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February 9, 2015

**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

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")  
Answer to OSBA's Petition for Reconsideration with regard to the above-referenced matter.  
Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Susan D. Colwell, w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

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

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February 9, 2015

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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :  
for Approval of a Default Service Program and : Docket Nos. P-2014-2417907  
Procurement Plan for the Period June 1, 2015 :  
Through May 31, 2017 :

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**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
TO OSBA PETITION FOR RECONSIDERATION**

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In the Opinion and Order entered January 15, 2015 (“*PPL DSP III Order*”), the Commission addressed the default service plan filed by PPL Electric Utilities Corporation (“PPL”) for the period of June 1, 2015 through May 31, 2017. In doing so, the Commission appropriately approved the Joint Petition for Partial Settlement (“Partial Settlement”) which addressed all but two issues that the Commission adjudicated in the *PPL DSP III Order*. Although the ultimate result did not adopt the proposals of the Retail Energy Supply Association (“RESA”)<sup>1</sup>, the PP&L Industrial Customer Alliance (“PPLICA”), or the Office of Small Business Advocate (“OSBA”) in full, only the OSBA filed a Petition for Reconsideration. In its Petition, OSBA asks the Commission to reverse its determination to approve the Partial Settlement which would provide hourly priced default service to commercial customers with peak demand at or above 100 kW. RESA opposes OSBA’s Petition for Reconsideration as the arguments set forth in OSBA’s Petition do not meet the applicable legal standard for

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<sup>1</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Dynegy Energy Services; GDF SUEZ Energy Resources NA, Inc.; IDT Energy, 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; Nordic Energy Services, 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 the position of RESA as an organization but may not represent the views of any particular member of RESA.

reconsideration as they were clearly considered and rejected by the Commission in the *PPL DSP III Order*. As such, RESA recommends that the Commission summarily deny OSBA’s Petition.

OSBA argues that the Commission “overlooked” the fact that there “already exists a fully competitive marketplace” for this customer class and allegedly those still on default service would be “forcibly removed”<sup>2</sup> by the Commission’s decision. Contrary to OSBA’s claim, the Commission fully set forth OSBA’s arguments in this regard and specifically stated that approval of the Partial Settlement on this issue is consistent with the goals of the Competition Act.<sup>3</sup> Simply put, the Commission did not “overlook” OSBA’s arguments, it rightly rejected them. The Commission’s decision is solidly rooted in the Competition Act and, therefore, OSBA’s Petition for Reconsideration must be denied.

In addition, OSBA continues to argue that – despite the Commonwealth Court’s subsequent ruling in the *Pike County* case<sup>4</sup> – the Commission somehow acknowledged before the *Pike County* case that it did not have authority to approve the Partial Settlement’s proposal to provide hourly priced default service to commercial customers with peak demand at or above 100 kW and, therefore, cannot approve the proposal in this proceeding.<sup>5</sup> OSBA does correctly acknowledge that the *PPL DSP III Order* does address its arguments on this point.<sup>6</sup> Therefore, the fact that the Commission considered (and rightly rejected) OSBA’s advocacy on this point means that reconsideration is not appropriate. Despite this, however, OSBA essentially laments

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<sup>2</sup> OSBA Petition for Reconsideration at ¶¶16-18.

<sup>3</sup> *PPL DSP III Order* at 41-42.

<sup>4</sup> *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff’d Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71A.3d1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

<sup>5</sup> OSBA Petition for Reconsideration at ¶¶21-31.

<sup>6</sup> *Id.* at ¶28 (“In response to the OSBA’s argument on this issue, the Commission responded. . .”).

that the Commission stated it did not have authority to lower the hourly demand threshold before this proceeding but is moving forward to do just that in this proceeding notwithstanding its alleged prior statements.<sup>7</sup> This argument is fundamentally flawed.

As the Commission notes in the *PPL DSP III Order*, it “expressed a preference for legislative amendments” in the *End State Order*<sup>8</sup> but also stated its belief in the *End State Order* that it had the authority to lower the threshold for hourly priced service.<sup>9</sup> OSBA prefers to ignore this last part. OSBA needs to do so in order to argue – incorrectly – that the Commission “recently expressed concern that such an act was outside of the authority granted to it by the legislature.”<sup>10</sup> As noted, though, this is not accurate because it ignores the full statement of the Commission on this point. Nonetheless, even if one were to accept OSBA’s flawed premise that the Commission only expressed concerns about its enabling authority, any such concerns were put to rest by the *Pike County* decision (which OSBA openly chooses to ignore in its Petition for Reconsideration).<sup>11</sup> The *PPL DSP III Order* leaves no doubt that the Commission understood, considered and rightly rejected OSBA’s advocacy in on these points. This is further evidenced by the statement of Commissioner Brown in which she states that she “weigh[ed] this issue carefully” and ultimately voted in support of the *PPL DSP III Order*. OSBA’s attempt to claim that the Commission overlooked its arguments or did not give them due consideration is without

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<sup>7</sup> *Id.* at ¶ 31.

<sup>8</sup> *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952, Final Order entered February 15, 2013.

<sup>9</sup> *PPL DSP III Order* at 45.

<sup>10</sup> OSBA Petition for Reconsideration at ¶ 31.

<sup>11</sup> *PPL DSP III Order* at 44. OSBA Petition for Reconsideration at ¶¶21-31. OSBA states that it “will not argue the merits” of this decision in its petition and then goes on to ignore its existence in its entirety.

merit. As such, there is no credible basis upon which to grant OSBA's Petition for Reconsideration and it should be denied.

While OSBA characterizes the Recommended Decision as "brilliantly set[ting] forth the inconsistencies of the Commission's policy on what is a prudent mix,"<sup>12</sup> ALJ Colwell's legal reasoning was fundamentally flawed for a number of reasons and was rightly reversed by the Commission. As RESA explained in its Exceptions:

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,"<sup>13</sup> 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."<sup>14</sup> 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."<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup> In other words, the Commission has always been clear since the inception of 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.

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<sup>12</sup> OSBA Petition for Reconsideration at ¶ 20,

<sup>13</sup> PPL RD at 43.

<sup>14</sup> 52 Pa Code § 69.1805(2).

<sup>15</sup> *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*").

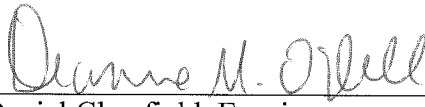
<sup>16</sup> *Default Service Policy Statement* at 2.

<sup>17</sup> 52 Pa. Code § 69.1802; *Default Service Policy Statement* at 2, 4.

Contrary to the claim of OSBA, the Commission has been clear and consistent regarding its policies related to commercial customers and its decision in the *PPL DSP III Order* to provide hourly priced default service to commercial customers with peak demand at or above 100 kW is legally sound and also appropriate from a policy perspective.

For all these reasons, RESA respectfully requests that the Commission deny OSBA's Petition for Reconsideration.

Respectfully submitted,



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