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COMMONWEALTH OF PENNSYLVANIA  
(Public Utility Commission)

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ED FREY, \*  
Complainant \* CASE:  
v. \* C-2023-3042130  
PPL ELECTRIC UTILITY \*  
COMMISSION \*  
Respondent. \*

-----\*  
Pages 1 through 80 TELEPHONIC HEARING  
Judge's Chambers  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, Pennsylvania

Wednesday, November 1, 2023  
Met, pursuant to notice, at 1:33 p.m.

BEFORE: THE HONORABLE JOHN M. COOGAN  
Administrative Law Judge

EXHIBIT INDEX		
NUMBER	FOR IDENTIFICATION	IN EVIDENCE
COMPLAINANTS (Attached)		
EXHIBITS:		
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PPL (Not Attached)		
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# Exhibit 1



Pennsylvania Public Utility Commission  
Rate Comparison Report  
April 15, 2023


Prepared by:  
Bureau of Technical Utility Services

# Rate Comparison Report – Page 6

## Section 1: Average Residential Usage and Bill

This section contains tables displaying the 2022 average monthly residential usage and corresponding bill amount for all 11 EDCs and the seven large NGDCs. Please see Sections 2 and 3 of this Report for a detailed comparison of the rates of all regulated electric and gas utilities across the state on a fixed usage basis.

### Electric

EDCs	Avg. Monthly Usage (kWh)	Avg. Monthly Bill (\$)
Citizens' Electric Co.	987	162.59
Duquesne Light Co.	609	134.46
Metropolitan-Edison Co.	951	164.20
PECO Energy Co.	787	130.56
Pennsylvania Electric Co.	731	138.86
Pennsylvania Power Co.	933	161.79
Pike County Light & Power Co.	686	157.87
PPL Electric Utilities Corp.	 963	199.85
UGI Utilities Inc. - Electric	1,000	190.43
Wellsboro Electric Co.	736	145.98
West Penn Power Co.	963	133.75

**Citizens' Electric Co.**

Citizens' Electric Co. (Citizens'), a subsidiary of C&T Enterprises Inc., serves about 5,900 residential, 1,100 commercial and 40 industrial customers. Its service territory consists of Lewisburg Borough and the townships of East Buffalo, Buffalo and Kelly in Union County, as well as West Chillisquaque in Northumberland County. Citizens' operates under the terms of Electric Tariff Pa. P.U.C. No. 14. With a service area of 55 square miles, Citizens' is one of the smallest electric companies, both in area and in number of customers, included in this rate comparison. C&T Enterprises Inc. is a holding company owned by the Claverack and Tri-County Rural Electric Cooperatives for their for-profit enterprises. C&T also owns the Pennsylvania utilities of Valley Energy Inc. (gas) and Wellsboro Electric Co. On Dec. 8, 2022, the Commission approved a settlement allowing for a \$930,000 base rate increase for Citizens'.

<b>Utility:</b>	<b>Citizens' Electric Co.</b>									
<b><u>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</u></b>										
<b><u>Rates for Default Service</u></b>										
<b>Rate Classification</b>	<b>Customer Charge</b>	<b>Distribution Charges</b>	<b>Generation Charges*</b>	<b>Transmission Charges</b>	<b>CTC (if applicable)</b>	<b>DSIC</b>	<b>Universal Service</b>	<b>GRT**</b>	<b>STAS</b>	<b>TOTAL</b>
Residential										
using 500 KWH	\$13.10	\$16.84	\$63.12					\$3.96	(\$0.01)	<b>\$97.01</b>

**Shopping Update:** As of March 2023, no EGSs were making offers to Citizens' residential customers. However, 55 commercial and industrial customers (15.6% of load) were using a competitive supplier. Information, including Citizens' price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

## Duquesne Light Co.

Duquesne Light Co. (Duquesne), a subsidiary of Duquesne Light Holdings, serves about 543,000 residential, 60,800 commercial and 1,000 industrial customers. Duquesne’s service territory consists of parts of Allegheny, Beaver, Butler and Westmoreland counties in Western Pennsylvania. Duquesne operates under the terms of Electric Tariff Pa. P.U.C. No. 25.

Utility:	<b>Duquesne Light Co.</b>									
<b><u>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</u></b>										
<b><u>Rates for Default Service</u></b>										
<b>Rate Classification</b>	<b>Customer Charge</b>	<b>Distribution Charges</b>	<b>Generation Charges</b>	<b>Transmission Charges</b>	<b>DSIC</b>	<b>Universal Service</b>	<b>EE&amp;C Charges</b>	<b>Education Charges</b>	<b>STAS</b>	<b>TOTAL</b>
Residential										
using 500 KWH	\$12.50	\$35.50	\$44.17	\$12.11	(\$0.05)	\$7.72	\$0.75		(\$0.08)	<b>\$112.62</b>
Notes:	*All Duquesne customers with a peak demand greater than or equal to 200 KW on average are enrolled in an hourly price plan for the generation component of their bill. The generation rate used for this report was a calculated average based on historic hourly price service data throughout the past year.									

**Shopping Update:** As of March 2023, 113 EGS offers were being made to Duquesne’s customers. Furthermore, 135,796 customers (22.2% of customers; 62.3% of the load) were using a competitive supplier. Information, including Duquesne’s price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

## Metropolitan Edison Co.

Metropolitan Edison Co. (Met-Ed), a subsidiary of FirstEnergy Corp., serves about 514,000 residential, 67,200 commercial and 1,700 industrial customers. With a total service area of about 3,300 square miles, Met-Ed's service territory consists of parts of the Easton, Lebanon and Reading areas in Eastern Pennsylvania and the York Area in South Central Pennsylvania. Met-Ed operates under the terms of Electric Tariff Pa. P.U.C. No. 52. FirstEnergy, headquartered in Akron, Ohio, is one of the country's largest investor-owned electric systems, serving approximately 6 million customers through its 10 electric utility operating companies in Pennsylvania, Ohio, Maryland, West Virginia and New Jersey.<sup>4</sup>

Utility:		Metropolitan Edison Co.								
<u>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</u>										
<u>Rates for Default Service</u>										
Rate Classification	Customer Charge	Distribution Charges	Generation Charges	DSIC	DSSR*	EE&C Charges	Smart Meter Charge	Universal Service	TCJA**	TOTAL
Residential										
using 500 KWH	\$11.25	\$24.00	\$51.52	\$1.06	\$2.38	\$0.72	(\$0.65)	\$3.16	(\$2.27)	<b>\$91.17</b>

**Shopping Update:** As of March 2023, 108 EGS offers were being made to Met-Ed's customers. Furthermore, 124,388 customers (21.3% of customers; 52.7% of the load) were using a competitive supplier. Information, including Met-Ed's current price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

<sup>4</sup> Other FirstEnergy electric utility operating companies in Pennsylvania are the Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co.

**PECO Energy Co.**

PECO Energy Co. (PECO), a subsidiary of the Exelon Corp. (Exelon), is Pennsylvania’s largest electric utility, serving approximately 1.52 million residential, 155,300 small commercial and industrial, and 3,100 large commercial and industrial customers within parts of the following counties in Southeastern Pennsylvania: Bucks, Chester, Delaware, Montgomery, Philadelphia and York. PECO operates under the terms of Electric Tariff Pa. P.U.C. No. 7. PECO also provides gas service to more than 500,000 customers in the Philadelphia area. Exelon, headquartered in Chicago, is the nation’s largest utility company, that, through its six utility operating companies, provides electric and natural gas service to more than ten million customers in Illinois, Maryland, Washington D.C., Delaware, New Jersey and Pennsylvania.

Utility:		PECO Energy Co.									
<b>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</b>											
<b>Rates for Default Service</b>											
Rate Classification	Customer Charge	Distribution Charges	Generation Charges	Transmission Charges	NDCA*	NBT**	EE&C Charges	Universal Service	Education Charges	STAS	TOTAL
Residential											
using 500 KWH	\$10.50	\$35.77	\$45.64	\$3.64	(\$0.30)	\$1.73	\$0.92	\$0.43	\$0.01	(\$0.05)	<b>\$98.29</b>

**Shopping Update:** As of March 2023, 130 EGS offers were being made to PECO’s customers. Furthermore, 391,229 customers (23% of customers; 51% of the load) were using a competitive supplier. Information, including PECO’s price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

## Pennsylvania Electric Co.

Pennsylvania Electric Co. (Penelec), a subsidiary of the FirstEnergy Corp., serves approximately 498,000 residential, 84,000 commercial and 1,700 industrial customers. Penelec's service territory consists of 17,600 square miles spanning more than 30 counties throughout mostly rural areas of Northern and Central Pennsylvania. Penelec operates under the terms of Electric Tariff Pa. P.U.C. No. 81. FirstEnergy, headquartered in Akron, Ohio, is one of the country's largest investor-owned electric systems, serving approximately 6 million customers through its 10 electric utility operating companies in Pennsylvania, Ohio, Maryland, West Virginia and New Jersey.<sup>5</sup>

Utility:		Pennsylvania Electric Co.									
Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania											
Rates for Default Service											
Rate Classification	Customer Charge	Distribution Charges	Generation Charges	DSIC	DSSR*	EE&C Charges	Smart Meter Charge	Universal Service	TCJA**	STAS	TOTAL
Residential											
using 500 KWH	\$11.25	\$30.37	\$49.45	\$1.38	\$3.84	\$0.73	(\$1.22)	\$4.60	(\$2.30)	\$0.02	<b>\$98.12</b>

**Shopping Update:** As of March 2023, 104 EGS offers were being made to Penelec's customers. Furthermore, 118,086 customers (20.1% of customers; 58.7% of the load) were using a competitive supplier. Information, including Penelec's current price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

<sup>5</sup> Other FirstEnergy electric utility operating companies in Pennsylvania are the Metropolitan Edison Co., Pennsylvania Power Co. and West Penn Power Co.

## Pennsylvania Power Co.

Pennsylvania Power Co. (Penn Power), a subsidiary of FirstEnergy Corp., serves approximately 149,000 residential, 20,700 commercial and 550 industrial customers. Penn Power's service territory consists of 1,100 square miles in parts of the following Western Pennsylvania counties: Allegheny, Beaver, Butler, Crawford, Lawrence, Mercer and Venango. Penn Power operates under the terms of Electric Tariff Pa. P.U.C. No. 36. FirstEnergy, headquartered in Akron, Ohio, is one of the country's largest investor-owned electric systems, serving approximately 6 million customers through its 10 electric utility operating companies in Pennsylvania, Ohio, Maryland, West Virginia and New Jersey.<sup>6</sup>

Utility:	Pennsylvania Power Co.									
Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania										
Rates for Default Service										
Rate Classification	Customer Charge	Distribution Charges	Generation Charges	DSIC	DSSR*	EE&C Charges	Smart Meter Charge	Universal Service	TCJA**	TOTAL
Residential										
using 500 KWH	\$11.00	\$22.19	\$52.56	\$2.60	\$1.59	\$0.84	(\$0.53)	\$3.45	(\$2.13)	<b>\$91.57</b>

**Shopping Update:** As of March 2023, 85 EGS offers were being made to Penn Power's customers. Furthermore, 33,921 customers (19.9% of customers; 57.9% of the load) were using a competitive supplier. Information, including Penn Power's current price and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

<sup>6</sup> Other FirstEnergy electric utility operating companies in Pennsylvania are the Metropolitan Edison Co., Pennsylvania Electric Co. and West Penn Power Co.

**Pike County Light & Power Co.**

Pike County Light & Power Co. (Pike), a subsidiary of Corning Natural Gas Holding Corporation (Corning), serves about 3,200 residential and 750 commercial customers. Pike’s service territory includes Westfall, Milford and Dingman townships, as well as Matamoras and Milford boroughs in Pike County, Northeastern Pennsylvania. Pike operates under the terms of Electric Tariff Pa. P.U.C. No. 8. Corning, headquartered in Corning, NY, also owns the Pennsylvania natural gas utility of Leatherstocking Gas Co. and provides natural gas service to approximately 15,000 customers across the southern and central regions of New York State. Additionally, Pike provides natural gas service in Pennsylvania in Westfall Township and Matamoras Borough, Pike County.

Utility:	<b>Pike County Light &amp; Power Co.</b>									
<b>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</b>										
<b>Rates for Default Service</b>										
<b>Rate Classification</b>	Customer Charge	Distribution Charges*	Generation Charges**	Transmission Charges	CTC (if applicable)	DSIC	Universal Service	SBC***	STAS	<b>TOTAL</b>
Residential using 500 KWH	\$8.80	\$46.37	\$62.32						\$0.03	<b>\$117.52</b>

**Shopping Update:** As of March 2023, no EGSs were making offers to Pike’s residential customers. However, 1,025 customers (19.7% of customers; 16.1% of the load) were using a competitive supplier. Information, including Pike’s price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

**PPL Electric Utilities Corp.**

PPL Electric Utilities Corp. (PPL), a subsidiary of the PPL Corp., serves approximately 1.28 million residential, 183,400 commercial and 3,200 industrial customers. PPL’s service territory consists of parts of the following counties in Eastern Pennsylvania: Berks, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming and York. PPL operates under the terms of Electric Tariff Pa. P.U.C. No. 201. PPL Corp., headquartered in Allentown, Lehigh County, delivers energy to roughly 3.5 million customers in Kentucky, Virginia, Rhode Island and Pennsylvania.

Utility:	<b>PPL Electric Utilities Corp.</b>											
<b>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</b>												
<b>Rates for Default Service</b>												
<b>Rate Classification</b>	Customer Charge	Distribution Charges	Generation Charges	Transmission Charges	DSIC	SDER**	TCJA***	EE&C Charges	Smart Meter	Universal Service	STAS	<b>TOTAL</b>
Residential												
using 500 KWH	\$14.09	\$17.67	\$61.48	\$11.58	\$1.82	(\$0.20)	(\$2.61)	\$0.65	\$1.90	\$4.92	(\$0.06)	<b>\$111.24</b>

**Shopping Update:** As of March 2023, 134 EGS offers were being made to PPL’s customers. Furthermore, 553,631 customers (39% of customers; 63.6% of the load) were using a competitive supplier. Information, including PPL’s current price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

## West Penn Power Co.

West Penn Power Co. (West Penn), a subsidiary of FirstEnergy Corp., serves approximately 633,000 residential, 99,200 commercial and 2,300 industrial customers. West Penn's service territory consists of portions of 25 counties throughout Southwestern and Central Pennsylvania. West Penn operates under the terms of Electric Tariff Pa. P.U.C. No. 40. FirstEnergy, headquartered in Akron, Ohio, is one of the country's largest investor-owned electric systems, serving approximately 6 million customers through its 10 electric utility operating companies in Pennsylvania, Ohio, Maryland, West Virginia and New Jersey.<sup>7</sup>

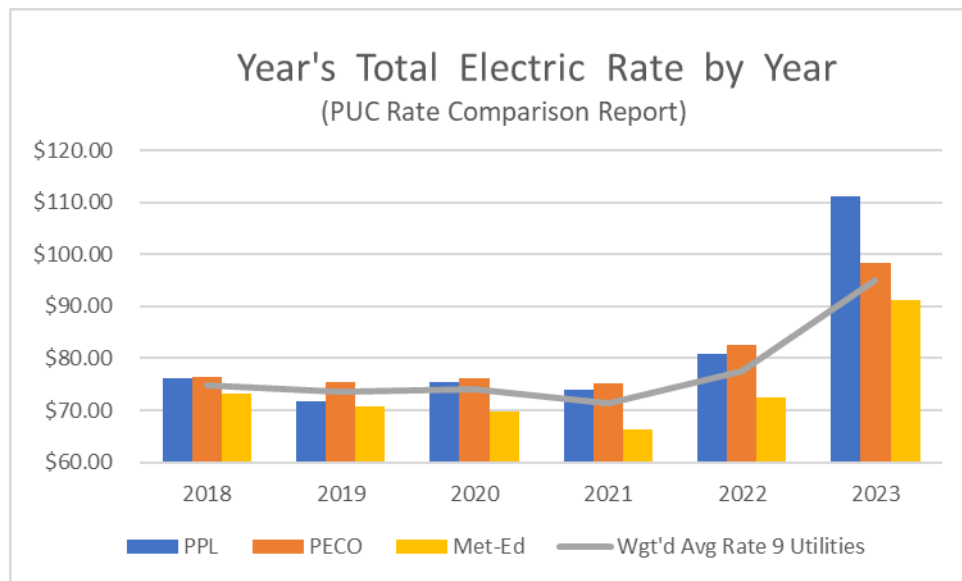
Utility:	West Penn Power Co.										
<b>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</b>											
<b>Rates for Default Service</b>											
Rate Classification	Customer Charge	Distribution Charges	Generation Charges	DSIC	DSSR*	Smart Meter Charge	EE&C Charges	TCJA**	Universal Service	STAS	TOTAL
Residential											
using 500 KWH	\$7.44	\$17.44	\$42.59	\$0.98	\$3.81	(\$0.24)	\$0.45	(\$1.12)	\$2.46	(\$0.03)	<b>\$73.78</b>

**Shopping Update:** As of March 2023, 94 EGS offers were being made to West Penn's customers. Furthermore, 138,153 customers (18.3% of customers; 55.8% of the load) were using a competitive supplier. Information, including West Penn's price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

<sup>7</sup> Other FirstEnergy electric utility operating companies in Pennsylvania are the Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co.

a. PPL to “shop” for supplier default rates and consistently acquire the offered Supplier Default Rate at a cost per kWh below or equal to their geographical peers; MetEd and PECO.

Report Yr	500 kWh costs displayed from PA PUC Rate Comparison Report										Weighted Avg Mthly Cost
Year	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn	Non-PPL Customers	
Residential Customers=>	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000	3,896,100	
2018	\$ 59.95	\$ 84.27	\$ 73.10	\$ 76.33	\$ 81.71	\$ 71.74	\$ 78.58	\$ 76.25	\$ 60.46	\$ 74.80	
2019	\$ 67.10	\$ 84.41	\$ 70.76	\$ 75.31	\$ 79.05	\$ 73.23	\$ 90.86	\$ 71.66	\$ 59.26	\$ 73.65	
2020	\$ 62.33	\$ 84.09	\$ 69.86	\$ 76.19	\$ 79.80	\$ 71.83	\$ 53.96	\$ 75.35	\$ 60.37	\$ 74.02	
2021	\$ 59.81	\$ 85.29	\$ 66.19	\$ 75.30	\$ 74.16	\$ 67.67	\$ 65.02	\$ 73.85	\$ 53.85	\$ 71.37	
2022	\$ 66.97	\$ 93.73	\$ 72.57	\$ 82.59	\$ 77.25	\$ 74.20	\$ 104.48	\$ 80.73	\$ 57.39	\$ 77.52	
2023	\$ 97.01	\$ 112.62	\$ 91.17	\$ 98.29	\$ 98.12	\$ 91.57	\$ 117.52	\$ 111.24	\$ 73.78	\$ 94.91	



- Used the PA PUC Rate Comparison Reports for the Data in the table
- Graph shows the Total Electric Rate for PPL, PECO, MetEd and the Weighted Average of 8 PA Electric Utilities, excluded PPL in the calculations
- PPL’s 1.28 million customers pay the highest DSR rate versus the large electric customer based utilities compared in the above table
- The right most column on the table is the weighted average of the 8 electric utilities supplying electricity to 3,896,000 residential customers
- UGI Electric and Wellsboro, 54,900 and 5,100 residential customers respectively, were not included as they cover ~ 1% of residential customers and their rates were also below PPL



# Exhibit 2

Established an excel table with supplier information provided on the PA PUC – Rate Comparison Report – 2023.

> Arrow is the row in the table capturing DSR charges for the 9 utilities shown at a monthly residential demand of 500 kWh

> Last row in the table is the SDR rate for each electric utility

Source PUC - Rate Comparison Report - 2023									
	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn
	500	500	500	500	500	500	500	500	500
Total Customers - All States	NA	NA	6,000,000	USA Largest	6,000,000	6,000,000	NA	3,500,000	6,000,000
Pa Number of Counties Serving	1	4		5	30	7	1	30	25
Pa Square Miles Serving			3,300		17,600	1,100			
Residential Customers	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000
Commercial Customers		60,800	67,200	155,300	84,000	20,700	750	183,400	99,200
Industrial Customers		1,000	1,700	3,100	1,700	5,500		3,200	2,300
Alternate Percentage - Residential CustomersEGSs	0			391,229					
Alternate Percentage - Com & Ind Customers EGSs	55								
ESG offerings	-	113	108	130	104	85	-	134	94
Customers using Competitive Supplier		135,796	124,388	391,229	118,086	33,921	1,025	553,631	138,153
ESGs Percent of Customers		22.20%	21.30%	23.00%	20.10%	19.90%	19.70%	39.00%	18.30%
EGSs Percentage of Load	15.60%	62.30%	52.70%	51.00%	58.70%	57.90%	16.10%	63.60%	55.80%
Customer Charge - 2023	\$ 13.10	\$ 12.50	\$ 11.25	\$ 10.50	\$ 11.25	\$ 11.00	\$ 8.80	\$ 14.09	\$ 7.44
Distribution Charges - 2023	\$ 16.84	\$ 35.50	\$ 24.00	\$ 35.77	\$ 30.37	\$ 22.19	\$ 46.37	\$ 17.67	\$ 17.44
Generation Charges - 2023	\$ 63.12	\$ 44.17	\$ 51.52	\$ 45.64	\$ 49.45	\$ 52.56	\$ 62.32	\$ 61.48	\$ 42.59
Transmission Charges - 2023		\$ 12.11		\$ 3.64				\$ 11.58	
2023 - Default Supplier Charges	\$ 63.12	\$ 56.28	\$ 51.52	\$ 49.28	\$ 49.45	\$ 52.56	\$ 62.32	\$ 73.06	\$ 42.59
2023 - Default Supplier Rate kWh	\$0.12624	\$0.11256	\$ 0.10304	\$ 0.09856	\$ 0.09890	\$ 0.10512	\$ 0.12464	\$ 0.14612	\$ 0.08518



Populated an excel table with the 9 electric SDR rates for each year, 2018 from 2023, using the PA Rate Comparison Report information for each year displayed. Year 2023 shows rates from prior slide, last row.

Default Supplier Charges - Derived from Annual Rate Comparison Report											Weighted Average Default Supplier Rate Excluding PPL
Avg Monthly kWh - 2022=>	987	609	951	787	731	933	686	963	952		
Year	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn		
Residential Customers	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000	3,896,100	
2018	\$ 0.07132	\$ 0.07826	\$ 0.06816	\$ 0.07216	\$ 0.06742	\$ 0.07202	\$ 0.06584	\$ 0.07464	\$ 0.06150	\$ 0.07005	
2019	\$ 0.07780	\$ 0.07442	\$ 0.06684	\$ 0.06822	\$ 0.06288	\$ 0.07714	\$ 0.10088	\$ 0.07040	\$ 0.06354	\$ 0.06781	
2020	\$ 0.07586	\$ 0.07098	\$ 0.06510	\$ 0.06738	\$ 0.06446	\$ 0.07572	\$ 0.03012	\$ 0.07634	\$ 0.05760	\$ 0.06584	
2021	\$ 0.06468	\$ 0.05200	\$ 0.06174	\$ 0.06426	\$ 0.05668	\$ 0.06436	\$ 0.02896	\$ 0.07318	\$ 0.05198	\$ 0.05914	
2022	\$ 0.07800	\$ 0.07980	\$ 0.07414	\$ 0.07024	\$ 0.06508	\$ 0.07594	\$ 0.09796	\$ 0.08942	\$ 0.05698	\$ 0.06942	
2023	\$ 0.12624	\$ 0.11256	\$ 0.10304	\$ 0.09856	\$ 0.09890	\$ 0.10512	\$ 0.12464	\$ 0.14612	\$ 0.08518	\$ 0.09918	

Multiplied each utility's SDR rate times the PPL average monthly usage (963 kWh) annualized to arrive at the total dollars for SDR that each utilities rate would generate. Show PPL, 2023 example and the same methodology was applied to all utility/year cells

Default Supplier Charges - Annually at the 2022 average kWh for PPL customers and the Generation and Transmission Default Rate for the Utility										
Avg Monthly kWh - 2022=>	987	609	951	787	731	933	686	963	952	
Year	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn	
Residential Customers	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000	
2018	\$ 824.17	\$ 904.37	\$ 787.66	\$ 833.88	\$ 779.11	\$ 832.26	\$ 760.85	\$ 862.54	\$ 710.69	
2019	\$ 899.06	\$ 860.00	\$ 772.40	\$ 788.35	\$ 726.64	\$ 891.43	\$ 1,165.77	\$ 813.54	\$ 734.27	
2020	\$ 876.64	\$ 820.24	\$ 752.30	\$ 778.64	\$ 744.90	\$ 875.02	\$ 348.07	\$ 882.19	\$ 665.63	
2021	\$ 747.44	\$ 600.91	\$ 713.47	\$ 742.59	\$ 654.99	\$ 743.74	\$ 334.66	\$ 845.67	\$ 600.68	
2022	\$ 901.37	\$ 922.17	\$ 856.76	\$ 811.69	\$ 752.06	\$ 877.56	\$ 1,132.03	\$ 1,033.34	\$ 658.46	
2023	\$ 1,458.83	\$ 1,300.74	\$ 1,190.73	\$ 1,138.96	\$ 1,142.89	\$ 1,214.77	\$ 1,440.34	\$ 1,688.56	\$ 984.34	



PPL 2023 Example	
Average Monthly Usage	963
DSR Rate	\$ 0.14612
Monthly Cost	\$ 140.71
Monthly Cost times 12	12
Annual Cost	\$1,688.56



PPL's annual SDR cost, at the 963 average monthly use for PPL customers had each other electric utility's DSR for that year times the PPL average monthly use annualized subtracted from the PPL annual SDR. One example is shown for PPL 2023 versus PECO 2023 to validate the savings shown in the excel table

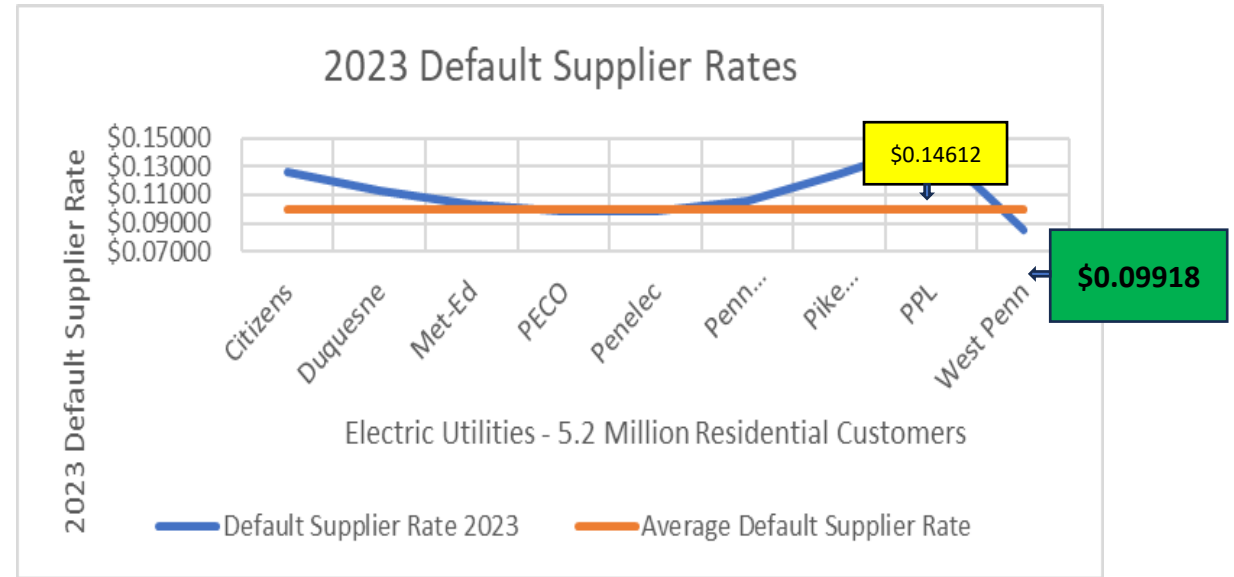
Default Supplier Charges - Annually - Math compares Electric Utility in the column's annual DSR dollars at PPL's Avg Monthly kWh vs PPL's DSR										Wgt'd Avg Annual Savings at Other Electric Utilities at their DSR at 963 kWh/Mth
Avg Monthly kWh - 2022	987	609	951	787	731	933	686	963	952	
Year	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn	
Residential Customers	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000	3,896,100
2018	\$ 38.37	\$ (41.83)	\$ 74.88	\$ 28.66	\$ 83.43	\$ 30.28	\$ 101.69	\$ -	\$ 151.85	\$ 53.03
2019	\$ (85.51)	\$ (46.46)	\$ 41.14	\$ 25.19	\$ 86.90	\$ (77.89)	\$ (352.23)	\$ -	\$ 79.27	\$ 29.98
2020	\$ 5.55	\$ 61.94	\$ 129.89	\$ 103.54	\$ 137.29	\$ 7.16	\$ 534.12	\$ -	\$ 216.56	\$ 121.28
2021	\$ 98.23	\$ 244.76	\$ 132.20	\$ 103.08	\$ 190.67	\$ 101.92	\$ 511.01	\$ -	\$ 244.99	\$ 162.30
2022	\$ 131.97	\$ 111.17	\$ 176.58	\$ 221.64	\$ 281.27	\$ 155.77	\$ (98.69)	\$ -	\$ 374.88	\$ 231.08
2023	\$ 229.73	\$ 387.82	\$ 497.83	\$ 549.60	\$ 545.67	\$ 473.80	\$ 248.22	\$ -	\$ 704.22	\$ 542.40
Total - 2018-23	\$ 418.33	\$ 717.40	\$ 1,052.52	\$ 1,031.72	\$ 1,325.24	\$ 691.05	\$ 944.13		\$ 1,771.77	\$ 1,140.08

PECO - 2023 Saved versus PPL \$549.60	
Average Monthly Usage	963
PECO 2023 DSR	\$ 0.09856
Monthly Cost	\$ 94.91
Monthly Cost times 12	12
Annual Cost	\$ 1,138.96
PPL Annual Cost	\$ 1,688.56
<b>PECO 2023 Annual Saved</b>	<b>\$ 549.60</b>



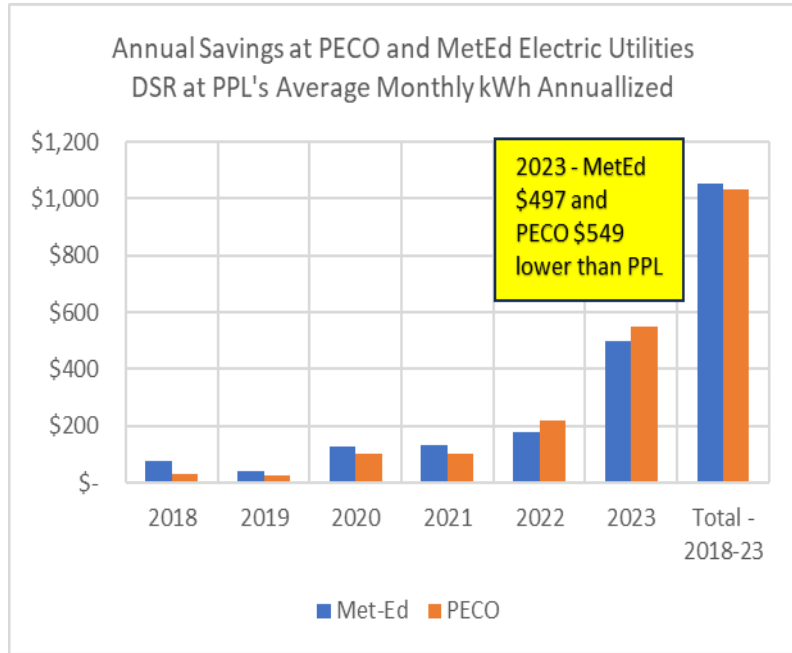
b. PPL to benchmark the work practices/methods/procedures that their geographical electric utility peers utilize to consistently acquire lower cost Supplier Default Rates and apply these practices for future DSR's offered to PPL customers. PPL's current DSR "shopping" practices on average cost PPL customers several hundred dollars above their MetEd and PECO peers.

- PPL's DSR for 2023, \$0.14612 per kWh is the highest of the 8 Electric Utilities shown from the PA PUC Rate Comparison Report
- The average DSR for the 8 Electric Utilities is \$0.09918, less than 4.6 cents below PPL's DSR of \$0.14612



Default Supplier Charges - Derived from Annual Rate Comparison Report											Weighted Average								
Avg Monthly kWh - 2022=>	987		609		951		787		731		933		686		963		952		Default Supplier Rate
Year	Citizens	Duquesne	Met-Ed	PECO	Penelec	Penn Power	Pike County	PPL	West Penn										Excluding PPL
Residential Customers	5,900	543,000	514,000	1,520,000	498,000	149,000	3,200	1,280,000	663,000										3,896,100
2018	\$ 0.07132	\$ 0.07826	\$ 0.06816	\$ 0.07216	\$ 0.06742	\$ 0.07202	\$ 0.06584	\$ 0.07464	\$ 0.06150										\$ 0.07005
2019	\$ 0.07780	\$ 0.07442	\$ 0.06684	\$ 0.06822	\$ 0.06288	\$ 0.07714	\$ 0.10088	\$ 0.07040	\$ 0.06354										\$ 0.06781
2020	\$ 0.07586	\$ 0.07098	\$ 0.06510	\$ 0.06738	\$ 0.06446	\$ 0.07572	\$ 0.03012	\$ 0.07634	\$ 0.05760										\$ 0.06584
2021	\$ 0.06468	\$ 0.05200	\$ 0.06174	\$ 0.06426	\$ 0.05668	\$ 0.06436	\$ 0.02896	\$ 0.07318	\$ 0.05198										\$ 0.05914
2022	\$ 0.07800	\$ 0.07980	\$ 0.07414	\$ 0.07024	\$ 0.06508	\$ 0.07594	\$ 0.09796	\$ 0.08942	\$ 0.05698										\$ 0.06942
2023	\$ 0.12624	\$ 0.11256	\$ 0.10304	\$ 0.09856	\$ 0.09890	\$ 0.10512	\$ 0.12464	\$ 0.14612	\$ 0.08518										\$ 0.09918

c. PPL to change practices/methods/procedures to regularly acquire Supplier Default Rates that in the best case are best/lower kWh in PA for their residential customers and worst case have a SDR equal to their MetEd and PECO peers SDR



- Used the PA PUC Rate Comparison Reports for the Data in the table
- Graph shows the yearly savings realized by residential customers using MetEd and PECO SDR at the average PPL kWh monthly demand annualized.
- Table below shows 8 Electric Utility SDR comparison, 2018 through 2023. Total weighted average annual savings for non-PPL customers totals \$1140.08, years 2018 through 2023. The 2023 weighted average annual savings for non-PPL customers is \$542.40.

Default Supplier Charges - Annually - Math compares Electric Utility in the column's annual DSR dollars at PPL's Avg Monthly kWh vs PPL's DSR											Annual Savings at Other Electric Utilities at Their DSR								
Avg Monthly kWh - 2022	987		609		951		787		731		933		686		963		952		
Year	Citizens		Duquesne		Met-Ed		PECO		Penelec		Penn Power		Pike County		PPL		West Penn		
Residential Customers	5,900		543,000		514,000		1,520,000		498,000		149,000		3,200		1,280,000		663,000		3,896,100
2018	\$ 38.37	\$ (41.83)	\$ 74.88	\$ 28.66	\$ 83.43	\$ 30.28	\$ 101.69	\$ -	\$ 151.85	\$ 53.03									
2019	\$ (85.51)	\$ (46.46)	\$ 41.14	\$ 25.19	\$ 86.90	\$ (77.89)	\$ (352.23)	\$ -	\$ 79.27	\$ 29.98									
2020	\$ 5.55	\$ 61.94	\$ 129.89	\$ 103.54	\$ 137.29	\$ 7.16	\$ 534.12	\$ -	\$ 216.56	\$ 121.28									
2021	\$ 98.23	\$ 244.76	\$ 132.20	\$ 103.08	\$ 190.67	\$ 101.92	\$ 511.01	\$ -	\$ 244.99	\$ 162.30									
2022	\$ 131.97	\$ 111.17	\$ 176.58	\$ 221.64	\$ 281.27	\$ 155.77	\$ (98.69)	\$ -	\$ 374.88	\$ 231.08									
2023	\$ 229.73	\$ 387.82	\$ 497.83	\$ 549.60	\$ 545.67	\$ 473.80	\$ 248.22	\$ -	\$ 704.22	\$ 542.40									
Total - 2018-23	\$ 418.33	\$ 717.40	\$ 1,052.52	\$ 1,031.72	\$ 1,325.24	\$ 691.05	\$ 944.13	\$ -	\$ 1,771.77	\$ 1,140.08									

# Exhibit #5

**PPL Electric Utilities Corp.**

PPL Electric Utilities Corp. (PPL), a subsidiary of the PPL Corp., serves approximately 1.28 million residential, 183,400 commercial and 3,200 industrial customers. PPL’s service territory consists of parts of the following counties in Eastern Pennsylvania: Berks, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming and York. PPL operates under the terms of Electric Tariff Pa. P.U.C. No. 201. PPL Corp., headquartered in Allentown, Lehigh County, delivers energy to roughly 3.5 million customers in Kentucky, Virginia, Rhode Island and Pennsylvania.

Utility:	<b>PPL Electric Utilities Corp.</b>											
<b>Default Rate Schedule for Electric Service in the Commonwealth of Pennsylvania</b>												
<b>Rates for Default Service</b>												
<b>Rate Classification</b>	Customer Charge	Distribution Charges	Generation Charges	Transmission Charges	DSIC	SDER**	TCJA***	EE&C Charges	Smart Meter	Universal Service	STAS	<b>TOTAL</b>
Residential												
using 500 KWH	\$14.09	\$17.67	\$61.48	\$11.58	\$1.82	(\$0.20)	(\$2.61)	\$0.65	\$1.90	\$4.92	(\$0.06)	<b>\$111.24</b>

**Shopping Update:** As of March 2023, 134 EGS offers were being made to PPL’s customers. Furthermore, 553,631 customers (39% of customers; 63.6% of the load) were using a competitive supplier. Information, including PPL’s current price to compare and competitive offers, is available at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com).

# **ELECTRIC POWER OUTLOOK FOR PENNSYLVANIA 2021–2026**

**August 2022**

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[www.puc.pa.gov](http://www.puc.pa.gov)

Technical Utility Services

Paul T. Diskin, *Director*

## Statewide Review of Electrical Energy Usage

As shown on Tables 5 and 6 below, Pennsylvania's Total electrical consumption energy usage (residential, commercial, industrial, sales for resale, and other) in 2021, was 142,827 GWh, as compared to: 139,185 GWh in 2020; and 145,090 GWh in 2019. The year-over-year (YOY) increase for electrical usage in 2021 was 2.62%. In general, commercial and industrial usage increased YOY by 5.15% and 2.46%, respectively. Residential usage increased by 1.26%. The increase in residential, commercial, and industrial usage is likely indicative of rebound of the economy from the economic impacts of the COVID-19 pandemic. Pennsylvania's GDP for 2021 saw a YOY increase of 8.75%, as compared to Pennsylvania's GDP in 2020, which experienced a YOY decrease of 3.5%.<sup>63</sup>

In 2021, the total number of electrical customers increased to 5,918,122 as compared to 5,876,336 in 2020, which is a YOY increase of 0.7%.

**Table 5: PA EDC customers served, energy usage, and peak load (2021)**

Company	Total Customers Served	Residential (MWh)	Commercial (MWh)	Industrial (MWh)	Other (MWh)	Sales For Resale (MWh)	Total Consumption (MWh)	System Losses (MWh)	Company Use (MWh)	Net Energy For Load (MWh)	Peak Load (MW)
Duquesne	607,349	4,214,577	5,778,492	2,509,208	55,025	23,975	12,581,277	556,932	18,308	13,156,517	2,760
Met-Ed	583,251	5,832,422	2,151,245	6,201,037	26,511	536,842	14,748,057	1,006,954	0	15,755,011	3,072
Penelec	588,548	4,362,887	2,389,755	6,426,713	33,179	2,759,650	15,972,184	1,254,866	0	17,227,050	2,898
Penn Power	169,954	1,662,849	705,941	2,062,762	3,263	164,714	4,599,529	254,890	0	4,854,419	971
PPL	1,466,277	14,879,215	13,807,121	8,339,688	77,690	0	37,103,714	2,675,386	54,430	39,833,530	7,314
PECO	1,686,527	14,262,461	7,597,167	14,002,669	565,755	3,372	36,431,424	1,973,908	30,212	38,435,544	8,479
West Penn	734,971	7,206,217	2,714,385	9,333,865	22,081	773,022	20,049,570	1,305,049	0	21,354,619	3,940
UGI	62,714	581,522	305,921	102,408	5,568	189	995,608	67,825	1,381	1,064,814	216
Citizens'	7,085	87,772	28,193	50,227	364	0	166,556	6,532	128	173,216	43
Pike County	5,047	32,899	42,041	0	430	0	75,370	0	0	75,370	16
Wellboro	6,399	44,815	31,276	27,616	66	90	103,863	7,385	211	111,459	21
<b>Total</b>	<b>5,918,122</b>	<b>53,167,636</b>	<b>35,551,537</b>	<b>49,056,193</b>	<b>789,932</b>	<b>4,261,854</b>	<b>142,827,152</b>	<b>9,109,727</b>	<b>104,670</b>	<b>152,041,549</b>	<b>29,730</b>
% of Total		37.23%	24.89%	34.35%	0.55%	2.98%	100.00%				

<sup>63</sup> US Bureau of Economic Analysis: <https://www.bea.gov/>.

f. PPL provide the formula with actual calculations utilized by PPL to validate their claim, in their information to the public "...is to be the best utility company in the U.S. This means delivering safe, reliable, affordable and sustainable energy to our customers..." As an alternative, provide a graphical display of how they determine that as a utility they are providing affordable electric to their customers. All of PPL's customers, whether on the Default Supplier Rate or Alternate Supplier rate pay for less affordable electric than their geographic peers. PPL encounters zero competition for their customers resulting in all customers paying for higher cost, less affordable electric, so provide the formulas used by PPL to ensure their cost to customers is "affordable". Provide the formula(s) and the last 10 years of data to validate their assertion of providing affordable energy to customers. The higher costs of the PPL DSR only customers annualized is total more dollars than the 2023 budget for Dauphin (\$221.6 million general fund) and Lancaster Counties (\$288.4 million)

	Company	Total Customers Served (residential and commercial)	Residential (Mkh)	Total Consumptions (MWh)	kWh
2021 Data from the August 2022 PA PUC - Electric Power Outlook Report	PPL	1466277	14879215	37103714	37103714000
March 2023, Percent of customers utilizing competitive supplier		39%			
Number of Customers, not utilizing a competitive supplier		894429.0			
% Load Utilizing Competitive Supplier				63.6%	
Load not alternative				13505751.9	13,505,751,896
Take the PPL DSR rate from 2023 Annual Rate Comparison Report	\$	0.14612			
Subtract the weighted average DSR rate for 8 PA Electric Companys, 2023	\$	0.09918			
PPL's 2023 DSR rate above 9 PA electric utilities	\$	0.04694			
Multiply the DSR premium paid by PPL Customers times kWh not using competitive supplier		13,505,751,896			
Annual Premium paid by PPL customers on \$.14612 Default Supplier	\$	633,959,994			
5 month Premium paid by PPL customers, through 6/1/2023	\$	264,149,997			

Dauphin + Lancaster County 2023, \$510 mil

# Exhibit 6

Safety is the first item mentioned by PPL; “Safe, Reliable and Affordable...” Universally companies work to improve their safety performance. Recognizing there are credible safety programs deployable by companies, it is expected that PPL works to continually improve their safety results for employees and contractors. No companies has all the best practices, programs, policies and procedures in support of Safe, Reliable and Affordable performance and seek best practices, programs, policies and procedures from sources outside their company.

1. What is the OSHA TRIR (Total Recordable Incident Rate) and DART rate (Days Away, Restricted, & Transferred) for PPL, employees for the years 2022, 2021 and 2020?
2. What is the OSHA TRIR (Total Recordable Incident Rate) and DART rate (Days Away, Restricted, & Transferred) for PPL, employees and contractors for the years 2022, 2021 and 2020?
3. What is the metric that PPL utilizes to determine that their employee safety program is continuously improving year to year?
4. What safety benchmarking or business to business exchanges of safety practices, procedures and policies has PPL conducted 2020, 2021, 2022 and 2023 year to date.

**PPL ELECTRIC**  
**EXHIBIT 5**

# THE PRICE OF ENERGY IS ON THE RISE

## Here's what you need to know

Every June and December the default rate that many customers pay for electricity supply changes. The most recent update took place on June 1, 2022. Customers who receive default electricity supply will see an increase in their bills. Here is everything you need to know, as well as some steps you can take to lessen the impact.

### WHAT CHANGED, AND HOW WILL IT IMPACT ME?

#### RESIDENTIAL CUSTOMERS

*The price to compare effective June 1, 2022 is 12.366¢/kWh.*

If you are on default service and use 1,000 kWh of electricity a month (this is about average), your bill will go up by about \$34.

#### BUSINESS CUSTOMERS

*The price to compare effective June 1, 2022 is 11.695¢/kWh.*

If you are on default service and use 1,000 kWh of electricity a month (this is about average), your business's bill will go up by about \$20.

### WHY DID THE DEFAULT RATE INCREASE?

- We deliver your electricity, but we don't own the power plants where it's generated. You can shop for an electricity supplier that is right for you. If you don't shop for electricity supply, we buy it for you and pass along the cost at no profit to us. That's called the default rate.
- We update the default rate twice a year based upon competitive energy auctions. The default rate represents the lowest rate available at the time of the auctions.
- Inflation and global economic events are impacting all parts of the economy, including the cost of energy supply sources, such as natural gas. Those rising prices are reflected in the default rate.

### WHAT CAN I DO TO LESSEN THE IMPACT ON MY BILL?



#### SHOP FOR A BETTER DEAL

You may be able to save money by choosing an electricity supplier. Always be sure to read the fine print and beware of variable rates that start low and increase with the price of energy. Visit [ppllectric.com/shopsmart](https://ppllectric.com/shopsmart) to learn more.



#### SAVE ENERGY

We have tips, programs, and rebates available to help. Residential customers can also sign up for a free virtual home energy audit. Check out [savewithppl.com](https://savewithppl.com) for more information.

### ARE THERE OTHER PROGRAMS THAT CAN HELP?

While we can't control electricity supply prices, we recognize rising prices create additional challenges. We offer programs and payment agreements that can help.



#### SPREAD OUT YOUR COSTS

Our budget billing program evens out your bills over 12 months and makes payments more predictable. Log into your account at [ppllectric.com](https://ppllectric.com) to sign up.



#### GET BILL HELP

If you're struggling to keep up with your electric bill, or have a past due balance, we can help. Residential customers, visit [ppllectric.com/billhelp](https://ppllectric.com/billhelp) or call 1-800-342-5775. Small business customers, call 1-800-342-5775. Larger businesses, call 1-888-220-9991.

**PPL ELECTRIC**  
**EXHIBIT 6**

**Subject:** Important Notice: PPL Electric's Price to Compare to decrease on June 1

**Preheader:** Now is the time to check your supply rate.

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



## Price to Compare decreases on June 1

Dear %%Customer Name%%,

We understand that rising power prices, like the cost of so many goods and services in today's economy, have put added strain on household finances. We want you to know that we are committed to managing energy prices and securing the lowest cost of energy for our customers. That's why we update the supply charge, or Price to Compare, twice per year.

**On June 1, our default rate will decrease by 17%. The new Price to Compare will be 12.126 cents per kWh.**

If you don't shop for your electricity supply, and use an average of 1,000 kWh per month, your bill will decrease by approximately \$24.

### What can you do next?

- **Check your rate.** If you shop for your energy supply, it's a good time to check your rate – you could be paying more or less than our Price to Compare. You can find your rate listed on your bill or on the Account Summary page of your online profile at [ppllectric.com](http://ppllectric.com).
- **Compare your options.** At PPL Electric, we deliver your electricity, but we don't own the power plants where it's generated. If you don't shop for electricity supply, you'll pay the Price to Compare. If you're interested in shopping, you may be able to save. Use the Price to Compare as a reference point when shopping for electricity supply and compare offers at [papowerswitch.com](http://papowerswitch.com).
- **Shop smart.** If you shop, shop smart. Before making any changes, make sure to check the supplier's terms and conditions and be sure to read the fine print and beware of variable rates that start low and increase with the price of energy.

We're here to help you save, and sharing information about smart shopping is just one way we do that.

[Shop smart](#)

### Manage your electricity costs

There are a number of other things you can do to manage your bill and energy use and save money:

- [Monitor your usage online](#)
- [Save energy](#)
- [Get help with your bill](#)

Visit [us online](#) to learn more or call us at [1-800-342-5775](tel:1-800-342-5775).

Our pledge to our customers: You Depend on Us and We Deliver

### Connect with us



[Forward this email to a friend](#)

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[Update your email address](#) or [unsubscribe](#) from these messages. This does not change the email address for your PPL Electric Utilities online account.

**PPL ELECTRIC**  
**EXHIBIT 7**

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# Connect



## The Price to Compare is decreasing

On June 1, the new Price to Compare will be 12.126 cents per kWh. That's a decrease of 17% from the current rate. Now is a good time to check your rate, compare it to the Price to Compare, and see if you can save by shopping for a supplier.

[Shop smart](#)



## Beware of scams

If you receive a call or email asking about your electric bill or supplier, know the warning signs of a scam before you respond. Watch out for threats and pay attention to requests for specific payment methods. Stay informed and stay vigilant. And don't hesitate to reach out to us directly to verify any of your account information.

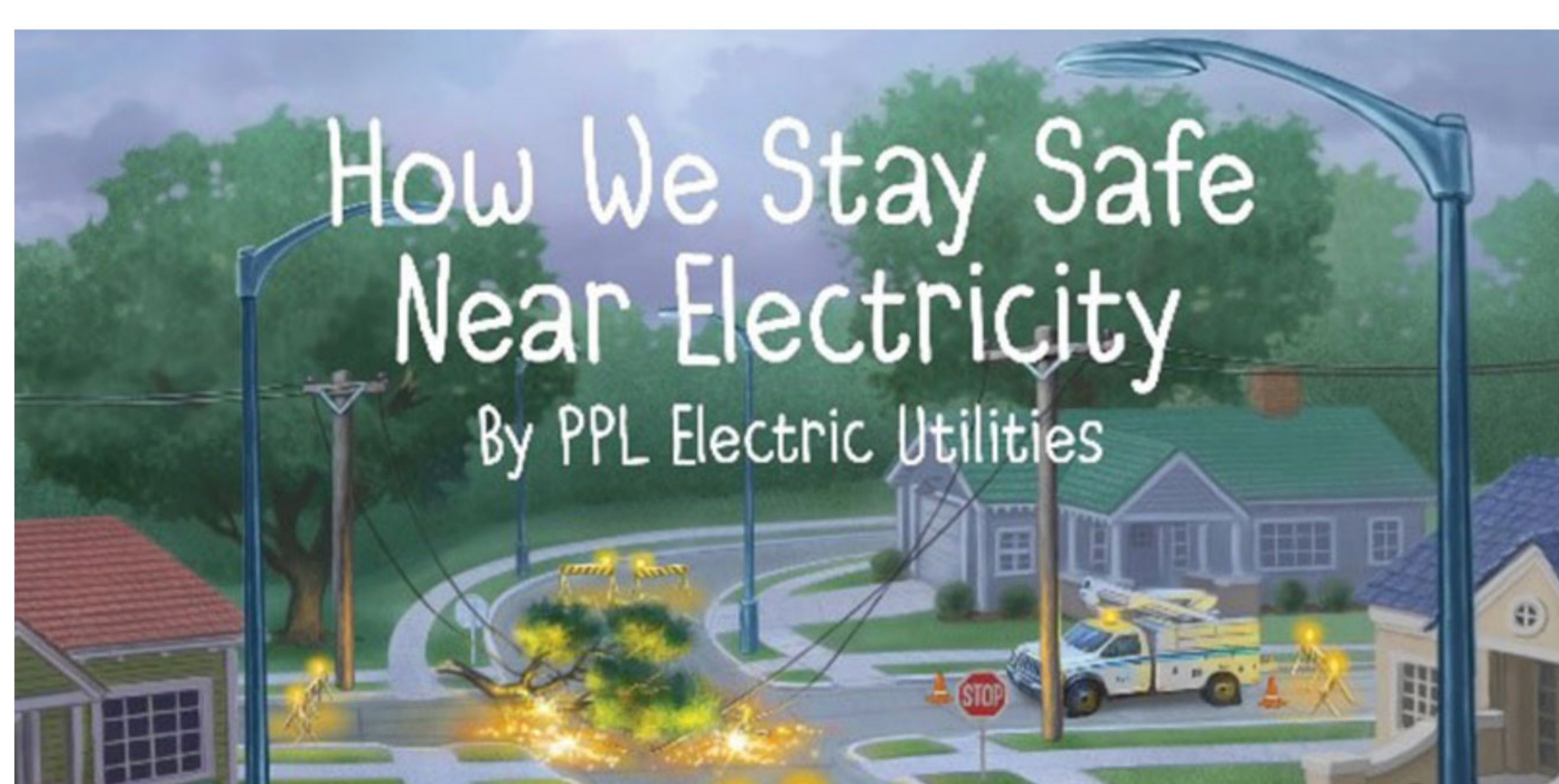
[Stop scams](#)



## We can help with your bill

We offer payment plans and assistance programs to help every family, regardless of your income. Sign in to your online account and click "Get help paying." We'll ask some questions about your household and let you know which option will benefit you most.

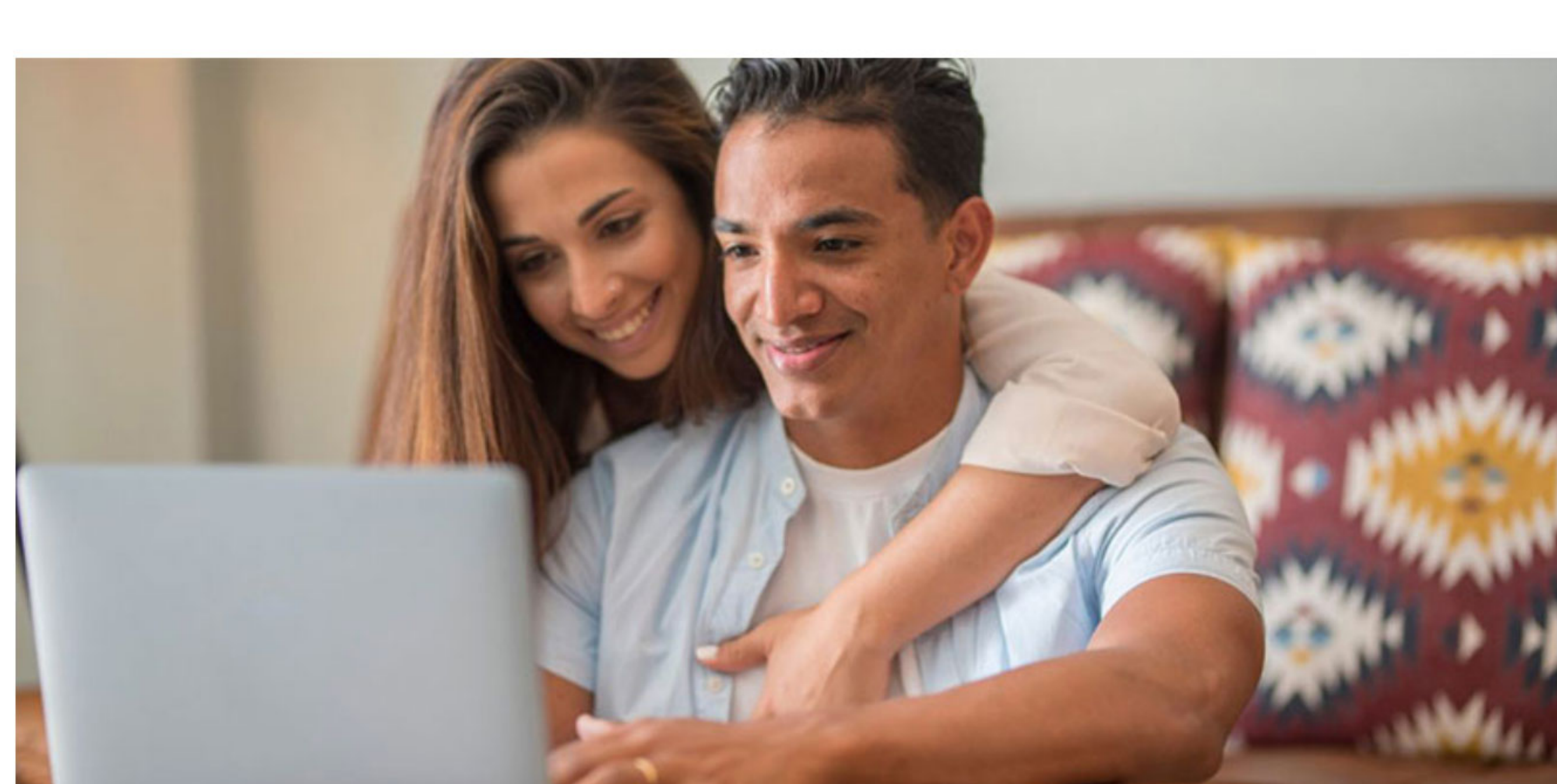
[Review my options](#)



## Staying safe near electricity

Do you know any fourth-grade teachers who'd like to teach their students about electricity? They can [order our book](#), How We Stay Safe Near Electricity, to share with their classrooms. We've distributed more than 42,000 books to students across PA, helping them learn more about electricity and how they can stay safe around it. You can even view an online copy to share with kids at home.

[Check it out](#)



## Take the next step toward energy efficiency with a no-cost, personalized Virtual Assessment

Looking for practical, effective steps to improve your home's efficiency? Talk with one of our energy advisors to learn about equipment and rebate options. Schedule your no-cost Virtual Home Energy Assessment today and get a free energy savings kit shipped to your door.

[Schedule Now](#)

Connect with us



[Forward this email to a friend](#)

**PPL ELECTRIC**

**Exhibit 8**

**GENERATION SUPPLY CHARGE-1**

**(C)**

The Generation Supply Charge-1 (GSC-1) shall be applied to each kilowatt-hour supplied to residential customers who take Basic Utility Supply Service (“BUSS”) from the Company under Rate Schedules RS and RTS (R), small commercial and industrial customers who take BUSS service under Rate Schedules GS-1, GS-3, BL, SA, SM (R), SHS, SLE, SE, TS (R) and GH-2 (R), and standby service for the foregoing rate schedules. The GSC-1 will not apply to those Rate Schedule GS-3 customers who have a peak demand of 100 kW or greater, but the GSC-1 will apply to those Rate Schedule LP-4 customers who have a peak demand of less than 100 kW. This peak demand will be based on the customer’s ICAP peak load contribution to PJM peak load assigned for the most recent PJM Planning Year. The GSC-1 shall have the options listed below.

**(C)**

**FIXED PRICE OPTION – RESIDENTIAL & SMALL COMMERCIAL/INDUSTRIAL**

**PURPOSE**

The Fixed Price Option provides eligible customers in the Residential and Small Commercial & Industrial Customer Class with default electric service for those customers who have not selected a retail electric generation supplier (EGS) or the Time of Use Program.

**PRICING PROVISIONS**

The Fixed Price GSC-1, determined in accordance with the formula set forth below, shall be applied to all kilowatt-hours billed for service provided during the billing period:

$$\text{Fixed Price GSC-1} = \left[ \left( \frac{GS_{fp}}{S_{fp}} \right) - \left( \frac{E}{S_{fp}} \right) \right] \times \frac{1}{(1-T)}$$

Where:

**GSC-1** = The Generation Supply Charge-1, stated in cents per kilowatt hour, shall be calculated separately for each of the following two Customer Classes: (1) residential, and (2) small commercial and industrial as designated above.

**GS<sub>fp</sub>** = The total estimated direct and indirect costs incurred by the Company to acquire generation supply from any source on behalf of participating BUSS customers on the Fixed Price Option in the applicable Customer Class. These costs shall be reduced by any revenue received by the Company from the sale of Alternative Energy Credits that otherwise would have expired.

The computation period shall be the six calendar months over which the Fixed Price GSC-1, as computed, will apply. Projections of the Company’s costs to acquire generation supply, adjusted for losses and including Alternative Energy Credits, for the computation quarter shall include all direct and indirect costs of generation supply to be acquired by the Company from any source plus any associated generation supply-related procurement and administration costs. Any costs incurred prior to June 1, 2021, shall be amortized ratably over the 48-month period June 1, 2021, through May 31, 2025, and the 6-month amortization amount shall be included in the computation of the GSC-1.

**(C)**

(Continued)

GENERATION SUPPLY CHARGE – 1 (Continued)

(C)

FIXED PRICE SERVICE – RESIDENTIAL & SMALL COMMERCIAL/INDUSTRIAL (Continued)

- E = Experienced net over or undercollection of costs associated with the acquisition of generation supply for participating BUSS customers in the applicable Customer Class. These costs will be computed as stated in the GSC-1 RECONCILIATION PROVISIONS and will include applicable interest. Interest shall be computed monthly from the month the over or undercollection occurs to the month in which the overcollection is refunded or the undercollection is recouped. Interest on recoveries of overcollections and undercollections shall be calculated at the prime rate for commercial borrowing in effect on the last day of the month the over or undercollection occurred.
- S<sub>fp</sub> = The Company's total retail KWH sales to participating BUSS customers on the Fixed Price Option in the applicable Customer Class, projected for the computation quarter.
- T = The Pennsylvania gross receipts tax rate (exclusive of Part 2 of the State Tax Adjustment Surcharge (STAS) within this tariff) in effect during the billing month, expressed in decimal form.

Minimum bills shall not be reduced by reason of the GSC-1, nor shall GSC-1 charges be a part of the monthly rate schedule minimum. The GSC-1 shall not be subject to any credits or discounts and Part 2 of the STAS shall apply.

The following GSC-1 charges apply for the Fixed Price Option during the period June 1, 2023 through November 30, 2023.

(C)

Customer Class	Small C&I	Residential
Rate Schedule / Charge	GS-1, GS-3 (< 100 kW), LP-4 (< 100 kW), BL, and GH-2 (R) \$0.09515/KWH (D)	RS and RTS (R) \$0.09769/KWH (D)

Small C&I – Street Lights										
Rate Schedule/ Charge	SA		SM (R)		SHS		SLE		SE	TS (R)
	Nominal Lumens	Charge	Nominal Lumens	\$/Lamp	Nominal Lumens	\$/Lamp	Nominal Lumens	\$/Fixture	\$/KWH	\$/Watt
HPS 9,500	6.242 \$/Lamp	3,350	4.672	5,800	2.835	2,600	1.227	0.09515	0.06951	
		6,650	7.298	9,500	4.063	3,300	1.788			
		10,500	10.200	16,000	5.975	3,800	1.807			
	LED 4,300	1.466 \$/Fixture	20,000	16.156	25,500	10.780	4,900			2.470
			34,000	27.546	50,000	16.918	7,500			3.152
			51,000	38.070			15,000			5.879
						20,000	9.119			

(Continued)

(D) Indicates Decrease (I) Indicates Increase (C) Indicates Change

GENERATION SUPPLY CHARGE -1 (Continued)

FIXED PRICE SERVICE – RESIDENTIAL & SMALL COMMERCIAL/INDUSTRIAL (Continued)

GSC – 1 RECONCILIATION PROVISIONS -

For the Fixed Price Option, the Company will file with the Commission thirty (30) days prior to each annual period (June 1 through May 31), a reconciliation of GSC-1 actual billed revenues and actual incurred costs for a twelve-month period ending March 31 of each year, pursuant to 66 Ps. C.S. §1307. The reconciliation shall become effective for service rendered during the 2 six-month computation periods. (C)

The reconciliation will be calculated separately for each of the two Customer Classes. The reconciliation will include a calculation of any over/under collection that will be reflected in the GSC-1 charges for the subsequent 2 six-month computation periods. The GSC-1 will be reconciled every twelve months, using over/under collection balance for the twelve-month period ending two months prior to each annual period. (C)

Application of the GSC-1 shall be subject to continuous review and audit by the Commission at intervals it shall determine. The Commission shall review the reasonableness and lawfulness of the level of charges produced by the GSC-1 and the costs included therein.

TIME OF USE PROGRAM – RESIDENTIAL AND SMALL COMMERCIAL/INDUSTRIAL (C)

PURPOSE

Beginning on June 1, 2019, this Time-of-Use (TOU) Program provides for the voluntary participation of eligible existing and new residential and small commercial & industrial customers in a year-round TOU Program. Eligible customers must meet the APPLICATION PROVISIONS of this TOU Program. The objective of this TOU Program is to provide eligible residential and small commercial & industrial customers with an opportunity to shift energy usage away from the on-peak periods, when wholesale electricity demand and prices are high, to off-peak periods, when demands and prices are lower.

(Continued)

GENERATION SUPPLY CHARGE – 1 (Continued)

TIME-OF-USE PROGRAM – RESIDENTIAL AND SMALL COMMERCIAL/INDUSTRIAL (C)  
 (Continued)

PRICING PROVISIONS

The following Generation Supply Charges apply for service under the TOU Program during the period June 1, 2023 through November 30, 2023. On-Peak hours will be set based on schedule (C) below Monday through Friday, excluding weekends and holidays.

Rate Schedule RS and RTS (R)	Winter On-Peak Hours (4:00 PM to 8:00 PM) <u>December 1 to May 31</u>	Summer On-Peak Hours (2:00 PM to 6:00 PM) <u>June 1 to November 30</u>
On-Peak Hours	13.255 cts per kWh	13.269 cts per kWh (D)
Off Peak Hours	11.098 cts per kWh	8.825 cts per kWh (D)

Rate Schedules GS-1, GS-3 (< 100 kW), LP-4 (<100kW), BL, and GH-2 (R)	Winter On-Peak Hours (4:00 PM to 8:00 PM) <u>December 1 to May 31</u>	Summer On-Peak Hours (2:00 PM to 6:00 PM) <u>June 1 to November 30</u>
On-Peak Hours	14.090 cts per kWh	12.652 cts per kWh (D)
Off Peak Hours	11.835 cts per kWh	8.671 cts per kWh (D)

The TOU GSC-1, determined in accordance with the formula set forth below, shall be applied to all kilowatt-hours billed for BUSS service provided during the billing month:

$$\text{Summer On-Peak TOU GSC-1} = \left[ \left[ \frac{GS_{\text{OFF}}}{S} \times GS_M \right] + \left[ \frac{GS_{\text{IND}} - E}{S} \right] \right] \times \frac{1}{(1-T)}$$

$$\text{Winter On-Peak TOU GSC-1} = \left[ \left[ \frac{GS_{\text{OFF}}}{S} \times GS_M \right] + \left[ \frac{GS_{\text{IND}} - E}{S} \right] \right] \times \frac{1}{(1-T)}$$

(Continued)

GENERATION SUPPLY CHARGE – 1 (Continued)

TIME-OF-USE PROGRAM – RESIDENTIAL AND SMALL COMMERCIAL/INDUSTRIAL (C)  
 (Continued)

$$\text{Summer Off-Peak TOU GSC-1} = \left[ \left[ \frac{GS_{GEN}}{S} \times 0.90 \right] + \left[ \frac{GS_{IND} - E}{S} \right] \right] \times \frac{1}{(1-T)}$$

$$\text{Winter Off-Peak TOU GSC-1} = \left[ \left[ \frac{GS_{GEN}}{S} \times 0.90 \right] + \left[ \frac{GS_{IND} - E}{S} \right] \right] \times \frac{1}{(1-T)}$$

Where:

- GSC-1 = The Generation Supply Charge-1, stated in cents per kilowatt hour, shall be calculated separately for each of the following two Customer Classes: (1) residential, and (2) small commercial and industrial (taking service at secondary voltage levels) as designated above.
- GS<sub>GEN</sub> = The total generation component for the respective customer classes' fixed price default service rate.
- GS<sub>OFF</sub> = The total Off-Peak generation component for the respective customer classes' fixed price default service rate.
- GS<sub>IND</sub> = The total estimated indirect costs incurred by the Company to acquire generation supply from any source on behalf of participating BUSS customers in the applicable Customer Class.
- E = Experienced net over or undercollection of costs associated with the acquisition of generation supply for participating BUSS customers in the applicable Customer Class. These costs will be computed as stated in the GSC – 1 RECONCILIATION PROVISIONS and will include applicable interest. Interest shall be computed monthly from the month the over or undercollection occurs to the month in which the overcollection is refunded or the undercollection is recouped. Interest on recoveries of overcollections and undercollections shall be calculated at the prime rate for commercial borrowing in effect on the last day of the month the over or undercollection occurred. (C)
- GS<sub>M</sub> = Seasonal Multiplier based on historic data.
- S = The Company's total retail KWH sales to participating BUSS customers in the applicable Customer Class, projected for the computation period.
- T = The Pennsylvania gross receipts tax rate in effect during the billing month, expressed in decimal form.

(Continued)

GENERATION SUPPLY CHARGE – 1 (Continued)

TIME-OF-USE PROGRAM – RESIDENTIAL AND SMALL COMMERCIAL/INDUSTRIAL (C)  
(Continued)

APPLICATION PROVISIONS

This TOU Program is available to existing and new residential and small commercial/ industrial customers who are served, or qualify to be served, under Rate Schedules RS, RTS(R), GS-1, GS-3 (customers with peak demands less than 100 KW), LP-4 (customers with peak demands less than 100KW), BL and GH-2 (R). This includes Volunteer/Non-Profit organizations (Volunteer Fire Companies, Non-Profit Senior Citizen Centers, Non-Profit Rescue Squads, and Non-Profit Ambulance Services) served under Rate Schedules GS-1 and GS-3, but does not include customers in the Company's OnTrack program. Customers taking service under the above-referenced rate schedules, who also participate in the Company's Net Metering for Renewable Customer Generator programs, are eligible for the TOU Program. (C)

TERMINATING PARTICIPATION

A customer may leave this TOU Program after providing notice to the Company. The customer, if still receiving BUSS, will return to the standard Fixed Price GSC-1.

**PPL ELECTRIC**

**Exhibit 9**

**TRANSMISSION SERVICE CHARGE**

**(C)**

The Transmission Service Charge (TSC) shall be applied to charges for electricity supplied to customers who receive Basic Utility Supply Service ("BUSS"), as defined in Rule 1B(1), from the Company under this Tariff.

**(C)**

The TSC shall be computed separately for each of the following four customer classes:

- (1) Residential: Consisting of Rate Schedules RS and RTS (R),
- (2) Small Commercial and Industrial: Consisting of Rate Schedules GS-1, GS-3, BL, SA, SM (R), SHS, SLE, SE, TS (R), and GH-2 (R) (Small C&I),
- (3) Large Commercial and Industrial – Primary: Consisting of Rate Schedule LP-4 (Large C&I – Primary), and
- (4) Large Commercial and Industrial – Transmission: Consisting of Rate Schedules LP-5, LPEP and L5S (Large C&I – Transmission).

The TSC, computed using the formulae described below, shall be applied to the monthly bill of each customer receiving BUSS service from the Company and shall be reconciled on an annual basis for undercollections and overcollections experienced during the previous year.

The TSC for the Residential class and the Small C&I class shall be computed using the following formula:

$$TSC = [TCe/S + TCd/S - E/S] \times 1/(1-T)$$

The TSC for the Large C&I – Primary class and the Large C&I – Transmission class shall be computed using the following formulae:

$$TSC = TSCd + TSCe$$

The demand – related portion of the TSC (TSCd) for the Large C&I – Primary class and the Large C&I – Transmission class shall be computed using the following formula:

$$TSCd = [TCd/D] \times 1/(1-T)$$

The other portion of the TSC (TSCe) for the Large C&I – Primary class and the Large C&I – Transmission class shall be computed using the following formula:

$$TSCe = [TCe/S - E/S] \times 1/(1-T)$$

Where:

TCd = The demand-related (kW) portion of the charges that the Company incurs to provide transmission service (including ancillary service charges and all non-market-based transmission service charges) to customers who receive BUSS service from the Company. These charges are all Federal Energy Regulatory Commission (FERC)-approved charges imposed by PJM Interconnection, LLC (PJM) on a kW basis. These charges are allocated to each customer class based upon the contribution of that class to the 5 coincident peaks used by PJM to establish such demand – related charges.

TCe = All other charges not recovered through TCd that the Company incurs to provide transmission service (including ancillary service charges and all non-market-based transmission service charges) to customers who receive BUSS service from the Company. These charges are all FERC-approved charges imposed by PJM on any basis other than a kW basis. These charges are allocated to each customer class based upon the projected kWh usage of that class, including estimated distribution system losses during the computation year.

(Continued)

**TRANSMISSION SERVICE CHARGE (CONTINUED)**

**(C)**

- D = For the Large C&I – Primary customer class, the total of the monthly billing demands for all customers in the class, projected for the computation year. For the Large C&I – Transmission customer class, the total of the monthly contributions of all customers in the class to the Company’s 5 coincident peaks used by PJM to establish such demand – related charges.
- E = Net over or undercollection of the TCe and TCd charges associated with the acquisition of transmission service as of the end of the 12-month period ending March 31 immediately preceding the computation year, including applicable interest. Reconciliation of the TSC will be conducted separately for each of the four customer classes. Beginning with the reconciliation period ending April 30, 2013, the percentage of demand-related costs assigned to each customer class will change monthly to reflect the class’ actual share of default service peak load responsibility in that month. Interest shall be computed monthly from the month the over or undercollection occurs to the month in which the overcollection is refunded or the undercollection is recouped. Interest on recoveries of overcollections and undercollections shall be calculated at the prime rate for commercial borrowing in effect on the last day of the month the over or undercollection occurred, effective April 1, 2016. **(C)**
- S = The Company’s total retail KWH sales to customers in each customer class who receive BUSS under this tariff (including distribution losses) projected for the computation year.
- T= The total Pennsylvania gross receipts tax rate (exclusive of Part 2 of the State Tax Adjustment Surcharge (STAS) within this tariff) in effect during the billing period, expressed in decimal form.

The TSC shall be filed with the Pennsylvania Public Utility Commission (Commission) by May 1 of each year. The TSC rate shall become effective for transmission service acquired on behalf of BUSS customers and rendered to those customers on or after the following June 1, unless otherwise ordered by the Commission, and shall remain in effect for a period of one year, unless revised on an interim basis subject to the approval of the Commission. Upon determination that a customer class’s TSC, if left unchanged, would result in a material over or undercollection of all transmission service charges incurred or expected to be incurred, the Company may file with the Commission for an interim revision of the TSC to become effective thirty (30) days from the date of filing, unless otherwise ordered by the Commission.

By May 1 of each year the company will file with the Commission the experienced net over or under collection as described above. The reconciliation will include a calculation of the application period over or under recoveries of transmission service costs. The reconciliation of the TSC will be the difference between actual transmission service costs incurred and actual revenue billed for the application period.

Minimum bills shall not be reduced by reason of the TSC, nor shall charges hereunder be a part of the monthly rate schedule minimum. The TSC shall not be subject to any credits or discounts, but Part 2 of the STAS shall apply.

Application of the TSC shall be subject to review and audit by the Commission at intervals it shall determine. The Commission shall review the reasonableness and lawfulness of the level of charges produced by the TSC and the costs included therein.

(Continued)

TRANSMISSION SERVICE CHARGE (CONTINUED)

TRANSMISSION SERVICE CHARGE

(C)

Charges under the TSC for the period June 1, 2023 through May 31, 2024 as set forth in the applicable Rate Schedules.

Customer Class	Large C&I - Transmission	Large C&I - Primary	Small C&I	Residential
Rate Schedule / Charge	L5S, LP-5, and LPEP	LP-4	GS-1, GS-3, BL, and GH-2 (R)	RS and RTS (R)
Energy Rate (\$/kWh)			0.02174 (I)	0.02357 (I)
Demand Rate (\$/kW)	25.575 (I)	7.826 (D)		

Small C&I – Street Lights										
Rate Schedule/ Charge	SA		SM (R)		SHS		SLE		SE	TS (R)
	Nominal Lumens	Charge	Nominal Lumens	\$/Lamp	Nominal Lumens	\$/Lamp	Nominal Lumens	\$/Fixture	\$/KWH	\$/Watt
	HPS 9,500	1.426 \$/Lamp	3,350	1.067	5,800	0.648	2,600	0.280	0.02174	0.01588
6,650			1.667	9,500	0.928	3,300	0.409			
10,500			2.331	16,000	1.365	3,800	0.413			
LED 4,300		0.335 \$/Fixture	20,000	3.691	25,500	2.463	4,900	0.564		
			34,000	6.294	50,000	3.865	7,500	0.720		
			51,000	8.698			15,000	1.343		
							20,000	2.083		

(D) Indicates Decrease (I) Indicates Increase (C) Indicates Change

**PPL ELECTRIC**

**Exhibit 10**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held December  
17, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement  
David W. Sweet, Vice Chairman, Statement  
John F. Coleman, Jr.  
Ralph V. Yanora

Petition of PPL Electric Utilities Corporation for  
Approval of Its Default Service Plan For the Period  
June 1, 2021 Through May 31, 2025

P-2020-3019356

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (Recommended Decision or R.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, issued on October 15, 2020, in the Petition of PPL Electric Utilities Corporation (PPL Electric or Company) for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025 (DSP V Petition or Petition), filed on March 25, 2020, at Docket No. P-2020-3019356. In the R.D., the ALJ recommended that the Commission approve PPL Electric's DSP V Petition, as modified by the Joint Petition for Approval of Partial Settlement (Joint Petition or Partial Settlement) filed in this proceeding on September 17, 2020, by the following Parties: PPL Electric, the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Service in PA (CAUSE-PA), the Sustainable Energy Fund (SEF), Calpine Retail Holdings, LLC (Calpine), and the following Commission-licensed Electric Generation Suppliers (EGSs): Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc, Vistra Energy Corp., ENGIE Resources LLC, WGL Energy and Direct Energy Services, LLC (collectively, the EGS Parties).

While the Partial Settlement itself is uncontested in this proceeding, it did not resolve all the contested issues raised by the Parties in this proceeding. The ALJ's Recommended Decision addressed the remaining three contested issues and approved PPL Electric's proposals relating to these contested issues. Now, before the Commission for consideration and disposition are the Exceptions to the R.D., filed on or before October 26, 2020, by the following Parties: CAUSE-PA, the EGS Parties, Starion Energy PA, Inc. (Starion), Inspire Energy Holdings, LLC (Inspire), the Industrial Energy Consumers of Pennsylvania (IECPA), and the PP&L Industrial Customer Alliance

(PPLICA).<sup>1</sup> Also before the Commission are the Replies to Exceptions filed on or before November 2, 2020 by the following Parties: PPL Electric, the OCA, CAUSE-PA, and the EGS Parties.<sup>2</sup>

For the reasons stated, *infra*, we shall grant, in limited part, Starion's Exception No. 2 and deny all other Exceptions filed by the Parties, consistent with this Opinion and Order. We shall approve the Partial Settlement without modification, and approve PPL Electric's DSP V Petition, as modified by the Partial Settlement, consistent with this Opinion and Order. We shall decline to adopt PPL Electric's proposals relating to its customer referral Standard Offer Program (SOP) that are the subject of litigation in this proceeding, consistent with this Opinion and Order; and, therefore, we shall modify the ALJ's Recommended Decision accordingly. However, we shall approve PPL Electric's proposal to end its Customer Assistance Program (CAP) SOP, and, therefore, we shall adopt the ALJ's Recommended Decision on this issue, consistent with this Opinion and Order. Finally, we shall adopt the ALJ's Recommended Decision on the final contested issue related to PPL Electric's proposed coincident peak methodology for allocating transmission costs, consistent with this Opinion and Order. Based on the foregoing, we shall adopt in part and modify in part the ALJ's Recommended Decision, consistent with this Opinion and Order.

## I. History of the Proceeding

On March 25, 2020, PPL Electric filed the DSP V Petition pursuant to Section 2807(e) of the Public Utility Code (Code), 66 Pa. C.S § 2807(e), the Commission's Default Service Regulations, 52 Pa. Code §§ 54.181-54.189, and the

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<sup>1</sup> The following Parties filed Letters stating they were not filing Exceptions to the R.D.: PPL Electric, I&E, the OCA, the OSBA and Calpine.

<sup>2</sup> The following Parties filed Letters stating they were not filing Replies to Exceptions: I&E, the OSBA, Calpine, Inspire, Starion, IECPA, and PPLICA.

Commission's Policy Statement on Default Service, 52 Pa. Code §§ 69.1801-69.1817. Together with the DSP V Petition, PPL Electric filed prepared Direct Testimony, with related exhibits in support of the DSP V Program. Therein, PPL Electric more fully explained the details of the proposed DSP V Program and why the Company believes that the proposed DSP V Program includes and/or addresses all of the elements prescribed by Section 2807(e) of the Code, the Commission's Regulations, and the Commission's policies for a Default Service plan.

On April 18, 2020, the Petition was published in the *Pennsylvania Bulletin* with a deadline to file protests, petitions to intervene and answers by May 8, 2020. 50 Pa. B. 2164.

On or before the May 8, 2020 deadline for interventions, I&E, the OCA and the OSBA each filed a Notice of Intervention (NOI) and the OCA also filed an Answer. Petitions to Intervene were filed by all the following parties: CAUSE-PA, SEF, Calpine, Statewise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively, Statewise), the EGS Parties, Starion, Inspire, IECPA, and PPLICA.<sup>3</sup>

On May 15, 2020, an initial prehearing conference was held before ALJ Barnes.

On May 28, 2020, PPL Electric filed an unopposed Motion for Protective Order, which was granted by the ALJ on June 1, 2020.

On June 25, 2020, the following Parties served Direct Testimonies: I&E, the OCA, the OSBA, CAUSE-PA, SEF, PPLICA, IECPA, the EGS Parties, Inspire, and

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<sup>3</sup> Retail Energy Supply Association (RESA) initially intervened in the proceedings, but subsequently withdrew its intervention.

Starion. On July 23, 2020, PPL Electric served Rebuttal Testimonies. On August 6, 2020, the following Parties served Surrebuttal Testimonies: PPL Electric, I&E, the OCA, the OSBA, CAUSE-PA, SEF, PPLICA, IECPA, the EGS Parties, Inspire, and Starion. On August 10, 2020, PPL Electric served Rejoinder Testimonies.<sup>4</sup> R.D. at 4-5.

On August 13, 2020, an evidentiary hearing was held before ALJ Barnes. The Parties agreed to waive cross-examination and moved their respective testimonies and exhibits into the record. CAUSE-PA and Starion entered into a Stipulation that was admitted into the record. CAUSE-PA and Inspire also entered into a Stipulation that was admitted into the record. R.D. at 5-6; Tr. at 44.

On or about September 3, 2020, all the Parties except I&E filed Main Briefs in this proceeding. R.D. at 6.

On September 17, 2020, PPL Electric, I&E, the OCA, OSBA, CAUSE-PA, SEF, the EGS Parties, and Calpine (the Joint Petitioners) filed the Partial Settlement, along with Statements in Support of the Partial Settlement. The Partial Settlement resolved all but three of the issues and concerns raised by the Parties in this proceeding. The Partial Settlement is not contested by any Party. R.D. at 6. To address the three outstanding issues not resolved in the Partial Settlement, on September 17, 2020, the following Parties filed Reply Briefs: PPL Electric, the OCA, CAUSE-PA, PPLICA, IECPA, Inspire, Starion, and the EGS Parties. R.D. at 6. Upon receipt of the Reply Briefs, the record closed on September 17, 2020.

As noted above, on October 15, 2020, ALJ Barnes' R.D. in this proceeding was served on the Parties of Record. In the R.D., ALJ Barnes recommended that the

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<sup>4</sup> For a complete listing of the served Testimonies by Witness Name and by Party, please refer to the ALJ's Recommended Decision at 4-5.

Commission approve by December 24, 2020, PPL's Default Service Plan and the Partial Settlement and adopt the ALJ's recommendations on the litigated issues in this proceeding.

Also as noted above, on October 26, 2020, CAUSE-PA, the EGS Parties, Starion, Inspire, IECPA, and PPLICA filed Exceptions to the R.D. On November 2, 2020, PPL Electric, the OCA, CAUSE-PA, and the EGS Parties filed Replies to Exceptions.

## II. Legal Standards

### Burden of Proof

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP V complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 49 Pa. 109, 413 A.2d 1037 (1980) (*Norfolk*).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or “weight,” the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al., v. Metropolitan Edison Co. (Metropolitan Edison Co.)*, Docket No. R-00061366C0001 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens’ Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens’ Electric Co.)*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

### **Standards Applicable to Default Service Plans**

The requirements for a Default Service plan appear in the Electricity Generation Customer Choice and Competition Act (Choice Act) or Section 2807 of the Code. 66 Pa. C.S. § 2807. These requirements include that the Default Service provider follow a Commission-approved competitive procurement plan; that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements; that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time; and that the Default Service provider shall offer a time-of-

use (TOU) rate program for customers who have smart meter technology. 66 Pa. C.S. §§ 2807(e)(3.1), (e)(3.2), (e)(3.4), (f)(5).

Also applicable are the Commission's Default Service Regulations, 52 Pa. Code §§ 54.181-54.189, and a Policy Statement addressing Default Service plans, 52 Pa. Code §§ 69.1802-69.1817. The Commission's Default Service Regulations require that a Default Service plan include: a rate design plan recovering all reasonable costs of Default Service, including a schedule of rates, rules, and conditions of default service in the form of proposed revisions to its tariff; contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. *See* 52 Pa. Code §§ 54.185(e)(3), (e)(5). Additionally, the Commission's Regulations require that a default service plan include copies of agreements or forms to be used in the procurement of electric generation supply for Default Service customers. *See* 52 Pa. Code § 54.185(e)(6).

Additionally, the Commission's Default Service Regulations require that a Default Service plan be consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the Regional Transmission Organization (RTO) or other entity in whose control area the default service provider is providing service, and that the default service procurement plan's period of service must align with the planning period of that RTO or other entity. *See* 52 Pa. Code § 54.185(e)(4).

The Commission's Regulations further require electric distribution companies (EDCs) to obtain Alternative Energy Credits (AECs) in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth in compliance with the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. §§ 1648.1 – 1648.8. *See* 52 Pa. § Code 54.182.

Section 69.1807(8) of the Commission's Default Service and Electric Retail Markets Statement of Policy provides that the competitive bid solicitation process used in a Default Service program should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. 52 Pa. Code § 69.1807(8). The Default Service and Electric Retail Markets Statement of Policy also states that the independent evaluator should have expertise in the analysis of wholesale energy markets, including methods of energy procurement. *Id.*

Additionally, the Commission has directed EDCs to consider incorporating certain program changes into their Default Service plans in order to foster a more robust retail competitive market. *See Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, 2011 Pa. PUC LEXIS 65 (Final Policy Statement entered Sept. 23, 2011) (hereinafter "*DSP Policy Statement*"); *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) (hereinafter "*End State Order*").

### **Standards Applicable to Settlements**

This Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401, *et seq.*, relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case.

Despite this policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); *Warner v. GTE North, Inc.*, C-00902815 (Opinion and Order entered April 1, 1996); 52 Pa. Code § 69.1201.

The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

We note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Finally, in her Recommended Decision, the ALJ reached thirteen Findings of Fact and twenty-three Conclusions of Law. R.D. at 9-11; 39-42. The Findings of Facts and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

### III. PPL's DSP V Petition

PPL Electric's current Commission-approved DSP IV Program<sup>5</sup> expires on May 31, 2021. To meet its statutory and regulatory Default Service obligation after the expiration of the DSP IV Program, PPL Electric proposes the DSP V Program to establish the terms and conditions under which PPL Electric will acquire and supply Default Service during the DSP V Program Period of June 1, 2021 through May 31, 2025. Petition at 4.

The Company stated that its primary goal with respect to the DSP V Program is to obtain a laddered portfolio of Default Service supply contracts that provide generation supply for default service customers from June 1, 2021 through May 31, 2025. To meet this objective, PPL Electric plans to acquire the generation supply and related services needed to meet its Default Service obligation for the DSP V Program Period through procedures similar to those previously approved by the Commission and used by PPL Electric to acquire Default Service supply under the DSP IV Program. Petition at 4.

Through the Default Service procurement process, the Company proposes to purchase energy, capacity, transmission (other than Non-market-based Transmission

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<sup>5</sup> See *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (Order entered October 27, 2016) (*DSP IV Order*).

Services (NMBs)<sup>6</sup>), ancillary services, congestion management costs, transmission and distribution losses, and such other services or products that are required to supply Default Service to PPL Electric's retail customers for each Customer Class, and will recover the cost of obtaining these services from Default Service customers in that Customer Class. Petition at 5.

For Residential and Small Commercial and Industrial (C&I) default service customers, the DSP V Program provides for the purchase of fixed-price, full-requirements, load-following products with 6 and 12-month contract terms using a laddered approach so that the procurements are staggered to avoid procuring 100% of the Default Service products at the same time. In addition, the Company will procure two 5-year, 50 MW block products for a total of 100 MW of block product for non-shopping residential customers. One 50 MW block will be procured during the first default service auction of the DSP V Program and the second 50 MW block will be procured during the second default service auction of the DSP V Program. Petition at 5, 12-16.

For Large C&I default service customers, the DSP V Program provides for the purchase of power supply through 12-month, full-requirements, load-following spot market supply contracts to meet the default service demand of those customers electing to receive such service. Petition at 5; 17-18.

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<sup>6</sup> The Non-market-based Transmission Services or NMBs that will not be purchased by the Company through the Default Service procurement process include: (1) Network Integration Transmission Services (NITS); (2) Transmission Enhancement Costs; (3) Expansion Cost Recovery Costs; (4) Non-Firm Point-to-Point Transmission Service Credits; (5) Regional Transmission Expansion Plan; and (6) Generation Deactivation Charges. PPL Electric is billed by PJM Interconnection, LLC (PJM) for these Non-market-based Transmission Services for default service customers and recovers those costs through its Transmission Service Charge (TSC), as a component of the Price-to-Compare (PTC).

As part of the DSP V Program, PPL Electric proposes to continue to provide a TOU rate option to eligible Default Service Residential and Small C&I customers. The Company proposes to offer the TOU rate option by securing the generation to service TOU customers through the default service auction process without holding a TOU-specific auction that solicits bids from wholesale suppliers or EGSs. Petition at 6; 33-34.

PPL Electric is proposing to remove wholesale suppliers' obligation to supply AECs as part of the default service auctions. Rather, PPL Electric will hold separate biannual auctions to procure the necessary AECs and proposes to adopt a new competitive procurement auction to acquire all Default Service AECs. Petition at 5, 6, 18-20.

The DSP V Petition consists of a contingency plan for the DSP V Program. R.D. at 2; Petition at 26-27.

The DSP V Petition also consists of a proposal to establish an optional Renewable Rate Program. Petition at 34-37.

Additionally, the DSP V Program consists of a proposal to modify the Company's customer referral Standard Offer Program (SOP). Specifically, PPL Electric proposed two modifications to its SOP program that are subject to litigation in this proceeding: (1) upon expiration of the SOP contract, a customer who fails to make an affirmative election of a new contract with the existing EGS or a new EGS would be automatically transferred to default service at the PTC, rather than be converted to a

month-to-month contract with their existing SOP EGS;<sup>7</sup> and, (2) implementing a new, two-step communication process, which would further inform customers about their shopping options after their SOP contracts expire and would remind SOP customers that they would be returned to default service at the end of their SOP contracts if they fail to make an affirmative shopping choice. Petition at 27-30; PPL M.B. at 17-18; PPL Electric St. 4 at 13-14. Additionally, the Company also proposed several other changes to the SOP that are intended to improve the SOP process. These include: (1) replacing specific SOP scripting used by PPL Electric Customer Service Representatives (CSRs) with guidelines to navigate the customers through the SOP process, while providing flexibility to modify the precise words if there is customer confusion about the program; (2) updating the scripting used by the third-party manager of the SOP enrollment process, to reflect changes made to the SOP; and (3) changing the EGS enrollment term from quarterly to semiannually, which coincides with the semi-annual PTC rate changes. Petition at 28-29; PPL Electric M.B. at 12; PPL Electric St. 4 at 6. The guidelines and scripting to be used will be consistent with the Commission's suggestions set forth in its Secretarial Letter dated January 23, 2020, at Docket No. M-2019-3007101, with respect to SOP scripting. PPL Electric St. 4 at 7.<sup>8</sup>

The DSP V Program consists of a proposal to end the participation of Residential customers enrolled in the Company's OnTrack program (the Company's low-

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<sup>7</sup> To the extent waiver of the Commission's Regulation is necessary to implement PPL Electric's SOP proposal, the Company requests waiver of 52 Pa. Code § 54.10(3) to automatically return customers to default service upon conclusion of their SOP contract unless the customer affirmatively elects otherwise. Petition at 29, 40.

<sup>8</sup> The Commission's Secretarial Letter further suggested that EDCs review the scripting approved in *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855 et al. (Order entered February 28, 2019) (*FirstEnergy Order*).

income residential Customer Assistance Program (CAP)) in the Company's CAP SOP and for CAP customers to take default service only. Petition at 27-33.

Finally, copies of a *pro forma* Default Service Request for Proposals Process and Rules (Default Service RFP), a *pro forma* Default Service Supply Master Agreement (Default Service SMA), a *pro forma* Block Energy Request for Proposals Process and Rules (Block RFP), a *pro forma* Block Energy Supply Master Agreement (Block SMA), a *pro forma* Alternative Energy Credit Request for Proposals Process and Rules (AEC RFP), and a *pro forma* Alternative Energy Credit Supply Master Agreement (AEC SMA) were included with the Petition. The filing also contained *pro forma* tariff pages to implement the Generation Supply Charge-1 (GSC-1), the Generation Supply Charge-2 (GSC-2), and the Transmission Service Charge (TSC) rates under the DSP V Program, and *pro forma* tariff pages for the proposed Renewable Rate Program. R.D. at 2, 15-16 (citing PPL Electric Exhibit 1, Attachments A-H).<sup>9</sup>

#### IV. Discussion

##### A. Review of the Uncontested Partial Settlement

The essential terms of the Joint Petition for Partial Settlement are set forth in Section III of the Joint Petition, Paragraphs 17 through 28. *See* Partial Settlement ¶¶ 17-28, at 7-10. Specifically, these essential terms and conditions of the Joint Petition are set forth below, with the original paragraph numbers maintained, followed by discussion of the ALJ's recommendations related thereto.

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<sup>9</sup> In the R.D., the ALJ found that the Petition's inclusion of the copies of the foregoing documents was consistent with the requirements of the Commission's Regulations at 52 Pa. Code § 54.185(e)(6). R.D. at 15-16

## **1. Terms and Conditions of the Partial Settlement**

The essential terms of the Joint Petition for Partial Settlement are set forth in Section III of the Joint Petition, Paragraphs 17 through 28. *See* Partial Settlement ¶¶ 17-28, at 7-10. The essential terms and conditions of the Joint Petition are discussed below individually along with the ALJ's Recommendations in the next section.

## **2. ALJ's Recommendations**

In her Recommended Decision, the ALJ found that a diverse group of interested parties have reached an agreement in the Partial Settlement that resolves nearly all of the issues in this case. Accordingly, the ALJ concluded it is in the public interest to recommend approval of the Partial Settlement including all terms and conditions thereof without further modification. R.D. at 27.

The ALJ's specific review of the individual terms and conditions of the Partial Settlement and reasons stated by the ALJ to support her recommendation that the Commission approve each term are discussed more fully below.

### **a. General**

The terms and conditions of the "General" Section A. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

18. Subject to the terms and conditions of the Partial Settlement and excluding the issues reserved for litigation, the Signatory Parties agree that the proposals set forth in PPL Electric's Petition requesting approval of its fifth Default Service Program and Procurement Plan ("DSP V Program"), including the Default Service Supply Master Agreement ("Default Service SMA"), Request for Proposals ("RFP")

Process and Rules, Program Product Procurement Schedule, and Tariff provisions for the Generation Supply Charge-1 (“GSC-1”), the Generation Supply Charge-2 (“GSC-2”) and the Transmission Service Charge (“TSC”), are acceptable and should be adopted by the Pennsylvania Public Utility Commission (“Commission”). Any proposals of other parties not expressly addressed in this Section III or reserved for litigation in Section IV are withdrawn.

19. The Signatory Parties agree that PPL Electric’s DSP V Program, as modified by the terms and conditions of the Partial Settlement and excluding the issues reserved for litigation, includes and/or addresses all of the elements prescribed by Section 2807 of the Public Utility Code, the Commission’s regulations, and the Commission’s policies for a Default Service plan.

Partial Settlement at ¶¶ 17-19, at 7.

The ALJ found that PPL’s DSP V Program Partial Settlement, is in the public interest because it includes and/or addresses all of the elements prescribed by Section 2807 of the Code, the Commission’s Regulations, and the Commission’s policies for a Default Service plan. R.D. at 13.

The ALJ explained that, pursuant to Section 2807(e)(3.1) of the Code, a Default Service provider shall provide Default Service pursuant to a Commission-approved competitive procurement plan that includes auctions, RFPs, and/or bilateral agreements. R.D. at 13 (citing 66 Pa.C.S. § 2807(e)(3.1)). Under the proposed DSP V Program, PPL Electric will acquire the Residential and Small C&I Customer Class default service supply through a series of 6- and 12-month fixed-price, load-following, full-requirements supply contracts. R.D. at 13 (citing PPL Electric St. 1 at 14, 18-20). PPL Electric will also procure 100 MWs for Block Energy supply through staggered 5-year contracts to be used in serving the Residential customer class. R.D. at 13 (citing PPL Electric St. 1 at 14). For the Large C&I Customer Class, PPL Electric will enter into

annual contracts with suppliers for the provision of the default service spot market, full requirements supply. R.D. at 13 (citing PPL Electric St. 1 at 24).

The ALJ further explained that the Company will obtain its default service supply needs through transparent competitive solicitations, with all qualified wholesale suppliers being eligible to participate. PPL Electric will implement the DSP V Program by holding solicitations pursuant to a series of RFPs to obtain the default service products from competitive wholesale generation suppliers. Separate bids will be solicited for the Residential, Small C&I, and Large C&I Customer Classes. R.D. at 13 (citing PPL Electric St. 1 at 9).

Moreover, the ALJ explained that Section 2807(e)(3.2) of the 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. R.D. at 13 (citing 66 Pa. C.S. § 2807(e)(3.2)). The ALJ found that PPL Electric's proposed DSP V plan consists of a prudent mix of products that include spot market purchases, short-term contracts, and long-term purchase contracts. R.D. at 13. For both the Residential and Small C&I Customer Classes, PPL Electric's DSP V Program proposes to use fixed-price, full-requirements, load-following products with 6- and 12-month contract terms. R.D. at 13-14 (citing PPL Electric St. 1 at 48). In addition, the Company will procure a meaningful percentage (approximately 10.5%) of Residential supply through long-term block contracts. R.D. at 14 (citing PPL Electric St. 1 at 20). PPL Electric's DSP V Program also proposes to continue to obtain Default Service supply on a real-time hourly basis through the PJM spot market for Large C&I Customer Class. R.D. at 14 (citing PPL Electric St. 1 at 24). PPL Electric's DSP V Program will include spot market purchases, short-term contracts, and long-term purchase contracts. Thus, in the ALJ's opinion, PPL Electric's DSP V Program as a whole contains a prudent mix of products as required by Section 2807(e)(3.2) of the Code. R.D. at 14. The ALJ pointed to the testimony of PPL Electric's independent,

outside expert, who concluded, based on a review of these products, that PPL Electric's DSP V Program procurements are consistent with the "prudent mix" requirement. R.D. at 14 (citing PPL Electric St. 2 at 28).

Additionally, the ALJ concluded that, consistent with the requirements of 66 Pa. C.S. § 2807(e)(3.4), PPL Electric's DSP V Program will provide adequate and reliable service to customers. R.D. at 14. The ALJ explained that under PPL Electric's DSP V Program, Default Service supply will be procured primarily through load-following, full requirements contracts, which obligate a wholesale electricity supplier to provide a fixed percentage (referred to as a "tranche") of PPL Electric's default service hourly load during every hour of a product's term. By assuming this obligation, wholesale suppliers are responsible for managing the acquisition of energy, capacity, transmission (other than defined non-market based transmission services), ancillary services, and any other related products (exclusive of AECs and net of transmission and distribution losses) to meet Default Service customers' hourly load. R.D. at 14 (citing PPL Electric St. 2 at 4). The ALJ found that these contracts will ensure that PPL Electric will be able to provide sufficient and reliable Default Service to customers. R.D. at 14.

The ALJ further explained that, pursuant to Section 2807(e)(3.4) of the Code, Default Service providers are to obtain Default Service supply at the "least cost to customers over time." R.D. at 14 (citing 66 Pa. C.S. § 2807(e)(3.4)). The fixed-price, load-following supply for Residential and Small C&I Default Service customers will be procured through widely advertised, well-defined solicitations where the overarching objective is to seek out the lowest-cost suppliers. R.D. at 14. By obtaining the Residential and Small C&I Default Service supplies through competitive solicitations in the form of an auction, PPL Electric is able to obtain default supplies at the lowest possible cost for the product being procured. R.D. at 14-15 (citing PPL Electric St. 2 at 33). The ALJ concluded that wholesale competition among suppliers of the spot market-priced product will ensure that PPL Electric provides default service for Large

C&I customers at the lowest possible cost available at the time. R.D. at 15 (citing PPL Electric St. 2 at 21). The ALJ also pointed to the testimony of PPL Electric's independent, outside expert, who concluded, based upon a review of these products, that PPL Electric's DSP V Program procurements are consistent with the "least cost to customers over time" requirement. R.D. at 15 (citing PPL Electric St. 2 at 31-33).

Furthermore, the ALJ explained that Section 69.1807(8) of the Commission's Default Service and Electric Retail Markets Statement of Policy provides that the competitive bid solicitation process should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. R.D. at 16 (citing 52 Pa. Code § 69.1807(8)). The Default Service and Electric Retail Markets Statement of Policy also states that the independent evaluator should have expertise in the analysis of wholesale energy markets, including methods of energy procurement. *Id.* The ALJ found that PPL complied with these requirements by having retained NERA Economic Consulting as the independent third-party manager to administer each procurement, analyze the results of the solicitations for each customer class, select the supplier(s) that will provide services at the lowest cost and submit all necessary reports to the Commission. R.D. at 16 (citing PPL Electric St. 1 at 30).

The ALJ explained that the Commission's Default Service Regulations require that a Default Service plan include contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. R.D. at 16 (citing 52 Pa. Code § 54.185(e)(5)). The ALJ found that PPL Electric proposed to continue in the DSP V Program the contingency plan from the DSP IV Program for previously offered products. R.D. at 16 (citing PPL Electric St. 1 at 58). PPL Electric will implement different contingency plans for block energy contracts and AEC contracts. R.D. at 16 (citing PPL Electric St. 1 at 59-60). For the block energy contracts, if the Commission rejects all bids for a given product, in any solicitation, or if there are not at least two wholesale suppliers submitting offers for the block energy

tranches, the Company will offer the unsuccessful block energy tranches during the next default service auction. The term of the block contract will remain at five years when rebid. Following the third unsuccessful auction for the block products, PPL Electric will cease offering the block product and instead seek Commission guidance. For AEC contracts, the contingency plan includes two steps – first, procuring AECs necessary for compliance from brokers, and second, in the instance procurement from brokers is unsuccessful, PPL Electric will seek guidance from the Commission. R.D. at 16 (citing PPL Electric St. 1 at 59-60).

Additionally, as the ALJ explained, the Commission’s Default Service Regulations require that a Default Service plan include a rate design plan recovering all reasonable costs of Default Service, including a schedule of rates, rules, and conditions of default service in the form of proposed revisions to its tariff. R.D. at 17 (citing 52 Pa. Code § 54.185(e)(3)). The costs incurred by PPL Electric to provide Default Service to the Residential and Small C&I Customer Classes will be recovered through the GSC-1, which is separately computed with respect to each Customer Class. Costs recovered in the GSC-1 will include, among other costs, those costs incurred under the various supplier contracts, AEC-only contract costs, and costs incurred to acquire the supply and administer the DSP V Program. R.D. at 17 (citing PPL Electric St. 1 at 23). The ALJ found that the Partial Settlement addresses GSC-1 reconciliation and is discussed below. The costs incurred by PPL Electric to provide Default Service to the Large C&I Customer Class will be recovered through the GSC-2. Costs recovered in the GSC-2 will include PJM spot market energy, PJM capacity charges, the suppliers’ charge for all other services based upon winning bids in the annual solicitation, the AEC-only contract charges allocated to the Large C&I class, and PPL Electric’s costs to acquire the supply and administer the DSP V Program. R.D. at 17 (citing PPL Electric St. 1 at 25).

Finally, the ALJ explained that the Commission’s Default Service Regulations require that a Default Service plan be consistent with the legal and technical

requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the default service provider is providing service, and that the default service procurement plan's period of service must align with the planning period of that RTO or other entity. R.D. at 17 (citing 52 Pa. Code § 54.185(e)(4)). The ALJ found that Company will provide Default Service within the control area of PJM, which is an RTO approved by the Federal Energy Regulatory Commission (FERC). The ALJ further found that PPL Electric's DSP V Program is consistent with the legal and technical requirements pertaining to the generation, sale, and transmission of electricity of PJM. R.D. at 17 (citing PPL Electric St. 1 at 56-57). The ALJ found that PPL Electric's DSP V Program aligns with the PJM's planning period, *i.e.*, begins June 1. R.D. at 17 (citing PPL Electric St. 1 at 57).

**b. NITS**

The terms and conditions of the "NITS" Section B. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

20. The EGS Parties' proposal for PPL Electric to create a non-by passable charge to recover NITS costs is withdrawn for purposes of this proceeding only.

Partial Settlement at ¶ 20, at 7-8.

The ALJ explained that Network Integration Transmission Service (NITS) are part of a broader group of charges defined within the Default Service SMA as Non-market-based Transmission Services (NMBs). NMBs include: (1) NITS, (2) Transmission Service Credits, (3) Regional Transmission Expansion Plan (RTEP), (4) and Generation Deactivation Charges. Appendix C of Default Service SMA (DS Supply Specifications) specifically states that "the Company shall be responsible, at its sole cost and expense, for the costs of Non-market-based Transmission Services." These

costs, as being defined within the Default Service SMA, cover default service load only. All other costs are the responsibility of each individual wholesale supplier. Additionally, all costs incurred by a retail EGS are the responsibility of the EGS. R.D. at 17-18 (citing PPL Electric St. 1-R at 11).

The ALJ explained that PPL Electric did not propose any changes to the responsibility for the recovery of NMBs in its DSP V Petition. Instead, PPL Electric proposed to continue assuming the responsibility for directly acquiring NMB services with respect to default service customers only. R.D. at 18 (citing PPL Electric St. 1-R at 11). The EGS Parties disagreed with PPL Electric's proposal and proposed that PPL Electric should treat NITS as it treats other NMBs and collect and remit them on behalf of all customers through a non-by passable charge. R.D. at 18 (citing EGS Parties' St. 1 at 36). PPL Electric opposed the EGS Parties' proposal and explained that such proposal is based on the incorrect premise that PPL Electric recovers some NMBs through a non-by passable charge. PPL Electric explained that it does not recover any NMBs through a non-by passable charge. All NMBs for default service customers are recovered in the same way – through the TSC, as a component of the PTC. Retail suppliers are responsible for recovering NMBs associated with the customers who shop with them. R.D. at 18 (citing PPL Electric St. 1-R at 14).

PPL Electric opposed the EGS Parties' proposal, noting that the Commission has already rejected this proposal on two previous occasions – in the PPL

Electric DSP II Plan<sup>10</sup> and the PPL Electric DSP III Plan.<sup>11</sup> In fact, in the *DSP III Order*, the Commission specifically noted that the approach taken by the Company in DSP III - assuming NMB responsibility for default service load only, whereas EGSs assume responsibility for NMBs of shopping load – was already approved by the Commission in PPL Electric’s DSP II Plan. Further, the Commission stated that:

In that proceeding, we rejected a similar proposal to that proffered by RESA in the instant proceeding to require PPL to assume responsibility for NMB costs related to both default service load and shopping load, and to recover those costs through a non-by passable charge. We find nothing on the record to indicate that there has been any significant change in circumstances surrounding PPL’s current approach with regard to these NMB costs since our prior approval of it in PPL DSP II.

R.D. at 18 (citing *DSP III Order* at 63-64). According to the ALJ, the EGS Parties have presented no new reasons or changed circumstances why their proposal should be adopted in the DSP V and instead relied on the same arguments that were previously rejected by the Commission. R.D. at 18-19.

Furthermore, according to the ALJ, there are many problems associated with the EGS Parties’ proposal to create a NITS non-by passable rider as explained in the rebuttal testimony of PPL Electric witness James R. Rouland. R.D. at 19 (citing PPL

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<sup>10</sup> See *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2302074 (Order entered January 24, 2013) (*DSP II Order*).

<sup>11</sup> See *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 (Order entered January 15, 2015) (*DSP III Order*).

Electric St. 1-R at 14-17). Primary among the problems is the fact that it is inconsistent with the PJM rules which define Load Serving Entities (LSEs) as follows:

A Load Serving Entity (LSE) is any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area.

R.D. at 19 (citing PJM Glossary of Terms).<sup>12</sup> The ALJ explained that, in PJM, all LSEs are charged market-based and NMB costs based on each LSE's load share. PPL Electric bears the associated costs for default service customers and EGSs bear the costs for those customers shopping with the EGS. R.D. at 19 (citing PPL Electric St. 1-R at 15).

The ALJ acknowledged that Calpine, an EGS, also opposed the EGS Parties' proposal. R.D. at 20 (citing Calpine St. 1). According to Calpine, the EGS Parties' proposal would negatively impact competition by taking away the competitive efficiencies and discipline of the market. Under the EGS Parties' proposal, neither the LSE nor their customers would be incentivized to manage load because their obligation to pay for NITS would be based on the average demand experienced by PPL Electric. R.D. at 20 (citing Calpine St. 1 at 4).

The ALJ explained that the Partial Settlement does not adopt the EGS Parties' proposal and provides that the EGS Parties' proposal for PPL Electric to create a non-by passable charge to recover NITS costs is withdrawn for purposes of this proceeding only. R.D. at 20 (citing Partial Settlement ¶ 20). The ALJ found that, by not adopting the EGS Parties' proposal, the Partial Settlement is consistent with the

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<sup>12</sup> See PJM Glossary of terms at: [https://www.pjm.com/Glossary#index\\_L](https://www.pjm.com/Glossary#index_L) (last visited October 13, 2020).

Commission's prior rulings on this subject. R.D. at 20. The ALJ reasoned that EGSs' have other options, such as pass-through clauses, to recover transmission costs from customers. R.D. at 20 (citing PPL Electric St. 1-R at 15). The Partial Settlement provision provides that the proposal is withdrawn for this proceeding only and preserves the EGS Parties' right to advance the proposal in future proceedings. The ALJ found this term is consistent with the Commission's prior directives on this issue, is in the public interest, and recommended the Commission's approval. R.D. at 20.

**c. GSC-1 Reconciliation**

The terms and conditions of the "GSC-1 Reconciliation" Section C. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

21. The Signatory Parties agree to settle this issue in accordance with the PPL Electric rebuttal testimony of Mr. Scott Koch, PPL Electric Statement No. 6-R, page 8, lines 4-15. Specifically, the Company will reconcile 12 months of over/under collections over a 12-month period consistent with its other Section 1307 surcharges. In the event the GSC-1 E-factor exceeds 10 percent of the Price-to-Compare for Small C&I GSC-1 customers, the Company agrees to consult with the OSBA regarding the causes for this variance and steps being taken to reduce GSC-1 variances.

Partial Settlement at ¶ 21, at 8.

The ALJ explained that PPL Electric did not propose any change in the DSP V Petition to the reconciliation process currently used by the Company, which was approved by the Commission as a component of the DSP IV proceeding. The current process involves a reconciliation balance that is calculated over a six-month period and

collected (or refunded) with interest, over the following six-month period, with a lag of approximately two months. R.D. at 20 (citing PPL Electric St. 6-R at 6).

The OCA's witness Dr. Steven L. Estomin proposed to modify the reconciliation process so that PPL Electric would use a 6-month reconciliation amortized over 12-months instead of being broken down into two 6-month amortizations. The OCA's proposal is based on witness Estomin's belief that the current reconciliation process used by the Company leads to adjustments of a greater magnitude than those that would be produced using the OCA's approach. R.D. at 20-21 (citing OCA St. 1 at 19-20). PPL Electric agreed with Dr. Estomin's assessment of the volatility associated with the current process, which is due primarily to the 2-month lag necessary when filing a rate with 30 days' notice. In a 6-month reconciliation period, one-third of that reconciliation relates to a prior rate period. One of those 2-month periods includes the time frame when PPL Electric typically compensates net metering customers (this occurs one time per year in May). In addition to the 2-month lag, another reason for the volatility is seasonality related to residential usage. R.D. at 21 (citing PPL Electric St. 6-R at 7).

In rebuttal testimony, the Company agreed that a change in the reconciliation process would produce less volatility. Specifically, PPL Electric agreed with Dr. Estomin's proposal of amortizing the over/under collection over a 12-month period, rather than the current 6-month period with one modification. The Company proposed that the reconciliation should also be calculated for a 12-month period rather than a 6-month period. This is consistent with other PPL Electric rider mechanisms and is consistent with the GSC-1 Section 1307(e) Reconciliation Statement. R.D. at 21 (citing PPL Electric St. 6-R at 8).

The ALJ stated that the Partial Settlement adopts the OCA's proposal as modified by PPL Electric. Specifically, the Company will reconcile 12 months of

over/under collections over a 12-month period consistent with its other Section 1307 surcharges. R.D. at 21 (citing Partial Settlement ¶ 21). This Partial Settlement provision is in the public interest because it will reduce the volatility associated with PPL Electric’s current reconciliation process. In addition, the Partial Settlement provides that in the event the GSC-1 E-factor exceeds 10 percent of the Price-to-Compare for Small C&I GSC-1 customers, the Company agrees to consult with the OSBA regarding the causes for this variance and steps being taken to reduce GSC-1 variances. (Partial Settlement ¶ 21). The ALJ concluded that taking steps to reduce these variances is in the best interest of customers. R.D. at 21.

**d. Renewable Energy Rider**

The terms and conditions of the “Renewable Energy Rider” Section D. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

22. The Company agrees to withdraw its proposed Renewable Energy Rider without prejudice to future re-filing in a default service docket either as part of a new plan or an amendment to an existing plan.

Partial Settlement at ¶ 22, at 8.

The ALJ explained that PPL Electric proposed in its DSP V Program to offer a new rate program for default service customers – the Renewable Energy Rider – with the intent to provide a voluntary renewable energy option for customers who receive default service. R.D. at 22 (citing PPL Electric St. 1 at 72-78). I&E, CAUSE-PA and the OCA all offered support for the Company’s proposed Renewable Energy Rate Program; however, each Party provided recommended adjustments to the program. R.D. at 22 (citing I&E St. 1 at 6-7; CAUSE-PA St. 1 at 22; OCA St. 1 at 18).

Three Parties, OSBA, SEF and the EGS Parties, recommended that the Renewable Energy Rate Program be rejected. In SEF's view, the renewable energy market is already vibrant and therefore does not need any intervention by PPL Electric. R.D. at 22 (citing SEF St. 1 at 6-7). OSBA also recommended against PPL Electric's proposal based on a perceived lack of customer demand that is not already being met by the EGS community. R.D. at 22 (citing OSBA St. 1 at 17). The EGS Parties contended that there is no legal support for the proposal and that the retail market already provides similar offers to customers. R.D. at 22 (citing EGS Parties' St. No 1 at 23).

In the Partial Settlement, PPL Electric agreed to withdraw its proposed Renewable Energy Rider without prejudice to future re-filing in a default service docket either as part of a new plan or an amendment to an existing plan. R.D. at 22 (citing Partial Settlement ¶ 21). According to the ALJ, this Partial Settlement term reflects a compromise of the Parties' positions in that it recognizes the Renewable Energy Rider will not be implemented in the DSP V, but may be proposed in a future default service proceeding in which all interested parties, including EGSs, would have an opportunity to evaluate and comment on the proposal. The ALJ found that this Partial Settlement term is in the public interest and recommended the Commission approve it. R.D. at 22.

**e. AEC Auction**

The terms and conditions of the "AEC Auction" Section E. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

23. The Company agrees to operate this program as a pilot program for the DSP V program period; provided, however, this proposal is contingent on full recovery of all costs of the program through the GSC-1 rate. Full-cost recovery in the GSC-1 rate will be subject to the determination that the costs are prudent and reasonable in the filing(s) in which PPL proposes recovery.

24. The Company will provide a summary report on each AEC Auction conducted throughout DSP V in its next DSP filing. This report will include forecast and actual AECs procured by customer group and Tier type; average pricing information by Tier type, customer group by period; number of customers by customer group; and reconciliation details by customer group.

Partial Settlement at ¶¶ 23-24, at 8-9.

The ALJ explained that the AEPS Act, 73 P.S. §§ 1648.1 – 1648.8, and the Commission’s implementing regulations further require EDCs to obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. R.D. at 15 (citing 52 Pa. § Code 54.182). To fulfill its obligations under the AEPS Act, PPL Electric proposed to procure AECs for all default service customer load through AEC-only contracts using a competitive auction process. R.D. at 22-23 (citing PPL Electric St. 1 at 13). PPL Electric’s proposal is detailed in the direct testimony of Company witness Rouland. R.D. at 23 (citing PPL Electric St. 1 at 30-36). PPL Electric believes that conducting AEC-only auctions will increase competition and achieve the least cost products for customers. The AEC auction process achieves increased competition through two fundamental actions: (1) separating the AECs from wholesale contracts, which allows this commodity to be separately auctioned; and (2) using new contract terms associated solely with the AEC procurement process to improve supplier participation. A result of increased supplier participation and resulting competition is the opportunity for decreased prices, which results in lower rates for customers. Increasing competition and thereby creating an opportunity for lower rates is in the public interest. R.D. at 23 (citing PPL Electric St. 1 at 37-39).

The ALJ acknowledged that many Parties either did not comment on the AEC Auction or supported the Company’s approach with minor modifications or

reporting requirement recommendations. For example, the OCA's witness Dr. Estomin supported PPL Electric's AEC Auction, stating "I expect that the prices associated with the wholesale power supply combined with the prices obtained for the AEC procurements would result in lower overall aggregate prices." R.D. at 23 (citing OCA St. 1 at 13). I&E witness Mr. Christopher Keller stated that he does not oppose the procurement of AECs through an AEC-only auction, but recommended that the Company implement the program as a pilot and that the Company report on the results in the next DSP. R.D. at 23 (citing I&E St. 1 at 4). Similarly, SEF witness Mr. John M. Costlow did not object to PPL Electric's approach to procure AECs through an AEC-only auction; however, he recommended PPL Corporation subsidiaries be excluded from the AEC Auction and recommended a modification to the product mix in the form of a solar set aside. R.D. at 23 (citing SEF St. 1 at 7). The only party to object to the implementation of the Company's AEC Auction was OSBA witness Robert D. Knecht, who recommended the AEC Auction be rejected unless the Company includes EGS AECs in the auction. R.D. at 23 (citing OSBA St. 1 at 12-13).

In rebuttal testimony, PPL Electric witness Rouland explained why PPL Corporation subsidiaries should not be excluded from the AEC Auction. First, based upon the rules set forth in the PPL Electric Default Service, Block Energy, and AEC RFP Process and Rules, it is illegal for any PPL Electric subsidiary to circumvent the auction process and gain non-public information to participate in either the basic default service auctions or AEC Auctions. Second, an affiliate would not have access to non-public information because PPL Electric specifically utilizes a third-party auction manager to manage supplier communications and supplier bids and conduct the supplier bid selection process based upon the least cost offering. PPL Electric has no involvement in these processes. R.D. at 23-24 (citing PPL Electric St. 1-R at 24).

Mr. Rouland also expressed the Company's disagreement with SEF's solar set aside proposal. The proposal did not take into account the high costs and extended

time required to obtain such AECs. In addition, Mr. Rouland explained PPL Electric's concerns that the solar set aside is overly complex, cumbersome, and is predicated upon an assumption that customers create AECs through PJM, that they are willing to sell them, and will engage with PPL Electric in a significant way to meet the targets set by SEF. In sum, PPL Electric concluded that there was not enough analysis to support the proposal. R.D. at 24 (citing PPL Electric St. 1-R at 27-29). Mr. Rouland also explained the Company's disagreement with the OSBA's recommendation to allow EGSs to opt-in to the Company AEC Procurements. R.D. at 24 (citing PPL Electric St. 1-R at 31-34).

The Partial Settlement provides that PPL Electric will operate the AEC Auction as a pilot program for the DSP V program period; provided, however, this proposal is contingent on full recovery of all costs of the program through the GSC-1 rate. Full-cost recovery in the GSC-1 rate will be subject to the determination that the costs are prudent and reasonable in the filing(s) in which PPL proposes recovery. R.D. at 24 (citing Partial Settlement ¶ 23). In addition, the Company has agreed to provide a summary report on each AEC Auction conducted throughout DSP V in its next DSP filing. This report will include: (1) the forecast and actual AECs procured by customer group and Tier type; (2) the average pricing information by Tier type and customer group by period; (3) the number of customers by customer group; and (4) reconciliation details by customer group. R.D. at 24 (citing Partial Settlement ¶ 24).

Based upon review of the foregoing, the ALJ concluded that implementation of the pilot program as provided for in the Partial Settlement is in the public interest because it will allow parties an opportunity to test the program on a pilot basis to determine if the program should be implemented on a permanent basis in the future. R.D. at 25. In addition, PPL Electric has committed to providing information needed to evaluate the program in its next DSP filing. This information will allow PPL Electric and interested parties to determine if AEC auctions should continue and if any adjustments need to be made. Therefore, the ALJ concluded that the Partial Settlement

terms pertaining to PPL Electric's AEC Auction proposal are in the public interest and recommended such terms be approved by the Commission. R.D. at 25.

**f. Standard Offer Program: Scripts**

The terms and conditions of the "SOP" Section F. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

25. The Company will work with OCA, OSBA, and other interested parties in revising the guidelines used by CSRs and scripts used by Hansen employees. Any such revisions will be completed within 90 days after the entry of a Commission order approving this Partial Settlement without modification.

26. The Company agrees to increase its monitoring of Hansen employees to ensure that the complete conversation accurately reflects the SOP contract terms and required disclosures. The Company further agrees to take any necessary actions, including, but not limited to, additional training of Hansen employees, or terminating the Company's contract with Hansen, as may be necessary.

Partial Settlement at ¶¶ 25-26, at 9.

PPL Electric's CSRs<sup>13</sup> offer the SOP to customers when customers contact the Company under certain circumstances. PPL Electric's CSRs provide a brief overview of the SOP to eligible customers. If a customer is interested, PPL Electric transfers the customer to a third-party to provide details of the SOP program and to enroll customers who elect SOP. PPL Electric St. 4 at 4-5. In this proceeding, PPL Electric proposed to replace specific SOP scripting used by PPL Electric CSRs with guidelines to navigate the customers through the SOP process, while giving the Company flexibility to modify precise words if customer confusion becomes apparent. PPL Electric also proposed to

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<sup>13</sup> As defined above, CSRs stand for customer service representatives.

update the third-party scripting to reflect changes made to the SOP. PPL Electric St. 4 at 4-5.

In testimony, the OCA's witness Barbara R. Alexander expressed her concerns with how the Company's CSRs and the third-party administrator's employees were reading the scripts. *See* OCA Supplemental Direct Testimony. In response, PPL Electric witness Michele LaWall-Schmidt explained it is impossible to create a one-size-fits-all approach to scripting, stating that inevitably customers will have different levels of understanding of the program and seek additional information. According to PPL Electric's witness, it is in the customers' best interest that the PPL Electric CSRs are permitted to engage in a conversation about the SOP to explain the program. PPL Electric St. 4-R at 16. With respect to the third-party administrator scripts, PPL Electric expressed that it was not opposed to revisiting the scripts to provide additional guidance on how the third-party administrator's employees should respond to questions from a customer. PPL Electric St. 4-R at 19.

The Partial Settlement provides that PPL Electric will work with the OCA, the OSBA, and other interested parties in revising the guidelines used by PPL Electric's customer service representatives and scripts used by the third-party program administrator. Any such revisions must be completed within 90 days after the entry of a Commission order approving this Settlement without modification. Partial Settlement ¶ 25. As part of the Partial Settlement, PPL Electric has also committed to increase its monitoring of the third-party program administrator's employees to ensure that the complete conversation accurately reflects the SOP contract terms and required disclosures. The Company has also committed to take any necessary actions, including, but not limited to, additional training of the third-party administrator's employees, or terminating the Company's contract with the third-party administrator, as may be necessary. Partial Settlement ¶ 26.

According to PPL Electric, authorizing PPL Electric CSRs to use guidelines in their SOP discussions with customers provides CSRs with the flexibility to offer a more customer-friendly experience, while maintaining an accurate description of the program. PPL Electric's commitment to working with interested parties to develop scripts for the third-party administrator and monitoring the third-party administrator's employees protects customers by helping to ensure that the third-party administrator's conversation with the customer accurately reflects the SOP contract terms and required disclosures. The Partial Settlement terms will allow PPL Electric and interested parties an opportunity to work collaboratively to revise the SOP scripts and guidelines. PPL Electric St. in Support at 22-23. According to the Joint Petitioners, these Partial Settlement terms are in the public interest and should be approved.

The ALJ explained that the Parties were able to resolve this particular issue with respect to the Standard Offer Program in the Partial Settlement, while other matters pertaining to the SOP have been reserved for litigation and are addressed in the Parties' main and reply briefs. R.D. at 25. While the ALJ did not make a specific recommendation either way with respect to these terms of the Partial Settlement, the ALJ concluded it is in the public interest to recommend approval of the Joint Petition for Approval of Partial Settlement including all terms and conditions without further modification. R.D. at 27.

**g. TOU Rates**

The terms and conditions of the "TOU Analysis" Section G. of the Partial Settlement are set forth verbatim below, with the original paragraph numbers maintained:

27. The Company agrees to perform additional analysis and reporting on the TOU program in its next DSP proceeding. Such analysis will include evaluation of the PPL Electric Residual Aggregation Point Locational Margin Prices

(LMP) for the preceding two calendar years, and residential and small commercial and industrial customer load, by hour, for the preceding two calendar years. Analysis will focus on evaluating the appropriate on-peak hours for the next DSP TOU program. PPL Electric agrees to include the following information on its website regarding its time of use rate: (1) Time of Use rates may not be appropriate for customers that cannot change the time of day that they rely on electricity, such as those with medical devices that require electricity or customers who are home during peak hours; and (2) If you are a low income customer, other programs and rate assistance may be available to help you to afford your bill. Contact PPL at [add phone number] for more information and to apply.

28. PPL Electric will evaluate the impacts of the Company's TOU rates on confirmed low-income customers as part of the annual report required by Act 129 of 2008.

Partial Settlement at ¶¶ 27-28, at 9-10.

Section 2807(f)(5) of the Code provides that a Default Service provider shall offer TOU rates to all customers that have been provided smart meter technology. R.D. at 15 (citing 66 Pa. C.S. § 2807(f)(5)). To comply with this requirement, PPL Electric proposed in the DSP V to maintain many elements of the currently effective TOU Program, including customer eligibility, seasonality, on-peak and off-peak hours, multipliers, and maintaining a webpage dedicated to the TOU Program. R.D. at 25. The Company proposed to make the following three changes to the TOU Program: (1) implement the TOU contingency plan employed under the DSP IV Program as the new primary plan in the DSP V Program (thereby eliminating the TOU auction and instead employing the DSP IV's TOU contingency plan calculation methodology); (2) change the release of the TOU rates to be in conjunction with the issuance of the PTC, 30 days in advance of the TOU and PTC rates going into effect; and (3) remove TOU eligibility from a small subset of grandfathered water heating customers based upon their complex configuration. R.D. at 25-26 (PPL Electric St. 1 at 64-65).

Two Parties, the OSBA and CAUSE-PA, offered comments with respect to PPL Electric's TOU proposal. While generally supportive of PPL Electric's TOU proposal, the OSBA witness Mr. Knecht recommended that the Company evaluate the key parameters for TOU rates, in particular with respect to on-peak hours and the off-peak percentage discount, in its next default service proceeding. R.D. at 26 (citing OSBA St. 1 at 13-15). PPL Electric concurred with Mr. Knecht's suggestion and agreed to provide the requested analysis as part of its next default service proceeding. R.D. at 26 (citing PPL Electric St. 1-R at 35).

To address OSBA's recommendation and as part of the Partial Settlement, PPL Electric agreed to perform additional analysis and reporting on the TOU program in its next DSP proceeding. Such analysis will include evaluation of the PPL Electric Residual Aggregation Point Locational Margin Prices (LMP) for the preceding two calendar years, and residential and small commercial and industrial customer load, by hour, for the preceding two calendar years. The analysis will focus on evaluating the appropriate on-peak hours for the next DSP TOU program. R.D. at 26 (citing Partial Settlement ¶ 27). The Partial Settlement term providing for PPL Electric to conduct additional analysis is in the public interest because the analysis will help PPL Electric and other interested parties effectively evaluate the Company's TOU Program as part of its next default service proceeding. R.D. at 26.

CAUSE-PA witness Harry Geller supported excluding CAP customers from TOU but expressed concern regarding the potential risk of TOU to confirmed low-income customers and those with known medical usage. R.D. at 26 (citing CAUSE-PA St. 1 at 20-21). PPL Electric witness Melinda Stumpf explained that low-income customer participation in the Company's TOU is small, and the Company already provides information needed to help customers make an informed decision regarding TOU. Therefore, customized confirmed low-income customer outreach and general communication is not warranted at this time. R.D. at 26 (citing PPL Electric St. 3-R at

10-11). PPL Electric agreed to include the following information on its website regarding its time of use rate:

- (1) Time of Use rates may not be appropriate for customers that cannot change the time of day that they rely on electricity, such as those with medical devices that require electricity or customers who are home during peak hours; and
- (2) If you are a low-income customer, other programs and rate assistance may be available to help you to afford your bill. Contact PPL at [add phone number] for more information and to apply.

R.D. at 26-27 (citing Partial Settlement ¶ 27). In addition, PPL Electric will evaluate the impacts of the Company's TOU rates on confirmed low-income customers as part of the annual report required by Act 129 of 2008. R.D. at 27 (citing Partial Settlement ¶ 28). The ALJ stated that she agreed with PPL Electric that these Partial Settlement terms are aimed at protecting low-income customers and should be approved. R.D. at 27.

### **3. Disposition**

Upon review of the Partial Settlement, we find that PPL's DSP V Program, as modified by the Partial Settlement, is in the public interest because it includes and/or addresses all of the elements prescribed by Section 2807 of the Code, the applicable Commission Regulations, and the Commission's policies for Default Service Plans. Specifically, we find that PPL Electric's proposed Default Service Supply Procurement Plan, for the DSP V Program Period, pursuant to the Petition, as modified by the terms of the Partial Settlement, consists of a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time. In addition, AECs are provided for in a competitive fashion, and a contingency plan is properly established. 66 Pa. C.S. §§ 2807(e), (f).

We find the terms and conditions of the Partial Settlement are reasonable and in the public interest and, therefore, we shall approve them without modification. We agree with the ALJ that the provisions within the Partial Settlement represent reasonable compromises among a diverse group of interested parties that resolve nearly all the issues in this proceeding. R.D. at 27. In this proceeding, the Parties engaged in extensive discovery, exchanged testimonies, held several settlement conferences, and exchanged several settlement proposals and counterproposals. PPL Electric Statement in Support at 3. The Partial Settlement was achieved only after a comprehensive investigation of PPL Electric's proposals set forth in its DSP V Program by the Parties. PPL Electric Statement in Support at 5.<sup>14</sup> The Partial Settlement reflects a carefully balanced compromise of the competing interests of all the Joint Petitioners in this proceeding, and the Joint Petitioners unanimously agree that the Partial Settlement is in the public interest.<sup>15</sup> *See* Statements in Supports filed by I&E, Calpine, CAUSE-PA, the EGS Parties, the OSBA, SEF, and PPL Electric. Additionally, the Partial Settlement provides the benefit of reducing litigation expenses of all involved Parties in this proceeding by avoiding the necessity of further administrative proceedings and possible appellate court proceedings.

The benefits of the Partial Settlement for Residential Customers, Small C&I Customers, Large C&I Customers, and low-income customers are numerous. Specifically, the Partial Settlement: (1) establishes the DSP V Program which continues

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<sup>14</sup> In addition to engaging in extensive discovery, the Parties served five rounds of written testimony, including PPL Electric's direct testimony, other Parties' direct testimony, rebuttal testimony, surrebuttal testimony, and rejoinder testimony. Further, the Parties participated in several settlement discussions and formal negotiations that ultimately led to the Partial Settlement. PPL Electric Statement in Support at 5.

<sup>15</sup> The Parties in this proceeding, and their counsel, have considerable experience in Default Service proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus in this proceeding on the settled issues. PPL Electric Statement in Support at 5.

the same basic procurement approach that was approved in the prior DSP IV program, and which, as modified by this Partial Settlement, includes both prudent steps necessary to negotiate favorable generation supply contracts and prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis, as required by Section 2807 of the Code; (2) memorializes the EGS Parties' commitment to withdraw their proposal for PPL Electric to create a non-bypassable charge to recover NITS costs, which if not withdrawn, would have resulted in further litigation between the Parties in attempt to change PPL Electric's currently-approved recovery method for NITS costs; (3) reconciles GSC-1 over/under collections over a 12-month period, rather than the current 6-month period, as initially proposed, consistent with the Company's other Section 1307 surcharges; (4) memorializes PPL Electric's commitment to withdraw its Renewal Energy Rate Program proposal without prejudice to preserve PPL Electric's opportunity to propose it again in a future DSP proceeding; (5) implements PPL Electric's AEC Auction proposal on a pilot basis, consistent with I&E's recommendation in this proceeding, to enable PPL Electric to pursue its goals of increasing competition and achieving the least cost products, which, if materialized, would benefit customers; (6) ensures that PPL Electric's customers are accurately informed about the opportunity to participate in the SOP through the use of revised SOP guidelines and new SOP scripts developed cooperatively by PPL Electric, the OCA, the OSBA, and other interested parties; (7) commits PPL Electric to perform an analysis of its TOU programming in its next DSP case, which will help the Parties and the Commission better analyze the costs and benefits of PPL Electric's programming moving forward; (8) commits PPL Electric to greater transparency by informing customers, via its website, that TOU programming may not be the best option for customers who cannot change the time of day that they rely upon electricity; and (9) commits PPL Electric to evaluate the impacts of the TOU rates on confirmed low-income customers, which is a necessary step towards ensuring that all PPL customers have access to affordable service and that such access is not compromised by TOU rates. *See* Statements in Support filed by I&E, Calpine, CAUSE-PA, the EGS Parties, the OSBA, SEF, and PPL Electric.

For the foregoing reasons, we concur with the ALJ's conclusion that it is in the public interest to approve the terms and conditions of the Partial Settlement without modification. R.D. at 27. Accordingly, we shall adopt the ALJ's recommendation to grant the Joint Petition for Partial Settlement and approve the Partial Settlement.

## **B. Review of the Contested Issues**

As noted above, the Partial Settlement did not resolve all of the issues in this proceeding raised by the Parties. The following issues were not resolved in the Partial Settlement and were subject to briefing and Exceptions by the Parties: (1) PPL Electric's proposed changes to its SOP design; (2) PPL Electric's proposal to end CAP customer participation in SOP; and (3) PPL Electric's proposed coincident peak methodology for allocating transmission costs. These contested issues and the Exceptions filed by the Parties relating to each issue and the ALJ's recommendations related thereto are discussed further below, followed by our disposition on each issue.

### **1. Standard Offer Program**

#### **a. Background**

The Commission issued final guidelines for program structure of SOPs in the Commission's *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012) (*RMI IWP Final Order*). These final guidelines were developed at the end of a nearly three-year investigation by the Commission into Pennsylvania's retail electricity market (retail market investigation or RMI). The RMI involved, *inter alia*, an open process in which the Commission's staff received and reviewed the comments of various interested stakeholders to develop an appropriate structure for SOP to be implemented in EDC default service plans. *See Investigation of Pennsylvania's Retail Electricity Market:*

*Intermediate Work Plan*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011) at 9-15 (“*RMI IWP Tentative Order*”) (details the history of the development of SOP in Pennsylvania).

In the *RMI IWP Final Order*, the Commission considered the comments of interested stakeholders regarding the Commission’s tentative guidelines for SOP program structure. The Commission noted that all interested stakeholders that commented on the tentative guidelines, with one exception,<sup>16</sup> were generally favorable of a SOP. *RMI IWP Final Order* at 30. After giving full consideration of the comments of interested stakeholders, the Commission directed that SOP proposals be included in EDC Default Service Plans, stating “it is expected that detailed implementation and logistical elements will be determined during the default service plan proceedings for each EDC.” *RMI IWP Final Order* at 31. To provide direction to each EDC to develop a specific SOP proposal for its service territory, the Commission provided the following final “guidelines” showing the Commission’s expectations of an acceptable SOP program structure (quoting the *RMI IWP Final Order* verbatim):

- The Standard Offer Customer Referral Program should be voluntary for customers, i.e., “opt-in”, as well as for participating EGSs.
- The standard offer will target/market residential default service customers; however, residential shopping customers will not be excluded if they specifically request to participate. At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI’s Universal Service subgroup.
- The standard offer should be comprised of a 7% reduction from the EDC’s effective DS PTC. The 7% reduction is a

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<sup>16</sup> The party that did not generally support SOPs in the RMI IWP proceeding is not a party to this proceeding.

constant price established against the PTC effective on the date the standard offer is made.

- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.
- Customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer's discretion, will be specifically detailed in each EDC's plan proposal to ensure fairness and impartiality.
- The terms and conditions of the standard offer must be presented to customers before they decide to enter the program.
- The Standard Offer Customer Referral Program should be presented during customer contacts to the EDC call centers, other than calls for emergencies, terminations and the like. We would, however, permit that a customer be presented the standard offer during customer contacts to the EDC call center for high bill issues, only and explicitly after the customer's concerns were satisfied.
- Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing.
- At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term.
- There will be no termination penalty or fee imposed at any time during the effective period of the standard offer.
- All existing customer notification requirements apply, including notices and the timing of those notices relating to

proposed changes in the terms and conditions of the EGS-customer relationship.

- At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.

*RMI IWP Final Order* at 31-32.

PPL Electric's SOP was first established in its DSP II Program, consistent with the guidelines in the *RMI IWP Final Order*. As part of PPL Electric's DSP IV Program, the Commission approved a design of the SOP available to all Residential customers, including CAP customers, and Small C&I customers under 25 kW peak demand. The SOP provides participants with a standard 7% discount off the then-current PTC for a twelve-month term. A customer who elects the standard offer price may choose to receive service from a particular EGS that is participating in the program, and customers who do not choose a specific EGS will be randomly assigned to an EGS. Customers may exit a standard offer contract at any time without penalty, either to re-enroll in SOP with a new rate, select another EGS or to return to default service. Petition at 28.

Pursuant to the SOP in effect during the DSP IV Program Period, PPL Electric has utilized a third-party to administer the SOP. Any customer who is interested in the SOP is transferred from PPL Electric to a separate, dedicated third-party service provider that will provide more detail regarding the SOP and enroll customers in the SOP. EGSs pay a fixed fee of \$28 per referred customer. In addition, customers who have elected to utilize PPL Electric's Web Self Service program can choose to participate

in the SOP without using the third-party service provider. In these instances, the supplier is not charged a referral fee. PPL Electric plans to continue using the third-party to administer its SOP. Petition at 28. Additionally, EGSs enrolled in PPL Electric's SOP program are responsible for notifying customers before their SOP contract expires. Upon the expiration of a customer's SOP contract, the customer is automatically enrolled in a new contract with the customer's existing supplier unless the customer affirmatively elects to change suppliers or return to default service. Petition at 29.

In the DSP V Petition, PPL Electric proposes two modifications to its SOP program that are subject to litigation before this Commission: (1) upon expiration of the SOP contract, a customer who fails to make an affirmative election of a new contract with the existing EGS or a new EGS would be automatically transferred to default service at the PTC, rather than be converted to a month-to-month contract with their existing SOP EGS;<sup>17</sup> and, (2) implementing a new, two-step communication process, which would further inform customers about their shopping options after their SOP contracts expire and would remind SOP customers that they would be returned to default service at the end of their SOP contracts if they fail to make an affirmative shopping choice. Petition at 27-30; PPL M.B. at 17-18; PPL Electric St. 4 at 13-14. Under the second modification, the first step of communications will occur 90 days prior to the end of the customer's SOP contract, at which point PPL Electric will undergo an outreach campaign including calls, letters, emails and/or text messages (according to customer preference) to discuss the options available to the customer. PPL Electric St. 4 at 14. PPL Electric described the educational campaign materials as follows:

The materials will help the customer become a proficient shopper after the SOP contract expires. This will include a

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<sup>17</sup> To the extent waiver of the Commission's Regulation is necessary to implement PPL Electric's SOP proposal, the Company requests waiver of 52 Pa. Code § 54.10(3) to automatically return customers to default service upon conclusion of their SOP contract unless the customer affirmatively elects otherwise. Petition at 29, 40.

reference to the PaPowerSwitch.com website, and a discussion of key shopping terms. The goal is to teach customers how to properly evaluate offers so they can become confident shoppers.

PPL Electric St. 4 at 14. The second step will occur 30 days prior to expiration date of the customer's SOP contract, at which point PPL Electric will issue notification to customers that they will be transferred to default service at the PTC upon the expiration of the contract. PPL Electric St. 4 at 14; PPL M.B. at 17-18. These proposed modifications are subject to litigation in this proceeding.

**b. Positions of the Parties**

**PPL Electric**

In the Petition, PPL Electric stated that from 2017 through 2019, an average of approximately 42,000 customers per year enrolled in the SOP. Petition at 28; PPL Electric M.B. at 11; PPL Electric St. 1 at 3. PPL acknowledged that the SOP has introduced many customers to the experience of shopping with an EGS, and the opportunity to reduce energy costs.

However, PPL Electric had identified, through customer complaints, that a meaningful number of customers fail to take action at the end of their SOP contract, and as a result are converted to month-to-month contracts at prices above, and in many cases substantially above, the PTC. When these customers recognize they are paying very high electric bills, often months after the end of their SOP contract, they complain to PPL Electric for sponsoring a program that would allow this to happen. PPL Electric M.B. at 11-12.

The Company characterized these results as an “adverse consequence” or “fundamental flaw” of the SOP program design. The Company stated it is concerned that such an adverse consequence will: (1) lead to an increase in payment-troubled customers; (2) result in reputational harm to the Company because customers criticize the Company for sponsoring a program that allows customers to be charged a higher rate after the initial contract term is concluded; (3) run contrary to the purpose of the SOP, which was developed to provide shopping-reluctant customers a low-risk opportunity to experience shopping; and (4) harm the retail market by dis-incentivizing further shopping by such customers. PPL M.B. at 14-15; PPL Electric St. 4 at 13; PPL Electric St. 4-R at 4, 14.

As a result of these concerns, PPL Electric undertook a statistical analysis of customers who reached the end of their SOP contracts from 2015 through 2019, examining these customers’ decisions for the four months following the expiration of their SOP contract. PPL M.B. at 15; PPL Electric St. 4 at 8-12. The ALJ’s findings from such data are set forth in the R.D.’s FOF Nos. 8, 9, 10, and 11 on page 11 of the R.D, as summarized below:

- One to three months after the expiration of their SOP contract, 22% of SOP customers are on roll over contracts with the SOP EGS. *See* FOF No. 8 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13.
- Four months after the expiration of their SOP contract, 20% of the SOP customers are on roll over contracts and are paying non-SOP rates at 10% or more above the applicable default service rate or PTC. *See* FOF Nos. 8, 11 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13.
- 93% of SOP participants that rolled onto a new contract after the expiration of the SOP contract paid non-SOP rates higher than the default service rate or PTC in the first month. *See* FOF No. 10 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13.
- More than 50% of SOP participants that rolled onto a new contract after the expiration of the SOP contract paid non-SOP rates at 25% or more above the

applicable default service rate or PTC between one and four months. See FOF No. 9; *see also* PPL Electric St. 4 at 8-13.

To explain these results, PPL Electric surmised that these customers are simply failing to act upon, or are ignoring, notices advising them that their contract is expiring, and as a result are “unwittingly” being placed on high priced, month-to-month contracts. PPL Electric St. 4 at 12; PPL M.B. at 16. Further, PPL Electric offered that the slow pace at which these customers move off these contracts indicates they are not managing their shopping choices. PPL Electric further offered that the initial 7% savings off the PTC that these customers are receiving through the SOP can quickly be wiped away when a customer is paying 25%, or even 50% or in some cases an even higher percentage above the PTC in just a few months post-SOP. PPL Electric St. 4-R at 6; PPL M.B. at 16-17. According to PPL Electric, this is a fundamental flaw of the SOP structure, which burdens customers who fail to make an affirmative election at the end of the SOP contract term, with generation prices significantly above the PTC. PPL M.B. at 17. As a result of PPL Electric’s concerns and analysis, PPL Electric proposed the two modifications to its SOP program, as discussed above.

### **OCA, OSBA, and CAUSE-PA**

The OCA, the OSBA and CAUSE-PA all supported the Company’s proposal to require, as a term of the SOP, that if a customer does not make an affirmative election at the end of their SOP contract term, the customer will return to default service, rather than be rolled over into a contract with their existing SOP EGS. These Parties also supported PPL Electric’s related proposal to undertake an educational campaign to reach out to customers prior to the conclusion of their SOP contract, to advise them of their shopping options and available resources, and to inform them that they will be returned to default service at the PTC if they do not make an affirmative election. OCA M.B. at 11-18; OSBA M.B. at 3-8; CAUSE-PA M.B. at 33-39.

## EGS Parties and Starion

The EGS Parties and Starion opposed PPL Electric's SOP proposals by arguing the proposals are not justified by the evidence presented by PPL Electric and such proposals, if implemented, would constitute unlawful regulation of EGS prices and unlawful slamming. EGS Parties M.B. at 13. First, the EGS Parties contend another statistic is an important fact in this proceeding:

- Within four months after the expiration of their SOP contract, or within 16 months after entering into SOP contracts, 80% of SOP customers make an active decision to shop. EGS Parties St. 1-R at 11-12, 20-21.

The EGS Parties argue this statistic demonstrates that the SOP program is successful. EGS Parties M.B. at 13. The EGS Parties argue that the entire alleged premise for PPL Electric's proposal is wrong because SOP customers indeed are exercising affirmative choice and learning how to function in a competitive environment. EGS Parties M.B. at 13. The EGS Parties submit that such result is exactly what the Commission had intended when it first required EDCs to implement SOP programs in the *RMI IWP Final Order*, because the Commission required that in the absence of affirmative customer action, the customer will roll over with the EGS on a month-to-month basis with no termination penalty or fee. EGS Parties M.B. at 13 (citing *RMI IWP Final Order* at 32).

Furthermore, the EGS Parties' argue that the PTC is not an appropriate benchmark to measure the effect of shopping on customers' bills. EGS M.B. at 7-8. The EGS Parties submit that PPL Electric's premise of comparing post-SOP market prices to the PTC as proving an "adverse consequence" to SOP customers is an unwarranted, inaccurate, and illegal comparison of the prices charged by competitors in the market, to the subsidized, marginal energy-cost-only default service rate or PTC. EGS Parties M.B. at 7 (citing EGS Parties St. 1-R at 6-9; EGS Parties St. 1-SR at 3-4). The EGS

Parties argue that there was never intended to be a “savings” comparison as between default service rates and the prices charged by EGSs. EGS M.B. at 8 (citing EGS Parties’ St. 1-R at 4-5). Such a comparison, argues the EGS Parties, would amount to a regulation of EGS prices, and the Commission clearly does not have the authority to regulate EGS prices. EGS M.B. at 8.<sup>18</sup> According to the EGS Parties, there is no sound legal or regulatory basis for the Commission to suggest to customers that comparing EGS offers to the PTC is “fair” or will “save them money.” Accordingly, the EGS Parties urge the Commission to resist this easy but incorrect comparison between the prices charged by EGSs and default service rates, in any context and for any purpose. EGS M.B. at 8.

According to Starion, the only way for the Commission to adopt PPL Electric’s proposals is for the Commission to accept the incorrect premise that it can regulate EGS pricing. In other words, PPL Electric’s proposal requires the Commission to conclude that prices above PPL’s PTC are too high or unfair and, therefore, the EGSs’ SOP customers who do not take an affirmative action must automatically be returned to PPL’s default service as some sort of “price protection mechanism.” Starion argued that it is well-settled the Commission lacks authority to regulate generation pricing, and since PPL’s proposal would amount to regulation of EGS pricing, the Commission does not have the requisite legal authority to approve PPL’s proposal. Starion M.B. at 12-13.<sup>19</sup>

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<sup>18</sup> Citing 66 Pa. C.S. §§ 2802(14) and 2806(a); *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. et al. v. Pa. PUC*, 120 A.3d 1087, 1101 (Pa. Cmwlth. 2015), *app. denied*, 136 A.3d 982 (Pa. 2016) (*CAUSE-PA*) (The Commonwealth Court found that “the PUC lacks the authority to regulate EGS rates under Chapter 13. This means that the PUC may not review EGSs rates to determine whether the rates are “just and reasonable.” 66 Pa. C.S. § 1301. It also means that the PUC lacks the authority to compel EGSs to file tariffs. *Id.* § 1302. Moreover, the power of the PUC under Section 1304 of the Code to ensure that rates are not unlawfully discriminatory does not extend to the rates charged by EGSs. *Id.* § 1304.”).

<sup>19</sup> Citing 66 Pa. C.S. §§ 2802(5), 2806(a), *Delmarva Power & Light Co. v. PUC*, 870 A.2d 901 (Pa. 2005); *CAUSE-PA* at 1101; *HIKO Energy, LLC v. Pa. PUC*, 163 A.3d 1079, 1082, n. 1 (Pa. Cmwlth. 2017).

Starion submits that the suggestion that adopting PPL’s proposal does not result in regulating EGS pricing because the SOP is a Commission-approved program is meritless. As a retail market enhancement, the SOP is a Commission-approved program that is voluntary for EGSs and created with the express purpose of incentivizing shopping and not providing customers with lower-priced generation service. According to Starion, a Commission decision declaring post-SOP contract EGS pricing above PPL’s PTC as “too high” and requiring a safety net process to “protect” those customers from such deemed-high or unfair pricing would constitute the unlawful regulation of EGS pricing. Starion M.B. at 14.

Furthermore, Starion submits that the only way for the Commission to accept PPL Electric’s proposal is for the Commission to agree with PPL Electric’s premise that a lack of action on the part of the SOP customer is not an affirmative choice to accept the renewal terms offered by the EGS. And accepting this premise is contrary to the Commission’s well-established precedent and is not supported by the facts in this record. Starion M.B. at 16. Starion argued that the Commission has steadfastly maintained that the way to ensure that a customer’s lack of action evidences such customer’s affirmative intention to remain with the EGS is for EGSs to: (1) provide proper notice to their customers prior to the end of the contract; and, (2) not impose any cancellation fees on a contract that automatically renews. Starion M.B. at 16-17.<sup>20</sup> Starion asserts that the Commission has specifically stated that this process of relying on

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<sup>20</sup> Citing *Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, Docket No. L-00970126, Final Order entered April 30, 1998 (“our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended.”); *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered September 23, 2010 at 24 (“customers who fail to respond to a renewal notice from their current supplier [will be provided] the opportunity to cancel, without penalty, any resulting agreement with that supplier.”).

a customer's inaction as affirmative consent to continue with the EGS is not slamming.<sup>21</sup> Starion submits that SOP customers who choose to stay with their supplier make an affirmative choice when they enrolled in the SOP, were informed about the program details of the SOP, and understood the process for renewal that would occur consistent with the Commission's Regulations. Starion M.B. at 16 (citing Starion St. 1-SR at 4).

Moreover, Starion argued that since the Commission has established that EGSs are legally permitted to convert an existing SOP contract consistent with the terms of its contract renewal notices and without the customer taking affirmative action to the contrary, any proposal to ignore this and switch the SOP customer to default service would constitute illegal "slamming." Starion M.B. at 17 (citing 66 Pa. C.S. § 2807(d), requiring the Commission to establish regulations to ensure that an EDC does not change a customer's EGS without consent). To support its slamming argument, Starion submits that slamming occurs when a customer's EGS is switched without authorization, noting the Commission's well-established, zero-tolerance policy on slamming in any means and any form. Starion M.B. at 17-18.<sup>22</sup> According to Starion, PPL's proposal must be rejected because to accept it would mean to permit slamming because the customer who has affirmatively selected SOP and chosen not to take any action during the renewal period to select a different product will be automatically returned to default service

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<sup>21</sup> *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286 (Order entered September 23, 2010) at 23.

<sup>22</sup> Citing Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998), quoted in *Standards for Changing a Customer's Electricity Generation Supplier*, 44 Pa. B. 3539 (June 14, 2014); Citing also *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385 (Final-Omitted Rulemaking Order entered April 3, 2014).

without their authorization. This would occur in clear contravention of the Commission's anti-slamming regulations and policy and in violation of Section 2807(d) of the Choice Act. Starion M.B. at 18.

Starion argued that PPL Electric's proposal is anti-competitive and discriminatory in contravention of the Choice Act. Starion M.B. at 19-20. According to Starion, adopting PPL Electric's proposal would mean allowing PPL Electric to contact the EGS SOP customers – using customer information that only PPL Electric has in its possession in its role as the EDC – well in advance of the time the EGSs are required to contact their customer about their renewal options pursuant to the Commission's Regulations. Since PPL Electric proposes to reach out to SOP customers via “calls, letters, emails and/or text messages,” PPL St. 4 at 6, 14, PPL Electric would be leveraging its significant advantage over EGSs in its role as the EDC – that is, its access to customer information. In contrast, because the customers enroll with EGSs via the SOP program (rather than as a result of the direct customer contact between the EGS and customer), the only piece of information that EGSs receive from the EDC about the SOP customer is the billing address. Starion St. 1-SR at 5-6. Thus, the only realistic opportunity for EGSs, like Starion, to gather additional contact information – such as a phone number or email address of the customer – is to send the customer a request via the mail and ask them to provide such contact information. In addition to requiring this extra time and effort on behalf of EGSs, Starion worries a customer will confuse such outreach as unwanted marketing. PPL St. 1-SR at 5-6; Starion M.B. at 21-22.

Starion argued that PPL Electric's proposal has the effect of discriminating between default service and competitive service by elevating default service over competitive service. PPL Electric's stated purpose of its SOP proposed revisions is to protect PPL from reputational harm whereby PPL is “blamed by customers for the increase in contract price after the SOP contract has expired.” PPL St. 4 at 13-14. As PPL is not proposing to promote the EGS's post SOP contract offers (and could not

because of a lack of information), there is no conclusion that can be drawn but that PPL’s proposal is intended to elevate default service over competitive options. According to Starion, adopting PPL’s proposal here would implicate the very same issues rejected by the Commonwealth Court in *The Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 755 A.2d 723, 724 (Pa. Cmwlth. 2000) (*MAPSA*).<sup>23</sup> PPL Electric’s role as the historical monopoly provider, its continuing role as the EDC and default service provider, its access to important customer information and its monthly contact with all customers through the bill mean that when PPL reaches out to customers about the SOP contract expiration, such outreach – by its very nature – creates the misimpression that PPL Electric’s default service is superior. Starion M.B. at 22-23.

Regarding PPL Electric’s customer education proposal, the EGS Parties and Starion expressed concerns that the proposal is intended to convince customers to return to default service and will not provide information to encourage shopping. EGS Parties M.B. at 13-14; Starion M.B. at 21-23. Additionally, the EGS Parties asserted that this further education to SOP customers about their end-of-term shopping options is not needed given the already existing notice and disclosure requirements in the Commission’s Regulations that the EGSs must follow. Starion M.B. at 14 (citing 52 Pa. Code §§ 51.10(1)-(2) and 54.5(b)(2)). Additionally, the opposing Parties argued

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<sup>23</sup> Starion explained that in *MAPSA*, the Commonwealth Court upheld the Commission’s action directing PECO to “refrain from . . . marketing practices which promote, solicit and advertise [default service] over competitive alternatives.” *MAPSA* According to the Commonwealth Court, PECO’s marketing activities were “*not* adequate to enable its customers to make an informed choice about the purchase of services.” In sum, the Commonwealth Court in *MAPSA* sought to guard against the anti-competitive effect of permitting PECO, the historical monopoly provider with well-established brand recognition, from: (1) creating a misimpression that default service was superior to the generation service provided by EGSs; and, (2) not presenting adequate information to enable consumers to make an informed choice about the purchase of services. Starion M.B. at 23 (citing *MAPSA*, 755 A.2d at 724).

that any additional education should be focused on increasing shopping among customers who do not shop. EGS Parties St. 1 at 21.

PPL Electric argued that the EGS Parties' and Starion's assertion that PPL Electric is trying to "market" default service and "win back" the customer is meritless. PPL M.B. at 23. PPL Electric explained that it does not profit from default service, and thus has no incentive to "market" that service to customers. PPL M.B. at 23; PPL Electric St. 4-R at 10. According to PPL Electric, any increased education about shopping options should be viewed as a positive action, and assuming EGSs agree with this statement, they should join with PPL Electric to educate their customers early and often. Regarding the EGS Parties' assertion that any education should be focused on increasing shopping among customers who do not shop, PPL Electric responded that it already has a robust program to encourage non-shopping customers to shop, and this is demonstrated by the high percentage of shopping customers on PPL Electric's system and the number of customers who sign up for SOP. PPL M.B. at 23; PPL Electric St. 4-R at 14. PPL Electric asserted that its communication proposal for the SOP is intended to focus on SOP customers who passively allow themselves to roll into high priced month-to-month contracts, in order to empower these customers to shop actively and wisely, after experiencing the competitive marketplace through the SOP. PPL M.B. at 23, PPL Electric St. 4-R at 14.

**c. ALJ's Recommended Decision**

The ALJ recommended approval of PPL Electric's proposals to modify the SOP design in this proceeding. R.D. at 28-34.

The ALJ found that 20% of the SOP customers are still on roll-over contracts, and are paying excessively high rates, four months after the end of their SOP contract, and another 22% are on roll-over contracts one to three months after their SOP

contract expired. R.D. at 28 (citing PPL Electric St. 4-R at 12). The ALJ also found that more than 50% of the customers who switch between one and four months after their SOP contract expired are paying rates 25% or more above the PTC during those intervening months. The ALJ found that 93% residential customers who remained with their SOP EGS after the conclusion of their contract were paying at or above the PTC in the first month after their SOP contract expired, and over 50% of those customers were paying at least 25% over the PTC. R.D. at 28 (citing PPL M.B. at 15-16). Four months post-SOP contract expiration, most of these customers continued with their SOP Supplier at a non-SOP rate, and the vast majority continued to be paying rates 10% or more above the PTC. *See* R.D. at 28-29 (citing PPL Electric St. 4-R at 12); *see also* R.D. at 11; FOF Nos. 8-11.

The ALJ found credible the following testimony of the OCA's Witness Alexander regarding the concerns with the results shown by the data:

This situation, if not resolved properly, will harm the reputation of PPL and the retail energy markets generally. The supplier prices identified in PPL's analysis of charges to customers based on negative option renewals of SOP contracts cannot be justified since those prices are far in excess of the PTC, far in excess of prices advertised on PaPowerSwitch, and raise the suspicion that these prices reflect the supplier's attempt to gain revenues lost as a result of the lower priced SOP contracts.

R.D. at 29 (citing OCA St. 2 at 15).

The ALJ stated she was unpersuaded by the EGS Parties' and Starion's arguments that the current structure of the SOP is "well designed," "successful," and is providing a "fair opportunity" for shopping. R.D. at 29 (citing EGS Parties M.B. at 4; Starion M.B. at 1, 2, 12). Rather, the ALJ found that PPL is handling numerous complaints from thousands of customers unknowingly being rolled into new contracts

with rates well above the PTC. The ALJ concluded that the increase in consumer complaints is substantial evidence that the program is not well-designed or successful. R.D. at 29.

The ALJ found that the PTC is an appropriate measure of whether the current SOP design is successful. The ALJ stated she was not persuaded by the EGS Parties' argument that the PTC is not an appropriate benchmark to measure the effect of shopping on customers' bills. R.D. at 29 (citing EGS M.B. at 7-8). The ALJ acknowledged that the EGSs argued that the PTC is incorrectly determined and therefore cannot form a proper basis to assess whether changes should be made to the rules related to what happens to customers at the end of their SOP contract term. However, the ALJ found the EGS Parties' contention is factually unsupported in the record and without merit. R.D. at 29. The ALJ found that the EGS Parties failed to submit any evidence that PPL Electric's PTC is incorrectly calculated. While offering general assertions, in rebuttal testimony, that portions of PPL Electric's distribution costs, such as facilities, salaries, billing and collections, should be allocated to the PTC, the EGS Parties provided no facts regarding what portion of distribution costs are to be allocated to the PTC, or any basis for such allocation. R.D. at 30 (citing EGS St. 1-R at 5). Moreover, the ALJ stated that the EGS Parties' Witness Mr. Christopher H. Kallaher testified that this DSP proceeding was not an appropriate proceeding to examine the "true" cost of default service. R.D. at 30 (citing EGS Parties St. 1-R at 6). The ALJ noted that the Commission has recently rejected a very similar proposal to allocate these categories of distribution costs to the PTC. R.D. at 30 (citing *Pa. PUC v. PECO Energy Company – Electric Division*, Docket No. R- 2018-3000164 (Order entered December 20, 2018) at 74). That decision was recently affirmed by the Commonwealth Court in the case of *NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936 (Pa. Cmwlth. 2020). R.D. at 30.

As for the legal arguments raised by the opposing Parties – the EGS Parties and Starion – that the Commission lacks the legal authority to modify the SOP program

(see EGS M.B. at 12-13; Starion M.B. at 15), the ALJ rejected this argument for the following reasons: (1) because the SOP is not a mandated program under the Choice Act, the Commission has the jurisdictional authority to change, or even eliminate, the SOP at any time, R.D. at 30 (citing 66 Pa. C.S. §§ 2801-2812); (2) even though the SOP program design was initially established in 2012 in the Commission’s *RMI IWP Final Order*, nothing in that Order precludes PPL Electric from proposing, or the Commission from amending, the SOP program authorized in a specific EDC territory, R.D. at 30; (3) the SOP design components specified by the Commission in the *RMI IWP Final Order* are put forth as *guidelines*, not mandatory requirements, R.D. at 30 (citing *RMI IWP Final Order* at 31) (emphasis in original); (4) the *RMI IWP Final Order*, by its very terms, recognizes that “detailed implementation and logistical elements” of program components may be determined by the Commission in DSP proceedings for each EDC, R.D. at 30 (citing *RMI IWP Final Order* at 31)<sup>24</sup>; and, (5) the Commission has the authority to amend its prior Opinion and Orders, explaining that in PPL Electric’s DSP IV proceeding, the Commission approved changes to CAP shopping rules, which were justified by the evidence, R.D. at 31 (citing *Petition of PPL Electric Utilities Corporation*, Docket No. P-2016-2526627 (Order entered October 27, 2016) at 53).

The ALJ further rejected the positions of the EGS Parties and Starion that PPL Electric’s proposal would constitute the illegal regulation of EGS prices or slamming. R.D. at 31 (citing Starion M.B. at 12-16). The ALJ concluded that no aspect of PPL Electric’s proposal seeks to control what price EGSs may offer to customers post-SOP, noting that EGSs and customers may negotiate any price terms they desire outside the SOP. R.D. at 31 (citing PPL Electric St. 4-R at 7). The ALJ reasoned that EGSs may offer any contract price they desire to SOP customers reaching the end of their contract terms, and that PPL Electric’s proposal deals only with the terms of the SOP –

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<sup>24</sup> “[I]t is expected that detailed implementation and logistical elements will be determined during the default service plan proceedings for each EDC.” *RMI IWP Final Order* at 31.

specifically, what happens to a customer who reaches the end of their SOP contract without making an affirmative shopping choice. R.D. at 31. The ALJ further reasoned that PPL Electric's proposal does not seek to distinguish between post-SOP contract offers – whether such offers be above or below the PTC – authorizing one but not the other. Rather, the proposal's focus is solely upon whether the customer has made an active decision to shop at the end of the SOP contract term. R.D. at 31.

The ALJ further explained that the SOP will remain a voluntary program after PPL Electric's modifications to the SOP design are made, and EGSs will continue to be able to offer other products outside the SOP. EGS notices to customers at the end of the SOP may continue to offer any price the EGS desires to offer. The only difference is that if a customer does not make an affirmative shopping decision, then they will be returned to default service. Based on the foregoing, the ALJ concluded that there is no bar to EGSs continuing to offer those prices in the future. R.D. at 31. The ALJ further concluded that PPL Electric's proposal does not constitute regulation of EGS pricing or slamming, which generally occurs when a customer's EGS is switched without authorization. R.D. at 31 (citing *Starion M.B.* at 17). Under PPL Electric's proposal, switching back to default service would be authorized, because it would be part of the SOP program design explained to customers when they first enroll in the SOP. R.D. at 31 (citing PPL St. 4-R at 7).

The ALJ explained that the Commission's Regulations recognize that a Commission-approved program may contain its own procedures for changing a customer's electricity provider. R.D. at 31. Specifically, Section 57.172 of the Commission's Regulations establishes that, as a general rule, if a customer contacts an EDC to request a supplier change, the customer is to be directed to contact their EGS. R.D. at 31. However, "[t]his notification requirement does not apply when a Commission-approved program requires the EDC to initiate a change in EGS service." R.D. at 31-32 (citing 52 Pa. Code § 57.172). Based on the foregoing, the ALJ concluded

that, because the SOP is a Commission-approved program, PPL Electric may be authorized under the Commission's Regulations to change a customer back to default service pursuant to the program's terms. R.D. at 32. The ALJ reasoned that, as the EDC change of the customer's supplier from the SOP supplier to default service would be authorized by Section 57.172 of the Commission's Regulations, it is, therefore, not slamming. R.D. at 32. Finally, the ALJ stated that she failed to see how PPL Electric's proposal to modify the end of term SOP procedures are anti-competitive or discriminatory. R.D. at 32 (citing *Starion M.B.* at 19-25).

The ALJ explained that PPL Electric's proposals seek to address the concern that a meaningful number of SOP customers are not making affirmative shopping decisions, and as a result are passively rolling onto contracts with substantial rate increases. R.D. at 32. These customers blame PPL Electric for the outcome and are potentially discouraged from further shopping by the result. *Id.* The ALJ found that PPL Electric's proposals are designed to avoid these negative outcomes, and to encourage active shopping, for the long-term benefit of the competitive market. *Id.* In this regard, the ALJ found that PPL Electric's proposals are consistent with *Starion's* statement of the purpose of the SOP: "to encourage customers to 'try' the competitive market so that they will continue to participate in the competitive market after expiration of the SOP contract." *Id.* (citing *Starion M.B.* at 20) (emphasis omitted). The ALJ reasoned that satisfied customers are more likely to embrace the competitive market, than are customers who believe they were deceived by a program that gave them some savings followed by substantial increased costs. *Id.*

The ALJ acknowledged that *Starion* also argued that PPL Electric's proposals are intended to "win back" customers to default service. PPL Electric anticipated, and responded to, this contention in its Main Brief. R.D. at 32 (citing *PPL M.B.* at 22-23). *Starion* suggested that PPL Electric may have some unidentified "reasons" to return customers to default service. However, the ALJ found this suggestion

speculative stating “these ‘reasons’ are unidentified because there are none.” R.D. at 32. The ALJ found that PPL Electric has no incentive or reason to return customers to default service. Rather, as has been consistently explained, the Company’s interest is in active, informed shopping customers, to avoid customer complaints that the Company’s program is poorly structured. R.D. at 32.

The ALJ acknowledged that Starion cited to the Commonwealth Court’s decision in *MAPSA* to assert that a utility’s marketing practices may not seek to promote default service over shopping. However, the ALJ found that PPL Electric’s proposals are unlike the proposals at issue in *MAPSA* and explained that the Court’s decision, therefore, may be distinguished and is non-controlling on this instant case. R.D. at 32-33.

The ALJ concluded that PPL Electric’s proposals are neither designed nor intended to discourage customers from shopping. R.D. at 33. The ALJ summarized the SOP as modified by PPL Electric’s proposals as follows:

The SOP will continue to be offered, with the same discount, to encourage customers to try the competitive market. PPL Electric will educate customers about their competitive options, near the end of their SOP contract term, to encourage active, knowledgeable shopping. Customers will be returned to default service only if they fail to make an active shopping choice. Customers will be directed to the PAPowerSwitch.com website, where they can find out about offers from all EGSs.

R.D. at 33. The ALJ also concluded that there is nothing anti-competitive or discriminatory about the above-summarized approach, which the ALJ found will encourage smart shopping and hopefully a more positive shopping experience. R.D. at 33.

The ALJ next addressed the EGS Parties' and Starion's challenges to the educational proposal set forth by PPL Electric. R.D. at 33 (citing EGS Parties M.B. at 13-14; Starion M.B. at 21-23). The EGS Parties and Starion expressed concerns that the proposal is intended to convince customers to return to default service and will not provide information to encourage shopping. R.D. at 33. The ALJ recognized PPL Electric's response to these assertions in the Company's Main Brief at pages 21-22. R.D. at 33 (citing PPL Electric M.B. at 21-22). Moreover, the ALJ explained that, in the *MAPSA* decision, the Commission set forth certain guidelines with respect to what is appropriate information material. Specifically, the Commission observed:

There is a clear distinction between a distribution company or any other electric supplier conducting a campaign to convince customers that they should not shop and a campaign encouraging customers to carefully evaluate their choices. Certain of PECO's campaign materials effectively encouraged customers not to choose, but instead to do nothing. The message delivered by PECO did not clearly educate the consumer of the available choices.

*MAPSA* Order at 40-41. The ALJ found that PPL Electric's proposed education materials clearly are intended to encourage customers to carefully evaluate their choices, and thus are permitted under *MAPSA*. The ALJ stated that she was specifically persuaded by the Testimony of PPL's witness Michelle LaWall-Schmidt:

Additionally, PPL Electric's proposal of educating customers about shopping prior to the end of their SOP contract is consistent with Mr. Kallaher's suggestion that the Company should encourage greater shopping. It is PPL Electric's intent with the proposed education material to empower customers to shop on their own after having had an opportunity to experience the competitive marketplace through the SOP.

R.D. at 33-34 (citing PPL Electric St. 4-R at 14-15).

Finally, the ALJ noted that PPL Electric recognized that copies of the intended educational materials are not yet available and will not be developed until after a Commission decision in this case is rendered. According to the ALJ, to respond to concerns that what is actually stated in those materials may be contrary to the standards set forth in *MAPSA*, PPL Electric is willing to provide the material to all interested parties, and the Commission, in advance, to receive helpful feedback. R.D. at 34.

**d. Exceptions and Replies**

**i. EGS Parties Exception No. 1 and Replies**

In their Exception No. 1, the EGS Parties assert that the R.D. erred by adopting Findings of Fact Nos. 8, 9, 10, and 11. EGS Parties Exc. at 1. The EGS Parties argue that Findings of Fact Nos. 8-11 perpetuate the “house of cards” argument upon which PPL Electric built its proposal to end-run the Commission’s clearly stated rationale for SOP programs. That intention is that the program be an “easy way” for customers to participate in the competitive market. Once enrolled, however, SOP customers are to be treated as any other EGS customer. EGS Parties Exc. at 2 (citing *RMI IWP Final Order* at 32). The EGS Parties asserted that PPL Electric’s mistaken “customer protection” rationale was wholly adopted in the R.D. According to the EGS Parties, if PPL Electric’s rationale was to be adopted by the Commission it would eviscerate the entire premise of the Choice Act, namely that it is the customer who is given the choice; even if those choices may appear to be based upon factors other than price or seem otherwise irrational. EGS Parties Exc. at 2 (citing 66 Pa. C.S. § 2806(a) (emphasis omitted)).

According to the EGS Parties, to judge post-SOP rates as “overcharging” is not appropriate as EGS rates are subject to the market and not Commission regulation. And while the Commonwealth Court did allow for capped rates for CAP shopping (*i.e.*, comparing EGS rates for CAP Shopping offers to the PTC), the underlying rationale for

that holding is not present here. In the CAP circumstance the Court was willing to “bend” competitive rules – *i.e.*, allow for a rate cap – in order to allow the CAP program to be cost effective. However, in the case of the SOP, there are no such concerns, according to the EGS Parties. Rather, the evidence is clear that there are ample offers that provide savings versus the PTC in the market, that those offers are available to SOP customers at the end of their contracts, and that the largest group of SOP customers do choose another supplier before their contract ends. EGS Parties Exc. at 2-3 (citing EGS Parties St. 1 at 15-17). The EGS Parties also assert that the evidence also shows that “a very small group of SOP customers, 20% or less, remain on a hold over contract after 4 months,” and such a small group do not warrant a policy change. EGS Parties Exc. at 3 (citing EGS Parties St. 1 at 15-16). The EGS Parties argue that it would be disastrous to make a monumental policy choice of forcing all SOP customers back to default service, based on such a small group, particularly where there is such potential to harm the rest of the market and to harm a presently successful SOP program. EGS Parties Exc. at 3.

### **PPL Electric Replies**

In its Replies, PPL Electric asserts that none of the arguments presented by the EGS Parties in their Exception No. 1 have any merit. According to PPL Electric, the fundamental flaw with this Exception is that nothing in the record contradicts these Findings of Facts and, therefore, the EGS Parties cannot dispute the veracity of these facts. Instead, the EGS Parties try to criticize the ALJ’s reliance on these findings in recommending the approval of PPL Electric’s proposed changes to the SOP. However, according to PPL Electric, the ALJ properly determined that the Company’s proposed changes to the SOP should be approved. PPL Electric R. Exc. at 4-5 (citing R.D. at 28-34; citing also PPL Electric M.B. at 14-17).

PPL Electric argues that the EGS Parties are simply attempting to deny that a problem exists by focusing on how a minority of customers (approximately 20%) are

affected by the hold over contracts after four months. PPL Electric R. Exc. at 5 (citing EGS Parties Exc. at 3). PPL submits that the Commission should flatly reject the EGS Parties' attempt to minimize this foundational issue with the current SOP design. Recognizing that a majority of SOP customers (62%) do make an affirmative election regarding shopping prior to the conclusion of their SOP contract, PPL Electric submits that it is indisputable that a significant minority (38%) of all SOP customers do not. PPL Electric R. Exc. at 5 (citing PPL M.B. at 21). Even after four months, approximately 20% of all SOP customers (which equates to approximately 8,000 customers) still have not made an affirmative decision. PPL Electric R. Exc. at 5 (citing R.D. at 28; PPL Electric St. 4 at 3, 11-12). Further, the impact of the SOP's current design on those passive customers is drastic. As the ALJ found, over 90% of the customers on roll-over contracts are paying rates in excess of the PTC upon the conclusion of their SOP contracts, with a striking number (over 50%) of those remaining customers paying in excess of 25% over the PTC. PPL Electric R. Exc. at 5 (citing R.D. at 28). Thus, according to PPL Electric, this is not some miniscule problem affecting a small number of customers that can be disregarded but rather it is a problem that, "if not resolved properly, will harm the reputation of PPL and the retail energy markets generally." PPL Electric R. Exc. at 5 (citing R.D. at 29).

Moreover, PPL Electric asserts that the SOP program should not be used as a marketing tool by EGSs designed to capture unaware customers at excessive rates after the initial term expires. PPL Electric R. Exc. at 6 (citing PPL Electric M.B. at 21). According to PPL Electric, the SOP should prevent such customers from experiencing substantial price increases after the end of their SOP contracts, as those large increases can lead to high bill complaints and payment difficulties. PPL Electric R. Exc. at 6 (citing PPL Electric M.B. at 21). PPL Electric submits that its proposed modifications to the SOP would not "eviscerate" customer choice, as alleged by the EGS Parties, because under its proposal SOP customers would be free to choose to continue receiving service from the current EGS or to select a new EGS when the SOP contract ends and nothing

would require the customers to return to default service if they do not want to return. PPL Electric R. Exc. at 6 (citing PPL Electric M.B. at 17). Also, the Company would explain this potential return to default service to customers during the SOP enrollment process and would remind those customers before their SOP contracts expire. PPL Electric R. Exc. at 6 (citing PPL Electric M.B. at 17-19). Given that SOP is a voluntary program, the customer would still have to choose to receive service under an SOP contract going forward. The only difference would be that the customer would know that the account would be returned to default service if the customer makes no affirmative decision to continue shopping. Thus, the Company's proposal preserves the customer's right to choose under the Choice Act. PPL Electric R. Exc. at 6.

### **OCA Replies**

In its Replies, the OCA asserts that neither the EGS Parties nor Starion presented any analysis of their own to counter or discredit PPL Electric's statistical analysis, which formed the basis of the R.D.'s Findings of Fact Nos. 8, 9, 10, and 11. OCA R. Exc. at 2. The OCA submits that PPL Electric's proposed modifications would not "eviscerate" customer choice or be "disastrous" to the retail market, as alleged by the EGS Parties, because: (1) PPL Electric is not proposing to force *all* SOP customers to default service; (2) SOP customers who take affirmative action at the end of their contract will be unaffected by PPL's proposed modifications; and, (3) SOP customers who are returned to default service do not lose their right to shop, either with another SOP supplier or with a supplier outside of an SOP. OCA R. Exc. at 2-3 (citing PPL Electric St. 4 at 16). Moreover, the OCA submits that PPL Electric made the well-founded point that the market can be harmed by holdover SOP customers being charged excessive prices. OCA R. Exc. at 3 (citing PPL Electric R.B. at 12.; R.D. at 32). Furthermore, the OCA states its agreement with the ALJ that 20% constitutes a "meaningful" number of customers and that a solution is necessary. OCA R. Exc. at 4.

The OCA submits that the testimonies of PPL Electric Witness LaWall-Schmidt and OCA Witness Alexander were persuasive and supported the R.D.'s adoption of Findings of Fact Nos. 8 through 11 and its reliance on those findings to support PPL Electric's proposal to return inactive SOP customers to default service at the end of their contract term is supported by substantial evidence and should be approved. OCA R. Exc. at 4-5 (citing PPL Electric St. 4-R at 13; citing also OCA St. 2-S at 1-2).

### **CAUSE-PA Replies**

In its Replies, CAUSE-PA submits that the Commission is plainly within its authority to approve PPL Electric's proposed SOP rule modifications. CAUSE-PA R. Exc. at 9 (citing CAUSE-PA M.B. at 34-35). First, Section 57.172 provides that a customer is not required to contact their supplier to initiate a switch "when a Commission-approved program requires the EDC to initiate a change in EGS service." CAUSE-PA M.B. at 34 (citing 52 Pa. Code § 57.172). According to CAUSE-PA, if the Commission was unable to set program rules to initiate a customer switch, this rule would have no meaning. Next, CAUSE-PA argues that the Commonwealth Court notably has - on two separate occasions - referenced the Commission-approved SOP as an example of how the Commission has exercised authority to approve or implement program rules that restrict competition - most recently concluding that it would be inconsistent to find that the Commission has authority to regulate EGS pricing through the SOP, but not through the CAP-SOP. CAUSE-PA M.B. at 34 (citing *Retail Energy Supply Association v. Pa. PUC*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018) (*RESA*); *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. et al. v. Pa. PUC*, 120 A.3d 1087, 1103 (Pa. Cmwlth. 2015), *app. den.*, 136 A. 3d 982 (Pa. 2016) (*CAUSE-PA*)). CAUSE-PA asserts that if the Commission has the authority to approve the SOP - which restricts supplier terms and pricing - it would be incongruous to conclude that the Commission then lacks authority to institute other market-related program terms, including those terms which govern the treatment of SOP participants

who do not affirmatively elect a new contract at the conclusion of the program. CAUSE-PA M.B. at 34-35 (citing CAUSE-PA St. 1-R at 5). As a Commission-created program, CAUSE-PA asserts that it is soundly within the Commission’s authority to establish program SOP rules that will protect consumers who participate in the program, and which will not subject unwitting SOP participants to an unreasonable risk of substantial financial harm. CAUSE-PA M.B. at 35.

According to CAUSE-PA, the SOP rule revisions proposed by PPL Electric and approved in the R.D. address what must happen at the end of the SOP term – not after the program is complete. CAUSE-PA R. Exc. at 9. For the entire duration of the program, and up through the SOP participants’ transition out of the program, the Commission remains responsible to ensure that the program rules are just and reasonable, and in accordance with all applicable laws and policies. CAUSE-PA R. Exc. at 9. Approval of these rules are not detrimental to the market – they will help preserve the integrity of the market, ensuring that participants have a good experience and are encouraged to actively participate in the market rather than being exposed to excessive rates. CAUSE-PA R. Exc. at 9 (citing CAUSE-PA St. 1-R at 15-16; OCA St. 2 at 15; R.D. at 29).

## **ii. EGS Parties Exception No. 2 and Replies**

In their Exception No. 2, the EGS Parties argue that the R.D. erred as matter of law in concluding that the PTC is an appropriate measure of whether the current SOP design is successful. EGS Parties Exc. at 3 (citing R.D. at 29). The EGS Parties assert that the entire R.D. is based on “the mistaken approach of measuring the competitive market by comparing prices offered by suppliers” to the PTC. They maintain that this is akin to comparing a “banana to a watermelon.” EGS Parties Exc. at 3. They argue that there are differences between EGS prices and the PTC such that the PTC does not fully reflect the costs of providing default service and that most of those costs are

recovered through distribution rates, not the PTC.<sup>25</sup> As a result, they assert that comparisons between EGS prices and the PTC are no basis upon which to make changes to the PPL SOP. EGS Parties Exc. at 3-4. Thus, the EGS Parties urge the Commission to find that the ALJ's conclusion that the PTC is an appropriate benchmark was in error, particularly since the comparison is based on entirely different products. EGS Parties Exc. at 4.

Furthermore, the EGS Parties assert that the entire analysis on pages 28-29 of the R.D., regarding the comparison of EGS rates to the PTC, is also lacking factually, in that it fails to consider that nearly 80% of customers who accept a one-year SOP offer have selected a different plan by the fourth month after the end of that year. EGS Parties Exc. at 4 (citing EGS Parties St. 1 at 15-16). Even so, the EGS Parties submit that it is not possible, based upon this record, to ascertain whether the 20% of customers who did not switch away affirmatively chose to stay with the SOP supplier for reasons other than price. According to the EGS Parties, if the Commission feels that some sort of education is required, perhaps it could be directed to this small subset of customers who simply fail to re-engage the market after their initial acceptance of an SOP offer. At bottom, it was an error of law, and an error of fact for the R.D. to support the notion that the PTC is an

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<sup>25</sup> The EGS Parties explain that an EGS must recover its entire cost of doing business through its rates, while the default service provider, here PPL, need only recover its incremental costs of energy and a few other expenses in the PTC. Most of the costs of providing default service are recovered through distribution rates. EGS Parties Exc. at 3 (citing EGS Parties St. 1-R, 6:21-9:2; EGS Parties' St. 1-SR, 3:21-4:19). According to the EGS Parties, because the EDC recovers no profit on default service – and this fact standing alone makes the point – that the PTC cannot be what it purports to be – a measure of the “fairness” of supplier rates. According to the EGS Parties, the products are not the same, the cost structures are not the same, and the market power as between the utility and the suppliers is vastly lopsided in favor of the utilities. EGS Parties Exc. at 3 (citing EGS Parties' St. 1-R, 3:1-4:9). Moreover, the EGS Parties assert that because the rates charged by suppliers are not subject to regulation, making a regulatory decision based on such comparison is misguided. EGS Parties Exc. at 3-4 (citing 66 Pa. C.S. §§ 2802(14) and 2806(a); *CAUSE-PA*, 120 A.3d at 1101).

appropriate comparison for the fairness of EGS rates. The EGS Parties urge the Commission to reverse the R.D. on this point. EGS Parties Exc. at 4.

### **PPL Electric Replies**

In Replies, PPL Electric submits the ALJ soundly held that the PTC is an appropriate measure of whether the current SOP design is successful. PPL Electric R. Exc. at 6. According to PPL Electric, the default service rate is called the “Price to Compare” for a reason. As intended, the “Price to Compare” provides a benchmark for customers to compare prices and evaluate their shopping options. When a customer does not shop, the customer pays the PTC, and when the customer does shop, the customer avoids the PTC and pays the EGS rate. If the EGS rate exceeds the PTC, the customer’s bill is higher. PPL Electric R. Exc. at 7 (citing PPL Electric R.B. at 6). Therefore, according to PPL Electric, it is appropriate to use the PTC when evaluating the current SOP design. PPL Electric R. Exc. at 7.

PPL Electric argues the EGS Parties’ assertion that the PTC is not calculated correctly lacks evidentiary support and legal merit. First, PPL Electric points out that the ALJ observed at page 30 of the R.D.: “[t]he EGS Parties failed to submit any evidence that PPL Electric’s PTC is incorrectly calculated.” The EGS Parties only “offer[ed] general assertions . . . that portions of PPL Electric’s distribution costs, such as facilities, salaries, billing and collections, should be allocated to the PTC.” They never presented any “facts regarding what portion of distribution costs are to be allocated to the PTC, or any basis for such allocation.” And the EGS Parties’ own witness “stated that this DSP proceeding was not an appropriate proceeding to examine the ‘true’ cost of default service.” PPL Electric R. Exc. at 7 (citing R.D. at 30). According to PPL Electric, without such evidence, the EGS Parties’ argument is completely unsupported. PPL Electric R. Exc. at 7. In addition, PPL Electric points out that the EGS Parties’ Exceptions notably failed to mention how the Commission and the Commonwealth Court

recently rejected a very similar proposal to allocate these categories of distribution costs to the PTC. PPL Electric R. Exc. at 7 (citing *Pa. PUC v. PECO Energy Co. – Elec. Div.*, Docket No. R-2018-3000164, p. 74 (Order entered Dec. 20, 2018) (*PECO Energy Order*), affirmed, *NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936 (Pa. Cmwlth. 2020), petition for allowance of appeal pending, Docket No. 359 MAL 2020) (*NRG Energy*). Thus, PPL Electric submits that the ALJ properly rejected the EGS Parties’ arguments and held that the SOP should be evaluated using the PTC. PPL Electric R. Exc. at 8 (citing R.D. at 29-30).

### **OCA Replies**

In its Replies, the OCA concurs with PPL Electric’s Replies, stating that regardless of whether the EGS Parties desire it to be so, the reality is, the PTC serves as a benchmark for customers for comparing competitive offers. OCA R. Exc. at 6-7. Additionally, the OCA concurs with PPL Electric that the EGS Parties’ general assertions about the PTC not being correctly calculated are not supported by record evidence and lack legal merit. OCA R. Exc. at 5-6 (citing PPL R.B. at 6; citing *PECO Energy Order* and *NRG Energy*). The OCA points out that, in the *PECO Energy Order* case, NRG proposed, as EGS Parties suggest here, a significant reallocation of costs from distribution service to default service, which the Commission rejected. The OCA highlights that in the *PECO Energy Order*, the Commission stated:

In this proceeding, [NRG witness] Mr. Peterson could not identify specific additional costs related to providing default service, having done no analysis of the costs that PECO actually incurs to provide default service. Rather, Mr. Peterson merely indicated that a “significant portion” of PECO’s expenses “reasonably support” residential default service since PECO provides default service to approximately sixty-six percent of its residential customers and those costs would be incurred if default service was provided through a division of PECO separate from its distribution operations.

*PECO Energy Order* at 71. The OCA submits that the general assertions regarding reallocation of costs to the PTC made by the EGS Parties in this proceeding are no different than the general assertions the Commission found fault with in the proceeding that resulted in the *PECO Energy Order*. OCA R. Exc. at 6.

### **CAUSE-PA Replies**

CAUSE-PA concurs with the OCA and PPL Electric that the EGS Parties' assertion that the PTC is not the appropriate benchmark for comparing competitive offers is without merit and should be summarily rejected. CAUSE-PA Exc. at 9-10 (citing CAUSE-PA R.B. at 18).

CAUSE-PA addresses the EGS Parties argument that the R.D. erred "in that it fails to consider the nearly 80% of customers who accept a one-year SOP offer have selected a different plan by the fourth month after the end of that year." CAUSE-PA Exc. at 10 (citing EGS Parties Exc. at 4). Specifically, CAUSE-PA submits that this assertion is built on the EGS Parties' earlier assertion that only a "very small group of SOP customers, 20% or less, remain on a hold over contract after 4 months." CAUSE-PA Exc. at 10 (citing EGS Parties Exc. at 3). According to CAUSE-PA, the statistics cited by the EGS Parties neither evidence a healthy marketplace nor support a conclusion that PPL Electric's proposed SOP rule changes are unnecessary. CAUSE-PA R. Exc. at 10. CAUSE-PA's expert addressed at length the EGS Parties' misapplication of these facts. *Id.* (citing CAUSE PA St. 1-R at 15-16; CAUSE-PA R. Exc. at 10-11). According to CAUSE-PA, the R.D. properly disregarded the statistics advanced by the EGS Parties, as they are not evidence that PPL's proposed SOP rules are unnecessary. If anything, the data cited by the EGS Parties, according to CAUSE-PA, further bolsters the need for such rules to protect unwitting SOP participants from the severe financial consequences of

inaction and to preserve the integrity of the market as a whole. CAUSE-PA R. Exc. at 11.

### iii. EGS Parties Exception No. 3 and Replies

In their Exception No. 3, the EGS Parties argue that the R.D. erred as a matter of law in authorizing PPL Electric to implement a different end-of-contract rule for SOP than for all other customers. EGS Parties Exc. at 4 (citing R.D. at 30-31).

The EGS Parties argue that in the *RMI IWP Final Order*, the Commission specified that “at the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer’s enrollment with a different EGS or the customer’s return to default service, the customer will remain with the EGS on a month-to-month basis.” EGS Parties Exc. at 4 (citing *RMI IWP Final Order* at 31). The EGS Parties point out that the very condition that is at issue here, whether SOP customers should be returned to default service or remain with their supplier absent an affirmative choice, was debated in the comments considered by the Commission before reaching the conclusion above. EGS Parties Exc. at 5 (citing *RMI IWP Final Order* at 23-27). According to the EGS Parties, the evidence of the record in this proceeding shows that the Commission made the correct choice in the *RMI IWP Final Order*, as the vast majority of customers (80%) are making affirmative choices within 4 months of the end of their contract, with the largest group making a choice before their contract even ends. EGS Parties Exc. at 5 (citing EGS Parties St. 1 at 15-16). To implement PPL Electric’s proposal would be to have the “tail wagging the dog.” According to the EGS Parties, the R.D. simply ignores the evidence that directly refutes the chosen outcome, and in that it commits error. EGS Parties Exc. at 5.

Further, the EGS Parties argue there is no good or distinguishable reason for treating SOP customers differently from shopping customers not enrolled in the SOP

at the expiration of their EGS contract. The EGS Parties explain that customers who enroll in the SOP, just like customers who enroll with a supplier in the ordinary course of business, receive two notices at the end of their contract and must heed those notices or end up in a roll-over contract at the supplier's going rate. PPL Electric's SOP customers are able to switch away without penalty, and most of them do before the contract ends. The EGS Parties submit that PPL Electric's largely unsupported claim (PPL M.B. at 14) adopted wholeheartedly by the R.D., that it receives "complaints" from customers who fail to take any action, and end up on a rollover rate despite having received two notices, does not provide any justification for changing the program. According to the EGS Parties, complaints are inevitable and unfortunate reality, no matter what PPL Electric were to do. The EGS Parties reason that if SOP customers end up with a different procedure at the end of the SOP, it is a slippery slope that could result in PPL Electric seeking a waiver of the "normal" end of contract procedure at 52 Pa. Code § 54.10(3) for all other shopping customers. According to the EGS Parties, this is not the sort of change that should be imposed on a one-off basis nor should a waiver of the Commission's Regulations at 52 Pa. Code § 54.10(3) be granted. EGS Parties Exc. at 5-6. According to the EGS Parties, no other EDC in Pennsylvania has proposed to require EGSs to obtain affirmative consent to retain SOP customers at the end of their contract, and the record lacks sufficient evidence to make PPL Electric the exception. EGS Parties Exc. at 6.

Further, the EGS Parties take issue with the ALJ's statement that EGSs may offer any contract price they desire to SOP customers reaching the end of their contract terms. EGS Parties Exc. at 6 (citing R.D. at 31). The EGS Parties submit that if PPL Electric's proposal is granted, EGSs will likely lose all or most of their SOP customers, regardless of price, because customers will be required to opt-in to the subsequent contract, which is not the way the market currently works. Therefore, the EGS Parties contend that the ALJ overlooked the ramifications of adopting the Company's proposal based on the premise of trying to "protect" a small number of

customers who fail to act. The EGS Parties urge the Commission to reverse the R.D. on these points. EGS Parties Exc. at 6-7.

### **PPL Electric Replies**

In its Replies to Exceptions, PPL Electric argues that the ALJ correctly found that the *RMI IWP Final Order* does not prohibit the Company from proposing changes to its SOP program, nor does it prohibit the Commission from amending the SOP design. PPL Electric echoes the ALJ's finding that because the SOP program is not compulsory under the Choice Act, the Commission is within its authority to change or eliminate the SOP at any time. In addition, PPL Electric notes the ALJ's finding that "the Commission approved changes to CAP shopping rules" in the Company's DSP IV proceeding when those changes "were justified by the evidence." PPL Electric R. Exc. at 8-9 (citing R.D. at 30-31). Therefore, PPL Electric takes the position that this proceeding is the appropriate venue to approve changes to the Company's SOP design. PPL Electric R. Exc. at 9.

PPL Electric also submits that the different treatment of SOP and non-SOP customers is reasonable and justified because SOP and non-SOP customers are, in fact, different. In this regard, PPL Electric notes that the SOP is a special discount rate, designed to focus on customers who do not shop. PPL Electric continues that, unlike non-SOP contracts, SOP contracts are required to have certain standard terms and conditions such as contract length, a fixed price, an initial price at 7% below the current PTC, and no early cancellation fees. Further, PPL Electric states that it is only able to describe the SOP to existing shopping customers who specifically inquire about the program. Therefore, PPL Electric asserts that the EGS Parties' Exception No. 3 should be rejected. PPL Electric R. Exc. at 9.

## OCA Replies

In its Replies to Exceptions, the OCA, likewise, submits that because the SOP program was created by Commission order, and not by statute, the Commission has the authority to modify the program. Namely, the OCA argues that in the *RMI IWP Final Order*, the Commission anticipated that changes to SOP programs will be made as they are implemented over time in default service proceedings when it stated, "...it is expected that detailed implementation and logistical elements will be determined during the default service plan proceedings for each EDC." OCA R. Exc. at 7-8 (citing the *RMI IWP Final Order* at 31). Therefore, the OCA refutes the EGS Parties' argument that the ALJ committed an error of law. OCA R. Exc. at 7.

The OCA also addresses the EGS Parties' contention that no other EDC has sought Commission-approval to require EGSs to obtain affirmative consent to retain SOP customers at the end of their contracts. The OCA posits that this is likely because no other EDC has performed an analysis like PPL's to determine the prices inactive SOP customers are paying in the period after their SOP contracts expire. According to the OCA, different treatment for passive SOP customers is necessary to prevent harm to the retail market in general. More specifically, the OCA reasons that because such prices are far in excess of the PTC and far in excess of prices advertised on PaPowerSwitch, this will raise the suspicion that these prices reflect the supplier's attempt to gain revenues lost as a result of the lower priced SOP contracts. OCA R. Exc. at 9.

## CAUSE-PA Replies

In its Replies to Exceptions, CAUSE-PA claims that the ALJ's recommendation that PPL be permitted to return inactive SOP participants to default service at the end of the program term is based on substantial evidence. CAUSE-PA submits that it is central to the Commission's role as a regulator to periodically review

and assess program data and performance and make appropriate adjustments to ensure that all ratepayer programs are just and reasonable, and in furtherance of the public interest. Therefore, CAUSE-PA argues that as a Commission-approved, EDC-administered, and ratepayer-supported program, the SOP is necessarily and appropriately subject to different rules for competitive market engagement. CAUSE PA R. Exc. at 11-12.

CAUSE PA frames the EGS Parties argument that all customers who shop must accept the responsibility that goes along with the shopping to be a *caveat emptor* (*i.e.*, buyer beware) statement. CAUSE-PA reasons that SOP customers do not actively set out to shop for energy, but instead such customers are invited to participate in the program at the end of a call when they contact PPL for different reasons. As such, CAUSE PA states that the only choice prospective SOP participants make is whether they want to participate in a program that will guarantee a discount of 7% off the applicable PTC. For this reason, CAUSE-PA claims that it is unreasonable for *caveat-emptor* to apply to customers who began shopping in this manner. CAUSE-PA R. Exc. at 12.

#### **iv. EGS Parties Exception No. 4 and Replies**

In its Exception No. 4, the EGS Parties object to the ALJ's finding that PPL Electric should be able to "educate" SOP customers as to their options near the end of their SOP contracts. The EGS Parties submit that because PPL Electric has acknowledged that such educational materials are not yet available, and will not be developed until the Commission renders a decision in this proceeding, there is nothing to prevent the Company from using such materials to persuade customers to choose default service over service from an EGS. Therefore, the EGS Parties claim that because the ALJ has proposed no process for which to review the not-yet-available materials, she has opened the door to potential misconduct. In this regard, the EGS Parties contend that

such materials may be contrary to the Commission's Code of Conduct Regulations at 52 Pa. Code § 122 and the Commonwealth Court's Decision in *MAPSA*, which will force EGSs to file complaints if there is something objectionable in these materials. EGS Parties Exc. at 7-8.

The EGS Parties disagree with the ALJ's finding that PPL Electric's educational materials are simply intended to encourage customers to carefully evaluate their choices and are, therefore, permitted under *MAPSA*. Rather, the EGS Parties cite to the testimony of their witness Mr. Christopher H. Kallaher that PPL's desire to educate appears to be driven by the idea that SOP customers are somehow disengaged or passive and thus unable to make appropriate decisions for themselves without PPL Electric stepping in to "help." The EGS Parties insist that there is no demonstrated need for the Company to educate its customers when nearly 80% of them make affirmative shopping decisions within sixteen months of enrolling in the SOP program. Therefore, the EGS Parties clarify that while they are not opposed to education, they are of the opinion that the Commission must be very specific as to what PPL Electric, or any EDC, is permitted to say in such communication to ensure that the educational materials do not erode the value of the SOP contract to the EGS that paid the price to be a party to it. EGS Parties Exc. at 8 (citing EGS Parties St. 1.0 at 20-21).

Further, the EGS Parties reason that if PPL Electric has a concern that a subset of SOP customers are being passive, then it should have specifically identified only those customers as the targets for their education efforts, rather than seeking to influence customers that already will have made affirmative choices. In the EGS Parties' view, the Company's proposal, in its current form, is unnecessary and should be rejected or at the least, modified appropriately. EGS Parties Exc. at 8-9.

## PPL Electric Replies

In its Replies to Exceptions, PPL Electric claims that the ALJ properly ruled that the Company should be permitted to send notifications to SOP customers nearing the end of their SOP contracts. PPL Electric explains that because it does not profit from default service, it has no incentive to market this service to customers. As such, PPL Electric avers that the educational materials it will present to customers nearing the end of their SOP contracts will not tout default service over shopping, but will instead encourage the SOP customers to shop and provide them with the resources to evaluate options. PPL Electric also refutes the EGS Parties' argument that the Company should send the education materials only to the "passive" SOP customers. PPL Electric contends that rather than waiting until SOP customers fail to act, as advocated by the EGS Parties, the Company's proposal is intended to be a preventative measure designed to educate the customers that they will soon be rolled over on to the higher priced contracts. PPL Electric R. Exc. at 9-11.

PPL Electric also states that it recognizes that the educational materials under its proposal have yet to be developed and that the EGS Parties have concerns about not having the opportunity to review these materials before they are sent to customers. However, PPL Electric submits that these concerns are addressed by the ALJ. PPL Electric R. Exc. at 11. Namely, PPL Electric emphasizes the ALJ's finding that "PPL Electric is willing to provide the material to all interested parties, and the Commission, in advance, to receive helpful feedback." *Id.* (citing R.D. at 34). In addition, PPL Electric asserts that it is willing to submit the proposed materials as a separate compliance filing in this proceeding. According to PPL Electric, this would give interested parties the opportunity to file comments and reply comments on the materials, after which the Commission would review and approve them. PPL Electric R. Exc. at 11.

## CAUSE-PA Replies

In its Replies to Exceptions, CAUSE-PA submits that contrary to the EGS Parties' assertion, PPL Electric's proposal to educate its customers should be embraced, not admonished. CAUSE PA reasons that an informed customer base is critically necessary to a well-functioning marketplace, and is particularly necessary and appropriate in light of the unrebutted evidence that SOP participants routinely roll onto contracts with prices well above the PTC, without taking any affirmative action. CAUSE-PA echoes PPL Electric's argument that the Company has no incentive to persuade consumers to return to default service. Rather, CAUSE-PA contends that PPL Electric has an appropriate role to play in educating consumers about the SOP program. CAUSE PA R. Exc. at 11-12. Citing to the testimony of its witness Mr. Harry Gellar, CAUSE-PA asserts that because PPL Electric is the company that initiates enrollment in the SOP program, it is logical to conclude that PPL Electric will conduct outreach to its customers to remind them that the program will soon come to an end and to inform them about their choices. CAUSE PA takes the position that such education efforts will encourage more active participation in the market by permitting EGSs to compete more directly with other EGSs participating in the SOP program. *Id.* at 12 (Citing CAUSE-PA St. 1-R at 7-8).

### v. Starion Exception No. 1 and Replies

In its Exception No. 1, Starion claims that if the Commission adopts PPL Electric's proposed changes to its SOP program, it will result in the end of the SOP program for all customers. In this regard, Starion submits that the ALJ failed to recognize that a critical component in the continual operation of the SOP program is the voluntary participation by EGSs. According to Starion, an EGS must weigh several factors in choosing whether to participate in the SOP program, including: (1) the amount of the customer referral fee paid to PPL Electric; (2) the pricing requirements for the SOP

contract; and, (3) the opportunity to retain the SOP customer at the end of the SOP contract term. Starion posits that given that there has never been a period without a participating EGS in the SOP in the six-year history of the program, it is reasonable to conclude that the current design of PPL Electric's SOP program appropriately incentivizes EGSs to participate. However, Starion takes the position that the adoption of the Company's proposed changes to the SOP program will serve as a disincentive for the EGSs to continue their participation. Starion Exc. at 4-5.

Namely, Starion claims that the adoption of PPL Electric's SOP proposal will negatively impact the opportunity for the EGS to retain the SOP customer at the end of the SOP contract term and will create significant customer confusion. Starion continues that under PPL Electric's proposal, the Company will contact the EGS's SOP customer before the EGS has had the opportunity to present the post SOP contract offer to the customer. In addition, Starion submits that the Company's proposal will result in conflicting notices in the days prior to contract expiration – one notifying the SOP customer that he or she will be returned to default service, and the other notifying the SOP customer of the EGS offers and what will happen following contract expiration. Therefore, Starion contends that PPL Electric's proposal will make it more difficult for consumers to remain in the competitive market upon SOP contract expiration because – for SOP contracts only – customers will have to take affirmative action to remain with the EGS. Starion submits that because the goal of the SOP is to introduce consumers to the competitive market, this requirement runs contrary to the very purpose for which the SOP was created and will further draw into question whether EGSs will elect to participate. Starion Exc. at 5-7.

Starion argues that PPL Electric proposed no changes for the other two EGS program participation requirements. Therefore, Starion notes that as a condition of participating in the SOP, EGSs would still be required to: (1) pay the Company a \$28 fee for each customer referred; and, (2) offer the SOP customer a price that is 7% below the

PTC at the time of enrollment and maintained for the twelve-month term of the contract regardless of market conditions. According to Starion, given the reduced likelihood that the EGS will be able to serve the SOP customer at the end of the SOP contract term, these remaining program participation requirements may no longer make voluntary participation in the program worthwhile. Starion Exc. at 7. Starion points, specifically, to the testimony of its witness Mr. Pete Muzsi that if PPL Electric's proposal is adopted, Starion would have no choice but to question its future participation in the Company's SOP program. *Id.* at 7-8 (citing Starion St. 1 at 2).

Starion further submits that a total collapse of PPL Electric's SOP program due to its redesign and the corresponding lack of participation by EGSs would not be in the public interest and would not serve customers or the competitive market. Starion points out that the Commission has recognized the value of the SOP since 2007 and undertook an extensive process of nearly three years to develop an appropriate structure for it. Starion notes, *inter alia*, the creation of the PaPowerSwitch website to provide information to Pennsylvania consumers about the SOP. Starion argues that over the years, if one of the EDC's SOP programs does not appear to be functioning well, the Commission has taken the initiative to further study the specific EDC's SOP and direct the changes necessary to improve the SOP being offered. Therefore, Starion asseverates that adopting PPL Electric's proposal to change a core design element of its SOP program will have a detrimental impact on the future of the SOP in PPL Electric's service territory, in direct contravention to the Commission's expressed desires over the years. Starion Exc. at 8-9.

### **PPL Electric Replies**

In its Replies to Exceptions, PPL Electric emphasizes its position that the SOP program should not be used as a marketing tool designed to capture unaware customers at excessive rates after the initial term expires. Rather, PPL Electric takes the

position that EGSs should be expected to try to retain these customers, rather than hope they roll over into higher priced, month-to-month contracts. Therefore, PPL Electric submits that the SOP program should show the competitive market's benefits. PPL Electric R. Exc. at 11-12. PPL Electric points to the record evidence that a majority of SOP customers make affirmative shopping choices before their SOP contracts end. *Id.* at 12 (citing PPL Electric R.B. at 9). PPL Electric states that the Company's proposed changes will not affect these customers and the EGSs will continue to retain such customers. Instead, the Company explains that the only customers affected by its proposal will be those who fail to make an affirmative choice to continue to shop. PPL Electric R. Exc. at 12.

According to the Company, nothing supports Starion's claim that EGSs would avoid the modified SOP unless they retain passive customers. PPL Electric notes the testimony of Starion's witness Mr. Pete Muzsi that the EGSs risk their reputation if rates substantially increase after the SOP contract ends. PPL Electric R. Exc. at 12 (citing Starion St. 1.0 at 12). In addition, PPL Electric refutes Starion's assertions that the Company's communication proposal will contribute to EGSs declining to participate in the SOP, and that it will confuse customers. In this regard, PPL Electric asserts that the Company's educational materials will encourage customers to shop and will enable them to make informed decisions in the competitive market. Therefore, PPL Electric argues that the Company's notice will not conflict with the EGS's notice informing the SOP customer of the EGS offers and what will happen following contract expiration. In the Company's view, the two notices will work in concert to help ensure that the SOP customers are fully apprised of their options. Further, PPL Electric states that it is willing to submit the educational materials as a separate compliance filing subject to other parties' comments and the Commission's review and approval. PPL Electric R. Exc. at 12.

## OCA Replies

In its Replies to Exceptions, the OCA points to an exhibit proffered by the EGS Parties, which referenced information by PPL Electric that for the period of January 2017 through December 2018, 62% of residential customers and 55% of Small C&I customers exited the SOP prior to the end of the twelve-month term. OCA R. Exc. at 9-10 (citing EGS Parties Exh. EGS-1). Therefore, the OCA takes the position that the fact that EGSs currently continue to offer the SOP despite this high turnover rate suggests that EGSs are not likely to abandon PPL Electric's SOP program if the Commission adopts the Company's proposal. OCA R. Exc. at 10.

The OCA also contends that the negative option renewal policy upon which EGSs currently rely to retain SOP customers who take no action is certainly not an ideal form of customer choice. Namely, the OCA highlights the testimony of PPL's witness Ms. Michelle LaWall-Schmidt that : "[t]he SOP is not intended to be a marketing tool to capture unaware customers at higher rates upon the conclusion of the contract term." OCA R. Exc. at 10-11 (citing PPL Electric St. 4-R at 13).

The OCA further contends that PPL Electric's proposal actually already addresses Starion's statement, *supra*, that if one of the EDC's SOP programs does not appear to be functioning well, the Commission has taken the initiative to further study the specific EDC's SOP and direct the changes necessary to improve the SOP being offered. OCA R. Exc. at 11 (citing Starion Exc. at 8). Namely, the OCA submits that PPL Electric has properly conducted an analysis of the prices paid by SOP customers who do not take action at the end of their SOP contract and has determined that its SOP program is not functioning well in its current form. Therefore, the OCA contends that the Company has done what Starion has suggested by seeking approval from the Commission to make the necessary changes to improve its SOP program. Accordingly,

the OCA submits that the Commission should reject Starion's Exception No. 1. OCA R. Exc. at 11.

### **CAUSE-PA Replies**

In its Replies to Exceptions, CAUSE-PA points to several statistics in the record that it claims are illustrative of the financial harm that passive SOP participants experience at the end of their contract terms. CAUSE-PA R. Exc. at 4 (citing CAUSE-PA St. 1 at 4-13; CAUSE-PA St. 1-R at 15-16; PPL St. 4 at 8-13). Conversely, CAUSE-PA insists that there is no record evidence to demonstrate that PPL Electric's proposed amendments to the SOP program will lead to the demise of the SOP. CAUSE-PA submits that no party to this proceeding testified that it would definitively pull out of the SOP program if the Company's proposed rule change were adopted. CAUSE-PA continues that although Starion's witness Mr. Muzsi testified that such a change in the SOP would cause Starion to "reconsider" participation in the SOP, he did not testify that Starion would exit the program entirely. Further, CAUSE-PA argues that neither Starion nor the EGS Parties encompass the full range of suppliers serving PPL Electric's service territory. Therefore, CAUSE-PA submits that Starion's Exception No. 1 should be denied. CAUSE-PA R. Exc. at 5-6.

#### **vi. Starion Exception No. 2 and Replies**

In its Exception No. 2, Starion opposes Conclusion of Law Nos. 20 and 21, which state, as follows:

20. PPL Electric's customers should be returned to default service at the end of their Standard Offer Program contracts unless the customers affirmatively elect to continue service with the EGS or chose another EGS.

21. PPL is not be required [sic] to provide EGSs with the telephone numbers and email addresses (if available) of SOP customers to the EGS serving the customer.

Starion Exc. at 9 (citing R.D. at 42). According to Starion, the ALJ erred by failing to consider alternative solutions in light of the concerns raised about PPL Electric's current SOP program. Starion Exc. at 9.

Starion argues that the origin of PPL Electric's concern regarding customer actions at the end of the SOP centers on the EGSs' lack of real-time, current contact information for their SOP customers. Starion explains that the only contact information EGSs receive from PPL Electric for customers enrolled via the SOP program is the billing address. Therefore, Starion states that it suggested an alternative method whereby PPL Electric would request permission from the customer being enrolled in the SOP program to have his or her contact information shared with the SOP EGS. According to Starion, although PPL Electric opposed this suggestion on the grounds that doing so would violate a distribution customer's expectations of privacy, addressing the lack of contact information provided to EGSs for SOP enrollments is a better approach than PPL Electric's proposed changes to the SOP program. Starion opines that this approach is one that would respect the current functionality of the SOP program, while attempting to implement a process to make it better. Starion Exc. at 10-11.

Starion asserts that the SOP customer is the EGS's customer. Starion reasons that the EGS has paid PPL Electric a referral fee, has agreed to specific contract terms as part of its participation in the SOP program, and is providing the supply service to the referred SOP customer. Starion also notes that the EGS is required to follow all Commission Regulations regarding the customer. In addition, Starion submits that the Commission has stated that EGSs have the right to access information about their customers. Starion Exc. at 11. Namely, Starion notes that it argues that the Commission recently reinforced that EGSs are not "third parties" and would be receiving information

from the EDC “about their own customers.” Starion Exc. at 11 (citing *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket No. P-2017-2637855 (Order entered September 4, 2018) (*First Energy DSP V Order*) at 25).

Finally, Starion argues that in *Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54*, Docket No. L-2017-2628991, (Order entered February 27, 2020) (*February 2020 Rulemaking Order*), the Commission added a new Regulation at 52 Pa. Code § 54.5(k) that requires EGSs to inform their customers if the EGS intends to obtain customer account and usage information from the utility. Starion Exc. at 11-12 (citing *February 2020 Rulemaking Order* at 71-74). In Starion’s view, customers own and control all of their data, and it is wholly inappropriate to permit PPL Electric to act as the ultimate gatekeeper of this information. Rather, Starion asserts that a simple question to the consumer during the SOP enrollment process asking whether he or she is willing to share his or her personal contact information – *i.e.*, the customer’s phone number or email address – to the SOP EGS ensures that the customer is given the right to decide whether or not to share his or her information. Starion Exc. at 12.

### **PPL Electric Replies**

In its Replies to Exceptions, PPL Electric submits that Starion’s alternative proposal would violate distribution customers’ expectations of privacy. PPL Electric points out that customers have the right, pursuant to the Commission’s Regulations at 52 Pa. Code § 54.8, to opt-out of having their telephone numbers listed in the Eligible Customer List (ECL). Therefore, PPL Electric argues that it is likely that customers would object to the Company releasing this information, especially if the customers have restricted the release of their telephone numbers in the ECL. PPL Electric R. Exc. at 13.

PPL Electric also contends that EGSs should not be granted the ability to bypass the Commission's ECL regulation by making the release of customer telephone numbers and email addresses a condition of the SOP. The Company frames Starion's alternative proposal as one that asks the Commission to establish a separate, duplicative process for PPL Electric to obtain customer consent to release certain information to EGSs. In PPL Electric's view, such a process should not be established in a DSP proceeding. Additionally, PPL Electric notes that Starion never explained why the SOP EGS cannot request this information from the customer on its own. PPL Electric takes the position that because the SOP EGS serves the customer and has a contract with the customer, it can clearly ask the customer to provide this information itself. PPL Electric R. Exc. at 13-14.

### **CAUSE-PA Replies**

In its Replies to Exceptions, CAUSE-PA argues that although Starion and the EGS Parties each proposed that PPL Electric should be required to disclose additional personal contact information of SOP participants, neither party advanced this proposal as an alternative that will prevent unsuspecting SOP participants from passively rolling onto a high-priced contract at the end of the SOP term. More specifically, CAUSE-PA asserts that neither Starion nor the EGS Parties stated that they would use this personal contact information to urge inactive SOP participants to make an affirmative choice at the conclusion of the SOP term. Rather, CAUSE-PA insists that it is to the suppliers' benefit for SOP participants to unwittingly roll onto a new contract when the SOP ends. Therefore, CAUSE-PA contends that suppliers have, themselves, articulated that they have a disincentive to educate consumers. Accordingly, CAUSE-PA submits that providing more personal contact information to suppliers will not rectify the problem identified by PPL Electric of having SOP participants consistently roll over onto high priced contracts, and is not a viable alternative to the Company's proposal to return inactive SOP participants to default service if they fail to make an affirmative choice

during the twelve-month SOP term. Further, CAUSE-PA submits that because consumers must affirmatively elect to withhold their phone number and other personal contact information from the ECL, a consumer's affirmative choice to maintain his or her privacy should not be disregarded simply because that consumer has decided to participate in the SOP. CAUSE-PA R. Exc. at 6-7.

**vii. Starion Exception No. 3 and Replies**

In its Exception No. 3, Starion submits that contrary to the ALJ's ruling, PPL Electric's proposed changes to its SOP program cannot be legally adopted. According to Starion, although PPL Electric's proposal to return SOP customers to default service may not specifically dictate what EGSs can charge for SOP or non-SOP contracts, the adoption of this proposal, nonetheless, would constitute the illegal regulation of EGS pricing. Namely, Starion contends that the ALJ made clear that the whole reason for recommending the adoption of the Company's proposal is based on the concern about the specific prices EGSs are charging SOP customers at the expiration of their SOP contracts. Starion Exc. at 13 (citing R.D. at 31).

Starion also objects to the ALJ's conclusion that PPL Electric's proposal to modify the end of term SOP procedures is neither anti-competitive nor discriminatory. More specifically, Starion takes issue with the ALJ's findings that: (1) the return to SOP would be an authorized program design and the Commission's Regulations at 52 Pa. Code 57.172 permit the Commission to implement such a requirement; (2) PPL Electric has no incentive to have these customers returned to default service and will encourage smart shopping and hopefully a more positive shopping experience; and (3) PPL Electric represented that its intended (but not yet developed) educational materials will be focused on encouraging customers to carefully evaluate their choices. Starion Exc. at 14-15 (citing R.D. at 31-34). According to Starion, these findings overlook the fact that the Choice Act charges the Commission with fostering the development of a competitive

market and ensuring that PPL Electric, as a historical monopoly provider of electricity, is not provided competitive advantages over EGSs and that PPL Electric's default service is not elevated to a superior position relative to the competitive market. Starion insists that if PPL Electric's proposal is adopted, it will have a negative impact on competition, contrary to the intent of the Choice Act. Starion Exc. at 15.

More specifically, Starion claims that instead of providing a more positive shopping experience, adopting the Company's proposal will automatically remove customers from the competitive market to return them to default service provided by PPL Electric. Starion submits that because PPL Electric continues to serve nearly 60% of residential customers, this will yield a significant advantage for the Company, relative to all other EGSs in the market. Starion continues that it will also result in a significant disincentive for EGSs to participate in the SOP, which will diminish the competitive market options available for consumers. Additionally, Starion claims that the Company's proposal will elevate default service over the competitive market. Starion reasons that by using PPL Electric's PTC as the benchmark to decide what is appropriate generation pricing, this will wrongly signify that PPL Electric's default service is superior to EGS market pricing. Therefore, Starion remains of the opinion that the Company's proposed changes to its SOP program should be rejected. Starion Exc. at 15-17.

### **PPL Electric Replies**

In its Replies to Exceptions, PPL Electric submits that Starion's argument regarding the illegal regulation of EGS pricing is contradictory. In this regard, PPL Electric highlights that while Starion accepts that the mandated 7% initial discount off the PTC contained in the SOP terms is not regulation of EGS pricing, it also claims that the Company's proposal to return SOP customers to default service if they fail to make an affirmative decision constitutes price regulation. PPL Electric emphasizes that its proposal deals only with the non-price terms of the SOP, specifically what happens to a

customer who reaches the end of their SOP contract without making an affirmative shopping choice. PPL Electric avers that no aspect of its proposal seeks to control what EGSs may offer to customers outside of the SOP or post-SOP. Rather, PPL Electric clarifies that EGSs are free to offer whatever contract price they wish to SOP customers reaching the end of their contracts. According to PPL Electric, the only difference under the Company's proposal is that if a customer does not make an affirmative shopping decision, the customer will be returned to default service. PPL Electric R. Exc. at 14-15.

PPL Electric also insists that the Company's proposed changes to its SOP program are not anti-competitive and discriminatory. In this regard, PPL Electric explains that its proposal is designed to facilitate well-informed shopping decisions. PPL Electric highlights that the SOP will continue to be offered, with the same discount, to encourage customers to shop, and that the Company will educate customers about their competitive options, near the end of their SOP contract term, to encourage active, knowledgeable shopping. PPL Electric restates that customers will only be returned to default service if they fail to make an active shopping choice. Finally, PPL Electric points out that the SOP program is not established by statute, and that there are no regulations mandating the terms of the SOP. As such, PPL Electric submits that the Commission has the power to modify the program's parameters, including what occurs at the end of the SOP contract. PPL Electric R. Exc. at 15.

### **OCA Replies**

In its Replies to Exceptions, the OCA submits that the ALJ properly concluded that PPL Electric's proposal can be legally adopted. The OCA stresses the ALJ's finding that the Company's proposal deals only with the terms of the SOP, and not with the prices charged after the end of the SOP contract. Therefore, the OCA echoes the ALJ's conclusion that PPL Electric's focus is solely upon whether a customer has made an affirmative decision to shop at the end of the SOP contract term. OCA R. Exc.

at 11-12 (citing R.D. at 31). The OCA also asserts that Starion has no basis upon which to claim that PPL's proposed changes to its SOP program are anti-competitive and discriminatory. Namely, the OCA contends that because the Company cannot earn a profit on its provision of default service, it has no incentive to promote default service over service from an EGS or to market this service to customers. OCA R. Exc. at 12-13.

### **CAUSE-PA Replies**

In its Replies to Exceptions, CAUSE-PA rebuts that PPL Electric's proposed SOP rules are both consistent with the law and in furtherance of strong public policy and should be upheld by the Commission. According to CAUSE-PA, if Starion's arguments were accepted, it would invalidate the entire SOP program. CAUSE-PA posits that the very premise of the SOP requires regulation of supplier pricing, as it mandates participating suppliers to agree to provide a specific discount off the applicable price to compare for a period of twelve months and prohibits the imposition of early cancellation or termination fees. CAUSE PA R. Exc. at 7-8.

CAUSE-PA also refutes Starion's argument that PPL Electric's proposal is anticompetitive. In this regard, CAUSE-PA contends that the Company's proposed SOP rules are designed to protect the integrity of the market by ensuring that inactive SOP participants, who have not made a choice, do not have a bad experience that would tarnish their willingness to later engage in the market. In CAUSE-PA's view, if an SOP customer experiences several months of excessive supplier pricing, it is likely that SOP participants will be less willing to engage in the market in the future. Accordingly, CAUSE-PA submits that the Commission has the clear authority to approve program rules designed to prevent identified financial harm to participants in Commission-approved competitive market programs. CAUSE-PA R. Exc. at 7, 8.

**e. Disposition**

Upon review of the record, the applicable law, the Recommended Decision, the Parties' Exceptions and Replies to Exceptions, we shall deny the EGS Parties Exception Nos. 1 through 4 and Starion Exception Nos. 1 and 3; and we shall deny, in part, and grant, in part, Starion Exception No. 2, consistent with this Opinion and Order. We shall decline to adopt PPL Electric's proposed modifications to the SOP program at issue above for failure of PPL Electric to carry its burden of proof in demonstrating with substantial evidence: (1) the existence of a harm to SOP customers associated with the existing SOP program rules, and (2) that no reasonable alternative exists to the proposed modifications. *See RESA*, 185 A.3d at 1228 (citing *CAUSE-PA* at 1103-1104). Accordingly, we shall modify the ALJ's Recommended Decision, consistent with this Opinion and Order.

The purpose of the SOP<sup>26</sup> is to enhance choice and facilitate the development of retail markets through the increased participation of residential and small

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<sup>26</sup> The history of the development of the Commission-approved SOP general structure is explained *supra*. In short, at the conclusion of a three-year investigation into the retail electricity market, during which the Commission considered the comments of various interested stakeholders, the Commission issued its final guidelines in the *RMI IWP Final Order* for the overall program structure of the SOP programs in each EDC service territory.

commercial customers in the retail electricity market.<sup>27</sup> Essentially, the SOP is a Commission-approved, standard EGS product offering containing various restrictions on price and terms of service.<sup>28</sup> An EDC is permitted to inform a customer of this standard EGS product offering after a customer specifically asks about it. Any customer who is interested in the SOP is transferred from PPL Electric to a separate, dedicated third-party service provider that will provide more detail regarding the SOP and enroll customers in the SOP. At that point, the EDC – PPL Electric – has no further role in administering the SOP.

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<sup>27</sup> The General Assembly, through the Choice Act, has made a broad policy decision that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). The General Assembly is clearly of the view that “greater competition in the electricity generation market” benefits “all classes of customers,” including those of low income. *Id.* § 2802(7). It is not the role of the Commission to second-guess that policy; rather, we must enforce it within the bounds of the applicable law. *See CAUSE-PA* at 1106. The Commission issued a Policy Statement at its May 10, 2007 Public Meeting, stating that “[t]his policy statement, coupled with the default service regulations, and the order on electricity price mitigation, represents a comprehensive strategy for addressing retail rates in the context of expiring rate caps and still developing retail and wholesale energy markets.” *See Final Policy Statement re: Default Service and Retail Electric Markets*, Docket No. M-00072009 (Order entered May 10, 2007) at 2-3. With respect to retail market issues specifically, the Commission stated it was providing “guidelines on the integration of default service with the competitive retail market.” In that regard, “[t]he Commission...identified a number of issues where opportunities exist to enhance customer choice and facilitate the development of retail markets. Robust, effective markets are vital element of any post-rate cap price mitigation strategy.” *See Final Policy Statement re: Default Service and Retail Electric Markets*, Docket No. M-00072009 (Order entered May 10, 2007) at 13-14. In that Policy Statement, the Commission established that “[t]he public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.” *Id.*, Annex A at 13. This policy is codified at 52 Pa. Code § 69.1815 and became effective on September 15, 2007.

<sup>28</sup> Such restrictions, or standard terms and conditions, have been fully explained in this record, but to summarize, under PPL’s SOP, the EGS’s contract with a customer is required to have: (1) a 12-month contract length; (2) a fixed price at 7% below the then-current PTC; and (3) no early cancellation fees.

Once a customer is enrolled with the EGS SOP, it is the EGS, not the EDC, that provides generation supply pursuant to the SOP contract price and terms of service. Also, it is the EGS, not the EDC, that is required to adhere to existing customer notification requirements, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship. *See RMI IWP Final Order* at 32; *see also* 52 Pa. Code § 54.10. Thus, even though the SOP serves to “bridge the gap” in forming a relationship between a customer and an EGS, once a customer is enrolled with the EGS, the customer has a direct relationship with the supplier and the supplier has the responsibility of providing all required notices to the customer relating to the expiration of the SOP fixed duration contract.<sup>29</sup>

Under our existing Regulations, a customer who is served by an EGS and who does not demonstrate an affirmative election to remain with the EGS upon the expiration of a fixed duration contract is automatically renewed with the EGS with no cancellation fees. *See* 52 Pa. Code § 54.10(3)(i)(A)-(B). The customer remains with the EGS under the renewal product until the customer affirmatively chooses one of the following options: (1) selects another product offering from the existing EGS; (2) enrolls with another EGS; or (3) returns to the default service provider. 52 Pa. Code § 54.10(3)(ii)(A)-(C). Thus, it is well-established that a lack of action on the part of the customer results in the customer being automatically renewed with the same EGS. To ensure customers are informed of their options and not penalized for a lack of action, EGSs are required to: (1) provide proper notice to their customers prior to the end of the contract; and, (2) not impose any cancellation fees on a contract that automatically renews. *See* 52 Pa. Code § 54.10(1)-(2).

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<sup>29</sup> For this reason, we are not convinced by the arguments of PPL Electric and CAUSE-PA that SOP and non-SOP shopping customers are in fact different classes of customers. Therefore, since we find no difference between SOP and non-SOP customers, such cannot serve as a basis for justifying differential treatment between SOP and non-SOP shopping customers.

The final guidelines established in the *RWI IWP Final Order* relating to SOP program design were consistent with these existing requirements in Section 54.10. Specifically, the final guidelines provide:

- All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.
- At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.

*RMI IWP Final Order* at 32.

In this proceeding, PPL Electric has proposed a modification to the existing SOP that is inconsistent with the Section 54.10 and the final guidelines in the *RMI IWP Final Order*. Per PPL Electric's proposal, at the end of the SOP contract term, a customer must demonstrate an affirmative election to remain with the EGS and failure of the customer to demonstrate such affirmative election by a time certain, will result in the customer being automatically returned to the EDC default service upon the expiration of the SOP contract. Given that the proposed modification is inconsistent with the Commission's existing Regulations and the final guidance in the *RMI IWP Final Order*, we view this proposed modification as a restriction on competition.

As the Commonwealth Court has articulated: “[a] restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition.” *RESA*,

185 A.3d at 1228 (citing *CAUSE-PA* at 1103-1104).<sup>30</sup> PPL Electric, as the proponent of the SOP modification, bears the burden of proof on both these showings in this proceeding. 66 Pa. C.S. § 332(a). Such a showing must be supported by substantial evidence of record. *See supra Norfolk*.

On the issue of harm, the evidence presented by PPL Electric showed the following statistics based on its review of SOP customers' decisions for the four months following the expiration of their SOP contract from 2015 through 2019: (1) one to three months after the expiration of their SOP contract, 22% of SOP customers are on roll over contracts with the SOP EGS, *see* FOF No. 8 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13; (2) four months after the expiration of their SOP contract, 20% of the SOP customers are on roll over contracts and are paying non-SOP rates at 10% or more above the applicable default service rate or PTC, *see* FOF Nos. 8, 11 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13; (3) 93% of SOP participants that rolled onto a new contract after the expiration of the SOP contract paid non-SOP rates higher than the

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<sup>30</sup> In *CAUSE-PA*, the Commonwealth Court held that the General Assembly has reserved within the Commission the authority to “bend” competition to further other important aspects of the Code, including the Choice Act, where the Commission provides substantial reasons why the restriction on competition is necessary (*i.e.*, there are no reasonable alternatives). *CAUSE-PA* at 1103-1104, 1106. In *RESA*, the Court explained, “there [must] be substantial evidence in the record showing a substantial reason why a restriction on competition is necessary, that is to say, there are no reasonable alternatives to restricting competition.” *RESA*, 185 A.3d at 1228 (citing *CAUSE-PA* at 1103-1104). That is, “[a] restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition.” *Id.*

We concur that the Commonwealth Court notably has – in *RESA* and *CAUSE-PA* – referenced the Commission-approved SOP as an example of how the Commission has exercised authority to approve or implement program rules that restrict competition – most recently concluding that it would be inconsistent to find that the Commission has authority to regulate EGS pricing through the SOP, but not through the CAP-SOP. *CAUSE-PA* M.B. at 34 (citing *RESA*, 185 A.3d at 1221 (citing *CAUSE-PA*, 120 A.3d at 1103)).

default service rate or PTC in the first month, *see* FOF No. 10 (citing PPL Electric St. 4-R at 12); *see also* PPL St. 4 at 8-13; and, (4) more than 50% of SOP participants that rolled onto a new contract after the expiration of the SOP contract paid non-SOP rates at 25% or more above the applicable default service rate or PTC between one and four months, *see* FOF No. 9; *see also* PPL Electric St. 4 at 8-13. *See* PPL St. 4 at 8-13; R.D. at 11; FOF Nos. 8-11.

The above statistics show that certain SOP customers are paying for generation supply above the applicable default service rate or PTC within the four months following the expiration of their 12-month SOP contract. Based on these statistics, the Company presented the following concerns regarding the potential harms that will result from such “overpayment”: (1) the possibility of a rise in payment-troubled SOP customers; (2) concern that the Company will suffer reputational harm among customers; (3) concern that these statistics run contrary to the purpose of the SOP, which was developed to provide shopping-reluctant customers a low-risk opportunity to experience shopping; and (4) the possibility of harming the retail market by disincentivizing further shopping by such customers. PPL Electric M.B. at 14-15; PPL Electric St. 4 at 13; PPL Electric St. 4-R at 4, 14.

While we appreciate PPL Electric raising the above concerns of harm, such concerns are not supported by substantial evidence in this record. Specifically, we have seen no evidence, let alone substantial evidence, to support the alleged resulting harms from SOP customers “overpaying” for generation supply in the four months following the expiration of their SOP contract. For example, we have seen no evidence of: (1) an increase in customer complaints specifically relating to the Company’s SOP and a related increase in costs incurred by PPL Electric in handling such complaints; (2) an inability of customer service representatives to effectively address customer complaints; (3) an increase in payment-troubled SOP customers; (4) an increase in collection activity or service terminations among SOP customers due to the rise of overdue billings; or (5) an

increase in the Company's uncollectible expense relating to an increase in payment-troubled SOP customers.<sup>31</sup>

At the same time, we note that it is unrefuted in this record that based on PPL Electric's statistical analysis, nearly 80% of customers who accept a 12-month SOP offer have selected a different plan by the fourth month after the end of that year. EGS Parties St. 1 at 15-16; EGS Parties St. 1-R at 11-12, 20-21.

Based on our inability to determine from this record that harm is occurring as a result of the existing SOP program, we shall reject PPL Electric's proposed modification to return SOP customers to default service supply in the event the customer fails to make an affirmative election prior to the expiration of their SOP contract. Given that PPL Electric's second proposed modification – a two-step communication process to educate customers about the expiration date of their SOP contract and the option for a customer to “do nothing” and automatically be returned to default service – directly flows from its first proposed modification, we shall reject this proposal as well.

Next, we find that PPL Electric has failed to demonstrate that no reasonable alternative exists to its proposed modifications. While we are unable to determine from this record that harm is occurring as a result of the existing SOP program, we share in the concerns expressed by all the Parties in this proceeding as to the reasons why certain SOP customers show inertia in making an affirmative choice between one to four months following the expiration of their SOP contracts and instead automatically renew with the EGS on a month-to-month variable price contract.

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<sup>31</sup> Should PPL Electric by its next DSP proceeding present new evidence that demonstrates harm from the existing SOP program design, we would consider any and all such evidence on a *de novo* basis.

This brings us to Starion's Exception No. 2. In this proceeding, Starion raised an alternative proposal to PPL Electric's proposed modifications to the SOP program. In its Exception No. 2, Starion submits the ALJ erred in reaching Conclusion of Law No. 21 by failing to consider this alternative solution in light of the concerns raised about PPL Electric's current SOP program. Starion Exc. at 9. PPL Electric proposed to reach out to SOP customers via "calls, letters, emails and/or text messages." PPL Electric St. 4 at 6, 14. The OCA and CAUSE-PA were supportive of PPL Electric's proposal for additional contact with customers other than those required to be sent by the EGS under Section 54.10 of the Commission's Regulations and the *RMI IWP Final Order*. Starion explains, however, that the only contact information EGSs receive from PPL Electric for customers enrolled via the SOP program is the customer's billing address, not a phone number or email address. As explained by Starion Witness Pete Muzsi, EGSs are not involved in the enrollment of customers into the SOP and only receive an electronic file from PPL Electric with just the SOP customer's billing address. Starion St. 1-SR at 5-6. According to Witness Muzsi, the lack of access to such customer information hinders the ability of the EGS to more directly contact their customers and it strains credulity to believe that with just a billing address the EGS can acquire more information from the SOP customer via a direct mailing request. *Id.*

Starion proposed an alternative method whereby PPL Electric would request permission from the customer being enrolled in the SOP program to have his or her contact information shared with the SOP EGS. Specifically, Starion asserts that a simple question to the consumer during the SOP enrollment process asking whether he or she is willing to share his or her personal contact information – *i.e.*, the customer's phone number or email address – to the SOP EGS ensures that the customer is given the right to decide whether or not to share his or her information. Starion Exc. at 12.

We recognize PPL Electric opposed this alternative proposal on the grounds that doing so would violate a distribution customer's expectations of privacy.

PPL Electric M.B. at 24. We disagree. The Commission recently reinforced that EGSs are not “third parties” and would be receiving information from the EDC “about their own customers.”<sup>32</sup> *See, supra, First Energy DSP V Order* at 25. In comparison, when a non-SOP customer shops in the retail electricity market and enrolls directly with an EGS for generation supply service, EGSs ask for and typically receive such customer contact information at the time of the enrollment. Starion R.B. at 3. Customers own and control all of their data, and if a customer gives informed consent to the release of such information to the SOP EGS during the SOP enrollment period, it would address the lack of contact information provided to EGSs for SOP enrollments. We agree with Starion that this is a reasonable alternative to PPL Electric’s proposed changes to the SOP program. Such alternative respects the fundamental structure of SOP, as designed in the Commission’s final guidelines in *RMI IWP Final Order*, while improving upon the current logistical elements of the SOP program in PPL Electric’s service territory.<sup>33</sup>

On this point, we note that PPL Electric did not raise any logistical or technical concerns with Starion’s alternative proposal. Specifically, PPL Electric did not submit any testimony or raise any argument about the impossibility or impracticability of being able to transfer a SOP customer’s phone number and/or email address to the SOP EGS during the enrollment process. Rather, PPL Electric’s objections centered on defending its perception that asking for a customer’s consent to share its contact information with the EGS during the SOP enrollment process would violate distribution

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<sup>32</sup> Section 54.8(a) of the Commission’s Regulations prohibit an EDC or EGS from releasing private customer information – *i.e.*, the customer’s phone number and historical billing data – to any “third party” without the customer’s informed consent. 52 Pa. Code § 54.8(a). But the Commission recently concluded that EGSs are not “third parties” when receiving information from the EDC “about their own customers.”<sup>32</sup> *See, supra, First Energy DSP V Order* at 25.

<sup>33</sup> In the *RMI IWP Final Order*, the Commission stated, “it is expected that detailed implementation and logistical elements will be determined during the default service plan proceedings for each EDC.” *RMI IWP Final Order* at 31.

of customers' expectations of privacy. And, as noted above, we disagree with this position.

While currently there is no requirement for a SOP EGS to call, text, or email its SOP customers prior to the expiration of the fixed duration contract, we would expect that, after receiving a SOP customer's phone number and/or email address, and to the extent an EGS has existing marketing methods in place for its non-SOP customers utilizing calls, texts, and/or emails, that the EGS would attempt to contact the SOP customer prior to the expiration of the SOP contract, via the same methods as it would a non-SOP customer, to inform the SOP customer of the expiring SOP contract and of the new offerings available from the EGS. Such notices would be in addition to the required notices the EGS must send under Section 54.10 of the Commission's Regulations and the final guidelines of the *RMI IWP Final Order*.

Therefore, we direct the Parties to this proceeding to address the details of this alternative proposal in the process established in Section F. of the Partial Settlement relating to revisions to the guidelines used by CSRs and the scripts used by Hansen employees. While above we approved Section F. of the Partial Settlement without modification, here we direct the Company to work with the OCA, OSBA, the EGS Parties, Starion, and other interested parties during the agreed-upon process for revising the guidelines used by CSRs and scripts used by Hansen employees to include an explanation to the SOP customer during the customer's SOP enrollment process that sharing the customer's information with the SOP EGS will enable the EGS to contact the customer by phone, text, or email prior to the contract term expiration and to inform the customer of the EGS offerings post contract expiration. Also, the CSRs and Hansen employees should include a simple question asking the customer whether the customer consents to the release of such contact information to the SOP EGS for this purpose. Should the customer consent to the release of such information, the SOP EGS should be provided such contact information when the customer is enrolled with the EGS. If the

customer does not consent to the release of such information, the SOP EGS shall not be provided such contact information when the customer is enrolled with the EGS. The remainder of Starion's Exception No. 2 is denied, consistent with the discussion above in this section.

Finally, we shall direct that a copy of this Opinion and Order be served on the Commission's Office of Competitive Market Oversight to raise its awareness to the issues discussed in this Order.

Thus, for all the foregoing reasons, and based upon our review of the record, applicable law, the Recommended Decision, the Parties' Exceptions and Replies to Exceptions, we shall deny the EGS Parties Exception Nos. 1 through 4 and Starion Exception Nos. 1 and 3; and we shall deny, in part, and grant, in part, Starion Exception No. 2, consistent with the discussion above. We decline to adopt PPL Electric's proposed modifications to the SOP program at issue above for failure of PPL Electric to carry its burden of proof in demonstrating with substantial evidence: (1) the existence of a harm to SOP customers associated with the existing SOP program rules, and (2) that no reasonable alternative exists to the proposed modifications. *See RESA*, 185 A.3d at 1228 (citing *CAUSE-PA* at 1103-1104). Accordingly, we shall modify the ALJ's Recommended Decision, consistent with this Opinion and Order.

## **2. CAP Standard Offer Program**

### **a. Background**

As part of PPL Electric's DSP IV Program, the Commission approved a design of the SOP available to all Residential customers, including Residential customers

enrolled in the Company's OnTrack program<sup>34</sup> or CAP. PPL Electric's DSP V Program consists of a proposal to require its CAP customers to take Default Service supply only. Petition at 30-33. Currently, the only way in which CAP customers in PPL Electric's service territory can shop is through a SOP specifically designed for CAP customers (the CAP SOP). The CAP SOP was established in the DSP IV proceeding<sup>35</sup> to mitigate the

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<sup>34</sup> PPL Electric's low-income residential CAP is called the OnTrack Program. Under the OnTrack Program, eligible customers receive a discounted payment amount and arrearage forgiveness for remaining current on their OnTrack payments. The costs associated with PPL Electric's universal service programs, including OnTrack, is recovered from the Residential Customer Class through the Universal Service Rider (USR). The difference between the fixed OnTrack monthly payment and the CAP customer's monthly energy charges, including any EGS charges, is recovered through the USR. OnTrack customers have been eligible to shop since the beginning of shopping in 2010. Shopping does not directly affect an OnTrack customer's payment amount, which is based upon ability to pay. However, OnTrack customers are limited to maximum CAP credits that they may receive (i.e., the difference between the actual bill and the required payment amount), and shopping can affect whether a customer exceeds their maximum CAP credit. CAP customer shopping can also affect the potential CAP program costs borne by other customers. Specifically, CAP shopping can result in CAP participants paying a rate greater than the PTC, thereby exceeding their CAP credits at a faster rate and putting them at risk of being removed from CAP or terminated from service. CAP shopping can also cause Residential non-CAP customers to bear increased costs related to CAP. Petition at 30-31.

<sup>35</sup> In the DSP IV proceeding, PPL Electric proposed that a statewide collaborative be initiated to address the issue of CAP shopping on a uniform basis. On February 28, 2019, the Commission issued a Proposed Policy Statement Order to address CAP participant shopping. *See Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order*, Docket No. M-2018-3006578 (February 28, 2019) (“*CAP Shopping Proposed Policy Statement Order*”). In the *CAP Shopping Proposed Policy Statement Order*, the Commission provided certain proposed guidelines and directed EDCs to address the mechanics of CAP shopping in their next default service plan proceedings. *CAP Shopping Proposed Policy Statement Order* at 6. No final policy statement has been issued as of the filing of this Petition. PPL Electric submitted comments and reply comments to the *CAP Shopping Proposed Policy Statement Order*, in which the Company explained the problems with CAP shopping and recommended that the best policy to protect CAP customers is simply to require that all CAP customers be placed on default service. *See PPL Electric Comments*, Docket No. M-2018-3006578 at 9-10. Petition at 32.

impacts of shopping by CAP customers by requiring all CAP customers who wish to shop to do so through the CAP SOP. The Commission approved the CAP SOP in the *DSP IV Order*, and the Commonwealth Court affirmed the Commission's decision on appeal in *RESA*. The CAP SOP was implemented on June 1, 2017, and remains in effect through May 31, 2021. Petition at 31.

In order for an EGS to participate in the CAP SOP, it must agree to serve customers at a 7% discount off the PTC at the time of enrollment. Under the current CAP SOP, the shopping rate could exceed the PTC if the PTC drops by more than 7% during the term of the CAP SOP contract. However, CAP SOP customers have the right to terminate the contract without payment of termination fees. Petition at 31.

PPL Electric represented that EGS participation in the CAP SOP has been minimal. At the commencement of the CAP SOP in June 2017, through November 2017, there were two EGSs participating in the CAP SOP. From December 2017 through May 2018, a single EGS participated in the program. From June 1, 2018 through February 29, 2020, there were no EGSs participating in PPL Electric's CAP SOP. During this time, CAP customers were not eligible to shop as the CAP SOP was not active. Effective March 1, 2020, there is one EGS participating in the CAP SOP. Petition at 31.

Additionally, PPL Electric represented that CAP customers who shopped prior to enrolling in OnTrack continue to pay significantly higher prices than the PTC. Under the terms of the CAP SOP approved in *DSP IV*, OnTrack customers enrolled with an EGS prior to entering OnTrack are permitted to remain with their existing supplier until the end of their contract term. As of January 2020, there were 7,975 OnTrack customers shopping with an EGS outside of the CAP SOP because these customers were shopping with an EGS prior to participation in the OnTrack program. Petition at 31-32.

As explained in the testimony of Company witness Ms. Stumpf, PPL Electric proposed to eliminate the CAP SOP beginning with the DSP V Program. As a result, CAP customers will be ineligible to shop and must remain on or be placed on default service beginning on June 1, 2020.<sup>36</sup> Under PPL Electric's proposal, low-income customers may elect to shop at any time; however, such customers will not be permitted to enter, or remain in, the CAP Program while shopping. As explained in the direct testimony of Ms. Stumpf, the Company believes its proposal to require that all CAP customers receive default service is in the best interest of PPL Electric's customers. Petition at 32-33.

## **b. Positions of the Parties**

### **PPL Electric**

PPL Electric provided that CAP eligible customers who are enrolled in OnTrack receive a discounted payment amount and arrearage forgiveness if they remain current on their OnTrack payments. PPL Electric explained that the difference between a CAP customer's required payment and their undiscounted bill is the CAP credit. CAP customers receive a maximum CAP credit amount, to be used over an 18-month period, based on their income as a percentage of the Federal Poverty Level (FPL). If a CAP customer exceeds their allowed CAP credit, then they are placed on the OnTrack Budget Billing program, where they continue to be eligible for preprogram arrearage forgiveness but do not receive a discounted bill. The costs associated with the OnTrack Program are recovered from the Residential Customer Class through the USR. The costs recovered

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<sup>36</sup> PPL Electric averred that should the Commission direct differently in any future order issued in Docket No. M-2018-3006578, *see supra* n. 10, during the DSP V Program period, PPL Electric will seek to amend the DSP V with respect to CAP shopping so that it is in compliance with the Commission's directives. Petition at 32, n. 15.

through the USR include the difference between a customer's fixed OnTrack monthly payment and the CAP customer's monthly energy charges, including EGS charges. This amount is termed the "CAP shortfall." The amount recovered through the USR also includes arrearage forgiveness and costs associated with the CAP. PPL Electric M.B. at 25-26 (citing PPL Electric Exh. No. 1 at 30; PPL Electric St. 3 at 4-5).

According to PPL Electric, CAP customers have been consistently exposed to harm as a result of CAP shopping. PPL Electric explains that if a CAP customer shops at a rate higher than the PTC, the customer will exceed their maximum allowable CAP credit at a faster pace, risking removal from CAP and increasing the likelihood that the customer could become payment troubled. PPL Electric M.B. at 26 (citing PPL Electric Exh. No. 1 at 30; PPL Electric St. 3 at 5). PPL Electric explained further that CAP shopping at rates higher than the PTC also increases the costs to other Residential customers. When CAP customers shop at a rate higher than the PTC, there is a higher shortfall recovered through the USR. PPL Electric M.B. at 27. PPL Electric contended that the results of CAP customers shopping at rates above the PTC is inconsistent with the purpose of CAP, which is to provide payment assistance to low income customers in a manner that is cost-effective. PPL Electric M.B. at 27 (citing 66 Pa. C.S. §2804(9)).

Existing CAP customers may only shop using the CAP SOP. PPL Electric explained that newly eligible CAP customers can come into CAP while still enrolled in a non-CAP SOP contract with an EGS. Those customers are permitted to remain with their existing supplier until the end of the contract term. PPL Electric noted that these contracts are often at prices higher than the PTC. PPL Electric M.B. at 28 (citing PPL Electric St. 3-R at 1-2). PPL Electric provided that as of January 2020, there were 7,975 CAP customers shopping with an EGS outside of CAP SOP because they entered CAP with a preexisting contract and 62% of these customers were paying rates more than the PTC. PPL Electric M.B. at 29 (citing PPL Electric St. 3 at 11).

PPL Electric proposes to inform shopping customers who apply for CAP that they must terminate their supplier contract or wait for the contract to expire before entering CAP. PPL Electric notes that it will inform these CAP applicants that they should contact their supplier to determine if termination fees apply so that they can make an informed decision whether to end the contract and join CAP or continue with their contract outside of CAP. PPL Electric M.B. at 32 (citing PPL Electric St. 1 at 16). For those customers who are currently enrolled in CAP and are shopping, PPL Electric will not automatically remove them from CAP. PPL Electric explains that those customers will be permitted to remain in CAP with their existing shopping contract until the earlier of the contract expiring or the need to recertify CAP eligibility. PPL Electric M.B. at 32 (citing PPL Electric St. 3 at 16-17).

PPL Electric averred that the CAP SOP has not sufficiently protected against the harms of CAP shopping at rates above the PTC. PPL Electric contended that the evidence supports eliminating the CAP SOP and requiring all CAP customers receive default service at the PTC. PPL Electric maintained that its proposal to require all CAP customers receive default service at the PTC will resolve the problem of customers entering CAP with pre-program shopping contracts that are above the PTC. PPL Electric M.B. at 32.

## **OCA**

The OCA disagreed with PPL Electric's requirement that prospective CAP enrollees with an existing EGS contract would be denied entry into CAP if they do not cancel their EGS contract. The OCA provided that PPL Electric's proposal places a requirement that the customer take an additional action to see that the EGS contract is canceled before entering CAP. The OCA offered that at the time a low income customer seeks assistance with his or her utility bill, including enrollment in CAP, the customer is often in the midst of a crisis (financial, medical or otherwise) that is burdening and

possibly overwhelming them. According to the OCA, asking the customer to also contact the EGS is not the most reasonable approach and may result in customers missing out on the benefits of CAP. OCA M.B. at 7.

The OCA witness, Ms. Alexander recommended that:

PPL should follow the directives that were ordered by the Commission to resolve this same concern in its CAP SOP Implementation Order. In that Order, the Commission allowed customers on a fixed-duration contract to remain with the supplier until the expiration date of the contract or when the contract is terminated for any reason, whichever comes first, and required the supplier to return the customer to default service. Customers with a month-to-month contract must be dropped by the supplier to default service within 120 days after the customer is enrolled in CAP. PPL should communicate with these customers and inform them of their right to return to default service even sooner. These policies appropriately shift the burden to the supplier to return the CAP customer to default service.

OCA M.B. at 7-8 (citing OCA St. 2 at 4-5 (footnote omitted)).

Ms. Alexander expressed concern that warning low income customers of the potential for such fees could discourage them from participating in CAP and result in the customer incurring higher costs outside of CAP that would outweigh the one-time early termination fee. OCA R.B. at 5 (citing OCA St. 2-S at 7). Ms. Alexander further recommended that PPL Electric seek a Commission order, if necessary, that upon entering CAP, the customer's supplier contract will be dropped within a reasonable time. OCA M.B. at 8 (citing OCA St. 2-S at 7). The OCA agreed with CAUSE-PA's proposals to eliminate early termination fees for CAP customers. The OCA submitted that PPL Electric's proposal, as modified by the OCA and CAUSE-PA is reasonable. OCA M.B. at 9.

## CAUSE-PA

CAUSE-PA agreed with PPL Electric’s proposal to prohibit CAP shopping as modified by its recommendations to ensure that low income consumers will be able to access CAP without facing fees or the additional accrual of arrearages. CAUSE-PA proposes to modify PPL Electric’s requirement that CAP applicants must end their supplier contract before enrolling in CAP. CAUSE-PA witness, Mr. Geller, explained that the requirement to end a supplier contract before enrolling in CAP would impose a CAP enrollment fee, making CAP less accessible to those in need:

Without added protection from termination and cancellation fees, economically vulnerable customers who have already evidenced an inability to pay [by seeking to enroll in CAP] will, in essence, be charged an upfront fee (in the form of an early termination or cancellation fee) to access critical rate assistance through CAP. Such an outcome is contrary to the statutory obligation for the Commission to ensure that universal service programs – including CAP – are accessible to those in need.

CAUSE-PA M.B. at 25 (citing CAUSE-PA St. 1 at 30).

CAUSE-PA explained that Chapter 14 of the Code recognizes that low income, CAP eligible customers, cannot afford to pay an upfront fee as a condition to accessing service, and explicitly prohibits public utilities from charging a security deposit to CAP-eligible customers: “[N]o public utility may require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.”

CAUSE-PA M.B. at 26 (citing 66 Pa. C.S. § 1404(a.1)).

CAUSE-PA explained further that a low income customer could avoid the cancellation fee by waiting for the end of their contract period to enroll in CAP, but this would likely exacerbate the level of arrears accrued by the customer. CAUSE-PA M.B.

at 26 (citing CAUSE-PA St. 1 at 32, 37). According to CAUSE-PA, these additional arrears will likely later be deferred for forgiveness through CAP, thereby further increasing the cost of CAP that will be passed on to non-CAP residential ratepayers. Additionally, these customers waiting to end their high cost contract, may lose utility service. CAUSE-PA M.B. at 26 (citing CAUSE-PA St. 1 at 31).

CAUSE-PA argued that to remediate this serious flaw in PPL Electric's proposed CAP shopping plan, PPL Electric should adopt a CAP rule that – as part of the CAP application process – would allow shopping customers to enroll in CAP but would require those CAP applicants to consent to return to default service concurrently upon entry into the program. CAUSE-PA witness, Mr. Geller, explained that PPL Electric should prohibit the imposition of any financial barriers to CAP enrollment by adopting a CAP rule that prohibits suppliers from charging any termination or cancellation fees to customers who switch to default service to enroll in CAP. CAUSE-PA recommends that PPL Electric should be required to work with its Universal Service Advisory Committee to develop changes to PPL's CAP application and subsequent customer communications to ensure that CAP customers are fully apprised of the options available to them. CAUSE-PA M.B. at 27 (citing CAUSE-PA St. 1 at 29).

CAUSE-PA averred that PPL Electric has the clear authority to design and impose CAP rules that would restrict charges imposed on CAP customers, and the Commission has the authority to approve and oversee those CAP rules. CAUSE-PA R.B. at 4 (citing CAUSE-PA St. 1-SR at 8-12). CAUSE-PA provided that Section 2804(9) of the Choice Act provides, in relevant part:

The commission shall ensure that universal service and energy conservation policies, activities and services are **appropriately funded and available** in each electric distribution territory. ... Programs under this paragraph shall be subject to the administrative oversight of the commission

which will ensure that the programs are operated in a **cost-effective manner**.

CAUE-PA R.B. at 4-5 (citing 66 Pa. C.S. § 2804(9) emphasis added).

CAUSE-PA explained that the Commonwealth Court’s decision in *CAUSE-PA et al. v. Pa. PUC*, interpreting this section, was explicit that the Commission has the authority and the obligation to impose CAP rules to prohibit the imposition of early termination and cancellation fees on CAP customers to fulfill its obligations to ensure that universal service programs are appropriately funded, available and cost effective. CAUSE-PA R.B. at 5 (citing CAUSE-PA St. 1-SR at 4; *CAUSE-PA*, 120 A.3d at 1103-04; *RESA*, 185 A.3d at 1221-1222 (explaining the court’s prior decision in *CAUSE-PA et al.* regarding the Commission’s authority to prohibit the imposition of early termination or cancellation fees on CAP customers)).

### **EGS Parties**

The EGS Parties argued that the proposed elimination of CAP shopping is contrary to the applicable law and Commission policy. The EGS Parties’ witness, Christopher Kallaher, Senior Director, Government and Regulatory Affairs for Direct Energy, relies on *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order (Proposed Policy Statement)*, Docket No. M-2018-3006578 (Order entered February 29, 2019) in support of the position that the Commission wants CAP customers to be able to engage in the competitive market, albeit with some protections. EGS Parties M.B. at 9 (citing EGS Parties St. 1 at 9; EGS Parties St. 1-R at 10-11). The EGS Parties stated their belief that this approach is consistent with the statutory requirement that “all customers ... shall have the opportunity to purchase electricity from their choice of electric generation suppliers.” EGS Parties M.B. at 9 (citing 66 Pa. C.S. § 2806(a)).

Mr. Kallaher also made specific recommendations, or alternative proposals to PPL Electric's proposal, to address supplier participation, as follows:

[A]llow EGSs to retain their CAP SOP customers at the end of the initial 12-month term so long as they agree to serve those customers at or below the current PTC rate. The other would be to consider a modest reduction in the discount given to CAP customers on the SOP. The SOP serves as a permanent discount versus the default service rate for CAP customers, which EGSs support. Whether the level of the discount – currently seven percent – has the unintended consequence of reducing the overall level of participation and thus the total reduction in supply charges paid by CAP customers is something EGS and other stakeholders should work with PPL to discover.

EGS Parties M.B. at 10 (citing EGS Parties St. 1 at 11).

The EGS Parties believe that, under the *Proposed Policy Statement*, the Commission's intention is that CAP customers be able to shop and that if an EDC deviates from that intention, there must be a good reason, which the EGS Parties claim, is not present here. EGS M.B. at 11. The EGS Parties further provided testimony that instead of giving up on PPL Electric's CAP-SOP, they would like to see the various stakeholders interested in protecting low-income customers and preserving the competitive market attempt to find a solution that does both. *Id.* at 12.

### **Inspire**

Inspire provided that at the time of the enrollment in CAP SOP, the bills for OnTrack participants are 7% less than the PTC. Inspire M.B. at 7 (citing PPL Electric St. 3 at 7-8). Inspire noted that historically, the initial contract rate has continued to provide savings off the then-effective PTC even when the PTC changed during the contract term. Inspire contended that OnTrack customers participating in CAP SOP are

reducing their overall energy bills thereby enabling them to enjoy their OnTrack benefits longer. Inspire M.B. at 8.

Inspire maintained that it will be purchasing Renewable Energy Certificates (RECs) equivalent to its load for the PPL Electric CAP SOP customers at no extra cost to the CAP SOP customer thereby allowing the customer to support renewable energy. Inspire M.B. at 8. According to Inspire, the CAP SOP also provides real benefit to PPL Electric's other ratepayers who are required to bear the costs of PPL Electric's financial assistance programs. Inspire noted that by decreasing the overall energy bills of OnTrack participants, the amounts other ratepayers are required to subsidize also are less. Inspire M.B. at 8 (citing Inspire St. 1-SR at 8).

Inspire contended that PPL Electric has not been complying with the Commission's required notice process to EGSs and PPL Electric has not provided the required monthly notices on a regular or consistent basis. Inspire M.B. at 10. Inspire provided that the failure of PPL Electric to comply with the directives of the Commission to give EGSs notice of when their customers enroll in OnTrack frustrates the ability of EGSs to return customers to default service as required by the Commission. Inspire M.B. at 10.

Inspire sets forth that the CAP SOP is in its infancy. Inspire recommended that more time and better compliance with the notice requirements of CAP SOP are necessary to be able to reasonably evaluate whether the CAP SOP is achieving the program goals. Inspire M.B. at 12.

**c. Recommended Decision**

The ALJ provided that the EGS Parties contend that PPL Electric's proposal to end CAP shopping violates the Choice Act by prohibiting customers from

exercising their ability to shop while PPL Electric contends that its proposal does not prohibit any customer who wishes to shop from doing so. The ALJ explained that PPL Electric's proposal requires that any customer who elects CAP benefits receive default service while enrolled in CAP. PPL Electric's CAP is a voluntary program. Any customer may shop for electric supply, but not while participating in CAP. R.D. at 34.

The ALJ reasoned that the Commission has legal authority under the Choice Act, 66 Pa. C.S. §§ 2801-2815, to impose restrictions on CAP customers' ability to shop for competitive electric supply. Additionally, the ALJ noted that the Commonwealth Court held in *CAUSE-PA* that the Commission has the authority under the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose CAP rules that limit a participating customer's ability to choose an EGS and remain eligible for CAP benefits. R.D. at 35.

Similarly, the ALJ noted that not only does the Commission have authority to impose limits on CAP shopping, the Commission is expressly required by the Choice Act to ensure that CAP is administered in a manner that is cost-effective for both CAP and non-CAP customers. R.D. at 35 (citing 66 Pa. C.S. § 2804(9)).

The ALJ concluded that PPL Electric's proposal, which is supported by unrefuted statistical evidence regarding its CAP SOP, is consistent with the Choice Act's requirement that the Commission administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants who share the financial consequences of the CAP participants' EGS choice. The ALJ stated that the preponderance of evidence shows significant financial harms result to both CAP customers and all residential customers when CAP customers shop. R.D. at 36.

The ALJ recommended that the Commission approve PPL Electric's proposal to eliminate CAP shopping. The ALJ reasoned that the proposal benefits both

CAP customers and other residential customers by ensuring that (1) CAP customers do not exhaust their CAP credits more quickly by shopping at rates above the PTC and (2) other residential customers are not responsible for higher CAP shortfalls. R.D. at 36-37. The ALJ also noted that the OCA and CAUSE-PA explained that there are substantial and important reasons why CAP customers' ability to shop for competitive electric generation supply should be restricted. R.D. at 37 (citing OCA M.B. at 6-10; CAUSE-PA M.B. at 25-32).

**d. Exceptions and Replies**

**i. EGS Parties Exception No. 5 and Replies**

In their Exception No. 5, the EGS Parties aver that the ALJ erroneously approved PPL Electric's proposal, which, according to the EGS Parties, denies a class of customers in CAP the statutory right to choose their supplier. The EGS Parties state that PPL Electric has proposed to eliminate CAP shopping entirely based primarily on a concern that a subset of customers may become CAP eligible while they remain on an existing contract with an EGS. The EGS Parties believe that PPL Electric should have proposed a compromise solution as was done in FirstEnergy's service territory,<sup>37</sup> instead of depriving CAP customers of the ability to shop and forcing CAP customers already shopping into default service. EGS Parties Exc. at 9. The EGS Parties assert that PPL Electric's proposal violates the Code and appellate precedent. *Id.* (citing 66 Pa. C.S. § 2806(a); *CAUSE-PA*, 120 A.3d at 1087; *RESA*, 185 A.3d at 1221). The EGS Parties argue that the Choice Act mandates that all customer classes must be allowed to take commodity service from a supplier they choose. The EGS Parties also argue that in the two decisions addressing CAP programs, the Commonwealth Court recognized that

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<sup>37</sup> See *Petition of Metropolitan-Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023 (FirstEnergy DSP)*, Docket No. P-2017-2637855 (Order entered February 28, 2019).

allowing CAP customers to shop may require competition to have to bend and be subject to some restrictions, but the Court did not suggest that the mandate for CAP customers to be able to shop be eliminated. EGS Parties R. Exc. at 9.

Additionally, the EGS Parties state that the Recommended Decision is based on statistics regarding CAP programs that the Commission has revised in its recent guidance. EGS Parties Exc. at 10 (citing *Proposed Policy Statement; Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms (Default Service Investigation)*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020)). The EGS Parties also state that PPL Electric improperly put those statistics back into play in this proceeding, and the ALJ adopted them as fact without conducting an analysis. EGS Parties Exc. at 10. The EGS Parties contend that Mr. Kallaher made recommendations that, if adopted, would have addressed PPL Electric's concerns, as follows:

One would be to allow EGSs to retain their CAP SOP customers at the end of the initial 12-month term so long as they agree to serve those customers at or below the current PTC rate. The other would be to consider a modest reduction in the discount given to CAP customers on the SOP. The SOP serves as a permanent discount versus the default service rate for CAP customers, which EGSs support. Whether the level of the discount – currently seven percent – has the unintended consequence of reducing the overall level of participation and thus the total reduction in supply charges paid by CAP customers is something EGS and other stakeholders should work with PPL to discover.

*Id.* (citing EGS Parties St. 1 at 11).

### **PPL Electric Replies**

In its Replies, PPL Electric avers that its proposed restriction on CAP shopping is legally permissible under the Choice Act and appellate precedent. PPL

Electric R. Exc. at 16. PPL Electric states that its proposal does not prohibit customers who wish to shop with an EGS from doing so, but, rather, its proposal requires customers that elect CAP benefits to receive default service while enrolled in CAP. PPL Electric also states that it is simply placing conditions on a customer's CAP eligibility. PPL Electric asserts that the Commission has the power to impose restrictions on CAP customers' abilities to shop for competitive electric generation supply. PPL Electric cites to *CAUSE-PA*, reasoning that the Commonwealth Court held that the Commission has authority under the Choice Act to impose CAP rules limiting a CAP customer's ability to choose an EGS and remain eligible for CAP benefits, and to Section 2804(9) of the Code, 66 Pa. C.S. § 2804(9), reasoning that the Choice Act requires CAP to be administered in a cost-effective manner for CAP and non-CAP customers. *Id.* at 17.

PPL Electric argues that its proposal complies with the applicable law, as both CAP customers and other residential customers experience "significant financial harms" when CAP customers shop. PPL Electric notes that 68 percent and 62 percent of CAP shopping customers were paying more than the PTC in 2018 and 2019, respectively. PPL Electric also notes that when CAP customers shop at rates above the PTC, they exceed their maximum CAP credit amounts at a faster pace, causing them to lose the program benefit more quickly and increasing the amount other residential customers must pay to cover the CAP shortfall. PPL Electric explains that CAP customers' shopping resulted in additional costs to other residential customers in the amounts of \$4.3 million and \$2.9 million in 2018 and 2019, respectively. *Id.* PPL Electric states that its proposal would eliminate these additional costs because CAP customers would receive default service at the PTC. Accordingly, PPL Electric avers that its proposal benefits both CAP and other residential customers by ensuring that CAP customers do not exhaust their CAP credits faster by shopping at rates above the PTC and by ensuring that other residential customers are not responsible for higher CAP shortfall amounts. *Id.* at 18.

Moreover, PPL Electric states that the EGS Parties' recommended alternatives to its proposal would exacerbate the issues concerning CAP shopping that PPL Electric has identified. PPL Electric submits that the ALJ properly weighed those alternatives, along with PPL Electric's proposal, and correctly rejected these alternatives. *Id.* at 16, n. 7.

### **OCA Replies**

The OCA states that the ALJ properly approved PPL Electric's proposal to require CAP customers to be served through default service, and the OCA supports PPL Electric's proposal. OCA R. Exc. at 13. The OCA avers that under PPL Electric's proposal, CAP customers are not being denied the ability to shop. *Id.* (citing PPL Electric R.B. at 16). The OCA also avers that PPL Electric's proposal is within the confines set forth by the Commonwealth Court in *CAUSE-PA*. *Id.* at 14. The OCA acknowledges that the Court did not address the direct question of whether CAP customers can be prohibited from shopping but offered "strong signals" of how such a case may be decided, as follows:

So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low income to afford electric service ... the[Commission] may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits — *e.g.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

*Id.* (citing *CAUSE-PA*, 120 A.3d at 1104). The OCA argues that PPL Electric presented substantial evidence to support its proposal and showed that its proposal is necessary to ensure a cost-effective and affordable CAP program. OCA R. Exc. at 14.

Additionally, the OCA addresses the EGS Parties' recommended alternative proposal that EGSs be allowed to retain their CAP SOP customers at the end of the initial twelve-month period if the EGSs agree to serve those customers at or below the current PTC. *Id.* The OCA avers that the EGS Parties' suggestion lacked any detail or consumer protection, as PPL Electric witness Melinda Stumpf, Manager of Regulatory Programs and Business Services in PPL Electric's Customer Services Department, pointed out in her Rebuttal Testimony. *Id.* at 14-15 (citing PPL St. 3-R at 18).

Nevertheless, the OCA is concerned about the PPL Electric requirements that: (1) prospective CAP enrollees with an existing EGS contract would be denied entry into CAP if they do not cancel their contract with an EGS, and (2) prospective CAP enrollees may be subject to termination or cancellation fees if they terminate their existing contract with an EGS to enroll in CAP. As such, the OCA explains that it recommended certain modifications to PPL Electric's proposal and requests that the Commission adopt these modifications. OCA R. Exc. at 13.

### **CAUSE-PA Replies**

CAUSE-PA responds that the Commission has the authority to restrict competition in furtherance of its statutory universal service obligations. CAUSE-PA R. Exc. at 13. CAUSE-PA states that the EGS Parties' argument has been addressed in and refuted in multiple appeals and at each stage of this proceeding. *Id.* at 13-14. CAUSE-PA avers that the record contains substantial un rebutted evidence of severe financial harm to economically vulnerable CAP customers and other residential customers. CAUSE-PA asserts that there is no alternative on the record capable of solving the ongoing harm identified by CAP shopping in this proceeding. *Id.* at 14.

**ii. Inspire Exception Nos. 1 and 2 and Replies**

In Inspire Exception Nos. 1 and 2, Inspire contends that PPL Electric's existing CAP SOP is a superior alternative to the ALJ's recommendation because: (1) the CAP SOP enables low income customers to receive competitive supply and have access to financial benefits; (2) the overall energy bill for CAP participants is lowered forestalling them from reaching their CAP maximum amount sooner so that they can enjoy CAP benefits longer; (3) CAP participants have the opportunity to support larger societal goals, such as renewable energy; and (4) by decreasing the overall energy bills for CAP participants, the amounts other ratepayers are required to subsidize are less. Inspire Exc. at 5. Inspire provides that PPL Electric did not follow Commission directives to provide EGS monthly notices about the CAP enrollment status of the EGS customers on a regular or consistent basis. Additionally, Inspire argues that the CAP SOP is in its infancy. Inspire reasons that more time and better compliance by PPL Electric with the EGS notice requirements of CAP SOP is necessary to evaluate the effectiveness of the CAP SOP. Inspire Exc. at 8-9.

**PPL Electric Replies**

In Replies, PPL Electric provides that it should end the CAP SOP because of minimal and inconsistent participation by EGSs which causes customer confusion and has made the CAP SOP difficult to administer. PPL Electric notes that from June 1, 2018 to February 29, 2020, no EGSs were participating and as of March 1, 2020 only one EGS was participating in the CAP SOP. PPL Electric Replies at 18 (citing PPL Electric M.B. at 28). PPL Electric avers that the record supports restricting CAP customers from shopping. PPL Electric argues that the benefit from customers who have paid less than the PTC through the CAP SOP has been far outweighed by the costs associated with CAP customers who have paid more than the PTC. PPL Electric provides that the net costs

associated with CAP customer shopping was approximately \$4.3 million in 2018 and \$2.9 million in 2019. PPL Electric Replies at 19 (citing PPL Electric R.B at 19).

PPL Electric disagrees with Inspire’s assertion that PPL Electric’s data is unreliable. PPL Electric contends that the customer lists available through the supplier portal inform the supplier if a particular customer is enrolled in OnTrack and this data is updated every business day. PPL Electric also notes that the ECL is updated every Sunday, and suppliers can use it at any time to determine if a customer is enrolled in OnTrack. PPL Electric Replies at 19 (citing PPL Electric R.B. at 21).

### **CAUSE-PA Replies**

In Replies, CAUSE-PA disagrees with Inspire that continuing the CAP SOP is a “reasonable alternative” as the program has caused substantial financial harm to CAP participants and other residential ratepayers. CAUSE-PA provides that in the five-month period from January to May 2020, CAP shopping customers were charged nearly \$1 million more than the default service price. CAUSE-PA Replies at 2-3 (citing CAUSE-PA M.B. at 22; CAUSE-PA St. 1 at 13, Tr. at 4, CAUSE-PA Exh. 3). CAUSE-PA contends that the only reasonable alternative on the record is PPL’s proposal to end its CAP SOP, require CAP customers to receive default service, coupled with CAUSE-PA’s proposal to remove barriers to CAP enrollment. CAUSE-PA Replies at 3 (citing CAUSE-PA M.B. at 27-32; CAUSE-PA R.B. at 14; CAUSE-PA PA Exceptions).

### **iii. CAUSE-PA Exception No. 1 and Replies**

In its Exception No. 1, CAUSE-PA argues that the Commission should amend the R.D. to adopt the CAP rules it proposed to: (1) permit low income customers to apply for CAP and return to default service concurrently upon enrollment and (2) allow CAP customers to join CAP without fees or penalties imposed by suppliers.

CAUSE-PA Exc. at 3. CAUSE-PA explains that these additional proposed CAP rules are necessary to ensure that PPL Electric’s economically vulnerable customers are able to access CAP without undue financial barriers or delays. CAUSE-PA explains further that since initial CAP entrants are entitled to arrearages forgiveness upon entry into CAP, these additional costs are also borne by other ratepayers who subsidize the cost of the program. CAUSE-PA exc. at 3.

CAUSE-PA provides that low income customers struggle to afford energy service, and most often require substantial financial assistance to maintain service. Further, the inability to maintain service threatens stable housing, employment, education and poses substantial health risks to the customer’s household members and to the larger community. CAUSE-PA Exc. at 4 (citing CAUSE-PA M.B. at 17; CAUSE-PA St. 1 at 31-33). According to CAUSE-PA, there is evidence in this proceeding that all residential customers including low income CAP and non-CAP shopping customers are consistently charged substantially higher rates than default service customers. CAUSE-PA Exc. at 4. CAUSE-PA provides that in 2019, PPL Electric’s CAP customers were charged an average of \$284.25 in excess of the default service price, while confirmed low income shopping customers were charged roughly \$269.22 more than the default service price. CAUSE-PA Exc. at 5 (citing CAUSE-PA St. 1 at 11, 13; CAUSE-PA M.B. at 23; Tr. at 3, 5).

CAUSE-PA avers that the additional CAP rules it proposed are necessary for the Commission to fulfill its statutory universal service obligations – to oversee universal service programming and to ensure that such programs are “appropriately funded and available” to ensure that low income customers “maintain electric service.” CAUSE-PA explains that the term “universal service and energy conservation” is defined as the “[p]olicies, protections, and services *that help low income customers to maintain electric service*” - and explicitly includes electric utility CAPs. 66 Pa. C.S. § 2803.

CAUSE-PA Exc. at 6 (citing 66 Pa. C.S. §§ 2802(9),(10),(17), 2803, 2804(9); *see RESA*, 185 A.3d at 1227-28; CAUSE-PA M.B. at 14-16; CAUSE-PA R.B. at 9-12).

CAUSE-PA contends that without the CAP rules it proposed, CAP will be unavailable and inaccessible to low income shopping customers. CAUSE-PA Exc. at 7. CAUSE-PA argues that requiring a low income customer to drop their supplier before they are eligible for CAP, and incur a termination fee or face a lengthy wait period to avoid a termination fee would effectively impose a CAP enrollment fee and should not be approved. CAUSE-PA at 8.

### **PPL Electric Replies**

In Replies, PPL Electric disagrees with CAUSE-PA's proposed changes to PPL Electric's CAP. PPL Electric notes that it has no authority over the terms of supplier contracts, including cancellation fees, for those contracts that are not part of the CAP SOP. PPL Electric asserts that it cannot waive the cancellation fee for a customer enrolled in a non-CAP SOP shopping contract. PPL Electric Replies at 20 (citing PPL Electric M.B. at 39).

PPL Electric provides that it will direct the shopping customer who applies for CAP to check with the customer's EGS to determine if any fees apply for ending the supply contract. PPL Electric notes that this will allow the customer to make an informed decision to either enter OnTrack at that point regardless of the fee or wait until the EGS contract expires. PPL Electric Replies at 20 (citing PPL Electric R.B. at 23).

#### **e. Disposition**

Based on our review of the record, the applicable law, and the Parties' respective arguments on PPL Electric's CAP SOP proposal, we shall deny the Parties'

Exceptions and adopt the ALJ's Recommended Decision. We conclude that PPL Electric's proposal is consistent with appellate precedent and the Choice Act. In *CAUSE-PA*, the Commonwealth Court set forth the rules under which competition could be restricted in order to fulfill the important objectives of an EDC's universal service program. While the Court did not address specifically the broad restriction on CAP shopping that PPL Electric proposes in this case, the Court explained that the competition scheme in the Choice Act does not demand "absolute and unbridled competition." *CAUSE-PA*, 120 A.3d at 1101. The Court also explained that the Commission may "bend" competition under the Choice Act to address other important concerns, such as "ensuring that universal service plans are adequately funded and cost-effective." *Id.* at 1103. The Court reasoned as follows:

So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service, the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits — *e.g.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

*Id.* at 1104 (citations omitted).

The Court in *RESA* adopted the reasoning in *CAUSE-PA* and explained that substantial evidence is required in order to support a restriction on competition as permitted in *CAUSE-PA*. The Court stated the following:

Therefore, what *CAUSE-PA* requires, in order for a rule restriction to survive our review, is that there be substantial evidence in the record showing a substantial reason why a restriction on competition is necessary, that is to say, there are no reasonable alternatives to restricting competition. Stated simply, the CAP-SOP, as it constitutes a restriction on

competition, must be necessary. A restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition.

*RESA*, 185 A.3d at 1228.

In the DSP proceeding before us, PPL Electric has presented substantial evidence supporting its proposal and the harm associated with its current CAP SOP, while the other Parties have not presented reasonable alternatives to PPL Electric's proposal. PPL Electric provided evidence that based on its experience with its CAP SOP, which has been in place since June 1, 2017, the program has resulted in both CAP customers and other residential customers suffering significant financial harms and has otherwise not been a successful program due to lack of EGS participation.

Ms. Stumpf testified that 68 percent and 62 percent of CAP shopping customers were paying more than the PTC in 2018 and 2019, respectively. PPL Electric St. 3 at 14, Table 3. Ms. Stumpf explained that CAP customers paying more than the price to compare are likely to shorten the duration of their CAP credits, and residential customers are paying higher subsidies into PPL Electric's CAP as a result of CAP customers paying rates above the PTC. PPL Electric St. 3 at 12-13, Table 4. CAP customers' shopping resulted in additional costs to other residential customers in the amounts of \$4.3 million and \$2.9 million in 2018 and 2019, respectively. *Id.* Ms. Stumpf stated that PPL Electric's current CAP SOP does not sufficiently protect customers from paying a rate higher than the PTC, because while CAP SOP may protect CAP customers from in-program shopping, it does not protect customers that were shopping before entering CAP. PPL Electric's data shows that as of January 2020, 7,975 CAP customers were shopping with an EGS outside of CAP SOP because they

entered CAP with a preexisting contract, and 62% of these customers were paying rates more than the PTC. PPL Electric St. 3 at 11, Table 3.

Ms. Stumpf also testified that a major difficulty in administering the CAP SOP was the lack of consistent supplier participation, as participation has been minimal and EGSs that have participated have done so only for a short time period. From June 2017 through November 2017, two EGSs participated in the CAP SOP; from December 2017 through May 2018, one EGS participated in the CAP SOP; from June 1, 2018 through February 29, 2020, no EGSs participated in the CAP SOP, resulting in the program becoming inactive; and beginning March 1, 2020, one EGS has been participating in the CAP SOP. PPL Electric St. 3 at 8-9. None of the other Parties presented evidence that refuted the evidence and data that PPL Electric presented in support of its proposal.

As a whole, the evidence supports PPL Electric's new proposal to have CAP customers receive default service at the PTC. Based on the record, PPL Electric's proposal will help ensure that CAP customers do not exhaust their CAP credits faster by shopping at rates above the PTC and ensure that other residential customers do not bear the cost burden of higher CAP shortfall amounts. This will enable PPL Electric to administer its CAP in a manner that is cost effective for both CAP and non-CAP customers, consistent with Section 2804(9) of the Code, 66 Pa. C.S. § 2804(9).

None of the Parties provided alternative proposals to PPL's proposal that were supported by substantial evidence showing that they were reasonable and workable. Without having a specific program already operating in PPL Electric's service territory, it is difficult to ascertain how successful an alternative proposal would be in practice, particularly given the pitfalls PPL Electric has experienced with its CAP SOP. For purposes of this proceeding, the EGS Parties' proposal does not resolve the major

concerns present in PPL Electric's current CAP SOP, and it does not provide great detail or consumer protections. As Ms. Stumpf stated in her testimony,

It is unclear whether Mr. Kallaher is suggesting that the rate be fixed at the PTC in effect at the time the 12-month contract term ends or if the rate would drop throughout the contract if the PTC drops. It is also unclear for how long the EGS would be agreeing to serve the customer at a rate at or below the PTC. Thus, allowing customers to remain with their CAP SOP supplier at the end of the 12-month contract term would result in the same problems that PPL Electric is experiencing with its SOP, i.e. customers end up paying significantly more than the PTC when the fixed rate term ends.

PPL Electric St. 3-R at 18. The EGS Parties also suggest that PPL Electric should have followed FirstEnergy's CAP shopping program to some degree. *See FirstEnergy DSP*. FirstEnergy's program has been in effect for a short time, since June 1, 2019, and the EGS Parties have not presented any data in this proceeding regarding the success of the FirstEnergy program or how that program would alleviate the issues PPL Electric is experiencing with CAP shopping and EGS participation in its service territory.

While both the OCA and CAUSE-PA agree with PPL Electric's proposal, these Parties also offer modifications or proposals they believe will remove barriers to CAP enrollment. CAUSE-PA requests that the Commission amend the Recommended Decision to adopt the CAP rules CAUSE-PA proposed to: (1) permit low income customers to apply for CAP and return to default service concurrently upon enrollment, and (2) allow CAP customers to join CAP without fees or penalties imposed by suppliers.

*See* CAUSE-PA Exc. at 3.<sup>38</sup> These proposals are not supported by substantial record evidence and do not contain sufficient information to demonstrate how PPL can successfully carry them out. While CAUSE-PA relies on the Choice Act and prior appellate precedent interpreting the Choice Act, including *CAUSE-PA*, to support a disallowance of supplier fees or penalties outside of the confines of the CAP program, the appellate cases address only restrictions within an EDC's CAP shopping program and do not address contracts previously entered into between non-CAP participants and EGSs.

PPL Electric presented sufficient testimony in response to these proposals. To address concerns that prospective CAP customers may be subject to cancellation or termination fees if they cancel their existing contract with an EGS to enroll in CAP, Ms. Stumpf testified that before a customer enrolls in CAP, PPL Electric will notify the customer that they should check with their EGS to determine if any early termination or cancellation fees will apply for ending their supplier contract. PPL Electric believes this will allow customers to make informed decisions on whether to enroll in CAP regardless of any termination fees or to wait until the EGS contract expires to enroll in CAP. Ms. Stumpf also stated that PPL Electric does not have authority over the terms provided in the supplier contract, including cancellation fees for those contracts that are not part of the CAP SOP. PPL Electric St. 3-R at 8. Ms. Stumpf further explained that CAUSE-PA's proposal to require CAP customers to switch to a default supplier immediately upon entry into CAP, could have the unintended consequence of a new CAP

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<sup>38</sup> The OCA did not file Exceptions; however, the OCA briefly mentioned in its Replies to Exceptions that it is concerned with PPL Electric's requirements that: (1) prospective CAP enrollees with an existing EGS contract would be denied entry into CAP if they do not cancel their contract with an EGS, and (2) prospective CAP enrollees may be subject to termination or cancellation fees if they terminate their existing contract with an EGS to enroll in CAP. The OCA made an alternative proposal in its OCA St. 2 at 4-5 and in its Main Brief, as discussed above.

customer realizing only upon entry into the program that they are responsible for a cancellation or termination fee because they are required to drop the supplier. *Id.* at 9-10.

Moreover, the EGS Parties appear to argue that the ALJ did not properly consider the Commission's *Proposed Policy Statement* or the *Default Service Investigation*. We disagree with the EGS Parties' contention and additionally conclude that neither the *Proposed Policy Statement*, nor the *Default Service Investigation* are dispositive of the outcome in this DSP proceeding, which is based on the specific facts in the record before us. Nor do either of these proceedings contain requirements that an EDC is mandated to follow. The *Proposed Policy Statement* is not yet finalized, and the Commission is considering comments and reply comments filed by various interested parties, including PPL Electric, in formulating the Final Policy Statement.<sup>39</sup> The *Default Service Investigation*, which was closed on January 23, 2020, offered guidance to EDCs in preparing for their next round of DSPs. CAP Customer Shopping was not a topic of that investigation; however, the Commission suggested that EDCs with CAP programs, as well as interested stakeholders, consider the issues and concerns the Commission addressed in recent Commission actions on this topic, including in *FirstEnergy DSP* and in the *Proposed Policy Statement*, when developing their CAP-shopping proposals in the upcoming DSP filings. *Default Service Investigation*, Secretarial Letter issued January 23, 2020, at 9-10. It is clear from the Parties' filings and testimony that the ALJ and the Parties, including PPL Electric, considered prior proceedings and the *Proposed Policy Statement* in the context of this proceeding. *See, e.g.*, EGS Parties St. 1 at 9; EGS Parties M.B. at 9, 10; PPL Electric St. 3-R at 15; PPL Electric R.B. at 16, n. 4. However, we note that PPL Electric has stated that, should the Commission issue a future order in its *Proposed Policy Statement* proceeding directing differently than what PPL Electric

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<sup>39</sup> The *Proposed Policy Statement* is an appropriate forum in which to consider various stakeholders' opinions on and experiences with CAP shopping and develop guidelines for EDCs' CAP shopping programs. Accordingly, it is not necessary at this time to engage in other stakeholder discussions as Mr. Kallaher suggests.

proposed in this proceeding, PPL Electric will seek to amend the DSP V with respect to CAP shopping so that it is consistent with the Commission's guidelines. *See* PPL Electric St. 3 at 17; PPL Electric M.B. at 31, n. 10; PPL Electric R.B. at 16, n. 4. For all of these reasons, we adopt the ALJ's recommendation to approve PPL Electric's proposal and deny the Parties' Exceptions on this issue.

### **3. Coincident Peak Methodology for Allocating Transmission Costs**

#### **a. Positions of the Parties**

##### **PPL Electric**

In this proceeding, PPL Electric explained that it determines each customer's contribution to the Network Service Peak Load (NSPL) based on each customer's usage during the five highest coincident peaks (CP) during the relevant 12-month period, applying loss and reconciliation factors, and averaging the results. The Company continued that it uses results of this allocation to create a NITS tag, expressed in megawatts, for each customer. PPL Electric M.B. at 41 (citing PPL Electric St. 5-R at 3-4).

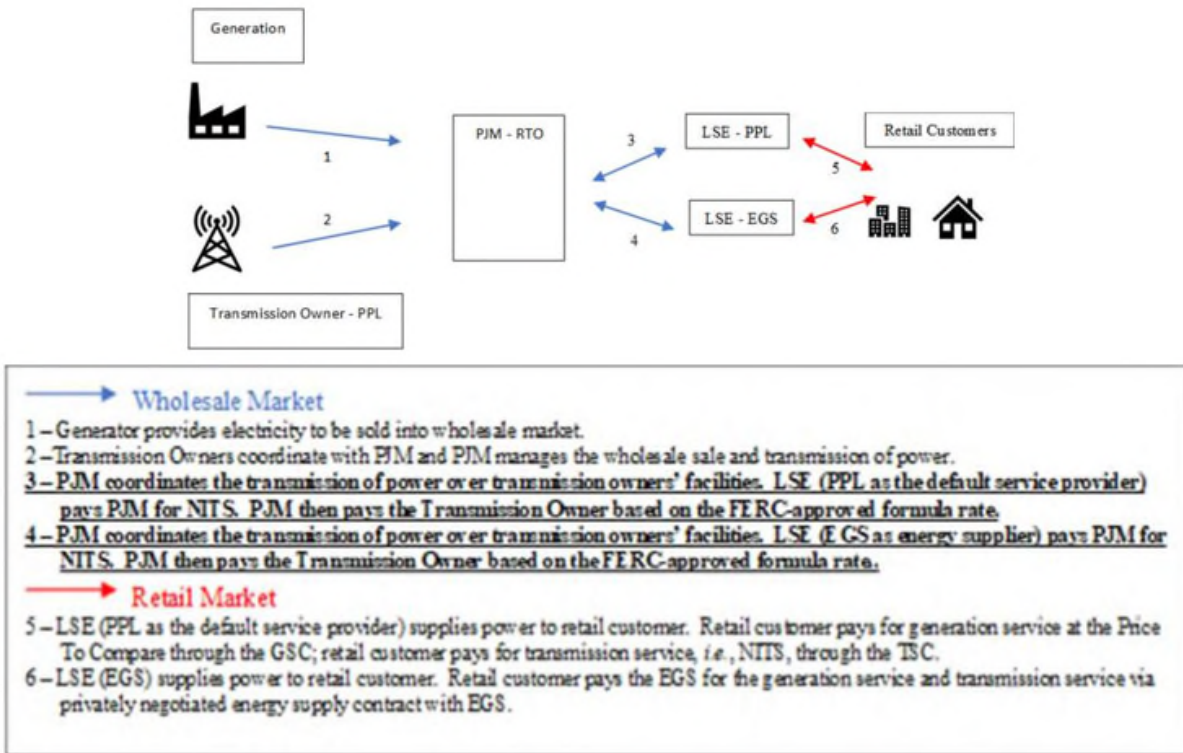
PPL Electric explained that it owns transmission facilities throughout its service territory in Pennsylvania that are operated by PJM, which is an RTO authorized by FERC to direct the operation of the interstate transmission system and coordinate the movement of wholesale electricity. PPL Electric M.B. at 43 (citing PPL Electric St. 5-R, at 7). The Company further explained that its transmission rate is set via a formula rate approved by FERC, and its transmission facilities are used to provide transmission service to LSEs, who provide service to retail customers. PPL Electric noted that PJM charges these rates to LSEs and then pays the amounts collected to PPL Electric in its role as the transmission owner. PPL Electric M.B. at 43 (citing PPL Electric St. 1, at 88).

The Company noted that, in addition to its role as the owner of transmission facilities that are operated by PJM, PPL Electric also acts as an LSE within the PJM wholesale power market, by purchasing wholesale electric power and transmission service from PJM, which it then sells to retail customers as the default service provider in its Pennsylvania electric service territory. PPL Electric further noted that it recovers the cost of providing default service through its Commission-approved GSC and TSC and it uses the 5 Coincident Peak (5 CP) method to allocate transmission costs to its retail customers. The Company added that the other major LSEs in PJM are EGSs who purchase generation and transmission service through PJM and then resell it to retail shopping customers in Pennsylvania through private contracts between the EGSs and owners.<sup>40</sup> PPL Electric M.B. at 43-44.

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<sup>40</sup> PPL Electric noted that PPLICA and IECPA are composed of industrial shopping customers who take both generation and transmission service from EGSs, not PPL Electric.

PPL Electric provided a graphic depiction of the functions of PJM, PPL Electric as a transmission owner and the role of LSEs, which is provided below:



PPL Electric M.B. at 44. PPL Electric explained that its role in this process is to establish each individual customer's contributions to NSPL, by calculating each customer's contribution to the average of its 5 highest coincident peaks during the relevant 12-month period, then it "scales up" the result to equal the 1 Coincident Peak (1 CP) for the PPL Electric Zone. PPL Electric M.B. at 45 (citing PPL Electric St. 5-RJ at 2-3). The Company further explained that this assignment is used to establish a NITS tag for each customer, reflecting the customer's contribution to peak load, and PJM then uses this tag to determine the NITS charge for LSEs. PPL Electric M.B. at 45. PPL Electric emphasized that these charges and calculations relate solely to interstate transmission service and not to retail transmission service. *Id.*

PPL Electric cited and referenced several decisions to support its claim that FERC has exclusive jurisdiction over interstate transmission service, including the

calculation of NITS rates.<sup>41</sup> PPL Electric M.B. at 46-48. In *New York*, FERC discussed its jurisdiction over the unbundled interstate transmission of electricity, as extending to both wholesale and retail transactions and that the Federal Power Act<sup>42</sup> preempts state jurisdiction over interstate transmission of electricity. PPL Electric M.B. at 46-47 (citing *New York* at 19-20). Regarding *Hughes*, PPL Electric explained that, the Supreme Court of the United States held that the State of Maryland's payments of subsidies to certain generators was preempted by FERC's exclusive jurisdiction over wholesale power sales under the Federal Power Act. PPL Electric M.B. at 47 (citing *Hughes* at 1297).

In the *National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, FERC Docket No. EL18-78-000, 171 FERC ¶ 61,237 (2020) (subject to reh'g.) (*2020 Amtrak Order*), PPL Electric noted that FERC analyzed the nature of its jurisdiction over PPL Electric's allocation of transmission charges using the 5 CP methodology and asserted jurisdiction over all claims raised by Amtrak. PPL Electric M.B. at 48 (citing *2020 Amtrak Order* at P 2). PPL Electric cited an excerpt from the *2020 Amtrak Order*, which is reprinted as follows:

As an initial matter, we find that the Commission [FERC] has jurisdiction over the matters raised in the complaint. Amtrak challenges the NITS charges assessed by PJM and passed through to Amtrak by its retail supplier without mark-up, *as well as the related PPL methodology for determining Network Service Peak Load Contributions*, both of which fall within the Commission's jurisdiction.

*2020 Amtrak Order* at P 34 (emphasis added) (citing PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002));

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<sup>41</sup> *FERC v. Electric Power Supply Association*, 136 S. Ct. 760, 767 (2016); *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 1292 (2016) (*Hughes*); *New York v. FERC*, 535 U.S. 1, 19-21 (2002) (*New York*).

<sup>42</sup> 16 U.S.C. § 824, *et. seq.*

*Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 133 FERC ¶ 61,118, at P 11 (2010 ComEd Order)). PPL Electric noted that, FERC held that it not only had jurisdiction over the NITS rates charged by PJM, but also the related PPL Electric methodology used to determine NSPL contributions. Therefore, the Company continued, the Commission is, in the instant case, preempted from exercising jurisdiction over the capacity and transmission charges assessed by PJM and PPL Electric's methodology used to calculate the NITS tag. PPL Electric M.B. at 48.

PPL Electric pointed out that, in addition to calculating its transmission revenue requirement and utilizing a FERC-regulated formula rate to do so, the Company also is responsible for allocating transmission costs to LSEs in a way that is reasonable and consistent with the operating and load characteristics of its service territory. To that end, PPL Electric noted that it uses the 5 CP methodology to assign transmission costs to LSEs and to determine each customer's responsibility for its share of transmission costs. The Company asserted that the 5 CP methodology provides reasonable assurance that cost allocation will reflect both summer and winter peaks, adding that the 1 CP methodology of cost allocation may fail to reflect the diversity of peak loads on a particular system. PPL Electric M.B. at 51-52, 55 (citing PPL Electric St. 5 at 5; PPL Electric St. 5-RJ at 3). PPL Electric noted that, historically, it has peaked during extended periods of either extreme cold, where electric heating is in use, or extended periods of extreme heat and humidity, where air conditioning is in use. PPL Electric M.B. at 52 (citing PPL Electric St. 5 at 6). Further, PPL Electric referenced two Commission cases<sup>43</sup> to support its use of the 5 CP method as consistent with Commission precedent adopting multi-peak methods for demand cost allocation. PPL Electric M.B. at 53. Moreover, the Company noted that PJM has recognized that utilities have different

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<sup>43</sup> *Pa. PUC v. Pennsylvania Power and Light Company*, Docket No. R-822169, *et al.*, 1983 Pa. PUC LEXIS 22 (Order entered August 19, 1983); *Pa. PUC v. PECO Energy Company*, Docket No. R-00973877 *et al.*, 1997 Pa. PUC LEXIS 26 (Order entered May, 22, 1997).

system needs and enables the use of the 5 CP methodology by providing the underlying data for the peak periods. In addition, PPL Electric referenced other utilities that use the 5 CP methodology<sup>44</sup> and noted that FERC has recently affirmed that transmission providers may adopt alternate allocation proposals.<sup>45</sup> PPL Electric M.B. at 53-55.

PPL Electric also stated that the 5 CP methodology is consistent with the fundamental principles of cost causation, in that it can be expected to capture the Company's system peaks whether they occur in the summer or the winter. The Company added that the 1 CP methodology, by definition, cannot capture both summer and winter peaks and is not consistent with principles of cost causation. PPL Electric noted that transmission costs are incurred to meet peak demand throughout the year, explaining that the demand allocator the Company selects should reflect that its transmission costs are caused by peak demands occurring during the year, so that the transmission costs are recovered fairly and consistently from all customers. PPL Electric M.B at 55-57.

PPL Electric further noted that the sum of the customer tag values will never equal the single peak from the prior year, as the peak values are calculated using meters located at substations which measure generation and/or energy flow entering and exiting the PPL Zone, and the customer tags are calculated using individual customer meters. The Company explained that the mix of customers changes over time, meaning the allocation must be continuously adjusted, and the total submission values must equal

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<sup>44</sup> See, e.g., *2010 ComEd Order; Duke Energy Ohio, Inc.*, 155 FERC ¶ 61,163 (2016); *PJM Interconnection, L.L.C.*, Docket No. ER14-2340-000 (Aug. 7, 2014) (accepting Attachment M-2 of PECO Energy Company); *PJM Interconnection, L.L.C.*, Docket No. ER14-2339-000 (August 6, 2014) (accepting Attachment M-2 of Baltimore Gas and Electric Company); *Duke Energy Ohio, Inc.*, Docket No. ER16-1150-001 (July 27, 2016) (accepting Attachment M-2 of Duke Energy Ohio, Inc.).

<sup>45</sup> See *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 169 FERC ¶ 61,041 (October 17, 2019) (*2019 PJM Order*) citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736.

the single peak in order to collect the transmission costs from all LSEs in total. Further, the Company stated that it must use scaling, which is the process of allocating an equal percentage share to all suppliers to account for the difference between the single peak (target) value and the sum of all customer tag values, and noted that it would need to use scaling whether it used a 1 CP methodology or a 5 CP methodology to align its values with those identified by PJM. Therefore, PPL Electric averred that it cannot adopt the 1 CP methodology utilized by PJM. PPL Electric M.B. at 57 (citing PPL Electric St. 5-R at 3).

Additionally, PPL Electric provided that the use of the 5 CP methodology reduces the rate volatility customers will experience in the allocation of transmission costs, particularly to seasonal use customers. The Company highlighted that it is important to ensure that all customers, including those with more significant seasonal use, pay a fair allocation of the costs of maintaining and improving the transmission system. PPL Electric M.B. at 59 (citing PPL Electric St. 5-RJ at 4). PPL Electric also asserted that the 1 CP methodology could cause customers to experience large fluctuations in their cost allocation, if the single peak occurred in a different season than the one previously used to establish transmission cost responsibility. The Company further noted that, when a customer shifts costs, either through seasonal swings or manipulation, other customers pay a larger share of the total transmission cost allocation. PPL Electric M.B. at 59-60.

PPL Electric offered that the 1 CP methodology will provide larger, more sophisticated customers with an opportunity to forecast when the 1 CP will occur and, consequently, reduce or shut down their operations during that period. If successful, the Company continued, these customers would reduce or eliminate their contribution to the NSPL and reduce or eliminate their transmission charges, thereby transferring this loss of revenue to other customers who will pay higher transmission rates. PPL Electric further explained that customers who are able to forecast and reduce load during peak periods, and avoid paying for transmission costs, will shift their share of the payment

responsibility to other customers because the total annual transmission costs are not meaningfully reduced. The Company further noted that, if a single atypical peak were to be used to allocate transmission costs, rather than the 5 CP average, it would be possible for customers with atypically low usage to avoid paying for maintenance and improvements to the transmission system, thereby unfairly burdening PPL Electric customers who cannot shift their use during a single peak period. Moreover, the Company asserted that, if customers want to reduce their future transmission cost obligations, using PPL Electric's 5 CP methodology will encourage these customers to invest in energy efficiency that would reduce their usage amounts year-round, which would be reflected by a reduction in their cost allocation value. PPL Electric M.B. at 60-61 (citing PPL Electric St. 5-RJ at 4-7).

PPL Electric pointed out that, FERC recently recognized load and cost shifting that occurs under the 1 CP methodology can be risky. Specifically, the Company cited *2019 PJM Order*, stating that FERC approved the use of a 12 CP cost allocation methodology. PPL Electric further stated that, in its Order on Rehearing in that proceeding, FERC noted that the 1 CP methodology advanced by the protesting parties will lead to load reduction during the coincident peak that "obscures actual transmission usage and results in cost shifting and avoidance among customers, as well as yearly volatility in service charges." PPL Electric M.B. at 62 (citing *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 172 FERC ¶ 61,054 at ¶ 44 (*2020 PJM Order*)).

PPL Electric averred that its current methodology for allocating transmission costs, which has been in use since 2011, should continue. The Company explained that, although it does not believe the 5 CP methodology is the only reasonable method for transmission cost allocation, or that the 5 CP methodology cannot be changed if there were a valid reason to do so, the Company believes that the 5 CP methodology strikes an appropriate balance in allocating costs while limiting the ability to shift costs

between customers. Further, regarding consideration of whether to modify a long-standing practice, the Company provided that agencies are not bound by their past precedent, but an agency “must render consistent opinions and should either follow, distinguish or overrule its own precedent.” PPL Electric M.B. at 62 (citing *Pa. Trout v. Dep’t Envtl. Prot.*, 863 A.2d 93, 107 (Pa. Cmwlth. 2004)).

## **IECPA**

In its Main Brief, IECPA challenged PPL Electric’s 5 CP methodology in the creation of NITS tags and NSPL contribution, stating that it deviates from PJM’s allocation approach, it does not appear to be based on actual customer usage during peak events, and it is inconsistent with proper cost causation principles. IECPA M.B. at 6-7.

IECPA stated that PPL Electric is allocating and collecting transmission costs from customers differently than how the customers are contributing to the transmission costs incurred by PPL Electric from PJM. IECPA explained that, because PJM plans and structures its transmission system to meet the single CP for each customer and allocates costs to LSEs on this basis, deviation from this wholesale allocation results in deviation from direct cost causation in PPL Electric's retail methodology. IECPA noted that, although this difference in transmission cost methodology is relatively small in terms of the overall Default Service Plan submitted by PPL Electric, it is not insignificant to individual customers. IECPA M.B. at 7-8 (citing IECPA St. 1 at 7). IECPA further noted that transmission costs are allocated directly to PPL Electric from PJM and are, or should be, passed directly through to customers. Therefore, IECPA continued, PPL Electric, as a transmission owner, should recover transmission costs in the same way that those costs are assigned to it by PJM. IECPA M.B. at 8-9.

IECPA also argued that PPL Electric is working against the objective of minimizing peak loads on the transmission system which, IECPA stated, is a recognized

benefit to the entire system. IECPA M.B. at 9 (citing IECPA Statement 1 at 8). IECPA explained that:

Because a 1 CP allocation approach is consistent with PJM's methodology, it follows that the nexus between the benefits to individual customers reducing load during that single peak and the benefits to the PPL system as a whole is closer than if customers are instead required to adjust for 5 CPs over a 12-month period, as reducing load during those 5 CPs very likely has no relationship to any benefits available to the system by avoiding PJM's single peak.

IECPA M.B. at 9. IECPA further argued that, by actively seeking to limit the ability of customers to manage their load during peak transmission periods, PPL Electric's 5 CP methodology for allocating PJM transmission costs sends inaccurate price signals to customers, particularly as they may compete with other business who have the benefit of paying retail transmission costs that align with PJM's wholesale allocation, thus impeding their ability to efficiently use the PPL Electric and PJM transmission systems. IECPA M.B. at 9-10 (citing IECPA St. 1 at 8-9).

IECPA posited that the most accurate way to align typical peak usage with the costs assigned to PPL Electric by PJM is to use the same method used by PJM. IECPA M.B. at 11 (citing IECPA St. 1 at 2-3). Further, IECPA noted that the Company is a seasonal-neutral peaking utility, meaning its transmission peak may occur at any point during the year. Accordingly, IECPA continued, by employing a 5 CP methodology instead of the 1 CP methodology that PJM reports and uses to assign LSEs their transmission load obligations, a customer desiring to efficiently use the transmission system must monitor every month of usage instead of just the single peak identified by PJM. IECPA M.B. at 13. IECPA opined that, by deviating from the PJM methodology, PPL Electric's methodology is "unduly burdensome" to customers and to the efficient use of the transmission system by requiring customers that seek access to competitively-priced power in the market to monitor five potential transmission peaks instead of the

single transmission peak that PJM identifies for each customer. IECPA M.B. at 16-17 (citing IECPA St. 1 at 7). Moreover, IECPA countered that, although the system's single zonal peak may be included in the 5 CP calculation with scaling, the 5 CP methodology will not match the 1 CP because all of the CPs and PPL Electric's scaling are moving targets over the course of the Company's 12-month transmission peak period. IECPA M.B. at 18.

## **PPLICA**

In its Main Brief, PPLICA argued that the Commission has jurisdiction to regulate the methods through which Pennsylvania EDCs allocate transmission costs to individual customers. PPLICA cited a recent Commission investigation<sup>46</sup> into how Pennsylvania EDCs allocate wholesale electric costs to individual customers. Ultimately, PPLICA contended that, because the NSPLs established by PPL Electric follow the customer, whether the customer takes default service supply from PPL Electric or competitive supply from an EGS, the Commission's exercise of jurisdiction over PPL Electric's NSPL calculation under its default service obligations applies to all customers, regardless of shopping status. PPLICA M.B. at 6.

PPLICA also argued that the Company should develop rate design measures to encourage load reductions during the system coincident peak. PPLICA elaborated that PPL Electric's current 5 CP methodology has the opposite effect, as customers with load management capabilities will not receive the full benefit of load reductions during the 1 CP unless they also reduce load during the next 4 highest CPs. PPLICA added that this is at odds with cost causation principles because PPL Electric has not shown a connection between customers' usage on the next 4 highest peaks and the transmission costs allocated to the LSEs by PJM. PPLICA M.B. at 10-11.

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<sup>46</sup> *See Default Service Investigation.*

**b. Recommended Decision**

The ALJ began her analysis of this contested issue by noting that PJM rules define LSEs as “any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area.”<sup>47</sup> The ALJ then astutely observed that, although it is PPL Electric’s role to establish individual contributions to NSPL,<sup>48</sup> PPL Electric provides this information to PJM so that PJM can calculate the wholesale interstate transmission charges for NITS that an LSE must pay. *See* PPL Electric St. 5-RJ at 2-3; R.D. at 37-38.

The ALJ thus agreed with PPL Electric that the Commission has no jurisdiction to require PPL Electric to change its method for allocating transmission costs from a 5 CP methodology for determining NSPL, to a 1 CP methodology and recalculate NITS rates accordingly. The ALJ determined that FERC has jurisdiction over both “the NITS charges assessed by PJM...as well as the related PPL Electric methodology for determining Network Service Peak Load Contributions.” *2020 Amtrak Order* at P 34 (citing PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002); *Commonwealth Edison Co.*, 133 FERC ¶ 61,118 at PP 6, 11 (2010)). The ALJ determined that this federal jurisdiction preempts state jurisdiction. R.D. at 38.

The ALJ continued her reasoning by noting that the FERC recently reiterated the exclusive nature of its jurisdiction over NITS charges and the methodology

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<sup>47</sup> *See* PJM Glossary of terms at [https://www.pjm.com/Glossary#index\\_L](https://www.pjm.com/Glossary#index_L).

<sup>48</sup> The Recommended Decision erroneously refers to the acronym for Network Service Peak Load as “NPSL” and we have corrected the error to “NSPL” here for clarity.

used to calculate NSPLs in *PJM Interconnection, L.L.C. and Va. Elec. and Power Co.*, 169 FERC ¶ 61,041 (2019) (*Coincident Peak Order*) and *2020 PJM Order*. She found that, at issue in each of these related proceedings was the decision of a transmission owner to “change[] the calculation of the Network Service Peak Load contribution for each Load Serving Entity within” its zone, which “is used to determine each load serving entity’s load ratio share of...[the transmission owner]’s annual transmission revenue requirement.” R.D. at 38 (citing *2020 PJM Order* at P 4). NITS charges, the NSPL input into the NITS charge and the method used to calculate the NPSL are not under the Pennsylvania Public Utility Commission’s subject jurisdiction. *2020 PJM Order* at P 16, n. 40; *Coincident Peak Order* at P 59, n. 89. Both the *2020 PJM Order* and the *Coincident Peak Order* make reference to the following quote: “As such, the proposed tariff provisions specify methodologies that are inputs to Commission jurisdictional charges assessed by PJM to [Load Serving Entities] who are customers in PJM.” *Commonwealth Edison Co.*, 133 FERC ¶ 61,118, at P 12 (2010). Based on this case law, the ALJ concluded that FERC has exclusive jurisdiction over these issues. R.D. at 38.

The ALJ stated that it is axiomatic that the Commission is a “creature of statute” and “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)). She concluded that, contrary to PPLICA’s and IECPA’s assertions, the Commission cannot extend its jurisdiction beyond that which has been granted to it by the General Assembly in the context of a market investigation order. R.D. at 39 and 42 (COL No. 23).

**c. PPLICA/IECPA Exception No. 1 and Replies**

In PPLICA/IECPA Exception No. 1, PPLICA and IECPA aver that the ALJ erred in dismissing this matter on the grounds that the Commission lacks jurisdiction to regulate PPL Electric’s NSPL calculation. PPLICA/IECPA Exc. at 3 (citing R.D. at 38). Specifically, PPLICA and IECPA argue that the ALJ’s reasoning, that the Commission’s jurisdiction is preempted because FERC has jurisdiction over both “the NITS charges assessed by PJM...as well as the related PPL methodology for determining Network Service Peak Load Contributions,” is incorrect because her analysis omits consideration of the concurrent jurisdiction between FERC and the Commission. PPLICA/IECPA Exc. at 4 (citing *2020 Amtrak Order*). PPLICA and IECPA further contend that, although FERC did not address, review or approve PPL Electric’s NSPL calculation in the *2020 Amtrak Order*, it did recognize its jurisdiction over PPL Electric’s NSPL calculation to confirm that PPL Electric’s declining to file its NSPL calculation, as an Attachment M-2 to the PJM tariff, is not a violation of the Federal Power Act. PPLICA/IECPA Exc. at 4-5 (citing *2020 Amtrak Order* at ¶ 62,763; *Duke Ohio Order* at P 15, n. 19; PPLICA R.B. at 5-6).

PPLICA and IECPA disagree with the ALJ’s interpretation of the following excerpt in the *2020 PJM Order*: “As such, the proposed tariff provisions specify methodologies that are inputs to Commission jurisdictional charges assessed by PJM to [Load Serving Entities] who are customers in PJM.” PPLICA/IECPA Exc. at 5 (citing R.D. at 38; *2010 ComEd Order*). PPLICA and IECPA are of the opinion that this excerpt from the *2010 ComEd Order* does not capture its overall finding; however, it does support the Commission’s exercise of jurisdiction over PPL Electric’s NSPL calculation. PPLICA and IECPA present the same excerpt cited in the Recommended Decision, as reprinted below:

As ComEd points out, the proposed tariff provisions specify how ComEd will calculate the Obligation Peak Load that it reports to PJM, and that PJM uses the Obligation Peak Load to calculate the Locational Reliability Charge issued by PJM to LSEs utilizing the RPM to satisfy their capacity obligations. As such, the proposed tariff provisions specify methodologies that are inputs to Commission-jurisdictional charges assessed by PJM to LSEs, who are customers of PJM. In contrast to the assertion of the Illinois Commission, *the proposed tariff provisions do not address how LSEs bill retail customers for such charges, and therefore do not affect the Illinois Commission's ability to allocate such charges.*

*2010 ComEd Order* at ¶ 61,596 (emphasis added). Therefore, PPLICA and IECPA continue, the Commission reserves full authority to regulate the allocation of NITS charges to PPL's retail customers. PPLICA/IECPA Exc. at 5-6.

PPLICA and IECPA reference a later decision in the *2020 Amtrak Order*, regarding proposed changes to Attachment M-2 to the PJM OATT filed with FERC by Virginia Electric and Power Company d/b/a Dominion Energy Virginia (Dominion), including the proposal to implement a 12 CP methodology for calculating customers' NSPLs. PPLICA and IECPA note that because PPL Electric has not filed its NSPL methodology with FERC as an Attachment M-2, FERC's exercise of jurisdiction over an NSPL calculation methodology previously filed as an Attachment M-2 does not prevent the Commission from exercising jurisdiction over PPL Electric's NSPL calculation methodology. PPLICA and IECPA further note that the *2020 Amtrak Order* does not provide any indication that the state commission in that case, the Virginia State Corporation Commission Division of the Public Utility Regulation, attempted to exercise jurisdiction over Dominion's NSPL calculation. PPLICA/IECPA Exc. at 6 (citing PPLICA R.B. at 12).

PPLICA and IECPA also reference the FERC's Order on Rehearing of the *2020 Amtrak Order*. Specifically, PPLICA and IECPA state that, in *National Railroad*

*Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,043 (October 25, 2020) (*2020 Amtrak Order on Rehearing*), FERC deemed a request to clarify “whether or not the calculation and application of Network Service Peak Load falls within the Commission’s exclusive jurisdiction” to be “unnecessary to the result reached in this case.” PPLICA/IECPA Exc. at 6-7 (citing *2020 Amtrak Order on Rehearing* at P 25). Therefore, PPLICA and IECPA aver that FERC’s acknowledgement of PPL Electric’s NSPL methodology was never intended as a finding of exclusive jurisdiction. PPLICA/IECPA Exc. at 7.

PPLICA and IECPA further argue that the Commission should exercise jurisdiction over PPL Electric’s NSPL methodology to ensure retail customers pay just and reasonable rates. Specifically, PPLICA and IECPA contend that the record in *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) (*Lloyd*) confirms that PPL Electric’s 5 CP allocator conflicts with cost causation because PJM calculates the NITS charges assessed to LSEs using a 1 CP and the Company then assigns such costs to customers using a 5 CP. PPLICA/IECPA Exc. at 7 (citing PPLICA M.B. at 7; IECPA M.B. at 6).

### **PPL Electric Replies**

In Replies, PPL Electric argues that PPLICA and IECPA conflate the payment of NITS charges by an LSE, which are calculated using an NSPL, with the allocation of transmission charges to retail electric service customers through either the Company’s TSC for default service customers or the private electric supply service contract between an EGS and a shopping customer. PPL Electric R. Exc. at 21 (citing PPL Electric M.B. at 43-46; PPL Electric R.B. at 28-30). PPL Electric explains that PPLICA and IECPA are challenging the NITS calculation and the use of a 5 CP methodology to determine the NSPL variable in the NITS calculation, on the basis that

the Commission and FERC have “concurrent jurisdiction” over transmission service. PPL Electric R. Exc. at 22 (citing PPLICA/IECPA Exc. at 4-5).

PPL Electric counters that, although the Commission may have jurisdiction over the transmission rates that the Company charges default service customers through the TSC, the NITS calculation is a part of the wholesale market and, therefore, within FERC’s exclusive jurisdiction. PPL Electric R. Exc. at 22. Further, PPL Electric notes that the Commission has no jurisdiction over the rates charged by an EGS to retail customers, including the customers that make up PPLICA and IECPA, or the private contracts for retail generation and transmission service provided by EGSs to their customers. PPL Electric R. Exc. at 23 (citing PPL Electric M.B. at 46, 48-49). Moreover, PPL Electric challenges PPLICA and IECPA assertion that FERC’s order in *2010 ComEd Order* supports their position, elaborating that FERC rejected claims by the Illinois Commerce Commission (ICC) that the proposed tariff provisions, which specified the methodologies for inputs to FERC-jurisdictional charges assessed by PJM to LSEs, “would limit the ICC’s ability to acknowledge how LSEs bill retail customers for such charges.” PPL Electric R. Exc. at 23 (citing *2010 ComEd Order*). PPL Electric continues that PPLICA and IECPA are not challenging PPL Electric’s TSC or how EGSs bill retail customers for transmission charges (*i.e.*, how an LSE would bill a retail electric customer for transmission service); they are challenging the input, or the NSPL, used to calculate the NITS charges, which the Company argues is within FERC’s jurisdiction. PPL Electric R. Exc. at 23 (citing PPL Electric M.B. at 44, 48).

PPL Electric further challenges PPLICA and IECPA’s claim that, in the *2020 Amtrak Order*, FERC did not intend its ruling as a “finding of exclusive jurisdiction” over the Company’s NSPL methodology. PPL Electric R. Exc. at 23 (citing PPLICA-IECPA Exc. at 6-7). The Company counters that, FERC declared that “[t]he fact that a Commission-jurisdictional methodology may also be included in a state commission tariff does not convey any jurisdictional finding.” PPL Electric R. Exc.

at 23-24 (citing *2020 Amtrak Order on Rehearing* at P 25). PPL Electric further argues that including the methodology used to calculate the NITS charge, or the NSPL input, in a state commission tariff does not change FERC's exclusive jurisdiction or grant jurisdiction over these issues to the Commission. Therefore, PPL Electric continues, FERC's jurisdiction over both the NITS rate, and the methodology used by the Company to determine NSPL contributions, preempts Commission regulation. PPL Electric R. Exc. at 24.

Finally, PPL Electric offers that, if the Commission considers the merits of this issue or avoids the jurisdictional analysis, then it should affirm the 5 CP methodology for the following reasons: (1) it properly reflects the seasonal nature of its peak load (noting that PPL Electric's peak can occur in the summer or the winter); (2) it is consistent with cost causation principles; (3) it reduces the risk of rate volatility for individual customers when the peak shifts from summer to winter, and vice versa; (4) it is consistent with all relevant precedent; and (5) it properly limits individual customers' ability to avoid cost responsibility for the transmission system, and thereby effectively receive free transmission service, if they can shift their load to avoid the single system peak. PPL Electric R. Exc. at 24-25 (citing PPL Electric M.B. at 42-43).

#### **d. Disposition**

In considering the evidence of record, the ALJ's Recommended Decision, and the Exceptions and Replies of the Parties, we shall deny the Exceptions and adopt the ALJ's reasoning that the Commission has no jurisdiction to require PPL Electric to change its method for allocating transmission costs from a 5 CP methodology for determining NSPL to a 1 CP methodology and recalculate NITS rates accordingly. We agree that FERC has jurisdiction over both the NITS charges assessed by PJM and the related PPL Electric methodology for determining NSPL contributions.

At issue here is the careful parsing of jurisdictional responsibilities set forth in the enabling statutes of the respective regulatory bodies – FERC on the wholesale side under the FPA and the Commission on the retail side pursuant to the Code. And while much has been argued that a blending or concurrence of jurisdiction is here in play, we determine that what seems complex is far simpler to ascertain.

We agree with the observation of PPL Electric that both PPLICA and IECPA conflate the payment of NITS charges by an LSE, which are calculated using an NSPL with the allocation of transmission charges to retail electric service customers, the latter occurring through either (a) PPL Electric’s TSC for default service customers, or (b) the private electric supply service contract between an EGS and a shopping customer. PPL Electric R. Exc. at 21; PPL Electric M.B. at 43-46; PPL Electric R.B. at 28-30.

PPLICA and IECPA repeatedly assert, without the benefit of any statutory or decisional authority that the Commission and FERC have “concurrent jurisdiction” over transmission service. PPLICA IECPA Exc. at 4-5. They plainly take issue with PPL Electric’s use of a 5 CP methodology to determine the NSPL for purposes of calculating a NITS charge. As stated by PPL Electric, while this Commission may have jurisdiction over the transmission rates that PPL Electric charges default service customers through the TSC (*i.e.*, No. 5 in PPL Electric’s graphic at 43-44, *supra.*), PPLICA and IECPA are specifically challenging something else – that is, the calculation of NITS and the use of a 5 CP methodology to determine the NSPL variable involved in this calculation (*i.e.*, Nos. 3 and 4 of PPL Electric’s graphic at 43-44, *supra.*). As asserted by PPL Electric and ultimately concluded by the ALJ, both aspects detailed in numbers 3 and 4 of the graphic are part of the wholesale market and, therefore, within FERC’s exclusive jurisdiction.

FERC’s order in *Commonwealth Edison Co.*, 133 FERC ¶ 61,118, 61,596 (2010) does not support the conclusion advanced by PPLICA and IECPA.

PPLICA-IECPA Exc. at 5-6. In *Commonwealth Edison*, FERC rejected claims by the ICC that the proposed tariff provisions, which specified methodologies for inputs to FERC-jurisdictional charges assessed by PJM to LSEs, would limit the ICC's ability to address "how LSEs bill retail customers for such charges." *Id.* Here, however, PPLICA and IECPA are challenging the input (the NSPL) used to calculate the NITS charge, which is the subject of FERC's jurisdiction, not PPL Electric's TSC or how EGSs bill retail customers for transmission charges—*i.e.*, how an LSE would bill a retail electric customer for transmission service.

Likewise, PPLICA and IECPA find no foundational support for their claims in FERC's decision in the *2020 Amtrak Order on Rehearing*. A full and fair reading of that Order requires a contrary conclusion. PPLICA and IECPA erroneously claim that FERC did not intend its ruling in that case as a "finding of *exclusive jurisdiction*" over the Company's NSPL methodology. PPLICA-IECPA Exc. at 6-7. Quite to the contrary, FERC declared that: "the fact that a Commission- jurisdictional methodology may also be included in a state commission tariff does not convey any jurisdictional finding." *2020 Amtrak Order on Rehearing*, at P 25. Simply put, FERC made clear that including the methodology used to calculate the NITS charge or the NSPL input in a state commission tariff does not alter FERC's exclusive jurisdiction or grant jurisdiction over these issues to a state commission.

We agree with the ALJ that FERC recently reiterated the exclusive nature of its jurisdiction over NITS charges and the methodology used to calculate NSPLs in its *Coincident Peak Order* and the *2020 PJM Order*. As the ALJ properly concluded, the FERC's jurisdiction over both NITS rates and the methodology used by PPL Electric to determine NSPL contributions preempts Commission regulation.

Finally, we also reject PPLICA's and IECPA's argument that the Commission's Order in the *Default Service Investigation* extended the Commission's

jurisdiction to reach the methodologies and inputs used to calculate the NITS charge. The ALJ correctly concluded that the Commission is a “creature of statute” and “cannot extend its jurisdiction beyond that which has been granted to it by the General Assembly in the context of a market investigation order.” R.D. at 39.

## V. Conclusion

Based upon our review of the fully-developed record in this proceeding, the ALJs’ Recommended Decision, the Exceptions and Replies filed thereto, and for all the foregoing reasons, we shall, consistent with this Opinion and Order:(1) grant, in limited part, Starion’s Exception No. 2; (2) deny all other Exceptions filed by the Parties; (3) approve the Partial Settlement without modification; (4) approve PPL Electric’s DSP V Petition, as modified by the Partial Settlement; (5) decline to adopt PPL Electric’s proposed modifications to the SOP program that are the subject of litigation in this proceeding; (6) approve PPL Electric’s proposed modifications to the CAP SOP; and (7) adopt in part and modify in part the ALJ’s Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions of Coalition for Affordable Utility Service in PA, filed on October 26, 2020, are denied, consistent with this Opinion and Order.

2. That the Exceptions of the Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc, Vistra Energy Corp., ENGIE Resources LLC, WGL Energy and Direct Energy Services, LLC, or collectively the EGS Parties, filed on October 26, 2020, are denied, consistent with this Opinion and Order.

3. That the Exceptions of Starion Energy PA, Inc., filed on October 26, 2020, are denied, in major part, and granted, in limited part, consistent with this Opinion and Order.

4. That the Exceptions of Inspire Energy Holdings, LLC, filed on October 26, 2020, are denied, consistent with this Opinion and Order.

5. That the Exceptions of Industrial Energy Consumers of Pennsylvania and the PP&L Industrial Customer Alliance, filed on October 26, 2020, are denied, consistent with this Opinion and Order.

6. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued on October 15, 2020, is adopted, in part, and modified, in part, consistent with this Opinion and Order.

7. That the Joint Petition for Approval of Partial Settlement filed in this proceeding on September 17, 2020, by the following Parties: PPL Electric Utilities Corporation, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service in PA, the Sustainable Energy Fund, Calpine Retail Holdings, LLC, and the following Commission-licensed Electric Generation Suppliers (EGSs): Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc, Vistra Energy Corp., ENGIE Resources LLC, WGL Energy and Direct Energy Services, LLC, collectively, the EGS Parties, is approved without modification.

8. That, except for the proposals denied in Ordering Paragraph Nos. 9, 10, and 11 below, the proposals set forth in PPL Electric Utilities Corporation's Default Service Plan for the Period June 1, 2021 through May 31, 2025, filed on March 25, 2020,

as modified by the Joint Petition for Approval of Partial Settlement filed on September 17, 2020, are approved, consistent with this Opinion and Order.

9. That the proposal of PPL Electric Utilities Corporation to modify its customer referral Standard Offer Program so that, upon expiration of the Standard Offer Program contract, a customer who fails to make an affirmative election of a new contract with the existing Electric Generation Supplier or a new Electric Generation Supplier would be automatically transferred to default service at the applicable default service rate, rather than be converted to a month-to-month contract with their existing Standard Offer Program Electric Generation Supplier, is denied.

10. That the request of PPL Electric Utilities Corporation for a waiver of Section 54.10(3) of the Commission's Regulations, 52 Pa. Code § 54.10(3), in connection with its Standard Offer Program, is denied.

11. That the proposal of PPL Electric Utilities Corporation to modify its customer referral Standard Offer Program to implement a new, two-step communication process, which would inform customers about their shopping options after the expiration of a customer's Standard Offer Program contract, is denied.

12. That PPL Electric Utilities Corporation is required to provide an Electric Generation Supplier with the telephone numbers and e-mail addresses (if available) of Standard Offer Program customers to the Electric Generation Supplier serving the customer upon receiving the customer's consent to the release of such information during the Standard Offer Program enrollment process.

13. That, consistent with this Opinion and Order, and consistent with the process established in Section F. of the Partial Settlement relating to revisions to the guidelines used by Customer Service Representatives and the scripts used by Hansen

employees, including but not limited to the 90-day deadline to complete the revisions, PPL Electric Utilities Corporation is directed to work with the Office of Consumer Advocate, the Office of Small Business Advocate, the EGS Parties, Starion Energy, and other interested parties to include an explanation to the Standard Offer Program customer during such customer's enrollment in the Standard Offer Program that sharing the customer's information with the Electricity Generation Supplier will enable that Supplier to contact the customer by phone, text, or email prior to the contract term expiration, and include a question asking the customer whether the customer consents to the release of such contact information for this purpose.

14. That PPL Electric Utilities Corporation's Customer Assistance Program Standard Offer Program (CAP SOP) shall be ended and customers participating in the OnTrack Program, or Customer Assistance Program, shall be required to receive default service at the applicable default service rate, or Price to Compare, consistent with the proposal in PPL Electric Utilities Corporation's Default Service Plan for the Period June 1, 2021 through May 31, 2025.

15. That Electric Generation Suppliers are required to commit to a semi-annual Standard Offer Program enrollment, which would correspond to PPL Electric Utilities Corporation's semi-annual Price to Compare price change.

16. That a copy of this Opinion and Order be served on the Director of the Commission's Office of Competitive Market Oversight.

17. That PPL Electric Utilities Corporation shall file appropriate tariff supplement(s), to be effective June 1, 2021, consistent with this Opinion and Order.

18. That, upon acceptance and approval by the Commission of the tariff supplement(s) filed by PPL Electric Utilities Corporation consistent with this Opinion and Order, this proceeding shall be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 17, 2020

ORDER ENTERED: December 17, 2020