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

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

November 19, 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 Exceptions 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.
Office of Special Assistants at ra-OSA@pa.gov
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

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

Via Email and/or First Class Mail

Michael W. Hassell, Esq.
David MacGregor, Esq.
Christopher T. Wright, Esq.
Post & Schell
17 North Second St., 12th Fl.
Harrisburg, PA 17101-1601
mhassell@postschell.com
dmacgregor@postschell.com
cwright@postschell.com

Paul E. Russell
Associate General Counsel
PPL Service Corporation
Two North Ninth St.
Allentown, PA 18101
PERussell@pplweb.com

Aron J. Beatty, Esq.
Amy E. Hirakis, Esq.
Hobart J. Webster, Esq.
Cammie A. Shoen, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Fl.
Harrisburg, PA 17101-1923
abeatty@paoca.org
ahirakis@paoca.org
hwebster@paoca.org
cshoen@paoca.org

Carrie B. Wright, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
PO Box 3265
400 North St., 2nd Floor West
Harrisburg, PA 17105-3265
carwright@pa.gov

Steven C. Gray, Esq.
Office of Small Business Advocate
300 North Second Street., Suite 202
Harrisburg, PA 17101
sgray@pa.gov

Patrick M. Cicero, Esq.
Elizabeth Marx, Esq.
Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net
emarxpulp@palegalaid.net

Divesh Gupta, Esq.
Assistant General Counsel
100 Constellation Way, Suite 500C
Baltimore, MD 21202
Divesh.gupta@constellation.com

David P. Zambito, Esquire
Cozen O'Connor
305 North Front St., Suite 400
Harrisburg, PA 17101
dzambito@cozen.com

Thomas J. Sniscak, Esquire
Todd S. Stewart, Esquire
Judith D. Cassel, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
tsstewart@hmslegal.com
jcassel@hmslegal.com

Charles E. Thomas, III, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust St., Suite 600
P.O. Box 9500
Harrisburg, PA 17108-9500
cet3@tntlawfirm.com

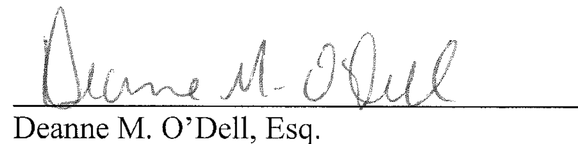
Adeolu A. Bakare, Esquire
Pamela polacek, Esq.
McNees, Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mwn.com
ppolacek@mwn.com

Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net

Heather M. Langeland, Esq.
PennFuture
200 First Avenue, Suite 200
Pittsburgh PA 15222
langeland@pennfuture.org

Amy M. Klodowski, Esq.
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

November 19, 2014



Deanne M. O'Dell, Esq.

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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

EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION

Daniel Clearfield, Esquire
Attorney ID #26183
Deanne M. O'Dell, Esquire
Attorney ID #81064
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Attorneys for Retail Energy Supply Association

Date: November 19, 2014

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I. INTRODUCTION

In this proceeding, the Commission must adjudicate the third default service plan ("DSP III") of PPL Electric Utilities Corporation ("PPL"). The parties in this proceeding have presented a Joint Petition for Settlement which resolves all but two issues. Those issues are: (1) whether PPL's proposal to lower the hourly priced demand threshold for commercial and industrial ("C&I") customers to those at or above 100 kW peak demand should be adopted; and, (2) whether the proposal of the Retail Energy Supply Association ("RESA")[1] to require PPL to assume the cost responsibility for all non-market based charges ("NMB Charges")[2] for all load (shopping and default service customers) should be adopted. In her Recommended Decision ("RD") dated October 17, 2014, Administrative Law Judge ("ALJ") Susan D. Colwell recommends that the Commission reject both proposals. Both of these recommendations are erroneous and must be rejected.

Regarding the hourly priced threshold, the ALJ bafflingly concludes that the Commission's *End State Order*[3] regarding the most appropriate default service plan for C&I customers with peak demand at or above 100 kW is not consistent with the Electricity

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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 The NMB Charges include: (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"; (6) Regional Transmission Expansion ("RTEP"); (7) any <u>new</u> PJM related charges; and, (8) Unaccounted for Energy.

3 *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Final Order entered February 15, 2013 (*"End State Order")*.

Generation Customer Choice and Competition Act ("Competition Act")[4] and, therefore, she erroneously recommends that the Commission reject PPL's proposal to move these customers to hourly priced default service.[5] The ALJ's analysis, however, fails to comprehensively analyze all of the requirements of the Competition Act. Importantly, she ignores the requirement that the Commission foster the development of a workably competitive market. After ignoring the full complement of statutory requirements the Commission must address, the ALJ then erroneously discounts the substantial evidence in the record showing how lowering the hourly priced default service demand threshold for C&I customers fulfills all of the statutory requirements of the Competition Act. Thus, the ALJ's recommendation to reject PPL's proposal to lower the hourly priced default service threshold for C&I customers with peak demand at or above 100 kW is clearly erroneous and must be rejected by the Commission.

In addition, the ALJ dismissively concludes that "no persuasive evidence" supports RESA's proposal that the Commission require PPL to assume the cost responsibility for all NMB Charges for all load (shopping and default) and recover the costs through a non-bypassable charge assessed on all customers. This conclusion is not based on the substantial evidence presented in this proceeding showing that: (1) the NMB Charges are not market-based, transparent costs and are subject to future unpredictable rate changes; (2) because of their nature, entities (other than the electric distribution companies, or "EDCs," like PPL) that are required to assume the cost responsibility for the NMB Charges have to figure out how to account for the unpredictable future rate changes meaning that retail customers are at risk for paying more than just the cost of the NMB Charges; (3) since EDCs have the right of full cost recovery, when they

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[4] 66 Pa.C.S. §§ 2801-2812.

[5] RD at 41-45.

assume the cost responsibility for the NMB Charges, end user customers are not at risk for paying more than just the actual costs of the NMB Charges; and, (4) when PPL passes on this advantage to just one segment of customers (i.e. default service customers) because it only assumes the cost responsibility for wholesale default service suppliers (which is what PPL does now), PPL is providing discriminatory access to its right of cost recovery in contravention of the Competition Act.[6] All of this evidence supports RESA's proposal to require PPL to assume the cost responsibility for all load (shopping and default service customers). RESA's proposal fairly permits nondiscriminatory access to the EDC's right of full cost recovery to both the wholesale default service suppliers and EGSs ensuring that no customers pay anything more than the actual costs of the unpredictable NMB Charges. Since substantial evidence shows both that RESA's proposal is more consistent with the Competition Act and leads to a more fair result for all customers, the ALJ erred in recommending that it be denied.

Thus, RESA respectfully requests that the Commission grant these exceptions, approve the Partial Settlement as submitted and direct that:

> (1) PPL's proposal to lower the hourly priced default service threshold to C&I customers with peak demand at or above 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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6 *See* 66 Pa C.S. § 2803 and 2804(6).

II. EXCEPTIONS

A. **Exception No. 1: The ALJ Erred In Rejecting PPL's Proposal To Provide Hourly Priced Default Service To Commercial Customers With Peak Demand At Or Above 100 kW (RD at 41-45; FOF # 62; Ordering ¶ 2)**

The ALJ does not dispute (because she cannot) that PPL's proposal is consistent with the *End State Order*.[7] Rather, the ALJ ultimately concludes that the Commission's *End State Order* is not consistent with the Competition Act and PPL has not met its burden of showing that its proposal is consistent with the ALJ's interpretation of the Competition Act. To reach this end result, the ALJ analyzes 52 Pa Code §69.1805 and the *End State Order* and finds that: (1) "neither one is legally binding and each acts as advisory to both the parties in a default service case and to the Commission itself;"[8] (2) Section 69.1805 most closely aligns with her interpretation of the Competition Act; and, (3) substantial evidence does not support PPL's proposal as consistent with her interpretation of Section 69.1805. The ALJ's analysis, however, is faulty on a number of different levels. As such, her recommendation to reject PPL's proposal is clearly erroneous and must be rejected by the Commission.

The ALJ correctly begins her legal analysis regarding the requirements of the Competition Act by nothing that the default service provider is required to acquire electric energy through a "prudent mix" 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.[9] The ALJ, however, then inexplicably stops her analysis of the

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7 RD at 45.

8 RD at 44.

9 66 Pa. C.S. §§ 2807(e)(3.1), (3.2), and (3.4).

Competition Act even though the Competition Act contains other important and directly relevant sections that need to be considered. Importantly, the Competition Act specifically states that transitioning customers to the competitive market is "in the public interest" because "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[10] As the Commonwealth Court has noted, "the Competition Act was enacted to establish competition in the sale of electric power" and "places an affirmative mandate on the PUC to foster competition" so as to "provide cost savings to consumers."[11] Thus, the General Assembly clearly anticipated that the competitive market would lead to lower (or at least market based) pricing for electricity and the Competition Act specifically requires the Commission to take measures to develop a competitive retail market.[12] Therefore, in addition to satisfying the specific requirements of Section 2807(e)(3.1) regarding procurement plan design, the Commission is legally required to ensure that the approved default service plan is reasonably calculated to promote the development of a workably competitive retail generation market.

Despite all of these clear statutory requirements, the ALJ focuses only on the product mix of the procurement plan for C&I customers with demand at or above 100 kW to conclude that the evidence does not support a finding that PPL's proposal "is consistent with the goal of the statute to establish a default plan which provides the least cost over time by using a prudent mix of products."[13] Nowhere in the ALJ's analysis does she discuss how the clearly expressed goals of competition and direct access to the competitive market set forth in the Competition Act

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[10] 66 Pa.C.S. § 2802(3),(5).

[11] *ARIPPA v. Pennsylvania Public Utility Commission*, 792 A.2d 636, 642, 654 n. 30; (Pa. Commw. Ct. 2002); *PP&L Industrial Customer Alliance v. PUC*, 780 A.2d 773, 776 (Pa. Commw. Ct. 2001).

[12] 66 Pa. C.S. §§ 2802(3) and (5); *see also Green Mountain Energy Company v. Pa. Public Utility Commission,* 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

[13] RD at 45.

would be accomplished by denying C&I default service customers hourly priced default service (which is reasonably calculated to lead to a robust competitive market where there are a significant number of competitive alternatives available). Rather, she focuses on whether there is a "prudent mix" of contracts[14] and the number of C&I default service customers to leap to the conclusion that the 5% decrease in shopping rate for these customers shows that these customers "see as desirable" the current full-requirements load-following contracts approach.[15] Apparently, the ALJ believes that the default service plan should be designed to satisfy what she thinks are the preferences of default service customers based on her interpretation of what the shopping statistics mean. This, however, lacks evidentiary support and fails to achieve all the goals of the Competition Act.

Contrary to the ALJ's flawed views, the substantial evidence here makes clear that all of the requirements of the Competition Act are satisfied by adopting PPL's proposal. As explained by RESA Witness Richard J. Hudson, Jr., hourly default service 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.[16] Thus, hourly priced default service leads to a default service structure that promotes the development of a robust competitive retail market which results in a variety of products and services for customers. Robust competition will lead to least cost over time for consumers. Hourly pricing also benefits customers and achieves broader public policy goals by providing more accurate price signals that

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[14] RD at 43-44.

[15] RD at 45.

[16] RESA St. No. 1 at 15; See also RESA Initial Brief at 5-6.

can better encourage energy conservation and demand response.[17] Thus, the substantial record evidence fully supports PPL's proposal as consistent with the entire Competition Act and the ALJ's contrary analysis must be rejected.

Moreover, while the ALJ is unjustifiably critical of the Commission's *End State Order* as "expanding the standard provided in the statute" and advises the Commission that it should "do so in a formal rulemaking proceeding,"[18] the ALJ's admonition ignores the Commission's long-standing view – as even stated in Section 69.1805(2) – that the amount of "shorter duration purchases and spot market purchases" for the default service load for C&I customers with 25 – 500 kW in peak load "should be gradually increased, depending on developments in retail and wholesale energy markets."[19] In fact, at the time the Commission adopted Section 69.1802(2), it made clear that it "did not interpret Act 129 as limiting [its] ability to provide guidance to EDCs in their procurement practices for particular customer groups."[20] Rather, the Commission recognized "that there were practical limits to its regulation of large, complex energy markets" and that "[r]equirements that might seem very appropriate today could be rendered obsolete by changes in markets, applicable law, or advances in technology."[21] Therefore, the Commission chose to adopt a policy statement to provide "guidance to the industry as opposed to strict rules," with the intent that such guidance could be reevaluated and reshaped as markets changed and developed.[22] In other words, the Commission has always been clear since the inception of

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17 RESA St. No. 1 at 16.

18 RD at 43.

19 52 Pa Code § 69.1805(2).

20 *Proposed Policy Statement Regarding Default Service and Retail Electric Markets,* Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011 at 13 ("*Default Service Policy Statement*").

21 *Default Service Policy Statement* at 2.

22 52 Pa. Code § 69.1802; *Default Service Policy Statement* at 2, 4.

Section 69.1505(2) that: (1) it expected the default service plan for these C&I customers to increase reliance on short-term contracts and spot market purchases over time; and, (2) that the Commission maintained its ability to provide guidance regarding procurement practices as the markets evolved. PPL's proposal and the *End State Order* are consistent with both of these points.

Following adoption of Section 69.1802(2), the Commission provided additional guidance to the EDCs (and all interested stakeholders) about the default service procurement plan for C&I customers with demand at or above 100 kW at several points in time. The first time the Commission addressed this issue during its Retail Markets Investigation ("RMI") it issued an order reiterating its policy in favor of the expansion of hourly-riced default service but recognizing that there were operational hurdles (i.e. a lack of installed interval metering or smart meters) such that lowering the hourly priced demand threshold effective June 1, 2013 would not be practical.[23] The Commission then addressed this issue a second time in its January 24, 2013 order adjudicating PPL's default service plan effective June 1, 2013. In that proceeding, PPL noted that it was in the process of implementing real-time pricing for C&I customers with demand at or above 100 kW and that would address "implementation of a 100 kW split for the Small C&I customers in a future default service filing."[24] Finally, the *End State Order* is the third and most recent guidance provided by the Commission to the EDCs making clear that it

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[23] *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952; Final Order entered December 16, 2011 at 60-61.

[24] *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 62.

expected – effective June 1, 2015 – the EDCs would "offer only hourly LMP to medium and large C&I customers with interval meters."[25]

Thus, the ALJ's effort to isolate and compare the Section 60.1805(2) and the *End State Order* misses the point that the market continues to evolve and the Commission has been clear to the industry and interested stakeholders that its policies would continue to evolve. The *End State Order* was not issued in a vacuum but, rather, followed a nearly three year process involving all segments of the industry and interested stakeholders.[26] In sum, there is simply nothing illegal or untoward about the *End State Order* nor is there any reason to justify the ALJ's recommendation that it be disregarded. On the contrary, PPL's proposal to lower the hourly demand threshold for C&I customers to those with peak demand at or above 100 kW is soundly supported by the evidence in the record and fully satisfies all the requirements of the Competition Act. As such, the ALJ's recommendation that PPL's proposal be rejected must be denied.

B. Exception No. 2: The ALJ Erred In Recommending That PPL Not Be Directed To Assume The Cost Responsibility For Non-Market Based Charges And Recover Costs From All Distribution Customers Through a Non-Bypassable Surcharge (RD at 51; Ordering ¶ 3)

The ALJ erred in concluding that there is no "persuasive evidence" to support RESA's recommendation that PPL be directed to assume the cost responsibility for all NMB Charges for all load (wholesale default service suppliers and EGSs) and recover the costs from all customers through a non-bypassable charge.[27] While the ALJ does not provide any detailed analysis about the reasons underlying her ultimate conclusion, the following record evidence fully supports rejecting the ALJ's recommendation and adopting RESA's proposal.

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[25] *End State Order* at 29, 31.

[26] *See* http://www.puc.state.pa.us/utility_industry/electricity/retail_markets_investigation.aspx

[27] RD at 51.

At the outset, it is important to remember that all customers will pay for the costs of NMB Charges regardless of the decision reached by the Commission in this proceeding.[28] The difference in adopting RESA's proposal – which recommends that PPL assume the cost responsibility for the NMB Charges for all load – is that the amount that would be paid by all customers (default and shopping) will be only the actual costs of the NMB Charges because neither the wholesale default service suppliers nor the EGSs would need to figure out how to calculate the costs of unpredictable future rate increases to the NMB Charges and factor them into the retail prices paid by all customers (whether paid in the default service rate or the supplier contract price).

Risk premiums are implicated by the NMB Charges because they are all non-hedgeable wholesale cost obligations which all load serving entities ("LSEs") in the wholesale market are required to pay (and which all LSEs recover from customers). Theses cost items are not market based because they are either fully regulated or quasi-regulated costs imposed at the wholesale level. These costs are unpredictable and cannot be hedged by competitive retail suppliers (i.e. EGSs) or wholesale default service suppliers.[29] This point is not disputed.[30]

The nature of these NMB Charges means that any non-EDC entity (i.e. wholesale default service supplier or EGS) that has to assume the cost responsibility for the charge must determine how to account for the risk of future unpredictable rate increases. Because these NMB Charges are not based on transparent, market-based factors (like the market-based energy commodity

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[28] RESA Initial Brief at 7-8.

[29] *See* RESA Initial Brief at 9-11 which discusses more fully each of the charges. *See also* RESA St. No. 1 at 17-18; RESA St. No. 1-SR at 14, 24-25.

[30] PPL concedes that the NMB Charges are unpredictable and cannot be hedged. PPL Initial Brief at 18. PPLICA also acknowledged that there was a 52% increase to NITS in the PPL zone effective June 1, 2013. PPLICA Main Brief at 13. *See* RESA Initial Brief citing RESA St. No. 1-SR showing the changes to the NITS rates.

cost), there is no reasonable way to calculate future unpredictable rate increases and then reasonably factor them into retail pricing (regardless of whether the retail price evolves from the bid for default service or the contract price offered to a customer by an EGS).[31] Therefore, when non-EDCs are required to assume the cost responsibility for the NMB Charges, retail customers are likely paying more than just the actual cost of the charge due to risk premiums. When customers may have a retail price that does not include risk premiums (whether the EGS miscalculated, negotiated away, or lacks authority[32] to pass through the unpredicted rate increase), the result will be to require the EGS to absorb the costs. This is not sustainable in the long term and will likely result in less competitive options offered by suppliers in the future.

In contrast to the difficulties faced by both EGSs and wholesale default service suppliers regarding how to account for unpredictable future rate increases to NMBs, when an EDC assumes the cost responsibility on behalf of all load – wholesale default service suppliers and EGSs – the result is that no customers pay anything beyond the actual costs of the NMB Charges. This is because when the EDC assumes the cost responsibility for NMB Charges, it is permitted to recover all reasonable costs incurred to provide default service on a full and current basis, pursuant to a reconcilable automatic adjustment clause.[33] This situation does not exist in PPL's service territory today because PPL currently assumes the cost responsibility only on

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31 *See* RESA Reply Brief at 11-12, citing RESA St. No. 1 at 17-18.

32 *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*"). As explained more fully in RESA's Reply Brief, the Commission's *Fixed Price Label Order* places practical constraints on the ability of EGSs to recover the costs of unpredictable future rate increases to the NMB Charges because there is only one way to guarantee EGSs maintain this ability and that is to offer a variable priced product. RESA Reply Brief at 7-10., citing RESA St. No. 1 at 21. It should be noted that 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.

33 66 Pa.C.S. § 2807(e)(3.9). *See* RESA Reply Brief at 13-14.

behalf of wholesale default service suppliers. The result is that only default service customers receive the benefit of ensuring that they pay only the actual costs of the NMB Charges. This is because PPL's assumption of the cost responsibility of NMB Charges for wholesale default service suppliers means that the wholesale default service suppliers do not need to factor into their bids a risk premium for future unpredictable price changes. In contrast, in PPL's service territory today, PPL does not assume the cost responsibility for any NMB Charges for EGSs. As such, EGSs are required to assume the cost responsibility of the NMB Charges for shopping load and must determine how to factor into their retail pricing the costs of future unpredictable rate increases to the NMB Charges. RESA's proposal, which was erroneously rejected by the ALJ, would resolve this inequity and ensure that all customers only pay the actual costs of the NMB Charges.

Moreover, from a legal standpoint – as the Commission has already correctly concluded – there is no legal bar to requiring PPL to assume the cost responsibility for the NMB Charges.[34] On the other hand, maintaining the status quo whereby PPL assumes the cost responsibility for wholesale default suppliers is contrary to the Competition Act which requires:

- that EDCs permit EGS "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 . . ."[35]
- the EDCs "shall provide transmission and distribution service to all . . . [EGSs]. . . on rates, terms of access and conditions that are comparable to the utilities own use of its system."[36]

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[34] *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 ("*FE DSP III Order*").

[35] 66 Pa. C.S. § 2803(emphasis added).

[36] 66 Pa. C.S. § 2804(6).

As discussed previously, when an EDC assumes the cost responsibility for NMB Charges it can advantage its right to full cost recovery of those charges to ensure that customers only pay the actual costs of the NMB Charges.[37] By requiring the EDC to assume the cost responsibility for the NMB Charges for both wholesale default service suppliers and EGSs, the result is that all LSEs receive nondiscriminatory access to the EDC's right of cost recovery and, therefore, the issue of including risk premiums into a retail price to account for NMB Charges is completely eliminated. If, however, the EDC assumes the cost responsibility for just one of the two entities that have the contractual requirement to supply the power to the customer (i.e. wholesale default service supplier) and not the other (i.e. EGS), then only the one entity gets the benefit of the EDC's right to full cost recovery for the NMB Charges. This is discriminatory access in violation of the Competition Act. Moreover, as explained previously, any scenario whereby the EGS is required to assume the cost responsibility means that risk premiums may be factored into the retail prices paid by shopping customers to account for these charges.

The best way to satisfy the requirements of the Competition Act regarding equal and nondiscriminatory access and to ensure that all customers only pay the actual costs of the NMB Charges is to require the EDC to assume the cost responsibility for both the wholesale default service suppliers and the EGSs because then all LSEs are being treated equally by the EDC. In lieu of this, however, the Commission cannot permit the EDC to assume the cost responsibility on behalf of the wholesale default service supplier only as PPL currently does.[38] Although this is the less preferable outcome for the customer in lieu of RESA's primary recommendation because it does not eliminate the issue of risk premiums for customers, at least it addresses the

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37 66 Pa. C.S. § 2807(e)(3.9).

38 RESA Initial Brief at 19-20, *citing* RESA St. No. 1-SR at 12-13.

Competition Act's requirements for nondiscriminatory and equal access because neither the wholesale default service supplier nor the EGS are receiving the benefit of the EDC's right to cost recovery. Of course, though, this also means that the customers are not receiving this benefit either but because both the wholesale default service supplier and the EGSs are required to determine how to factor risk premiums into their retail pricing, the retail rates paid by default service customers and shopping customers are more of an apples-to-apples comparison.[39]

Finally, while the Commission chose not to adopt RESA's preferred position for NITS for the FirstEnergy EDCs, maintaining the status quo here – as erroneously recommended by the ALJ – would treat NITS and all of the other NMB Charges differently for PPL than they are treated for the FirstEnergy EDCs. This is because the FirstEnergy EDCs assume the cost responsibility for almost all of the NMB Charges for all load and they do <u>not</u> assume the cost responsibility for NITS for wholesale default service suppliers.[40] While RESA maintains that the preferred approach whereby PPL would assume the cost responsibility for all NMB Charges for all load can and should be adopted as the best approach both practically and legally, in lieu of that, the Commission should at least issue a decision that better aligns PPL with the outcome of the *FE DSP III* proceeding. To achieve this 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,

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39 RESA St. No. 1-SR at 12-13.

40 *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.*

- 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).[41]

All of this record evidence shows that adopting RESA's proposal to require PPL to assume the cost responsibility for all load (shopping and default) for all NMB Charges and recovering the costs from all customers is consistent with the Competition Act and in the public interest because it ensures that all customers pay only the actual costs for these non-market based, unpredictable charges. For these reasons, the ALJ's recommendation on this issue must be rejected.

III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission grant these exceptions, approve the Partial Settlement as submitted and direct that:

> (1) PPL's proposal to lower the hourly priced default service threshold to C&I customers with peak demand at or above 100 kW be adopted;

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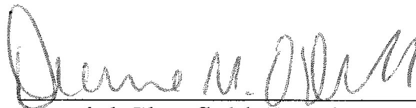
[41] This is not RESA's preferred outcome whereby PPL would assume the cost responsibility for all NMB Charges but this alternative recommendation would be consistent with how the FirstEnergy EDCs handle this charge. *See* Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power 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.

(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.

Respectfully submitted,



Daniel Clearfield, Esquire
Attorney ID #26183
Deanne M. O'Dell, Esquire
Attorney ID #81064
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

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