

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held January 24, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Partial Dissenting Statement
James H. Cawley, Statement
Pamela A. Witmer, Statement

Petition of PPL Electric Utilities Corporation
For Approval of a Default Service Program
and Procurement Plan

Docket No. P-2012-2302074

OPINION AND ORDER

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BY THE COMMISSION:

I. MATTER BEFORE THE COMMISSION

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell issued November 15, 2012. Also before the Commission are the Exceptions of PPL Electric Utilities Corporation (PPL or the Company), the Office of Consumer Advocate (OCA), the Retail Energy Supply Association (RESA), FirstEnergy Solutions Corp. (FES), Dominion Retail Inc. and Interstate Gas Supply, Inc. (DR/IGS), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE). Replies to Exceptions were filed by PPL, the OCA, RESA, FES, DR/IGS, the PP&L Industrial Customer Alliance (PPLICA), and Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, Constellation or Joint Suppliers).

II. HISTORY OF THE PROCEEDING

On May 1, 2012, PPL filed a Petition requesting approval of a Default Service Program and Procurement Plan for the period of June 1, 2013 through May 31, 2015 (DSP II). PPL served the Petition on the public advocates and the electric generation suppliers (EGSs) doing business in its territory. The Company asks that the Commission approve its program no later than February 1, 2013, in order to have sufficient time to implement the program and to comply with the statutory deadline. The Commission's statutory deadline is February 1, 2013. 66 Pa. C.S. § 2807(e)(3.6).

On May 19, 2012, notice of the Petition was published in the *Pennsylvania Bulletin*, 42 Pa.B. 2871, along with notice of the prehearing conference scheduled for June 6, 2012. The deadline for filing interventions and protests was set for June 4, 2012.

Notice of appearance was filed by the Commission's Bureau of Investigation and Enforcement (I&E) on May 14, 2012. Notice of Intervention and Answer was filed by the OCA on May 21, 2012, and by the Office of Small Business Advocate (OSBA) on June 4, 2012.

Timely petitions to intervene were filed by Sustainable Energy Fund (SEF), Eric Joseph Epstein, UGI Energy Services d/b/a UGI EnergyLink (UGIES), Direct Energy Services (Direct Energy), RESA, PPLICA, FES, CAUSE, DR/IGS, Constellation, Nextera Energy Resources, LLC, and Noble Americas Energy Solutions.

Evidentiary hearings were convened as scheduled on September 7, 10 and 11, 2012. A transcript of 322 pages was developed. Initial briefs were filed on October 5, 2012, and reply briefs on October 22, 2012. The record closed upon receipt of the reply briefs.

The ALJ's Recommended Decision was issued on November 15, 2012, as noted, *supra*. The ALJ made 128 Findings of Fact and reached twenty-six Conclusions of Law. *See*, R.D. at 3-23; 159-164. The Findings of Fact 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.

Exceptions and Reply Exceptions were filed as noted, *supra*. Before we address the merits of the Exceptions to the Recommended Decision, we note, as a preliminary matter, that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

III. LEGAL STANDARDS

A. Burden of Proof

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. §332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition. See *In re Loudenslager’s Estate*, 430 Pa. 33, 240 A.2d 477, 482 (1968). The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast. *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa. Cmwlth. Ct. 1993).

Therefore, the Company has the burden of proving that its proposed default service provider program is just and reasonable, and any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.

B. Standards for Default Service

The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e).¹ The 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 plan shall offer a time-of-use program for customers who have smart meter technology. 66 Pa. C.S. §§ 2707(e), 2708.

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2801(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2801(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, at 7-8 (Opinion and Order entered August 16, 2012)(*FE DSP II Order*).

Also applicable are the Commission’s default service regulations, 52 Pa. Code §§ 54.181-54-189, and policy statement, 52 Pa. Code §§ 69.1802-69-1816. The Commission has directed that EDCs consider the incorporation of certain market

¹ *Electricity Generation Customer Choice and Competition Act*, Act 138 of 1996, as amended by Act 129 of 2008, codified at 66 Pa. C.S. § 2801 *et seq.*

enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011) (*December 16 Upcoming DSP Order*), and *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) (*March 2 IWP Order*).

Finally, a default service provider shall file its service program with the Commission no later than twelve months prior to the conclusion of the currently effective program. 52 Pa. Code § 54.185(a).

IV. DISCUSSION

A. Class Procurements

1. Residential - Fixed Rate

a. Product Mixture

i. Positions of the Parties

PPL states that its proposed procurement plan for its Residential Class under DSP II is built off of, and coordinates with, the procurement structure under its currently effective Default Service Program (DSP I). PPL Main Brief at 12. PPL summarizes its DSP I Residential procurement plan as follows:

PPL Electric's DSP I Program obtains a portfolio of laddered fixed-price full-requirements load following supplies, real-time wholesale electricity spot market full-requirement, load-following supplies, and longer-term fixed price block supplies for its residential customers. (PPL Electric St. No. 2, p. 8). As shown on PPL Electric Ex. JC-1, PPL Electric currently purchases 350 MW of block supplies under 24 x 7 contracts. These block supplies include four layered 50 MW block products that are scheduled to expire in 50 MW increments on a quarterly basis beginning May 31, 2013. The Company has two 50 MW five-year term block products that will expire on December 31, 2015. The ten-year 50 MW block unit entitlement product has a contract term extending to May 31, 2021. (PPL Electric St. 1, p. 10). PPL Electric purchases full-requirements, load-following products to supply 100% of residential default service requirements that remain after the purchase of the long term block products. (PPL Electric Ex. JC-1). Of these load-following products, 90% are purchased under fixed-price, full-requirements contracts. The remaining 10% of these full-requirements, load-following supplies are purchased under contracts priced at the real time spot market. The purchase of the fixed-price, full-requirements, load-

following supplies are laddered, with a mixture of 12-month and 24-month products. (PPL Electric Ex. JC-1). Under the DSP I Program, the product mixture is structured around quarterly procurements with one or more block, spot full-requirements, or fixed-price full-requirements products being procured every three months. (PPL Electric St. 2, p. 9; PPL Electric Ex. JC-1).

Id. at 12-13 (footnotes omitted).

Under DSP II, PPL is proposing the following changes from its DSP I Program with regard to its procurement plan for the Residential class:

- Eliminate the twenty-four-month contracts and replace them with fixed-price, full-requirements, load-following contracts of nine and twelve months' duration.²
- Eliminate the purchase of spot market full-requirements load-following supplies.
- Eliminate the procurement of additional block supply, allowing for a gradual phase down in the amount of block supply procured for the Residential class as block supply contracts executed during DSP I expire during the DSP II Program. At the conclusion of the DSP II Program term, the Company would have 150 MW of block supplies remaining under contract.

Id. at 13-14; PPL Ex. JC-4A.

² As discussed *infra*, PPL is proposing that its October 2014 procurement obtain default supply through six- and three-month contracts rather than twelve- and nine-month contracts so that no fixed-price load-following contracts would extend beyond May 31, 2015.

PPL argues that the high level of shopping occurring among its residential customers,³ combined with expectations of further increases in residential shopping, support a decision to move to a more simplified product mix, with shorter term fixed-price, full-requirements, load-following contracts. *Id.* at 15-16. PPL avers that the elimination of twenty-four-month contracts will increase supplier interest by decreasing the volumetric risk associated with longer-term products. The Company further contends that by eliminating the twenty-four-month products and shifting to shorter term, laddered one-year products, the need for spot supply to balance the longer term products is eliminated. PPL also asserts that the elimination of spot market priced products will reduce the need for reconciliation adjustments because there will be no need to account for variances between *projected* spot market prices and the *actual* spot market prices in the Company's Price to Compare (PTC). *Id.* at 16.

With regard to its proposed reduction in the reliance on block products, PPL states that increased shopping has increased the proportion of default service load that is being provided by block supply to a level of almost 40% of total annual residential default service load. PPL asserts that under minimum load conditions, the current level of block supplies is providing nearly all residential default service load, and with an anticipated further increase in residential shopping, PPL expects to be forced to sell a portion of its block supplies, potentially at a loss, if it continues to purchase the current level of block supplies. PPL St. 1 at 10. By allowing existing block purchases to expire without replacement, PPL estimates that it will be able to reduce its reliance on block products to approximately 15-20% of its residential default service supply during the term of the DSP II Program. *Id.* at 17. PPL further argues that its proposed reductions in the reliance on block supply will reduce reconciliation adjustments arising from the

³ PPL asserts that it has the highest current percentage of customer shopping of all major EDCs in Pennsylvania, stating that as of July 1, 2012, over 46% of residential customer load was being served by an alternative supplier. PPL MB at 15.

divergence between the projected amount of load to be served by block supply, and the actual amount served. *Id.*

The OCA opposes PPL's proposal to eliminate spot and block purchases for its Residential customers, and recommends a plan that includes procuring 5% of Residential supply from spot purchases, 20% from block purchases, and 75% from full requirements purchases. OCA MB at 13. Exhibit OCA-RSH-4. The OCA states that this plan is based on continuing layering and laddering of procurements using a maximum of twelve months for a contract term, though such terms can be revised to include longer contracts if desired. OCA MB at 16.

With respect to PPL's concerns regarding reconciliation adjustments relating to spot and block purchases, the OCA contends that excluding these purchases will not eliminate reconciliation concerns. *Id.* at 14. Moreover, the OCA asserts that it is recommending a different procurement structure for the block and spot component that will avoid the problem of block purchases becoming a greater percentage of default service load when customers switch to EGS supply. *Id.* The OCA plan would include the purchase of block energy consisting of different block sizes during the winter and summer peak periods that are adjusted based on the default service load. *Id.* at 15. The OCA argues that shaped blocks with a base amount during all hours plus additional blocks during winter and summer peak hours will better follow the actual hourly loads and reduce on-peak purchases. *Id.* However, the OCA proposes that PPL not procure 50 MW blocks in the procurements that are remaining in DSP I, contending that such an approach will better shape block purchases to the 20% target portion of default service load in the DSP II period. *Id.* at 16.

The OCA asserts that if the Commission agrees with PPL that block and spot market purchases should be eliminated, its other recommendations regarding PPL's DSP II (as discussed, *infra*) should still be adopted. *Id.* at 17. However, under such a

scenario, the OCA's proposed procurement percentages would be adjusted in order to accommodate the absence of the block and spot market procurements. *Id.*; Exhibit OCA-RSH-1-S.

PPL opposes the OCA's proposal because it would require the Company to actively manage its procurements, preparing forecasts of the quantity of power needed to match a projected load shape, and forecasting the prices and amount of spot supply that will be a fallout of the projected block shapes. PPL MB at 23. PPL asserts that it does not have employees with knowledge and experience to make judgments about what will be appropriate block loads. *Id.* at 24. PPL concludes that the OCA's proposal adds complexity to the procurement process, while its own proposal "supports simplicity as it moves to the ultimate end stage of default service procurement." *Id.*

The OCA also put forth a proposal to set aside a portion of the targeted full requirements contracts and not procure them until after the results of the Retail Opt-In Program are known. The OCA recommends that this be done in order to reduce the volumetric risk that wholesale suppliers may perceive relating to the possible loss of load should a significant number of default service customers decide to participate in the Retail Opt-In Program after the suppliers have finalized their prices. According to the OCA, suppliers would be compelled to raise their bid prices to account for this risk. OCA MB at 45-46. OCA witness Hahn further explained this proposal as follows:

After the Retail Opt-in Auction is held, the size of the default service tranches can be adjusted based upon how many Retail Opt-in Auction tranches are actually filled. This approach maintains the megawatts expected to be supplied by each default service supplier at the level in the original default service solicitation, but each supplier's percentage of load served changes. Any tranches not filled during the Retail Opt-in Auction program would be supplied by additional spot

purchases or by additional default service solicitations to be held after the conclusion of the Retail Opt-in Auction.

OCA St. No. 1 at 20.

PPL objects to the OCA's set-aside proposal, contending that it may increase the amount of supplies procured at spot prices, and thereby add to reconciliation adjustments that cause the PTC to vary from market price. PPL MB at 24. PPL also argues that this proposal would change the nature of the full-requirements, load-following contracts, such that the contracted percentage of load provided by a supplier would need to change to meet a target amount of load rather than a percentage of load. *Id.* at 24-25. PPL asserts that the OCA has offered no explanation of how a supplier's contract should be modified to accomplish this post-solicitation modification of transaction confirmations. *Id.* at 25.

FES recommends a Residential default supply mix of twelve-, fifteen-, eighteen-, twenty-one-, and twenty-four-month contracts, arguing that contracts between twelve and twenty-four months in length will provide greater price stability for customers than PPL's proposed mix. FES MB at 14. FES avers that such stable prices over a two-year period will reduce customer confusion while they evaluate offers from retail suppliers, and retail suppliers will be given a better defined default service product against which they can develop a wider variety of short- and long-term products that respond to customer needs and expectations. *Id.* at 14-15. Most of the contracts in FES's proposed product mix are designed to end on May 31, 2015, though FES notes that under its proposal, PPL will have less than 20% of its fixed-price, full-requirements supply still under contract beyond that date. *Id.* at 16. *See*, FES Ex. SLN-1. FES asserts that these contracts should be assignable in the event the Commission designates a new entity as

default service provider in the PPL service territory as part of the new end-state of default service. FES MB at 16.

PPL responds that FES's proposal would result in a product mix that is largely similar to that used in its DSP I program, and as such, cannot be expected to encourage further develop retail markets beyond the levels of shopping achieved under that program. PPL MB at 20. PPL concludes that FES's proposal is not sufficiently market-responsive, and is not consistent with the high level of supply in PPL's service territory. *Id.* at 21.

RESA proposes a portfolio mix of twelve-month and quarterly fixed-price full-requirements products, where the percentage of the portfolio made up of quarterly priced products increases over time. RESA MB at 18. RESA notes that under its proposal, the percentage of three-month products procured quarterly will be less than 23% of the total procurement for the Residential class in September of 2014, but will rise gradually to 100% by the end of the DSP II period. *Id.* at 20. RESA contends that this gradual movement toward short-term contracts procured quarterly is designed to make retail power prices more market-reflective, in conformance with the Commission's expressed desire in its Retail Market Investigation (RMI). *Id.* at 19-20, citing *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Statement of Chairman Robert F. Powelson, issued September 27, 2012.

With regard to PPL's proposal to eliminate spot market purchases, RESA states that it could support such a proposal only if it is combined with its own proposal to shorten an ever-increasing portion of the full requirements contract terms, and ensure that the procurement of supply occurs no more than sixty days prior to delivery. RESA MB at 20-21. However, RESA asserts that if its proposal is not adopted, PPL should be required to add, at a minimum, 10% spot market purchases into its portfolio. *Id.* at 21.

PPL responds that RESA's proposal would immediately expose residential customers to substantial rate swings and rate instability. PPL MB at 21. PPL argues that as a greater and greater portion of default service load is served by an unladdered product procured at a single point in time, there is an increased possibility that a solicitation will occur at a time of unusual market conditions. *Id.* With regard to RESA's proposal to add spot market purchases to its portfolio, PPL states that such a proposal will require it to make projections of spot prices and load for the upcoming PTC period. However, PPL contends that if spot market prices turn out to be different from its projections, this will result in the need for additional E-factor adjustments in subsequent PTCs, which can disconnect the PTC from relevant market prices as the PTC varies, either up or down, from underlying default service contract prices. *Id.* at 22.

DR/IGS supports the Company's procurement plan, arguing that the resulting rate stability will allow suppliers to make competitive offers to customers on a basis that is more relevant to the customer, since suppliers typically offer longer term fixed-price contracts in the range of one year or longer. DR/IGS MB at 11. DR/IGS also asserts that PPL's proposed elimination of block and spot purchases is essential to encouraging customers to feel safe about entering the competitive market. *Id.* at 12.

ii. ALJ's Recommendation

The ALJ recommends adoption of PPL's proposed procurement mix, finding it to be superior to those of the other Parties as it strikes an appropriate balance between being market reflective, and providing a level of price stability for default service customers. R.D. at 38. The ALJ rejects the OCA's position, finding persuasive the Company's argument that it is not in a position to actively manage its procurements. *Id.* at 32. The ALJ also rejects FES's proposal, agreeing with PPL that a product portfolio so similar to that of its DSP I would be unlikely to spur additional shopping. *Id.* at 34. Finally, the ALJ recommends that RESA's proposal to move to three-month full-

requirements products for residential customers, as well as its alternative proposal to include spot market purchases, be denied for the reasons expressed by the Company. *Id.* at 35.

iii. Exceptions and Replies

RESA states that the ALJ erred in rejecting its proposed modifications to PPL's procurement plan contract mix for Residential customers. RESA asserts that the ALJ appears to have erroneously focused on the issue of price stability as a reason for rejecting its proposal, and ignored the fact that its proposed modifications would lead to a more market-reflective default service rate which would foster the development of a competitive retail market, consistent with the Competition Act. RESA Exc. at 5. RESA contends that even if the goal of price stability should be considered, the proper way to achieve it is to develop a robust competitive retail market where any customer who wants a more stable, fixed price option can get it from any number of different suppliers. *Id.* at 5-6.

RESA argues that the Commission has already found in prior default service proceedings that the policy objective of price stability cannot be elevated above satisfying the legal requirement set forth in the Competition Act that default service plans must result in the least cost to customers over time. *Id.* at 5, citing *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042 (Opinion and Order entered May 24, 2012), and *FE DSP II Order* at 25. RESA also reiterates its position that its proposed gradual progression toward a portfolio of three-month contracts procured quarterly is consistent with the goals set forth in the Commission's RMI. RESA Exc. at 6.

In its Exception, FES avers that the ALJ's recommendations to approve PPL's supply portfolio for Residential customers are erroneous as a matter of law, and

contrary to the weight of the evidence. In contrast to RESA, FES contends that PPL's proposed supply mix focuses too much on market-reflectiveness and not enough on price stability. FES Exc. at 5. FES asserts that under its proposal, PPL would replace a percentage of its generation contracts every three months, but that percentage would never exceed 26.875%, while PPL's proposal would replace 39.375% of its generation contracts on December 1, 2014, and 49.375% of its contracts on June 1, 2014, thus increasing the likelihood of a significant price swing. *Id.* at 4. FES argues that the lengths of its proposed contracts are substantially similar to those in the Residential supply portfolio adopted by the Commission in *FE DSP II*. *Id.* at 4-5. FES also contends that the ALJ gave no weight to the evidence it provided that its proposed mix of contracts would promote shopping by providing a better defined product that will facilitate price comparisons of the default service product with competitive offerings. *Id.* at 5. Finally, FES asserts that its proposed mix of laddered short-term contracts will promote a smoother transition to the Commission's proposed end-state of default service than will PPL's proposed portfolio. *Id.* at 5-6.

The OCA notes that the ALJ did not accept its proposal to set aside a portion of the fixed-price, full-requirements tranches until after the enrollment period for the Retail Opt-In Program is completed. OCA Exc. at 3. The OCA states that it will not except to the ALJ's determination in this regard, but contends that in the absence of this proposed mechanism, its proposed 20% customer participation cap for the Opt-In Program should be adopted.⁴ *Id.* at 4.

In Reply, PPL notes the contrast between the RESA and FES proposals, and contends that neither proposal provides the appropriate balance between market reflectivity and price stability. PPL R.Exc. at 2-3. With regard to RESA's position that

⁴ The OCA's 20% customer participation cap for the Retail Opt-In Program will be addressed, *infra*.

market reflectivity should be given paramount importance, PPL asserts that the Commission has unequivocally rejected this interpretation of Act 129. As to FES's proposal, PPL argues that continuing two-year contracts will reduce market reflectivity of its default service rates. *Id.* at 3. With regard to both RESA's and FES's contentions that their proposals will better transition Residential customers to the Commission's proposed end-state for default service, PPL avers that it is premature to consider possible end-state designs in assessing the reasonableness of its proposed procurements, as statutory amendments may be necessary before the Commission's end-state proposal may be implemented. *Id.* Nevertheless, PPL argues that its own proposal represents a far better transition than either RESA's or FES's. *Id.* at 3-4.

In its Reply, the OCA avers that the ALJ properly rejected RESA's proposal, and properly recognized that rate stability is a key component of the Commission's default service regulations and the statutory framework of Act 129. OCA R.Exc. at 2. The OCA argues that in its Final Rulemaking Order implementing Act 129, the Commission rejected the premise that Act 129's "least cost over time" standard requires default service rates to approximate the market price of energy, or that achieving market-based rates should be achieved at the expense of price stability. *Id.* at 2-3, citing *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*) at 39-41. The OCA contends that RESA's proposal will introduce significant price volatility into Residential default service rates. OCA R.Exc. at 3. The OCA also asserts, as did PPL, that RESA's reliance on the Commission's end-state default service model in the RMI proceeding is misplaced, arguing that "[a]ny possible transition would require a myriad of issues to be addressed including proper method of implementing a transition." *Id.* at 4.

In its Reply, FES also argues that the Commission concluded in its *Act 129 Final Rulemaking Order* that price stability must be part of the determination of whether

a mix of supply contracts ensures the least cost over time. FES R.Exc. at 4-6. As to the issue of a proper transition to the Commission's end-state proposal for default service, FES contends that the Commission's end-state Tentative Order proposes to provide for substantial customer education prior to the introduction of quarterly pricing in June 2015, and that RESA's proposal to phase in market-responsive pricing before that date is premature. *Id.* at 6-7, citing *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Tentative Order entered November 8, 2012) (*RMI End State Tentative Order*).

In its Reply, DR/IGS also argues that a transition of to an end-state model at this time is premature, and urges rejection of RESA's proposal. DR/IGS R.Exc. at 3-4.

iv. Disposition

We agree with the ALJ that PPL's proposed portfolio mix strikes the most favorable balance between market reflectiveness and price stability, and we will adopt the Company's proposal. As we stated in our *Act 129 Final Rulemaking Order*, "... a default service plan that meets the 'least cost over time' standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both relatively stable and also economical relative to other options." *Act 129 Final Rulemaking Order* at 40. PPL's proposed elimination of twenty-four month full requirements, load following contracts in favor of contracts with terms of twelve months or less represents reasonable movement toward default service rates that are more market-reflective than those under DSP I, while still providing ample price stability for Residential default service customers.

While RESA's proposal may reflect, to some extent, our vision for Residential end-state default service as set forth in the *RMI End State Tentative Order*, we are concerned that this proposal attempts to realize that vision too quickly. As set

forth in our *RMI End State Tentative Order*, we have established June 1, 2015, as the proposed effective date for changes to the default service product offered by the EDCs. We proposed to issue guidelines prior to that date setting forth the components that should be included in the default service plans and addressing any other implementation issues that may arise from statutory changes and the Final Order issued in the RMI. *RMI End State Tentative Order* at 18. Thus, RESA's attempt to arrive at a product mix that would anticipate the Commission's intentions for end-state default service is premature, as FES contends. Conversely, we find that while the supply mix proposed by FES may ensure relatively stable default service rates, it may not best meet the "least cost over time" standard of Act 129.

We also find PPL's proposal to eliminate block energy purchases to be reasonable, given the increased level of Residential customer shopping in its service territory. Moreover, we find persuasive the Company's argument that the elimination of block products as well as spot market priced products will reduce the need for reconciliation adjustments due to variances between projected and actual prices and customer load. Also, we will not require PPL to include shaped blocks in its Residential supply portfolio as the OCA proposed, as we find no reason to question the Company's assertion that it does not have the personnel with the capability to actively manage its procurements to the degree necessary to fulfill this requirement.

Finally, we will reject the OCA's proposal to set aside a portion of the fixed-price, full-requirements tranches until after the enrollment period for the Retail Opt-In Program is completed. As PPL argued, the OCA offered no explanation of how a wholesale supplier's contract should be modified to account for the results of the Retail Opt-In Program.

Consistent with the foregoing discussion, we will deny the Exceptions of RESA and FES.

b. Procurement Schedule

i. Positions of the Parties

Under its DSP II, PPL is proposing to change from a quarterly procurement process to a semi-annual procurement process for its Residential Class. PPL states that it will purchase a series of laddered twelve- and nine-month fixed-price, full-requirements, load-following products semi-annually, resulting in a product mixture in which half of the Company's procurements turns over every six months. PPL MB at 14, 26. PPL states that through these semi-annual procurements, the twelve-month product will be solicited approximately one month prior to delivery, while the nine-month product will be procured approximately four months prior to delivery. PPL St. 2 at 16; PPL Exhibit JC-4A; PPL MB at 14. PPL asserts that semi-annual procurements will allow it to obtain a relatively larger percentage of supply for shorter durations than under the DSP I Program, and will produce savings in procurement costs. PPL St. 1-R at 10; MB at 26; PPL RB at 16.

The OCA asserts that quarterly solicitations for full requirements and block products should continue. The OCA argues that such quarterly solicitations will result in staggered procurements of approximately 25% of default service load at any one time, allowing the price of the total supply portfolio to better track current market trends while still maintaining a reasonable level of price stability. OCA St. No. 1 at 12; MB at 19. The OCA opines that PPL will already need to hold eight solicitations of full requirements contracts over the two-year term of DSP II because existing contracts from DSP I expire quarterly until February 2015, and PPL will therefore still need to use quarterly solicitations throughout DSP II to adjust to contracts from DSP I that are phasing out. OCA MB at 19. Thus, the OCA concludes that PPL's proposal to use semi-annual solicitations will not be achieved until very late in DSP II, and will not reach a

steady-state series of semi-annual procurements until the default service plan that follows DSP II is implemented. *Id.*

PPL responds that OCA is mistaken in its belief that the Company must undertake quarterly solicitations as a result of the expiration of contracts under DSP I. PPL points out that it proposes to undertake simultaneous procurements for its twelve-month and nine-month contracts, and thus will only need to implement semi-annual procurements.

RESA also proposes the use of quarterly procurements in PPL's DSP II, arguing that such a procurement schedule will result in default service rates that more accurately reflect the underlying wholesale cost of electricity, and will enable customers to reap the benefits of a more competitive market. RESA MB at 24. In support of this argument, RESA points to the experience of Maryland utilities, who have conducted quarterly procurements since 2006, and for whom shopping has improved and remained at a consistently high level. *Id.* at 24-25. RESA avers that more market reflective default service pricing will eliminate the "boom-bust" cycles that naturally occur when default service prices are set for long periods of time. *Id.* at 26.

In response to concerns that more frequent procurements will be more costly to PPL's default service customers, RESA argues that such cost increases would be manageable, and would be balanced by significant benefits for customers. *Id.* at 26. RESA opines that the more robust and sustainable competitive retail market that would result from its proposal, as well as the lower overall prices that would be achieved over time, represent a fair trade-off for any added costs that PPL claims would be incurred by implementing quarterly procurements. *Id.* at 27.

In addition to recommending quarterly procurements, RESA also proposes a plan that provides for lead times of no more than two months for each procurement. *Id.*

RESA contends that two-month lead times would allow PPL seven to ten business days to calculate its new PTC, and would provide EGSs forty-five days to adjust to the new PTC. *Id.* In any event, RESA asserts that PPL's proposed lead times of up to four months should be shortened so that no procurement is conducted more than sixty days prior to delivery of any products. *Id.*

FES supports PPL's proposal to move to semi-annual procurements for its Residential customers, and opposes the OCA's and RESA's recommendations that PPL conduct quarterly procurements. FES MB at 24-25; RB at 11. FES agrees with the Company that quarterly procurements would be more costly, and disagrees with RESA that the extra costs are manageable and represent a fair trade-off. FES MB at 25; RB at 11. FES also opposes RESA's proposal that PPL's lead time for each procurement be no more than two months, arguing that RESA has provided no evidence to suggest that this change would result in any material change in default service prices. FES MB at 25.

ii. ALJ's Recommendation

The ALJ finds PPL's proposal to be reasonable, and recommends its adoption, stating that that semi-annual procurements will simplify and lessen the cost of default service procurements. R.D. at 41.

iii. Exceptions and Replies

RESA asserts that the ALJ erred in recommending approval of PPL's semi-annual procurement schedule. RESA argues that PPL already utilizes four procurements per year, and that there is no reason to lessen that number of procurements, which will lead to less market-reflective default service rates. RESA Exc. at 9. RESA reiterates its argument that quarterly procurements will lead to a more competitive market, and asserts that they are consistent with the Commission's vision for end-state default service. *Id.*

at 9-10. RESA also restates its contention that any cost increases resulting from quarterly procurements would be manageable, and would be balanced by significant benefits for customers. *Id.* at 10.

In Reply, PPL disagrees with RESA's contention that lessening the number of procurements would lead to less market-reflective rates. As PPL explains:

With the amount of laddering that occurs with four solicitations per year, default service prices under the DSP I Program change more slowly over time, and thus may be less market responsive than initially anticipated. In addition, with the success of shopping and continuation of long-term block supplies, four solicitations per year will result in tranche sizes that serve very small amounts of actual load, which can discourage wholesale bidder interest.

PPL R.Exc. at 5-6.

As for RESA's contention that a reduction in the number of procurements would result in only small cost savings, PPL asserts that as its default service customer base declines due to shopping increases under the Company's market enhancement proposals, the cost benefits resulting from a reduction in the number of procurements would be magnified. *Id.* at 6.

iv. Disposition

We agree with the ALJ that PPL's proposed semi-annual procurement schedule for its Residential default service customers is reasonable, and we will adopt the recommendation to approve it. We note that while the Company will procure default service supply twice a year under its proposal, the contracts will be laddered and of varying duration (mainly nine and twelve months, as discussed, *supra*), ensuring that new products will be added to the mix on a quarterly basis. *See*, PPL Ex. JC-4A. This should

allow default service prices to reasonably track current market trends while ensuring adequate rate stability. With additional shopping and the continuation of the Company's long-term block supplies, four solicitations per year may result in tranche sizes that serve smaller amounts of load, which may discourage wholesale supplier interest, as PPL contends. Moreover, we agree with the Company that semi-annual procurements would be less costly than quarterly procurements.

Additionally, we decline to adopt RESA's proposal that lead times for PPL's default service supply procurements be no longer than two months. We note that in the *FE DSP II Order*, we allowed the EDCs to determine the appropriate timing for their default service procurements, directing only that no procurements be made more than five months prior to the time the EDCs were scheduled to first provide service under those procurements. *FE DSP II Order* at 26. Under PPL's DSP II, the Company proposes lead times of approximately one month for its twelve-month product, and four months for its nine-month product. We find these lead times to be reasonable.

Accordingly, RESA's Exceptions on this issue are denied.

c. Wholesale Supplier Load Cap

i. Positions of the Parties

Under its currently effective DSP I, PPL has two types of load caps in place that limit the amount of supply that may be won by any wholesale supplier. First, there is a solicitation load cap of 85%—applicable to Residential, Small C&I, and Large C&I Classes—that prevents an individual bidder from winning more than 85% of a customer class's default service load offered in each solicitation. In addition, there is an aggregate load cap of 70%—applicable to wholesale suppliers providing supply to the Residential Class—under which the Company (through its independent procurement manager NERA) must monitor and disallow bids if a single supplier provides more than 70% of

the aggregate load of the class. PPL MB at 28. PPL states that in its experience, supplier diversity has not been a problem, there being twenty-two different suppliers providing products to meet the Company's default service requirements. As a result, PPL is proposing to remove this separate aggregate load cap in its DSP II. *Id.*

The OCA recommends that the aggregate supplier load cap be retained, but that it be reduced to 50%. The OCA argues that eliminating the aggregate load cap and retaining only the 85% solicitation load cap could result in one supplier serving 85% of the Residential default service load, which the OCA submits is too high. The OCA contends that such an 85% limit would increase the impact of a supplier bankruptcy or financial default. OCA MB at 20. The OCA asserts that lowering the aggregate load cap to 50% will allow for as few as two default service suppliers to win residential load, but would still limit the impacts of a bankruptcy or financial default. *Id.*

Citing publicly available purchased power data for PPL for calendar year 2011 as set forth in PPL's FERC Form 1 Report, the OCA notes that the single largest supplier of default service supply provided 26% of the energy at 23% of the cost. The OCA further notes that the share of all other PPL default service suppliers was at or below 20%. Thus, the OCA concludes that its proposal to lower the supplier load cap to 50% will not adversely impact PPL's default service customers, but will provide the benefit of protection should the supplier default. *Id.* at 20-21.

RESA also supports lowering the aggregate supplier load cap to 50%. Similar to the OCA, RESA argues that greater supplier diversity will protect default service customers by mitigating the impact on default service rates should any single wholesale supplier not be able to meet its contractual wholesale supply obligations. RESA MB at 28-29. RESA also asserts that this recommendation is consistent with the Commission's decisions in the FirstEnergy and PECO Energy Company DSP proceedings, wherein the Commission adopted RESA's 50% load cap proposal based on

the conclusion that ensuring supplier diversity will result in the lowest supply prices over the long run. *Id.* at 29; *See, FE DSP II Order* at 33-34; *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (*PECO DSP II*) (Opinion and Order entered October 12, 2012) (*PECO DSP II Order*) at 40-41.

PPL responds to contentions that a reduced load cap is needed to provide protection against supplier default by noting that the Company has strong security provisions in place under the terms of the Supply Master Agreement (SMA). PPL MB at 29. PPL contends that implementing lower load caps as the OCA and RESA recommend would increase default service rates if an otherwise successful low bid would be disallowed because a supplier exceeded the applicable load cap. *Id.*

FES states that it is opposed to any kind of load cap, and strongly opposes OCA's and RESA's proposal to reduce the aggregate supplier load cap to 50%. FES MB at 26. FES contends that load caps limit supplier competition, and that the lower the load cap, the higher the likelihood that the cap will increase the total price customers will pay for default service. *Id.* FES states that although the Commission adopted a 50% load cap in *FE DSP II*, that load cap "was based on a perceived situation specific to [the four FirstEnergy] EDCs, and it would not be correct to apply the same basis for a decision here." *Id.* at 27.

With regard to the OCA's conclusions based on the data in PPL's FERC Form 1 Report, FES contends that these data do not specifically relate to any particular customer class or product, and they represent annual numbers that do not reflect the amount of load served by a supplier in any given month or procurement. *Id.* at 28. Moreover, FES argues that if the data presented by the OCA does, in fact, relate to PPL's default service supply procurements, it demonstrates the PPL already has a high degree of supplier diversity, and that no additional load cap is necessary. *Id.* FES also agrees with

PPL that an aggregate load cap is not necessary to protect against supplier default because the Company already has in place numerous protections against such situations. *Id.* at 28-30.

ii. ALJ's Recommendation

The ALJ recommends adoption of PPL's proposal to eliminate the 70% aggregate supplier load cap. The ALJ dismisses the OCA's and RESA's positions that the load cap should be reduced to 50%, citing PPL's argument that such a reduction may increase default service rates if an otherwise successful low bid would be disallowed because a supplier exceeded the applicable load cap. R.D. at 43. The ALJ found that in light of the strong security provisions that PPL has in effect, OCA's and RESA's proposals should be rejected. *Id.*

iii. Exceptions and Replies

In its Exception, RESA avers that the ALJ's recommendation is inconsistent with the Commission's decisions in *FE DSP II* and *PECO DSP II*, wherein the Commission adopted a 50% supplier load cap. RESA asserts that the record in this proceeding does not support a deviation from these determinations. RESA Exc. at 11. RESA also argues that PPL's assertion that a lower load cap may discourage supplier participation was refuted on the record, citing testimony by its expert witness that New Jersey has achieved competitive results in its default supply procurements with a load cap of 33 1/3%. *Id.*

In its Reply, PPL contends that a lower load cap is not needed for its default service procurements, noting again that there are twenty-two different suppliers providing products to meet its default service requirements. PPL R.Exc. at 6. PPL also asserts that RESA's claim regarding the Company's belief that a lower load cap would discourage

supplier participation was a misstatement of the Company's position. PPL explains that its contention was that a lower load cap could disqualify a lower priced bid that exceeded the load cap, resulting in an increase to default service costs. *Id.*

In its Reply, FES avers that the ALJ correctly concluded that a healthy level of supplier diversity in PPL's default service procurements makes an aggregate load cap unnecessary. FES R.Exc. at 8. FES submits that the load cap determinations in *FE DSP II* and *PECO DSP II* should be limited to those cases, and that the Commission should consider the individual facts and circumstances in each case. *Id.* at 9. Moreover, FES asserts that the Commission's conclusion in *FE DSP II* is inconsistent with its prior recognition that increasing supplier diversity through a reduced load cap "would necessarily increase the total average cost to serve default load." *Id.* at 9-10, citing *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Opinion and Order entered November 6, 2009) at 18. FES argues that the record evidence in this case, including the data presented by the OCA from the Company's 2011 FERC Form 1, demonstrates a high degree of supplier diversity in PPL's procurements, and there is thus no need for a reduced load cap. FES R.Exc. at 9.

iv. Disposition

After consideration of the evidence of record on this issue, we will direct that PPL's aggregate wholesale supplier load cap be reduced to 50%. As we determined in *FE DSP II* and *PECO DSP II*, a lower load cap will ensure a healthy level of supplier diversity, which in turn will promote a robust competitive retail energy market, and will result in the lowest supply prices in the long run. PPL and FES appear to suggest that the degree of supplier diversity achieved under DSP I supports a finding that an aggregate load cap is no longer necessary. We disagree. Rather, the evidence suggests that the existence of a load cap encourages greater supplier participation in the Company's

default service solicitations, and that the elimination of the load cap would likely produce the opposite result of reducing the number of wholesale suppliers that would have an opportunity to win some share of PPL's default service load. For these reasons we will reverse the ALJ's recommendation and grant RESA's Exception.

2. Small C&I - Fixed Rate

a. Product Mixture and Procurement

i. Positions of the Parties

PPL's current DSP I procurement for the Small C&I class is a mixture of 90% fixed-price, full-requirements, load-following supply procured under one-year and two-year contracts, and 10% spot market priced, full-requirements, load-following supply. Under DSP II, PPL is seeking to eliminate the spot market and two-year term full requirements contracts for this class. PPL MB at 30. PPL will, instead, procure a fixed percentage of its default service load on a semi-annual basis through twelve- and nine-month contracts.⁵ PPL St. 1 at 6-7. PPL Ex. JC-4B. PPL states that it considers the procurement of a laddered full-requirements product with a one-year term to be an appropriate approach for this class as a transition from the current mix of spot, one-year and two-year contracts. PPL MB at 30. PPL asserts that as of August 8, 2012, nearly 50% of Small C&I customers representing over 88% of its load were shopping, and that the remaining Small C&I customers taking default service tend to be smaller customers. Thus, PPL concludes that the reasons supporting the elimination of spot and two-year

⁵ As discussed *infra*, PPL is proposing that its October 2014 procurement obtain default supply through six- and three-month contracts rather than twelve- and nine-month contracts so that no fixed-price load-following contracts would extend beyond May 31, 2015.

term contracts for its Residential customers are applicable to the Small C&I class as well. *Id.* at 30-31.

The OSBA supports the PPL's product mix for its Small C&I customers, and agrees that the elimination of spot market purchases would lessen the problems associated with the reconciliation mechanism. OSBA MB at 6. The OSBA contends that PPL's proposed mix is consistent with the Commission's policy statement set forth at 52 Pa. Code § 69.1805(2) regarding customers with maximum demand between 25 and 500 kW, which states that "[f]ixed term contracts may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices." *Id.* at 6-7, quoting 52 Pa. Code § 69.1805(2).

FES supports PPL's procurement of default supply for Small C&I customers through fixed-price, load-following contracts, but disagrees with the lengths of those contracts proposed by the Company. FES MB at 31. As it proposed with regard to the Residential class, and for the same reasons, FES recommends a portfolio of twelve-, fifteen-, eighteen-, twenty-one-, and twenty-four-month contracts. *Id.* FES also avers that, similar to its recommended mix of contracts for Residential customers, its proposal for the Small C&I customers will limit the existence of short-term energy contracts extending past May 31, 2015, noting that PPL will have less than 20% of fixed-price, full-requirements default supply under contract under that date under its proposal. *Id.* at 31-32.

RESA recommends that PPL be directed to modify its proposed portfolio to procure 100% fixed-price, full-requirements three-month contracts each quarter. RESA MB at 31. As with its recommendation for the Residential class, RESA proposes that the proportion of three-month contracts for the Small C&I class be gradually increased so that default service rates will more closely reflect market prices for this class. *Id.* at 32. RESA states that under its proposal, the percentage of three-month products procured

quarterly will be less than 27% of the total procurement for the Small C&I class in June of 2013, but will rise gradually to 100% by the end of the DSP II period.

In response, PPL asserts that RESA has offered no reason for eliminating contract laddering at this time, which is a natural byproduct of its procurement proposal. PPL MB at 32. PPL avers that the Commission is well aware that there are risks inherent in any procurement plan that does not ladder procurement, citing *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205, 2006 Pa. PUC LEXIS 3; 249 P.U.R.4th 327 (Apr. 20, 2006) (*April 2006 Direct Energy Order*). *Id.* at 32-33. According to PPL, such risks include the possibility of an unusual event causing extreme price spikes, and the potential for substantial uncovered load in the event of a procurement failure. *Id.* at 33.

DR/IGS supports PPL's proposed procurement plan for the Small C&I class, for the same reasons it supports the Company's procurement plan for its Residential class. DR/IGS MB at 11-12.

ii. ALJ's Recommendation

For the reasons offered by PPL, the ALJ found the Company's position to be reasonable, and recommended approval of its proposal to eliminate spot market and two-year full requirements contracts in favor of twelve- and nine-month contracts procured on a semi-annual basis for the Small C&I customer class. R.D. at 46.

iii. Exceptions and Replies

In its Exception, RESA states that the ALJ erred in rejecting its proposed modifications to PPL's procurement mix for the Small C&I customers. RESA Exc. at 7.

As it argued with regard to default service procurement for the Residential class, RESA asserts that the policy objective of price stability cannot be elevated above satisfying the legal requirements of the Competition Act. RESA submits that the ALJ did not address the fact that its proposal would lead to more market-reflective default service rates which would encourage a more robust competitive retail market consistent with the requirements of the Competition Act. *Id.* at 7-8. RESA also argues once more that its proposed quarterly procurement schedule is consistent with the Commission's pronouncements in the *RMI End State Tentative Order*. *Id.* at 8. RESA also asserts that there is no evidence that its proposal would expose customers to price spikes. *Id.* at 8-9.

FES takes exception to the ALJ's recommendation to approve PPL's proposed procurement plan and to reject its own proposal. FES contends that is recommended mix of twelve-, fifteen-, eighteen- twenty-one-, and twenty-four-month contracts will result in more market-reflective rates than those under PPL's DSP I, but also greater price stability than PPL's proposal. FES Exc. at 7. FES states that its proposed mix of contracts includes more laddering than PPL's and asserts that while both PPL's and its own proposal will replace a percentage of the Company's generation every three months, FES's proposal would not require PPL to replace percentages approaching half its generation as would the Company's. *Id.* at 8.

FES also objects to the ALJ's apparent agreement with the Company that FES's proposal reflects no change from PPL's DSP I procurement plan, and that FES offered no evidence to support a conclusion that the continuation of that plan would provide any further encouragement for shopping. FES sees an inconsistency between the ALJ's conclusion in this regard, and her recommendation that Small C&I customers be excluded from the Company's retail market enhancement programs (discussed, *infra*) on the grounds that the market for these customers is already robust. *Id.*

In Reply, PPL notes that RESA and FES take diametrically opposed positions with regard to default service procurement for the Small C&I class, as they did for the Residential class. PPL asserts that RESA's and FES's Exceptions should be denied for the reasons it already stated regarding their positions for Residential procurement. PPL R.Exc. at 4. In addition, PPL disputes FES's argument that continuing with longer term contracts for the C&I class will further encourage the robust shopping that resulted under DSP I. PPL contends that FES's proposal under DSP II will lengthen the net term of PPL's contracts by eliminating spot contracts and including a higher percentage of contracts with terms longer than twelve months. PPL believes its own proposed shorter contracts will provide the right balance of market reflectivity and price stability to encourage more Small C&I customers to shop. *Id.* PPL also takes issue with RESA's assertion that unladdered three-month contracts will not expose customers to price spikes, arguing again that the Commission has recognized the increased risk of an unusual event causing a substantial price change absent laddered procurements. *Id.* at 5, citing *April 2006 Direct Energy Order*.

In its Reply, FES asserts that RESA's proposed mix of contracts for Small C&I customers will not meet the requirements of Act 129. FES contends that by focusing on the need for a market-reflective rate, RESA ignores the fact that price stability is a part of Act 129's "least cost over time" analysis. FES R.Exc. at 7. FES also disputes RESA's claim that shopping increases in circumstances where more market-reflective rates exist, asserting that there is no evidence for this claim. *Id.* Additionally, FES disagrees with RESA that Act 129 is satisfied when price stability is obtained only through EGS offerings, and not through stable default service rates. *Id.* at 8.

With regard to RESA's contention that its proposed gradual movement toward exclusive reliance on three-month contracts is consistent with Commission's pronouncements in the *RMI End State Tentative Order*, FES argues once again that RESA ignores the need to first prepare customers for potentially significant rate shifts

every three months through the *RMI End State Tentative Order*'s proposed customer education program. *Id.* FES also contends that RESA's dismissal of any concerns regarding rate volatility under RESA's proposal evidences insufficient attention to the challenges presented in transitioning to the desired end state of default service. According to FES, this transition must be made more responsibly than RESA recommends. *Id.*

iv. Disposition

We will adopt the ALJ's recommendation to approve PPL's proposed elimination of spot market and two-year contracts in favor of twelve- and nine-month laddered full requirements products for the Small C&I class. We note that the Parties' positions regarding this issue are consistent with their positions on the parallel issue of the Residential class supply mix, and our reasons for approving the Company's proposal are likewise similar to those set forth with respect to that issue. Specifically, we find that PPL's proposed portfolio mix for Small C&I customers strikes the most favorable balance between market reflectiveness and price stability. As we stated, *supra*, while RESA's proposed quarterly-procured three-month contracts may reflect the Commission's vision for Residential end-state default service as set forth in the *RMI End State Tentative Order*, our concern is that this proposal attempts to realize this vision prematurely, as FES argues. Conversely, FES's proposal would appear to move too slowly toward establishing shorter-term contracts that would result in more market-reflective rates. In our view, PPL's proposal will best meet Act 129's "least cost over time" standard without injecting undue volatility into Small C&I customers' default service rates. Consistent with the foregoing discussion, we will deny the Exceptions of RESA and FES.

b. Wholesale Supplier Load Cap

i. Positions of the Parties

As is the case with respect to PPL's Residential class procurement under DSP I, there is a procurement load cap of 85% for Small C&I procurements. In addition, the Company imposes an aggregate supplier load cap of 65% for this class. Under DSP II, PPL is proposing to eliminate the aggregate supplier load cap for Small C&I customers, but retain the procurement load cap of 85%. PPL MB at 34.

No party has objected to PPL's elimination of the aggregate supplier load cap for the Small C&I class. However, RESA points out that more than 88% of the Small C&I load, and almost half of the Small C&I customers are currently shopping, and asserts that if such statistics should reverse in the future, the Commission should consider imposing a wholesale supplier load cap to ensure supplier diversity. RESA MB at 34.

ii. ALJ's Recommendation

The ALJ recommended that the Company's proposal to eliminate the aggregate load cap for the Small C&I class should be adopted. R.D. at 47.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

Consistent with our decision on this issue with regard to the Residential procurement class, we will direct that PPL's aggregate wholesale supplier load cap for Small C&I procurements be reduced to 50%, rather than eliminated as the Company proposes. As with the Residential class, we are concerned that the elimination of the load

cap for Small C&I procurements would have the effect of reducing the number of wholesale suppliers that would have an opportunity to win some share of PPL's default service load. As noted, *supra*, we believe that a lower load cap will ensure a healthy level of supplier diversity, which in turn will promote a robust competitive retail energy market, and should result in the lowest supply prices in the long run. For these reasons we will reverse the ALJ's recommendation on this issue.

3. Large C&I – Real-Time Hourly Rate

a. Product Mixture

i. Positions of the Parties

Under its DSP II, PPL is proposing to continue acquiring default supply for the Large C&I class via the spot market, as it currently does under DSP I. Specifically, the Company states that it will purchase one-year term products obtained from wholesale suppliers through competitive procurements, in which each winning supplier will be paid the hourly real-time spot market energy price for the PPL Zone, PJM's capacity charge for the PPL Zone, and the price the supplier bids to cover all other components of the full-requirements, load-following service. PPL MB at 34-35. PPL asserts that the vast majority of its Large C&I customers are purchasing power supplies from competitive retail suppliers, and can be expected to continue to do so. PPL concludes that continuing the spot market offering for these larger customers provides a flexible default service that is reasonably priced and available whenever a customer must rely on default service supply, and is an appropriate product for supporting the development of a retail competitive market in Pennsylvania for these large customers. *Id.* at 35.

No party objects to PPL's proposed product mix for the Large C&I customer class.

ii. ALJ's Recommendation

As PPL's proposal is unopposed, the ALJ recommends that it be approved.
R.D. at 48.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We will adopt the ALJ's recommendation on this issue.

b. Procurement Schedule

i. Positions of the Parties

For the Large C&I class, PPL is proposing to issue a single annual solicitation, wherein the Company will request competitive offers from suppliers to provide Default Service spot market supply. The first solicitation is proposed to take place in April 2013 and the second in April 2014, for the subsequent PJM planning period beginning June 1, 2013 and June 1, 2014, respectively. PPL MB at 35.

No party objects to PPL's procurement schedule for the Large C&I customer class.

ii. ALJ's Recommendation

As no party has objected to PPL's proposed procurement schedule for its Large C&I customers, the ALJ recommends that it be approved. R.D. at 48.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We will adopt the ALJ's recommendation on this issue.

c. Wholesale Supplier Load Cap

i. Positions of the Parties

Under DSP II, PPL proposes to maintain the solicitation load cap of 85% for Large C&I customers that exists under DSP I. There is no separate aggregate load cap for this Class, as all procurements for the year are undertaken at the same time. PPL MB at 36.

No party objects to PPL's proposal to maintain the 85% solicitation load cap for the Large C&I customer class.

ii. ALJ's Recommendation

As no party objects to the Company's proposal, the ALJ recommends that it be approved. R.D. at 48.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We will adopt the ALJ's recommendation on this issue.

4. Contract Terms Beyond May 31, 2015

a. Positions of the Parties

PPL states that the one exception to the procurement schedule proposed for its Residential and Small C&I Classes is that the October 2014 procurement will obtain supplies under six- and three-month fixed-price, full-requirements, load-following contracts rather than under the twelve- and nine-month contracts proposed for prior procurements. PPL is proposing the shorter contracts for this procurement so that no fixed-price load-following contracts would extend beyond May 31, 2015. PPL MB at 14, 36. PPL avers that these short-term contracts, which will replace the last of the expiring DSP I contracts and expiring one-year term contracts under DSP II, will permit all contracts for supply—other than the 150 MW of long term five- and ten-year block supplies for residential customers—to expire as of May 31, 2015.⁶ *Id.* at 36. PPL states that this proposal is designed to comply with the Commission's recommendation that default service suppliers minimize the amount of supply under contract after May 31, 2015, as set forth in the *December 16 Upcoming DSP Order*. PPL MB at 14, 36-37; *See December 16 Upcoming DSP Order* at 19. PPL argues that if substantial amounts of default service load are tied up in contracts that extend beyond May 31, 2015, this will delay the Commission's implementation of its end-state structure. PPL MB at 37.

⁶ PPL notes that its Large C&I real time hourly rate contracts are one-year term contracts which would expire on May 31, 2015, and therefore there is no issue regarding extension of these terms beyond May 31, 2015. PPL MB at 36, Footnote 42.

PPL has also included a provision that would allow it to extend the term of these final DSP II procurements by an additional six months, should the Commission determine that the Company will continue its role as default service provider beyond May 31, 2015, and if the Commission's end-state structure supports contracts layered for a term beyond that date. PPL St. 2 at 16; PPL MB at 14, 37. PPL states that it anticipates the Commission's end-state decision will be made well in advance of the renewal date of these contracts, but that if such a decision has not been made, the Company will need to submit a new default service plan well in advance of May 31, 2015. PPL MB at 37.

As noted *supra*, PPL has two block contracts of 50 MW each with five-year terms ending December 31, 2015, and one 50 MW unit-specific product with a ten-year term ending May 31, 2021. PPL asserts that if it does not continue in the role of default service provider after May 31, 2015, appropriate provision must be made for it to recover the costs associated with contracts extending beyond May 31, 2015, along with the costs of any associated Alternative Energy Credits (AECs). Therefore, PPL requests that the Commission confirm that if these contracts do not continue to be used to provide default service for its Residential customers, the Company will be made whole for the cost of supplies that it must purchase under these contracts. PPL MB at 37-38.

The OCA opposes PPL's proposal to end all supply contracts on May 31, 2015, contending that such a "hard stop" would expose default service customers to possible dramatic price increases depending on market conditions at that time. OCA MB at 22. The OCA argues that if DSP II contracts do end on that date, either the Company or a replacement default service provider will need to purchase a large amount of default supply on a given date for delivery at the start of the next default service period, or in the alternative, commence buying tranches as much as a year in advance. OCA St. No. 1 at 13; OCA MB at 22. The OCA asserts that although market conditions are currently favorable, they may not be at the time of PPL's next default service filing. OCA MB at 22. The OCA argues that the *December 16 Upcoming DSP Order* allows for flexibility

in contract lengths, and that PPL should therefore be permitted to continue the implementation of a layering and laddering procurement strategy with contract terminations that overhang into the next default service period. OCA MB at 23; OCA St. No. 1 at 14.

The OSBA also recommends that the Commission allow PPL the flexibility to extend default service contracts beyond May 31, 2015. OSBA MB at 10. Specifically, the OSBA proposes that PPL be allowed to extend its last two Small C&I procurements to nine and twelve-month procurements instead of the Company's proposed three- and six-month procurements, in order to retain the rate stability advantages of contract laddering. OSBA St. 1 at 10; OSBA MB at 10.

RESA does not object to PPL's proposal to end all supply contracts on May 31, 2015, noting that the term of its own proposed twelve-month and quarterly contracts would also end on that date. RESA MB at 35. RESA opposes the use of any default service contracts, regardless of the term, that extend beyond the term of the Company's DSP II, contending that such a recommendations "runs counter to the clear objective outlined by the Commission in its [*December 16 Upcoming DSP Order*] and reaffirmed in the *FE DSP II Order*". *Id.* at 36-37. RESA asserts that if the Commission determines that the default service plans that are in effect on June 1, 2015 should continue for some period beyond that date, then all non-block default supply could be procured on a quarterly fixed-price full-requirements basis going forward. *Id.* at 36.

As noted, *supra*, FES proposed a mix of contracts that are generally designed to end on May 31, 2015, with less than 20% of its proposed fixed-price, full-requirements supply still under contract beyond that date. FES asserts that those contracts extending beyond May 31, 2015 should be assignable, in the event the Commission designates a new entity as default service provider in PPL's service territory as part of the new end-state of default service. FES MB at 36.

b. ALJ's Recommendation

The ALJ recommends approval of PPL's proposal to end all fixed-price load-following contracts by May 31, 2015, and to include a provision allowing it to extend the term of its final DSP II procurements by an additional six months should the Commission determine that the Company will continue its role as default service provider beyond May 31, 2015, and if the Commission's end-state structure supports contracts layered for a term beyond that date. The ALJ found that this proposal provides a modicum of protection for default service customers against possible price spikes, and that it will not pose any threat to the existence or development of a competitive market. R.D. at 51.

c. Exceptions and Replies

The OCA avers that the ALJ erred in adopting PPL's proposal to end all supply contracts on May 31, 2015, arguing that this proposal exposes Residential customers to potential dramatic price changes on June 1, 2015. OCA Exc. at 4-5. The OCA repeats its contention that although market conditions are currently favorable, they may not be at the time of PPL's next default service filing, thus exposing customers to dramatic price increases if purchases of 100% of default supply must become effective at one time.

The OCA also questions the feasibility and efficacy of PPL's proposal to modify its default service plan to extend the term of its later procurements if it remains the default service provider beyond DSP II. The OCA argues that under such a scenario, PPL would still be in the position of having to replace 100% of its supply over a relatively short period of time, and only after the filing and approval of a new plan. *Id.* at 5. The OCA asserts that in *PECO DSP II*, the Commission approved PECO's plan to

include some procurements that extended beyond May 31, 2015 to allow for a smooth transition between default service periods. *Id.* at 5-6, citing *PECO DSP II Order* at 31. The OCA “submits that its recommendation to include a limited number of contracts that overhang May 31, 2015 should be adopted to provide the proper layering and laddering of supply and to avoid the potential for price spikes and volatility between default service periods.” *Id.* at 6.

In Reply, PPL asserts that its proposed option to extend the term of its final procurement beyond May 31, 2015, adequately addresses the OCA’s concerns regarding the Company’s proposal to end all supply contracts on that date. PPL notes that its final procurement will obtain about 45% of its requirements for terms of six and three months, ending on May 31, 2015. PPL argues that there is sufficient time in 2014 to modify those contracts for a longer term if desired. PPL expresses its belief that this proposal is consistent with the Commission’s decision as set forth in the *PECO DSP II Order* cited by the OCA, wherein the Commission concluded that the terms of scheduled procurements in 2014 could be modified to accommodate any end-state decision. PPL R.Exc. at 7.

d. Disposition

We will adopt the recommendation of the ALJ to approve PPL’s proposal to end all fixed-price load-following contracts by May 31, 2015. This proposal is consistent with the Commission’s recommendation in the *December 16 Upcoming DSP Order* that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period. *December 16 Upcoming DSP Order* at 19. While we agree with the OCA and OSBA that the *December 16 Upcoming DSP Order* also allows EDCs to retain flexibility to determine contract lengths, we find that PPL has exercised that flexibility in proposing to shorten the duration of its final procurements to prevent them from extending beyond the

end of DSP II, while adding a provision that will allow these contracts to be extended if required to accommodate the Commission’s decision regarding the end-state of default service. Thus, we see no reason for concern regarding the possible negative effects of a “hard stop,” as there should be sufficient time in 2014 to revise the Company’s default service contracts as necessary.

As to PPL’s concern regarding its block contracts that extend beyond May 31, 2015, we confirm that appropriate provision will be made for the Company to recover its costs relating to these contracts, should it be determined that PPL will not continue in the role of default service provider after that date.

In accordance with the foregoing discussion, we will deny the OCA’s Exception.

5. Alternative Energy Portfolio Standards Issues⁷

a. AEPS Procurement

i. Positions of the Parties

The Alternative Energy Portfolio Standards (AEPS) Act requires that EDCs and EGSs obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. 73 P.S. §§ 1648.1—1648.8; 52 Pa. Code § 75.61. Thus, PPL is proposing to procure certain AECs to meet its obligation under the

⁷ In addition to the two issues addressed in this subsection, a third issue was raised relating to a proposal by Constellation that PPL revise the SMA to permit a supplier to remedy any failure to provide the full amount of its required alternative energy credits obligation by paying to the Company the Alternative Compliance Payment set forth in the AEPS Act for the full amount of such shortfall. Constellation St. No. 1 at 35-36. However, the Joint Suppliers have withdrawn this proposal in their Main Brief, and it is no longer an issue. Joint Suppliers MB at 10-11.

AEPS Act as a component of its fixed-price and spot-market default service supply contracts as it currently does under DSP I. PPL MB at 38. Under the terms of PPL's SMA, each wholesale supplier must provide its proportional share of actual AECs to fulfill the Company's AEPS obligation. Additionally, the SMA requires the supplier to complete its transfer of AECs into PPL's Generation Attribute Tracking System (GATS) account(s) in the amount necessary to fulfill the supplier's AEPS obligation, with monthly delivery of AECs pursuant to a schedule set forth in the SMA. *Id.*

PPL explains that it has separately entered into contracts to procure AECs for certain of its Residential block contracts, but must acquire additional AECs to cover a 50 MW obligation for the period from June 1, 2013 through May 31, 2015, for the ten-year long-term product obligation during the DSP II Program period. Thus, PPL is proposing to solicit at least three pricing offers from AEC brokers in both June of 2013 and June of 2014 for Tier I non-solar and Tier II credits required to cover this long-term contract obligation. *Id.* at 38-39. PPL states that it will accept the least cost offer and will document the entire process, including the brokers contacted and price offerings by AEC vintage. *Id.* at 39. PPL proposes to recover the costs of these AECs through its GSC-1, as it currently does. *Id.* Based on current market conditions, the Company estimates the total costs for Tier I Non-Solar and Tier II AECs to be procured through the separate solicitation to be approximately \$79,000. *Id.*

PPL states that it is proposing to use the broker market to procure these AECs because only 50 MW of Tier I Non-Solar and Tier II AECs are needed. PPL believes that a competitive RFP solicitation would be unnecessarily expensive given the small number of credits required, and could result in poor participation. PPL argues that by obtaining multiple pricing offers from AEC brokers, a competitive offer is still obtained and AEPS obligations are met in a less complicated and more cost-effective manner. *Id.*

No party objects to PPL's proposed procurement of AECs.

ii. ALJ's Recommendation

As no party opposes this proposal, the ALJ Recommends that it be approved. R.D. at 52.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We will adopt the ALJ's recommendation on this issue.

b. Transfer of AECs

i. Positions of the Parties

As noted *supra*, PPL's SMA requires that wholesale suppliers transfer AECs into the Company's GATS accounts on a monthly basis. PPL contends that by implementing monthly transfers, it reduces the risk of non-compliance with the AEPS Act if a supplier defaults on its obligation to transfer AECs. PPL MB at 40. PPL explains that if a supplier defaults on its transfer obligation during a reporting year, the Company can take actions to acquire necessary AECs prior to the end of the year when it must transfer its credit obligations to the state. According to PPL, this will ensure the Company is able to comply with state AEPS requirements and can respond to a contract default in a timely fashion. *Id.* PPL further contends that, due to the significant number of suppliers with obligations to supply AECs across all of PPL's contracts, by implementing a monthly transfer requirement, all suppliers understand their obligations in conjunction with when monthly invoices are issued, reducing confusion and enabling suppliers to procure credits closer to the time of delivery than would otherwise be

possible with an annual transfer obligation. *Id.* Finally, PPL argues that by implementing monthly transfers, the Company is more appropriately matching its payment of the cost associated with AECs—which are part of the overall price paid to wholesale suppliers each month under the full-requirements contracts—with its actual receipt of credits. *Id.*

The Joint Suppliers propose that wholesale suppliers be required to transfer AECs to PPL on an annual rather than monthly basis to better reflect the nature of the AEC trading market. Joint Suppliers MB at 9. The Joint Suppliers argue that the monthly transfer of AECs is an unusual practice that causes confusion and administrative burden, and that no other utility in Pennsylvania or elsewhere requires monthly transfers of AECs pursuant to a default service supply agreement. *Id.* at 9-10. The Joint Suppliers assert that because AEC compliance under various states' AEPS laws is typically required on a yearly basis, market participants with such AEPS requirements typically manage their AEC portfolios with such timing in mind. *Id.* at 10.

In response, PPL asserts that supplier convenience is not a sufficient reason to satisfy the Joint Suppliers' burden to justify its proposed change to the Company's established requirement for a monthly transfer of AECs. PPL RB at 21. PPL avers that as a default service provider, it has a duty to meet the requirements of the AEPS Act, and that failure to do so will expose it to penalties. PPL contends that the Joint Suppliers offered no response to the Company's explanation that a monthly transfer requirement provides greater assurance that it will have received AECs before it must transfer the credit obligations to the state, and have adequate time to obtain replacement credits in the market in the event of a supplier default. *Id.* PPL argues that it has the duty to negotiate favorable contract terms with wholesale suppliers under Act 129, and that a contract term that increases its ability to comply with the AEPS Act is a favorable term that should be continued. *Id.* PPL also contends that the Joint Suppliers do not explain why wholesale suppliers should be permitted to deliver AECs to the Company only on a yearly basis,

when they are paid for such delivery on a monthly basis as part of their fixed price payment for the provision of full requirements supply. *Id.*

ii. ALJ's Recommendation

The ALJ found that the Company is in the best position to judge its needs in this area, and that its reasons are adequate to support its proposal. Therefore, the ALJ recommends that the Joint Suppliers' proposal be denied. R.D. at 53.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We will adopt the ALJ's recommendation that the Joint Suppliers' proposal be denied for the reasons expressed by PPL.

6. Administrative Costs and Cash Working Capital

a. Positions of the Parties

PPL proposes that the administrative costs related to this proceeding, and other costs incurred prior to June 1, 2013 related to procurement of supply, be included in the rates for default service, with such costs amortized ratably over the twenty-four month term of the DSP II Program. PPL MB at 42. No party has objected to this proposal.

However, PPL has also included a provisional claim for cash working capital (CWC) as an administrative expense in this case. PPL explains that this claim for CWC is being made for two reasons. First, PPL asserts that it currently recovers a CWC

allowance related to its default service generation supply costs through its GSC-1 reconciliation methodology. PPL St. No. 5 at 9. However, PPL is concerned that the results of a pending Commission proceeding regarding Default Service Interim Guidelines may prevent it from doing so in the future. PPL MB at 42-43; *See, Default Service Reconciliation Interim Guidelines*, Docket No. M-2012-2314313 (*DSP Reconciliation Proceeding*) (Order entered August 14, 2012) *DSP Reconciliation Proceeding Order*. For this reason PPL is making a provisional claim for CWC in this proceeding, and requests a ruling on the issues related to the appropriate calculation of this item. PPL MB at 43.

Secondly, PPL asserts that if the Commission adopts Constellation's position in this proceeding that the Company change from a monthly to a weekly settlement schedule for payments to default service suppliers (addressed, *infra*), its CWC needs will increase, and thus, a further claim for a CWC allowance would be necessary. *Id.* at 47-48.

PPL avers that its calculation of a CWC requirement associated with default service costs followed the same process it uses for computing CWC in base rate cases. Specifically, PPL determined the average net lag in days between payments to wholesale suppliers of default supplies, and payments from default service customers. This net average lag was then multiplied by PPL's average daily default service expense to develop a working capital requirement of \$54.3 million. *Id.* at 43-44; PPL Ex. JMK-4. This amount was then multiplied by the Company's weighted average cost of debt and equity, grossed up for income taxes, to produce a CWC claim of \$7.5 million, which represents PPL's CWC claim in this proceeding if it is permitted to continue with monthly payments to its default service suppliers. *Id.* at 44; PPL St. No. 5 at 10; PPL St. No. 5-R at 17.

Should the Commission adopt Constellation's proposal that wholesale suppliers be paid weekly rather than monthly, PPL asserts that its CWC requirement would be \$115.3 million. PPL St. No. 5-R at 18; PPL Ex. JMK-7. This amount would then translate into a CWC revenue requirement of \$16.7 million, an incremental increase of \$8.8 million over PPL's claim under the monthly settlement scenario. PPL St. No. 5-R at 16; PPL MB at 47-48. PPL avers that the additional CWC requirement resulting from the adoption of Constellation's weekly settlement proposal would apply regardless of the results of the *DSP Reconciliation Proceeding*. PPL MB at 47-48.

The OCA asserts that PPL has not demonstrated that it has a legitimate working capital need as the result of the provision of default service, and contends that it is inappropriate to include a working capital allowance in a reconciliation recovery mechanism that is designed to recover specific identified costs. OCA MB at 24. The OCA also takes issue with the methodology used by PPL to develop its claim, arguing that if it had assumed the proper number of days within which residential customers pay their bills in its calculation of average lag days, the Company's working capital requirement would be zero. OCA St. No. 1 at 29; OCA MB at 24. Moreover, the OCA submits that the timing of the Company's collection of residential late fees causes its actual revenues to exceed the cost of any funds that PPL may need to borrow for working capital. OCA St. No. 1-S at 9-10.

The OCA also disagrees with the use of a return on rate base that includes an equity component, grossed up for income tax purposes, in determining the annual revenue requirement of a working capital need. The OCA argues that shareholders did not make any investment in PPL for the purpose of providing default service suppliers, so a return with an equity component is not appropriate. OCA St. No. 1 at 28; OCA MB at 25. The OCA avers that if the Commission considers a CWC allowance to be appropriate in this proceeding, PPL's short-term cost of debt (approximately 2% per annum) would be the proper rate to use to determine the revenue requirement associated

with a default service working capital requirement. OCA MB at 25. According to the OCA, using this rate would yield a CWC revenue requirement of \$1.09 million, as opposed to the Company's claimed \$7.5 million. *Id.*

PPL disagrees with the OCA's contention that any CWC requirement should be based on the Company's short-term cost of debt. PPL argues that it is long-standing ratemaking practice in Pennsylvania to compute the CWC requirement at the weighted average cost of debt and equity, grossed up for income taxes. PPL St. No.5-R at 17; PPL MB at 44. In addition, PPL asserts that short-term debt is used to finance construction projects and is a component of an electric utility's calculation of its monthly allowance for funds used during construction (AFUDC) rate. As such, PPL avers that the OCA's proposal would inappropriately account for short-term debt twice. *Id.*

The OCA counters that if PPL has legitimate working capital needs, it will engage in additional short-term borrowing to meet those needs. OCA St. No.1-S at 9; OCA MB at 26. Thus, the OCA contends that short-term debt costs incurred to fund construction projects are separate and distinct from default service working capital needs, and no double counting of short-term debt would occur. *Id.*

The OSBA agrees in theory with PPL that it should be permitted the opportunity to recover any working capital costs that it incurs in providing default service.⁸ OSBA St. No 1 at 13; OSBA MB at 12. However, the OSBA expresses concern that the rate of return on rate base used in PPL's CWC calculation was the same rate of return proposed in its concurrent base rate proceeding, a rate of return which

⁸ OSBA witness Knecht noted that "[t]he Commission's guidelines regarding default service costs elements explicitly recognize working capital as a default service costs. 52 Pa. Code §69.1808(a)(4)." OSBA St. No. 1 at 13, Footnote 15.

certain parties to that proceeding deemed excessive. OSBA St. No. 1 at 13, Footnote 16; See, *Pennsylvania Public Utility Commission, et al. v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597, et al.

The OSBA also identified four additional problems with the Company's proposal. First, the OSBA contends that PPL did not account for timing differences in the payment of bills among rate classes in its calculation of lag days. OSBA St. No. 1 at 13-14; OSBA MB at 23-23. Second, the OSBA states that PPL provided no details as to how it intends to recover or reconcile CWC costs or credits.⁹ OSBA St. No. 1 at 14; OSBA MB at 13. Third, the OSBA asserts that PPL did not address the issue of CWC costs associated with its purchase of receivables program. *Id.* Finally, the OSBA contends that PPL's CWC claim does not take late payment charges relating to generation service into account, and that such charges should serve as an offset to CWC costs. OSBA St. No. 1 at 14; OSBA MB at 13-14. Ultimately, the OSBA concludes that the issue of including CWC costs in default service rates should be deferred to the *DSP Reconciliation Proceeding*. OSBA St. No. 3 at 7; OSBA MB at 14.

In response to the OSBA's concern regarding PPL's use of its claimed rate of return from the concurrent base rate proceeding, the Company states that it would not object to any CWC allowance in this case being adjusted for the allowed return in the base rate case. PPL St. No. 5-R at 18; PPL MB at 46. However, with respect to the OSBA's concerns regarding differences between rate classes and the proper recovery

⁹ OSBA witness Knecht asserted that "[b]ecause default service CWC will generally vary based on overall revenues which fluctuate with load, power purchase prices and shopping levels, it would be appropriate to recover these costs as a percentage of revenues. A reasonable approach for doing so would be to include the CWC charge/credit in the merchant function charge ("MFC"). In order to encourage the Company to collect bills in a timely way, variances in the CWC percentage rate should not be reconciled." OSBA St. No. 1 at 14 (footnote omitted).

mechanism for default service CWC, PPL argues that such concerns relate to the details of how CWC is allocated or recovered, but do not negate the fact that the Company has a CWC requirement. PPL MB at 47.

As for both the OCA's and OSBA's assertions that the Company's CWC determination does not properly account for late payment fees, PPL avers that it has included all late payment fees in its pending base rate case, and that to also include such fees as an offset to any CWC requirement in this proceeding would amount to a double counting of these fees. PPL RB at 23. Furthermore, PPL contends that the OSBA offered no proposal to identify and remove from the base rate case the late payment fees associated with generation charges that would then be applied as a credit against CWC costs in this proceeding. *Id.*

b. ALJ's Recommendation

The ALJ found that in making a provisional claim in this proceeding for CWC based on its concern regarding the outcome of the *DSP Reconciliation Proceeding*, PPL "is seeking an insurance policy against regulatory uncertainty in the form of a binding decision from the regulator on an event that *might* end in a result that *may or may not* require the utility to change its behavior in some undetermined way." R.D. at 55 (emphasis in original). Thus, the ALJ recommends that the Company's request be unequivocally denied. *Id.*

c. Exceptions and Replies

PPL excepts to the ALJ's recommendation that its provisional claim for a CWC allowance be denied. PPL reiterates its position that its claim must be decided in this proceeding because its current ability to recover a CWC allowance through its GSC reconciliation methodology may be eliminated as a result of the *DSP Reconciliation*

Proceeding, and because the Commission may approve Constellation’s proposal in this proceeding to require PPL to pay wholesale suppliers on a weekly rather than monthly basis. PPL avers that it is undisputed that accelerating the date for payment to wholesale suppliers will shift CWC responsibility from being borne by suppliers and included in their bid prices, to being borne by PPL and being charged as an additional cost of default service. PPL Exc. at 9-10.

The OCA replies that the ALJ properly rejected PPL’s claim for a CWC allowance based on the Company’s concern regarding the outcome of the *DSP Reconciliation Proceeding*, calling such a concern “speculative.” OCA R.Exc. at 7. The OCA argues that if PPL is required in a future proceeding to adjust its reconciliation methodology, the Commission can properly consider any arguments regarding CWC needs at that time based on the facts in that proceeding. *Id.* Moreover, the OCA submits that PPL’s CWC claim in this proceeding was seriously flawed. The OCA asserts that it demonstrated that PPL failed to show that it had a legitimate CWC need as a result of providing default service, and that PPL’s CWC calculation would result in the Company unjustly profiting from the provision of default service. *Id.* at 7-8.

d. Disposition

After careful consideration of the evidence of record, we will adopt the ALJ’s recommendation to reject PPL’s claim for a provisional CWC allowance. We do not believe PPL has adequately demonstrated a need for such a CWC allowance in this proceeding, and in any event, we are not convinced that PPL has properly calculated its claimed CWC amount.

With respect to PPL’s concern that it may lose the ability to recover, through its GSC-1 reconciliation methodology, a CWC allowance relating to its default service generation supply costs as a result of the outcome of the pending *DSP*

Reconciliation Proceeding, we find this concern to be premature. We note that the *DSP Reconciliation Proceeding* was instituted to address a myriad of issues regarding the most appropriate method to use for the reconciliation of default service costs and revenues, including the question of how working capital costs should be recovered for default service. See, *DSP Reconciliation Proceeding Order* at 4. Until such issues are resolved, we do not find it appropriate to grant PPL's request for a provisional CWC allowance in the instant proceeding based upon a feared outcome that may not occur. As the OCA argued, if PPL is required to adjust its reconciliation methodology based on the results of the *DSP Reconciliation Proceeding*, the Commission can properly consider any arguments regarding the Company's CWC needs at that time based on the facts in that proceeding.

Additionally, we are concerned about issues raised by the OCA and OSBA relating to the proper calculation of PPL's CWC claim. Again, we believe that these issues would be more appropriately addressed in a future proceeding designed to focus more exclusively on such issues, should that prove necessary.

As noted, *supra*, PPL also claims that it will be entitled to an additional CWC allowance in this proceeding should the Commission adopt Constellation's proposal to require it to pay wholesale suppliers weekly rather than monthly. As discussed, *infra*, we will deny Constellation's proposal in this regard, and thus, there is no reason to grant PPL's CWC request based on this issue.

Consistent with the foregoing discussion, PPL's Exception is denied.

B. Rate Design

1. Residential and Small C&I – Fixed Rate Option: Frequency of Rate Changes

a. Positions of the Parties

Under its DSP II, PPL proposes to continue to charge a flat, single charge per kWh rate to the Residential and Small C&I customer classes under the GSC-1 fixed rate option. PPL will calculate a separate GSC-1 rate for each of these customer classes, and proposes that the GSC-1 be recalculated every six months, beginning June 1, 2013, to reflect the prices under the default service supply contracts for the upcoming six-month period. PPL MB at 49.

PPL's proposed semi-annual default service prices changes represent a departure from its current quarterly price changes under DSP I. PPL argues that the semi-annual price changes will align with its proposed semi-annual procurements (discussed, *supra*), as well as its proposed semi-annual reconciliation of GSC-1 costs and proposed six-month contract terms for its Opt-In and Standard Offer Referral Programs (both discussed, *infra*). PPL MB at 50. PPL contends that its proposed semi-annual procurements and price changes reflect a balance between market reflective pricing and default service price stability, and will simplify the default service process, giving further encouragement to shopping. *Id.* PPL also argues that limiting the frequency of PTC changes to twice per year will give Residential default service customers greater assurance that the offers they consider under the Opt-In and Standard Offer Referral Programs will result in real savings off the PTC rates. *Id.*

RESA states that it is strongly opposed to PPL's proposed semi-annual price changes, and asserts that the Company should continue its quarterly price changes. RESA MB at 38. RESA argues that quarterly price changes will comport with its proposed quarterly procurements for default supply. *Id.* However RESA contends that

even if its proposed supply mix is not adopted, quarterly price updates are still necessary because, under PPL's proposed procurement plan, delivery on a significant portion of the load will begin each quarter. Thus, RESA argues that prices must be adjusted to reflect the prices established for that portion of the load. *Id.* at 38-39. Likewise, RESA submits that regardless of the contract terms for the Opt-In and Standard Offer Programs, PTC adjustments should be made quarterly to ensure that default service rates are more reflective of wholesale market prices. RESA RB at 15. RESA avers that its proposal would result in a default service structure that would promote the development of a robust competitive retail market, which would ultimately result in the price stability that PPL claims its proposal will achieve. RESA MB at 39.

b. ALJ's Recommendation

The ALJ recommends that PPL's proposed semi-annual price changes for Residential and Small C&I customers be adopted, consistent with her recommendation that the Company's semi-annual procurement schedule be adopted. The ALJ agrees with PPL that its proposals reflect a balance between market reflective pricing and default service price stability, and will simplify the default service process, giving further encouragement to shopping. The ALJ also agrees with the Company that limiting the frequency of PTC changes to twice per year will give Residential default service customers greater assurance that the offers they consider under the Retail Opt-In and Standard Offer Referral Programs will result in real savings off of the PTC rates, which should provide customers with a positive experience and further encourage them to continue shopping after their initial contract terms end. Thus, the ALJ concludes that PPL's proposal is suited to the needs of all parties – the Company's, the customers', and the EGSs' – and that RESA's proposal to continue with quarterly PTC price changes under these circumstances should be denied. R.D. at 57.

c. Exceptions and Replies

In its Exception, RESA asserts that the ALJ erred in adopting PPL's proposal to adjust its PTC on an annual basis rather than on a quarterly basis. RESA contends that the ALJ is mistaken in her belief that such a change will further encourage customers to shop due to greater assurances that shopping or participating in the retail market enhancement programs will result in savings. RESA asserts that such a conclusion by the ALJ represents only personal opinion, and that there is no record evidence to support it. RESA further contends that semi-annual price changes will not accurately reflect the true market price of energy, a result that is inconsistent with goals expressed by the Commission in the *RMI End State Tentative Order*. RESA Exc. at 12.

RESA submits that semi-annual PTC adjustments would not be necessary under its proposed procurement structure, in which an increasing amount of load will be procured through quarterly contracts. However, RESA argues that even if the Commission does not adopt its proposed portfolio mix, the PTC will still need to be updated quarterly under PPL's procurement plan because delivery of a significant portion of the load begins each quarter. As such, RESA argues, the price must be adjusted to reflect the prices established for that portion of the load. *Id.* RESA avers that this will ensure that prices in any given service period more accurately reflect the cost of wholesale energy supply, which will foster the development of a robust competitive retail market consistent with the goals expressed in the *RMI End State Tentative Order*. *Id.* at 12-13.

DR/IGS also avers that the ALJ erred in recommending approval of PPL's proposed semi-annual PTC adjustments. DR/IGS contends that PPL's proposal is not consistent with its proposed procurement structure. Specifically, DR/IGS argues as follows:

. . . PPL has proposed a continuation of its laddering of products (albeit minus spot market purchases and with fewer block purchases over time) that will mean new sources of supply will be entering and leaving the mix at a frequency that is not synchronized to its semi-annual pricing/reconciliation proposal. This misalignment of retail pricing, in the form of the PTC, with the actual wholesale prices of the products will create the potential for significant swings at the semi-annual price change intervals. What this means in the real world is that it creates the significant possibility of a worsening boom and bust cycle, with significant price changes at the six (6) month interval, at increased potential that the changes could move in directions that would be opposite from the actual price moves in the wholesale market.

DR/IGS Exc. at 2.

To correct the alleged deficiencies of PPL's proposal, DR/IGS suggests a number of possible solutions. First, DR/IGS asserts that PPL could align its procurements so that the products included in the PTC would be products that would be expiring or entering the mix at the appropriate time intervals, so that a new price would not appear in the middle of a six-month period, thus potentially exacerbating reconciliation issues at the end of the semi-annual period. *Id.* at 3. As an alternative, DR/IGS suggests that PPL could move to six-month procurements, though it considers this unwise given the potential volatility this would inject into PPL's default service rates. *Id.* Ultimately, DR/IGS asserts that the most practical solution would be to require PPL to continue its quarterly reconciliations and price changes until such time as it aligns its procurement start and end dates with the six-month or longer interval period. *Id.*

DR/IGS charges that the ALJ seeks to place the burden of proof for this issue on the suppliers, and expects them to overcome PPL's proposal, which itself is contrary to Commission's preferred methodology of quarterly price changes. *Id.* DR/IGS asserts that "the concept that there should be alignment between procurements

and price changes/reconciliation is consistent with current Commission thinking on the end state of competitive markets, and is far more likely to produce default service rates that are reflective of market rates than PPL's proposal." *Id.* at 4.

In Reply, PPL disputes RESA's claim that the ALJ's conclusions on this issue represent only personal opinion, contending that there is substantial record to support the conclusion that semi-annual PTC changes will support shopping and result in measurable savings to default service customers when viewed in the context of the Company's coordinated proposals for six-month contracts under its Opt-In and Standard Offer Referral Programs. PPL R.Exc. at 7-8. PPL argues that the assurance of real savings that default service customers will experience as a result of the Company's proposal—more than any other aspect of its retail market enhancements—will further encourage shopping “by providing new shoppers comfort that they got a real deal.” *Id.* at 8.

PPL also disagrees with DR/IGS's assertion that PPL's proposed semi-annual pricing will not mirror its procurements. PPL argues that its proposed twice-yearly procurements—which DR/IGS supports—along with prices from contracts carried over from DSP I, will provide the basis for establishing the semi-annual price changes that will become effective about a month after the procurements. Thus, PPL asserts, there will be no misalignment of pricing, and DR/IGS's concern regarding a boom and bust cycle is without merit. *Id.* at 8-9.

In its Reply, the OCA submits that the ALJ's recommendation to approve PPL's proposal is reasonable and should be adopted. The OCA asserts that the semi-annual price change allows for proper coordination and alignment between the competitive retail market enhancement programs and the PTC. The OCA also agrees with the ALJ that the semi-annual price change will facilitate customer shopping. OCA R.Exc. at 5-6.

d. Disposition

Based on our consideration of the evidence of record, we will reject PPL's proposal to calculate its PTC on a semi-annual basis, and will direct the Company to continue utilizing quarterly PTC adjustments. We find no validity in PPL's suggestion that the frequency of its default service rate changes must necessarily match the frequency of its procurements. We note that while PPL may procure default supply semi-annually under its proposed procurement plan (which we have approved, *supra*), delivery of a significant portion of that supply will begin each quarter. Thus, as RESA argues, it would be more appropriate to adjust default service prices quarterly to better reflect that new portion of supply. In this way, default service prices will be more reflective of market prices, in furtherance of the goal of promoting a more robust retail electricity market.

We also do not accept PPL's position that the frequency of its default service price changes should align with the contract terms of its retail market enhancement programs. While it may appear that such alignment could facilitate, to some degree, a customer's comparison of the PTC with the rates offered in those programs, the PTC itself may not accurately reflect market prices under these circumstances, and the comparison, therefore, would not be meaningful.

Accordingly, we will reverse the ALJ's recommendation, and grant the Exceptions of RESA and DR/IGS to the extent they are consistent with the foregoing discussion.

2. Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW

a. Positions of the Parties

PPL notes that it currently provides real time hourly default service pricing for its Large C&I customer class, which includes customers with demands greater than 500 kW. PPL MB at 51. PPL points out that in the *December 16 Upcoming DSP Order*, the Commission directed the Company to file testimony in this default service case setting forth the cost to convert its billing system to allow hourly price service to all default service customers larger than 100 kW. *Id.*; *See, December 16 Upcoming DSP Order* at 60, Footnote 11. In compliance with this directive, PPL estimates that it would cost over \$360,000 to implement real-time default service pricing for all default service customers larger than 100 kW. PPL St. 1-R, p. 31; PPL MB at 51.

Additionally, PPL notes that in an Order issued by the Commission addressing a petition filed by the Company to modify its Smart Meter Technology Procurement and Installation Plan, PPL was encouraged to propose a mechanism for implementing real-time pricing for Small C&I customers with load over 100 kW in a future default service filing. PPL MB at 52; *See, Petition of PPL Electric Utilities Corporation for Approval to Modify Its Smart Meter Technology Procurement and Installation Plan and to Extend Its Grace Period*, Docket No. P-2012-2303075, (Order entered August 2, 2012) (*PPL Smart Meter Order*) at 9-10. Accordingly, PPL states that it will address the implementation of a 100 kW split for Small C&I customers in a future default service filing. PPL MB at 52. PPL states that is aware of no opposition to this proposal. *Id.*

RESA generally supports PPL's proposal to lower the hourly-priced threshold for Small C&I customers to 100 kW, and urges the Company to transition such customers to hourly-priced service on an ongoing basis as it continues to develop the

capability to do so. RESA MB at 40. RESA states that “PPL should reassess its capability to provide hourly-priced service each quarter in order to forgo a quarterly procurement for each new segment of customers capable of receiving hourly-priced service.” *Id.*

b. ALJ’s Recommendation

The ALJ recommends that PPL’s proposal to further address this matter in a future DSP case be approved. R.D. at 59.

c. Exceptions and Replies

No Exceptions were filed on this issue.

d. Disposition

We will adopt the ALJ’s recommendation on this issue.

3. Residential and Small C&I Customers – Reconciliation

a. Positions of the Parties

PPL notes that it currently reconciles its GSC-1 revenues and expenses on a quarterly basis, but asserts that such quarterly reconciliation has produced substantial variances and swings in the E-factor rate of the GSC-1. PPL MB at 52. PPL states that for the Residential class, the E-factor has experienced swings from a .68 cent/kWh recoupment to a .36 cent/kWh refund by quarter, while for the Small C&I class, the E-factor has varied from a 4.15 cent/kWh charge to a 1.53 cent/kWh refund. PPL Ex. JMK-5; PPL MB at 52. Thus, PPL is proposing to revise its method of computing the GSC-1 reconciliation to calculate it every six months based upon a rolling twelve-month average of projected GSC-1 sales, rather than a reconciliation of a three-month period of

revenues and costs based upon a projection of the next three months' sales. PPL St. 5-R, pp. 4-5; PPL MB at 52-53. PPL asserts that the Commission should approve this semi-annual reconciliation methodology regardless of whether its default service rates are recomputed on a quarterly or a semi-annual basis. PPL St. 5-R at 5.

PPL contends that E-factors, particularly those computed quarterly, do not insure that default service rates reflect current market prices. PPL MB at 53. PPL asserts that a large refund or recoupment factor in the E-factor could influence a customer's decision to shop for electricity. *Id.* As the Company further explains:

[U]se of a short-term quarterly reconciliation process contributes to these E-factor variances because, due to the limited period of time for refund or recoupment of over or under collections, the quarterly reconciliation process exacerbates any misforecast of revenues and costs. Such misforecasts occur because of reduced revenues resulting from customer migration, misprojection of the cost of spot market purchases, misprojections of the portion of default service load being provided by block and full requirements contracts due to changes in customer load, and any deviation of customer monthly usage caused by periods of extreme weather conditions. (PPL Electric St. 5-R, p. 7).

PP MB at 53-54.

PPL asserts that a rolling twelve-month average reconciliation methodology will smooth E-factor rate adjustments and allow C-factor rate adjustments, which reflect the changes in market prices resulting from default service procurements, to more accurately reflect default service rates over time. *Id.* at 54. In support of this assertion, PPL recalculated its actual E-factor changes for its Residential and Small C&I customers from June 2011 through August 2012 using its proposed twelve-month rolling average methodology. PPL Exs. JMK-5 and JMK-6. Based on the results of these recalculations, PPL avers that the large swings that occurred for each quarter during that period under its

current methodology would have been greatly mitigated using its proposed methodology. PPL MB at 54-55. PPL concludes that the results of these recalculated E-factors “is compelling evidence to demonstrate the merit in revising the E-factor calculation to moderate default rate swings that are unrelated to market price changes, which alternately can encourage and discourage customer shopping.” *Id.* at 55-56.

In addition to proposing to calculate the reconciliation amount every six months based upon a twelve-month rolling average of projected GSC-1 sales, PPL also states that:

. . . the DSP II GSC-1 reconciliation calculations will include the remaining over/under collection balances for both the fixed price and TOU price rate options as of May 31, 2013 under the DSP I Program for the separate Residential and Small C&I customer classes. In this regard, the Company intends to follow the order issued by the Commission on August 30, 2012 at Docket No. R-2011-2264771, wherein the Commission held that PPL Electric may recover the net undercollection of its prior period TOU program from all default service customers, by customer class, following certification by the Commission’s Bureau of Audits that the amount of the net undercollection claimed is correct and has been accounted for consistent with Commission directives. (PPL Electric St. 5-RJ, p. 2). PPL Electric is aware of no opposition to this proposal.

PPL MB at 56-57; *See, Pennsylvania Public Utility Commission et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-2011-2264771 *et al.* (Opinion and Order entered August 30, 2012) at 25.

RESA opposes PPL’s proposed reconciliation methodology, and recommends that the Company maintain its current quarterly reconciliation mechanism. RESA MB at 41. RESA contends that administrative mechanisms like reconciliations that are done after the fact, regardless of frequency, have the potential to impair

development of a retail market that will deliver the best products and services to customers. *Id.* RESA further argues:

In addition, by making the reconciliation adjustment period longer than the initial price application period where the over/under recovery occurred, PPL will be further divorcing the actual default service rates from actual underlying wholesale costs. Default service rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop and customers can benefit. RESA respectfully submits that a semi-annual reconciliation will create a distorted pricing structure that will stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately reflect market prices and costs.

Id. at 41-42.

In addition, RESA asserts that PPL's proposal to extend the reconciliation period will add to carrying costs, which will further distort the true costs of default service. *Id.* at 42-43. RESA concludes that, pending the outcome of the Commission's *DSP Reconciliation Proceeding*, PPL's current reconciliation mechanism should be continued. *Id.* at 44.

DR/IGS also opposes PPL's proposed semi-annual reconciliation methodology. DR/IGS notes that currently, PPL's quarterly E-factor calculation results in the recovery of the over or under collection balance over the succeeding quarter, with a one quarter lag. DR/IGS states that this methodology recovers default service costs within a fairly close time period to when they were incurred. However, DR/IGS asserts that PPL's proposal in this case would push recovery of costs out to well over a year in most cases, resulting in a lag that is simply too long to allow prices to be even close to market reflective, even with one-year products. DR/IGS RB at 6.

DR/IGS contends that PPL's semi-annual reconciliation proposal is contrary to the Commission's ruling in *FE DSP II*, as well as in PECO Energy Company's recent default service plan proceeding, wherein the Commission adopted DR/IGS's position that quarterly reconciliation is appropriate, and that the goal of smoother default service rates should not trump market reflectiveness. DR/IGS MB at 12-13; DR/IGS RB at 6; *See, FE DSP II Order* at 98; *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (*PECO DSP II*) (Order entered October 12, 2012) (*PECO DSP II Order*) at 56. DR/IGS argues that switching to a twelve month rolling average reconciliation coupled with only two price changes per year would eliminate the market responsiveness of default service rates that PPL would seek to promote through its proposed procurement plan. DR/IGS St. No. 1 at 4-5; DR/IGS MB at 13. DR/IGS concludes that ". . . absent accounting volatility, shorter term reconciliation produces more market reflective rates, better price signals to customers, and a better basis for rate comparisons with competitive offers." DR/IGS MB at 13.

The OCA supports PPL's reconciliation proposal in this proceeding. OCA MB at 29. The OSBA also supports the Company's proposal, but only as an interim measure, recommending that the issue of PPL's default service reconciliation mechanism ultimately be deferred to the Commission's *DSP Reconciliation Proceeding*. OSBA St. No. 2 at 4; OSBA MB at 15-16. The OSBA disputes RESA's argument that PPL's existing quarterly reconciliation mechanism will better align default service rates with actual market prices. The OSBA contends that *any* reconciliation charge or credit, regardless of the length of time over which it is in effect, will cause default service rates to depart from current market conditions. OSBA RB at 9-10. In support of this argument, the OSBA points to actual fluctuations in reconciliation charges and credits that have occurred under PPL's current quarterly reconciliation methodology, stating that RESA offers no credible explanations as to how or why such fluctuations are consistent

with matching default service rates with market prices. *Id.* at 10. The OSBA concludes that while it recognizes PPL's proposal in this proceeding will not address the underlying problems with its reconciliation methodology, it will at least smooth out the fluctuations and thereby reduce the distortion associated with the previous mechanism until the issue can be addressed in more detail in the Commission's generic proceeding. *Id.* at 10-11.

b. ALJ's Recommendation

The ALJ recommends that PPL's proposal to reconcile its GSC-1 rates semi-annually based on a twelve-month rolling average be adopted. The ALJ states that it appears that PPL's quarterly reconciliation periods have created a PTC that is more volatile and higher than it needs to be, and that the EGSs would prefer that this situation remain rather than attempt a method that could result in accurate and fair prices for default service customers. R.D. at 62. The ALJ found that PPL's recalculation of its Residential and Small C&I customer E-factor changes from June 2011 through August 2012 using its proposed twelve-month rolling average methodology shows that Small C&I customers would have benefitted significantly, thus justifying the adoption of the rolling reconciliation methodology. *Id.* at 66. Although the ALJ found the benefit to be less clear for the residential customers, she concluded that for the sake of consistency, there would be no harm in treating both customer classes the same. *Id.* Thus, the ALJ recommends that because of PPL's well-documented difficulty with reconciliations, the Company should be allowed to try its proposed method, and notes that the results would be available for reporting in the generic *DSP Reconciliation Proceeding*.

c. Exceptions and Replies

In its Exception, RESA avers that the ALJ erred in adopting PPL's proposed reconciliation methodology, and unfairly dismissed concerns raised by RESA and other EGSs. RESA Exc. at 14. RESA states that the issue of reconciliation is

complicated, and that the difficulty lies in trying to square and EDC's right to full cost recovery with the need to make the PTC more market reflective. *Id.* RESA asserts that inaccurate PTCs distorted by reconciliations harm the market, and that the ALJ's view that EGSs prefer them has no basis in fact. *Id.* at 14-15. RESA contends that EGSs want and need PTCs that best reflect the market and the costs of providing default service, and that PPL's proposed reconciliation methodology moves away from this requirement. *Id.* at 15. RESA concludes that rather than having PPL "try" a new method as the ALJ recommends, RESA supports maintaining the *status quo* pending the outcome of the Commission's broader proceeding addressing reconciliation. *Id.* at 15.

In its Exception, DR/IGS avers that PPL's proposed twelve-month rolling average reconciliation tends to smooth out the PTC too much, and should be eliminated. DR/IGS argues that this methodology is a vestige of regulation that provides no benefit to customers, and that smooth default service rates that do not reflect market influences are a bad idea in a market that is seeking to become more competitive. DR/IGS Exc. at 3.

In Reply, PPL disagrees with the assertions of RESA and DR/IGS, and contends that in this case, the evidence shows conclusively that shorter term reconciliation is producing less market reflective rates. PPL R.Exc. at 9-10. PPL avers that differences between prior period revenues and costs are alternately decreasing and increasing default service rates by a factor of 20% or more. *Id.* at 10. PPL states that it has demonstrated that a twelve-month rolling average reconciliation will smooth rate swings unrelated to current market prices, which will result in rates that better track current costs, which in turn, will support shopping. *Id.*

In its Reply, the OCA avers that the ALJ recommendation to approve PPL's reconciliation proposal is reasonable, and should be adopted. The OCA contends that its expert witness reviewed this and other reconciliation methods, and concluded that the twelve-month rolling average approach worked best. The OCA also states that it

provided an analysis that showed that the twelve-month approach will smooth reconciliation adjustments and allow the PTC to more accurately reflect changes in market prices resulting from default service procurements. According to the OCA, the ALJ correctly concluded that the shortened reconciliation period supported by RESA has actually created a PTC that is more volatile and higher than it needs to be, and that the record demonstrates that the longer reconciliation period would reduce such volatility and result in more market-reflective PTC. OCA R.Exc. at 6.

d. Disposition

We will adopt the position of RESA and DR/IGS that PPL continue using its current quarterly reconciliation methodology for its GSC-1 rates. We are certainly aware of the fluctuations that can occur in the PTC through the reconciliation process. However, while longer and less frequent reconciliation periods may smooth out these fluctuations to some degree, we are concerned that PPL's proposed semi-annual reconciliation based on a projected twelve-month rolling average of sales will further separate the PTC from the underlying wholesale costs of electricity. As we stated in *PECO DSP II*, it is not clear how a smoothed out PTC will create clear price signals, and customers do not benefit when they are sheltered from the market forces that are the basis of the prices they will eventually pay. *See, PECO DSP II Order* at 56. In addition, as in *FE DSP II*, we are concerned that PPL's proposal to extend the reconciliation period will add to the carrying costs, thus further distorting the true costs of default service as RESA argued. *See, FE DSP II* at 98. Accordingly, we will reverse the ALJ's recommendation and grant the Exceptions of RESA and DR/IGS.

4. Large C&I Customers – Rates and Reconciliation

a. Positions of the Parties

PPL proposes no changes from its DSP I Program regarding the calculation of charges for default service to customers in the Large C&I customer class under the GSC-2 rate. The Company states that it will continue to collect the following components:

- (1) An energy charge per kWh based on the real time hourly spot-market price and the customer's actual hourly energy usage;
- (2) A capacity charge per kW based on the PJM reliability pricing model (RPM) price for capacity and the customer's peak load contribution; and
- (3) An energy charge per kWh to recover all supplier charges and PPL's costs of administration, including an amortization of the costs of procurement.

PPL Ex. 1 at 32; PPL MB at 57. PPL states that the energy charge per kWh to cover supplier charges and administrative costs is revised annually, consistent with the annual procurement process for default service supplies for this customer class. *Id.* PPL also states that the energy charge for real-time hourly spot market prices and capacity charge are derived from PJM markets. PPL MB at 57.

With regard to reconciliation of default service charges for the Large C&I class, PPL notes that it currently reconciles the GSC-2 revenues and costs on an annual basis, consistent with the fact that the bulk of the charges are pass-throughs of PJM real-time spot and capacity charges, and with the annual non-laddered procurement of contracts from suppliers. PPL St. 5-R at 8; PPL MB at 57. PPL is proposing no change to this reconciliation methodology in DSP II. PPL MB at 57-58. PPL proposes that any

remaining over or under collection from DSP I be included in the ongoing GSC-2 reconciliation. PPL MB at 58. PPL notes that over 98% of its Large C&I customer load is currently shopping, and asserts that there is no reason, from a shopping perspective, to change the existing process of reconciliation. *Id.*

No party opposes PPL's proposal to continue its current calculation and reconciliation methodologies for the Large C&I customer GSC-2 rates.

b. ALJ's Recommendation

Since no party has challenged the rate structure or reconciliation methodology for PPL's Large C&I customer class, the ALJ recommends that the Company's proposals be approved. R.D. at 67-68.

c. Exceptions and Replies

No Exceptions were filed on this issue.

d. Disposition

We will adopt the ALJ's recommendation on this issue.

5. The Green Power Program

a. Positions of the Parties

PPL's Green Power Program was implemented on August 11, 2009, to provide Residential and Small C&I default service customers with an option to pay a fee, in addition to their monthly bills, with the fees of all participating customers used to purchase AECs. PPL states that participation in this program has never exceeded a few hundred customers. PPL MB at 58. PPL is now proposing to terminate this program on

May 31, 2013 because 1) the contract between the Company and the supplier of the AECs, Community Energy, Inc., will terminate on that date; and 2) PPL believes that this type of optional service should be offered by competitive market participants, not by a default service provider. *Id.* PPL proposes to send a letter to each participant prior to the contract termination date informing each customer that the Green Power Program will be ending. *Id.*

RESA agrees that the program should be permitted to expire, and that this type of optional service should be provided by the competitive market. RESA MB at 45. However, RESA offered recommendations to insure that PPL's Green Power customers will have the opportunity to obtain similar "green" products from the competitive market:

RESA recommends that PPL send two notices to each of the customers subscribing to this product, rather than just one. At least one, if not both of the notices should contain offers (prepared at the EGS's expense) describing alternative green products offered in the competitive market. Any Pennsylvania EGS should be eligible to participate and they should be able to discuss in their marketing material any alternative energy product that satisfies Pennsylvania's Alternative Energy Portfolio Standards Act (AEPS Act).

Id. at 45-46 (footnotes omitted).

SEF believes that the Green Power Program should continue, asserting that it provides significant benefits to ratepayers at a relatively low price in comparison to the alternatives currently available. SEF MB at 8. However, since PPL plans to allow the Green Power program to expire on May 31, 2013, SEF offers recommendations similar to those of RESA:

Prior to the May 31, 2013 expiration date, the Company will send a letter to each participating Green Power customer, advising them that the Green Power program will be ending

and that green power rate options may be available from Electric Generation Suppliers (“EGSs”). At the election of EGSs and at the sole expense of electing EGSs, the Company will send a second letter to participating Green Power customers containing offers of EGSs for green products. SEF believes that this offer of compromise will ensure that Green Power program participants are given timely notice of the end of the program and are apprised of available options, provided that EGSs are sufficiently interested in their business.

Id.

PPL has indicated its agreement with these recommendations, and states that it will implement them. PPL RB at 27.

b. ALJ’s Recommendation

The ALJ recommends that PPL’s proposal to discontinue its Green Power Program be approved. The ALJ notes that the Parties are now in agreement that the Green Power Program should be permitted to expire, and that PPL will notify customers of the end of the program and advise them that green power rate options may be available from EGSs. The ALJ further notes that at the election of EGSs, PPL will send a second letter to customers containing offers from EGSs. R.D. at 70.

c. Exceptions and Replies

No Exceptions were filed on this issue.

d. Disposition

We will adopt the ALJ’s recommendation on this issue.

6. Optional Monthly Pricing Service

a. Positions of the Parties

PPL is proposing to eliminate procurements for its Optional Monthly Pricing Service (OMPS), and to eliminate this rate option for the Large C&I Customer Class. PPL MB at 61. PPL notes that the OMPS was established in the settlement of the DSP I program, and was designed to provide a monthly fixed price service option for Large C&I customers. PPL states that the provision of OMPS was contingent upon the Company receiving bids from wholesale suppliers to provide the service. PPL points out that in every procurement to date under the DSP I program, no supplier has bid to provide OMPS service, and the service has never been available. *Id.* Thus, PPL concludes that it is clear that no supplier is willing to undertake the risk of providing OMPS, and is therefore proposing to discontinue offering this product. *Id.*

No party has objected to this proposal.

b. ALJ's Recommendation

The ALJ recommends that PPL's proposal to discontinue offering its Optional Monthly Pricing Service for Large C&I customers be approved. R.D. at 70.

c. Exceptions and Replies

No Exceptions were filed on this issue.

d. Disposition

We will adopt the ALJ's recommendation on this issue.

7. Price to Compare Calculation Date

a. Positions of the Parties

PPL states that it publishes a final PTC rate about ten to fifteen days prior to the effective date, and provides a preliminary PTC approximately ninety days in advance of the final PTC rate. PPL MB at 61.

RESA asserts that the PTC and its various components should be calculated in a timely way after the procurement in order to provide customers with accurate information needed to make informed shopping decisions. RESA MB at 46. To this end, RESA proposes that PPL's default service RFP take place approximately sixty days in advance of the applicable effective period, and that the Company calculate the new PTC forty-five days in advance. *Id.* at 46-47. RESA states that publishing the PTC only fifteen days before the start of the effective period means that both customers and EGSs have very little time to react to the new PTC price signal. *Id.* at 47. RESA states that its proposal is intended to ameliorate the negative effects of a significant divergence between the PTC and the underlying wholesale market prices at the time of delivery. *Id.* at 47.

PPL disagrees with RESA's proposal, contending that it will result in a less accurate PTC rate and greater E-factor distortions. PPL MB at 62. As PPL explains:

The Company's regulatory accounting department does not finalize its calculation of the E-factor component of the PTC until about 15 days prior to the effective date of new GSC rates. (PPL Electric St. 1-R, p. 14). The Company seeks to have the most recent available over/under collection data, calculated through the end of the month prior to the new PTC date, in order to minimize the potential distortion, and resulting increased reconciliation, that would result from having less current actual data. (Tr. 157). In addition, the Company receives updated forecasts of default service load

on a monthly basis. By waiting for the beginning of the month in which the PTC is calculated, the Company is able to use a more current forecast of projected sales to calculate the PTC. Current forecasts of projected default service sales also reduce reconciliation distortions. (PPL Electric St. 1-R, p. 14).

Id. PPL further contends that its preliminary PTC calculation, offered approximately ninety days in advance, provides adequate time for customers and EGSs to react to upcoming PTC changes. PPL RB at 28.

b. ALJ's Recommendation

The ALJ found that while publishing the PTC with more advance notice would better allow EGSs to educate customers about upcoming changes in the PTC, and would allow customers to make better informed shopping decisions, it would not allow the Company to provide a more accurate forecast of the PTC than its current procedure does. The ALJ also found that there is no dispute that reduction of reconciliation distortions is an important factor to consider in determining the appropriate date on which to calculate the final PTC. Accordingly, the ALJ recommended that RESA's proposal to accelerate procurements and require an earlier publication of the final PTC be rejected. R.D. at 71-72.

c. Exceptions and Replies

In its Exception, RESA asserts that the ALJ erred in her recommendation to reject RESA's proposal that PPL be required to publish its PTC with more advance notice, and in her recommendation to give greater importance to accuracy over the benefit to the competitive market. RESA Exc. at 13. RESA maintains that publishing the PTC with more advance notice will better allow EGSs to educate customers about

upcoming changes in the PTC, and will allow customers to make better informed shopping decisions. *Id.*

In its Reply, PPL explains that it has a two-step process for publishing its PTC rates. Approximately ninety days prior to the date the new PTC rates become effective, PPL provides a preliminary PTC rate. About fifteen days prior to the rate's effective date, PPL provides a final rate. PPL reiterates that by waiting until about fifteen days before the rate effective date to publish a final rate, it is able to incorporate the most recent month's over/undercollection activity and updated load forecasts. PPL R.Exc. at 9. PPL questions the necessity of publishing a final rate forty-five days in advance in order to allow customers to make more informed shopping decisions as RESA proposes. PPL argues that shopping on its system is the highest among all major EDCs, and thus, "it is difficult to perceive that customers are ill-informed about shopping." *Id.* PPL concludes that rather than providing more information, RESA's proposal will result in less accurate rates, which can distort the E-factor and resulting PTC, producing PTCs that are less market reflective. *Id.*

d. Disposition

We agree with PPL that publishing the PTC in accordance with its proposed schedule will result in more accurate default service rates, and that more accurate rate information will better serve customers in making informed shopping decisions than will more timely but less accurate information. Furthermore, we note that PPL offers a preliminary PTC approximately ninety days before the final rate is published, which should provide a reasonably accurate first estimate to customers with ample advance notice. For these reasons we will adopt the ALJ's recommendation that RESA's proposal be rejected, and will deny RESA's Exception on this issue.

8. Recovery of Transmission and Other Related Charges

The Company imposes a Transmission Service Charge (TSC) on all default service customers, through which it recovers the cost of acquiring transmission service for such customers. In its DSP II filing, the Company proposed to modify the language of the TSC to clarify that the FERC-approved costs recovered therein include those charges that, under the default service SMA, are billed to the Company and not to default service wholesale suppliers. PPL St. 5 at 10; PPL Ex. JMK-3; PPL MB at 63. PPL further describes the types of costs recovered through the TSC, and the customer classes to whom the TSC applies, as follows:

Under the SMA, PPL is responsible for payment of all “non-market based transmission services” costs, which the SMA defines as network integration transmission services (NITS), transmission enhancement costs, expansion cost recovery costs, non-firm point-to-point transmission service credits, regional transmission expansion plan (RTEP) and generation deactivation charges. (PPL Electric Ex. 1, Appendix A, Article 2.3 and Article 1, Definition of “non-market-based transmission services”). It is these transmission charges that PPL Electric recovers through the TSC.

Pursuant to PPL Electric’s tariff, the TSC is separately computed and applied to four customer classes: Residential, Small C&I, Large C&I Primary and Large C&I Transmission. For TSC purposes, the Large C&I – Primary customers take service at 12 kV primary voltage level and are served under Rate Schedules LP-4 and IS-P(R). Large C&I – Transmission customers take service at the 69 kV or higher transmission voltage level. Residential and Small C&I customers are served at a secondary voltage level. (PPL Electric St. 5-R, p. 10).

PPL MB at 63 (footnote omitted).

Various Parties raised issues regarding the recovery of transmission charges and the operation of PPL's TSC. These will be discussed next.¹⁰

a. Non-Bypassable Structure

i. Positions of the Parties

The OSBA contends that PPL's TSC proposal negatively impacts EGSs. The OSBA asserts that under PPL's approach, wholesale suppliers are not obligated to provide basic transmission service, and therefore face no risks associated with transmission costs because PPL recovers these costs through the TSC. OSBA St. No. 1 at 6; OSBA MB at 16. The OSBA further avers that because the TSC is reconcilable, PPL itself faces little or no risk associated with these costs. *Id.* In contrast, the OSBA notes that EGSs are obligated to pay these transmission costs, and then recover them from their customers in their retail rates. *Id.*

As a remedy to this alleged deficiency, the OSBA proposed two alternative solutions. First, the OSBA proposed that non-market-based transmission costs be recovered through a non-bypassable charge imposed by the Company on both shopping

¹⁰ In addition to the issues addressed herein, we note that Constellation also initially proposed that the non-market-based charges recovered by PPL through its TSC include certain new charges resulting from PJM's implementation of its revised Economic Load Response program. However, the Joint Suppliers state that while they continue to support such a change, they will no longer pursue the matter based on Orders issued by the Commission in *FE DSP II*. Joint Suppliers MB at 11.

and default service customers.¹¹ OSBA St. No. 3 at 2; OSBA MB at 18. However, noting that the Commission rejected such a proposal in *FE DSP II*, the OSBA recommended that as an alternative, PPL could pass transmission costs currently recovered in its TSC onto the default service wholesale suppliers. OSBA St. No. 1 at 8; OSBA MB at 18-19. The OSBA further explains this approach as follows:

If PPL Electric assigns transmission costs to wholesale suppliers, it should adopt a policy that transmission costs are assigned to both wholesale and retail suppliers on the same basis, primarily based on actual [peak load contribution] levels by rate class group. In this approach, the TSC is eliminated and no reconciliation is necessary, because the variances are absorbed by wholesale suppliers. Transmission costs would implicitly be recovered by wholesale suppliers in their bid prices, and by retail suppliers in their prices to customers.

OSBA St. No. 1 at 8-9; OSBA MB at 19. The OSBA recommends that this alternative proposal be adopted in order to level the playing field between retail and wholesale suppliers. OSBA MB at 19.

PPLICA objects to any proposal that would require PPL to assume responsibility for recovering non-market-based transmission charges for both default service customers and shopping customers through a non-bypassable charge, noting that the Commission rejected such a proposal in *FE DSP II*. PPLICA MB at 6-7. Moreover,

¹¹ Constellation also initially proposed that PPL collect non-market-based transmission charges from both shopping and non-shopping customers alike on a non-bypassable basis. However, the Joint Suppliers state that while they continue to support such a change, they will no longer pursue the proposal in this proceeding based on the Commission's Orders in *FE DSP II*. Joint Suppliers MB at 12.

PPLICA argues that both the Electric Competition Law as well as Commission regulations require that transmission costs be treated as unbundled supply-related costs, to be recovered from customers by the particular entity that provides generation service to those customers. PPLICA MB at 6-10. Accordingly, PPLICA contends that PPL should be responsible for recovering transmission costs and other PJM charges from its default service customers, while EGSs should be responsible for recovering such costs from shopping customers. *Id.*

PPLICA further argues that requiring PPL to collect PJM charges from all customers would eliminate customers' ability to choose a fixed-price arrangement for the payment of such charges, an option they currently enjoy under contracts offered by EGSs. *Id.* at 11-13. In addition, PPLICA contends that having PPL bear responsibility for collecting PJM charges from all customers raises transitional issues for customers that currently have competitive supply contracts that include a transmission component extending beyond the June 1, 2013 DSP II effective date. *Id.* at 14-17. PPLICA argues that such customers would be at risk for being over-charged for transmission-related services, and would have to spend time and resources renegotiating shopping contracts with EGSs to avoid a double-counting of PJM charges that could be imposed by both PPL and the EGS. *Id.* PPLICA concludes that if the Commission finds any merit in the recovery of PJM charges through a non-bypassable rider, consideration of such a proposal should be deferred to the Commission's end-state default service proceeding. *Id.* at 17.

The Joint Suppliers strongly oppose the OSBA's alternative proposal to have wholesale suppliers bear the responsibility for transmission costs currently recovered by PPL through its TSC. The Joint Suppliers contend that such an approach would place wholesale suppliers at a disadvantage compared to EGSs, who have the option to recover costs and/or increases to costs such as those currently included in the TSC through special contract terms, while wholesale suppliers do not have such an

option. Joint Suppliers RB at 9. Moreover, the Joint Suppliers assert that if wholesale suppliers are to be responsible for such unknown and unpredictable costs, they would need to factor a premium into their default service bids to account for the added risk involved, to the detriment of default service customers. *Id.* at 9-10. Also, since the OSBA's proposal in this regard would be unique to PPL, it may place PPL at a competitive disadvantage with respect to other EDCs, as its RFPs would be less attractive to potential wholesale suppliers, and therefore less competitive. *Id.* at 10.

PPL argues against both the imposition of a non-bypassable transmission charge on all distribution customers, and the assignment of transmission charges to wholesale suppliers. With regard to the non-bypassable charge, PPL contends that this proposal involves numerous complexities, and could result in substantial cost shifting among customers. PPL MB at 66. As PPL further explains:

To accomplish this proposal, transmission-related costs currently billed by PJM to EGSs would need to be reassigned to PPL Electric, which would then need to develop new class cost allocators. Constellation Stmt. 1-SR at 2. This process would need to account for all customers' load, peak load and costs. *See* PPL Electric Stmt. 5-R at 13. In addition, a change to a non-bypassable charge applied to all distribution customers would deprive customers of the opportunity to seek alternative arrangements for payment of transmission-related costs. Constellation witness Bennett acknowledged that Large C&I customers currently may have contracts with pass through or fixed price arrangements related to recovery of transmission charges. Among these arrangements are EGS offerings to collect costs through a collection method that reflects a customer's individual PJM transmission obligation. Constellation Stmt. 1-SR at 6. As the Commission examines potential end state default service structures and EGSs argue that shopping provides opportunities to tailor new products for customers, it would appear to be a step backward to make a substantial change to the structure of the TSC rider to create a non-bypassable charge to be imposed by the default service provider upon all customers. PPL Electric further notes that,

as acknowledged by witnesses for OSBA and RESA, the Commission rejected a proposal to establish a non-bypassable transmission charge in the *FirstEnergy Order*. (OSBA St. 3, p. 3; RESA St. 1-R, p. 14; *FirstEnergy Order* at pp. 77-78).

For these reasons, the proposal to create a non-bypassable TSC should be rejected.

Id. at 66-67.

With regard to the assignment of transmission costs to wholesale suppliers, PPL argues that there are difficulties with this proposal as well:

Current contracts with wholesale suppliers under the DSP I Program do not provide for suppliers to be responsible for these transmission-related charges. These DSP I Program contracts extend for various terms into the DSP II Program period, with the last of the fixed-price, full-requirements, load-following contracts for the Residential and Small C&I customer classes not expiring until March of 2015. (PPL Electric St. 1-R, p. 30; PPL Electric Ex. JC-4A; PPL Electric Ex. JC-4B). As such, it is not possible to require these suppliers to bear such transmission-related costs. Thus, as Mr. Knecht concedes, there would need to be a process to phase out the TSC charge. (PPL Electric St. 1-R, p. 30; OSBA St. 3, p. 2). Mr. Knecht has offered no explanation of how the process of phasing out the TSC charge would be accomplished. He also has not offered any analysis of whether such a phase out process could affect shopping decisions by customers or affect the willingness of wholesale suppliers to continue to participate in future default service procurements. (PPL Electric St. 1-R, p. 30). OSBA's alternative proposal to phase out the TSC should be rejected.

Id. at 67-68 (footnote omitted).

ii. ALJ's Recommendation

The ALJ found that while the difficulties relating to the OSBA's proposal to have wholesale suppliers bear the responsibility for transmission-related costs constrain PPL's ability to implement such a proposal in this proceeding, they do not prevent it from considering the proposal in the Company's next DSP case. Accordingly, the ALJ recommended that PPL be directed to consider the OSBA's proposal in its next DSP proceeding. R.D. at 76.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

With regard to the proposal that non-market-based transmission costs be recovered through a non-bypassable charge imposed by the Company on both shopping and default service customers, PPLICA and the Joint Suppliers correctly note that we rejected such a proposal in the *FE DSP II Order*. There, we expressed concern that the imposition of such a non-bypassable charge would interrupt long-term shopping contracts and may force contracts to be renegotiated. In addition, we found that this proposal would increase the likelihood of double cost collection by the EDCs and EGSs, while increasing the risk for customers. *FE DSP II Order* at 81. Though the OSBA and the Joint Suppliers appear to have withdrawn support for this proposal in the instant proceeding, we will reaffirm our finding that the imposition of a non-bypassable charge for the recovery of transmission-based costs is inappropriate for the reasons given in the *FE DSP II Order*. Moreover, we agree with PPLICA that Electric Competition Law as well as Commission regulations require that transmission costs be treated as unbundled supply-related costs, and are more properly recovered from customers by the particular entity that provides generation service to those customers.

With regard to the OSBA's alternative proposal that wholesale suppliers take on the responsibility for transmission costs, we are persuaded by the Joint Suppliers' argument that such a proposal would place wholesale suppliers at a disadvantage vis-à-vis EGSs, because EGSs have the ability to adjust to changes in transmission-related costs through special contract terms, while wholesale suppliers do not have that ability. Thus, wholesale suppliers would need to account for the unpredictability of such cost changes by building an additional risk premium into their default service prices, which would increase rates for default service customers. Such a scenario may also place PPL at a competitive disadvantage with respect to other EDCs, as its RFPs would be less attractive to potential wholesale suppliers, and therefore less competitive. We also agree with PPL regarding the difficulties involved with respect to ongoing DSP I contracts that contain no provision for wholesale suppliers to bear transmission-related costs. For these reasons we will reject the OSBA's proposal to have wholesale suppliers bear the responsibility for transmission costs.

Additionally, since details of the key components relating to the end-state of default service have yet to be determined, we do not believe it is appropriate at this time to direct PPL to consider the OSBA's proposal in its next DSP proceeding, as recommended by the ALJ. Accordingly, we decline to adopt this recommendation.

b. Reconciliation

i. Positions of the Parties

PPL explains its TSC cost allocation and reconciliation procedure as follows:

PPL Electric's current TSC cost allocation and reconciliation procedure among the customer classes is based on each

transmission customer class's percentage contribution to the five highest coincident peaks used by PJM to bill PPL Electric for default service transmission costs. The percentages for these five days are averaged to develop a customer class contribution. The resulting calculated class peak load responsibility is adjusted for the forecast amount of default service load for the upcoming annual TSC application period. The adjusted peak load responsibility values then are used to determine the annual percentage of the demand related components of the PJM transmission-related charges assigned to each customer class for the term of the annual TSC application period. Currently PPL Electric uses the same calculated percentages for the after-the-fact reconciliation of the actual demand related costs that are incurred. (PPL Electric St. 5-R, pp. 13-14).

PPL MB at 68.

The OSBA contends that PPL's reconciliation methodology for the TSC does not reasonably reflect actual costs incurred by customer class. The OSBA asserts that for demand related costs (which represent most of the TSC costs), PPL's reconciliation mechanism relies on forecasted class contributions to peak demands rather than actual contributions to peak demands. OSBA St. No. 1 at 6; OSBA MB at 17. The OSBA cites historical data to support its position that PPL's use of forecasted peak demand numbers rather than actual numbers in its TSC reconciliation has resulted in a large reconciliation credit to the Residential class, and a large reconciliation charge to the Small C&I class. *Id.* The OSBA concludes that PPL's reconciliation approach has created undue encouragement for Small C&I customers to shop by overstating the TSC, while reducing the economic incentive for Residential customers to shop by understating

the TSC. OSBA St. No. 1 at 7; OSBA MB at 17.¹² The OSBA avers that these issues can be mitigated simply by assigning transmission costs to the default service wholesale suppliers.¹³

In response to the OSBA's concerns, PPL states that it concurs that a modification of the TSC allocation procedure to reflect actual monthly TSC demand per customer class is appropriate. PPL MB at 69. Thus, PPL proposes that customer class allocation factors for demand-related transmission costs be adjusted monthly. *Id.* PPL explains that under this approach, the percentage of demand-related costs assigned to each customer class would change monthly to account for increases and decreases in the customer classes' assigned peak load responsibility, based on a customer class's share of default service load in a given month. This monthly adjustment to the customer class allocation factors would then be reflected in the annual reconciliation of TSC demand-related costs. *Id.* PPL asserts that no party has opposed this modification, and therefore recommends that it be adopted for the current annual TSC application/reconciliation period for the twelve months ending May 31, 2013. *Id.*

¹² The OSBA also questions PPL's math in developing a recent TSC charge, asserting that the charge for Small C&I customers was higher than that for Residential customers, even though Small C&I customers are generally less costly to serve. The OSBA contends that the results of the Company's calculations would appear to indicate that the Small C&I class has a lower load factor than the Residential class, a situation that OSBA believes to be unlikely. OSBA St. No. 1 at 7; OSBA MB at 17-18.

¹³ As discussed, *supra*, we have already rejected this proposed remedy by the OSBA.

ii. ALJ's Recommendation

Because PPL's proposal to adjust the allocation factors for its demand-related transmission costs on a monthly basis was unopposed, the ALJ recommended that it be approved.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

We find that PPL's proposed modification of its TSC allocation methodology adequately addresses the OSBA's concerns. Accordingly, we will adopt the ALJ's recommendation to approve this proposal.

c. Generation Procurement and TSC Classification Criteria

i. Positions of the Parties

The OSBA is troubled by the fact that the criteria used by PPL to classify Small C&I customers for TSC purposes differs from that used to classify that class of customers for generation procurement (and GSC) purposes. Thus, the OSBA recommends that PPL's classification criteria for Small C&I customers be modified so that they are the same for all components of the PTC. OSBA St. No. 1 at 8-9; OSBA MB at 18, 20. As explained by PPL, the question is whether customers receiving service under Rate Schedule GS-3 with a peak demand of 500 kW or greater—considered Small C&I customers for TSC purposes but Large C&I customers for generation procurement purposes—should be switched to the Large C&I Primary class for TSC purposes; and whether customers receiving service under Rate Schedule LP-4 with a peak demand of less than 500 kW—considered Large C&I Primary customers for TSC purposes but

Small C&I customers for generation procurement purposes—should be switched to the Small C&I class for TSC purposes. PPL MB at 64.

PPL opposes such a change, arguing that it is more appropriate to continue the assignment of customers for TSC purposes based upon their service voltage level, rather than on a previously-agreed upon assignment of the customers for procurement purposes. PPL St. 5-R at 11-12; PPL MB at 64. As PPL witness Kleha further explained:

The peak demand breakpoint used to define whether the customer receives hourly default service or a fixed rate per kWh under the GSC-1 or GSC-2 should not be used to define the allocation of transmission service costs to the customer. Rather, the customer's proper transmission service-related customer class, as well as how the customer is billed for transmission service, should determine the allocation of transmission service costs, because a change in the current billing criteria may have adverse effects on certain customers, and may lead to cost shifting among customer classes.

PPL St. 5-R at 12.

In surrebuttal testimony, OSBA witness Knecht testified that it was not his intent to create a cost shifting problem, and that if PPL presented credible evidence of a material amount of cost shifting, he would recommend that OSBA no longer support this adjustment. OSBA St. No. 3 at 4. PPL responds as follows:

. . . PPL Electric witness Kleha testified that the 104 Rate Schedule LP-4 customers who would be moved from the Large C&I – Primary class to the Small C&I class under OSBA's proposal would collectively pay about \$226,000 more (averaging over \$2,000 more per customer). In addition, the six Rate Schedule GS-3 customers who would be moved from the Small C&I class to the Large C&I –

Primary class would collectively pay about \$121,000 less. (PPL Electric St. 5-RJ, pp. 1-2). Mr. Kleha further explained that the switch would not only substantially affect the individual customers who would be moved between the two TSC rate classes, but would also affect existing customers on those two classes. Specifically, the remaining Small C&I customers would receive a decrease in costs of about \$152,000 while existing Large C&I – Primary customers would experience an increase in costs of \$47,000. (PPL Electric St. 5-RJ, pp. 1-2). PPL Electric believes these class shifts are material and provide further substantial evidence that these GSC-3 and LP-4 customers should not be moved out of their existing TSC customer classes.

PPL MB at 64.

ii. ALJ's Recommendation

The ALJ agrees with the OSBA that the differing eligibility rules for Small C&I customers between the TSC and GSC involve complexity and confusion, and appears to support the creation of a consistent definition for the Small C&I class for both TSC and generation procurement purposes. R.D. at 73.

iii. Exceptions and Replies

No Exceptions were filed on this issue.

iv. Disposition

While it is true that PPL's tariff sets forth two different definitions and classification criteria for Small C&I customers as described, *supra*, we are convinced that this distinction is proper and should be retained. Moreover, PPL provided ample evidence of the cost shifting that would occur among customers served under different

rate schedules if the OSBA's proposal were adopted. Accordingly, we will reject the OSBA's proposal on this issue.

9. Time-of-Use Rate Option

a. Introduction and Background

Section 2807(f)(5) of the Code provides that default service providers must submit one or more time-of-use (TOU) rates and real-time price plans to the Commission in their default plans:

By January 1, 2010, or at the end of the applicable generation rate cap, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to [sic] the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

66 Pa. C.S. § 2807(f)(5). Accordingly, PPL is required to offer a TOU rate option to its default service customers.

The TOU program proposed by PPL in this proceeding is essentially the same program it filed on September 26, 2011, in response to a Commission Order entered on August 25, 2011 at Docket No. M-2011-2258733. In that Order, the Commission, *inter alia*, directed the Company to submit a new TOU plan to address problems caused by the pricing structure of its then current plan. PPL MB at 73. PPL notes that this new TOU program filed on September 26, 2011 (2012 TOU Program), was still pending

before the Commission at the time its DSP II Program was filed on May 1, 2012. *Id.*
PPL states:

Given the lack of a final Commission decision, the transitional nature of the default service filing and the uncertainty regarding PPL Electric's default service provider status after June 1, 2015, the Company decided to "stick with" its 2012 TOU proposal in its default service filing, and to reflect any changes that might later be required as a result of the pending 2012 TOU rate proceeding.

Id. at 73-74.

On August 30, 2012, an Opinion and Order was entered in the proceeding regarding PPL's 2012 TOU Program at Docket No. R-2011-2264771, in which the Commission, *inter alia*:

- Denied PPL's request to implement the 2012 TOU program as filed, and ruled that the Company's current TOU program and current rates should remain in effect until June 1, 2013, which date coincides with the effective date of PPL's DSP II;
- Held that PPL's TOU rates should not be a derivation of the fixed-price default service rate;
- Held that PPL's TOU program is a form of default service; and
- Authorized PPL to recover the net undercollection of its prior period TOU program from all default service customers by customer class, following certification by the Commission's Bureau of Audits that the amount of the net undercollection claimed is correct, and the accounting method used is consistent with Commission directives.

Pennsylvania Public Utility Commission et al. v. PPL Electric Utilities Corporation, Docket Nos. R-2011-2264771 *et al.* (Opinion and Order entered August 30, 2012) (*August 30 PPL TOU Order*).

PPL states that because the *August 30 PPL TOU Order* was only entered shortly after testimony was filed and shortly before hearings began in this proceeding, the Company and other interested parties did not have a chance to respond to it. PPL MB at 75. However, PPL believes that the most prudent course of action would be to approve its as-filed TOU plan as an interim, transitional measure in this proceeding. *Id.* If the Commission does not adopt the plan as filed, PPL presents an alternative proposal that seeks to address the major concerns raised by the ALJ, the Commission, and other Parties to this proceeding. *Id.* PPL also requests that a collaborative be implemented so that details of the alternative proposal can be worked out, and to ensure that all implementation issues are fully addressed. *Id.* PPL's as-filed TOU plan, as well as its proposed alternative, will be discussed next.

b. Positions of the Parties

i. PPL's As-Filed TOU Program

PPL explains that it designed its proposed TOU program with four goals in mind: (1) to provide a basic TOU rate option for default service customers that would allow them the opportunity to save money if they shifted usage; (2) to provide a program that did not unduly inhibit the development of or compete with TOU rate options in the competitive retail market; (3) to avoid a design that would encourage customers to switch back and forth between the TOU and fixed default service rates based on structural differences in the two programs; and (4) to enable the Company to recover all costs associated with providing TOU default service on a full and current basis. PPL MB at 76.

PPL's proposed TOU program establishes a separate default service rate option for Residential and Small C&I customers, with prices based on the underlying fixed-price default service rate, *i.e.*, customers will pay a premium above the fixed rate

during on-peak periods, and will pay a discount below the fixed rate during off-peak periods. *Id.* at 75-76. PPL explains the details of its proposal as follows:

Under PPL Electric's proposed TOU program for Residential customers, the Company is proposing an on-peak period from 12:00 p.m. to 7:00 p.m. year-round, excluding weekends and PJM holidays. All other hours would be considered off-peak. This consistent year-round time period will simplify TOU program implementation for customers because it will: (1) be easier for customers to remember, (2) not require them to reset timers on appliances or other devices, and (3) not require them to change usage patterns on a seasonal basis. The actual load shape for the Residential class was used to determine the hourly percentage variance from the annual average for all possible combinations of on-peak and off-peak periods. The on-peak period was evaluated based on several criteria including: a premium/discount that would encourage shifting of load and/or conservation; a reasonable time frame to encourage participation; and periods that included the typical summer and winter peak load times.

The on-peak period for Small C&I customers is from 7:00 a.m. to 7:00 p.m., also on a year-round basis, excluding weekends and PJM holidays. All other hours would be considered off-peak. The same criteria set forth above for the Residential Class were used to select the on-peak period for the Small C&I class including in particular that customers taking optional off-peak space heating and water heating service under Rate Schedules GH-1 and GH-2 already have equipment that is controlled to minimize use during the 7:00 a.m. to 7:00 p.m. period.

The rates for Residential and Small C&I TOU customers will be fixed for a 6-month period, corresponding with each proposed fixed-price default service PTC period, *i.e.*, June - November and December - May supply periods. The rates will reflect the generation cost component of the respective Customer Class GSC-1 rates adjusted by an adder for the on-peak period and a discount for the off-peak period, plus the Customer Classes' respective portions of Company administrative costs and the E-Factor.

As described in detail by PPL Electric witness Woodruff, the on-peak adder and off-peak discount will be determined based on an analysis of the prior three calendar years of energy prices and load. This analysis will include a review of the Customer Class hourly load, the hourly PJM LMP, the hourly spot market energy dollars, the on-peak and off-peak \$/MWh averages, and the generation cost factor of the GSC-1 rate for the respective Customer Class.

TOU over/under collections will be reconciled across all default service customers by rate class, *i.e.*, Residential TOU over/undercollections will be reconciled over all Residential default service load and Small C&I over/undercollections will be reconciled over all Small C&I default service load.

Customers will be provided with advance notice and must affirmatively elect to participate in the TOU program, *i.e.*, there will be no carryover of customers from the former program. There is no cap on the number of customers who can participate in the proposed TOU program. All existing TOU customers would be removed from the then-existing TOU rates as of their meter reading in May 2013, and would be eligible for the new TOU rates as of their meter reading in June 2013. The TOU program end date will be based on a customer's final billing cycle on or before May 31, 2015.

Id. at 76-78 (citations omitted; footnote omitted).

Although the Commission held in the *August 30 PPL TOU Order* that the TOU rates should not be a derivation of the fixed-price default service rate as noted, *supra*, PPL states that it continues to believe it is reasonable and appropriate to determine the on-peak and off-peak rates in relation to the fixed-price rate, providing several reasons in support of this belief. *Id.* at 78. First, PPL asserts that establishing fixed-price and TOU rates for the same underlying service in two completely different ways will create distortions which will cause customers to decide whether or not to elect the TOU option based on artificial rate design differences as opposed to a desire or willingness to

shift load from on-peak to off-peak periods. *Id.* Second, PPL avers that determining fixed-price and TOU rates on different bases can make price comparisons more difficult and inhibit the development of TOU rates in the competitive market. *Id.* at 79. Third, PPL points to its experience with its 2011 TOU program, in which the TOU rates were based on the futures market rather than on the fixed-price default service rate. PPL notes that this method of setting TOU rates resulted in large undercollections and large, unintended customer migrations between the fixed-price option and the TOU option. *Id.* Finally, PPL contends that its proposal to maintain the *status quo* in this proceeding is consistent with the transitional nature of this filing and the uncertainty surrounding EDCs' future as the default service provider. PPL concludes that it does not make sense to expend limited Commission resources to develop a new TOU rate program that may only be in effect for a short period of time. *Id.*

With regard to procurement of supply for its TOU rate option, PPL proposes that winning bidders of the six- and twelve-month fixed-price load following product procurements also provide supply to meet the default service load of TOU customers for a six-month period beginning each June and December. *Id.* at 82. Under this plan, these winning suppliers will be proportionally responsible for a portion of all loads of customers on the TOU rate option. In order to reduce reconciliation issues related to over/undercollections, PPL states that it will compensate suppliers based on the amount that it bills to the assigned TOU customers for generation costs, exclusive of gross receipts tax, administrative costs and E-factor amounts, on a *pro rata* basis for all TOU billings. *Id.* at 83. PPL states that it will transition any remaining TOU over/undercollections from the DSP I Program's TOU rate option into the reconciliation of the GSC-1. *Id.* PPL submits that its goal in combining the fixed-price and TOU procurements is to ensure that it is able to obtain adequate supply to provide a TOU rate option. *Id.* at 83-84.

The OCA agrees with the general design of PPL's TOU program, as well as its methodology for determining the on-peak premium and off-peak discount factors. OCA MB at 31. However, the OCA asserts that the Company should not use the same definition of the on-peak period for both the summer and non-summer months. As the OCA argues:

In the non-summer months, loads and price within PPL's proposed peak period are generally lower than loads and prices outside of the peak period. If non-summer loads were shifted from within this period to outside of this period, the cost to supply these customers could actually increase. Under the Company's proposed TOU rates, customers who shift load from peak hours to off-peak hours will still receive the benefit of the off-peak discount, but the suppliers' cost to serve this load might not be reduced. Also, peak loads may not actually be reduced.

OCA St. No.1 at 24-25; OCA MB at 30. The OCA contends that in such a situation, suppliers may be reluctant to participate, or may include higher risk premiums in their default service bids. OCA St. No. 1 at 26; OCA MB at 31.

Consistent with its view that the on-peak and off-peak hours should be different for the summer and non-summer periods, the OCA also asserts that there should be a different on-peak premium and off-peak discount for the summer and non-summer months. The OCA recommends that the Company use its proposed methodology to determine these amounts. OCA MB at 30-31.

The OSBA does not object to PPL's proposal to include TOU service in the default service procurement for Small C&I customers, but does not support the Company's use of different on-peak and off-peak periods for the Residential and Small C&I customers. OSBA MB at 21. The OSBA contends that hourly market prices are the same for both customer classes, and therefore any benefits of shifting usage from a high-

priced hour to a lower-priced hour is the same for both classes. *Id.* Also, although the OSBA opines that integrating TOU service with fixed-price default service could increase supplier risk and result in higher bid prices than if TOU supply were separately procured, the OSBA believes there will be little interest in Company-sponsored TOU rates, and suppliers will thus perceive very little risk from a practical point of view. OSBA St. No. 1 at 10-11; MB at 21-22. This is so because, according to the OSBA, customers' experience with the pricing issues that have occurred under PPL's current TOU structure have likely "soured" customer interest, and has resulted in few customers remaining on PPL's TOU service. OSBA St. No. 1 at 11; MB at 22.

RESA recommends that PPL's TOU proposal be rejected, and that PPL be required to rely on the competitive market to comply with its TOU rate obligation. RESA MB at 49. In support of this position, RESA points to the *December 16 Upcoming DSP Order*, wherein the Commission stated that it:

. . . will maintain its recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. The Commission does wish to clarify that this recommendation is not, in and of itself, a rejection of the other proposals raised, such as instituting peak time rebate offers or creating a separate wholesale auction for TOU rates. Such ideas may indeed have merit, and we will allow the EDCs to evaluate these proposals for possible inclusion in their next default service filings.

RESA MB at 49-50 (footnote omitted), quoting *December 16 Upcoming DSP Order* at 47.

Specifically, RESA recommends:

. . . that PPL be required to certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territories. To comply with the Act 129 requirement

that the “default service provider shall submit to the Commission one or more proposed time-of-use rates and real-time price plans,” each year, PPL would survey EGSs and determine whether they are or intend to offer a time-differentiated rate and whether the EGS intends to offer the product for at least 12-months. If PPL finds one or more EGSs offering such rates, it would post that information on a clearinghouse website (and refer customers to the information upon inquiry) and certify this information to the Commission. After the end of the year, PPL would submit a report on the number of EGSs actually providing the service. Act 129 also provides that the default service supplier should prepare a report [presumably to the Commission] detailing “the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.” Rather than have PPL compile these data and provide these opinions (which could require PPL to review competitively sensitive information), this data could be compiled and analyzed by either the Commission’s Bureau of Conservation, Economics and Energy Planning (“CEEP”), or by a consultant hired by PPL.

RESA MB at 50-51 (footnotes omitted).

As an alternative, RESA proposes that PPL be required to bid out the TOU program to EGSs, and select the proposal that provides the best value and innovation to customers. *Id.* at 51. Under this plan, customers who elect to participate in the TOU program would become customers of the winning EGS, and would continue receiving TOU service from that EGS after the end of the contract term unless the customer affirmatively elects otherwise. *Id.* RESA contends that “[t]his approach, which has recently been proposed by PECO and accepted by the Commission, has the advantage of utilizing the competitive market to secure the TOU rate required by Act 129.” *Id.*, referencing *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012) (*PECO Dynamic Pricing Plan Vendor Order*). RESA contends that both of its proposals offers advantages

over PPL's TOU rate option, and suggests that EGSs would be more efficient and effective in designing and delivering innovative products that customers really want. RESA MB at 52-53; RB at 20-21.

SEF submits that PPL's proposed TOU program is flawed and should be rejected. SEF MB at 13. SEF details its criticisms of PPL's TOU program as follows:

[SEF witness] Mr. Costlow has observed that PPL Electric has committed two critical errors in the design of TOU rates that result in rates that are unjust and unreasonable. These critical errors include: (1) the creation of "on-peak" periods that do not send appropriate market based pricing signals to ratepayers; and, (2) the creation of artificial "on-peak" periods that rely on historical data and may not reflect current market conditions. First, although wholesale prices change throughout the day due to changes in energy demand, PPL Electric offers a Default Service product in which the price is the same for each hour of the day. Under the Company's current procurement procedure, the price only changes quarterly based on a portfolio of short and long term supply agreements. Second, SEF witness Mr. Costlow has demonstrated that the Company's reliance upon historical data in developing its "on-peak" and "off-peak" periods is flawed because the historical data is not reflective of the current market.

In addition, the record reflects the fact that PPL Electric has made three critical errors in developing its "on-peak" period: (1) it has proposed separate "on-peak" periods for commercial and residential customers; (2) it has proposed "on-peak" periods that do not differentiate for seasonal energy demand changes; and, (3) it has proposed "on-peak" periods that do not correspond to the RTO's true economic peaks.

Id. at 13-15 (footnotes omitted).

In place of PPL's TOU program, SEF offers two alternative proposals, which it refers to an Easy TOU rate and a traditional TOU rate, respectively. SEF witness Costlow details each of these TOU rate proposals as follows:

The Easy TOU program is available to both Residential and Small C&I rate payers. The rate is available from June 1 through August 30 [sic]. The "on-peak" periods are from 3:30 p.m. to 6:30 p.m. Monday through Friday excluding holidays. The program is simple and targets the very highest peak periods during the summer. The "on-peak" and "off-peak" rates will be fixed for the period from June 1 through August 31 and posted on PPL Electric's Electric Choice Webpage at the same time the June 1 to August 31 Price to Compare is posted. During the remainder of the year from September 1 through May 31, Easy TOU customers receive the same rates as the standard Default Service customers.

The [traditional] Time of Use rate is available to both Residential and Small C&I ratepayers. The rate is available in the winter from December 1 through February 28 and in the summer from June 1 through August 31. The winter "on-peak" hours are 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 8:00 p.m., while the summer "on-peak" hours are from 12 Noon to 7:00 p.m. Monday through Friday excluding holidays. During the Shoulder months of March, April, May, September and November [sic], Time of Use ratepayers receive the same rates as standard Default Service customers.

SEF St. No. 1 at 15.

SEF states that its proposed TOU rates will be a fixed price for each period, and will be solicited at the same time as the Company's six-month fixed price solicitations. SEF MB at 16. SEF states that the winning supplier will be the bidder that offers an on-peak and off-peak price that provides the greatest benefit for participants that shift load from on-peak to off-peak periods. *Id.* SEF avers that in addition to more accurately reflecting the intent of Act 129 by encouraging least cost procurement, a

bidding process will avoid the possibility of TOU undercollections because the supplier will absorb the risk and associated cost or benefit from actual prices that vary from its projections used in formulating its bid. *Id.*

FES disagrees with PPL's proposal to combine the fixed-price and TOU procurements, arguing that these are two completely different products with different risk profiles. FES MB at 39. FES believes that the Company's proposal will reduce the overall level of wholesale supplier interest in PPL's fixed-price products, and/or increase bids on fixed-price supply. *Id.* FES recommends that PPL continue procuring TOU default supply from wholesale suppliers that currently supply PPL's default service spot market energy needs, or in the alternative, to conduct a separate solicitation for TOU service for suppliers who might specialize in TOU products. *Id.* at 39-40. FES would also support the RESA and SEF proposals that PPL bid out its TOU program to an EGS, noting, as did RESA, that the Commission approved a similar approach for PECO. *Id.* at 40-41.

In response to the various Parties' proposals that PPL bid out its TOU program to an EGS, or otherwise refer customers to EGSs to obtain TOU service, PPL argues that such proposals are prohibited by Act 129, which requires that the default service provider—not an EGS—offer TOU rates to its customers. PPL MB at 85-87. PPL notes that in the *August 30 PPL TOU Order*, the Commission established that its TOU program is a form of default service, and thus concludes that only the Company as the default service provider can offer such a program to its customers. *Id.* at 86. PPL states that “[u]nless and until PPL Electric is replaced as the default service provider, it and it alone must offer TOU default service.” *Id.* at 87.

In response to this argument, RESA asserts that its proposals to either have PPL certify that certain EGSs are available to provide TOU service, or to bid out its TOU program to an EGS, are both consistent with Act 129. RESA MB at 52; RESA RB at 21-

22. RESA argues that Act 129 imposes the obligation for a default service provider to ensure that TOU rates are available, and that this obligation can be fulfilled by the default service provider by bidding out the service, or by certifying that such services are being provided by EGSs. RESA MB at 52. RESA also argues that neither the definition of time-of-use rate nor the definition of real-time price as set forth in Act 129 specifies that the rate or price must come only from the EDC or default service. RESA RB at 21-22. FES also dismisses PPL's argument in this regard, noting, as did RESA, that the Commission approved a similar bid-out approach for PECO. FES MB at 41, citing *PECO Dynamic Pricing Plan Vendor Order*.

ii. PPL's Alternative Summer TOU Proposal

PPL states that although it believes its as-filed TOU program should be approved, it recognizes that that program is the same, in all relevant aspects, as the TOU program rejected by the Commission in the *August 30 PPL TOU Order*. PPL MB at 88. PPL asserts that while the issuance of that Order did not allow it adequate time to develop an alternative on the record in this proceeding, it would be willing to adopt SEF's Easy TOU program if certain modifications were made to it. *Id.* at 88-90. PPL's modified version of SEF's proposal, styled by the Company as the Summer TOU program, would have the following characteristics:

- An on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding weekends and PJM holidays.
- During the remainder of the year, Summer TOU customers would receive the same rates as the standard default service customers, and would be included in load to be met by fixed rate default service suppliers.
- The same on-peak and off-peak periods would apply to Residential and Small C&I customers.

- The default service Summer TOU load would be bid out separately from fixed-price supply, but at the same time as the fixed-price default service load.
- The Company would issue an RFP¹⁴ requesting bidders to provide both an on-peak price and off-peak price at the same time in seeks bids for the fixed-price load-following contracts. The TOU RFP would seek to procure products to meet the default service load of TOU customers for the summer period only.
- The Company would evaluate the bids based on the prices that would result in the greatest economic benefit, *i.e.*, the least overall cost to the TOU customer using the existing rate class profiles. The Company and the supplier will enter into a supply agreement with the winning bidders.
- The rates for the on-peak and off-peak periods would be those directly resulting from the winning suppliers' bids, plus the Customer Classes' respective portions of Company administrative costs and the E-Factor. Winning suppliers for the Summer TOU period would be paid their bid price.
- Any over/under collections will be recovered as per the Company's as-filed proposal.
- A collaborative should be implemented so that details of the Summer TOU could be worked out and to ensure that implementation issues are addressed.

Id. at 89.

¹⁴ PPL states that if this alternative proposal is accepted, the Company will need to revise the SMA and RFP filed on May 1, [2012] to account for this new Summer TOU program which will be separately procured. Furthermore, the Company will need to formulate an SMA and RFP applicable to the Summer TOU program. PPL MB at 89, Footnote 71.

PPL explains that this alternative proposal includes two changes from SEF's Easy TOU program. First, the on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding week-ends and PJM holidays, is intended to target the highest peak periods during the summer months.¹⁵ Second, TOU customers will be billed on their normal billing cycles and not on a calendar month basis. *Id.* at 90.

PPL states that if the Commission decides to adopt this alternative proposal rather than its as-filed TOU program, a collaborative should be implemented so that the details of the Summer TOU program can be worked out to ensure that all implementation issues are fully addressed. *Id.* PPL asserts that its alternative Summer TOU proposal generally satisfies the goals that it has set for its TOU rate option. *Id.* PPL further argues that its alternative proposal addresses, at least in part, many of the concerns and criticisms raised by other Parties to this proceeding:

OSBA and FES assert that TOU supply should be bid out separately from fixed-price default service load. PPL Electric's alternative proposal adopts this approach. The Commission and others do not believe that TOU prices should be developed from fixed-price default service rates. PPL Electric's alternative proposal separates the determination of TOU rates from fixed-price default service rates. SEF contends that TOU prices should be market based. PPL Electric's alternative proposal adopts this approach. SEF contends that the same on peak and off peak periods should be used for Residential and Small C&I customers. PPL Electric's alternative proposal adopts this approach.

¹⁵ PPL states that "[a]lthough SEF's Easy TOU proposal provided for a 3:30 p.m. to 6:30 a.m. on-peak period, PPL Electric witness Woodruff explained the difficulty of operating a TOU program in half-hour increments on PJM. (PPL Electric St. 1-R, p. 10). Furthermore, SEF explained that 'the Easy TOU 'on-peak' period could be modified to start at 3:00 PM and at 6:00 PM or as suggested by Mr. Woodruff.'" (SEF St. 1-SR, p. 9)." PPL MB at 90, Footnote 72.

Id. at 91(citations omitted) (footnote omitted).

PPL states that its proposed Summer TOU program is not perfect, warning that wholesale suppliers may not bid on a separate TOU product where the amount of load is likely to be small, at least initially, and where customers can freely join or leave the rate at any time.¹⁶ *Id.* Also, PPL avers that the prices for this TOU service, while market-based, would be detached from fixed-price default service rates and could lead to customers joining or leaving the TOU rates based on the different designs of the rates as opposed to the merits of the TOU program. *Id.* However, PPL concludes that “given the unique facts and circumstances of this case and the transitional nature of this proceeding, the Company would support the adoption of a Summer TOU program as an interim measure to transition to a yet undefined default service end state if its as-filed proposal is not adopted.” *Id.*

SEF recommends adoption of PPL’s Summer TOU program, indicating that it has no problem with the changes incorporated in this program from its own proposed Easy TOU program. SEF RB at 1. SEF believes that this alternative will provide the best opportunity for PPL customers to enjoy true TOU rates in accordance with the requirements of Act 129. *Id.* SEF states that it views PPL’s proposal as transitional, and sees it as an opportunity for the Commission to observe the results and make determinations regarding its efficacy, and the viability of a future winter TOU program. *Id.* SEF also agrees with the Company that a collaborative needs to be convened as soon as possible to identify and address implementation issues. *Id.*, Footnote 2.

¹⁶ PPL states that in the event it is not able to procure supply for the Summer TOU load, it will not offer the Summer TOU rate option to customers and will return to the Commission with a new proposal. PPL MB at 91, Footnote 74.

FES states that it does not object to PPL's proposed Summer TOU plan because the TOU load will be bid out separately from fixed-price supply. FES RB at 23. However, RESA recommends that this proposal be rejected. RESA RB at 24-25. RESA avers that while the Summer TOU program may be an improvement over the Company's original program, there is no reason to believe it will be effective. *Id.* at 24. RESA continues to recommend adoption of either its EGS certification proposal or its EGS bid-out proposal. *Id.* at 25.

c. ALJ's Recommendation

The ALJ recommended that PPL's as-filed TOU plan be rejected, and that the Company be directed to implement the Easy TOU program. The ALJ noted that the as-filed plan was already evaluated and rejected by the Commission in the *August 30 PPL TOU Order*, and stated that neither the plan, nor the reasons for rejecting it have changed. R.D. at 91. The ALJ criticized PPL's contention that maintaining the status quo with regard to its TOU plan is appropriate due to the transitional nature of the plan and the uncertainty surrounding the future of EDCs as default service providers. The ALJ found that this position has no support in the law, stating that "[t]he requirement in the existing statute is for PPL, as an EDC providing default service, to propose and implement a valid TOU plan for use during the two-year period covered by the DSP II plan." R.D. at 85.

As for RESA's proposal to require PPL to certify that certain EGSs are available to provide TOU service, the ALJ recommended that this proposal be denied, asserting that it "is complicated, confusing, and requires actions on the part of the Company which are clearly outside the scope of a distribution company's normal activities." *Id.* at 88. Notwithstanding this recommendation, the ALJ did find some merit in RESA's stance that EGSs represent a more appropriate choice to provide TOU programs than EDCs. *Id.* at 88-89. Nevertheless, the ALJ agreed with the Company that such an option is prohibited by Act 129. As the ALJ explained:

There is no doubt that the arguments in RESA's Reply Brief touting the preferable aspects of the time-of-use programs are persuasive as an ideal market-based alternative to having the EDC offer a TOU plan, RESA RB at 20-21, and the existence of these time-of-use plans to be offered by EGSs would be a wonderful way for the industry to support the goals of the legislature by shifting peak load at critical times. However, as the Company argues, this approach does not satisfy the statutory requirement that the TOU program be administered by the default service provider as default service. Ironically, it is this statutory requirement that stands in the way of the ideal solution, which is to simply allow the EGSs to offer a time-of-use program with terms specific to each EGS, *instead* of requiring the EDC to administer it. Of course, the EGSs may offer these programs now, but that does not relieve the default service provider from the statutory requirement that it offer one or more time-of-use programs itself.

Id. at 89.

The ALJ concluded that “[i]n the wake of a failed TOU program and several inadequate proposals for replacement, the Company should be directed to implement the Easy TOU program in time for the 2013 summer season.” *Id.* at 95. The ALJ also recommended that PPL be directed to convene a collaborative to work out the details of the program within a week of the Commission's final Order in this proceeding, and to provide a complete plan for staff review under the present docket no later than one month prior to the first effective date of the program. *Id.*

d. Exceptions and Replies

In its Exception, PPL states that it is not challenging the ALJ's determination that its as-filed TOU program be rejected, but seeks confirmation and clarification regarding the implementation of the alternative proposal recommended for approval by the ALJ. PPL Exc. at 13-14. Specifically, PPL requests that the

Commission confirm that the Company should implement the Summer TOU rate option that it proposed, and not the Easy TOU rate option originally proposed by SEF. PPL notes that the terms “Summer TOU” and “Easy TOU” have been used interchangeably, but states that these rate options are not exactly the same. PPL reiterates that while its proposed Summer TOU is based on SEF’s Easy TOU program, there are certain material differences between the two, each of which have been accepted by SEF and discussed in the RD. *Id.* at 14-15. As PPL explains:

First, in the Summer TOU rate option the on-peak period of June, July and August from 3:00 p.m. to 6:00 p.m., excluding week-ends and PJM holidays, is intended to target the highest peak periods during the summer months. Second, in the Summer TOU rate option TOU customers will be billed on their normal billing cycles and not on a calendar month basis. (R.D. 92 and 95). The Easy TOU program originally proposed by SEF contained a different peak period and different billing parameters. Notably, SEF has explained that it does not oppose the modification to its Easy TOU program which transforms it into the Summer TOU rate option proposed by PPL Electric.

Id. at 15.

PPL states that its interpretation of the Recommended Decision is that its recommendation is to implement the Summer TOU rate option as discussed at length in the Recommended Decision, inclusive of PPL’s proposed changes to the original Easy TOU proposal accepted by SEF. PPL requests that the Commission confirm this interpretation and permit the Company to implement the Summer TOU rate option. *Id.*

Additionally, PPL requests that the Commission affirmatively state that the collaborative recommended in the Recommended Decision be convened to discuss only the implementation of the Summer TOU rate option. PPL states that it anticipates the implementation issues to be minor and administrative in nature, and it expects to

implement the Summer TOU rate option as soon as possible. *Id.* at 15-16. As PPL further explains:

Consistent with the R.D.'s recommendation, PPL electric plans to schedule and hold a collaborative regarding implementation issues of the Summer TOU rate option within one week of entry of the final Order in this proceeding. At the collaborative, PPL Electric will present the RFP and tariff sheets that encompass the Summer TOU rate option, and resolve any implementation issues that may be identified. Thereafter, PPL Electric anticipates that the filing of the Summer TOU rate option would be considered a compliance filing in this docket and not a matter to be addressed in a separate proceeding (or hearing). The Company further anticipates filing the required documents shortly after the collaborative is held for expedited review and approval by the Commission in order to obtain the supply for the Summer TOU rate option in April 2013. In order for the Company to implement the Summer TOU option in June 2013, the program would need to be approved by the Commission before April 2013, in order for procurements to be undertaken.

Id. at 16.

In its Exception, RESA avers that the ALJ erred in rejecting both of its proposed TOU alternatives. RESA asserts that the ALJ correctly found that its proposals to rely on the competitive market to provide TOU programs were desirable from a policy perspective, but that the ALJ felt compelled to reject these proposals based on certain flawed conclusions. RESA Exc. at 15-16. Specifically, RESA contends that the ALJ erred in concluding that an EDC's legal requirement to submit a TOU plan is equivalent to a requirement to actually provide the service. RESA argues that Section 2807(f)(5) of the Competition Act provides that default service providers must submit one or more TOU rates and real-time price plans to the Commission, but does not specify that the rate or price may only be provided directly by the EDC, or that administering a plan equates

to providing the service as the ALJ concluded. *Id.* at 16. RESA further argues that Section 2807 provides that one or more “plans” be used, but that there is no legal or logical bar prohibiting a plan from consisting of a certification process or bid-out process consistent with RESA’s recommendation. *Id.* RESA reiterates its contention that its proposals are consistent with Commission determinations in other proceedings that an EDC can satisfy its TOU requirement by using real-time price plans that could consist of contracts with EGSs. *Id.* at 17.

RESA also asserts that the ALJ’s conclusion that its primary proposal is complicated, confusing, and requires actions on the part of the Company that are outside the scope of an EDC’s normal activities should be rejected. RESA argues that its EGS certification proposal relies on data from the competitive suppliers and places minimal burdens on PPL. *Id.* at 17. According to RESA, the provision set forth in its proposal that PPL submit an annual report on the number of EGSs offering TOU service would only require the Company to solicit and gather information from EGSs. RESA asserts that this should be neither complicated nor burdensome for PPL. *Id.* at 17-18. Finally, RESA contends that there is no rational reason to reject its primary proposal on the basis that the details of the program would need to be worked out in a collaborative. RESA asserts that the Commission has used a post order collaborative process on numerous occasions, and that even the ALJ’s recommended TOU plan would require PPL to convene a collaborative. *Id.* at 18.

In Reply, PPL maintains that both of RESA’s TOU proposals are inconsistent with the statutory requirements of Act 129. PPL repeats its argument that the Statute requires the default service provider—not an EGS—to submit TOU rates to the Commission and to offer TOU rates to its customers. PPL R.Exc. at 10. PPL again cites to the *August 30 PPL TOU Order*, in which the Commission established that its TOU program is a form of default service, and concludes that “pursuant to the plain language of 66 Pa. C.S. § 2807(f)(5), PPL Electric, as the default service provider, is

required to offer a TOU default service rate option.” *Id.* at 11. PPL asserts that if it were to simply certify that an EGS is offering a TOU rate in its service territory, or bid out TOU service to an EGS, then the EGS, by definition, would be providing the service and the Company would not be meeting its statutory obligation to offer a TOU rate option. *Id.*

PPL also argues that RESA’s certification process would require more of PPL than simply soliciting and gathering information, as RESA indicated in its Exception. PPL avers that RESA’s proposal “would require the Company to survey EGSs, post EGS TOU information on a clearinghouse website, certify the EGS survey information to the Commission, and, draft and submit a report on any applicable EGS TOU service.” PPL concludes that the ALJ correctly determined these additional activities to be outside the Company’s regular activities. *Id.*

Finally, PPL contends that RESA’s proposals would not ensure that a TOU rate option is available to default service customers. PPL asserts that RESA has not explained what backstop responsibility the Company would have if it cannot certify that TOU service is available from an EGS, or if no EGS bids to serve the default service TOU customers. PPL submits that RESA has failed to address this and other issues, and thus, there is no certainty under its proposals that a TOU rate option would be available. *Id.* at 12. PPL concludes that under the TOU proposal recommended by the ALJ, the Company will obtain bids from wholesale suppliers to provide TOU service, and therefore the benefits of market-based pricing are preserved while PPL remains compliant with Act 129. *Id.*

e. Disposition

After careful consideration of the evidence of record on this issue, we will reject PPL’s as-filed TOU plan. We note, as did the ALJ, that PPL’s as-filed plan has

already been evaluated and rejected by the Commission in the *August 30 PPL TOU Order*, and that the reasons for such rejection were clearly stated therein. PPL has offered no valid evidence or argument in this proceeding to persuade us that our decision as set forth in the *August 30 PPL TOU Order* should be altered.

In the instant proceeding, PPL has proposed an alternative TOU option that would utilize a separate wholesale auction to obtain supply to serve its default service customers who choose to pay for electricity on a time-of-use basis. Holding a separate auction to procure supply exclusively for TOU service may ensure that the rates for this service will be more reflective of the market than PPL's current TOU rates, and may ensure that such rates are based on the actual costs to provide the service rather than on an artificial modification of the fixed-priced rate, a defect of PPL's current TOU rates.¹⁷ Thus, under the Summer TOU rate option, customers who choose this option may be able to receive more accurate price signals, and adjust their electricity usage accordingly.

On the other hand, PPL has not had good experience with separate auctions for products that are solicited in addition to the standard default product. Specifically, as addressed *supra*, PPL's Optional Monthly Pricing Service did not receive any wholesale competitive bids to provide this optional supply service for the Company's Large C&I customers. PPL even admits that its proposed Summer TOU program is not perfect, warning that wholesale suppliers may not bid on a separate TOU product where the amount of load is likely to be small, at least initially, and where customers can freely join

¹⁷ This is consistent with our holding in the *August 30 PPL TOU Order* that TOU rates should not be a derivation of the fixed-price default service rate. *August 30 PPL TOU Order* at 18.

or leave the rate at any time.¹⁸ Thus, it is questionable as to whether or not sufficient competitive bidding activity would result from PPL's alternative Summer TOU Option. However, if PPL blended these TOU supply requirements into its basic full requirements contracts, this may impose additional costs on non-TOU customers in the form of less competitive bidding for fixed-priced supply, as FES argues. Thus, issues of cross-subsidization may exist. Accordingly, we decline to adopt PPL's proposed alternative Summer TOU rate option.

As for RESA's proposals to require PPL to rely on EGSs to provide TOU service, we do not agree with PPL and the ALJ that Act 129 prohibits a default service provider from utilizing EGSs to satisfy its TOU rate requirement. In the *December 16 Upcoming DSP Order*, we recommended, but did not mandate, that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. *December 16 Upcoming DSP Order* at 47. In fact, PECO appears to be well on its way to successfully integrating this TOU model into its default service plan. *See, PECO Dynamic Pricing Plan Vendor Order*. For these reasons, PPL is encouraged to give further consideration to RESA's proposal to implement a competitive retail bid process to meet its TOU rate requirement.

As PPL's TOU proposals have been rejected, it is strongly encouraged that, within ten business days of the entry date of this Opinion and Order, PPL schedule a collaborative with interested stakeholders, to be held within ninety subsequent days, in order to discuss and resolve any issues regarding the development and implementation of a TOU rate option that will allow the Company to meet its TOU rate requirement. PPL is

¹⁸ As noted, *supra*, PPL stated that in the event it is not able to procure supply for the Summer TOU load, it will not offer the Summer TOU rate option to customers and will return to the Commission with a new proposal. PPL MB at 91, Footnote 74.

directed to subsequently file a new TOU rate proposal within ninety days following the conclusion of the collaborative.

Accordingly, we will grant RESA's Exception on this issue to the extent it is consistent with the foregoing discussion, and will deny PPL's Exception.

C. Other Default Service Program Issues

1. Supply Master Agreement and FRP Process and Rules

As described by the ALJ, PPL proposed to use the same implementation approach for DSP II as it used in DSP I. PPL proposed the following:

- 1) Hold solicitations pursuant to a Request for Proposal (RFP) process to obtain Default Service products from competitive wholesale power suppliers;
- 2) All winning suppliers will be required to execute a standard Supply Master Agreement (SMA).
- 3) The RFP and the SMA are based upon the documents used in DSP I and the prior CBP program with some changes based upon the experiences in those programs.

R.D. at 96.

The balance of the implantation terms were described by PPL as follows:

The RFP provides that the results for each solicitation will be presented to the Commission within one business day of the bid proposal due date for that solicitation. (PPL Electric St. 1, p. 17). After receiving Commission approval of the solicitation results, PPL Electric will then execute transaction confirmations with the winning suppliers. The prices in the resulting wholesale supply agreements will form the basis of

the rates charged to each of the customer classes. This is the same process used in the DSP I Program.

Each solicitation will be designed to procure a pro rata portion of the estimated Default Service load for each customer class. The portion of total Default Service supply included in each solicitation has been established so that, over the course of the DSP II Program, each solicitation will procure a specific number of tranches of supply based on product quantity percentage. (PPL Electric St. 1, p. 18; PPL Electric Exs. JC-4A, JC-4B; PPL Electric Ex. 1, Appendix B, p. 10).

For both the Residential and Small C&I Customer Classes, each tranche will be a fixed percentage of the customer class' Default Service load. The RFP tranche percentages are estimated to produce approximately 100 MW of peak load per tranche based on current PPL Electric forecasts and the customer class' 2012-2013 projected peak load contribution with PJM, including both default and shopping load. The actual MW size of each tranche will depend on the Company's actual Default Service load at the time of delivery. Supply must be load following. (PPL Electric Ex. 1, Appendix B, p. 9; PPL Electric St. 1, p. 18).

As has been required under the CBP and DSP I Program, PPL Electric proposes that suppliers selected to serve any portion of PPL Electric's Default Service load be required to post performance assurance. Such assurance is required to enable PPL Electric to recover costs arising from a supplier default. Depending upon its credit rating, a supplier will be extended an unsecured credit amount, and the required performance assurance will be a calculated amount in excess of any unsecured credit. The Company proposes that the performance assurance will be recalculated every business day based upon forward prices for energy and capacity to be delivered under the contract. (PPL Electric St. 1, p. 20).

Included with the Company's Petition was the proposed SMA and proposed RFP Process and Rules ("RFP Rules"). (PPL Electric Ex. 1, Appendices A and B). The SMA is based upon the supply master agreements approved by the Commission in the DSP I Program proceeding. (PPL Electric

St. 1, p. 21). The Company has updated the SMA and the revisions are both ministerial and substantive. Because the Company will be procuring fewer product types, the Company has eliminated the multiple SMAs used in the DSP I Program, and will undertake all procurements pursuant to a single form of SMA. Other substantive changes include, inter alia, including TOU load, updating the credit sections, adding a TOU exhibit, removing the “Sample PJM Invoice” Exhibit, and updating the “Transaction Confirmation Example” Exhibit. The RFP Rules are also similar to the rules approved by the Commission in the DSP I Program proceeding. The RFP also has been updated to reflect changes between the DSP I Program and the DSP II Program. (PPL Electric St. 1, pp. 21-22).

PPL Electric MB at 92-94.

According to the ALJ, the majority of the provisions of the SMA and RFP rules were uncontested. However, Constellation and FES recommended several changes which were said to encourage more robust participation in the DSP’s RFPs. Those changes included:

1. Inclusion of other EDCs’ more appropriate unsecured credit thresholds or, at a minimum, the thresholds used in the SMA previously approved for use by PPL in its 2011-2013 Default Service Plan;
2. Provision for weekly settlements in order to reflect and operate in concert with PJM Interconnection, LLC’s weekly settlement process;
3. Change from one month to two weeks as the settlement period in the SMA; and,
4. Allowance of three business days rather than two for a DS supplier to replace a letter of credit.

Joint Suppliers’ MB at 12-13.

The ALJ stated that the third issue had been agreed to by the Company, citing the Joint Suppliers' RB at 11. R.D. at 98.

a. Unsecured Credit

i. Positions of the Parties

PPL proposed to revise its unsecured credit amounts in the DSP II program. PPL proposed to reduce the amount of allowable unsecured credit for its wholesale suppliers; the amount permitted is indexed to the credit rating of the particular supplier. The largest change was a reduction for suppliers rated A- or above from \$75 million to \$50 million. R.D. at 98. PPL argued that the reduced unsecured credit thresholds were "aligned" with other EDC DSP requirements. PPL asserted that unsecured credit represented a risk to default service customers and the proposed reductions were a reasonable effort to moderate that risk. PPL MB at 95.

Constellation proposed that the SMA be revised to include higher unsecured credit thresholds than those proposed by PPL. Constellation argued that the limits in place in DSP I should be increased, not decreased, as proposed by the Company. According to Constellation, the reduction in unsecured credit amounts will serve to reduce supplier participation in the wholesale procurements. Constellation St. 1 at 30.

The Joint Suppliers also argued that PPL's proposed unsecured credit thresholds are too restrictive. The Joint Suppliers argued that the Commission should direct PPL to include the unsecured credit thresholds used by West Penn Power Company, or at least the levels used in PPL's DSP I SMA's. Joint Suppliers' MB at 15. FES agreed with Constellation and the Joint Suppliers. FES RB at 24.

ii. ALJ Recommendation

The ALJ found that PPL's justification for the reduction in allowable unsecured credit limits was "difficult to follow." She found that the Company had failed to produce any evidence which supported a finding that the unsecured credit limits contained in DSP I were a problem. On that basis, the ALJ determined that the Company failed to satisfy its burden of proving that the new limits should be imposed. The ALJ recommended that the limits used in DSP I should be maintained. R.D. at 100.

iii. Exceptions and Replies

In its Exceptions, PPL states that pursuant to the SMA, PPL computes its Aggregate Exposure under all of a wholesale supplier's contracts with PPL in the event of a default by the supplier. PPL explains that usually, a wholesale supplier is required to post security equal to that Aggregate Exposure. However, depending on the credit rating of a particular supplier, PPL will extend to the supplier unsecured credit. PPL states that this is a normal practice, but it does present some exposure to PPL and default service customers to the extent that unsecured credit is extended. On that basis, as well as a comparison with other EDC's unsecured credit thresholds, PPL proposes to reduce the amount of unsecured credit it will extend in DSP II. PPL Exc. at 5-7.

Constellation responds that the ALJ was correct in finding that PPL failed to justify a reduction in the unsecured credit thresholds for DSP II. Constellation asserts that PPL simply repeats the arguments it made before the ALJ and argues, without foundation, that other EDCs have lower unsecured credit thresholds than PPL's current amounts. Constellation R.Exc. at 2. Constellation argues further that an examination of PPL's comparison group reveals that PPL's highest proposed threshold of \$50 million is actually lower than all but one of the four EDCs in PPL Electric's comparison group.

According to Constellation, the only EDC which had a lower threshold than that proposed does not participate in the PJM wholesale market. *Id.*

FES also responds that PPL's proposed reduction in the unsecured credit thresholds is not in line with the comparison group. FES argues that PPL has failed to provide any evidence that the current unsecured credit thresholds are inadequate. Accordingly, FES argues that PPL should provide unsecured credit thresholds in the amounts currently provided by West Penn Power Company, or, at least, maintain the current levels. FES R.Exc. at 11-12.

iv. Disposition

We will adopt the ALJ's recommendation on this issue. We agree that PPL has produced no evidence which indicates that the current unsecured credit thresholds are inadequate or otherwise present an undue risk to PPL or the default service customers. We also agree with Constellation and FES that PPL's comparison group does nothing to support its arguments here. PPL is directed to maintain the unsecured credit thresholds currently established in DSP I.

b. Monthly vs. Weekly Payment

i. Positions of the Parties

PPL pays suppliers on a monthly basis under DSP I and proposed to continue that payment process in DSP II. R.D. at 100.

Constellation argued that wholesale suppliers are required to make weekly settlements with PJM. Accordingly, Constellation asserted that moving to a weekly settlement with PPL would make the wholesale procurement more competitive because the need for credit would be reduced. Joint Suppliers MB at 17.

PPL responded and argued that a shift to weekly payments would shift the Cash Working Capital responsibility from the suppliers to PPL. That shift would necessarily be reflected in higher default service rates. On that basis, PPL argued that there would be no benefit to the customers in moving to a weekly settlement. R.D. at 101.

ii. ALJ Recommendation

The ALJ found that shifting costs from suppliers to PPL in order to move to a weekly settlement “is not consistent with the requirements of the statute regarding the DSP plan and should be denied.” R.D. at 101.

iii. Disposition

No Party filed an Exception on this issue. We will adopt the ALJ’s recommendation.

c. Letter of Credit

i. Positions of the Parties

Before the ALJ, Constellation proposed a change to PPL’s Letter of Credit. The change would allow a supplier three Business Days rather than only two Business Days to replace a Letter of Credit. PPL did not oppose the change.

ii. ALJ Recommendation

The ALJ recommended adoption of Constellation’s proposed change.

iii. Disposition

No Party filed an Exception on this issue. We will adopt the ALJ's recommendation and PPL Electric is directed to provide that a supplier has three Business Days to replace a Letter of Credit.

d. PPL's Exception No. 2: The ALJ Erred by Reciting Four Issues Raised by Constellation.

As noted above, the ALJ described four issues raised by Constellation regarding the SMA and RFP rules. R.D. at 98. In PPL's second Exception, the Company argues that only three issues were raised: the unsecured credit threshold; the weekly settlement issue; and, allowance for a supplier to replace a Letter of Credit in three, not two, Business Days. PPL argues that the issue relating to changing the one-month to two-week period for settlement in the SMA was never identified as an issue and was not agreed to by the Company as stated in the Recommended Decision. The only item agreed to by PPL was permitting a supplier to replace a Letter of Credit in three days. PPL requests that the Recommended Decision be modified to incorporate that correction. Electric Exc. at 7-8. No Reply Exceptions were filed.

Our review of the record, in particular the Reply Brief cited by the ALJ in the Recommended Decision, reveals that PPL is correct. We will grant this Exception and modify the Recommended Decision accordingly.

2. Third-Party Manager

a. Positions of the Parties

PPL noted that our Policy Statement at 52 Pa. Code § 69.1807(8) provides that the competitive bid solicitation process should be monitored by an independent evaluator to achieve a fair and transparent process for each solicitation. PPL has retained

NERA as the independent third-party to administer each of the proposed procurements, 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. PPL stated that NERA successfully administered the DSP I Program procurements to date. No Party objected to PPL's proposal.

b. ALJ Recommendation

The ALJ recommended approval of NERA as the third-party administrator.

c. Disposition

No Party filed Exceptions on this issue. We will adopt the ALJ's recommendation.

3. RTO Compliance and Consistency

a. Positions of the Parties

PPL noted that 52 Pa. Code § 54.185(d)(4) requires that Default Service plans include documentation which shows that the program is consistent with the requirements regarding the generation, sale and transmission of electricity of the RTO in the control area where the Default Service provider is providing service. PPL asserted that the proposed DSP II plan satisfies that requirement. No Party opposed PPL's position. PPL MB at 101-102.

b. ALJ Recommendation

The ALJ recommended that PPL's proposed DSP II plan be found to comply with this requirement.

c. Disposition

No Party filed Exceptions on this issue. We will adopt the ALJ's recommendation.

4. Contingency Planning

a. Positions of the Parties

PPL also noted that 52 Pa. Code § 54.185(d)(5) requires that Default Service plans include contingency plans to ensure the reliable provision of Default Service if a wholesale generation supplier fails to meet its contractual obligations. PPL described the various methods it would pursue in the event that not all default load was subscribed or successful bidders failed to provide the contracted supply:

If the Commission rejects all bids for a given product, in any solicitation, or if some tranches of a given product, in a particular solicitation do not receive bids, the Company will expeditiously seek guidance and approval from the Commission to address this short fall in procurement of Default Service supply. (PPL Electric Ex. 1, p. 38). However, to the extent that unfilled tranches remain at the commencement of delivery for a given product, the Company will obtain Default Service supply through the spot market administered by PJM. (PPL Electric St. 1, p. 25). Specifically, PPL Electric will supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets, including, but not limited to, the PJM energy, capacity, and ancillary services markets, any other service required by PJM to serve such unserved load, and any AEPS requirements. (PPL Electric Ex. 1, p. 38). PPL Electric proposes to recover all of the costs of such purchases from Default Service customers in the retail rates charged for the service for which the purchases are made. (PPL Electric Ex. 1, p. 38).

In the event a supplier defaults, PPL Electric will offer full requirements supply assignment to other winning bidders for the same product consistent with the step-up process described in the

Default Service SMA. (PPL Electric Ex. 1, Appendix A, pp. 24-25). If this assignment is not successful, PPL Electric will offer full requirements supply assignment to all Default Service suppliers consistent with the Default Service SMA, even if a Default Service supplier does not serve tranches for that product. These assignments will be offered at the original bid price in the event of default(s), or at the average price from the last successful bid for that product in the event of insufficient bids. *Id.*

PPL MB at 103.

No Party challenged PPL's contingency planning.

b. ALJ Recommendation

The ALJ recommended approval of PPL's contingency planning. R.D. at 104.

c. Disposition

No Party filed an Exception on this issue. We will adopt the ALJ's recommendation.

5. Additional Information to Wholesale Suppliers Regarding Shopping and Procurements

a. Positions of the Parties

Constellation recommended that PPL provide additional information to wholesale suppliers regarding shopping and procurements. Constellation requested that PPL provide the following information:

- Hourly shopping and non-shopping data by rate class;
- Aggregate historical hourly data specifically for those customers that choose PPL's TOU offering;
- Daily eligible and non-shopping data for peak load contribution (PLCs) and network service peak load (NSPL) by rate class;
- Daily shopping and non-shopping customer counts by rate class;
- Hourly data prior to 2011 for customer classes that were reclassified as part of the 500 kW peak demand reclassification of Small and Large C&I customers;
- PPL should provide to RFP bidders and DS Suppliers all of the same data that it provides to EGSs bidding in its Retail Opt-In Auction.

R.D. at 104.

PPL argued that it can supply some of the requested data, but not all. Specifically, PPL stated that it could provide daily shopping and non-shopping customer counts by rate class; aggregate historical hourly data for those customers that choose PPL's TOU rate option; and, additional data and information provided to bidders in the Retail Opt-In Auction (to be provided through PPL's Default Service Procurement website). R.D. at 104. PPL asserted that it could not provide hourly shopping and non-shopping data by rate class nor could it provide daily eligible and non-shopping data for PLC and NSPL by rate class. *Id.* at 105.

b. ALJ Recommendation

The ALJ found that the Joint Suppliers were satisfied with the data PPL committed to provide and recommended that the Company be directed to make the agreed-upon data available. R.D. at 105.

c. Disposition

No Party filed an Exception to this issue. We will adopt the ALJ's recommendation and direct PPL to make the agreed-upon data available.

D. Retail Market Enhancements

The ALJ noted that the Commission's *March 2 IWP Order* directed PPL to address several specific retail market enhancement mechanisms in the context of the proposed DSP II:

1. Three separate consumer education mailings in late 2012 and early 2013;
2. A new/Moving customer program to encourage shopping, to be implemented in late 2012 under the auspices of the Commission's Office of Competitive Markets Oversight (OCMO);
3. A Retail/Opt-In Program; and
4. A Standard Offer Referral Program.

R.D. at 105.

1. Separate Consumer Education Mailings

a. Positions of the Parties

PPL proposed to issue a customer referral mailing to all residential default customers in mid-2013. The timing of the mailing will depend upon approval of the timing of the Retail Opt-In Program and the Standard Offer Referral Program. PPL's proposal provided that any EGS wishing to participate would submit a standard 5"x8" sized offering to residential customers. The Company would include a cover letter describing the contents of the mailing, and the total cost of the mailing would be divided evenly among participating EGSs. The estimated minimum cost was \$500,000. R.D. at 107.

RESA recommended merging the Customer Referral Mailing with the last of the consumer education letters required by the RMI Order on Consumer Education Mailings entered June 21, 2012, and a mailing date of no later than March 1, 2013, regardless of the timing of the other programs. RESA argued that this approach would reduce the cost to the EGSs. The OCA did not object to that proposal provided the incremental costs of the mailing are paid for by the participating EGSs. The Company did not object to the proposal provided that the schedule for implementing the Opt-In Auction and Standard Referral Offer Program is approved. R.D. at 107.

RESA also recommended that a separate referral mailing be provided to small commercial and industrial (C&I) customers. The Company did not object to this provided that the small C&I customer mailing is separate from the residential customer mailing. PPL also did not object to the cost-sharing concept provided that the merged mailing concept is approved. R.D. at 108.

The OCA proposed that PPL provide additional education to customers participating in the Retail Opt-In Program by providing a third notice, in addition to the two notices required from EGSs, prior to the end of the Retail Opt-In Program contract term. PPL expressed concern about the cost of additional mailings not envisioned in the Commission's *March 2 IWP Order*. R.D. at 108.

b. ALJ's Recommendation

The ALJ did not specifically address the merged mailing proposal, although her recommendation to approve the timing of PPL's retail market enhancement programs is presumed to include the recommended approval of that proposal. R.D. at 147.

c. Exceptions and Replies

In Exception No. 5, PPL argues that while it agreed to issue an additional Customer Referral Mailing in the second quarter of 2013, that mailing is contingent on approval of PPL's proposed timing for both the Retail Opt-In Program and the Standard Offer Referral Program. According to PPL, in the event the Commission directs an earlier implementation date for either Program than proposed, then the Commission should conclude that the optional customer referral mailing is not required. PPL Exc. at 18.

RESA also filed an Exception on this issue. In RESA's Exception No. 10, RESA argues that the ALJ never provided a recommended disposition of the direct mail customer referral proposal of PPL. RESA recommends adoption of the program, with RESA's modifications, "regardless of what decision the Commission makes on timing of the RME initiatives." RESA Exc. at 23.

PPL responds to RESA and argues that the only issue in dispute regarding this mailing is whether it should be required if the Commission revises the timing of the

Retail Opt-In Program and/or the Standard Offer Referral Program. PPL states that it opposes an additional mailing if it would be undertaken around the same time as either the Retail Opt-In Program or the Standard Offer Referral Program. PPL R.Exc. at 15.

RESA replies to PPL's Exception and states the following:

The direct mailing program (which would be paid by participating EGSs) is a very effective method through which consumers can receive information about available competitive offers. The program is far more analogous to a consumer receiving an offer in the mail from an EGS or from selecting a supplier through PApowerswitch (channels which would remain open regardless of other RME programs) than it is to the RME programs. Through the direct mail program, the focus is on the EDC providing information to consumers – through direct mail – about offers available in the service territory. The consumer then has the option to contact one of the suppliers and choose whether or not to receive service from that supplier. This is different from either the opt-in program or the standard offer customer referral program which focus on the standard product customers would receive rather than on the specific EGS providing the offer. As these are different programs, each with unique benefits, there is simply no reason not to pursue the direct mail avenue to reach customers because other – differently structured and focused – programs may also be occurring.

RESA R.Exc. at 4.

FES also responded to RESA's Exception. FES states that if either retail market enhancement program is accelerated, then "there would likely be insufficient time to conduct the customer referral mailing prior to June 2013." FES R.Exc. at 19. FES argues that its primary focus is to accelerate implementation of PPL's retail market enhancement programs. FES acknowledges that such an effort will need to be carefully

coordinated and would prefer to eliminate the customer referral mailing rather than jeopardize a coordinated, earlier roll-out of the market enhancement programs. *Id.*

d. Disposition

As will be discussed, *infra*, we will direct PPL to substantially accelerate implementation of both the Retail Opt-In Program and the Standard Offer Referral Program. On that basis, we agree with the Company and FES that the customer referral mailing is unnecessary. We will grant PPL's Exception, consistent with this determination.

2. New/Moving Customer Program

The New/Moving Customer Program is a program designed to provide shopping information to customers moving into PPL's service territory who call to establish service for the first time and to customers who are moving within PPL's service territory. The objective is to provide customers with information which they can use to establish service with a competitive supplier as soon as possible without taking service through the default service supplier any longer than necessary. In addition, if the customer already knows which EGS the customer would like to take service from, the Company should have the capability to transfer the call to the EGS to permit the customer to sign up for service at the new service address. *March 2 IWP Order* at 18-19. It is also expected that the New/Moving Customer Program will eventually be merged into the Standard Offer Referral Program. *Id.* at 20.

a. Positions of the Parties

RESA argued that PPL should be directed to implement a "day-one switch" capability that allows the customer to initiate service with an EGS directly through the Company's customer service representative, with a transfer to an EGS representative.

RESA asserted that the “day-one switch” capability is necessary to put EGS service on an equal footing with bundled utility service. RESA argued that the Commission should direct PPL Electric to implement this capability “as soon as practicable after the proposed retail enhancements are in place.” RESA MB at 56-57.

PPL stated that it fully intended to implement such a system in the context of the Standard Offer Referral Program, but that its current system capability is limited to transferring the call to the EGS selected by the customer. PPL MB at 107-108. PPL further argued that absent a standard offer for service, the Company has no way to determine whether the customer and the EGS have actually agreed to terms. In addition, the Company asserted that its current methodology is consistent with this Commission’s decision in the *FE DSP II Order*. R.D. at 110.

b. ALJ’s Recommendation

The ALJ did not make a specific recommendation regarding RESA’s argument relating to the “day-one switch” capability.

c. Exceptions and Replies

In RESA’s Exception No. 12, RESA reiterates its argument that the “day-one switch” capability is necessary to put both EGS service and bundled utility service on an equal footing. According to RESA, failure to provide this capability will result in the customer receiving commodity service from the utility for at least one billing cycle, even though the customer knows which EGS it wants to use. RESA argues that this is inconsistent with fostering a robust competitive market. RESA acknowledges that PPL currently uses a hot transfer process to transfer a customer to an EGS upon the customer’s request. However, RESA states that this is not an acceptable long-term solution. RESA argues further that PPL has not presented any evidence why the

“day-one switch” capability cannot use existing processes rather than wait for the implementation of the Standard Offer Referral Program. RESA Exc. at 27-29.

In reply, PPL asserts that it does not oppose the concept of a “day-one switch,” but that implementation is simply premature. PPL argues that it has committed to implementation in the context of the Standard Offer Referral Program. In addition, PPL argues that it cannot sign up a customer to a specific EGS without knowing that the EGS is currently accepting new customers and the rates the EGS is offering. PPL asserts that it has no way of knowing whether a customer/provider relationship has been established. PPL R.Exc. at 14.

d. Disposition

We will deny RESA’s Exception. RESA itself has observed that the hot transfer capability is a reasonable interim measure. RESA Exc. at 28. PPL has agreed that it will develop the capability for “day-one switch” in the context of its Standard Offer Referral Program. As we noted above, it has always been intended that the New/Moving Customer Referral Program will be merged into the Standard Offer Referral Program. On this basis, we agree with PPL that RESA’s requested modification is simply premature.

3. Retail Opt-In Auction

a. Description of the Program

Subsequent to PPL’s original presentation of its Retail Opt-In Program design, the Commission issued the *FE DSP II Order* which expressed a preference for an aggregation program. PPL described the modifications it could make to bring its program design in line with the decision in the *FE DSP II Order* as follows:

From the perspective of a customer participating in the program, there would only need to be two modifications. First, the price that customers would pay would be a 5% discount from the Company's December 1, 2013 PTC, instead of a minimum 5% discount with the actual price determined by auction results. (PPL Electric St. 4-SR, p. 9). The second modification is that customers would only be sent a single letter advising them of the terms of the program and providing instructions on how they may elect to participate. (PPL Electric St. 4-SR, pp. 9-10).

From the EGS perspective, with elimination of an auction, the Company would propose to solicit participation from all licensed EGSs authorized to serve residential customers. A minimum of two participating EGSs would have to agree to participate in order to comply with the 50% participation cap established by the *RMI-IWP Final Order*. (PPL Electric St. 4-SR, p. 8). Based upon the number of customers electing to participate, tranches of load would be divided evenly among participating EGSs with customers randomly assigned. (PPL Electric St. 4-SR, p. 8). EGSs would compensate the Company on a pro rata basis for the cost the Company incurs in marketing and conducting the aggregation. However, because no auction would be conducted and only a single mailing would be sent to customers, the cost of the program would be substantially reduced. (See Section III.C.6 for further explanation of the issue of cost recovery of an Opt-In Aggregation Program).

PPL MB at 114-115.

The ALJ identified eight discrete elements of the program to be discussed: (1) length of time; (2) limitation on number of participants, (a) residential customers, (b) whether to include small C&I customers; (3) price; (4) terms and conditions disclosure; (5) supplier participation load cap; (6) customer options upon expiration of program and notice requirements; (7) the structure of the opt-in program; and, (8) low-income customer participation. R.D. at 113.

b. Length of Time of Program

i. Positions of the Parties

PPL has proposed a six-month, fixed price product at a minimum discount of 5% off PPL Electric's December 1, 2013 PTC. Customers participating in the auction would receive a \$50 cash payment from the supplying EGS after participating for three consecutive billing cycles. PPL proposes limiting participation by non-shopping customers to 50% of the total number of default customers as of October 31, 2013. Shopping customers will not be targeted, but will be permitted to participate.

The OCA stated that it normally recommends a twelve-month term for these types of programs, however, it can support a six-month term if PPL's proposal for biannual changes in its PTC is also adopted. The OCA also argued that regardless of the term length, the supplier rate must change to the extent the PTC changes during the term in order to guarantee savings to participating customers. R.D. at 113.

FES and DR/IGS recommended that the term of the program should be for twelve months rather than six months. FES observed that both the *FE DSP II Order* and the *PECO DSP II Order* provided for a twelve-month term. FES recommended two modifications to the Retail Opt-In Program designs set forth in the *FE DSP II Order* and the *PECO DSP II Order*. First, FES recommended that the eight-month fixed price product provided after the initial four-month discount from the PTC be uniform among all participating EGSs. Second, FES recommends that the fixed price product be established and made known to customers before they decide whether to participate in the program. FES MB at 44-45.

PPL responded to FES and argued that the shorter contract term provided more assurance of favorable pricing. Over a twelve-month term, PPL argued that it was possible for the PTC to fall below the fixed price offering during the remaining eight

months of the term. In that event, PPL expressed concerns that the fixed price product provides a less favorable experience for the participating customers. R.D. at 114. PPL also agreed with FES that if a twelve-month term were adopted, the remaining eight months should feature a uniform, fixed price for all participating EGSs. PPL MB at 116-117.

DR/IGS argued that a six-month term is too short for EGSs to recover the \$50 bonus payment. DR/IGS also argued that if the Commission moved to an aggregation process, additional security may be needed to ensure participating EGSs can meet the obligation to pay the \$50 bonus payment. In addition, DR/IGS argued that additional transparency would be needed for the eight-month fixed price product to ensure that pricing was consistent with current market conditions. DR/IGS MB at 17-18.

ii. ALJ's Recommendation

The ALJ recommended adoption of PPL's proposed six-month term. The ALJ suggested that adoption of the six-month term in this proceeding will provide the opportunity to review the results of the different program terms and make a determination on program length based upon that review. R.D. at 117-118.

iii. Exceptions and Replies

In its Exception No. 3, FES excepts to the ALJ's recommendation to adopt PPL's proposed six-month term for the Retail Opt-In Program. According to FES, this issue has already been decided in the *FE DSP II Order* and the *PECO DSP II Order*. FES notes that in each of those proceedings, the Commission determined that the term for the Retail Opt-In Program was twelve months. FES Exc. at 10.

FES responds to concerns regarding price fluctuation over a twelve-month term as contrasted to a six-month term. FES notes that there will be 5 months of guaranteed savings under either term length and argues that any fluctuations over the longer twelve-month term are resolved by the ability of customers to freely move from the program without penalty. FES also argues that the ALJ's suggestion that a comparison of results from different programs ignores the Commission's intent that the Retail Opt-In Program is a one-time initiative. Accordingly, FES asserts that there is little value in setting up a different term as recommended by the ALJ. FES Exc. at 11.

DR/IGS also excepted to the ALJ's recommended six-month term. DR/IGS argue that:

. . . it is highly preferable to have consistency across EDC service territories. Moreover, while a six (6) month opt in program may coincide with PPL's six (6) month reconciliation/price change regimen, it may also tend to dissuade EGSs from participating, due to the relatively short program period versus the significant costs of participation.

DR/IGS Exc. at 4.

DR/IGS also agrees with FES that our prior decisions in the *FE DSP II Order* and the *PECO DSP II Order* should be controlling on this issue. DR/IGS Exc. at 4. FES supports DR/IGS's Exception on this issue. FES R.Exc. at 12.

PPL responds and argues that the proposed six-month term avoids uncertainty and eliminates the possibility that some customers may be disadvantaged if their assigned EGS provides for a higher price over the remaining eight-month term in a twelve-month term design. PPL also argues that the shorter six-month term will provide an easy to understand product, with some certainty of real savings over a midrange term.

PPL argues that this will be far more attractive to customers than a twelve-month term with no price certainty after the first four months. PPL R.Exc. at 16.

The OCA also responded and advanced arguments similar to those of PPL. The OCA argues that a six-month term combined with PPL's proposed PTC semi-annual adjustment customer savings under the Retail Opt-In Program can be guaranteed over the full six-month term. The OCA further argues that this will provide for a much better customer experience than the twelve-month term designs reflected in the *FE DSP II Order* and the *PECO DSP II Order*. OCA R.Exc. at 11-12.

iv. Disposition

In the *FE DSP II Order* we stated the following:

[W]e direct the Companies to develop a twelve-month ROI product, comprised of a fifty dollar bonus (addressed, *infra*), a four-month guaranteed five percent discount off the PTC at the time of enrollment, and an EGS-provided fixed price product for the remaining eight months. In order to receive the bonus, customers must remain in the ROI Program for at least the initial four-month program. So that we can fully evaluate the terms of this program, we will require that participating EGSs provide to the Commission for review and approval, the terms and conditions of the eight-month ROI fixed-price offering. With these improvements, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI Program.

FE DSP II Order at 117-118.

We also stated that participating customers may leave the ROI Program at any time, without penalty. *FE DSP II Order* at 118, n. 29.

We note further that in the *PECO DSP II Order*, PECO originally proposed a twelve-month term based, but modified it to a six-month term during the proceeding apparently based upon our *March 2 IWPF Order*. In the *PECO DSP II Order*, we rejected the modified six-month term and directed PECO to move to a twelve-month term with the same product offering that was directed in the *FE DSP II Order*. *PECO DSP II Order* at 90-91.

Based upon our review of the record in this proceeding, nothing has been presented which persuades us to approve a term as short as six months. Our intent with the retail market enhancement programs is to provide an attractive mechanism which will persuade customers to move into the competitive marketplace. In addition, the program design must be such that EGSs will be willing to participate. We agree with FES and DR/IGS that the length of the term should be uniform and long enough that EGSs will be willing to provide the initial discount and bonus payments. We also find that a twelve-month term will be more attractive to customers than an abbreviated six-month term. In addition, as we will discuss *infra*, customers will be able to freely move out of the program with no penalty. That addresses concerns regarding price volatility over a twelve-month period contrasted to the shorter six-month term.

c. Limitation of Participants – Residential Customers

i. Positions of the Parties

PPL proposed to offer participation to all residential customers, with a limit on participation by non-shopping customers capped at 50% of the number of default service customers as of October 31, 2013, which was estimated to be approximately 360,000 residential customers. The Retail Opt-In Program will be targeted to non-shopping customers, but shopping customers will be permitted to participate upon request. Small C&I customers were not included in the proposed plan. R.D. at 118.

The OCA recommended limiting the number of participants to 20% of non-shopping customers. The OCA argued that its proposed cap would mitigate the increased volumetric risk and, therefore, higher prices for default service. R.D. at 118-119.

RESA supported the 50% participation cap. RESA R.B. at 32-33. RESA also argued that customers who are receiving service from an EGS should be prohibited from participating in the Retail Opt-In Program. RESA asserted that the intent of the Retail Opt-In Program is to motivate customers currently on default service to explore the competitive market and alternative service offers. Accordingly, there is no reason to permit customers already in the marketplace to participate in the Retail Opt-In Program. RESA also asserted that EGSs have engaged in substantial marketing and education in order to acquire their customers. Those EGSs should not have risk customer loss to the Retail Opt-In Program which is designed for default service customers. RESA also argued that there must be a limit on eligibility as opposed to simply targeting non-shopping customers. R.D. at 119-120.

ii. ALJ Recommendation

The ALJ recommended both the 50% customer cap as proposed by PPL and denial of RESA's request that shopping customers be restricted from participation. R.D. at 119, 120.

iii. Exceptions and Replies

RESA excepts to the ALJ's recommendation to include shopping as well as non-shopping customers in the Retail Opt-In Program. RESA states that it continues to oppose participation by shopping customers. However, if shopping customers are permitted to participate, RESA asserts that program information only be sent to default service customers. RESA Exc. at 24.

In its Exception No. 2, the OCA argues that the ALJ erred in failing to reduce the customer participation cap to 20% rather than the recommended 50%. The OCA reiterates its argument that a 20% customer participation cap is necessary in order to mitigate the increased volumetric risk in providing default service. OCA Exc. at 6. The OCA asserts that competitive suppliers that bid to provide default supply will need to factor in a migration risk of up to 50% of customer load as their bids are submitted. That could substantially increase the bids for default supply and ultimately result in higher default service prices. The OCA also expresses the concern that if the 50% cap is not reached, or the program is substantially under-subscribed, that could be seen as a program failure. The OCA argues that its recommended 20% cap will address both of those concerns while fostering increased participation in PPL Electric's retail market. *Id.* at 7-8.

PPL responds to RESA's Exception relating to participation by shopping customers and argues that this issue was decided in our *March 2 IWPF Order*. PPL also asserts that RESA has offered no reason, not previously considered, which supports its position. PPL R.Exc. at 20.

PPL also responds to the OCA's Exception relating to the recommended 50% customer participation cap. Again, PPL asserts that this issue was decided in our *March 2 IWP Order* and the OCA has offered no reason why that should be modified here. PPL R.Exc. at 17.

RESA replies to the OCA Exception regarding the customer participation cap and argues that a 20% cap is too restrictive. RESA observes that this Commission found that a participation cap below 50% could result in the rejection of customers who wished to participate. RESA also points out that OCA's recommendation has already

been rejected in the *FE DSP II Order* and the *PECO DSP II Order*. RESA R.Exc. at 9-10.

FES also replied to the OCA arguments relating to the customer participation cap. FES asserts that the OCA failed to show that a 50% customer participation cap would increase the volumetric risk to bidding default supply bidders. FES also argues that a lower cap would discourage participation by EGSs. FES R.Exc. at 12-13.

The OCA responded to RESA's argument that shopping customers should be prohibited from program participation. The OCA argues that excluding shopping customers who otherwise become of the program could be discriminatory and result in customer dissatisfaction. The OCA indicated that it does not oppose RESA's alternative request that the Retail Opt-In Program information be sent only to non-shopping customers. OCA R.Exc. at 12-13.

iv. Disposition

We will adopt the ALJ's recommendations that a customer participation cap of 50% of non-shopping customers be established as proposed by PPL and that all residential customers, shopping and non-shopping, will be permitted to participate. We note that RESA's alternative suggestion, that information regarding the Retail Opt-In Program should be targeted to non-shopping customers, is consistent with PPL's proposal. We agree that this is appropriate given our intent that this program should provide incentives to non-shopping customers to explore the competitive marketplace. The 50% customer participation cap is also consistent with our determination of this issue in the *FE DSP II Order* and the *PECO DSP II Order*.

d. Limitation of Participants – Small C&I Customers

i. Positions of the Parties

PPL did not propose to include small C&I customers in the Retail Opt-In Program. PPL acknowledged that small C&I customers were deemed eligible for participation in the *FE DSP II Order*. However, PPL argued that there were factors in this proceeding which distinguish it. PPL asserted that data indicated that there is much more robust shopping by small C&I customers in its service territory than in the FirstEnergy Companies' service territories. On that basis, PPL argued that the reasons stated in the *FE DSP II Order* for small C&I customer participation do not exist here. PPL MB at 119-120.

RESA argued that small C&I customers are not shopping in PPL's service territory. RESA suggested that PPL's shopping statistics were skewed by the inclusion of larger business customers who are shopping. RESA MB at 68.

ii. ALJ Recommendation

The ALJ recommended that PPL's proposal be accepted and small C&I customers be excluded from program participation. The ALJ determined that 64% of the peak load capacity of non-residential customers with less than 25 kW is served by EGSs. The ALJ stated: "As it appears that the small C&I market is already robust, the cost of extending this program to small C&I customers would be unjustified." R.D. at 122.

iii. Exceptions and Replies

RESA excepted to the ALJ's conclusions that the small C&I market in PPL's service territory was already robust and that the cost of including small C&I customers in the Retail Opt-In Program was unjustified. RESA argues that while the

record shows that 64% of the peak load capacity for non-residential customers with less than 25 kW is served by competitive suppliers, that number is far lower than the figures for all commercial customer load (88.3%) or all industrial customer load (98.6%). RESA argues that there is no reason to be satisfied with a lower amount of shopping by smaller C&I customers. RESA also argues that the focus on peak load capacity ignores the fact that 56% of small C&I customers under 25 kW are not shopping. RESA Exc. at 25.

RESA also asserts that there is nothing in the record to support the conclusion that the cost of adding small C&I customers to the program is outweighed by the benefits. RESA states that the Retail Opt-In Program is designed to stimulate the competitive market and participation of small C&I customers in that program will advance that goal. According to RESA, there is nothing in the record which would enable one to conclude that the costs involved will outweigh the benefits of improved participation by small C&I customers. RESA Exc. at 25-26.

FES also excepts to the exclusion of small C&I customers from the Retail Opt-In Program. FES argues that this issue was raised and decided in both the *FE DSP II Order* and the *PECO DSP II Order*. FES states that in each of those proceedings, FES states that small C&I customers were permitted to participate. FES asserts that nothing in this record suggests that a different result should occur in this proceeding. FES Exc. at 13-14.

PPL responds to both RESA and FES and argues that there is a cost associated with adding small C&I customers to the Retail Opt-In Program. PPL reiterates its argument that the shopping numbers for small C&I customers in its service territory are substantially higher than the levels of shopping in the service territories of either the FirstEnergy Companies or PECO. On that basis, PPL argues that the ALJ was correct in concluding that small C&I customers need not be included in the Retail Opt-In Program to further boost shopping for this customer segment. PPL R.Exc. at 20.

iv. Disposition

We will grant RESA's and FES's Exceptions on this issue. All Parties understand that the Retail Opt-In Program is a step which is intended to stimulate non-shopping customers to enter into the competitive marketplace and become comfortable receiving service from competitive suppliers rather than simply remaining on default service. Accordingly, while PPL does have better shopping numbers among small C&I customers (less than 25 kW) than the FirstEnergy Companies or PECO, RESA correctly points out that the record shows that 56% of the small C&I customers in PPL Electric's service territory remains on default service. Although PPL suggests that there are added mailing costs to include small C&I customers, we find that the fact that more than half of those customers remain on default service justifies the added expense to provide them with this opportunity to explore the competitive market. We will direct PPL to include small C&I customers (less than 25 kW) in the Retail Opt-In Program.

e. Price

i. Positions of the Parties

PPL proposed that the EGSs offer a six-month, fixed price product at a minimum 5% discount off the PTC on December 1, 2013, and that participating customers receive a \$50 cash bonus after receiving generation service from the EGS who acquires the customer in the auction after three billing cycles. R.D. at 122.

The OCA proposed that customers receive the guaranteed savings off the PTC for the entire term of the contract. The OCA expressed concerns that there may be adjustments during the contract term which could leave customers with a negative opinion. R.D. at 122-123.

ii. ALJ's Recommendation

The ALJ recommended that PPL's original proposal be adopted. R.D. at 123.

iii. Exceptions and Replies

FES excepted to the ALJ's recommendation to adopt PPL's proposal. FES noted that in both the *FE DSP II Order* and the *PECO DSP II Order*, the Commission directed that the Retail Opt-In Program product design should include a twelve-month product, comprised of a fixed price for four months guaranteed to be 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining eight months. FES Exc. at 10.

DR/IGS also excepted to the ALJ's recommendation. DR/IGS argue that a twelve-month term with a four month guaranteed 5% savings combined with an eight-month term fixed price "seems to be a better fit in today's competitive market where many suppliers offer a one (1) year product." DR/IGS Exc. at 5. DR/IGS argues further that with the decisions in both the *FE DSP II Order* and *PECO DSP II Order* directing the same product designs, nothing in this record suggests that a different result should occur. DR/IGS Exc. at 4-5.

In its Exceptions, the OCA stated that in the event a longer term product is directed, then the guaranteed savings for customers should continue for the entire term of the program. OCA Exc. at 9-10.

RESA replies to the OCA's position on guaranteed savings and argues that the focus of the program is not to guarantee a price below the PTC. According to RESA, the focus of the program is to move customers into the competitive market. In addition,

requiring guaranteed savings over the life of the term may serve as a disincentive to EGSs to participate which may result in reduced participation by EGSs. RESA asserts that the initial price offerings should be viewed as “introductory” and that customers must be made aware of potential price changes. RESA R.Exc. at 14. RESA again notes that customers are free to leave the program at any time without penalty. RESA states that if, at the conclusion of the introductory price, there is a price change unsatisfactory to the customer, then the customer may shop for a better deal. *Id.*

FES responds to the OCA and states that while it does not necessarily oppose guaranteed savings, it does not believe that guaranteed savings are necessary for participating customers to benefit from the Retail Opt-In Program. FES R.Exc. at 12.

DR/IGS also replies to the OCA’s Exceptions and states the following:

Guaranteed savings products substantially increase the risk to suppliers, because they would be forced to adjust their product to match (at a discount) a PTC that is reconciled, which by definition is not a market based product. In a program where there can be no cancellation fees and where suppliers are required to provide a fifty (\$50.00) bonus after the first three (3) months of the program, the downside risk is likely to be too much for most suppliers to willingly accept. Simply put, adding the risk of managing mid-term PTC changes, and a requirement to adjust prices to reflect those changes to the list of risks and costs for suppliers only lessens the likelihood of participation by significant or substantial number of suppliers and, thus, increases the likelihood of program failure.

DR/IGS R.Exc. at 5.

DR/IGS argues further that since the PTC is not market-based, there is no reason to suggest that pricing for the non-introductory period would not be “fair.”

DR/IGS states: “The OCA insistence that the product provide the customer with guaranteed savings every day of the program simply does not reflect market reality and cannot be adopted reasonably here.” DR/IGS R.Exc. at 6.

The OCA replies to FES and DR/IGS and argues that, as proposed by the Company, and if the PTC semi-annual adjustment and the Retail Opt-In Program are aligned, then customer savings can be guaranteed for the life of the proposed six-month term. While the OCA acknowledges that a different product design was directed in both the *FE DSP II Order* and the *PECO DSP II Order*, the OCA asserts that the difference in the program design proposed by PPL can assure benefits to customers and result in a positive experience. OCA R.Exc. at 11-12.

iv. Disposition

We have already determined that the Retail Opt-In Program term should be for a period of twelve months. After review of the record in this proceeding, as well as our determinations in the *FE DSP II Order* and the *PECO DSP II Order*, we will direct that PPL modify its product design to be consistent with those earlier determinations. That product design shall be comprised of:

A twelve-month product, comprised of a fixed price for four months equal to a discount of 5% off the PTC at the time of enrolment, and an EGS-provided fixed-price product for the remaining eight months;

The payment of a \$50 bonus to customers; however, customers must remain in the Retail Opt-In Program for at least the initial four-month period to receive the bonus;

In order to allow the Commission to effectively evaluate the terms of the Retail Opt-In Program, participating EGSs shall provide the terms and conditions of the eight-month fixed-price offering for the Commission to review.

See, PECO DSP II Order at 90-91; FE DSP II Order at 117-118.

As we stated in the *PECO DSP II Order*: “With these improvements, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the [Retail Opt-In Program].” *PECO DSP II Order* at 118. We also acknowledge the Reply Exceptions of DG/IGS, including their arguments relating to the perspective of EGSs wishing to participate. From the perspective of the customer, the modified product design will provide an initial savings and bonus incentive to participate, while also giving them experience in the market with a potential change in price with the ability to exit the program at any time, without penalty. The participating customers will receive all required notices of any price change after the initial period and may then participate in the competitive market by choosing to remain with their current EGS, shop for alternatives or return to default service. It is intended that customers will learn from this experience and become comfortable shopping for competing electric supply in a relatively risk-free environment.

f. Terms and Conditions Disclosure¹⁹

The ALJ’s discussion of this issue stated that in the event that PPL is directed to implement an aggregation program, then the Parties’ positions with regard to this issue will become irrelevant. R.D. at 123, Footnote 40. As discussed above, we have

¹⁹ Our determination of this issue resolves Exception No. 11.4 filed by RESA (RESA Exc.at 27) and Exception No. 3 filed by DR/IGS (DR/IGS Exc. at 5).

directed that the proposed product be modified to provide for a set price of 5% below PPL Electric's PTC at the time of enrollment. Similar to the treatment of this issue in both the *FE DSP II Order* and the *PECO DSP II Order*, we have determined to provide for a product design offering a fixed price for the first four months, then a fixed price product developed by the participating EGS for the remaining eight months. This modified product design shifts the over-all program design from an auction process to an aggregation process as will be discussed, *infra*. On that basis, customers should have the introductory offer price and term information available at the time they enroll.

We will also require that participating EGSs submit, for Commission monitoring, the terms and conditions of the eight-month Retail Opt-In Program fixed price offering as one of the conditions of participation. *See, e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company; Petitions for Reconsideration/Clarification*, Docket Nos. P-2011-2273650, *et al.* (Amended Order entered October 11, 2012) at 17-19. Those terms and conditions of the EGS offerings shall be submitted to the Commission no later than forty-five days before the offers are extended to potential customers. *FE DSP II Order* at 161. We also note that notification of any changes in terms and conditions to the customers which deviate from the introductory offer must comply with the Commission's regulations at 52 Pa. Code § 54.5, relating to Disclosure Statements.

g. Supplier Participation Load Cap

i. Position of the Parties

In its original auction proposal, PPL proposed that an EGS participation in the Retail Opt-In Program may not serve more than 50% of the customer class default service accounts. R.D. at 124.

RESA recommended that there should be a requirement of a minimum of at least four successful EGS bidders in any auction or aggregation program. RESA explained:

The goal of RESA's recommendation is to enhance supplier diversity, and thus enhance the long term competitiveness of the market. Specifically, if implemented, this recommendation has the potential to increase the number of suppliers achieving sustainable scale, and increase their ability to offer more diverse products and services to their customers.

RESA MB at 71 (footnotes omitted).

FES opposes any limitation on the number of winning bidders. PPL responded that the limitation will encourage EGS participation. R.D. at 124-125.

RESA had also proposed that if the enrollment process generates less than a 10% response rate, then PPL should provide for a second round of enrollments. PPL responded that repeating the enrollment process would be costly and inefficient. PPL argued that a report will be filed with the Commission at the conclusion of the Opt-In process and the Commission can make a determination at that time whether additional action is needed. R.D. at 125.

ii. ALJ's Recommendation

The ALJ recommended adoption of RESA's suggestion to provide that there must be a minimum of four successful bidders in the program. The ALJ also recommended against RESA's suggestion of a second Opt-In process as a second process would be cost prohibitive. R.D. at 125.

iii. Exceptions and Replies

PPL excepts to the ALJ's recommendation to adopt RESA's suggestion that the process require a minimum of four successful bidders. PPL argues that the goal of the retail market enhancement programs is to encourage customers to shop. According to the Company, RESA's proposal does not advance the goal of customer shopping, it only complicates the process of selecting winning bidders. PPL Exc. at 19.

FES also excepts to the ALJ's recommendation to require a minimum of four winning bidders. FES argues that this recommendation has been rejected in both the *FE DSP II Order* and the *PECO DSP II Order*. FES states that we have previously held that such a requirement, in addition to the 50% supplier participation cap, is inconsistent with a competitive market. FES Exc. at 15.

RESA excepted to the ALJ's rejection of RESA's recommendation to provide a trigger in the event that the initial Opt-In process produces less than a 10% response rate, a second enrollment process should occur. RESA argues that any expense incurred for additional communications or enrollment opportunities "would be reasonable and would be exceeded by the benefits from these offers and from a more competitive market." RESA Exc. at 26-27.

PPL responds to RESA's Exception and again asserts that the costs attendant on RESA's recommended additional communications outweigh any perceived benefit. PPL argues that each additional mailing proposed by RESA to default service customers would increase costs by over \$600,000. Accordingly, PPL continues to oppose RESA's recommendation regarding additional customer notices. PPL R.Exc. at 17-18.

iv. Disposition

We will grant PPL's and FES's Exceptions relating to RESA's recommended four successful bidder requirement. Initially, we note that we have modified the Retail Opt-In Program design to an aggregation program rather than an auction. That modification should, in part, encourage EGS participation. In addition, we have adopted PPL's proposal for a 50% supplier participation cap. That 50% supplier participation cap strikes the appropriate balance. This is consistent with our resolution of this proposal in both the *FE DSP II Order* and the *PECO DSP II Order*.

We will also deny RESA's Exception relating to a trigger for a second enrollment process. We agree with PPL that the report which will be filed at the conclusion of the Opt-In process will provide this Commission with sufficient information to determine whether additional action is needed. To the extent that RESA has recommended notices in addition to that proposed by PPL, that recommendation is denied.

h. Customer Options on Product Expiration and Notice Requirements

i. Positions of the Parties

The ALJ noted that PPL's proposed design provides that a customer will remain with the EGS at the end of the program period, absent some affirmative action by the customer to change suppliers. R.D. at 125.

The OCA did not object, but argued that there should be notice to the customer that the program will be terminated. The OCA also argued that absent affirmative customer action, the customer should be placed on a month-to-month contract at a fixed price. R.D.at 125. The OCA asserted that the final notice should include a

summary of the customer's options at the end of the term. The OCA argued further that such notices are necessary to ensure that customers are fully informed of their options. *Id.* at 126-127.

FES argued that the customer should not automatically be returned to default service at the end of the Retail Opt-In Program term absent an affirmative customer choice. R.D. at 127.

ii. ALJ's Recommendation

The ALJ stated that participating customers actively chose to participate in the program with full knowledge of the terms and conditions. She recommended that customers should remain with the EGS unless they affirmatively choose to move to another EGS or back to default service. R.D. at 127.

iii. Exceptions and Replies

The OCA filed two Exceptions to the ALJ's recommendation on this issue. In its Exception No. 4, the OCA excepted to the ALJ's failure to recommend that customers receive notice prior to the end of the program period. In its Exception No. 5, the OCA excepted to the failure of the ALJ to recommend that customers be placed on a fixed price month-to-month contract absent an affirmative choice to the contrary. OCA Exc. at 10-11. With regard to the notice issue, the OCA reiterates a final notice is intended to ensure that customers understand that the program is about to end. The OCA argues that participating customers will not have any previous experience participating in the retail market and the additional notice will assist them in understanding the next steps. *Id.* at 10. The OCA also argues that participating customers should not be exposed to variable pricing or a rate that is inconsistent with the program at its conclusion.

According to the OCA, moving customers to a fixed price month-to-month contract will help maintain the customers' comfort level in the market place. *Id.* at 11.

PPL responds to the OCA's proposed additional notice and asserts that participating customers will receive two notices from participating EGSs prior to the end of the Opt-In contract. PPL argues that an additional mailing as proposed by the OCA will be costly and of doubtful benefit. PPL R.Exc. at 18. PPL also responds to the OCA's recommendation that customers be placed on a fixed price month-to-month contract at the end of the term. PPL argues that this issue was decided in the *March 2 IWP Order* which rejected the OCA's proposal. PPL argues further that the OCA has not offered any new arguments which would justify adoption of its proposal in this proceeding. *Id.*

DR/IGS also responds to the OCA and argue that there is no need for an additional notice regarding the end of the Opt-In contract term. DR/IGS asserts that customers in today's marketplace receive 2 notices at the end of a fixed-price contract, or if price/terms and conditions are proposed to change. That is the same notice which the Opt-In customers will receive. DR/IGS argues that the OCA has not offered any evidence which suggests that the current rule is ineffective. DR/IGS R.Exc. at 6.

iv. Disposition

We will deny the OCA's Exceptions and adopt the ALJ's recommendation. We agree with DR/IGS that the current notice provisions relating to contract termination and changes in terms and conditions are sufficient to apprise customers that changes may be occurring to their supply contracts and some action may be necessary. In addition, those notices inform the customers what those changes will be. Changes could include price increases, price reductions, reduced term, etc. Regardless, it is up to the customer to evaluate the proposed changes and make a determination of whether to accept the

changes and remain with the EGS or take an affirmative action and move to another competitive supplier or to default service. We find that mandating a fixed price month-to-month contract absent affirmative customer action is inconsistent with the entire premise of the Retail Opt-In Program, which is to get customers into the market place and introduce them to the experience of shopping for competitive supply. Accordingly the OCA's Exceptions 4 and 5 are denied.

i. Structure of Opt-In Auction

We have stated above that we will direct PPL to modify its program design to provide for an aggregation model rather than an auction model. This effectively moots this issue. We will direct PPL to implement a Retail Opt-In Program using an aggregation model. The product design is to be a one-year product comprised of 5% off the PTC at the time of enrollment for four months, a fixed price EGS offering for the remaining eight months and the inclusion of a \$50 bonus provided the customer remain in the program for the initial offer period. We find that this program design is superior to an auction process with regard to attracting EGS participation and customer participation.

i. Exceptions and Replies

PPL anticipated the potential for our directed modification to an aggregation model in its Exceptions. We will address that Exception here.

PPL argues that, until the aggregation models directed in the *FE DSP II Order* and the *PECO DSP II Order* are implemented, we should consider alternatives, such as the proposed auction model, to determine the better approach. PPL Exceptions at 18.

RESA responds to the Company's Exception and argues that an aggregation approach will provide all interested EGSs an equal opportunity to participate and acquire customers through the aggregation. RESA states:

This will better serve the Commission's stated goal of encouraging further retail market development and exposing customers to a wide range of EGS value propositions in the marketplace. An auction approach, by contrast, runs the risk of being dominated by one or two suppliers and will focus heavily on price as the driving value proposition.

RESA R.Exc. at 6. RESA also asserts that with our previous direction to the FirstEnergy Companies and PECO to implement an aggregation approach, consistency across service territories will also promote EGS participation. *Id.*

FES responds and supports PPL's Exception. FES argues that the Retail Opt-In Program should include some form of bidding in order to provide customers with maximum savings and provide a clear methodology for allocating customers among participating suppliers. FES R.Exc. at 13-14.

DR/IGS also responds to PPL's Exception. They support an aggregation design and argue that it is a better approach than an auction. DR/IGS argues that an aggregation program is less costly to develop and administer. They also assert that there is value in uniformity which will increase EGS interest and participation across the several service territories. DR/IGS states that statewide participation by EGSs will permit the sort of scale that will allow for greater investment in the Commonwealth. DR/IGS R.Exc. at 2.

ii. Disposition

We will deny PPL's Exception on this issue. We agree with RESA and DR/IGS that the aggregation design provides several benefits including cost, supplier interest and ease of administration. In this context we note that PPL provided an alternative program description which addresses several changes in the event an aggregation program is directed, including supplier selection. We will approve that alternative approach subject to any modifications required as a result of this Opinion and Order. We will also direct PPL to meet with the Parties to develop appropriate terms and conditions which will govern the relationship between PPL and participating EGSs. We further direct that PPL report back to the Commission regarding the agreed-upon terms and conditions within forty-five (45) days of the entry date of this Opinion and Order.

j. Low Income Participation in Retail Market Enhancements

i. Positions of the Parties

PPL explained that its low income program customer assistance program (CAP), known as "OnTrack," presents considerations not related to shopping which make inclusion of the On Track program customers a difficult proposition. PPL stated that non-CAP residential customers pay the difference between the CAP bill and the CAP customers' full bill. PPL further explained that when an OnTrack customer's full bill increases, the shortfall does as well. Similarly, if an OnTrack customer receives benefits not reflected in the determination of their payment, the amount paid by the non-CAP customers will be unnecessarily higher. R.D. at 128.

PPL also explained that in the event an OnTrack customer would select a supplier who charged significantly above the PTC, then the OnTrack customer would be responsible for the extra amount above the \$10 per month threshold as part of their OnTrack bill. Conversely, any savings related to a price below the PTC would be split by

a ratio of 60% to the OnTrack customer and 40% to the non-CAP customers who pay the program's costs. PPL stated:

These protocols are designed to encourage efficient shopping by OnTrack customers by increasing their required payment if they take more expensive service from an EGS while allowing them to receive a share of the savings from shopping, while providing a share of shopping savings to the non-CAP residential customers that pay the CAP shortfall.

PPL MB at 138.

CAUSE²⁰ argued that if one assumes that the Retail Opt-In Program will result in an initial 5% savings off the PTC, then a participating CAP customer would see only 40% of that savings (approximately 2% off the PTC). Thus any suggestion that a CAP customer would receive an initial 5% savings is illusory. CAUSE expressed the concern that while PPL's systems may be adjusted to reflect the shared savings, the result would not be readily explained to CAP customers. CAUSE also expressed the concern that CAP customers could experience significant increases at the end of the initial four month discount. CAUSE argued that due to these factors, CAP customers should not be permitted to participate in either the Retail Opt-in Program or the Standard Offer Referral Program. R.D. at 129-131.

RESA recommended that PPL Electric's OnTrack program be replaced by a standard state-wide program that could provide a portable benefit to be applied equally whether a CAP customer was shopping or not. R.D. at 133.

²⁰ We note that CAUSE also recommended that all CAP customers be returned to default service, and that all low-income non-CAP customers be returned to default service, at the conclusion of the Retail Opt-In Program. R.D. at 132. Those issues have not been presented by the Petition and are not properly in front of us in this proceeding.

CAUSE and the OCA requested that PPL re-examine its position on participation by OnTrack customers in the Retail Opt-In Program. PPL expressed the concern that OnTrack customer's shopping choices may be increasing the costs to non-CAP customers who pay the cost of the program, or that those choices may be making it more difficult for OnTrack customers to remain on the preprogram. PPL recommended that these issues be examined in the context of its next Universal Service Plan filing or in the Commission's RMI Working Group on CAP customer shopping. At this time, PPL recommends allowing OnTrack customers to participate in the Retail Opt-In Program and the Standard Offer Referral Program, but will not market the programs to them. R.D. at 133-134.

ii. ALJ's Recommendation

The ALJ observed that the Commission has established a subcommittee of the RMI group to investigate whether additional protections should be implemented for this group of customers. Until the outcome of that investigation is known, the ALJ recommends that low-income customers should be treated like other customers and be permitted to participate in the program. R.D. at 134.

iii. Exceptions and Replies

The OCA excepted to the ALJ's recommendation and argues that the record shows that there is the potential for increased costs by allowing CAP customers to participate in the Retail Market Enhancement Programs. On that basis, the OCA argues that CAP customers should not be permitted to enroll in either the Retail Opt-In Program or the Standard Offer Referral Program. The OCA states that the issue of CAP customer participation should be referred to the RMI universal service subgroup for further

analysis and consideration. CAP customer participation should not be permitted pending the outcome of that review. OCA Exc. at 13-15.

CAUSE excepts to the ALJ's recommendation that CAP customers be permitted to participate in the Retail Opt-In Program and the Standard Offer Referral Program pending the outcome of the Commission's review in the RMI Universal Service subgroup. CAUSE argues that the RMI Universal Subgroup is inactive and has not been charged with the responsibility to conduct such an investigation. CAUSE also asserts that any action by the Subgroup has been rendered moot by the Commission's decision in the *PECO DSP II Order* by directing PECO to develop a CAP program that can provide portable benefits. CAUSE Exc. at 6-7. CAUSE also asserts that the Commission should defer participation by PPL Electric's CAP customers until a thorough investigation is conducted to determine what protections should be mandated to prevent harm to CAP customers. *Id* at 8.

CAUSE argues further that the record in this proceeding establishes that CAP customers are being harmed in the retail market. On that basis, CAUSE argues that this case is distinguishable from our proceeding decided by the *FE DSP II Order* where we permitted CAP customers to participate in the retail market. CAUSE argues alternatively that the Commission should defer CAP customer participation and take an approach similar to that directed by the *PECO DSP II Order* and direct PPL Electric to work with the Office of Competitive Markets Oversight, then low-income advocates and the OCA to develop an effective plan to permit CAP customer participation. CAUSE Exc. at 8-10.

RESA responds to the OCA and CAUSE and argues that PPL currently permits its CAP customers to select an EGS and there is no reason to prohibit them from participating in the RME programs. RESA also argues that the evidence referenced by CAUSE to indicate that CAP customers have been harmed in the market is misleading. That evidence focuses on a specific point of time and is not indicative of a customer's

experience over the entire term of a contract. A different point in time, such as when customers initially enrolled, would have provided entirely different results. RESA R.Exc. at 17-18.

iv. Disposition

We will deny the Exceptions of the OCA and CAUSE and adopt the recommendation of the ALJ. In doing so, we note that the ALJ recommended that OnTrack customers be treated the same as all other customers. Accordingly, this recommendation also modifies PPL's proposal to withhold information about the Retail Opt-In Program and the Standard Offer Referral Program from these customers.

We agree with the position taken by PPL and RESA that the evidence suggesting that OnTrack customers have been harmed by participating in the retail market is speculative at best and certainly not substantial. Both RESA and PPL point out that the primary statistic used is based on a single point in time and is not, in and of itself, conclusive that these customers were paying more for service for the full term of their contracts, or that they will not have any savings from their shopping experience. R.D. at 132; RESA R.Exc. at 18.

We also point out that PPL's OnTrack program design provides for a sharing of savings between OnTrack customers and non-CAP customers who pay for the difference between the OnTrack customers' usage and the actual amount due. R.D. at 130. In addition, participating customers will receive a guaranteed discount from the PTC during the introductory period. If the price increases after that period, the customers are free to return to default service at no penalty.

For the foregoing reasons, we will deny the OCA's and CAUSE's Exceptions on this issue, modify PPL's proposal and adopt the ALJ's recommendation.

4. Standard Offer Program Design

a. Positions of the Parties

PPL proposed to initiate the Standard Offer Referral Program on an ongoing basis in mid-2014 after necessary programming changes have been made to the Company's customer information and billing systems to implement the program. PPL proposes that the program will target residential customers on default service, but non-default customers who affirmatively request information about the program will be eligible to participate. R.D. at 134-135. PPL described the program design as follows:

The Program proposes to provide participants with a standard 7% discount off the then-current PTC for a term of six billing cycles. In the event the PTC changes, any new offers by an EGS must change to reflect a 7% discount off the new PTC. However, contracts entered into previously under the Standard Offer Referral Program would not be subject to a pricing change when the PTC changes. (PPL Electric St. 4, pp. 26-27). A customer who elects the standard offer price may choose to receive service from a particular EGS that is then participating in the program, and customers who do not chose a specific EGS will be randomly assigned to an EGS. (PPL Electric St. 4, p. 27). Customers may exit a standard offer contract at any time without penalty, either to select another EGS or to return to default service. At the end of the term of the standard offer contract, customers will be notified of their options to renew consistent with their disclosure statement and the regulations an EGS must follow to provide notice. (PPL Electric St. 4, p. 27). Absent an affirmative action by the customer to switch at the end of the contract term, the customer will remain with the chosen/assigned EGS on a month to month basis with no termination penalty or fee. (PPL Electric St. 4, pp. 26-28). The program will be presented to shopping customers during contacts to the PPL Electric call center, other than in the event that the call concerns emergencies, terminations, or similar circumstances where it might be deemed inappropriate. The Company also

anticipates engaging customers through IVR functionality and website enrollment capability (PPL Electric St. 4, p. 27).

PPL Electric also proposes a simple process for EGSs to participate. The Company will solicit all EGSs serving residential customers in its service territory for their interest in serving customers under the program. (PPL Electric St. 4, p. 27). Each participating EGS will be required to sign a one time Binding Program Agreement Form, which spells out the EGS's basic responsibilities (Ex. DAK-2). After executing the Binding Program Agreement Form, EGSs will have the opportunity to choose to participate or not on a month to month basis through a simple notification to PPL Electric. (PPL Electric St. 4, pp. 26-27). When electing to participate in a month, EGSs will be indicating their willingness to provide a price for six billing cycles that is equal to a 7% discount from the then-current PTC (PPL Electric St. 4, p. 29). EGSs will be permitted to continue the enrollment of customers up to June 1, 2015, which is the end of the DSP II Program.

PPL MB at 122-123. It should be noted that PPL is not proposing to continue the program beyond June 1, 2015, pending a final determination of the Commission with regard to end-state default service. *Id.* at 123, n. 88.

The OCA argued that the Company's proposed design creates the potential for customers to pay a higher price than the PTC if the PTC is adjusted semi-annually. The OCA recommended that the program design provide for a guaranteed discount off the PTC for the entire term of the offer. R.D. at 136.

DR/IGS and FES recommended that the program term should be twelve months. DR/IGS also argued that under PPL's proposed plan, EGSs would have to begin sending out the required end of term notices only a few months after the term began. R.D. at 136, 137. The OCA recommended a term of four months with the modification that savings be guaranteed. R.D. at 136.

RESA supported a four month term, followed by either a month-to-month variable rate or a fixed price over an eight-month term. R.D. at 137. RESA also expressed a preference that shopping customers not be eligible but does accept the provision that shopping customers will not be targeted with program information. *Id.* at 139.

PPL responded and argued that its proposed program design struck a balance between the interests of consumers and EGSs. PPL asserted that there will be no penalty for customers to exit the program so if changes to the PTC during the program result in a loss of savings, they are free to move. The Company further argued that the proposed six-month term is short enough that customers will not experience more than one PTC change; the term is consistent with other products offered in the marketplace; and, provides the customer with the experience of seeing supplier charges on his bill, receiving communications from an EGS, and considering options at the end of the term within a reasonable time frame. R.D. at 138.

PPL also proposed that, at the end of the program contract term, absent affirmative customer action, the customer will remain with the EGS on a month-to-month basis and shall not be subject to any termination fee or penalty. R.D. at 140.

CAUSE recommended that confirmed low-income customers should be returned to default service at the end of the program term absent an affirmative choice made by the customer. The OCA recommended that any customer should be returned to default service at the end of the program period absent an affirmative choice. *Id.* at 140-141.

b. ALJ's Recommendation

The ALJ recommended adoption of the Company's program design of a discount equal to 7% off the then current PTC for a term of six months. R.D. at 138. The ALJ also recommended adoption of the Company's proposal that customers would remain with the EGS absent affirmative action on the part of the customer to select an alternative supplier or move to default service. The customer would remain with the EGS on a month-to-month basis without any termination penalty or fee. *Id.* at 141.

c. Exceptions and Replies

RESA excepts to the ALJ's rejection of RESA's proposals to reduce the program term to four billing cycles and to include small C&I customers. RESA also suggests that the Commission direct the Parties to work together to develop a set of fair and balanced binding terms to govern their relationship for this program. RESA Exc. at 29-32.

RESA argues that the longer program term, with the guaranteed 7% off for the full term, will be unattractive to EGSs and will decrease the likelihood of a successful program. RESA suggests that the term should be reduced and/or remove the requirement that the price be guaranteed for the full term. RESA Exc. at 30. RESA asserts that a 7% discount over a four-month term strikes the appropriate balance and reflects that the program is to be introductory in nature. *Id.* at 31. RESA also asserted that, consistent with its arguments relating to inclusion of small C&I customers in the Retail Opt-In program, small C&I customers should participate in this program as well. *Id.* at 32.

FES also excepts to the recommended adoption of the Company's proposed six-month term. FES notes that the Commission approved twelve-month terms for the Standard Offer Referral Programs in both the *FE DSP II Order* and the *PECO DSP II*

Order. FES argues that a twelve-month term will provide increased savings and a more stable product for customers. FES argues further that the term must be sufficient to provide customers with the opportunity to gain confidence in the market. In addition, FES asserts that customers may leave at any time without penalty. FES Exc. at 16.

The OCA excepted to the ALJ's failure to adopt the OCA's recommendation that savings be guaranteed for the length of the program term. The OCA argues that customers face a real possibility that a PTC change during the term of their participation could result in a loss of savings and cause customer dissatisfaction with the program and the retail market. OCA Exc. at 15-16.

CAUSE filed an Exception and argued that the ALJ erred when she found that CAP customers who participated in the Standard Offer Referral Program would receive 50% of the savings offered by that program. CAUSE asserts that the record shows that CAP customers would receive only 40% of the savings given that PPL's OnTrack program is structured to provide a 40%/60% sharing of savings achieved through shopping. CAUSE Exc. at 5-6. CAUSE also reiterated its argument stated in the discussion of the Retail Opt-In Program that CAP customers should be excluded from the Standard Offer Referral Program. *Id.* at 7-10.

PPL responds to the OCA and asserts that the program term, in concert with its proposed semi-annual PTC changes, provides a compromise between competing proposals relating to term length and price guarantees. PPL asserts that its proposal mitigates the OCA's concerns. PPL R.Exc. at 22. The Company also responds to RESA and FES and again asserts that the proposed six-month term with a guaranteed 7% discount off the then-current PTC is a compromise which provides customers with real market experience without subjecting them to multiple price changes during the term of an introductory program. *Id.* PPL also asserts that RESA's proposal to include small

C&I customers should be rejected as too costly given the high shopping numbers for that customer class. *Id.* at 22-23.

RESA also responds to the OCA and CAUSE and reiterates that CAP customers should be permitted to participate in the Standard Offer Referral Program. RESA makes the same arguments here as it did with regard to the Retail Opt-In Program. RESA R.Exc. at 16-18. RESA replies to the OCA's Exception relating to guaranteed savings over the life of the term. RESA reiterates that a requirement to guarantee savings over the life of the term would seriously deter EGS participation. RESA argues that even though the PTC may change in a manner which would impact savings, customers are free to leave the program at any time without termination penalty. *Id.* at 15-16.

FES replies to the OCA's Exception relating to guaranteed savings and argues that guaranteed savings over the term are not necessary to achieve customer benefits. FES notes that upon enrollment, the customer will achieve a 7% discount from the then current PTC. Even if FES's suggested twelve-month term is adopted, FES notes that customers are free to leave the program if the PTC declines more than 7% over that term. FES R.Exc. at 17.

FES also replies to RESA's Exception which proposes that the Standard Offer Referral Program provide for an introductory offer followed by an 8-month variable rate or an eight-month fixed rate selected by an EGS. FES argues that participating customers should be provided with a full twelve-month term, free to leave at any time, in order to provide them with a realistic shopping experience. FES R.Exc. at 17-18.

The OCA replied to RESA's Exception relating to guaranteed savings and reiterates its argument that the proposed 7% discount should be applied to each change in

the PTC and not just the PTC which is current at the time of enrollment. OCA R.Exc. at 15.

d. Disposition

We will modify the ALJ's recommendation and direct that PPL alter its Standard Offer Referral Program to provide for a twelve-month term, with a 7% discount from the then current PTC. In doing so, we note that CAP customers will be permitted to participate in the program. We will also direct that small C&I customers with less than 25kW be permitted to participate in the program. In addition, we agree with RESA that PPL should meet with interested Parties to develop an agreed upon set of terms to govern the relationship between the Company and participating EGSs.

Our disposition here is consistent with the program designs directed in the *FE DSP II Order*. In this context, we note that CAP customers are also permitted to shop in the FirstEnergy Companies' service territories. We also agree with FES that a twelve-month term with a 7% discount off the then current PTC will provide participating customers with a realistic shopping experience while providing a penalty-free option to move out of the program if a decline in the PTC warrants it. We find that setting the discount at the time of enrollment should mitigate RESA's concerns regarding price fluctuation. The current discount will float with the changing PTC, but will not change for existing customers. Participating EGSs will know what the PTC is for upcoming enrollments so they may take appropriate steps.

In addition, we agree with the Company's proposal that customers will remain with their EGS at the end of the program term, absent affirmative customer action, on a month-to-month basis without penalty to terminate at any time. Customers will receive all required notices regarding the end of the program term and any changes

in terms and conditions. This is consistent with our resolution of this issue in the Retail Opt-In Program.

5. Standard Offer Program – Types of Customer Calls Eligible for Referral

a. Positions of the Parties

PPL proposed that the Standard Offer Referral Program will be promoted during all customer calls other than those regarding emergencies or terminations. R.D. at 141.

The OCA recommends that this program be offered only during calls that involve establishing service, transferring service to a new location, and calls specifically inquiring about customer choice. The OCA expressed the concern that if the program is promoted to callers seeking information or resolution of issues concerning bills, credit and collection, or reliability of service, such a requirement may jeopardize quality of service in violation of Section 2807(d) of the Code, 66 Pa. C.S. § 2807(d). R.D. at 141. CAUSE agreed that the program should not include customers calling about high bill complaints.

PPL responded and stated that the customer's concerns regarding other issues must be satisfied before the program will be raised. R.D. at 141-142.

b. ALJ's Recommendation

The ALJ recommended that, consistent with the *March 2 IWP Order*, the Standard Offer Referral Program should be presented during customer contacts to EDC call centers, other than calls for emergencies, terminations and the like. For high bill

calls, the program should be presented only after the customer's concerns have been satisfied. R.D. at 143.

c. Exceptions and Replies

The OCA excepted to the ALJ's recommendation and reiterated its arguments that solicitation for the program should be limited to new or moving customers and those customers inquiring about shopping. The OCA asserted that, at a minimum, the program should not be presented to customers seeking information or resolution of issues concerning high bills, credit and collection, or reliability of service. The OCA argued further that the condition that those customers concerns must be addressed before the program is presented does not eliminate the problem. The OCA asserts that for many of these types of calls, the customer's concerns will not be resolved through a single contact. Those calls may be escalated through supervisors or result in an informal investigation. The OCA argues that there has been no determination of when a customer is deemed "satisfied" which would then permit presentation of the program. OCA Exc. at 16-18.

PPL replies and states that its proposal is consistent with the Commission's *March 2 IWP Order* and the OCA's Exception should be denied. PPL emphasizes that the Standard Offer Referral Program will only be presented to customers after other concerns which prompted the call are satisfied. PPL R.Exc. at 23.

RESA also responds and argues that the OCA's arguments and concerns have already been addressed and rejected in the *FE DSP II Order* and the *PECO DSP II Order*. RESA notes that in the *FE DSP II Order*, the Commission stated that customers with high bill complaints are likely to be customers who can benefit most from competitive offers such as the Standard Offer Customer Referral Program. Similarly, the Commission accepted PECO's commitment to resolve the issue the customer is calling

about before presenting the program, as PPL has committed here. RESA R.Exc. at 15-16.

d. Disposition

We will deny the OCA's Exception on this issue and adopt the recommendation of the ALJ. As stated by both RESA and PPL, the Company's proposal is consistent with our determination in the *March 2 IWP Order*, the *FE DSP II Order* and the *PECO DSP II Order*. For the reasons set forth in those proceedings, as well as the arguments presented by PPL and RESA here, we will adopt the ALJ's recommendation.

6. Timing of the Retail Market Enhancements

a. Positions of the Parties

PPL recommended the following schedule:

- Third quarter of 2012: implementation of the new/moving customer program scripts and a new customer welcome package;
- Second or third quarter of 2013: customer referral mailing;
- Late November/early December 2013: Opt-In Program
- Mid-2014: Initiation of Standard offer Referral Program

R.D. at 143.

PPL asserted that this schedule will avoid affecting several fixed-price full-requirements load-following contracts, which expire in November 2013, that were

executed under the DSP I Program prior to the initiation of the Commission's Retail Markets Investigation. The schedule will also allow a group of block contracts executed under the DSP I Program to expire and permit the Company to avoid having to sell excess power at a loss. The staggered implementation dates will minimize potential customer confusion by not overlapping the two programs. Finally, the schedule will enable the Company to make programming changes that would enhance customer information and billing systems to allow "day one" switching and avoid customer confusion about the standard offer program. R.D. at 143. To offset the delayed start of the two programs, PPL offered to undertake a Customer Referral Mailing in June 2013 to continue to promote shopping in its territory. *Id.* at 144.

FES, RESA and DR/IGS objected to the delay in implementation of the two programs. FES argued that the Standard Offer Referral Program should begin in June 2013, and not wait for the conclusion of the Retail Opt-In Program. FES also asserted that the two programs were substantially different and will be marketed and solicited through different methods. R.D. at 144. RESA agreed with FES's position. *Id.*

DR/IGS asserted that PPL had not provided any substantial reason why its programs could not be moved up to more closely mirror the other EDC DSP plans. DR/IGS and RESA all argued that PPL had failed to provide a sufficient basis to delay the Retail Opt-In Program until December 2013. R.D. at 144.

PPL responded and argued that successful implementation of the two programs will cause the default load to drop below currently contracted supply. Under that reduced load scenario, the potential for sales of excess power at a loss is high. That loss will, in turn, be passed on to a smaller default service customer base. That is potentially large effect and more than substantiates PPL's implementation schedule. R.D. at 145. In addition, PPL asserted that work is needed to implement a Standard Offer Program that avoids marketing to shopping customers, allows "day one" switching

and otherwise allows Customer Service Representatives to properly present the Program to customers that call in. The Company expressed the concern that without sufficient system support in place, there could be customer confusion and errors which would detract from the customers' shopping experience. *Id.* at 146.

b. ALJ's Recommendation

The ALJ recommended adoption of PPL's proposed implementation timeline. The ALJ stated that PPL was "best able to evaluate and predict the current capabilities of its systems and predict the amount of work and time necessary to create the support system needed to implement these enhancement programs." R.D. at 146. The ALJ agreed that with PPL's concerns regarding customer confusion. The ALJ noted that the proposed timeline was consistent with the Commission's *March 2 IWP Order*. *Id.* at 147.

c. Exceptions and Replies

RESA filed an Exception to the ALJ's recommended adoption of PPL's implementation schedule. RESA had recommended that both the Retail Opt-In Program and the Standard Offer Referral Program be implemented by June 2013. RESA argues that the June 2013 implementation timeline was established in the Commission's *March 2 IWP Order*. RESA argues that this Commission has previously determined in the *March 2 IWP Order* that there was little overlap between the two programs, customer confusion would be minimal, and comparing prices and terms of service is no different than comparing two competing offers in the competitive market. RESA asserts that this result carried through in both the *FE DSP II Order* and the *PECO DSP II Order*. RESA Exc. at 19.

RESA also disputes PPL's statements regarding the disruption of contracted supply for default service. RESA argues that to the extent that PPL has full-requirements load-following contracts, that type of contract does not guarantee any particular level of load at any given time. Accordingly, any migration due to the RME programs should not impact those contracts. As to any block energy contracts, RESA asserts that there is little chance that migration due to these programs would have any impact for more than one month. RESA recognizes that in the event losses are incurred, they would be reflected in the reconciliation process for default service, but RESA argues that the contracts themselves would not be affected. RESA Exc. at 21.

RESA also argues that the record reflects that the Company's arguments regarding systems issues are far over-stated. According to RESA, the record indicates that the Company's customer service representatives already have information as to whether a customer is a default supply customer. That is the most important information needed. RESA states that the programs should begin as soon as possible and that PPL can add enhancements as they become available. RESA Exc. at 22.

FES also excepted to the ALJ's recommended adoption of the Company's implementation schedule. FES argues that the Company's arguments regarding systems improvements are not supported by substantial evidence. FES also argues that the two programs are significantly different that concerns about customer confusion are misplaced. FES Exc. at 18.

PPL replies and argues that the primary reason for the delay in the start of the Retail Opt-In Program was to avoid affecting several fixed-price full-requirements contracts which expire November 30, 2013, and allow several existing block contracts to expire. The Company argues that this is consistent with the Commission's statement in the *Tentative Intermediate Work Plan Order*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011), that it did not intend to disrupt default supply

contracts under Commission-approved plans. PPL argues that the primary reason for deferring implementation of the Standard Offer Referral program until mid-2013 is to provide the Company with the time to make enhancements to its customer information and billing systems. The Company states:

Failure to implement these changes before starting the Standard Offer Program may result in enrollment and billing errors, because customer service representatives, web and IVR systems will not have full functionality to enroll customers, randomly assign EGSs and create unnecessary enrollment transactions with EGSs. These computer modifications are also needed to accomplish the “Day One Switch” capability that RESA impatiently demands.

PPL R.Exc. at 13.

The OCA responds and argues that RESA minimizes the potential losses attendant on the sale of unneeded block contracts during low-load situations and the attendant pass through of those losses to a smaller default customer base. The OCA asserts that avoiding those losses outweighs any potential benefit to beginning the two programs six and twelve months earlier than proposed. The OCA also argues that RESA minimizes the evidence produced by the Company which indicates that system improvements are necessary to implement the two programs, particularly the Standard Offer Referral Program. The OCA argues further that both RESA and FES fail to appreciate the potential for confusion among customers if both programs are implemented simultaneously. OCA R.Exc. at 8-11.

d. Disposition

We will reject the ALJ’s recommendation on the implementation schedule. With regard to the concern about customer confusion, we rejected these arguments in both the *FE DSP II Order* and the *PECO DSP II Order*. FES and RESA correctly argue

that the two programs are substantially different, will be marketed differently and customer enrollment will occur through different ways. We also agree with RESA that PPL Electric's arguments relating to default supply contracts are overstated. Even if customer migration through these programs is sufficient enough to impact block contract supply, the impact should not be significant enough to outweigh the benefits of moving the program implementation dates forward.

We will direct PPL Electric and the Parties to meet and report back to the Commission within forty-five days of the entry date of this Opinion and Order of a revised implementation schedule for both the Retail Opt-In Auction and the Standard Offer Referral Program. This new schedule must provide for implementation of the Retail Opt-In Program no later than July 1, 2013. This direction will also change the target PTC for purposes of the discount. The new schedule must also provide for implementation of the Standard Offer Referral Program no later than August 1, 2013. PPL Electric is directed to advise the Commission within forty-five days of the entry date of this Opinion and Order of any modifications to the Standard Offer Referral Program required by the advanced implementation date.

7. Cost Recovery for the Retail Market Enhancements and Customer Referral Programs

a. Positions of the Parties

For the Retail Opt-In Program, PPL proposed that participating EGSs would reimburse the Company for the costs of the aggregation program on a *pro rata* basis. Should there be no EGS participation, the cost will be spread across all customers through the Competitive Transition Rider. R.D. at 149.

PPL proposed that all non-capital costs for implementing and administering the Standard Offer Referral Program be recovered from the participating EGSs on a *pro*

rata basis, including training and customer communication costs. Service representative call time and capital costs to modify the Company's information and billing system would be recovered from customers through a future base rate proceeding. R.D. at 150.

The OCA argued that the *March 2 IWP Order* requires that all costs be borne by the EGSs. The OCA asserted that neither the Retail Opt-In Program nor the Standard Offer Referral Program is required by statute or necessary to advance retail competition. The OCA argued that to the extent that EGSs gain customers through these programs, they do not have to incur marketing and communications costs normally experienced in a competitive market place. On that basis, the EGSs should bear all of the incremental costs to provide these two programs. Similarly, the OCA opposed the Company's proposal to recover capital costs through base rates. According to the OCA, the costs are incurred in the place of the EGSs' own marketing. The OCA asserted that is a value that should not be provided at the expense of the regulated customers. R.D. at 149-150.

DR/IGS argued that any costs attendant on the two proposed programs which are charged to EGSs should be borne entirely by the winning suppliers on a *pro rata* basis. R.D. at 151.

FES argued that all customers in all classes eligible to participate should bear the costs of the programs. FES asserted that all customers will reap the benefits of the resulting increased retail competition and must share in the costs. FES argued that EGSs are already offering discounts and a bonus for the Retail Opt-In Program. FES expressed the concern that if program costs are added to that, it will discourage EGS participation. R.D. at 151. FES also argues that there should be a cap on program costs. To the extent costs exceed that cap, the excess should be paid by all customers from the classes of customers eligible to participate. *Id.* at 52.

PPLICA agreed that any program costs should be recovered from EGSs and opposes any proposal to recover costs from customers, including capital costs. PPLICA argued that to the extent costs are to be recovered from customers, recovery should only come from customer classes eligible to participate. R.D. at 154.

b. ALJ's Recommendation

The ALJ recommended adoption of the Company's proposal with regard to the Retail Opt-In Program based upon an auction process, but did not specifically address the aggregation approach. R.D. at 152. The ALJ generally recommended that all costs of the programs should borne by the EGSs, and that unrecovered costs be assessed to EGSs as well. R.D. at 154.

c. Exceptions and Replies

RESA excepts to the ALJ's recommendation and argues that it is unclear and should be rejected. RESA argues that the Company should be required to present an accounting of the projected costs of both programs and a projected per-customer cost for each program. Those costs then should be evaluated to determine whether they would discourage EGS participation and what the cost assignment should be between distribution customers and EGSs. RESA prefers an allocation of all costs to all customers through a non-bypassable charge, it suggests that the Commission consider an equal sharing of costs between EGSs and customers. RESA also suggests a third alternative would be to allocate costs of these programs only to default service customers. RESA Exc. at 32-35.

DR/IGS filed an Exception and argued that the ALJ erred by not adopting the Company's proposed recovery mechanism. According to DR/IGS, PPL proposed to recover the Retail Opt-In Program costs directly from participating EGSs. PPL also

proposed to recover non-capital costs of the Standard Offer Referral Program from participating suppliers and to recover the capital costs of these programs from customers through base rates. DR/IGS argues that this proposal is a fair way to address cost recovery by splitting cost recovery into non-capital and capital components. DR/IGS asserts that capital costs are typically borne by all customers through distribution rates while the operational costs of these programs will be recovered from participating suppliers. DR/IGS Exc. at 6.

The OCA filed an Exception and argues that there appears to be an inconsistency in the ALJ's discussion of this issue, which assigned all costs to the EGSs, and adoption of PPL's proposal in proposed Ordering Paragraph No. 14. According to the OCA, adopting the Company's proposal would result in capital costs being allocated to regulated customers through base rates. The OCA reiterated its arguments that customers should not be responsible for any program costs. OCA Exc. at 18-19.

PPL responds to the Exceptions filed on this issue and observes that the issue is primarily a dispute between consumer oriented parties who believe all costs should be borne by EGSs, and parties representing EGS interests who believe that some or all of the program costs should be paid by customers. PPL reiterates that its proposal provides that EGSs should be primarily responsible for payment of the costs of the two programs. PPL states that the costs of customer service representative time should not be charged to EGSs because it is not practical to determine the portion of that time which is spent on discussion of the programs. Similarly, system upgrades should be recovered in a future base rate case because those upgrades can be used for other customer service functions. PPL R.Exc. at 23-24.

FES replies and asserted that the Commission should direct the Parties to submit a proposal regarding cost recovery, including the possibility that EGSs or

customers will pay some or all of the costs. FES emphasizes that customers should have some share of program costs. FES R.Exc. at 15-16, 20-21.

DR/IGS responds and argues that the Company's proposal should have been adopted as submitted. DR/IGS argues that it is appropriate to recover unrecovered costs from customers. Similarly, capital costs should be recovered from customers. DR/IGS R.Exc. at 7.

The OCA also replies and reiterates its position that all program costs should be recovered from EGSs. The OCA disagrees with RESA and argues that out prior decisions in the *FE DSP II Order* and the *PECO DSP II Order* did not suggest that customers share in program costs. The OCA asserts that in each of those proceedings, indicated that the EGSs should be responsible for the program costs. OCA R.Exc. at 16-19.

PPLICA also replies and argues that it opposes recovery of program costs from any customers. However, in the event that the Commission directs some sharing of costs, only those customer classes eligible to participate in the programs should be subject to program costs. PPLICA R.Exc. at 2-5.

d. Disposition

Initially, we note that we have directed PPL to modify the Retail Opt-In Program from an auction model to an aggregation model. In addition, as we stated in the *FE DSP II Order* and the *PECO DSP II Order*, we do not believe that we have sufficient information to adopt PPL Electric's proposal. Like our disposition of this issue in the prior cases, we will direct the Company to meet with the EGSs and interested parties and resubmit a plan or proposal within forty-five days of the entry date of this Opinion and

Order regarding how EGSs and/or customers will pay for the Standard Offer Referral Program and the redesigned Retail Opt-In Program.

E. Additional Issues

1. RESA's Proposed 5 mils/kWh Charge Added to Default Service Rates

a. Positions of the Parties

RESA proposed that PPL impose a 5 mil/kWh charge on default service rates to be used to pay any verifiable costs related to providing default service that have not previously been unbundled, and to pay costs related to implementing and maintaining competitive market enhancements. Any balance remaining after payment of costs would be returned to distribution customers. R.D. at 155.

PPL opposed RESA's proposal. PPL argued that there were no unbundled costs to recover. In addition, the Company had proposed a cost recovery methodology for retail market enhancements which provided for recovery from EGSs. R.D. at 155.

PPLICA opposed RESA's proposal and argued that it would artificially inflate the PTC, inappropriately refund excess cost recovery to all customers and is not in accordance with the Code. PPLICA agreed with the OCA that the proposal was projected to recover \$49 million through the adder. PPLICA argued that cost figure was completely arbitrary and unrelated to any cost for implementing default service or the retail market enhancements. R.D. at 155. CAUSE and the OCA also argue that RESA's proposed adder is arbitrary and unrelated to any actual, relevant cost. The OCA argues further that the adder would artificially increase the PTC, which in turn impacts the discounts to be offered and will violate the Code's least cost over time requirement. *Id.* at 156.

b. ALJ's Recommendation

The ALJ recommended that RESA's proposal be denied.

c. Exceptions and Replies

In RESA's Exception concerning over-all cost recovery for the retail market enhancement programs, RESA again suggested that a 5mil/kWh adder approach be used. RESA Exc. at 34-35.

The OCA replied and reiterated that RESA's proposal is arbitrary, not based on cost causation principles and violates the Code. OCA R.Exc. at 19-22.

d. Disposition

We have already ruled on the issue of cost recovery, *supra*. We agree with the OCA, PPLICA and CAUSE to the extent that, based upon the record before us, RESA's proposed adder is simply arbitrary and not based on any evidence of record. We will adopt the ALJ's recommendation and deny RESA's Exception.

2. Requested Ruling Pursuant to Section 2102 of the Code, 66 Pa. C.S. § 2102

In its Petition, the Company requested that the Commission approve the SMA as an affiliated interest agreement pursuant to Section 2102 of the Code, 66 Pa. C.S. § 2102 (relating to affiliated interest contracts). According to PPL, its unregulated affiliates are permitted to participate in the default service supply auctions. If one of those affiliates is a successful bidder, PPL would enter into a SMA with that affiliate. PPL noted that similar treatment was given to the potential for SMA contracts with PPL's unregulated affiliates in PPL's first DSP proceeding.

a. ALJ's Recommendation

The ALJ recommended approval of PPL's requested approval under 66 Pa. C.S. § 2102(b), noting that the request was unopposed.

b. Disposition

We will adopt the ALJ's recommendation and grant approval of PPL's SMAs, pursuant to 66 Pa. C.S. § 2102(b), as affiliated interest agreements that are reasonable and consistent with the public interest.

3. Requested Waivers

PPL requested waivers of our regulations at 52 Pa. Code § 54.187(i), (j) and (k), relating to default service rate design and cost recovery. PPL also noted that our Policy Statement at 52 Pa. Code § 69.1805, relating to electric generation supply procurement, may also be need to be waived. PPL stated that the regulations provide that DSPs should divide customers into three groups based upon peak loads from 0-25kW, 25-500kW or above 500kW. The Policy Statement also provides for a division of customer classes based upon peak load. PPL stated further that its tariffs, with limited exception, are not based on peak demand. PPL proposes to use its current rate schedule designations as a basis for identifying customer classes in the DSP II Program. PPL asserts that is the current approach used in DSP I and it is working well.

a. ALJ' Recommendation

The ALJ recommended a grant of PPL's requested waivers. No Party opposed the request.

b. Disposition

We agree that PPL's request for waivers of our regulations at 52 Pa. Code 54.187(i), (j) and (k) as well as our Policy Statement at 52 Pa. Code § 69.1805 is reasonable. We will adopt the ALJ's recommendation and grant the requested waivers to the extent necessary for PPL Electric to move forward with its proposed plan, consistent with this Opinion and Order.

V. CONCLUSION

PPL's DSP II contains all of the elements of a default service plan required by the Code, the Commission's default service regulations (52 Pa. Code §§ 54.181 – 54.189), and the Commission's Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including procurement, implementation, and contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.

PPL's Petition for Approval of its Default Service Program and Procurement Plan is in compliance with 66 Pa. C.S. § 2807(e)(3.7) in that it includes prudent steps necessary: (1) to negotiate favorable generation supply contracts; (2) to obtain least cost generation supply contracts; and (3) because neither the Default Service Providers nor their affiliated interests have withheld from the market any generation supply in a manner that violates federal law.

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions to the Recommended Decision, consistent with this Opinion and Order; (2) adopt the Recommended Decision, as modified by this Opinion and Order; (3) approve, in part, and deny, in part, the Petition, as set forth in this Opinion and Order; (4) direct PPL to file a revised DSP, as set forth in this Opinion and Order; (5) approve, in part, and deny, in part, PPL's proposed default service procurement plan, as set forth in this Opinion and Order; (6) deny PPL's request for a provisional CWC allowance, as set forth in this Opinion and Order; (7) approve, in part, and deny, in part, PPL's proposed default service rate design, as set forth in this Opinion and Order; (8) reject PPL's as-filed TOU program as well as its proposed Summer TOU rate option, and encourage the Company to further consider RESA's proposal to implement a competitive retail bid process to meet its TOU rate requirement, as set forth in this Opinion and Order;

(9) encourage PPL to schedule a collaborative with interested stakeholders to discuss and resolve any issues regarding the development and implementation of a TOU rate option that will allow the Company to meet its TOU rate requirement; (10) direct PPL to file a new TOU rate proposal within ninety days following the conclusion of the TOU collaborative; (11) direct PPL to modify its unsecure credit thresholds and provide for three business days' time for replacement of letters of credit in its SMAs; (12) approve of PPL's selection of NERA as the independent third-party to administer the proposed procurements; (13) direct PPL to provide the agreed upon data to wholesale suppliers regarding shopping and procurements; (14) direct PPL to modify its Retail Opt-In Program as described in this Opinion and Order; (15) direct PPL to modify its Standard Offer Referral Program as described in this Opinion and Order; (16) direct PPL to revise the timing for implementation of both the Retail Opt-In Program and the Standard Offer Referral Program as described in this Opinion and Order; (17) direct PPL to meet with interested EGSs to reach appropriate terms and conditions governing PPL's relationship with EGSs participating in the Retail Opt-In Program and the Standard Offer Referral Program; (18) direct PPL to meet with interested EGSs and other interested Parties to develop a plan or proposal for cost recovery of costs incurred for implementation of the Retail Opt-In Program and the Standard Offer Referral Program; (19) grant PPL's requested waivers of regulations and a policy statement relating to default service rate design, cost recovery and electric generation supply procurement; and, (20) grant PPL's request for approval of the SMAs as affiliated interest agreements as reasonable and consistent with the public interest pursuant to the Section 2102(b) of the Code, 66 Pa. C.S. § 2102(b); **THEREFORE,**

VI. ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Exceptions filed by PPL Electric Utilities Corporation to the Recommended Decision of Administrative Law Judge Susan D. Colwell are granted in part and denied in part, consistent with this Opinion and Order.
2. That the Exceptions filed by the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Susan D. Colwell are denied, consistent with this Opinion and Order.
3. That the Exceptions filed by the Retail Energy Supply Association to the Recommended Decision of Administrative Law Judge Susan D. Colwell are granted in part and denied in part, consistent with this Opinion and Order.
4. That the Exceptions filed by FirstEnergy Solutions Corporation to the Recommended Decision of Administrative Law Judge Susan D. Colwell are granted in part and denied in part, consistent with this Opinion and Order.
5. That the Exceptions filed by Dominion Retail, Inc. and Interstate Gas Supply, Inc. to the Recommended Decision of Administrative Law Judge Susan D. Colwell are granted, consistent with this Opinion and Order.
6. That the Exceptions filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to the Recommended Decision of Administrative Law Judge Susan D. Colwell are granted in part and denied in part, consistent with this Opinion and Order.

7. That the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued on November 15, 2012, is adopted as modified by this Opinion and Order.

8. That PPL Electric Utilities Corporation's DSP II contains all of the elements of a default service plan required by the Code, the Commission's default service regulations (52 Pa. Code §§ 54.181 – 54.189), and the Commission's Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including procurement, implementation, and contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.

9. That PPL Electric Utilities Corporation's Petition for Approval of its Default Service Program and Procurement Plan is in compliance with 66 Pa. C.S. § 2807(e)(3.7) in that it includes prudent steps necessary: (1) to negotiate favorable generation supply contracts; (2) to obtain least cost generation supply contracts; and (3) because neither the Default Service Providers nor their affiliated interests have withheld from the market any generation supply in a manner that violates federal law.

10. That the Petition of PPL Electric Utilities Corporation for approval of its Default Service Program and Procurement Plan, filed on May 1, 2012, is granted, in part, and denied, in part consistent with this Opinion and Order.

11. That PPL Electric Utilities Corporation's proposed default service product mixture for its Residential customer class is hereby approved, consistent with this Opinion and Order.

12. That PPL Electric Utilities Corporation's proposed semi-annual procurement schedule for its Residential customer class is hereby approved, consistent with this Opinion and Order.

13. That PPL Electric Utilities Corporation be directed to reduce its wholesale supplier load cap to 50% for its Residential customer class, consistent with this Opinion and Order.

14. That PPL Electric Utilities Corporation's proposed product mixture and procurement schedule for its Small Commercial and Industrial customer class is hereby approved, consistent with this Opinion and Order.

15. That PPL Electric Utilities Corporation's proposal to eliminate the aggregate supplier load cap for its Small Commercial and Industrial customer class is hereby rejected, and that PPL Electric Utilities Corporation be directed to reduce its wholesale supplier load cap to 50% for its Small Commercial and Industrial customer class, consistent with this Opinion and Order.

16. That PPL Electric Utilities Corporation's proposed product mixture for its Large Commercial and Industrial Real-time Hourly Rate customer class is hereby approved, consistent with this Opinion and Order.

17. That PPL Electric Utilities Corporation's proposed procurement schedule for its Large Commercial and Industrial Real-time Hourly Rate customer class is hereby approved, consistent with this Opinion and Order.

18. That PPL Electric Utilities Corporation's proposal to maintain the solicitation load cap of 85% for its Large Commercial and Industrial Real-time Hourly Rate customer class is hereby approved, consistent with this Opinion and Order.

19. That PPL Electric Utilities Corporation's proposal to end all fixed-price load-following contracts by May 31, 2015 under its DSP II Program is hereby approved, consistent with this Opinion and Order.

20. That PPL Electric Utilities Corporation's proposal regarding the procurement of alternative energy credits in accordance with the Alternative Energy Portfolio Standards Act is hereby approved, consistent with this Opinion and Order.

21. That PPL Electric Utilities Corporation's proposal regarding the monthly transfer of alternative energy credits by wholesale suppliers is hereby approved, consistent with this Opinion and Order.

22. That PPL Electric Utilities Corporation's request for a provisional cash working capital allowance in this proceeding is hereby denied, consistent with this Opinion and Order.

23. That PPL Electric Utilities Corporation is directed to continue adjusting its default service Price to Compare on a quarterly basis, consistent with this Opinion and Order.

24. That PPL Electric Utilities Corporation's proposal to propose a mechanism for implementing real-time pricing for Small Commercial and Industrial customers with load over 100 kW in a future default service filing is hereby approved, consistent with this Opinion and Order.

25. That PPL Electric Utilities Corporation is directed to continue using its quarterly reconciliation methodology for its GSC-1 rates, consistent with this Opinion and Order.

26. That PPL Electric Utilities Corporation's proposals regarding the calculation and reconciliation of default service rates for its Large Commercial and Industrial customer class under the GSC-2 rate are hereby approved, consistent with this Opinion and Order.

27. That PPL Electric Utilities Corporation's proposals regarding the expiration of its Green Power Program are hereby approved, consistent with this Opinion and Order.

28. That PPL Electric Utilities Corporation's proposals to eliminate procurements for its Optional Monthly Pricing Service, and to eliminate this rate option for the Large Commercial and Industrial customer class, are hereby approved, consistent with this Opinion and Order.

29. That the Retail Energy Supply Association's proposal to modify the calculation date for PPL Electric Utilities Corporation's Price to Compare is hereby denied, consistent with this Opinion and Order.

30. That the Office of Small Business Advocate's proposal to require non-market-based transmission costs to be recovered by PPL Electric Utilities Corporation through a non-bypassable charge imposed on both shopping and default service customers is hereby denied, consistent with this Opinion and Order.

31. That the Office of Small Business Advocate's proposal to require wholesale suppliers to bear the responsibility for non-market-based transmission costs is hereby denied, consistent with this Opinion and Order.

32. That PPL Electric Utilities Corporation's proposed modification of its TSC allocation methodology is hereby approved, consistent with this Opinion and Order.

33. That the Office of Small Business Advocate's proposal to require PPL Electric Utilities Corporation to modify the classification criteria for its Small Commercial and Industrial customers so that these criteria are the same for both TSC purposes and generation procurement purposes is hereby denied, consistent with this Opinion and Order.

34. That PPL Electric Utilities Corporation's as-filed TOU program and alternative Summer TOU rate option are hereby rejected, and that PPL Electric Utilities Corporation is directed to give further consideration to RESA's proposal to implement a competitive retail bid process to meet its time-of-use rate requirement, consistent with this Opinion and Order.

35. That PPL Electric Utilities Corporation is strongly encouraged to schedule a collaborative with interested stakeholders within ten (10) business days of the entry date of this Opinion and Order, to be held within ninety (90) subsequent days, in order to discuss and resolve any issues regarding the development and implementation of a time-of-use rate option that will allow the Company to meet its time-of-use rate requirement, consistent with this Opinion and Order. PPL Electric Utilities Corporation is directed to subsequently file a new time-of-use rate proposal within ninety (90) days following the conclusion of the collaborative

36. That PPL Electric Utilities Corporation, in collaboration with the other Parties, is directed to report back to the Commission within forty-five (45) days of the entry date of this Opinion and Order proposing new implementation dates for the Retail Opt-In Program and the Standard Offer Referral Program. The proposed schedule

must provide for implementation of the Retail Opt-In Program no later than July 1, 2013. The proposed schedule must provide for implementation of the Standard Offer Referral Program no later than August 1, 2013. PPL Electric Utilities Corporation is further directed to advise the Commission of any modifications to the Standard Offer Referral Program required by the revised implementation date.

37. That PPL Electric Utilities Corporation, in collaboration with interested electric generation suppliers and other interested Parties, is directed to submit a revised plan or proposal within forty-five (45) days of the entry date of this Opinion and Order regarding how electric generation suppliers and/or customers will pay for the costs of the Retail Opt-In Program and Standard Offer Referral Program as modified by this Opinion and Order.

38. That PPL Electric Utilities Corporation is directed to meet with interested electric generation suppliers to develop appropriate terms and conditions which will govern the relationship between PPL Electric Utilities Corporation and electric generation suppliers that will participate in PPL Electric Utilities Corporation's Retail Opt-In Program. PPL Electric Utilities Corporation shall submit the agreed-upon terms and conditions to the Commission within forty-five (45) days of the entry date of this Opinion and Order.

39. That PPL Electric Utilities Corporation is directed to meet with interested electric generation suppliers to develop appropriate terms and conditions to govern the relationship of the parties in providing the Standard Offer Referral Program. PPL Electric Utilities Corporation shall submit the agreed-upon terms and conditions to the Commission within forty-five (45) days of the entry date of this Opinion and Order.

40. That PPL Electric Utilities Corporation's request for a waiver of our regulations at 52 Pa. Code § 54.187(i), (j) and (k), relating to default service rate design

and cost recovery, for purposes of its Default Service Plan as modified by this Opinion and Order is hereby granted.

41. That PPL Electric Utilities Corporation's request for a waiver of our Policy Statement at 52 Pa. Code § 69.1805, relating to electric generation supply procurement, for purposes of its Default Service Plan as modified by this Opinion and Order is hereby granted.

42. That licensed electric generation suppliers that elect to participate in the Retail Opt-In Program shall submit, for Commission monitoring, the terms and conditions of their eight-month Retail Opt-In Program offering. These filings shall be submitted to the Commission no later than forty-five (45) days before offers are extended to potential customers.

43. That PPL Electric Utilities Corporation's request for approval of its proposed Supply Master Agreement as an approved affiliated interest agreement pursuant to Section 2102(b) of the Code, 66 Pa. C.S. § 2102(b), is hereby granted as reasonable and consistent with the public interest.

44. That PPL Electric Utilities Corporation shall file a revised Default Service Plan, including associated tariff supplements, which reflect *all* of the revisions set forth in this Opinion and Order. This revised Default Service Plan shall be filed within sixty (60) days of the entry date of this Opinion and Order and shall be served on the active Parties to this proceeding.

45. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Rosemary Chiavetta", written over the printed name.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2013

ORDER ENTERED: January 24, 2013