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September 12, 2014

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Initial Brief of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Susan D. Colwell, w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

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

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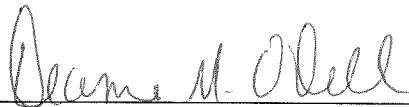
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September 12, 2014

  
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**BEFORE THE  
PENNSYLVANIA PUBLIC COMMISSION**

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

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**INITIAL BRIEF OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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## I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric”) proposes to implement a default service plan for the period of June 1, 2015 through May 31, 2017 (“DSP III”). In evaluating the proposals offered by PPL and the other parties, the Commission is required to approve a default service plan that complies with the Electricity Generation Customer Choice and Competition Act (the “Competition Act”)<sup>1</sup> and, particularly for this plan period, the directives set forth by the Commission in its *End State Order*.<sup>2</sup> The parties have amicably resolved the majority of the issues as set forth in the Joint Petition for Approval of Partial Settlement (“Partial Settlement”). For the reasons set forth in its Statement In Support, the Retail Energy Supply Association (“RESA”)<sup>3</sup> supports adoption of the Partial Settlement.

1. The Partial Settlement reserved for litigation the following two issues: (1) PPL’s proposal to change the customer size demarcation between Small Commercial and Industrial (“C&I”) customers and Large C&I customers from 500 kW to 100 kW is reserved for litigation.

demand split for Commercial and Industrial (“C&I”) customers from 500 kW to 100 kW; and, (2) the issue of cost responsibility for non-market based (“NMB”) charges. Regarding these two issues, RESA recommends that: (1) PPL’s proposal to lower the demand threshold for hourly pricing to 100 kW be adopted; and, (2) RESA’s proposal that PPL be required to assume the cost responsibility for NMB Charges for all load and recover the costs through a non-bypassable charge be adopted.

As explained further below, lowering the hourly priced threshold for C&I customers is consistent with the Commission’s clear pronouncements in the *End State Order* and moves these

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<sup>1</sup> 66 Pa.C.S. §§ 2801-2812.

<sup>2</sup> *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952, Final Order entered February 15, 2013 (“*End State Order*”).

<sup>3</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

customers to a more appropriate default service structure enabling them to obtain the benefit of the competitive market.

Further, addressing the cost assignment issues related to NMB Charges is an important component of developing a functional competitive retail market because the result impacts how much risk premium a customer will be required to bear as well as the customer's ability to accurately compare competitive prices to default service rates. Requiring the EDC to assume the cost responsibility for these charges for all load and recover the costs from all customers through a non-bypassable charge is the most reasonable way to ensure that: (1) customers pay only the actual costs of these charges rather than the cost of additional risk premiums; (2) a competitive advantage for default service is not created; and, (3) that EGSs have equal and nondiscriminatory access to the EDC's own use of its system.

## **II. PROCEDURAL HISTORY**

On April 18, 2014, PPL filed its petition to establish the terms and conditions under which it will procure default service supplies and provide default service to non-shopping customers for the period of June 1, 2015 through May 31, 2017 ("Petition"). PPL is an electric distribution company ("EDC") and is currently the default service provider ("DSP") in its respective service area. The Petition was assigned to Administrative Law Judge ("ALJ") Susan D. Colwell. On June 5, 2014, a prehearing conference was held by ALJ Colwell and RESA's timely Petition for Intervention was granted. The active parties conducted discovery and also engaged in settlement discussions.

The evidentiary hearing was held on August 19, 2014 during which the active parties moved their respective testimonies and exhibits into the record. At that time, the following testimony on behalf of RESA submitted by Richard J. Hudson, Jr. was admitted: (a) RESA St. No. 1 which includes Exhibits RJH-1, RJH-2, RJH-3; (b) RESA St. No. 1-R; and, (c) RESA St. No. 1-SR which includes Exhibit RJH-4.

Consistent with the procedural schedule, Initial Briefs are due September 12, 2014 and Reply Briefs are due September 26, 2014. Simultaneously being submitted with the Initial Briefs is the Joint Petition for Approval of Partial Settlement by and between PPL, 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”), and Exelon Generation Company, LLC (“ExGen”)

The purpose of this Initial Brief is to set forth RESA’s positions on the two issues reserved for litigation. Specifically, RESA recommends that: (1) PPL’s proposal to lower the demand threshold for hourly pricing to 100 kW be adopted; and, (2) RESA’s proposal that PPL be required to assume the cost responsibility for NMB Charges for all load and recover the costs through a non-bypassable charge be adopted.

### **III. LEGAL STANDARDS**

#### **A. Burden of Proof**

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>4</sup> It is axiomatic 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.”<sup>5</sup> A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>6</sup> Additionally, any finding of fact necessary to support

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<sup>4</sup> 66 Pa. C.S. § 332(a).

<sup>5</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>6</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

the Commission's adjudication must be based upon substantial evidence.<sup>7</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>8</sup>

PPL has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

## **B. Standards Applicable to Default Service**

The Electricity Generation Customer Choice and Competition Act (the "Competition Act") addresses the requirements that PPL, as the default service provider, must meet.<sup>9</sup> The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider, acquire electric energy through a "prudent mix"<sup>10</sup> of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>11</sup>

The Competition Act also mandates that customers have direct access to a competitive retail generation market.<sup>12</sup> This is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity."<sup>13</sup> Thus, a

<sup>7</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

<sup>8</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

<sup>9</sup> See 66 Pa. C.S. § 2807(e).

<sup>10</sup> 66 Pa. C.S. § 2807(e)(3.2); "In interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent.'" *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71A.3d 1112, 1117 (Pa. Cmwlth. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

<sup>11</sup> 66 Pa. C.S. § 2807(e)(3.1).

<sup>12</sup> 66 Pa. C.S. § 2802(3). "The Competition Act was enacted to establish competition in the sale of electric power." *PP&L Industrial Customer Alliance v. Pennsylvania Public Utility Commission*, 780 A.2d 773 (Pa. Cmwlth. 2001).

<sup>13</sup> 66 Pa. C.S. § 2802(5). See *Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>14</sup> Further, the Competition Act requires EDCs to provide transmission and distribution service to EGSs “on rates, terms of access and conditions that are comparable to the utilities own use of its system.”<sup>15</sup> Therefore, in evaluating a default service plan, the Commission must ensure that the proposals are consistent with fostering the development of a workably competitive retail electricity market and ensuring that EGSs have equal access to the EDC’s own use of its system.

**IV. PPL’S PROPOSAL TO LOWER THE DEMAND THRESHOLD FOR HOURLY PRICING TO 100 KW SHOULD BE ADOPTED**

PPL is proposing to lower its current hourly pricing threshold to include all customers with peak demand above 100 kW.<sup>16</sup> RESA supports PPL’s proposal as it is consistent with the Commission’s *End State Order* and moves these customers into a more appropriate default service structure.<sup>17</sup> OSBA is the only party to oppose PPL’s proposal claiming that: (1) this change would “eliminate the more stable default service rate option” currently available to these customers; (2) legislative changes are required before this change can be implemented; and, (3) the proposal is not generally consistent with the practices of other EDCs.<sup>18</sup> All of these arguments should be rejected and PPL’s proposal should be adopted.

First, OSBA’s concern about these customers continuing to have access to fixed price products fails recognize that a competitive market that offers many different products and services will better meet the individual needs and desires of consumers. When the Commission approves a default service plan that is reasonably calculated to produce a market reflective default service rate – which would occur here by moving these customers to hourly priced service – competitors will be encouraged to

<sup>14</sup> 66 Pa. C.S. § 2802(5).

<sup>15</sup> 66 Pa. C.S. § 2804(6)(emphasis added).

<sup>16</sup> PPL St. No. 1 at 30-31.

<sup>17</sup> RESA St. No. 1 at 30-31.

<sup>18</sup> OSBA St. No. 1 at 7-9.

enter the market, resulting in a variety of products and services, which, in turn, enables each consumer to choose for him/herself which product best suits his/her own needs and desires. To the extent consumers desire a stable price, they will have the ability to select that option from the competitive market. OSBA's sole reliance on the rate provided by the default service provider as the one and only way to achieve price stability is short-sighted, and, inconsistent with the Commission's expressed direction for default service effective June 1, 2015 as set forth in the *End State Order*. Instead of relying on the default service provider to fulfill all policy objectives – including price stability – adopting PPL's proposal will lead to a default service structure that promotes the development of a robust competitive retail market thereby enabling competitors to fulfill all appropriate policy objectives – including offering stable priced products to consumers.

Second, PPL's proposal is clearly consistent with the Commission's *End State Order* which directed that "in the next round of default service plans that begin on June 1, 2015, we expect that EDCs will offer only hourly LMP to medium and large C&I customers with interval meters."<sup>19</sup> As explained by RESA Witness Richard J. Hudson, Jr., hourly default service pricing is a more appropriate default service structure for the medium to larger commercial and industrial market. Hourly pricing is a more sustainable default service design because it avoids the "boom" or "bust" business cycle that can result in periods of time where retail competition is stifled because longer term fixed price, utility-provided default service fails to reflect current market conditions. Hourly pricing also benefits customers and achieves broader public policy goals by providing more accurate price signals that can better encourage energy conservation and demand response.<sup>20</sup> In sum, as the Commission noted, "medium C&I Customers are equally well-equipped and educated to manage their commodity costs in an hourly LMP default service environment."<sup>21</sup>

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<sup>19</sup> *End State Order* at 29.

<sup>20</sup> RESA St. No. 1 at 16.

<sup>21</sup> *End State Order* at 29.

OSBA's claim that the Commission also concluded in the *End State Order* that legislative changes were a necessary precondition to moving C&I customers into the hourly priced group is too narrowly focused. In the *End State Order*, the Commission makes clear its view that "spot market approaches in specific situations are appropriate" but that it would "prefer to pursue legislative amendments that clearly provide the authority."<sup>22</sup> Nothing in the *End State Order* prohibits the movement of C&I customers to the hourly priced procurement group or requires awaiting legislative changes. Notably, following the *End State Order*, the Commission's decision to rely on a 100% spot market procurement plan for Pike County Power & Light was upheld by the Commonwealth Court with the Supreme Court declining to review.<sup>23</sup> Thus, the Commission's authority pursuant to the Competition Act – as it is written – to move medium commercial customers to the hourly priced procurement class is clear.

Finally, OSBA's argument that the movement of C&I customers to hourly priced service is not consistent with other EDCs ignores the fact that these differences are the result of technical interval meter deployment issues and not any specific policy or other objection to the Commission's stated desires. PPL has widespread deployment of interval meters and is, therefore, ready to make the change in this DSP III period. Similarly, PECO is in the process of widespread interval meter deployment and has committed to transitioning these customers to hourly priced default service as soon as reasonably possible and in no event later than June 1, 2016.<sup>24</sup> On the other hand, the FirstEnergy EDCs do not yet have widespread deployment of interval meters and, therefore, their ability to move these customers is

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<sup>22</sup> *Id.* at 45 (emphasis added).

<sup>23</sup> *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff'd Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71A.3d1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

<sup>24</sup> *Petition of PECO Energy Company for Approval of its Default Service Program for The Period From June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2409362, Joint Petition for Partial Settlement dated August 28, 2014 at 8, ¶26.

technically hampered. Therefore, reliance on the inability of other EDCs to come into compliance with the Commission's directives is not a reasonable basis upon which to deny PPL's proposal here.

For all these reasons, RESA recommends that the ALJ issue a recommended decision adopting PPL's proposal to lower its current hourly pricing threshold to incorporate all customers with peak demand above 100 kW.

V. **RESA'S PROPOSAL THAT PPL BE REQUIRED TO ASSUME THE COST RESPONSIBILITY FOR NMB CHARGES FOR ALL LOAD AND RECOVER THE COSTS THROUGH A NON-BYPASSABLE CHARGE SHOULD BE ADOPTED**

PPL does not propose any changes to its current treatment of various NMB charges. Currently, PPL assumes the cost responsibility on behalf of wholesale default service suppliers only the following charges: (1) Network Integration Transmission Services ("NITS"); (2) Transmission Enhancement; (3) Expansion Cost Recovery; (4) Non-firm Point to Point Transmission Service Credits; (5) Generation Deactivation or "RMR"; and, (6) Regional Transmission Expansion ("RTEP").<sup>25</sup> Additionally, PPL proposes to seek Commission approval to assume the cost responsibility of any new PJM related charges on behalf of wholesale default service suppliers only.<sup>26</sup> Wholesale default service suppliers, on the other hand, are responsible for assuming the cost responsibility for Unaccounted for Energy.<sup>27</sup> Under both scenarios, EGSs are required to assume the cost responsibility for these charges on their own behalf. The costs for these NMB Charges are recovered from all customers. PPL recovers them for default service load through the default service rate (i.e. the Price-to-Compare). EGSs recover them from shopping customers through their retail prices.

RESA recommends that PPL be directed to assume the cost responsibility for all of these charges on behalf of both the wholesale default service suppliers and EGSs.<sup>28</sup> Pursuant to RESA's recommendation, all customers would continue to be responsible for cost recovery (as they are today)

<sup>25</sup> PPL St. No. 1R at 42.

<sup>26</sup> RESA St. No. 1 at 19-20, quoting PPL Petition, Attachment B at 100-101.

<sup>27</sup> *Id.*

<sup>28</sup> RESA St. No. 1 at 17.

but the mechanism for recovery would be through a non-bypassable charge assessed to all customers. As explained further below, RESA's recommendation would reasonably and fairly spread the costs of NMB Charges to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC's facilities.

**A. Nature of NMB Charges**

NITS, RMR, RTEP and Unaccounted for Energy are all non-hedgeable wholesale cost obligations for which all load serving entities in the wholesale market are required to pay. These cost items are not market based because they are either fully regulated or quasi-regulated costs imposed at the wholesale level on all load serving entities. These costs are unpredictable and cannot be hedged by competitive retail suppliers or wholesale default service suppliers.<sup>29</sup>

The deactivation of generating units in the PJM region is governed by Part V of the PJM Open Access Transmission Tariff ("PJM Tariff").<sup>30</sup> The costs incurred by the generation owners are allocated to the load in the zone of the transmission owner that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact resulting from the deactivation.<sup>31</sup> The pace of deactivation and the financial impact for a specific zone are unpredictable and subject to change.

RTEP recovers the cost of transmission system additions and improvements identified by PJM to address transmission overloads, voltage limitations and other reliability standards violations. The historical transmission upgrades approved pursuant to this process for each transmission zone and the associated cost allocation to each zone has been significant. The total for these historical transmission upgrades was about \$26 billion across the entire PJM system and about \$1.4 billion allocated for the

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<sup>29</sup> RESA St. No. 1 at 17-18.

<sup>30</sup> PJM Tariff, FERC Electric Tariff, Part V, Generator Deactivation.

<sup>31</sup> *Id.* at Section 120 Cost Allocation.

PPL zone.<sup>32</sup> Again, these costs must be paid by all load in a particular zone but, like the other charges, the actual costs are unpredictable and can be quite significant.

NITS costs are essentially fully regulated cost-of-service rates that are imposed on all Load Serving Entities (“LSEs”) based on each LSE’s share of load served. Accordingly, all customer load on an EDC’s system is allocated a share of transmission service costs based on the customer’s Network Service Peak Load Contribution.<sup>33</sup> PPL is required to recalculate the appropriate rate on an annual basis and submit the NITS rate to FERC as part of the PJM Tariff.<sup>34</sup> Thus, there is a potential each year for unexpected changes. RESA Witness Hudson submitted the below chart<sup>35</sup> to illustrate the range of NITS increases for various PJM utilities for the NITS rates that went into effect June 1, 2014.

Zone	% Change	Old Rate (\$/MW-Yr)	New Rate	Diff
AP	0%	17,895	\$17,895	-
APPA	0%	17,895	\$17,895	-
BGE	12%	22,369	\$25,047	2,678.00
CNTIVNJ	12%	28,526	\$32,049	3,523.00
COMED	11%	21,732	\$24,025	2,293.00
DMVDE	29%	23,938	\$30,793	6,855.00
DMVMD	29%	23,938	\$30,793	6,855.00
JCO1	0%	15,112	\$15,112	-
METED	0%	15,112	\$15,112	-
PECO	0%	20,942	\$20,942	-
PENELEC	0%	15,112	\$15,112	-
PEPCODC	7%	23,265	\$24,949	1,684.00
PEPCOMD	7%	23,265	\$24,949	1,684.00
PPL	6%	36,688	\$38,729	2,041.00
PSEG	0%	70,697	\$70,697	-
DUQ	9%	35,781	\$39,053	3,272.00
RECO	0%	32,114	\$32,114	-
PENN	-15%	15,087	\$12,769	(2,317.92)
CSP	0%	32,035	\$32,035	(0.25)
OPCO	0%	32,035	\$32,035	(0.25)

Source: <http://www.pjm.com/markets-and-operations/market-settlements/network-integration.aspx>

<sup>32</sup> <http://www.pjm.com/planning/rtep-upgrades-status/cost-allocation-view.aspx>

<sup>33</sup> RESA St. No. 1 at 18.

<sup>34</sup> See PJM Open Access Transmission Tariff, Attachment H-8.

<sup>35</sup> RESA St. No. 1-SR at 14.

This shows changes to the NITS rate for about half of the applicable zones, including PPL. The rate changes vary from a decrease of 15% to an increase of 29%. While there was an increase in the rate for the PPL zone of about 6% for this recent change, there have been even more significant increases in the past. For example, the NITS rate in effect for January 1, 2013 was \$24,119/MW-Yr and this increased to \$36,668/MW-Yr for June 1, 2013 which was a 52% increase in the cost.<sup>36</sup>

Finally, Unaccounted for Energy is the energy associated with losses, theft, inaccurate metering equipment and other factors that result in a quantity of MWh being unaccounted for via the normal load allocation process. This unaccounted for energy is allocated to all load serving entities based on each entity's load ratio share. Transferring these cost obligations to the EDC and recovering them through a non-bypassable tariff charge would be reasonable and efficient.<sup>37</sup>

**B. RESA's Recommendation Resolves The Existing Inequitable Treatment Of The NMB Charges Between Default And Competitive Retail Supply**

Requiring PPL to assume the cost responsibility for the NMB Charges for all load resolves the inequitable treatment of these charges that currently exist. Currently, cost responsibility for the NMB Charges are assumed differently for wholesale suppliers (for whom PPL undertakes the cost responsibility) and the EGSs (who take on their own cost responsibility). This disparity does not exist in any of the FirstEnergy EDC territories (because FirstEnergy does not assume the responsibility for only wholesale suppliers for any of the NMB Charges).<sup>38</sup> The difference between the two cost assignment approaches (i.e. PPL assuming the cost responsibility for wholesale default service suppliers only versus PPL assuming the responsibility for all load) has a direct impact on consumers and the ability of the competitive market to develop comparable pricing offers.

<sup>36</sup> RESA St. No 1-SR at 14 citing <http://www.pjm.com/markets-and-operations/market-settlements/network-integration.aspx>

<sup>37</sup> *Id.* at 24-25.

<sup>38</sup> See RESA Exhibit RJH-4 which is a comparison of the treatment of various NMB Charges for the FirstEnergy EDCs and PPL.

The difference is that allowing PPL to assume the cost responsibility for only wholesale default service suppliers (versus for all load) unfairly shifts a competitive advantage to PPL's default service. This is because when PPL assumes responsibility on behalf of the wholesale default service suppliers, the wholesale default service suppliers no longer need to factor in the risk of future price increases in the NMB Charges into the bids they submit for default service supply. Therefore, the resultant bid price (which forms the final default service rate charged) does not account for the risk of cost increases for NMB Charges. Instead, PPL will simply pass on the actual costs to default service customers at the currently applicable level.<sup>39</sup> Thus, PPL's default service rate includes the current transmission rate (reflected in the Transmission Service Charge rider) but not any additional amount to account for the risk of future price increases to the NMB Charges. PPL does not need to include this additional cost factor because it is permitted to pass through to customers the actual future rates.<sup>40</sup>

On the other hand, the retail price offered by EGSs must account for the current transmission rate and take into consideration how to factor into their retail pricing the risk for potential future rate increases in the NMB Charges. The result is that shopping customers may be required to pay more if an EGS chooses to embed a risk premium into its pricing. This disparity (i.e. default service customers only pay the actual costs of the NMB Charges while shopping customers pay actual costs plus an EGS' specific calculation to account for potential future rate increases in NMB Charges) is a bad result for customers.

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<sup>39</sup> PPL's claim that RESA's recommendations here are a masked attack on the right of EDCs to recover their default service related costs through a guaranteed and reconcilable cost recovery mechanism is nothing more than a misdirection. RESA has not advocated anything in this proceeding that would alter the current framework for guaranteed default service cost recovery for EDCs. While there are valid policy concerns with default service cost reconciliation, RESA's recommendations regarding NMB Charges are offered to address the disparate and negative outcome that results from the current framework where PPL assumes the cost responsibility for wholesale default service suppliers but not EGSs. RESA St. No. 1-SR at 16.

<sup>40</sup> RESA St. No. 1 at 20.

While RESA recognizes that the Commission previously concluded that EGSs have the ability to adjust to changes in costs through special contract terms with their customers,<sup>41</sup> to the extent EGSs may have had such options in the past the Commission's determinations in the *Fixed Price Label Order* have curtailed this opportunity as the Commission now effectively requires EGSs to cancel contracts with mass market customers to address any changes in unpredictable charges.<sup>42</sup> Moreover – because of default service reconciliation – price changes in NMB Charges are directly passed on to default service customers. The same is not true for shopping customers because the Commission's *Fixed Price Label Order* also does not permit EGSs to offer fixed price products (defined as a product with a contract term longer than three billing cycles) to mass market customers with pass through provisions. Therefore, the product offered by the default service rate (a fixed price for a period of time that can be adjusted through default service reconciliation to adjust for increases to NMB Charges) is not the equivalent of a fixed price product that an EGS is permitted to offer customers per Commission's directives (an EGS cannot offer a fixed price product that is subsequently adjusted for increases to NMB Charges). For all these reasons, a competitive disadvantage results because the EDC is using the tools available to it (right of full cost recovery and default service reconciliation) only for the benefit of default service customers while denying shopping customers the same opportunity. If the EDC were to assume the cost responsibility for all load (wholesale default service suppliers and EGSs), this issue could be reasonably addressed.

Thus, the only fair and equitable approach is for PPL to assume the costs of the NMB Charges on behalf of wholesale default service suppliers and EGSs instead of the current inequitable approach where PPL only assumes the cost responsibility for the wholesale default service suppliers. This

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<sup>41</sup> *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074, Opinion and Order entered January 24, 2013 at 86 (“*PPL DSP II Order*”).

<sup>42</sup> *Fixed Price Label Order* at 24 (“a ‘fixed price’ product must not change in price during the term of the agreement.”)

approach would eliminate the need for either wholesale suppliers or EGSs to include risk premiums to account for the risk of future changes in these cost components. As such, RESA's recommendation reasonably and fairly spreads the actual costs of the NMB Charges and nothing more to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC's facilities. Thus, adopting RESA's recommendation ensures that all customers pay only the actual costs of the NMB Charges since no entity (either the wholesale default service suppliers or the EGSs) need to embed any risk premium into their retail pricing.

**C. RESA's Recommended Approach Is Legally Sound and Consistent With Precedent**

**1. RESA's Recommendation Is Consistent With The Competition Act**

In the *FE DSP III Order*, the Commission addressed the legality of the approach recommended here – i.e. requiring the EDC to assume the cost responsibility on behalf of all load and recover the costs from all customers through a non-bypassable charge – and correctly concluded that it does not violate the Competition Act, the Public Utility Code or the Commission's regulations.<sup>43</sup> The Competition Act requires that customers be allowed “to choose among electric generation suppliers in a competitive generation market through direct access.”<sup>44</sup> “Direct Access” is defined by the Competition Act as:

The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.<sup>45</sup>

Likewise, the Competition Act requires that:

<sup>43</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 at 38 (“*FE DSP III Order*”).

<sup>44</sup> 66 Pa. C.S. § 2804(2).

<sup>45</sup> 66 Pa. C.S. § 2803(emphasis added).

A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.<sup>46</sup>

As explained above in Section V.B, allowing PPL to assume the cost responsibility for only wholesale default service suppliers (vs. for all load) unfairly shifts a competitive advantage to PPL's default service because wholesale default service suppliers no longer need to factor in the risk of future price increases in the NMB Charges into the bids for default service supply since PPL will directly pass on those costs to default service customers at the currently applicable level. Conversely, EGSs do need to decide how to factor into their pricing the risks of future rate increases in the NMB Charges. Thus, when PPL or any EDC inserts itself into the process to assume the responsibility of PJM Charges only for wholesale default service suppliers but not for EGSs, the result is inconsistent with these provisions of the Competition Act because the EDC can leverage its ability to receive full cost recovery of NMB Charges to impact the default service rate. In doing this, PPL provides discriminatory and advantageous access to the wholesale default service suppliers that is not similarly made available to the EGSs. Thus, the only way to ensure equal access to the EDC's own use of its facilities and also ensure that customers do not pay anything more than the true costs for these NMB charges, is to adopt RESA's proposal that PPL be required to assume the cost responsibility for all the NMB Charges on behalf of all load.

## **2. RESA's Recommendation is Consistent With Commission Precedent**

Neither the Commission's *PPL DSP II Order* or the *FE DSP III Order* preclude adoption of RESA's recommendation. As noted above, the *FE DSP III Order* makes clear that RESA's recommendation that PPL assume the cost responsibility for NMB Charges for all load and recovering the costs through a non-bypassable charge would not violate the Competition Act, the Public Utility

<sup>46</sup> 66 Pa. C.S. § 2804(6)(emphasis added).

Code or the Commission's regulations.<sup>47</sup> While the Commission decided not to go in this direction for NITS in the *FE DSP III Order*, it did adopt the parties' settlement to require the FirstEnergy EDCs to assume the cost responsibility for all load for Generation Deactivation Charges, Unaccounted For Energy, and historic out of market tie-line, generation and retail meter adjustments. As such, there is no legal bar to adopting RESA's preferred approach for all NMB Charges.

Moreover, PPL is distinguishable from the FirstEnergy EDCs because the FirstEnergy EDCs never assumed the cost responsibility for NMB Charges on behalf of the wholesale default service suppliers. Rather, prior to the Commission's recent orders whereby the FirstEnergy EDCs assume the cost responsibility for all load, the wholesale default service suppliers were required to assume their own cost responsibility.<sup>48</sup> This is true for NITS as well. PPL, on the other hand, already assumes the cost responsibility for NITS on behalf of its wholesale default service supplier and, therefore, requiring PPL to also assume it on behalf of the EGSs is a reasonable outcome.

Additionally, in the *FE DSP III Order* the Commission noted that even though it was rejecting requiring the EDCs to assume the cost responsibility for NITS for all load consistent with its determination in the prior *FE DSP II Order*, it made clear that the *FE DSP III Order* was based on the record of the FirstEnergy DSP III proceeding and not because the Commission was constrained by the doctrine of issue preclusion.<sup>49</sup> In the *PPL DSP II Order*, the Commission rejected proposals to shift the cost responsibility for NMB Charges to PPL based on its reasoning in the prior *FE DSP II Order*.<sup>50</sup> Since the *PPL DSP II Order*, however, the Commission has approved RESA's recommendation here

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<sup>47</sup> *FE DSP III Order* at 38.

<sup>48</sup> RESA St. No. 1-SR at 12. *See also* RESA Exhibit RJH-4 which is a comparison of the treatment of various NMB Charges for the FirstEnergy EDCs and PPL.

<sup>49</sup> *FirstEnergy DSP III Order* at 53.

<sup>50</sup> *PPL DSP II Order* at 85.

for all charges but for NITS in the *FE DSP III Order*.<sup>51</sup> Therefore, the *PPL DSP II Order* does not preclude adoption of RESA's recommendation here.

Further, the Commission recognized in its Guidelines for Use of Fixed Price Labels proceeding and its more recent rulemaking to revise EGS disclosure requirements concerns about how EGSs attempt to recover these costs from customers.<sup>52</sup> Importantly, in the Commission's *Fixed Price Label Order*, the Commission prohibited suppliers from exercising regulatory change provisions in order to pass through certain wholesale cost changes to residential and small business customers on fixed price products. Rather, if an EGS is faced with one of these unpredictable price increases for the NMB Charges that cannot be absorbed through the contractual price, the *Fixed Price Label Order* requires the EGS to provide the customer notices of its intent to alter the contractual price and, if the customer does not affirmatively accept the new price, then the EGS must cancel the contract.<sup>53</sup> This further exacerbates the ability of EGS's competitive supply to fairly compete with default service because the EGS has no ability to ensure that only actual costs are recovered from its customers and then, when faced with an unpredictable rate increase for the NMB Charges, the EGS has to choose between receiving less than actual cost or not receiving anything at all. As explained by RESA Witness Hudson, requiring PPL to assume the cost responsibility for NMB Charges would eliminate this impossible situation and would have a direct impact on reducing the risk premiums embedded in EGS fixed price products which would reduce the likelihood of an EGS needing to trigger a regulatory change or cost pass through clause or cancel an existing contract.<sup>54</sup> This would be a good result for

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<sup>51</sup> Some of the PJM Charges for FirstEnergy were shifted during the FirstEnergy DSP II proceeding. *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, P-2011-2273670, Opinion and Order entered December 20, 2012 at 10-11 ("*FE DSP II Order*").

<sup>52</sup> See, e.g., *Fixed Price Label Order*; *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, Final Order entered April 3, 2014.

<sup>53</sup> *Fixed Price Label Order* at 26.

<sup>54</sup> RESA St. No. 1 at 21.

consumers which would: (a) be consistent with the Commission's goals as set forth in the *Fixed Price Label Order*; (b) benefit customers by removing risk cost components from the pricing calculations of EGSs; and, (c) would be consistent with the Commission's *FE DSP III Order*.

**D. Any Customer Transition Issues Resulting From Adopting RESA's Recommendation Can Be Adequately Addressed As They Were for The FirstEnergy EDCs**

In defense of its opposition to RESA's recommendation, PPL raises concerns that requiring PPL to assume the cost responsibility for the NMB Charges for all load could negatively impact customers with existing contracts which may include fixed components for transmission related services.<sup>55</sup> There is no record support for these concerns and, moreover, to the extent any exist there are ways that they can be addressed as they were for the FirstEnergy EDC.

First, PPL's claim that every customer would need to have a revised contract effective the date of the change ignores the fact that many other circumstances and assumptions underlying the fixed price may have also changed since the time the contract was first accepted. Customers on fixed products may be better off continuing on the originally agreed to price instead of reopening the contract which may result in price changes not only for these NMB Charges, but other components as well.<sup>56</sup>

Second, there are transition mechanisms to address the concern over existing EGS contracts. For example, in the *FE DSP III Order*, the change in cost responsibility for Generation Deactivation Charges was limited to only new charges associated with Reliability Must Run unit declarations occurring after the approval of the settlement.<sup>57</sup> Because the change in cost responsibility was limited to new charges there is no concern over "double recovery" for customers' existing EGS contracts. For NITS and other transmission charges, a similar approach could be implemented that fixes the costs at

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<sup>55</sup> PPL St. No. 3R at 15.

<sup>56</sup> RESA St. No. 1-SR at 15.

<sup>57</sup> *FE DSP III Order* at 13-14.

the current level with PPL assuming responsibility for any increases. Alternatively, the change in cost responsibility could be deferred to a later date, such as June 2016, to provide a transition period during which many EGS contracts would expire and renew. The new renewal rates offered would reflect removal of the cost obligations from EGSs and address concerns over potential “double recovery.”<sup>58</sup> In sum, there are a variety of transition mechanisms that can be considered. If the Commission accepts RESA’s proposal regarding non-market based charges, RESA would welcome Commission guidance on this transition issue.

**E. Even If RESA’s Recommendation Is Rejected, PPL’s Current Approach Of Assuming Cost Responsibility For Wholesale Default Service Suppliers Must Be Modified**

If RESA’s recommendation is rejected, maintaining the status quo will not reasonably address the issues identified above in Section V.B regarding the need for EGSs to factor the risk of future rate increases to the NMB Charges into their retail pricing and their unequal access to the EDC’s own use of its facilities. This is because the status quo permits PPL to assume cost responsibility for the NMB Charges only on behalf of the wholesale default service suppliers and EGSs assume their own cost responsibility. Therefore, pricing for shopping customers factors in the potential risk of future price changes in the NMB Charges whereas the pricing for default service customers does not. The most fair way to address this is (consistent with the discussion above) is to require the EDC to assume cost responsibility for all load. If, however, this superior approach is rejected, then PPL should be directed to modify its wholesale supplier master agreement (“SMA”) to require the wholesale default service suppliers to assume their own cost responsibility for the default service load just as EGSs would assume the cost responsibility for their shopping customers.<sup>59</sup> This is not an ideal outcome because it would result in the need for wholesale suppliers to account for the risk of increases to these NMB

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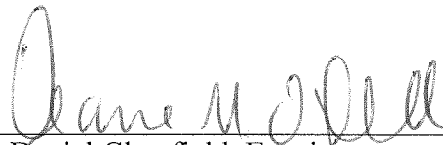
<sup>58</sup> RESA St. No. 1-SR at 15-16.

<sup>59</sup> RESA St. No. 1-SR at 12-13.

Charges in their bid prices. However, since EGSs would likewise be required to factor in the same risk premium calculation into their retail pricing as the wholesale default service suppliers factor into their default service bids, the result will at least be a more equal comparison of the default service rate and EGS prices.

**VI. CONCLUSION**

For all the reasons discussed above, RESA respectfully requests that the Administrative Law Judge approve the Joint Petition for Partial Settlement as submitted; and, recommend adoption of: (1) PPL's proposal to lower the demand threshold for hourly pricing to 100 kW; as well as, (2) RESA's proposal that PPL be required to assume the cost responsibility for NMB Charges for all load and recover the costs through a non-bypassable charge.



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