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September 26, 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 Response 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 26, 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

RESPONSE BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

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Dated: September 26, 2014

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I. INTRODUCTION

In this proceeding, PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), 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"). On September 12, 2014, a Joint Petition for Partial Settlement ("Settlement") was filed to resolve certain of the issues and concerns raised in the instant proceeding.[1] The Settlement reserved 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. The second issue is the cost responsibility for Non-market-based Transmission Service Charges ("NMB Charges").

On September 12, 2014, in accordance with the litigation schedule established at the Prehearing Conference and set forth in Administrative Law Judge Susan D. Colwell's ("ALJ") June 6, 2014 Scheduling Order, certain parties submitted Initial Briefs in support of their various positions on the issues reserved for litigation in the above-captioned proceeding. The parties that submitted Initial Briefs included PPL Electric, OSBA, RESA, PPLICA, and Noble. In their Initial Briefs, PPL Electric and RESA supported PPL Electric's proposal to reduce the peak

[1] 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"), and Exelon Generation Company, LLC ("ExGen") were Signatory Parties to the Settlement. The Bureau of Investigation and Enforcement ("I&E") for the Commission, FirstEnergy Solutions Corp. ("FES"), Noble Americas Energy Solutions LLC ("Noble"), and Direct Energy Services, LLC ("Direct Energy") were not parties to the Settlement but indicated that they do not object.

demand limitation for the Small C&I Customer Class from 500 kW to 100 kW, and the OSBA opposed the proposal. In their Initial Briefs, PPL Electric, PPLICA, and Noble each opposed 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.[2]

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 Response Brief on the two issues reserved for litigation. PPL Electric's Initial Brief anticipated, and responded to, many of the arguments that have been raised by the other parties on the two issues reserved for litigation. In several instances, PPL Electric's position is fully set forth in its Initial Brief and further response is not necessary. Certain arguments of other parties, however, require further response. In responding to other parties, PPL Electric will minimize repetition of arguments set forth in its Initial Brief.

For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, PPL Electric's Small C&I demand split proposal should be adopted, and RESA's and ExGen's NMB Charges proposal should be rejected.

II. BURDEN OF PROOF

In its Initial Brief, PPL Electric explained that a party seeking a rule or order from the Commission has the burden of proof in that proceeding, and that a party's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.

[2] In its Initial Brief, Noble also "reserves the right" to respond to positions taken and arguments raised by other parties on any other issues, including future costs recovery of PPL Electric's Standard Offer Program. (Noble IB, p. 5) Noble's "reservation of right" overlooks that there were only two issues reserved for litigation: (i) PPL Electric's Small C&I demand split proposal, and (ii) RESA's and ExGen's NMB Charges proposal. These are the only issues that have been briefed in this proceeding. All other issues have been fully settled.

(*See* PPL Electric IB, p. 6) PPL Electric also explained that, while it bears the burden of proof on its proposal regarding the demand split for the Small C&I Customer Class, RESA and ExGen bear the burden of proof on their proposal to change the cost responsibility for NMB Charges. (*See* PPL Electric IB, pp. 7-8) PPL Electric notes that none of the parties that submitted Initial Briefs dispute or otherwise oppose which party bears the burden of proof on the two issues reserved for litigation.

III. REPLY ARGUMENT

A. SMALL C&I DEMAND SPLIT

In this proceeding, PPL Electric is proposing to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW. In its Initial Brief, PPL Electric explained the proposal to change the Small C&I demand split from 500 kW to 100 kW is consistent with PPL Electric's commitment adopted in its DSP II Program proceeding and the Commission's Final Order in *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) ("*End State Order*"). (*See* PPL Electric IB, pp. 12-13) PPL Electric also explained that a significant number of commercial and industrial customers with a demand of 100 kW or higher currently are shopping, and that there are only a relatively few number of default service customers with a demand between 100 kW and 500 kW that would be impacted. (PPL Electric IB, pp. 14-15)

The only party to oppose the proposed change in the demand split between Small C&I customers and Large C&I customers was the OSBA. The OSBA raises the following four arguments in opposition to PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW: (1) there would be a significant number of customers that would be impacted; (2) it does not meet the "prudent mix" requirement of Section 2807; (3)

it does not meet the "least cost" requirement of Section 2087; and (4) the Commission cannot approve the proposal absent further legislation. For the reasons that follow, the OSBA's arguments should be rejected.

1. Number of Customers Impacted

The OSBA first argues that PPL Electric's proposal should not be adopted because, according to the OSBA, there would be a significant number of customers that would be impacted. (OSBA IB, p. 4) Even assuming, *arguendo*, that the OSBA is correct and a significant number of customers could be impacted by PPL Electric's proposal, this fact alone is not a sufficient reason to reject PPL Electric proposal. Indeed, under this theory, no rate change could ever be approved because, undoubtedly, it could affect a significant number of customers. PPL Electric submits that the appropriateness of a change in a default service rate depends on the reasonableness of the change, not the number of customers impacted by the change.

In this case, the parties have fully investigated PPL Electric's proposal through discovery, testimony, and briefing. Based on this investigation and the record developed by the parties, PPL Electric submits that its proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW is reasonable because it is consistent with the Company's proposal in the DSP II Program proceeding and the Commission's End State Order. The proposal also recognizes the substantial experience these customers have with shopping. Thus, PPL Electric's proposal should be adopted.

Notwithstanding the foregoing, PPL Electric submits that only a relatively small number of Small C&I customers would be impacted by PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW. There are approximately 1.4 million customers within PPL Electric's certificated service territory. (PPL Electric Exhibit No. 1, p. 3) Currently there are approximately 194,300 customers (shopping and non-shopping) that

have a demand less than 500 kW, categorized as Small C&I customers; and there approximately 3,200 current Small C&I customers with demand between 100 kW and 500 kW. (PPL Electric Statement No. 1, p. 31) As of May 2014, the number of default service customers that would be impacted if PPL Electric's proposal is adopted is 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) PPL Electric therefore submits that only a relatively few number of customers would be affected by PPL Electric's proposal.

The OSBA asserts that these 430 default service customers represent about 13.7% of all Small C&I default service load. (OSBA IB, p. 4) However, if load is to be considered, it is appropriate to compare the load of these 430 customers to the total load, shopping and non-shopping, of the Small C&I Customer Class. As of May 2014, these 430 customers represented about 2.1% of all Small C&I customer load. (OSBA Ex. 1Ec-SD2)

By focusing on just default service load statistics, the OSBA overlooks that a significant number of commercial and industrial customers with a demand of 100 kW or higher currently are shopping, including 88% of customers with a demand between 100 kW and 500 kW. (*See* PPL Electric Statement No. 1, p. 31) 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. *See End State Order*, 2013 Pa. PUC LEXIS 306 at *38-39, Slip Op. pp. 25 ("Noting that LMP pricing is already offered to large C&I customers, the Commission suggested that medium C&I customers are equally well-equipped and educated to manage their commodity costs in an hourly LMP default service environment.")

Based on the foregoing, only a relatively small number of customers would be impacted by PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW. For this reason, and for the reasons more fully explained in PPL Electric's Initial Brief, the OSBA's argument should be rejected and PPL Electric's proposal should be adopted.

2. Prudent Mix

The OSBA next argues that PPL Electric's proposal should be rejected because, according to the OSBA, it does not meet the "prudent mix" requirement of 66 Pa.C.S. § 2807. (OSBA IB, pp. 5-8) The OSBA's "prudent mix" concern was raised for the first time it its Initial Brief. Despite serving four rounds of testimony, the OSBA did not raise this issue in its testimony. As a result, the parties, including PPL Electric, have not had a meaningful opportunity to explore this issue during the evidentiary stages of this proceeding. Due process requires that the parties have reasonable notice and the opportunity to examine this issue during the evidentiary stages of this proceeding.[3] For this reason, the OSBA's "prudent mix" argument should be rejected.

The OSBA's contention also is not supported by the record or the law. The OSBA appears to contend that in order for the Commission to find that PPL Electric's DSP III Program

[3] "For matters coming before an administrative agency, procedural due process, however, requires that a party be afforded reasonable notice of the issues raised and the agency's rulings on those issues, so that the party has an opportunity to present any response or objection." *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003), appeal denied, 836 A.2d 123 (Pa. 2003). *See also Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service Petition for Reconsideration of Duquesne Light Company Petition for Reconsideration of Constellation NewEnergy, Inc. and Constellation Power Source, Inc.*, Docket No. P-00032071, 2004 Pa. PUC LEXIS 42 (Order entered October 5, 2004); *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, et al.*, Docket No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 (Order entered August 24, 1998).

meets the "prudent mix" requirement there must be a mix of default service products procured for customers with maximum loads between 100 kW and 500 kW. (OSBA IB, p. 8) 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). Contrary to the OSBA's interpretation, there is nothing in Section 2807(e)(3.2) that requires a default service provider to procure a mix of default service products for each customer class (or in this case a subset of a customer class). Rather, Section 2807(e)(3.2) merely provides that a default service plan include a "prudent mix" of products. Here, the record evidence clearly demonstrates, and the Settlement clearly acknowledges, that PPL Electric's DSP III Program, as a whole, will include a prudent mix of default service products.[4]

Further, the OSBA's argument was recently considered and rejected by the Commonwealth Court. In *Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal denied*, 83 A.3d 416 (2013), the Commission approved a default service plan that consisted solely of spot market purchases. On appeal, the OCA argued that, in order to be a "prudent mix" of services, as required by Section 2807(e)(3.2), a default service plan must include at least two of the sources enumerated in Section 2807(e)(3.2)(i)-(iii). *Id.* at 1116. The Commonwealth Court rejected the OCA's argument, explaining that the word "prudent" must not be disregarded

[4] 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) 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) In addition, 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) Clearly, PPL Electric's DSP III Program, as a whole, will include a prudent mix of default service products as required by Section 2807(e)(3.2).

in Section 2807(e)(3.2), and that the Commission "must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent.'" *Id.* at 1117.

In this proceeding, PPL Electric explained why it is "prudent" to use a spot market product for larger commercial and industrial customers. Specifically, the Company explained that it learned from its experience with DSP I that wholesale suppliers are not interested in providing a fixed-price, load-following, full-requirements product to serve the default service needs of the larger commercial and industrial customers. (PPL Electric Statement No. 2, p. 17) The Company also explained that, by using a spot market product, PPL Electric protects larger commercial and industrial customers from the risks of high costs that could result if longer-term products were purchased that required bidders to incorporate into their prices the uncertainty associated with shopping customers possibly returning to default service. (PPL Electric Statement No. 2, pp. 27-28). Finally, the Company explained that using a spot market-priced service provides default service customers the opportunity to shop without restrictions that would be necessary to support a longer-term fixed-price service. (PPL Electric Statement No. 2, p. 28) The undisputed record clearly demonstrates that it is "prudent" to use a spot market-priced product for larger commercial and industrial customers.

The OSBA's theory on the "prudent mix" requirement also is inconsistent with prior Commission precedent. Indeed, in PPL Electric's current Default Service Program and Procurement Plan for the period of June 1, 2013 through May 31, 2015 ("DSP II Program"), the Commission approved using a single default service product for the Large C&I Customer Class (a full-requirements, load-following, spot market product). *See 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 July 24, 2013). Further, as acknowledged by the OSBA, other EDCs also offer a single hourly default service product to large commercial and industrial customers. (*See* OSBA Statement No. 1, p. 8) Clearly, the OSBA's conclusion -- that each customer class, or in this case a subset of a customer class (those commercial and industrial customers with a demand between 100 kW and 500 kW), must have a mix of default service products to satisfy the "prudent mix" requirement -- is contrary to previously approved default service plans.

Based on the foregoing, the OSBA's "prudent mix" argument should be rejected and PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW should be adopted.

3. Least Cost Over Time

The OSBA next asserts that PPL Electric's proposal should be rejected because, according to the OSBA, it does not meet the "least cost" requirement of 66 Pa.C.S. § 2807. (OSBA IB, pp. 5-8) Similar to its "prudent mix" argument, the OSBA's "least cost" concern was raised for the first time it its Initial Brief. Due process requires that the parties have reasonable notice and the opportunity to examine this issue during the evidentiary stages of this proceeding.[5] For this reason, the OSBA's "least cost" argument should be rejected.

The OSBA's "least cost" argument is not supported by the record or the law. The OSBA appears to contend that, for commercial and industrial customers with load between 100 kW and 500 kW, there must be "price stability" in default service rates to meet the "least cost" requirement. (OSBA IB, pp. 6-7) Pursuant to Section 2807(e)(3.4) of the Public Utility Code, default service providers are required to obtain default service supply at the "least cost to

[5] *See* Footnote 3, *supra.*

customers over time." 66 Pa.C.S. § 2807(e)(3.4). Although PPL Electric agrees that "price stability" is an important factor that must be taken into account, price stability is not the only factor that must be considered in determining if a default service program meets the "least cost" requirement.

If price stability was the controlling factor in determining whether default service rates for a particular class or subclass of customers meet the "least cost" requirement, as suggested by the OSBA, then long-term default supply contracts clearly would be favored over short-term default supply contracts. However, such a result clearly would be contrary to the Commission's direction that EDCs should limit the proportion of long-term contracts that comprise their default service plan energy portfolios. *See Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952, 2011 Pa. PUC LEXIS 202 at *6-7 (October 14, 2011).

The undisputed record in this case clearly demonstrates that PPL Electric's DSP III Program will obtain default service supply for commercial and industrial customers over 100 kW at the "least cost to customers over time." Under PPL Electric's proposal, all commercial and industrial customers with a demand over 100 kW will be Large C&I customers. Wholesale competition among suppliers of the 12-month, full-requirements, load-following, spot market-priced product for Large C&I default service supplies 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) Clearly, the record demonstrates that the products to be procured through PPL Electric's DSP III Program will be at the "least cost to customers over time."

Further, the OSBA's "price stability" argument assumes that customers with a demand between 100 kW and 500 kW will be required to take spot market-priced electric generation

supply. However, the OSBA overlooks the options available to these customers. As explained by PPL Electric's witness Mr. Cavicchi:

> [T]he vast majority of PPL Electric's large commercial and industrial customers and load will continue to be served by competitive suppliers. By continuing to offer default service with spot market pricing to non-shopping large commercial and industrial customers, these non-shopping customers will continue to have a strong incentive to consider the competitive offerings from retail suppliers, whose short- and long-term products will be best suited to their particular individual needs. Moreover, as Exhibit JC-2 shows, PPL Electric's largest customers have demonstrated that they are able to consistently obtain power supply from retail suppliers.

(PPL Electric Statement No. 2, pp. 21-22) As further 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, the OSBA's "least cost" argument should be rejected and PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW should be adopted.

4. No Further Legislation is Required

The OSBA next argues that the Commission's expectation in the *End State Order* that EDCs will offer hourly spot market products to customers with a demand level above 100 kW is not mandatory but, rather, merely a "wish list" that requires further legislation to implement. (OSBA IB, p. 8) Notably, the OSBA does not dispute that PPL Electric's proposal to reduce the

demand level for the Small C&I Customer Class from 500 kW to 100 kW is in fact consistent with the Commission's expectation set forth in the *End State Order*.[6]

Although the Commission acknowledged concerns in its *End State Order* about the legality of a "general pronouncement" requiring all commercial and industrial customers over 100 kW in Pennsylvania to receive an hourly priced default service absent further legislation, there is nothing in the *End State Order* or the Public Utility Code that prohibits the Commission from approving a proposal to reduce the demand level for PPL Electric's Small C&I Customer Class from 500 kW to 100 kW based on current facts and circumstances. Indeed, the Commission noted in its *End State Order* that "the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are appropriate." *End State Order*, 2013 Pa. PUC LEXIS 306 at *73-74, Slip Op. p. 45.

Simply stated, there is nothing in the *End State Order* that prohibits or requires legislation before the Commission may approve the movement of commercial and industrial customers to spot market-priced products. In this case, the continued development of shopping on the PPL Electric system supports this change to the default service product for commercial and industrial customers over 100 kW.

Based on the foregoing, and for the reasons more fully explained in PPL Electric's Initial Brief, the OSBA's argument that further legislation is required should be rejected and PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW should be adopted.

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[6] *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").

B. NMB CHARGES

1. Introduction

As explained in PPL Electric's Initial Brief, 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. As RESA concedes, PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program. (*See* PPL Electric IB, p. 15; RESA IB, p. 8)

In this proceeding, 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.[7] As explained in PPL Electric's Initial Brief, 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. (*See* PPL Electric IB, pp. 6-8). .

In this case, RESA concedes that its proposal to shift the cost responsibility of NMB Charges was rejected by the Commission in PPL Electric's DSP II Program proceeding, *Petition*

[7] As a preliminary matter, PPL Electric notes that ExGen did not file an Initial Brief in this proceeding. When parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived. *Pa. PUC v. Metropolitan Edison Company*, Docket Nos. R-00061366 et al., 2006 Pa. PUC LEXIS 116 (Order entered October 31, 2006) (citing *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super 2002); *Brown v. PA Dep't of Transportation*, 843 A.2d 429 (Pa. Cmwlth. 2004)); *see also Pa. PUC v. Columbia Gas of Pennsylvania*, Docket Nos. R-00049783, 2005 Pa. PUC LEXIS 14 at *165-66; 245 P.U.R.4th 1 (November 4, 2005) (concluding as reasonable the ALJ's recommendation that when parties have been directed to file briefs and fail to include an issue in their briefs, the unbriefed issues may properly be viewed as having been waived). Therefore, ExGen has waived its proposal to modify the cost responsibility for NMB Charges.

of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074, Slip Op. p. 85 (Jan. 24, 2013). (*See* RESA IB, p. 16) However, in an effort to meet its burden to prove that the Commission should alter its decision from PPL Electric's DSP II proceeding, RESA asserts several arguments.

First, RESA contends that NMB Charges are unpredictable and cannot be hedged by EGSs. (RESA IB., pp. 9-11) Second, RESA argues that the cost responsibility for NMB Charges approved in PPL Electrics DSP II Program and proposed in its DSP III Program results in an inequitable treatment of wholesale and retail suppliers. (RESA IB, pp. 11-12) Third, RESA contends that its proposal is consistent with the Commission's decision in *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 Order*"). (RESA IB, pp. 15-17) Fourth, RESA argues that its proposal should be adopted because EGSs have a limited ability to pass through unanticipated changes in costs such as NMB costs as a result of the Commission's decision 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 IB, p. 17) Finally, RESA contends that there would be no customer transition issues if the Commission adopted its proposal. (RESA IB, pp. 18-19)

Noble and PPLICA both oppose 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. PPLICA, however, asserts as an alternative that the Commission should adopt a "carve out" for the Large C&I Customer Class if RESA's and ExGen's proposal is adopted. (PPLICA IB, p. 4)

For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, RESA and ExGen 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.

2. Unpredictable and Unhedgable Nature of NMB Charges

RESA contends that NMB Charges are unpredictable and cannot be hedged by EGSs. (RESA IB, pp. 9-11) RESA arguments are without merit and should be rejected.

In support of its argument, RESA offers a single instance where the Network Integration Transmission Service ("NITS") increased in the PPL Zone between January 1, 2013 and June 1, 2013. (RESA IB, pp. 10-11) Although NITS charges are the largest portion of the transmission service costs (87% in PPL Electric's most recent TSC rate filing), NITS are set by PJM on an annual basis, thereby reducing volatility to which any entity is exposed. (PPL Electric Statement No. 3-R, p. 15) Further, the Commission recently found a single instance as insufficient to demonstrate the alleged volatility, stating:

> 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 Order, Slip Op. pp. 31-32.

More importantly, as PPL Electric explained in its Initial Brief, there simply is no record evidence to suggest that NMB Charges have become any more or less predictable or hedgable than they were in the DSP II Program proceeding. (PPL Electric IB, p. 19) PPL Electric submits that NMB Charges are just as unpredictable and unhedgable today as they were in DSP II.

Further, PPL Electric notes that there is nothing in the record to suggest that EGSs cannot offer competitive products that include fluctuating (annually in the case of NITS) NMB Charges.

Based on the foregoing, and for the reasons more fully explained in PPL Electric's Initial Brief, 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.

3. Inequitable Treatment of Wholesale and Retail Suppliers

RESA contends that the cost responsibility for NMB Charges approved in PPL Electric's DSP II Program and proposed in its DSP III Program result in an inequitable treatment of NMB Charges between wholesale and retail suppliers. (RESA IB, pp. 11-12) According to RESA, because PPL Electric assumes the NMB costs for default service wholesale suppliers only, this creates a competitive advantage for default service wholesale suppliers. Specifically, RESA contends that wholesale suppliers do not have to account for the risk of changes in the NMB charges in their default service bids, whereas retail suppliers must account for such risks in their competitive offers to shopping customers. RESA asserts that this impacts retail suppliers' ability to effectively compete in the competitive market. (RESA IB, pp. 11-12)

As a preliminary matter, it must be noted that RESA concedes that PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program. (*See* RESA IB, p. 8) Stated otherwise, RESA concedes that the "treatment" of default service wholesale supplies and retail suppliers has not change since the DSP II Program. Indeed, RESA has failed to offer any evidence to suggest that default service wholesale suppliers and retail suppliers will be treated differently under the proposed DSP III Program then they were under the DSP II Program. For this reason alone, RESA has failed to meet its burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

Further, in its testimony, PPL Electric explained that, under the rules of PJM Interconnection, LLC ("PJM"), all load serving entities ("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) Indeed, RESA concedes that LSEs are obligated to pay NMB Charges. (RESA IB, p. 9) It is undisputed that EGSs are the LSEs for shopping customers and PPL Electric is the LSE for default service customers. 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. (*See* PPL Electric IB, pp. 16-17)

Although RESA admits that LSEs are obligated to pay NMB Charges, RESA conveniently overlooks and fails to refute that EGSs are the LSEs for shopping customers, not PPL Electric. Further, RESA has failed to explain whether the PJM rules would even permit a third-party to assume a LSE's obligation to pay NMB Charges. Finally, RESA has failed to provide any details regarding how its proposal would be implemented, including the methodology to recover the costs through the proposed non-bypassable rider. Without such information, it is impossible to assess to what extent the proposal may shift costs between shopping and non-shopping customers. These are fundamental issues that must be addressed on the record before the Commission could even consider RESA's and ExGen's proposal to change the cost responsibility for NMB Charges. RESA and ExGen have failed to do so in this proceeding and, therefore, their proposal must be rejected.

EGSs must obtain the electric supply necessary to serve the shopping customer load -- whether produced by the EGS or its affiliate in the competitive generation market or procured from the competitive wholesale market -- and then must provide this electric supply to shopping customers. The costs incurred to obtain and provide competitive electric generation supply to

shopping customers, including NMB Charges, are EGSs' 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.[8] 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)

RESA's and ExGen's proposal, however, would allow EGSs to participate in the competitive market without assuming the risks and costs required to compete in the market. It should not be the responsibility of the EDC to pay the costs for the EGSs to serve their customers, which is precisely what would occur if the EDC were responsible for all of the transmission costs for its territory. The EDC should not be subsidizing the competitive EGS market by eliminating a cost of doing business as a competitive EGS. Additionally, if the EDC were to bear all of the transmission charges for the entire service territory, and charge all customers through a non-bypassable clause, there may be cross-subsidization of transmission costs between the shopping and non-shopping customers. (PPL Electric Statement No. 3-R, pp. 16-17)

Based on the foregoing, and for the reasons more fully explained in PPL Electric's Initial Brief, 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.

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[8] *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., Slip Op. p. 10 (Order on Reconsideration entered October 11, 2012) ("Consistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGSs.").

4. FirstEnergy DSP III

RESA asserts that its proposal is consistent with the Commission's decision in *FirstEnergy DSP III Order*. (RESA IB, pp. 15-17) Specifically, RESA asserts that "[w]hile the Commission decided not to go in this direction for NITS in the *FirstEnergy 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." (RESA IB, p. 16) RESA's reliance on the *FirstEnergy DSP III Order* is misplaced.

The Commission's decision in the *FirstEnergy DSP III Order* to allow the FirstEnergy EDCs to assume the cost responsibility of some, but not all, NMB Charges was the result of a settlement. The settlement petition in the FirstEnergy DSP III proceeding clearly indicates that it is not binding on any parties, including the settling parties. *See FirstEnergy DSP III Order*, Slip Op. p. 18. Clearly that settlement, which PPL Electric was not a party to, is not binding on PPL Electric nor any other party to this proceeding. Further, the agreement reached by the parties in the FirstEnergy DSP III proceeding was a compromise of competing interests. No such agreement has been reached in this case.

In addition, contrary to RESA assertion otherwise, RESA's proposal is not consistent with the *FirstEnergy DSP III Order*. In this proceeding, RESA proposes that PPL Electric assume the cost responsibility for all NMB Charges for both default service and shopping customer load. In support, RESA argues that the unpredictable and unhedgable nature of NMB Charges and the Commission's *Fixed Price Order* justified the non-bypassable collection of NMB Charges. However, as PPL Electric explained in its Initial Brief, these very same arguments were rejected by the Commission in the *FirstEnergy DSP III Order*. (*See* PPL Electric IB, pp. 21-22)

Further, in this proceeding, RESA and ExGen propose that PPL Electric assume the cost responsibility for all NMB Charges, including NITS. However, in the *FirstEnergy DSP III Order*, the Commission explicitly rejected the fully litigated proposal that EDCs assume the cost responsibility for NITS for both default service and shopping customer load. *See FirstEnergy DSP III Order*, Slip Op. pp. 31-32.

Based on the foregoing, it cannot reasonably be maintained that RESA's and ExGen's proposal is consistent with the *FirstEnergy DSP III Order*. For these reasons, as well as those more fully explained in PPL Electric's Initial Brief, RESA and ExGen have failed to meet its burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

5. Fixed Price Order

RESA argues that its proposal should be adopted because EGSs have a limited ability to pass through unanticipated changes in costs such as NMB costs as a result of the Commission's decision in the *Fixed Price Order*. Specifically, RESA asserts that the *Fixed Price Order* prohibits EGSs from passing through unanticipated changes in costs such as NMB costs. Based upon this assertion, RESA claims 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 to include premiums in the fixed price products to cover the risk associated with such charges. (RESA IB, p. 17) RESA's reliance on the *Fixed Price Order* is misplaced and should be rejected.

As explained in PPL Electric's Initial Brief, 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. (PPL Electric IB, pp. 20-21)

Moreover, the Commission very recently considered and rejected RESA's argument that the Commission's *Fixed Price Order* justified the non-bypassable collection of NMB Charges. *FirstEnergy DSP III Order*, Slip Op. pp. 31-32. RESA has not offered any reason or evidence to depart from the Commission's reasoning in the *FirstEnergy DSP III Order*.

Based on the foregoing, and for the reasons more fully explained in PPL Electric's Initial Brief, RESA and ExGen have failed to meet its burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

6. Customer Transition Issues

In its Initial Brief, PPL Electric explained that if it were to develop a non-bypassable clause for the non-market based charges, every customer with every EGS would need a revised contract in order to avoid a double collection of NMB Charges. (See PPL Electric IB, p. 21) RESA contends that there would be no customer transition issues if the Commission adopted its proposal and offers various ways in which these issues could be addressed.[9] (RESA IB, pp. 18-19) As explained above, and in PPL Electric's Initial Brief, RESA has 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.

[9] Specifically, RESA offers the following solutions to customer transition issues: (i) customers may be better off continuing their original fixed-price products instead of entering into new fixed-priced contracts that do not include the costs and risks of NMB Charges; (ii) fixing the current level of NMB Charges with PPL Electric assuming responsibility for any increases in the NMB Charges; (iii) limiting the change in NMB Charges cost responsibility only to new NMB Charges; and (iv) deferring the change in NMB Charges to a later date to provide a transition period that existing EGS contracts could expire. (RESA IB. pp. 18-19)

According, RESA's proposal should be rejected and, therefore, the Commission need not reach the merits of RESA's proposed "fixes" to address customer transition issues.

Further, PPL Electric notes that the customer transition solutions proposed by RESA are substantially similar to those offered by the parties in the FirstEnergy DSP III proceeding. *See FirstEnergy DSP III Order*, pp. 39-41. Notably, the Commission rejected these solutions in the *FirstEnergy DSP III Order* noting that "if the Commission would have implemented this revised collection of NITS costs within FirstEnergy's DSSR, there is merit in the concerns expressed by IUG with regard to a possible double-collection." *FirstEnergy DSP III Order*, p. 42. Clearly, the Commission has already considered this issue and, moreover, concluded that RESA's proposal could result in certain customer transition issues.

Based on the foregoing, and for the reasons more fully explained in PPL Electric's Initial Brief, RESA and ExGen have failed to meet its burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

7. Large C&I Carve Out

In its Initial Brief, PPLICA strongly opposes RESA's and ExGen's proposal 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. PPL Electric generally agrees with the arguments and reasoning set forth in PPLICA's Initial Brief. In its Initial Brief, however, PPLICA proposes for the first time that a "carve out" should apply to the Large C&I Customer Class if the Commission were to adopt RESA's and ExGen's NMB Charges proposal. (PPLICA IB, p. 4, fn. 5) PPLICA's "carve out" must be rejected.

Although PPLICA was an active party in this proceeding, PPLICA submitted no testimony or exhibits, nor did it elicit any testimony or exhibits through cross-examination.

Simply stated, there is absolutely nothing in the record that could arguably serve as a basis to support PPLICA's proposal for a Large C&I "carve out." Indeed, PPLICA raised this proposal for the very first time in its Initial Brief. Due process requires that the parties have reasonable notice and the opportunity to examine this issue during the evidentiary stages of this proceeding.[10]

In addition, the "carve out" proposed by PPLICA fails to recognize that the reasons against RESA's and ExGen's proposal are not unique to Large C&I customers. NMB Charges are no more "unpredictable" or "unhedgeable" for small and large customers. EGS's are the LSEs for both small and large customers. The *First Energy DSP III Order* applies equally to small and large customers. Finally, transition issues exist for small and large customers. Simply stated, PPLICA has failed to identify anything unique that would warrant treating Large C&I customers different than Small C&I and Residential customers for purposes of NMB Charges.

For these reasons, PPLICA's "carve out" should be rejected.

IV. 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) 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

[10] *See* Footnote 3, *supra.*

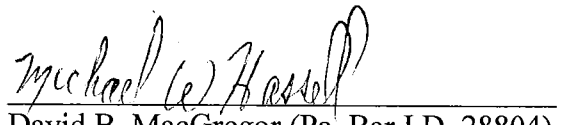
provisions for the Generation Supply Charge-1, the Generation Supply Charge-2 and the Transmission Service Charge, as modified by the terms and conditions of the partial settlement;

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

(c) 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.

(d) Deny PPLICA's proposal to apply a "carve out" to the Large C&I Customer Class if the Commission adopts 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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