alter its well-reasoned decision in PPL Electric's DSP II Program proceeding that NMB Charges should not be collected by PPL Electric through a non-bypassable surcharge. Accordingly, RESA's and ExGen's proposal should be rejected.

VI. ARGUMENT

A. SMALL C&I DEMAND SPLIT

In PPL Electric's Commission-approved DSP II Program, the Small C&I Customer Class included customers with a peak demand of less than 500 kW. As a result, customers on Rate Schedules GS-3 and LP-4 with a demand level of 500 kW and above are classified as Large C&I customers and receive spot market-based default service,[5] and those with a demand below 500 kW are classified as Small C&I customers receive fixed price default service. However, in the DSP II Program proceedings, PPL Electric committed to reduce the peak demand for the Small

[5] LP-5 customers, and LPEP customers requesting 60 Hz supply, also are Large C&I Customers.

C&I Customer Class from 500 kW to 100 kW in its next Default Service filing, which commitment was adopted by the Commission. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. Docket No. P-2012-2302074, Slip Op. pp. 62-63 (Opinion and Order entered July 24, 2013). Consistent with its Commission-approved commitment in the DSP II Program proceeding, PPL Electric herein proposes to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. (PPL Electric Ex. No. 1, p. 16, ¶ 50; PPL Electric Statement No. 1, p. 30) RESA supported PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. (RESA Statement No. 1, pp. 15-16) The only party to oppose the change in the demand level split between Small C&I Customers and Large C&I Customers was the OSBA. For the reasons explained below, the OSBA's arguments should be rejected.

PPL Electric is proposing to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW for three primary reasons. First, in its *End State Order*, the Commission stated that it expected EDCs to implement a 100 kW demand split for commercial and industrial customers. *See End State Order*, 2013 Pa. PUC LEXIS 306 at *50, Slip Op. pp. 31-32 ("Therefore, at this time, the Commission continues to support the threshold of 100 kW for purposes of determining medium and large C&I customers, but expects EDCs to offer hourly LMP products only to the customers above that demand level who have interval meters").[6] Second, as explained above, the Company stated in its DSP II Program proceeding that it would reduce the peak demand limitation for the Small C&I Customer Class in its DSP III Program.

[6] In its *End State Order*, the Commission explained that it supports the threshold of 100 kW and directed that all hourly spot-market Default Service customers be grouped into one single auction class for each EDC. *Id.* at *50. The Commission also directed EDCs to offer hourly spot-market products only to customers above the 100 kW demand level who have interval meters. *Id.*

Third, the number of Default Service customers impacted, as of May 2014, is very small at approximately 430 customers. This is only 0.4% of all Default Service commercial and industrial customers. (PPL Electric Statement No. 1-R, pp. 20-21; PPL Electric Exhibit JMR-5R)

OSBA asserts that other Pennsylvania EDCs have higher break points than 100 kW. However, as Mr. Knecht acknowledged in a footnote to his direct testimony, other EDCs do not have installed interval meters to provide hourly default service at a 100 kW demand level. (OSBA Statement No. 1, p. 8, fn. 6) In contrast, PPL Electric has demand meters installed for all 3,200 customers with demand between 100 kW and 500 kW. This difference in capability clearly distinguishes PPL Electric from other EDCs.

A significant number of commercial and industrial customers with a demand of 100 kW or higher currently are shopping (88% of customers with a demand between 100 kW and 500 kW are shopping and over 90% of customers with a demand greater than 500 kW are shopping). (PPL Electric Statement No. 1, p. 31) It therefore is clear that commercial and industrial customers with a demand of 100 kW or greater generally are well-equipped and educated to manage their commodity costs in an hourly spot market default service environment.

Although approximately 430 Default Service customers with a demand between 100 kW and 500kW would be impacted by the proposed change to the Small C&I demand split, these customers can still obtain fixed-price electric generation supply from the competitive market. As explained by the Commission, reducing the peak demand limitation for commercial and industrial customers is a "natural progression for the retail marketplace and ... having EDCs offer hourly [locational marginal price] to these accounts will put EGSs on a level playing field

for competing not only with the PTC but with each other." *See End State Order*, 2013 Pa. PUC LEXIS 306 at *38-39, Slip Op. pp. 25.

Based on the foregoing, PPL Electric's proposal to change the Commercial & Industrial demand split from 500 kW to 100 kW is consistent with PPL Electric's commitment in the DSP II Program proceeding and the Commission's *End State Order* and, therefore, should be adopted.

B. NMB CHARGES

PPL Electric's proposed DSP III Program SMA fully defines the cost responsibilities for NMB Charges. (*See* PPL Electric Ex. 1, Attachment B, Appendix C) Under the SMA, PPL Electric is be responsible for the following costs for default service customers: (1) Network Integration Transmission Services ("NITS"), (2) Transmission Enhancement Costs, (3) Expansion Cost Recovery Costs, (4) Non-firm Point-to-Point Transmission Service Credits, (5) Regional Transmission Expansion Plan ("RTEP"), and (6) Generation Deactivation Charges. (PPL Electric Exhibit JMR-9-R) These costs cover *default service load only*. All other costs are the responsibility of the wholesale supplier. Additionally, all costs incurred by retail EGSs are the responsibility of the EGS. (PPL Electric Statement No. 1-R, p. 42)

Importantly, PPL Electric's proposal in this case is identical to the cost responsibility for NMB Charges that was fully litigated and approved in PPL Electric's DSP II Program. Under the DSP II Program, each EGS currently is responsible for the market-based and non-market based costs for the customers they serve, and PPL Electric is responsible for the market-based and non-market based costs for its Default Service customers. (PPL Electric Statement No. 1-R, p. 42) PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program.

RESA and ExGen both propose to modify the cost responsibility for NMB Charges.[7] Specifically, RESA and ExGen propose that PPL Electric assume cost responsibility for NMB Charges on behalf of all load on its system (both Default Service customer load and shopping customer load) and recover these costs from all distribution customers through a non-bypassable surcharge. (RESA Statement No. 1, pp. 17, 20-21; ExGen Statement No. 1, pp. 4-6) Because this proposal is entirely outside the proposals set forth in PPL Electric's proposed DSP III Program, RESA and ExGen bear the burden of proof on their proposal to modify the cost responsibility for NMB Charges.[8] For the reasons explained below, RESA and ExGen have failed to meet their burden of proof and, therefore, their proposal should be rejected.

RESA's and ExGen's proposal is inconsistent PJM rules.[9] Under PJM rules, all LSEs are charged market-based *and* NMB costs based on each LSE's share of the load served.[10] This means that each EGS bears the costs for the customers served by that EGS, and PPL Electric bears the costs for its Default Service customers. (PPL Electric Statement No. 3-R, p. 13) EGSs are the LSE for shopping customers, not PPL Electric. Therefore, it would not be appropriate to

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[7] PPL Electric notes that there is not a standard definition of NMB Charges and different entities include different charges in their definitions. Indeed, PPL Electric, RESA, and ExGen all define NMB Charges differently. (PPL Electric Statement No. 3-R, p. 12) Thus, even assuming, *arguendo*, that RESA's and ExGen's proposed departure from the DSP II cost responsibility for NMB Charges is reasonable, which PPL Electric denies as explained herein, it is entirely unclear which individual NMB Charges would be included in and recovered through the non-bypassable rider and which would not. For this reason, RESA's and ExGen's proposal should be rejected.

[8] *See* Section IV.A, *supra.*

[9] PJM is a Federal Energy Regulatory Commission approved Regional Transmission Organization charged with ensuring the reliability of the electric transmission system under its functional control and coordinating the movement of electricity in all or parts of thirteen states and the District of Columbia, including most of Pennsylvania.

[10] Under the PJM rules, a LSE is defined as "any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area." (PPL Electric Statement No. 3-R, p. 13)

make PPL Electric pay these costs for customers for whom it does not provide generation service.

Importantly, RESA's and ExGen's NMB Charge proposal was previously rejected by the Commission in PPL Electric's DSP II Program proceeding.[11] *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013). In rejecting this proposal, the Commission stated as follows:

> With regard to the proposal that non-market-based transmission costs be recovered through a non-bypassable charge imposed by the Company on both shopping and default service customers, PPLICA and the Joint Suppliers correctly note that we rejected such a proposal in the *FE DSP II Order*.[12] There, we expressed concern that the imposition of such a non-bypassable charge would interrupt long-term shopping contracts and may force contracts to be renegotiated. In addition, we found that this proposal would increase the likelihood of double cost collection by the EDCs and EGSs, while increasing the risk for customers. *FE DSP II Order* at 81. Though the OSBA and the Joint Suppliers appear to have withdrawn support for this proposal in the instant proceeding, we will reaffirm our finding that the imposition of a non-bypassable charge for the recovery of transmission-based costs is inappropriate for the reasons given in the *FE DSP II* Order. Moreover, we agree with PPLICA that Electric Competition Law as well as Commission regulations require that transmission costs be treated as unbundled supply-related costs, and are more properly recovered from customers by the particular entity that provides generation service to those customers.

[11] RESA concedes that the Commission rejected the proposal in DSP II to reassign NMB Charges to PPL Electric for all load and to recover such costs through a non-bypassable rider. (*See* RESA Statement No. 1, p. 21)

[12] *See 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, *et al.* (Opinion and Order entered Aug. 16, 2012).

Id., Slip Op. p. 85 (emphasis added). PPL Electric submits that nothing has changed from DSP II to DSP III that would justify a change in the cost responsibility for NMB Charges previously approved by the Commission.

RESA and ExGen assert two arguments in support of their proposal. First, RESA and ExGen argue that the NMB Charges are unpredictable and cannot be hedged and, according to RESA and ExGen, EGSs therefore are not able to offer competitive pricing compared to an EDC because the EDC does not reflect in its rates the risk that these costs may go up, but the EGSs do. (RESA Statement No. 1, page 20; Statement No. 1, pp. 5-6) Second, RESA and ExGen contend that it is appropriate to revisit the cost responsibility for NMB Charges in light of the Commission's Final Order in *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013) (hereinafter "*Fixed Price Order*"). RESA's and ExGen's contentions are without merit and should be rejected.

With respect to RESA's and ExGen's argument that NMB Charges are unpredictable and cannot be hedged, RESA and ExGen are essentially arguing that EGSs should be able to avoid paying the costs incurred to provide service to their shopping customers simply because these costs may be variable and difficult to hedge. This argument is not persuasive. If a cost is properly assigned to and paid for by an EGS (or to any party for that matter), the EGS (or the relevant party) should pay that cost. The fact that the cost may be variable or difficult to hedge is completely irrelevant to determining proper cost responsibility. To the extent that every LSE is paying for its share of the load, the playing field is level. Each entity is responsible for projecting and pricing its load and transmission service costs accurately. (PPL Electric Statement No. 3-R, p. 14)

It is anticipated that RESA and ExGen will argue that because PPL Electric employs a reconcilable rate mechanism to recover its transmission service costs (as part of the TSC) its PTC does not reflect the potential for future increases in transmission service costs; whereas, EGSs must account for the current rate and the risk that transmission service costs may increase. Unlike an EGS, however, PPL Electric is required by statute to provide generation supply to Default Service customers, and is permitted to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause, all reasonable costs incurred to provide Default Service to customers. *See* 66 Pa.C.S. § 2087(e). For a regulated EDC in a default supplier role, the methodology of rate development is fundamentally different and should not be compared to a competitive EGS that has voluntarily elected to compete in a particular market.

As explained above, the NMB Charges incurred to provide competitive electric generation supply to shopping customers are EGSs' costs, not PPL Electric's costs. By the nature of being a competitive EGS, it is appropriate that such a business needs to manage both market and NMB Charges, and the risks associated therewith, like any other competitive industry. The EGSs are aware of this structure when they enter the market and have a choice to compete given the conditions that exist. (PPL Electric Statement No. 3-R, pp. 14-15)

Moreover, RESA and ExGen have failed to provide any evidence to suggest that NMB Charges have become more unpredictable than they were in the DSP II Program proceeding. Similarly, that fact that NMB Charges cannot be hedged remains unchanged since the DSP II Program proceeding. There simply is no record evidence to suggest that the unpredictability or unhedgability of NMB Charges has changed since the DSP II Program proceeding. Therefore, RESA and ExGen have failed to meet their burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

RESA and ExGen also argue that, as a result of the *Fixed Price Order*, EGSs have a limited ability to pass through unanticipated changes in costs such as NMB costs. Based upon this assertion, RESA and ExGen claim that if PPL Electric does not pay such costs and pass them through a non-bypassable rider, it is likely to result in EGSs being forced to market variable price products to customers or including premiums in the fixed price products to cover the risk associated with such charges. (RESA Statement No. 1, p. 21; ExGen Statement No. 1, p. 5) RESA's and ExGen's reliance on the *Fixed Price Order* is misplaced and should be rejected.

In its *Fixed Price Order*, the Commission clearly explained that the "price an EGS presents to residential or small business customers is expected to be 'all inclusive' – including all of the pricing components found in the PTC for default customers (generation, transmission where applicable, gross receipts tax, etc)." *Id.* p. 28. The Commission summarized the guidelines adopted in the *Fixed Price Order* as follows:

> A "fixed price" product does not change in price during the term of the agreement. Customers are best served by labels and terms that are precise, transparent, and in plain language. Given this, "fixed means fixed" is the appropriate guidance.
>
> We withdraw the proposal in the Tentative Order to create a new pricing label "Price With Pass-Through Clause."
>
> EGSs that are concerned that they may be trapped in uneconomic long-term contracts, have the option of including in disclosure statements a provision that allows the EGS to, in the event of an unanticipated cost, reformulate the contract by proposing new contract terms to the customer, as long as the customer affirmatively consents. A lack of affirmative customer response would be deemed a rejection of the new terms. In the event of a rejection by the customer, the customer is then free to pursue other opportunities in the market with no penalty. If the customer does not enroll with another EGS the customer will then be placed on default service without penalty. Any such provisions should be clearly stated in the disclosure and should specify the circumstances under which the clause could be invoked....

Id., Slip Op. p. 32 (emphasis added).

Contrary to RESA's and ExGen's assertion, the *Fixed Price Order* did not foreclose the ability of EGSs to pass through unanticipated NMB Charges. Rather, the *Fixed Price Order* unequivocally permits EGSs to reformulate existing contracts with customers by proposing new contract terms to fully account for unanticipated changes in costs, including changes in NMB Charges. Thus, EGSs will not, as RESA and ExGen suggest, be forced to market variable priced products if the Commission does not adopt a non-bypassable surcharge to recover NMB Charges.

In addition, if the EDC were to develop a non-bypassable clause for the non-market based charges, every customer with every EGS would need a revised contract effective on the date in which the change took place. Otherwise, customers would be paying the EGS price that includes transmission costs, as well as being charged by the EDC for transmission costs. (PPL Electric Statement No. 3-R, p. 15) Further, PPL Electric notes that changing the cost responsibility for NMB Charges from the EGS to PPL Electric will deprive customers, as well as the EGS, of the bargain they negotiated for in fixed-priced contracts that do not allow for changes due to NMB Charges.

Finally, PPL Electric notes that the Commission very recently considered and rejected RESA's and ExGen's arguments that the unpredictable and unhedgable nature of NMB Charges and the Commission's *Fixed Price Order* justified the non-bypassable collection of NMB Charges. *See 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-2013-2391368 (Final Order entered Jul. 24, 2014) (hereinafter, "*FirstEnergy DSP III*").

In *FirstEnergy DSP III*, RESA, ExGen, and the FirstEnergy Companies proposed that the FirstEnergy Companies assume the responsibility for the Network Integration Transmission Service ("NITS") charges for all customer load, both shopping and non-shopping, and recover those costs through a non-bypassable rider. In support of their proposal, the proponents argued that NITS are unpredictable and unhedgable, and that the Commission's *Fixed Price Order* limits EGSs' ability to pass through unanticipated changes in NITS costs. The Commission rejected this argument and this proposal stating as follows:

> Upon our consideration of the evidence of record, as well as the Exceptions of IUG and Replies thereto, we are persuaded by the arguments proffered by IUG that the evidence presented by FES *et al.* is insufficient to meet their burden of proof that the Commission should alter our decision within FirstEnergy's DSP II proceeding that NITS costs should not be collected through the Companies' DSSR rider mechanism. We find that neither our *Fixed Price Order*, entered in November of 2013, nor the single, alleged incident of volatile NITS costs in a neighboring jurisdiction amount to "changed circumstances" which would warrant the requested non-bypassable collection of NITS costs as proposed by FES *et al.* We further conclude that the FES *et al.* arguments as to the volatility issue are simply unconvincing as only one, single instance was offered as evidence. We do not agree that this one instance of volatility would lead to the inference that all NITS costs are now unpredictable and should be collected via the EDCs' non-bypassable DSSR.

FirstEnergy DSP III, Slip Op. pp. 31-32 (emphasis added). Notably, neither RESA nor ExGen has offered any reason or evidence to depart from the Commission's decision in *FirstEnergy DSP III*. The period for taking an appeal from *FirstEnergy DSP III* has closed and the Commission's order has now become final.

Based on the foregoing, RESA and ExGen have failed to proffer any credible evidence to suggest that anything has changed from DSP II to DSP III that would justify a change in the cost responsibility for NMB Charges previously approved by the Commission. RESA and ExGen therefore have failed to meet their burden to demonstrate that the Commission should alter its

well-reasoned decision in PPL Electric's DSP II Program proceeding that NMB Charges should not be collected by PPL Electric through a non-bypassable surcharge. Accordingly, RESA's and ExGen's proposal that PPL Electric assume cost responsibility for NMB Charges on behalf of all load on the PPL Electric System, wholesale and retail, and recover these costs from all distribution customers through a non-bypassable surcharge should be rejected.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Susan D. Colwell issue an Initial Decision recommending that the Pennsylvania Public Utility Commission:

(a) Adopt the Proposed Findings of Fact attached hereto as Appendix A;

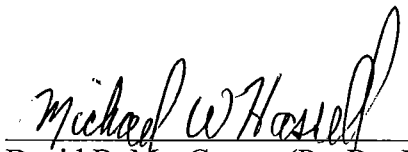
(b) Adopt the Proposed Conclusions of Law attached hereto as Appendix B;

(c) Approve the proposals set forth in the "Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017," including the Default Service Supply Master Agreement, Request for Proposals Process and Rules, Program Product Procurement Schedule, and Tariff provisions for the Generation Supply Charge-1, the Generation Supply Charge-2 and the Transmission Service Charge, as modified by the terms and conditions of the partial settlement;

(d) Approve the proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW; and

(e) Deny the proposal that PPL Electric Utilities Corporation bear the responsibility for certain NMB Charges for all customer load on its system and recover these costs from retail customers through a non-bypassable surcharge.

Respectfully submitted,



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Dated: September 12, 2014

Appendix A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017	: : : : :	Docket No. P-2014-2417907

PROPOSED FINDINGS OF FACT OF
PPL ELECTRIC UTILITIES CORPORATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

PPL Electric Utilities Corporation ("PPL Electric") respectfully requests that Administrative Law Judge Susan D. Colwell ("ALJ") and the Pennsylvania Public Utility Commission ("Commission") adopt the following findings of fact in the above-caption proceeding:

A. BACKGROUND

1. PPL Electric furnishes electric distribution, transmission and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. (PPL Electric Exhibit No. 1, p. 3)

2. PPL Electric is a "public utility," an "electric distribution company" ("EDC"), and a "default service provider" as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803. (PPL Electric Exhibit No. 1, p. 3)

3. On April 18, 2014, PPL Electric filed a Petition requesting Commission approval of its third Default Service Program and Procurement Plan ("DSP III Program") to establish the

terms and conditions under which PPL Electric will acquire and supply Default Service or provider of last resort service ("Default Service"), from June 1, 2015 through May 31, 2017 (the "DSP III Program Period"). (PPL Electric Exhibit No. 1, *passim*)

4. The DSP III Program, *inter alia*, consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits ("AECs") during the DSP III Program Period; an implementation plan; a proposed rate design, including a Time-of-Use ("TOU") rate option for Default Service during the DSP III Program Period; a proposal to continue and expand the Company's current Standard Offer Referral Program; and a contingency plan for the DSP III Program. (PPL Electric Exhibit No. 1, *passim*)

5. Copies of a *pro forma* Default Service Supply Master Agreement ("Default Service SMA") and a pro forma Request for Proposals ("RFP") Process and Rules were included with the Petition. (PPL Electric Exhibit No. 1, Appendices A and B)

6. The Petition also contained *pro forma* tariff pages to implement rates under the DSP III Program. (PPL Electric Exhibit No. 1, Appendix D)

B. COMPETITIVE PROCUREMENT PLAN

7. Under the proposed DSP III Program, PPL Electric will acquire the Residential and Small Commercial and Industrial (Small "C&I") Customer Class default service supply, other than TOU supply, through a series of fixed-price, load-following, full-requirements supply contracts. (PPL Electric Statement No. 1, p. 7)

8. For the Large Commercial and Industrial ("Large C&I") Customer Class, PPL Electric will enter into annual contracts with suppliers for the provision of the default service spot market, load-following, full-requirements supply. (PPL Electric Statement No. 1, p. 7)

9. As modified by the Settlement, the Company will obtain its default service supply needs through transparent competitive solicitations, with all qualified wholesale suppliers being

eligible to participate. PPL Electric will implement the DSP III Program by holding solicitations pursuant to a series of RFPs to obtain the default service products from competitive wholesale generation suppliers. (PPL Electric Statement No. 1, p. 22; Settlement ¶¶ 22-24)

C. PRUDENT MIX

10. PPL Electric's proposed DSP III Program will acquire a fixed percentage of the Company's Residential and Small C&I default service load on a semiannual basis through short and medium-term 6- and 12-month contracts. (PPL Electric Statement No. 1, pp. 11-12)

11. The DSP III Program procurement schedule includes procuring a large percentage of supply through short-term, 6-month, contracts which enable more market-reflective rates while continuing to moderate price volatility through the procurement of 12-month contracts. (PPL Electric Statement No. 1, pp. 11-12)

12. The Signatory Parties have agreed that the procurements under the DSP III Program will continue to obtain both 12- and 6-month fixed-price products. (Settlement ¶ 22)

13. The 12- and 6-month fixed-price products strike a balance where default service pricing regularly adjusts to ensure that the default service price-to-compare reflects changes in wholesale electricity market prices, while avoiding the price volatility associated with very short-term products. (PPL Electric Statement No. 2, pp. 15-16; PPL Electric Statement No. 2-R, p. 7)

14. The Signatory Parties have agreed that the final October 2016 procurements under the DSP III Program will be modified so that 55% of the Residential portfolio will expire on May 31, 2017, and 45% of the Residential portfolio will extend beyond May 31, 2017. (Settlement ¶ 23) This modification is consistent with the product portfolio and procurement schedule approved by the Commission in PPL Electric's DSP II Plan. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. Docket No. P-2012-2302074 (Opinion and Order entered Jul. 24, 2013).

15. The Large C&I Customer Class will continue to be served by 12-month, full-requirements, load-following, spot market contracts procured once a year. (PPL Electric Statement No. 1, pp. 11-12)

16. The Company has 100 MW of fixed-price, long-term block supply committed through December 31, 2015, and 50 MW of energy and capacity associated with a long-term product for the period June 1, 2015 through May 31, 2021. (PPL Electric Statement No. 1, pp. 11-12)

17. PPL Electric's independent, outside expert concluded that PPL Electric's DSP III Program procurements are consistent with the "prudent mix" requirement. (PPL Electric Statement No. 2, pp. 22-28)

D. ADEQUATE AND RELIABLE SERVICE TO CUSTOMERS

18. PPL Electric's Default Service load-following, full requirements products obligate a wholesale electricity supplier to provide a fixed-percentage (referred to as a "tranche") of PPL Electric's default service hourly load during every hour of a product's term. (PPL Electric Statement No. 2, pp. 4-5)

19. Under PPL Electric DSP III Program, wholesale suppliers are responsible for managing the acquisition of energy, capacity, transmission (other than defined non-market based transmission services), ancillary services, AECs, and any other related products (net of transmission and distribution losses) to meet Default Service customers' hourly load. (PPL Electric Statement No. 2, pp. 4-5)

20. PPL Electric's Default Service load-following, full requirements products will ensure that PPL Electric will be able to provide adequate and reliable Default Service to customers. (PPL Electric Statement No. 2, pp. 4-5)

E. LEAST COST TO CUSTOMERS OVER TIME

21. The fixed-price, load-following supply for Residential and Small C&I Default Service customers will be procured through widely advertised, well-defined solicitations where the overarching objective is to seek out the lowest-cost suppliers. (PPL Electric Statement No. 2, pp. 30-31)

22. By obtaining the Residential and Small C&I Default Service supplies through competitive solicitations in the form of an auction, PPL Electric is able to obtain default supplies at the lowest possible cost for the product being procured. (PPL Electric Statement No. 2, pp. 30-31)

23. By using 12-month, full-requirements, load-following, spot market products to obtain Large C&I Default Service supplies, the DSP III Program ensures that these customers receive price-reflective energy costs. (PPL Electric Statement No. 2, pp. 31-32)

24. Wholesale competition among suppliers of the spot market-priced product will ensure that PPL Electric provides this default service at the lowest possible cost available at the time. (PPL Electric Statement No. 2, pp. 31-32)

25. PPL Electric's independent, outside expert concluded that PPL Electric's DSP III Program procurements are consistent with the "least cost to customers over time" requirement. (PPL Electric Statement No. 2, pp. 29-32)

F. TIME OF USE

26. Under the DSP III Program, PPL Electric will implement a TOU Program as approved by the Commission at Docket No. P-2013-2389572. On April 11, 2014, the parties to that proceeding reached a partial settlement which establishes terms for a new TOU Program. The TOU Settlement and the proposed TOU Program currently are pending before the Commission for disposition. (PPL Electric Statement No. 1, pp. 12-14; PPL Electric Statement No. 1-R, p. 22)

27. In the Settlement, the Signatory Parties have agreed that for the DSP III Program period PPL Electric will implement the TOU Program as approved by the Commission at Docket No. P-2013-2389572, including a net metering option if adopted. (Settlement ¶ 52)

G. ALTERNATIVE ENERGY CREDITS

28. Under the DSP III Program, PPL Electric will procure certain AECs to meet its obligation under the AEPS Act as a component of its load-following fixed-price and spot market default service supply contracts. (PPL Electric Statement No. 1, p. 16)

29. Each Default Service wholesale supplier will provide its proportional share of AECs to fulfill PPL Electric's AEPS obligation, in accordance with the terms of the Default Service SMA. (PPL Electric Statement No. 1, p. 16)

30. The Company already has long-term solar AEC contracts as part of its procurement mix. (PPL Electric Statement No. 1-R, pp. 5-6)

31. With respect to the Company's long-term 50 MW block contract used for Residential Default Service supply, the Company previously has entered into long-term contracts to procure Tier I Solar AEPS Credits. However, PPL Electric must still acquire Tier I non-solar and Tier II AEPS Credits to cover the period from June 1, 2015 through May 31, 2021. (PPL Electric Statement No. 1, pp. 16-17)

32. As part of the Settlement, PPL Electric has agreed to procure additional Tier I non-solar and Tier II AECs through new individual long-term contracts in an amount necessary to cover the AEPS requirements associated with the pre-existing long-term contract for 50 MW committed through May 31, 2021. (Settlement ¶ 29)

H. FORMS TO BE USED IN THE PROCUREMENT OF DEFAULT SUPPLY

33. PPL Electric's *pro forma* DSP III RFP and SMA are attachments to PPL Electric's DSP III Petition. (PPL Electric Statement No. 1, pp. 26-27; PPL Electric Exhibit No. 1, Attachments A and B)

34. In the Settlement, the Signatory Parties have agreed to make certain modifications and corrections to the SMA. (Settlement ¶¶ 38-43)

I. INDEPENDENT EVALUATOR

35. PPL Electric has retained NERA Economic Consulting as the independent third-party manager to administer each procurement, analyze the results of the solicitations for each customer class, select the supplier(s) that will provide services at the lowest cost and submit all necessary reports to the Commission. (PPL Electric Statement No. 1, pp. 23, 33)

J. CONTINGENCY PLAN

36. The Company has had only two instances where a contingency plan was required to be put into place in the history of its competitive Default Service plans and, thus, it is unlikely that the contingency plan will need to be implemented. (PPL Electric Statement No. 1-R, pp. 16-17; OCA Statement No. 1-S, p. 3)

37. In this proceeding, PPL Electric proposed to continue the contingency plan from the DSP II Program. (PPL Electric Statement No. 1, p. 35)

38. As part of the Settlement, PPL Electric has agreed to certain modifications to its proposed DSP III Program contingency plan. (Settlement ¶¶ 26-27)

39. With respect to the TOU Program, the Company is proposing to implement the same contingency plan set forth in the TOU Settlement, which is to bid out TOU supply to EGSs through a competitive RFP. (PPL Electric Statement No. 1, pp. 14-15)

K. RATE DESIGN

40. The costs incurred by PPL Electric to provide Default Service to the Residential and Small C&I Customer Classes will be recovered through the Generation Supply Charge-1 ("GSC-1"), separately computed with respect to each Customer Class. Costs recovered in the GSC-1 will include, among other costs, both costs incurred under the various supplier contracts and costs incurred to acquire the supply and administer the DSP III Program. (PPL Electric Statement No. 3, pp. 4-7; PPL Electric Exhibit No. 1, Attachment D)

41. The costs incurred by PPL Electric to provide Default Service to the Large C&I Customer Class will be recovered through the Generation Supply Charge-2 ("GSC-2"), which remains unchanged from the GSC-2 tariff provisions approved in the DSP II Program. Costs recovered in the GSC-2 will include PJM spot market energy, PJM capacity charges, the suppliers' charge for all other services (including AECs) based upon winning bids in the annual solicitation and PPL Electric's costs to acquire the supply and administer the DSP III Program. (PPL Electric Statement No. 3, pp. 7-9; PPL Electric Exhibit No. 1, Attachment D)

42. In the Settlement, the Signatory Parties have agreed that PPL Electric will issue its PTC 30 days in advance of the effective date, and that, in order to accommodate filing the PTC on 30 days advance notice, PPL Electric's procurements will be advanced by 2 weeks. (Settlement ¶¶ 30-31)

43. In the Settlement, the Signatory Parties have agreed that the GSC-1 and GSC-2 will be reconciled using the over/under collection balance for the applicable period (6-month period for GSC-1 and 12-month periods for the GSC-2) ending 2 months prior to the new Price-to-Compare ("PTC") effective date. (Settlement ¶¶ 33-36)

L. CONSISTENT WITH RTO

44. PPL Electric's DSP III Program is aligned with PJM's planning period, *i.e.*, begins June 1 and ends May 31. (PPL Electric Statement No. 1, p. 34)

45. The Default Service RFP Rules and accompanying SMA require that both PPL Electric and any bidder in the procurement process must be in compliance with PJM requirements. (PPL Electric Statement No. 1, p. 34)

46. The Default Service RFP Rules and accompanying SMA require that a potential bidder must certify that it has been authorized by FERC to make sales of energy, capacity, and ancillary services at market-based rates. (PPL Electric Statement No. 1, p. 34)

M. STANDARD OFFER PROGRAM

47. The Company proposed to implement the SOP as part of its DSP II plan. The SOP began on August 1, 2013, and is currently still in place. (PPL Electric Statement No. 1, p. 18)

48. Given the success of the SOP, PPL Electric proposed to continue to offer the SOP during the DSP III Program period, or until the Commission eliminates EDCs' Default Service obligation. (PPL Electric Statement No. 1, pp. 20-21)

49. PPL Electric also proposed to expand the promotion of the SOP to include customers that contact the Company using the Web Self Service application. (PPL Electric Statement No. 1, pp. 20-21)

50. In the Settlement, the Signatory Parties have agreed to further modify the SOP, and to refer the SOP Web Self Service application to a stakeholder process. (Settlement ¶¶ 44-51)

N. SMALL C&I DEMAND SPLIT

51. PPL Electric proposes to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. (PPL Electric Ex. No. 1, p. 16, ¶ 50; PPL Electric Statement No. 1, p. 30)

52. The number of default service customers impacted, as of May 2014, is very small at approximately 430 customers. This is only 0.4% of all default service commercial and industrial customers. (PPL Electric Statement No. 1-R, pp. 20-21; PPL Electric Exhibit JMR-5R)

O. NON-MARKET BASED CHARGES

53. PPL Electric's proposed DSP III Program SMA fully defines the cost responsibilities for NMB Charges. (See PPL Electric Ex. 1, Attachment B, Appendix C)

54. Under the SMA, PPL Electric is be responsible for the following costs for default service customers: (1) Network Integration Transmission Services ("NITS"), (2) Transmission Enhancement Costs, (3) Expansion Cost Recovery Costs, (4) Non-firm Point-to-Point Transmission Service Credits, (5) Regional Transmission Expansion Plan ("RTEP"), and (6) Generation Deactivation Charges. (PPL Electric Exhibit JMR-9-R)

55. These costs cover Default Service load only. All other costs are the responsibility of the wholesale supplier. Additionally, all costs incurred by retail EGSs are the responsibility of the EGS. (PPL Electric Statement No. 1-R, p. 42)

56. PPL Electric's proposal in this case is identical to the cost responsibility for NMB Charges that was fully litigated and approved in PPL Electric's DSP II Program. (PPL Electric Statement No. 1-R, p. 42)

57. Under the DSP II Program, each EGS currently is responsible for the market-based and non-market based costs for the customers they serve, and PPL Electric is responsible

for the market-based and non-market based costs for its Default Service customers. (PPL Electric Statement No. 1-R, p. 42)

58. Under the PJM rules, a LSE is defined as "any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area." (PPL Electric Statement No. 3-R, p. 13)

59. EGSs are the LSEs for shopping customers, not PPL Electric. (PPL Electric Statement No. 3-R, p. 13)

60. Under PJM rules, all LSEs are charged market-based *and* NMB costs based on each LSE's share of the load served. (PPL Electric Statement No. 3-R, p. 13)

61. Each EGS is responsible for the costs incurred for the customers they serve, and PPL Electric bears the costs for its customers served by Default Service supply. (PPL Electric Statement No. 3-R, p. 13)

62. The Commission has previously rejected the proposal of RESA and ExGen that that PPL Electric pay the NMB Charges for all load on its system (both Default Service customer load and shopping customer load) and recover these costs from all distribution customers through a non-bypassable surcharge. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013).

63. RESA concedes that the Commission rejected the proposal in PPL Electric's DSP II to reassign NMB Charges to PPL Electric for all load and to recover such costs through a non-bypassable rider. (*See* RESA Statement No. 1, p. 21)

64. There is no record evidence to suggest that the unpredictability or unhedgability of NMB Charges has changed since the DSP II Program proceeding.

65. Defining which entity incurs a cost does not make the cost more or less predictable or reduce the risk. (PPL Electric Statement No. 3-R, p. 14)

66. To the extent that every LSE is paying for its share of the load, the playing field is level. Each entity is responsible for projecting and pricing its load and transmission service costs accurately. (PPL Electric Statement No. 3-R, p. 14)

67. By the nature of being a competitive EGS, it is appropriate that such a business needs to manage both market and NMB Charges, and the risks associated therewith, like any other competitive industry. The EGSs are aware of this structure when they enter the market and have a choice to compete given the conditions that exist. (PPL Electric Statement No. 3-R, pp. 14-15)

68. If the EDC were to develop a non-bypassable clause for the non-market based charges, every customer with every EGS would need a revised contract effective on the date in which the change took place. Otherwise, customers would be paying the EGS price that includes transmission costs, as well as being charged by the EDC for transmission costs. (PPL Electric Statement No. 3-R, p. 15)

69. The Commission very recently considered and rejected RESA's and ExGen's arguments that the unpredictable and unhedgable nature of NMB Charges and the Commission's Final Order in *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013), justified the non-bypassable collection of NMB Charges. *See 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-2013-2391368 (Final Order entered Jul. 24, 2014).

Appendix B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017	: : : : : :	Docket No. P-2014-2417907

PROPOSED CONCLUSIONS OF LAW OF
PPL ELECTRIC UTILITIES CORPORATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

PPL Electric Utilities Corporation ("PPL Electric") respectfully requests that Administrative Law Judge Susan D. Colwell ("ALJ") and the Pennsylvania Public Utility Commission ("Commission") adopt the following conclusions of law in the above-caption proceeding:

A. GENERAL

1. Section 332(a) of the Public Utility Code , 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

2. A litigant's burden of proof before the Commission is satisfied by establishing a preponderance of evidence, which requires proof by a greater weight of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Commonwealth of Pa. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999); *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614, n.14 (Pa. Cmwlth. 2008).

3. A party that offers a proposal not included in the original filing bears the burden of proof for such proposal. *See Brockway Glass Co. v. Pa. PUC.*, 437 A.2d 1067 (Pa. Cmwlth.

1981); *Pa. PUC v Duquesne Light Company*, Docket Nos. R-2013-2372129, et al. (Opinion and Order entered Apr. 23, 2014); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2010-2215623, *et al.*, 2012 Pa. PUC LEXIS 420 (Opinion and Order entered Ma. 15, 2012); *Pa. PUC v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Opinion and Order entered Jan. 11, 2007); *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 (Opinion and Order entered Sept. 28, 2007).

B. DEFAULT SERVICE

4. Pursuant to Section 2807(e)(3.1) of the Public Utility Code, a Default Service provider shall provide Default Service pursuant to a Commission-approved competitive procurement plan that includes auctions, RFPs, and/or bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1).

5. Section 2807(e)(3.2) of the Public Utility Code provides that electric power procured by a Default Service provider shall include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts. 66 Pa.C.S. § 2807(e)(3.2).

6. Section 2807(e)(3.4) of the Public Utility Code requires a Default Service provider to provide adequate and reliable service to customers. 66 Pa.C.S. § 2807(e)(3.4).

7. Pursuant to Section 2807(e)(3.4) of the Public Utility Code, Default Service providers are to obtain Default Service supply at the "least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.4).

8. Section 2807(f)(5) of the Public Utility Code provides that a Default Service provider shall offer TOU rates to all customers that have been provided smart meter technology. 66 Pa.C.S. § 2807(f)(5).

9. The Alternative Energy Portfolio Standards Act ("AEPS Act"), 73 P.S. §§ 1648.1 – 1648.8, and the Commission's implementing regulations further require EDCs to obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. See 52 Pa. § Code 54.182.

10. The Commission's Default Service Regulations require that a default service plan include copies of agreements or forms to be used in the procurement of electric generation supply for Default Service customers. See 52 Pa. Code § 54.185(e)(6).

11. Section 69.1807(8) of the Commission's Default Service and Electric Retail Markets Statement of Policy provides that the competitive bid solicitation process should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. 52 Pa. Code § 69.1807(8).

12. The Commission's Default Service Regulations require that a Default Service plan include contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. See 52 Pa. Code § 54.185(e)(5).

13. The Commission's Default Service Regulations require that a Default Service plan include a rate design plan recovering all reasonable costs of Default Service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. See 52 Pa. Code § 54.185(e)(3).

14. The Commission's Default Service Regulations require that a Default Service plan be consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the default service provider is providing service, and that the default service procurement plan's period of service must align with the planning period of that RTO or other entity. See 52 Pa. Code § 54.185(e)(4).

15. PPL Electric's DSP III Program, as modified by the terms and conditions of the Settlement, includes and/or addresses all of the applicable elements prescribed by Section 2807 of the Public Utility Code, the AEPS Act, the Commission's regulations, and the Commission's policies for a Default Service plan.

C. STANDARD OFFER PROGRAM

16. PPL Electric's Standard Offer Program, as modified by the terms and conditions of the Settlement, satisfies the requirements under *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, 2012 Pa. PUC LEXIS 324 (Final Order entered March 2, 2012).

D. SMALL C&I DEMAND SPLIT

17. PPL Electric bears the burden of proof on its unsettled proposal regarding the demand split for the Small C&I Customer Class.

18. In its 2012 Default Service case, PPL Electric committed to reduce the peak demand for the Small C&I Customer Class from 500 kW to 100 kW in its next Default Service filing, which commitment was adopted by the Commission. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. Docket No. P-2012-2302074, Slip Op. pp. 62-63 (Opinion and Order entered Jul. 24, 2013).

19. The Commission directed EDCs to implement a 100 kW demand split for commercial and industrial customers. *See Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, 303 P.U.R.4th 28, 2013 Pa. PUC LEXIS 306 at *50, Slip Op. pp. 31-32 (Final Order entered Feb. 15, 2013).

20. PPL Electric's proposal to change the Commercial & Industrial demand split from 500 kW to 100 kW is consistent with PPL Electric's commitment in its 2012 Default Service case and the Commission's *End State Order*.

E. NON-MARKET BASED CHARGES

21. RESA and ExGen bear the burden of proof on their proposed change to the cost responsibility for NMB Charges.

22. RESA's and ExGen's proposal that PPL Electric assume cost responsibility for NMB Charges on behalf of all load on its system (both Default Service customer load and shopping customer load) and recover these costs from all distribution customers through a non-bypassable surcharge is inconsistent with the rules of PJM Interconnection, LLC.

23. RESA's and ExGen's NMB Charge proposal was previously rejected by the Commission in PPL Electric's DSP II Program proceeding. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013).

24. The Commission's Order in *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013) (hereinafter "*Fixed Price Order*") did not foreclose the ability of EGSs to pass through unanticipated NMB Charges.

25. The Commission very recently considered and rejected RESA's and ExGen's arguments that the unpredictable and unhedgable nature of NMB Charges and the Commission's *Fixed Price Order* justified the non-bypassable collection of NMB Charges. *See 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-2013-2391368 (Final Order entered Jul. 24, 2014).

26. RESA and ExGen have failed to meet their burden of proof regarding their proposal that that PPL Electric pay the NMB Charges incurred to serve all customers, both Default Service and shopping customers, and recover these costs from all retail customers through a non-bypassable surcharge.