

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of PPL Electric Utilities Corporation
for Approval of its Default Service Program**

**Public Meeting held January 15, 2015
2417907-OSA
Docket Nos. P-2014-2417907**

STATEMENT OF COMMISSIONER GLADYS M. BROWN

Before the Commission for consideration and disposition is the Petition of PPL Electric Utilities Corporation (PPL) for Approval of its Default Service Program for the period of June 1, 2015 through May 31, 2017.

On September 12, 2014, the Parties to this proceeding filed a Joint Petition for Partial Settlement. The Parties failed to settle on a number of issues, one being whether PPL should assume responsibility for non-market-based PJM charges for all customer load, both shopping and non-shopping, and recover those costs through a non-bypassable charge.¹ Another being whether or not PPL should expand the number of customers who receive hourly-priced default service.

On October 30, 2014, Administrative Law Judge (ALJ) Susan Colwell issued a Recommended Decision which recommended approval of the Partial Settlement and, *inter alia*, denied the proposal by the Retail Energy Supply Association (RESA) and Exelon Generation Company, LLC (ExGen) to incorporate non-market-based PJM charges into a non-bypassable charge. The ALJ submits that "...the record in this case contains no persuasive evidence to support a modification to the present method used by PPL for the collection of transmission and transmission-related costs." Exceptions and Reply Exceptions were filed by numerous Parties in response to the Recommended Decision.

It is my opinion that the collection of non-market based charges such as NITS in a competitively-neutral manner can work to benefit consumers by reducing the risk-premiums that EGSs and wholesale generation providers embed in their prices. This is particularly relevant for EGSs given the Commission's recently issued Guidelines on fixed price products at Docket Number M-2013-2362961. As RESA points out in its Exceptions, requiring the EDCs to assume the cost responsibility associated with these non-market based PJM charges for all load removes additional costs from the price customers will pay. This is the case because, unlike an EGS, an EDC is permitted to recover on a full and current basis all reasonable costs incurred to provide default service. Therefore, the EDC will not place a risk premium on the recovery of these costs. This is contrary to what an EGS would do since the costs cannot effectively be hedged.

The second issue which was not settled regards procurement of default service supply for Small Commercial customers with demand between 100 kW and 500 kW. PPL proposes to serve these customers by reclassifying them as Large Commercial customers and offering them hourly-rates.

¹ Non-market-based PJM charges include network integration transmission service, transmission enhancement costs, expansion cost recovery costs, non-firm point-to-point transmission service credits, regional transmission expansion plan, and generation deactivation charges.

PPL apparently proffered this change to comply with the Commission's direction in the *Investigation of Pennsylvania's Retail Electricity Market; end State of Default Service*, Docket No. I-2011-2237952 at 31-32 (February 15, 2013) (*RMI Order*), that customers with interval meters and peak demands above 100 kW be moved to hourly-priced default service. I wish to note that the *RMI Order* recognized that the Commission was treading a fine line between setting market-reflective competitive policies and complying with the prudent mix procurement language in Act 129 of 2008²:

While the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers **and an hourly LMP product for "medium" C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act.** To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.

(*RMI Order* at 45, footnote omitted, (emphasis added)). As noted in the *RMI Order*, this Commission is a creature of the Legislature and, as such, is well-served to ensure that the General Assembly is supportive of our overall policy on matters as important as the retail market for electricity. The then sitting Commission which approved the *RMI Order* stated its intent to seek legislative changes that afford the Commission the flexibility to make this kind of questionable policy change. Those legislative changes have not yet been made; therefore, I had to weigh this issue carefully.

The ALJ rejected the proposal to move these commercial customers to hourly default service rates, stating that PPL "...has provided no evidence to support a finding that its proposal to move small commercial customers to hourly pricing is consistent with the goal of the statute." (RD at 44-45).

I would be remiss not to mention that the Commonwealth Court has since ruled that this Commission acted within the bounds of Act 129 when the Commission approved Pike County Electric Company's 100% spot market procurement in its default service filing. *Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal den.*, 2013 Pa. Lexis (2013). However, the court in *Popowsky* also found that the Commission's approval of a spot market only procurement in light of the prudent mix standard was lawful since the Commission properly considered the possibility of including short-term contracts (including financial hedges) and determined it was not prudent to do so. *Popowsky*, 71 A. 3d 1112, 1118. As acknowledged by the court in *Popowsky*, "the Preamble to Act 129 indicates that **price stability was one of the goals to be achieved by that act, and that price instability was one of the harms the act was intended to**

² 66 Pa. Cons. Stat § 2807(e)(3.2) (*hereinafter* Act 129 or Section 2808(e)(3.2)) (2008 Pa. Session Laws page no. 970)(amending 66 Pa. Cons. Stat § 2807(e)(2)-(3)(1996)).

ameliorate ...” 71 A.3d 1112, 1117 (emphasis added). The court ultimately determined that the Commission had not discounted the importance of price stability, and that the Commission concluded that the additional benefits of a financial hedge would not be justified by the additional costs. 71 A.3d 1112, 1118. No evidence was offered into the record in this case to quantify the amount of price volatility as compared to the putative price savings the Commercial class would be exposed to if moved to hourly spot market default service supply.

Having voiced this concern, I will submit that the partial Settlement does establish a default service plan that satisfies the procurement requirements under Act 129, specifically, Section 2807(e) of the Public Utility Code; 66 Pa. C.S. § 2807(e). This provides that a default service provider must procure electric power via a prudent mix of spot market, short-term, and long-term contracts designed to ensure adequate and reliable service at the least cost to customers over time. PPL’s proposed default service plan includes spot market products in the large commercial and industrial portfolio, short-term contracts in the residential and small commercial portfolio, and long-term contracts in the residential portfolio.³ The mix of contracts is by no means an exact science but, I note that if the default service plans that were in place during the recent polar vortex had been priced solely on short-term or hourly contracts, default service customers would have been exposed to extreme pricing volatility.

Because PPL’s overall plan includes a prudent mix sufficient to satisfy Section 2807(e) of the Code, and the Court’s ruling in *Popowsky*, I will vote to approve the hourly-priced default service for customers with demand between 100 kW and 500 kW. I also wish to note, as I have in previous default service proceedings, that none of the default service plans that I have voted on during my tenure include “new” long-term contracts, only long-term contracts inherited from previous default service plans. These grandfathered contracts will eventually expire. I wish to clarify that, in my opinion, it will be incumbent upon the EDCs and this Commission to carefully consider long-term contracts of four to twenty year terms, consistent with Section 2807(e) of the Code; in future default service plans unless the Legislature decides otherwise.

As such, I will vote to approve PPL’s default service programs as outlined in the partial Settlement but, note that it is my position that non-market-based PJM charges should be recovered for all customers via a non-bypassable charge.

January 15, 2015
Date


Gladys M. Brown, Commissioner

³ The residential portfolio includes a ten-year block energy product grandfathered into this portfolio from past default service procurements. This block product expires on May 31, 2021.