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February 9, 2015

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 Answer of PPL Electric Utilities Corporation to the Petition of the Office of Small Business Advocate for Reconsideration of the Commission's Order, Entered January 15, 2015, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/skr
Enclosures

cc: 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: February 9, 2015

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

ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO THE PETITION OF THE OFFICE OF SMALL BUSINESS ADVOCATE FOR RECONSIDERATION OF THE COMMISSION'S ORDER, ENTERED JANUARY 15, 2015

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Dated: February 9, 2015

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PPL Electric Utilities Corporation ("PPL Electric"), pursuant to 52 Pa. Code § 5.572, hereby respectfully submits this Answer to the Petition for Reconsideration filed by the Office of Small Business Advocate ("OSBA") on January 30, 2015. In its Petition, the OSBA seeks reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission ("Commission") entered January 15, 2015 ("*Opinion and Order*"). Specifically, the OSBA requests that the Commission reverse its approval of 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.[1]

For the reasons explained below, PPL Electric respectfully requests that the Commission expeditiously deny OSBA's Petition for Reconsideration at its Public Meeting scheduled for February 12, 2015. In the alternative, to the extent that the Commission grants reconsideration pending further consideration of the merits, PPL Electric respectfully requests that the Commission limit reconsideration to the single issue raised in the OSBA's Petition for Reconsideration and fully decide the merits of the OSBA's Petition for Reconsideration on or before the Public Meeting scheduled for February 26, 2015. Finally, PPL Electric respectfully requests that the Commission promptly review and approve PPL Electric's compliance filing and procurement plan no later than the end of February 2015. As explained further below, action prior to the end of February 2015 on the OSBA's Petition for Reconsideration and PPL Electric's compliance filing is critical in order for PPL Electric to undertake its first procurement under the new procurement plan in mid-April 2015 to develop rates for service to customers effective June 1, 2015.

[1] Currently, Rate Schedule GS-3 customers with peak demand of 500 kW or greater receive hourly default service under GSC-2, and Rate Schedule LP-4 customers with peak demand of less than 500 kW receive fixed price default service under GSC-1. As proposed by PPL Electric and approved by the *Opinion and Order*, these break points will be changed to 100 kW.

I. INTRODUCTION

On April 18, 2014, PPL Electric filed a Petition requesting 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, from June 1, 2015 through May 31, 2017 (the "DSP III Program Period"). PPL Electric's proposed DSP III Program, *inter alia*, consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits ("AECs") during the DSP III Program Period; an implementation plan; a proposed rate design, including a Time-of-Use ("TOU") rate option for Default Service during the DSP III Program Period; a proposal to continue and expand the Company's current Standard Offer Referral Program ("SOP"); and a contingency plan for the DSP III Program.

Pertinent to the OSBA's Petition for Reconsideration, PPL Electric's DSP III Program also proposed to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW. PPL Electric explained that 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 *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. Docket No. P-2012-2302074, Slip Op. pp. 62-63 (Opinion and Order entered July 24, 2013) ("*DSP II Order*"), and the Commission's expectation announced 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*"). 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.

As a result of extensive settlement discussions, the active parties were able to achieve a partial settlement. On September 12, 2014, a Joint Petition for Partial Settlement ("Settlement")

was filed to resolve the vast majority of the issues and concerns raised in the instant proceeding.[2] The Settlement reserved two discrete issues for litigation. As relevant to this Petition for Reconsideration, one issue was PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW.

By Secretarial Letter dated October 30, 2014, the Commission issued the Recommended Decision ("RD") of Administrative Law Judge Susan D. Colwell. Therein, the RD concluded that the Settlement is in the public interest and should be approved without modification. The RD also recommended that the Commission reject PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW.

On November 19, 2014, PPL Electric and RESA filed Exceptions on the Small C&I demand split proposal. Replies to Exceptions on this issue were filed by the OSBA on December 1, 2014. Pertinent to OSBA's Petition for Reconsideration, on January 15, 2015, the Commission entered an Opinion in Order that approved the Settlement without modification and approved the proposal of PPL Electric to change the customer size demarcation between the Small C&I Customer Class and the Large Commercial & Industrial ("Large C&I") Customer Class from a peak demand level of 500 kW to a peak demand level of 100 kW.

On January 30, the OSBA filed the pending Petition for Reconsideration. In its Petition for Reconsideration, the OSBA seeks reconsideration of the Commission's approval of PPL Electric's proposal to reduce the peak demand limitation for the Small C&I Customer Class from 500 kW to 100 kW. Specifically, the OSBA asserts that the Commission overlooked the fact that

[2] PPL Electric, the OSBA, the Office of Consumer Advocate ("OCA"), PP&L Industrial Customer Alliance, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Sustainable Energy Fund, Citizens for Pennsylvania's Future, NextEra Energy Power Marketing, LLC, Retail Energy Supply Association ("RESA"), and Exelon Generation Company, LLC were Signatory Parties to the Settlement. The Bureau of Investigation and Enforcement for the Commission, FirstEnergy Solutions Corp., Noble Americas Energy Solutions LLC, and Direct Energy Services, LLC were not parties to the Settlement but indicated that they do not object.

there already exists a fully competitive marketplace for PPL Electric's Small C&I Customer Class, and that the current competitive marketplace affords Small C&I customers with a choice whether they want service from an electric generation supplier or from PPL Electric as the default supplier. (OSBA Petition, p. 4) The OSBA also contends that the Commission's approval of PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW is inconsistent with the "prudent mix" requirement. (OSBA Petition, pp. 5-6) Finally, the OSBA argues that the Commission erred as a matter of law because it lacks legal authority to approve PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW. (OSBA Petition, pp. 6-7)

For the reasons explained below, as well as those more fully explained in the Commission's *Opinion and Order*, the OSBA's Petition for Reconsideration should be denied, and the Commission should promptly review and approve PPL Electric's DSP III Program compliance filing and procurement plan.

II. LEGAL STANDARD

The Commission's standards for granting reconsideration following final orders are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

> A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Thus, in order for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard -- "by the Commission" -- focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597, p. 3 (May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been but were not previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* As explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

As explained below, the OSBA's Petition clearly fails to satisfy the standards for granting reconsideration.

III. ARGUMENT

A. The OSBA's Petition Fails to Satisfy the Standards for Granting Reconsideration

The OSBA's Petition for Reconsideration fails to satisfy the *Duick* standards for granting reconsideration. The OSBA's Petition does not raise new or novel arguments or issues that were

not considered by the Commission. Rather, the OSBA's Petition merely re-raises the very same arguments that clearly were previously considered and rejected by the Commission in its *Opinion and Order*. Therefore, for this reason alone, as more fully explained below, the OSBA's Petition for Reconsideration should be denied.

In its Petition, the OSBA first argues that the Commission overlooked the fact that there already exists a fully competitive marketplace for PPL Electric's Small C&I Customer Class and, that the current competitive marketplace affords Small C&I customers with a choice whether they want service from an electric generation supplier or from PPL Electric as the default supplier. (OSBA Petition, p. 4) These are the very same arguments raised in the OSBA's Reply to Exceptions. (*See* OSBA Reply Exceptions, pp. 7-8) Although the OSBA characterizes these arguments as facts that were "overlooked" by the Commission, such characterization is inaccurate. These arguments were fully considered and rejected by the Commission in its *Opinion and Order*, which provides, in pertinent part, as follows:

> The OSBA contends that RESA ignores the fact that the 430 Small C&I customers that would be affected by PPL's proposal already have complete access to the competitive market, and that they have all decided that taking default service from PPL is superior to competitive options. The OSBA further contends that RESA ignores the fact that shopping in the Small C&I class is already robust, and therefore, the existing procurement and pricing mechanism for these customers is not imposing any unreasonable bar to competition. OSBA R. Exc. at 7-8. Thus, the OSBA asserts that "the ALJ's legal analysis missed nothing," because there is already a fully robust competitive market in PPL's service territory. *Id.* at 8.
>
> * * *
>
> In this case, PPL indicated that all of the customers affected by its proposal to lower the demand threshold to 100 kW for the Large C&I class are equipped with demand meters. Furthermore, PPL stated that 88% of these customers are currently shopping. PPL M.B. at 14. Thus, we agree with the Company that these customers "are well-equipped and educated to manage their

> commodity costs in an hourly spot market default service environment." *Id.*; *See also*, End State Order at 29. As for the OSBA's concern that customers affected by PPL's proposal will be deprived of fixed-price service that may provide greater price stability, we believe that C&I customers' desire for fixed-price products can be adequately addressed though the competitive offerings of EGSs.

See Opinion and Order, pp. 41, 43. Clearly, the Commission has already considered and rejected the arguments raised in the OSBA's Petition for Reconsideration regarding the successful competitive market.

The OSBA next contends that the Commission's approval of PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW is inconsistent with the "prudent mix" requirement. In support, the OSBA's Petition for Reconsideration cites to and quotes the discussion in the RD regarding the "prudent mix" standard required in 66 Pa.C.S. § 2807(e)(3.2), the Commission's policy statement at 52 Pa. Code § 69.1805 promoting the "prudent mix" standard, and the Commission's *End State Order*. (OSBA Petition, pp. 5-6) According to the OSBA, the Commission "made no attempt to address the legal defects demonstrated by the ALJ in her RD." (OSBA Petition p. 6) These arguments, however, were raised in the OSBA's Reply to Exceptions (*see* OSBA Reply Exceptions, pp. 4-5) and, moreover, were fully considered and rejected by the Commission. Indeed, the Commission's *Opinion and Order* provides, in pertinent part, as follows:

> The ALJ appears to believe that a single, hourly-priced spot market product for the C&I customers affected by PPL's proposal does not meet the "prudent mix" standard of the Competition Act. However, we agree with PPL that the Competition Act does not require that multiple products necessarily be procured for each customer class of a default service provider, but rather, requires that a default service plan as a whole include a prudent mix of spot market purchases, short-term products, and long-term purchase contracts as necessary to ensure adequate and reliable service to customers at the least cost over time. *See*, 66 Pa. C.S. §§ 2802(e)(3.2) and 2807(e)(3.4). In addition, as PPL points out, the

> Commonwealth Court recently upheld the Commission's approval of a default service plan for Pike County that included only spot market purchases, finding that the Commission properly determined that a "prudent mix" of products may include only one of the sources enumerated in 66 Pa. C.S. 2807(e)(3.2) when this is the most prudent course and is likely to incur the least cost over time. *Popowsky* at 1116 1117.
>
> The OSBA argues that the circumstances presented in the Pike County proceeding were markedly different from those in the instant proceeding, and the ALJ appears to agree, referring to the Pike County situation as a "specific exception." R.D. at 43. However, regardless of how different the specific circumstances may be, the Court found that the Commission's interpretation of 66 Pa. C.S. 2807(e)(3.2) properly allowed for the possibility that a single procurement source may constitute a "prudent mix" of sources when the evidence supports such a conclusion. Similarly, in this case, we find that PPL's proposal, which will result in the expansion of hourly-priced default service to an additional group of C&I customers, will result in least-cost service over time for these customers, and constitutes part of a prudent mix of products included in PPL's overall DSP III program, consistent with 66 Pa. C.S. 2807(e)(3.2). Moreover, this Commission has approved hourly pricing for C&I customers on a number of prior occasions. *See, e.g., PPL DSP II; 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) (FirstEnergy DSP III Order); *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 (Opinion and Order entered December 4, 2014).

See Opinion and Order, pp. 43-44. Clearly, the Commission has already considered and rejected the arguments raised in the OSBA's Petition for Reconsideration regarding the "prudent mix" standard.

Finally, the OSBA argues that the Commission erred as a matter of law because it lacks legal authority to approve PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW. (OSBA Petition, pp. 6-7) Again, this is the very same

argument raised in the OSBA's Reply to Exceptions. (*See* OSBA Reply Exceptions, pp. 9-10) Moreover, the Commission clearly considered and rejected this argument in its *Opinion and Order*, which stated, in pertinent part, as follows:

> Finally, we do not agree with arguments suggesting that we are precluded from permitting EDCs to expand the availability of hourly-priced products to C&I customers with demand between 100 kW and 500 kW because of certain pronouncements we made in the *End State Order*. While we expressed a preference for legislative amendments that would provide the authority to approve default service plans containing more market-based products, we also stated our belief that "the Commission appears *currently* to have authority to establish shorter-term default service products that are more reflective of market conditions than existing products." *End State Order* at 45-46 (emphasis added). In the instant proceeding, we are not attempting to revise what the General Assembly has determined to constitute a prudent mix of products as enumerated in 66 Pa. C.S. 2807(e)(3.2). Rather, we are simply approving the proposed expansion of hourly-priced default service to an additional group of C&I customers who, as we stated above, appear to be "well-equipped and educated to manage their commodity costs in an hourly spot market default service environment," and who we believe will receive the benefits of reliable service at the least cost over time as a result, in accordance with 2807(e)(3.4).

See Opinion and Order, p. 45 (emphasis in original). There is no question that the Commission previously considered and rejected the arguments raised in the OSBA's Petition for Reconsideration regarding the Commission's authority to approve PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW.

Based on the foregoing, it is clear that all the arguments and issues presented in the OSBA's Petition for Reconsideration were fully presented to, considered by, and rejected by the Commission. Indeed, the OSBA has failed to articulate any new or novel arguments, issues or facts that were not previously considered by the Commission. Although the OSBA is apparently unhappy with the result reached by the Commission, the *Duick* standard simply does not permit a petitioner to re-raise issues and arguments that were previously considered and decided. Because

the OSBA's Petition for Reconsideration clearly fails to satisfy the *Duick* standards for granting reconsideration, the Commission should deny the OSBA's request for reconsideration of the January 15, 2015 Opinion and Order.

B. The OSBA's Arguments are Without Merit

Even assuming, *arguendo*, that the OSBA's Petition for Reconsideration satisfies the threshold for granting reconsideration, which it clearly does not for the reasons explained above, the OSBA's arguments are factually and legally incorrect. For these reasons, as further explained below, the Commission should deny the OSBA's Petition for Reconsideration.

1. The OSBA Misconstrues the Impact to the Small C&I Customers

The OSBA asserts that by adopting PPL Electric's proposal, 430 default service customers, representing about 13.7% of all Small C&I default service load, will be forcibly removed from fixed-price default service to an hourly spot market default service. (OSBA Petition, pp. 3-4) 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.

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) Although approximately 430 Small C&I default service customers would be impacted if PPL Electric's proposal is adopted, 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.

Further, if load is to be considered as suggested by the OSBA, 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)

Finally, as explained next, these 430 customers will not be required to take spot market-priced electric generation supply. Indeed, these customers can shop and still obtain fixed-price electric generation supply from the robust competitive market. *See Opinion and Order*, p. 43.

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, the Commission should deny the OSBA's Petition for Reconsideration and affirm the well-reasoned findings and conclusions set forth in the *Opinion and Order*.

2. The OSBA's Reliance on the Success of the Competitive Market is Misplaced

In its *Opinion and Order*, the Commission found PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW "to be consistent with the Competition Act's goals of promoting a competitive marketplace for electricity, and ensuring that customers receive adequate and reliable service at the least cost over time." *See Opinion and Order*, pp. 42-43 (citing 66 Pa.C.S. §§ 2802(7) and 2807(e)(3.4)). The OSBA asserts that promoting competition does not justify the Commission's approval of PPL Electric's proposal. (OSBA Petition, p. 4) For the reasons explained below, the OSBA's reliance on the competitive marketplace is misplaced.

The OSBA first argues that the Commission erred in approving PPL Electric's proposal because a fully competitive marketplace already exists for PPL Electric's Small C&I Customer

Class. (OSBA Petition, p. 4) PPL Electric acknowledges that the record demonstrates 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) However, the fact that a significant number of commercial and industrial customers with a demand of 100 kW or higher currently are shopping does not mean that additional measures designed to further promote competition should not be considered and/or implemented. Indeed, promoting competition in the marketplace is one of the fundamental policies underlying the Competition Act. *See* 66 Pa.C.S. § 2802.

In this case, 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) Indeed, the Commission found that "[s]pot market prices tend to produce the 'least cost to consumers over time' because lower risk premiums are included in spot-market-priced contracts due to the reduced uncertainty of recovery for wholesalers of costs related to generation and transmission services." *See Opinion and Order*, p. 43 (quoting *End State Order*, at 15). Further, the Commission has previously explained that 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*, p. 25. Notably, the OSBA does not dispute that PPL Electric's proposal would further promote the competitive market by reduced uncertainty of recovery for wholesalers of costs related to providing generation and transmission services to customers with a demand between 100 kW and 500 kW.

The OSBA also argues that the Commission erred in approving PPL Electric's proposal because the current competitive market affords Small C&I customers with a choice whether they want service from an electric generation supplier or from PPL Electric as the default supplier. According to the OSBA, the Competition Act was not intended to require "customers to shop even when they choose not to in a fully functioning and competitive marketplace." (OSBA Petition, p. 4) It is clear, however, that under PPL Electric's proposal, if adopted, all customers with a demand between 100 kW and 500 kW would still be able to voluntarily select to obtain competitive supply from an EGS or to take default service supply from PPL Electric. To be clear, under PPL Electric's proposal, customers with a demand between 100 kW and 500 kW will continue to be offered default service, *i.e.*, an hourly-priced spot market product.

The OSBA's true concern is that customers affected by PPL Electric's proposal will no longer be offered a fixed-price product that may provide greater price stability. The OSBA's concerns regarding price stability, however, mistakenly assumes that customers with a demand between 100 kW and 500 kW will be required to take spot market-priced electric generation supply. Although approximately 430 Default Service customers with a demand between 100 kW and 500 kW would be impacted by the proposed change to the Small C&I demand split, there is absolutely nothing in the record to suggest that these customers will be unable to obtain fixed-price electric generation supply from the competitive market. Stated otherwise, these customers can still obtain fixed-price electric generation supply from the competitive market. *See Opinion and Order*, p. 43.

Finally, the percentage of commercial and industrial customers with a demand between 100 kW and 500 kW who are shopping is very similar to the percentage of commercial and industrial customers with a demand over 500 kW who are shopping. (PPL Electric St. 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 Opinion and Order*, p. 43 (citing *End State Order*, at 29).

Based on the foregoing, the Commission should deny the OSBA's Petition for Reconsideration and affirm the well-reasoned findings and conclusions set forth in the *Opinion and Order*.

3. The Commission has Clear Authority to Determine what "Prudent Mix" Products will result in Least Cost over Time for Separate Groups

The OSBA contends that the Commission's approval of PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW is inconsistent with the "prudent mix" requirement. (OSBA Petition, pp. 5-6) For the reasons explained below, the Commission has clear authority to define what are prudent products to achieve least cost over time for separate groups.

Section 2807(e)(3.2) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3.2) does not require a default service provider to procure multiple default service products for each customer class (or in this case a subset of a customer class).[3] Rather, Section 2807(e)(3.2) 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. (RD, pp. 32, 53) It should be noted that the OSBA was a signatory to the Settlement.

[3] 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).

Moreover, the Commission and the appellate courts have clearly recognized that a single product can be a "prudent mix" for certain customer classes under appropriate circumstances and within the Commission's reasonable discretion. 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 for Pike County Light & Power Company that consisted solely of spot market purchases. On appeal, the OCA argued that, in order to satisfy the "prudent mix" standard set forth in 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 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. Further, as the OSBA conceded, other electric distribution companies ("EDCs") also offer a single hourly default service product to large commercial and industrial customers. (*See* OSBA Statement No. 1, p. 8)[4]

Although the OSBA may disagree with the Commission and appellate court precedent, the law is well-settled -- a single product can be a "prudent mix" for certain customer classes under appropriate circumstances and within the Commission's reasonable discretion. *See*

[4] *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 May 23, 2013) (approved using a single full-requirements, load-following, spot market default service product for the Large C&I Customer Class); *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) (approving a single hourly pricing default service product for the industrial customer class for West Penn Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company); *Petition of PECO Energy Co. for Approval of Its Default Service Program II*, Docket No. P-2012-2283641 (Order entered October 12, 2012). approving the procurement of a single hourly pricing default service product for the Large Commercial and Industrial Class); *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 Through May 31, 2013*, Docket No. P-2009-2135500, 2010 Pa. PUC LEXIS 1075 (Opinion entered June 21, 2010) (approving a single hourly pricing default service product for Large C&I customers).

Popowsky, supra. Moreover, it is important to emphasize, as the Commission observed on page 45 of its *Opinion and Order*, that the Commission has not directed adoption of a single product for an entire new customer class. Instead, it has adjusted the class definition to shift a small subgroup from Small C&I Customer Class to Large C&I Customer Class. Where, as here, a further group of commercial and industrial customers demonstrate shopping characteristics similar to the existing Large C&I Customer Class, the Commission has the discretion, consistent with the policy statement at 52 Pa. Code § 69.1805,[5] to redefine the parameters of the Large C&I Customer Class to include this group of customers, without violating the "prudent mix" standard.

PPL Electric submits that its proposal to reduce the demand level for the Small C&I Customer Class is entirely consistent with prior Commission and appellate court precedent and policy regarding the "prudent mix" standard. For these reasons, the Commission should deny the OSBA's Petition for Reconsideration and affirm the well-reasoned findings and conclusions set forth in the *Opinion and Order*.

4. The Commission has Clear Legal Authority to Approval PPL Electric's Proposal to Reduce the Size Limit of Small C&I Customers from 500 kW to 100 kW

In its Petition for Reconsideration, the OSBA argues that the Commission erred as a matter of law in approving PPL Electric's proposal to change the size limit of Small C&I customers from 500 kW to 100 kW because, according to the OSBA, the Commission admitted

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[5] The Commission's policy statement provides, in pertinent part, as follows:

> (2) Nonresidential customers with 25—500 kW in maximum registered peak load. The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

52 Pa. Code § 69.1805 (emphasis added).

in its *End State Order* that it lacks authority to force Small C&I customers into the spot market. (OSBA Petition, pp. 6-7) The OSBA, however, misstates the Commission's decision in the *End State Order*.

Relying on the *End State Order*, the OSBA appears to assert that the Commission cannot approve proposals to offer hourly spot market products to customers with a demand level above 100 kW without further legislation. 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*, p. 45.

It is clear that the Commission in its *End State Order* merely acknowledged that, absent further legislation, it may lack authority to mandate that all commercial and industrial customers over 100 kW in Pennsylvania be required to receive an hourly priced default service. However, there is nothing in the *End State Order* that prohibits or requires legislation before the Commission may approve a proposal to move commercial and industrial customers to spot market-priced products in appropriate circumstances.[6]

[6] The OSBA's theory regarding the need for further legislation before the Commission may approve a proposal, when applied to other proposals, would lead to illogical results. For example, the Commission has approved purchase of receivables ("POR") programs that have been proposed by many electric and natural gas distribution companies. There is nothing in the Public Utility Code that requires public utilities to implement POR programs, nor does the Public Utility Code expressly authorize the Commission to approve POR programs. Indeed, the Commission specifically held that POR programs are voluntary and the Commission is without authority to require public utilities to offer POR programs. *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary*

In this case, PPL Electric explained that it was proposing to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW for three primary reasons. First, 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 PPL Electric's DSP II Plan. *DSP II Plan Order*, Slip Op. pp. 62-63. Second, the Commission stated that it expected EDCs to implement a 100 kW demand split for commercial and industrial customers. *End State Order*, at *50, Slip Op. pp. 31-32. Third, the number of Default Service customers impacted, as of May 2014, is very small at approximately 430 customers, which is only 0.4% of all default service commercial and industrial customers. (*See* PPL Electric Initial Brief, pp. 12-13) The competitive market has developed more robustly on PPL Electric's system, particularly as to this subgroup, and PPL Electric's proposal to further adjust the product applied for this subgroup is consistent with that development.

PPL Electric submits that the issue of whether PPL Electric's proposal to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW is a matter of policy that is within the sound discretion of the Commission to decide. *See Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604 2011 Pa. PUC LEXIS 114 at *68 (October 4, 2011) ("Act 129 does not represent the adoption of a 'cookie-cutter' or 'one size fits all' approach to procurement....."). The Competition Act requires that a default service plan as a whole include a prudent mix of spot market purchases, short-term products, and long-term purchase contracts as necessary to ensure adequate and

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Purchase of Accounts Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502, 279 PUR4th 539, 2009 Pa. PUC LEXIS 266 at *12 (Nov. 19, 2009). Under the OSBA's theory in this case, however, the Commission would not have authority to approve the POR programs voluntarily proposed by the Pennsylvania public utilities absent further legislation. Clearly, the OSBA's theory would lead to an unworkable standard that would require express legislation before any voluntary proposals by parties could be adopted. Such a result is clearly contrary to long-standing Commission practice and precedent.

reliable service to customers at the least cost over time. *See* 66 Pa. C.S. §§ 2802(e)(3.2) and 2807(e)(3.4). However, as explained above, the Commission and the appellate courts have clearly recognized that a single product can be a "prudent mix" for certain customer classes under appropriate circumstances and within the Commission's reasonable discretion.

In this case, the Commission found that PPL Electric's proposal, "which will result in the expansion of hourly-priced default service to an additional group of C&I customers, will result in least-cost service over time for these customers, and constitutes part of a prudent mix of products included in PPL's overall DSP III program, consistent with 66 Pa. C.S. 2807(e)(3.2)." *Opinion and Order*, p. 44. Therefore, under these circumstances and consistent with Commission and appellate court precedent, the Commission clearly has authority to approve PPL Electric's proposal to reduce the size limit of Small C&I customers from 500 kW to 100 kW.

Based on the foregoing, the Commission should deny the OSBA's Petition for Reconsideration and affirm the well-reasoned findings and conclusions set forth in the January 15, 2015 Opinion and Order.

C. The Commission should Expeditiously Decide the Petition for Reconsideration and Approve PPL Electric's DSP III Program Compliance Filing

As a final matter, PPL Electric notes that prompt disposition of the OSBA's Petition for Reconsideration is critical to successfully completing the first scheduled procurement in PPL Electric's DSP III Program. In order to facilitate a successful procurement of default service supply for the Small C&I and Large C&I Customer Classes, PPL Electric respectfully requests that the Commission expeditiously decide the OSBA's Petition for Reconsideration and approve PPL Electric's DSP III Program compliance filing and procurement plan prior to the end of February 2015. The DSP III Program compliance filing was filed on January 30, 2015.

Until this matter is fully and finally resolved, it is uncertain whether the default service procurements for the Small C&I Customer Class or the Large C&I Customer Class will include commercial and industrial customers with a peak demand below 100 kW or below 500 kW. Importantly, under the terms of the Commission-approved DSP III Program, as modified by the Settlement, the first default service procurement will occur on or about April 14, 2015. This is critical if PPL Electric is to meet the further settlement commitment to post a final Price to Compare ("PTC") thirty days prior to the June 1, 2015 change to default service rates. In order to meet the procurement date, the solicitation activities, including the issuance of the Request for Proposal ("RFP") to be used for the procurement, must begin four to six weeks before the April 14, 2015 bid proposal due date, i.e., early March 2015. *See* Default Service RFP Process and Rules, Article 2, Section 2.2 (January 30, 2015). These solicitation activities are necessary to a successful RFP. PPL Electric cannot issue the RFP for either the Small C&I Customer Class default service load or the Large C&I Customer Class default service load and provide adequate notice to wholesale suppliers unless and until the Commission approves the DSP III compliance filing and procurement plan, which requires that the demand split for the Small C&I and Large C&I Customer Classes be resolved.

Further, a resolution of the Petition for Reconsideration and approval of the DSP III compliance filing will be critical to wholesale suppliers in determining whether and at what price to submit bids for the Small C&I and Large C&I Customer Class default service loads. It is questionable whether wholesale suppliers will bid on a product for a default service load if class composition could change after the bids have been submitted. There are many procurements by other EDCs scheduled to occur in early 2015.[7] As a result, wholesale suppliers may elect to

[7] In Pennsylvania, PPL Electric, PECO Energy Company, Duquesne Light Company, and all three FirstEnergy companies are scheduled to hold default service supply auctions between March and April of 2015. In addition,

forego the uncertainty and risk of participating in PPL Electric's procurement and, instead, participate in one of the many other auctions occurring in early 2015 that do not carry the same risk that the class composition could change after the bids have been submitted.

Even if there are wholesale suppliers that would be willing to participate in PPL Electric's procurement with the risk that the class composition could change, it is likely that any such bid would include a premium for this added uncertainty. Undoubtedly, such a premium would increase costs for the Small C&I Customer Class.[8]

For these reasons, it is imperative that the demand split for the Small C&I and Large C&I Customer Classes be fully resolved in sufficient time, i.e., early March 2015, for PPL Electric to begin the solicitation activities necessary to complete the first DSP III program procurement on or about April 14, 2015. PPL Electric acknowledges that the time period to take an appeal from the *Opinion and Order* ends January 17, 2015. Therefore, PPL Electric respectfully requests that the Commission deny the OSBA's Petition for Reconsideration at its Public Meeting scheduled for February 12, 2015. In the alternative, to the extent that the Commission grants reconsideration pending further consideration of the merits, PPL Electric respectfully requests that the Commission fully decide the merits of the OSBA's Petition for Reconsideration on or before the Public Meeting scheduled for February 26, 2015.

In addition, to the extent that the Commission grants the OSBA's Petition for Reconsideration subject to further consideration on the merits, PPL Electric respectfully requests

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statewide procurements for Illinois and Maryland are scheduled to occur between March and April of 2015. Finally, Ohio Power Company (American Electric Power Co., Inc.) and Duke Energy Ohio are also planning to procure supply to serve 100% of their load starting June 1, 2015.

[8] PPL Electric also notes there would be practical difficulties in issuing an RFP for the Small C&I Class that is defined by the 100 kW split, and then redefining the Class to a 500 kW split after bids are received and contracts executed. Because each winning bidder's compliance is defined by providing a fixed percentage of the Class's default load, a contract requirement to provide 5% of the Small C&I Class default load, where eligible class customers are defined by the 100 kW split, will result in insufficient supply if the Class is subsequently defined by the 500 kW split. After-the-fact determinations of the load differences would be difficult, as would be procurement.

that the Commission's reconsideration be expressly limited solely to the issue presented in the OSBA's Petition for Reconsideration, *i.e.*, the demand split for the Small C&I and Large C&I Customer Classes, rather than a general reconsideration of the merits of the *Opinion and Order*. PPL Electric believes that limiting reconsideration to the issue presented in the OSBA's Petition for Reconsideration will reduce potential uncertainty regarding those portions of PPL Electric's DSP III compliance filing and procurement plan unaffected by OSBA's Petition for Reconsideration.

PPL Electric has a mandatory statutory obligation to procure default supply for all default service customers. 66 Pa.C.S. § 2807(e)(3.1). If the Commission delays a decision on the merits of the OSBA's Petition for Reconsideration and, as a consequence, delays approval of PPL Electric's compliance filing, PPL Electric would be unable to implement the DSP III Program planned procurements. Therefore, to the extent that the Commission does not decide the OSBA's Petition for Reconsideration by or before the February 26, 2015 Public Meeting date, PPL Electric respectfully requests prompt review and approval of its DSP III Program compliance filing and procurement plan. Absent such action, PPL Electric will be unable to procure supplies under the DSP III Program for any customers, including the Residential Customer Class, and would be forced to provide spot supplies for all customer classes until approval of the DSP III Program compliance filing and procurement plan is granted.

If the Commission approves PPL Electric's DSP III Program compliance filing, PPL Electric will solicit fixed-price, load-following supply for Small C&I default service customers with a peak demand less than 100 kW and will solicit spot market supply for Large C&I default customers with a peak demand of 100 kW and above. PPL Electric will notify wholesale suppliers in advance that the demand split for the Small C&I and Large C&I Customer Classes is

under review and subject to change. As explained above, however, suppliers may be reluctant to bid or may include a premium due to the risk that the class composition could change after the bids have been submitted.[9]

Based on the foregoing, PPL Electric respectfully requests that the Commission expeditiously decide the OSBA's Petition for Reconsideration and promptly review and approve PPL Electric's DSP III compliance filing and procurement plan so that PPL Electric will be able to procure default supply in time to provide reliable default service to customers by June 1, 2015.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in January 15, 2015 Opinion and Order, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission:

(1) Deny the Petition for Reconsideration filed by the Office of Small Business Advocate in its entirety at the Public Meeting scheduled for February 12, 2015;

(2) In the alternative, to the extent that reconsideration is granted pending further consideration of the merits, fully decide the merits of the Petition for Reconsideration on or before the Public Meeting scheduled for February 26, 2015;

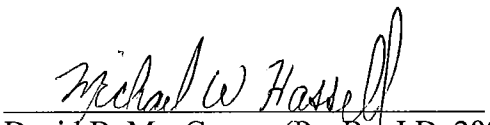
(3) To the extent that reconsideration is granted, expressly limit reconsideration solely to the single issue presented in the Petition for Reconsideration; and

(4) Promptly review and approve PPL Electric's DSP III compliance filing and procurement plan by the end of February 2015 in order for PPL Electric to undertake

[9] To the extent that the OSBA is entitled to the relief requested, which it is not for the reasons stated in the Commission's well-reasoned *Opinion and Order*, any relief granted regarding the demand split for the Small C&I and Large C&I Customer Classes should be applied on a prospective basis only for procurements occurring after a final order. Under this scenario, if the OSBA's requested relief is subsequently granted in a final order, PPL Electric will present to the Commission a plan to transition to the change in the demand split for the Small C&I and Large C&I Customer Classes in the next solicitation immediately following the entry of the final order.

its first procurement under the DSP III Program in mid-April 2015 to develop rates for service to customers effective June 1, 2015.

Respectfully submitted,



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