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September 26, 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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply 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

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 Reply 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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September 26, 2014

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BEFORE THE
PENNSYLVANIA PUBLIC 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

REPLY BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION AND PROCEDURAL HISTORY

PPL Electric Utilities Corporation ("PPL") proposes to implement a default service plan for the period of June 1, 2015 through May 31, 2017 ("DSP III"). Simultaneously with the filing of Initial Briefs of September 12, 2014, a Joint Petition for Approval of Partial Settlement ("Partial Settlement") was filed. For the reasons set forth in its Statement in Support, the Retail Energy Supply Association ("RESA")[1] supports adoption of the Partial Settlement. Regarding the two issues reserved for litigation, as set forth more fully in RESA's Initial Brief, RESA recommends that: (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 be adopted; and, (2) RESA's proposal that PPL be required to assume the cost responsibly for Non-Market Based ("NMB") Charges[2] for all load and recover the costs through a non-bypassable charge be adopted.

In its Initial Brief, RESA anticipated and fully addressed many of the arguments in opposition to its recommended outcome and incorporates those arguments herein but offers this additional response to a few of the issues raised in the Initial Briefs of the other parties. First, as explained more fully below, the opposition of the Office of Small Business Advocate ("OSBA") to PPL's proposal to lower the hourly demand threshold based on its view of Commission precedent is without merit and must be rejected.

Second, RESA's proposal regarding the NMB Charges is legally sound and would address significant issues in the market today that inhibit the ability of electric generation suppliers

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1 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.

2 NMB Charges include Network Integration Transmission Service ("NITS") and related transmission charges (such as Regional Transmission Charges or "RTEP"), Generation Deactivation Charges (also referred to as Reliability Must Run Unit charges or "RMR"), and Unaccounted for Energy. RESA St. No. 1 at 17.

("EGSs") to offer a wider variety of competitive supply contracts and pricing. Such result would advantage consumers and should be adopted.

II. PPL'S PROPOSAL TO LOWER THE DEMAND THRESHOLD FOR HOURLY PRICING TO 100 KW SHOULD BE ADOPTED

RESA supports PPL's proposal to change the customer size demarcation between Small C&I customers and Large C&I customers from 500 kW to 100 kW.[3] Only the Office of Small Business Advocate ("OSBA") opposes this result. OSBA argues that moving these customers to hourly priced service "is not consistent with the statute" based on the Commission's determinations in the *Act 129 Final Rulemaking Order*.[4] Also according to OSBA, "consistency with the *End State Order*[5] is not a basis upon" which to make this change and, again according to OSBA, the *End State Order* is not a mandate because the Commission referenced a desire to seek legislative changes to implement its "wish list."[6] OSBA's arguments are incorrect, unpersuasive and must be rejected.

As OSBA implicitly concedes, PPL's proposal is consistent with the *End State Order*. However, OSBA's view that PPL's proposal should nevertheless be rejected based on the Commission's *Act 129 Final Rulemaking Order* is erroneous. The purpose of the *Act 129 Final Rulemaking Order* – entered October 4, 2011 – was to update the Commission's regulations following the passage of the Act 129 amendments to the Electricity Generation Customer Choice and Competition Act (the "Competition Act").[7] While the *Act 129 Final Rulemaking Order* also offered the Commission's view on broader policy questions as raised by stakeholders during the comment period, the Commission made clear that the *Act 129 Final Rulemaking Order* was not

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3 RESA Initial Brief at 4-8.

4 OSBA Main Brief at 7; citing, *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order Entered October 4, 2011) ("*Act 129 Final Rulemaking Order*").

5 *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*).

6 OSBA Main Brief at 8.

7 66 Pa.C.S. §§ 2801-2812.

intended to create any mandates for future default service plans or require (or reject) any specific contract mix:

> In particular, the Commission wishes to make clear that the focus of this rulemaking is to bring our existing default service rules into compliance with Act 129 standards. Therefore, these final form regulations should not be construed to anticipate, pre-judge or otherwise foreclose our consideration of other default supply models or adjustments to the current default service model in the pending *Retail Electricity Markets Investigation* at Docket No. I-2011-2237952.[8]

Consistent with this clear pronouncement, the Commission specifically declined to establish specific percentages of default service load that should be served under various types of products[9] and the Commission has subsequently approved procurement plans with a variety of contract types and mixes.[10] As such, the *Act 129 Final Rulemaking Order* provides no basis upon which to reject PPL's proposal to transition C&I customers with peak demand above 100 kW to hourly priced service.

In contrast, the Commission's subsequent *End State Order* – entered February 15, 2013 – was the result of an extensive investigation into Pennsylvania's retail electricity market (initiated in April 2011) and set forth the Commission's "proposed model for default service."[11] Specifically, the Commission stated that it recommended "fundamentally changing the default service product so

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8 *Act 129 Final Rulemaking Order* at 9 (emphasis added). See *Id.* at 32. ("We assure the parties that any future decisions to amend these regulations as a result of the comments received on the policy questions, the outcome of the current investigation into default service or development resulting from evaluation of future DSP plans will be subject to the full rulemaking processes.")

9 *Act 129 Final Rulemaking Order* at 66. See *Id.* at 60 (". . . we will continue to review each plan on a 'case by case' basis that independently evaluates the merits of each default service plan where input from stakeholders is assured.")

10 *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 August 16, 2012; *Petition of PECO Energy Company for Approval of its Default Service Program* II, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015,* Docket No. P-2012-2301664, Opinion and Order entered January 25, 2013; *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan,* Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012.

11 *End State Order* at 3.

that it more closely resembles market conditions" and made clear that it was committed to effectuating these changes on June 1, 2015.[12] The Commission also made clear that it expected – effective June 1, 2015 – that EDCs would "offer <u>only hourly LMP to medium and large C&I customers with interval meters</u>."[13] As explained further in RESA's Initial Brief, OSBA's claim that the Commission's statements about seeking legislative changes meant that the *End State Order* could be disregarded if no legislative amendments were made ignores the fact that nothing in the *End State Order* prohibits PPL's proposal here or requires awaiting legislative changes.[14] It also ignores the fact that the Commission has approved a default service procurement mix that reflects a single product – hourly priced service – for Large C&I customers for years now and the use of a single product procurement plan for Pike County Power and Light has been affirmed on appeal.[15] There is simply no logical or legally sound basis to support OSBA's argument that the Commission is somehow without the legal authority to adopt PPL's consistent proposal here particularly in light of the *End State* Order and the fact that PPL is technically capable of implementing this change.

For all of these reasons (in addition to those stated in RESA's Initial Brief), RESA recommends adoption of PPL's proposal to change the customer size demarcation between Small C&I customers and Large C&I customers from 500 kW to 100 kW. OSBA has presented no persuasive or compelling argument to support a different outcome and, therefore, its opposition to PPL's proposal should be rejected.

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12 *Id.* at 15-16.

13 *Id.* at 29, 31.

14 RESA Initial Brief at 7.

15 *Id.* OSBA's effort to dismiss the Commission's approval of a default service procurement mix for Pike County & Light Power that relies exclusively on spot market purchases as "completely different from PPL" is unavailing. As a creature of statute, the Commission has only those powers which are expressly conferred upon it by the Legislature (or which may arise by necessary implication). See, e.g., *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977). Therefore, the Commission's actions regarding Pike County Light & Power could not have been affirmed on appeal if they were illegal.

III. 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

While RESA anticipated the majority of the arguments in opposition to its recommendation that PPL assume the cost responsibility for NMB Charges for all load and recover the costs from all customers through a non-bypassable charge and incorporates them here, RESA offers the following response to some of the arguments opposing RESA's recommendation.

A. There Is No Serious Debate Regarding The Legality Of RESA's Recommendation Or The Nature Of The NMB Charges

Both PPL and PPLICA attempt to make legal arguments in opposition to RESA's arguments based on Commission precedent and/or the Competition Act.[16] These arguments, however, ignore the Commission's *FE DSP III Order* where the Commission specifically stated:

> . . . we disagree with IUG that the NITS Proposal [i.e. EDC would assume the cost responsibility for all load and recover from all customers through a non-bypassable charge] would violate the Competition Act, the Public Utility Code or our Regulations. We find that IUG's arguments on these points are without merit, as neither the Competition Act nor the Code preclude the implementation of the NITS proposal. . . [17]

Thus, there is no legal bar to implementing RESA's recommendation that PPL be required to assume cost responsibility for all load (default service and shopping) and recover costs from all customers on a non-bypassable basis. Moreover, as explained more fully in RESA's Initial Brief, permitting PPL to continue to assume the cost responsibility for the NMB Charges exclusively for wholesale default service suppliers (and not also for EGSs) runs afoul of Section 2804(6) of the Competition Act which requires an EDC to provide transmission and distribution service to all

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16 PPL Initial Brief at 17-18; PPLICA Main Brief at 7-10, 11, 16.

17 *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*").

EGSs "on rates, terms of access and conditions that are comparable to the utilities own use of its system."[18]

Furthermore, the efforts of both PPL and PPLICA to extrapolate the Commission's decision in the *FE DSP III Order* regarding just one of these charges – NITS – to argue that the same treatment should be applied to all the NMB Charges here conveniently ignores that: (1) the Commission approved RESA's recommended approach for all of the other NMB Charges;[19] and, (2) if the FirstEnergy EDCs assume cost responsibility for the charge, then they assume it for all load (wholesale default service suppliers assume the cost responsibility for NITS not the EDCs).[20] As explained further in Section III.E below, translating the result of the *FE DSP III Order* here would require a change to the status quo and adoption of some version of RESA's recommendation.

Finally, regarding the nature of the NMB Charges, PPL concedes that the NMB Charges are unpredictable and cannot be hedged.[21] PPLICA dismisses the 52% increase to NITS in the PPL zone effective June 1, 2013 as an "outlier."[22] However, whether an increase is an "outlier" or not, the fact remains that its impact needs to be addressed by those who are required to pay it. This 52% increase further proves that future price changes can be unpredictable – regardless of whether such increases are experienced in other zones or are consistent with prior pricing. Adopting RESA's recommendation will ensure that customers only pay the actual cost of the NMB Charges while

18 RESA Initial Brief at 14-15.

19 The *FE DSP III Order* approved the parties' agreement to use RESA's recommended approach for: (1) PJM charges associated with RMR unit declarations and deactivation of plants for which charges are set after the approval of the Revised DSP Programs by the Commission; (2) historical out of market tie line, generation and retail customer meter adjustments; and (3) unaccounted for energy. *FE DSP III Order* at 13-14. The Commission had previously permitted the FirstEnergy EDCs to assume the cost responsibility for all load for Regional Transmission Expansion ("RTEP") and Transmission Enhancement costs ("TEC") effective June 1, 2013. *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 10-12.

20 *See* Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Default Service Supplier Master Agreement at Appendix D, available at: *http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA_DSPIII_SMA.pdf.*

21 PPL Initial Brief at 18.

22 PPLICA Main Brief at 13.

shielding them from the negative market impacts that occur when another "outlier" occurs and customer contracts need to be cancelled or suppliers are forced out of business.

B. The *Fixed Price Label Order* In Combination With The Unpredictability of NMB Charges Directly Impacts EGS Decisions About Products And Pricing That Will Be Offered To Customers

Both PPL and PPLICA downplay the impact of the *Fixed Price Label Order*[23] and the interplay of recovering costs associated with the risk of future unpredictable price increases in NMBs Charges. More specifically, PPL states that "the *Fixed Price Order* did not foreclose the ability of EGSs to pass through unanticipated NMB Charges."[24] Similarly, PPLICA dismisses the *Fixed Price Label Order* as focusing on "only the nomenclature to be used by EGSs for contracts, thereby rendering it inapplicable to the current issues."[25]

Importantly, these interpretations of the *Fixed Price Label Order* come from two entities that are neither EGSs nor mass market customers. PPL is an EDC and provides generation service as the default service supplier and not through individual contracts with consumers. PPLICA is an association of Large C&I customers, none of which provided any testimony in this proceeding. Neither PPL nor PPLICA are parties to the contracts most impacted by the *Fixed Price Label Order* nor do either of these entities engage in the pricing/product structuring process in which all EGSs must engage. As such, PPL and PPLICA's views on the real world, practical implications of the *Fixed Price Label Order* should not be given significant weight.

On the other hand, RESA is a trade association of EGSs whose members are and have been directly impacted by the *Fixed Price Label Order* and who actively enter into competitive generation supply contracts with all customer classes in Pennsylvania. As explained by RESA

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23 *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause,* Docket No. M-2011-2362961, Final Order entered November 14, 2013 ("*Fixed Price Label Order*").

24 PPL Initial Brief at 21.

25 PPLICA Initial Brief at 14.

Witness Richard J. Hudson, Jr., the *Fixed Price Label Order* places practical constraints on the ability of EGSs to recover the costs of future rate increases in NMB Charges.[26] This is because – under the present process – there is only one way for an EGS to guarantee its ability to recover from customers the future, unpredictable rate changes in NMB Charges and that is to offer a variable priced product.[27] An EGS offering a fixed price product cannot adjust the contract during the term to recover the costs from customers for unpredictable rate changes to the NMB Charges – regardless of whether or not such right is reserved in the contract.[28] EGSs also cannot rely on a "regulatory out" clause in the contract to recover the cost from the fixed price customer because the *Fixed Price Label Order* requires an EGS dealing with an unpredicted rate increase in NMB Charges (that it did not already factor into the fixed price product) to provide the customer prior notice of the EGS's intent to pass on the charge to the customer. If the customer does not affirmatively agree to the price increase, then the EGS must cancel the contract.[29] The likely outcome of this action is for the EGS to lose the customer.

For all these reasons, the practical impact of the *Fixed Price Label Order* for the competitive market is that EGSs assessing how to deal with unpredictable future rate changes in NMB Charges need to determine whether to: (1) rely exclusively on variable contracts to recover these costs; or, (2) take the risk of offering fixed price contracts knowing that the contracts will likely be cancelled if the EGS attempts to recover the costs from the customer. Neither result is good for customers

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26 RESA St. No. 1 at 21.

27 Notably, the Commission has expressed "particular concern for customers receiving their electric supply service from an EGS under a contract with a monthly adjusted variable rate" and has undertaken numerous measures (including implementing new regulations) to help ensure that consumers are more informed about variable rate products. *See, e.g., 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 to Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Final-Omitted Rulemaking Order, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered April 3, 2014 at 6-8 ("*Final-Omitted Rulemaking Order*").

28 *Fixed Price Label Order* at 24 ("a 'fixed price' product must not change in price during the term of the agreement").

29 *Id.* at 26. PPLICA's claim that mass market customers can just "negotiate a pass through clause" with EGSs does not reasonably take into consideration the realistic characteristics of this group of customers.

because each limits the variety of potential competitive products and competitive pricing that could be offered. The Commission acknowledged this reality in the *Fixed Price Label Order* when it stated:

> We. . . understand that if EGSs are not able to recover costs that are imposed upon them, they may indeed limit the variety of long-term fixed price offers they make available. Additionally, such offers may have to include a substantial risk-premium that would increase customer costs.[30]

Thus, and despite the attempts of PPL and PPLICA to argue otherwise, the *Fixed Price Label Order* has presented new practical obstacles to the ability of customers to have a variety of competitive products available to them. In the *Fixed Price Label Order*, the Commission noted that "there may be mechanisms to help address this concern that are more legally tenable than allowing a 'fixed' price to change."[31] RESA's recommendation here presents the Commission one of those more legally tenable alternate mechanisms because the end result would be to remove the need of EGSs to factor into their pricing and product decisions the risk of future unpredictable price increases related to NMB Charges thereby giving them more flexibility to design a greater array of competitive products and pricing.

In sum, requiring PPL to assume the cost responsibility for all load would lead to significant positive impacts for customers especially given the practical effect of the *Fixed Price Label Order*. First, the resulting price paid by customers (whether default service customers or shopping customers) will not include any amount to account for the risk of future rate changes in the NMB Charges. Second, EGSs would have more flexibility to design their products and pricing without factoring in the risk of unpredictable increases in NMB Charges which would benefit customers with a greater variety of competitive products. Finally, the wholesale default service supplier and

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30 *Id.* at 25-26.
31 *Id.* at 26.

the EGS would have equal and non-discriminatory access to the EDC's ability to ensure that only actual costs of the NMB Charges are paid by all customers.[32]

C. Customers Benefit From Products That Do Not Need To Factor In The Costs Of Unpredictable Charges

1. Eliminating the option for customers to negotiate the impact of risk premiums ignores the better option to customers of eliminating risk premiums entirely

As explained in the previous section, adopting RESA's proposal would give EGSs the flexibility to design a greater variety of competitive product offerings for the benefit of customers. Notwithstanding this, some parties argue that recovering the costs of NMB Charges would eliminate the ability of customers to obtain fixed price contracts that account for the risk of future price increases to the NMB Charges – regardless of whether or not those increases actually happen.[33] According to these arguments, customers should not be denied the opportunity to negotiate these types of contracts. There are two significant flaws with this theory.

First, these arguments ring hollow for mass market customers who generally do not engage in these types of negotiations for their competitive generation supply. Mass market customers do not review a proposed contract from an EGS and negotiate with that EGS whether the contract price either includes or excludes the costs of future price changes to the NMB Charges. If such were the case, then the Commission's existing regulations would be futile.[34] On the contrary, the Commission views its regulations as necessary to provide shopping customers concise, transparent terms and conditions and greater clarity of customers' rights and responsibilities when shopping for electricity generation supply.[35] Therefore, rejecting RESA's recommendation on the basis of

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32 RESA Initial Brief at 12-14.

33 Noble Initial Brief at 4; PPLICA Main Brief at 19.

34 The Commission has numerous regulations governing an EGSs interactions with residential and small commercial customers including marketing, disclosure statements and enrollment. *See, e.g.* 52 Pa. Code §§ 54.4-54.10; 111.1-111.14.

35 *Final-Omitted Rulemaking Order* at 6.

preserving the alleged choice to negotiate contract terms is meaningless because such option does not exist in reality for mass market customers.

Second, even for those who negotiate contract terms with EGSs, the nature of the non-market charges is not the same as the nature of the market-based energy commodity cost. Each EGS has to undertake an analysis of energy markets to determine the price that it can offer to customers. This analysis relies on transparent, market-based factors. Further, EGSs can manage the risk associated with offering fixed-price commodity service precisely because hedging and other risk management tools are available through the market itself. Conversely, the market offers no such tools for mitigating the risk associated with the non-market based charges. Allowing customers – any customers – the ability to negotiate the energy commodity price with EGSs (or compare the prices offered by different EGSs) is an important part of the competitive market which would not be impacted by adopting RESA's proposal here. Rather, RESA's recommendation focuses on non-market based charges which are very different from the market-based nature of energy. As explained by RESA Witness Richard J. Hudson, Jr.:

> Each of these cost items is a non-hedgeable wholesale cost obligation that all load service entities are subject to in the wholesale market. 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.[36]

Because of the nature of these NMB Charges, there is no market-based, transparent way for EGSs to reasonably calculate future rate increases and then reasonably factor them into contract prices. While some individual customers may get a "benefit" when the EGS' calculations lead to a result where the EGS has to absorb the costs because it did not factor in the correct risk premium into the retail price (or the EGS negotiated away the right to include one), the long-term impact to

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36 RESA St. No. 1 at 17-18.

the market will be negative. Suppliers will not be able to continue to take the risk of being forced to absorb these unpredictable rate increases – whether by design or through negotiation – and, over the long term, there is likely to be less competitive options offered by suppliers. Therefore, any short term appeal to preserving the ability to negotiate contracts whereby EGSs are required to absorb the costs of increased NMB Charges is not a reasonable way to design a functioning competitive retail market that will be sustainable over the long term and RESA's recommendation must not be rejected on this basis.

2. <u>RESA's recommendation advantages all customers and eliminates the current inequity in which PPL provides discriminatory access to wholesale default service suppliers only</u>

PPL argues that RESA's proposal is an attempt by EGSs "to avoid paying the costs incurred to provide service to their shopping customers" and "to the extent that every Load Serving Entity (LSE) is paying for its share of the load, the playing field is level."[37] PPL's advocacy here, however, misses the point from the customer's perspective. Regardless of what entity assumes the cost responsibility for NMB Charges, all customers will pay them. Currently, PPL recovers the costs for default service load through the default service rate and EGSs recover the costs from shopping customers through their retail pricing. The fact that all customers pay for the costs of NMB Charges does not change if RESA's proposal is adopted and PPL is required to assume the cost responsibility for NMB Charges for all load. The difference is that RESA's proposal eliminates the need to deal with risk premiums that require customers to pay something more than the actual costs of the NMB Charges because the entity developing the pricing (whether wholesale default service supplier or EGS) factors in some amount to account for the unpredictable future

[37] PPL Initial Brief at 18.

price change in NMB Charges.[38] Thus, RESA's proposal ultimately benefits all customers because the price paid by customers is only the actual cost of the NMB Charges.

Further, PPL's attempt to argue that the EGSs would get some unfair advantage by RESA's proposal or that PPL should not be required to assume costs that "are EGSs' costs"[39] ignores the inequities that result when PPL assumes the cost responsibility only for wholesale default service suppliers but not for EGSs. As aptly stated by PPL, "[f]or a regulated EDC in a default supplier role, the methodology of rate development is fundamentally different" because the EDC is permitted to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause, all reasonable costs incurred to provide default service to customers.[40] As explained further in RESA's Initial Brief, leveraging this advantage for the benefit of default service customers only (which occurs when the EDC assumes the cost responsibility only for wholesale default service suppliers as PPL currently does) results in the EDC providing discriminatory and advantageous access to the wholesale default service suppliers that is not similarly made available to the EGSs in contravention of the Competition Act.[41] Like EGSs, wholesale default service suppliers are contractually and financially responsible for supplying default service load yet PPL has no problem with assuming the cost responsibility on their behalf and giving them the advantage of the EDC's right to full cost recovery.[42] Thus, PPL's lament that it should not have to "pay EGSs' costs" is specious. Adopting RESA's proposal that PPL assume the cost responsibility for EGSs would be consistent with how PPL treats wholesale default service suppliers. PPL's argument that it should

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38 *See also* RESA Initial Brief at 11-14.

39 PPL Initial Brief at 19.

40 *Id.*

41 RESA Initial Brief at 14-15.

42 This situation does not exist for the FirstEnergy EDCs because wholesale default service suppliers are required to assume the cost responsibility for the one NMB Charge (NITS) for which the Commission declined to allow the FirstEnergy EDCs to assume responsibility.

not be required to afford the same treatment to EGSs that it affords wholesale default service suppliers is without merit and must be rejected.[43]

D. There is No Record Support Regarding PPLICA's Claims Of Potential Negative Impact To Large C&I Customers

PPLICA devotes significant time to claiming that RESA's proposal would create difficult transition issues for Large C&I customers and relies exclusively on testimony submitted by PPL and Commission dicta from other proceedings.[44] PPL, however, does not enter into contracts with Large C&I customers. In fact, the record does not include any testimony from any Large C&I Customers supporting the factual claims made in PPLICA's Main Brief. While RESA acknowledges that in other proceedings and based on the record in those proceedings (which did include testimony from Large C&I customers) the Commission expressed concerns about the impact of this proposal on Large C&I customers, the fact remains that a similar record was not developed in this case. Nonetheless, as explained in more detail in RESA's Initial Brief, the record does show that the customer transition issues raised on the record by PPL that PPL alleges might result from adopting RESA's recommendation can be adequately addressed just as they were for the FirstEnergy EDCs. PPLICA's effort to include factual advocacy in its Main Brief that is not supported in the record by any impacted Large C&I customer should be summarily rejected.

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43 If RESA's recommendation is not adopted, then maintaining the status quo whereby PPL continues to assume the cost responsibility on behalf of wholesale default service suppliers must be revised. As explained more fully in RESA's Initial Brief, the status quo provides a competitive advantage to wholesale default service suppliers that is not similarly provided to EGSs. This is because the EDC's involvement enables default service providers to remove the need to factor into their default service supply bid a risk premium for future price increases to the NMB Charges although EGSs would still be required to do so. In lieu of adopting RESA's recommendation, removing PPL from the equation entirely (by not permitting PPL to assume the cost responsibility on behalf of the default service suppliers) would at least result in a more equal comparison of the default service rate and EGS prices (because both would include risk premiums). RESA Initial Brief at 19-20.

44 PPLICA Main Brief at 6.

E. The Outcome Which Would Be Consistent With *FE DSP III Order* And Create Some Uniform Treatment Among EDCs

Regarding the assignment of cost responsibility and cost recovery of the NMB Charges, RESA supports uniform statewide application across all EDCs. Such is not the case in Pennsylvania today. Each EDC treats the specific charges in their own manner without regard for how the same charges are treated by another EDC. Even within each EDC, the assignment of cost responsibility can vary with respect to each charge. For example, PPL assumes the cost responsibility for NITS, Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-firm Point-to-Point Transmission Service Credits, Regional Transmission Expansion Plan and Generation Deactivation Charges. However, all other costs are assumed by the wholesale default service supplier.[45] The result of the varying treatment among EDCs and within each EDC creates difficulty for competitive suppliers in assessing each market and determining whether or not they can enter that market. RESA maintains that all EDCs in Pennsylvania should assume the cost responsibility for all load and recover the costs from all customers through a non-bypassable charge for all NMB Charges. If, however, this recommendation is not accepted, then – at a minimum – the Commission should better align PPL with the outcome of the *FE DSP III* proceeding. To achieve that result:

- PPL should be directed to assume cost responsibility for all load for Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-firm Point-to-Point Transmission Service Credits, Regional Transmission Expansion Plan and Generation Deactivation Charges; and,
- Wholesale default service suppliers should be required to assume cost responsibility for NITS (PPL, in contrast, proposes to assume cost responsibility for wholesale default service suppliers).[46]

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45 PPL St. No. 1-R at 42.

46 This is not RESA's preferred outcome whereby PPL would assume the cost responsibility for all NMB Charges but this alternative recommendation would be consistent with how the FirstEnergy EDCs handle this charge. *See* Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, And West Penn Power Company Default Service Supplier Master Agreement at Appendix D, available at: *http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA_DSPIII_SMA.pdf.* To effectuate this recommendation, the SMA would need to be updated to reflect that the wholesale default service suppliers are required to assume the cost responsibility for the NMB Charges.

While this outcome would still not provide consistency of treatment for all NMB Charges within PPL's service territory or among all the service territories of all the EDCs, it would be an improvement over the situation that currently exists for PPL and would better align PPL with how the charges are being treated in the FirstEnergy service territories. Further, this result would also be closer aligned to the Partial Settlement pending before the Commission in the PECO DSP III proceeding where PECO agreed to support RESA's recommended approach for the following charges: Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan "RTEP"); Expansion Cost Recovery charges ("TEC/ECRC"); and, Generation Deactivation/Reliability Must Run ("RMR") charges for which charges are set after the approval of PECO's Revised DSP III by the Commission; and, the parties reserved for litigation all issues related to the treatment of NITS.[47]

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47 *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 ¶48.

IV. CONCLUSION

For all the reasons discussed above, RESA respectfully requests that the Administrative Law Judge approve the Partial Settlement as submitted and direct that:

(1) PPL's proposal to lower the demand threshold for hourly pricing to 100 kW be adopted;

(2) PPL assume cost responsibility for all load for RTEP, Expansion Cost Recovery Charges, Generation Deactivation/Reliability Must Run Charges and NITS and implement a non-bypassable surcharge to recover the costs; or, alternatively, that wholesale default service suppliers (not PPL on their behalf) and EGSs be required to assume the cost responsibility for these charges with each recovering the costs from either default service or shopping customers.

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