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September 3, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Esq.  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025 – Docket No. P-2020-3019356

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Starion Energy PA, Inc.'s ("Starion") Main Brief in the above matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Elizabeth Barnes w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Starion Energy PA Inc.'s Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: September 3, 2020



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of a Default :  
Service Program and Procurement Plan for : Docket No. P-2020-3019356  
the Period June 1, 2021 Through May 31, :  
2025 :

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**MAIN BRIEF OF  
STARION ENERGY PA, INC.**

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The Commission must deny the proposal of PPL Electric Utilities Corporation (“PPL”) to automatically switch the standard offer program (“SOP”) customers of electric generation suppliers (“EGSs”) to default service if the SOP customer takes no action to the contrary. PPL’s proposal is unlawful, a reversal of decades of Commission precedent, and will result in the end of its SOP program.

The proposal is unlawful because it leads to an illegal regulation of EGS pricing, results in slamming, and gives an unfair and anticompetitive advantage to PPL – the historical monopoly provider and default service provider. The proposal reverses decades of Commission precedent regarding the design of the SOP programs and the Commission’s EGS contract expiration notice process. The Commission has consistently held that the EGS customer who takes no affirmative action to the contrary is deemed to accept the renewal terms of the EGS so long as those terms are presented consistent with the Commission’s regulatory requirements and the renewal contract does not have any early termination fees. The Commission has maintained this process for EGS customers referred through the SOP program and adoption of PPL’s proposal would reverse it.

Also important is that approving PPL’s proposal will result in the end of the SOP program as EGSs will likely elect not to participate. The Commission has long recognized the value of a well-designed SOP and memorialized this in its Default Service Policy Statement in 2007.<sup>1</sup> In furtherance of this goal, the Commission embarked upon a nearly three year process that lead to the SOP in place in PPL today. The Commission continues to actively monitor the

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<sup>1</sup> 52 Pa Code § 69.1815.

functioning of the SOP programs and provides monthly statistics about performance.<sup>2</sup> Given that EGS participation in SOP is voluntary, EGSs must balance a number of factors in determining whether to participate. These factors include the requirement to pay a \$28 referral fee for every customer referred, the requirement to hold the SOP contract price for 12-months without regard to market conditions and the opportunity to retain the SOP customer after the end of the SOP contract. PPL's proposal to automatically return SOP customers to default service who take no affirmative action to the contrary coupled with PPL's proposed "win-back" communications to SOP customers before the EGS sends any Commission required notice of what they will offer after SOP contract expiration significantly increases the likelihood that EGSs will not have a fair opportunity to retain their SOP customers after contract expiration. Without a fair opportunity to retain SOP customers (for whom the EGS already paid to PPL a \$28 referral fee and assumed the risk of changing market conditions to hold a discounted rate), it is highly likely EGSs will not agree to participate in the future SOP.

Thus, PPL's proposal to automatically return SOP EGS customers to default service who take no action to the contrary and after PPL has engaged in a win-back campaign before the EGSs contact their customers must be rejected because it is illegal and will result in the end of the SOP program.

## **II. PROCEDURAL HISTORY**

On March 25, 2020, PPL filed its Petition for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 Through May 31, 2025 proposing to establish the terms and conditions under which it will procure default service supplies, provide default service

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<sup>2</sup> <https://www.papowerswitch.com/about-switching-electricity/standard-offer-program/#>

to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards Act and recover all associated costs on a full and current basis for the period from June 1, 2021 through May 31, 2025. The Commission issued a Publication Notice on April 10, 2020 which established a deadline of March 8, 2020 for the filing of Petitions to Intervene. By Interim Order entered August 7, 2020, Starion’s Petition to Intervene was granted.

During the evidentiary hearing held on August 13, 2020 the following evidence was admitted into the record on behalf of Starion: (1) Starion St. No. 1 the Direct Testimony of Pete Muzsi; (2) Starion St. No. 2 the Surrebuttal Testimony of Pete Muzsi; and, (3) a Joint Stipulation between Starion and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).

### **III. LEGAL STANDARDS**

#### **A. COMPETITION ACT**

As a creation of the Legislature, the Commission has only the powers and authority granted to it by the Legislature and contained in the Public Utility Code, 66 Pa.C.S. §§ 101 et seq.<sup>3</sup> A part of the Public Utility Code, the Competition Act, addresses the requirements that PPL, as the default service provider, must meet.<sup>4</sup> The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a “prudent

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<sup>3</sup> See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Order entered May 28, 2008.

<sup>4</sup> See 66 Pa. C.S. § 2807(e).

mix”<sup>5</sup> of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>6</sup>

The “overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.”<sup>7</sup> Therefore, the Competition Act also directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis.<sup>8</sup> The purpose of this restructuring is to ensure that “all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers [“EGSs”].”<sup>9</sup>

Recognizing the then-existing monopoly market structure in place and the need to create a pathway for EGSs to be able to offer competitive generation services (which had been previously offered by the EDCs), the Competition Act sets forth specific directives regarding interactions between the EDCs and EGSs. More specifically, the Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC’s transmission and distribution system

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<sup>5</sup> 66 Pa. C.S. § 2807(e)(3.2); “In interpreting the term ‘prudent mix,’ the PUC must exercise some balance and discretion under the circumstances of the case in order for the ‘mix’ in question to be ‘prudent.’” *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013) (Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

<sup>6</sup> 66 Pa. C.S. § 2807(e)(3.1).

<sup>7</sup> *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (“CAUSE-PA CAP Shopping Order”); 66 Pa.C.S. § 2802(13).

<sup>8</sup> 66 Pa.C.S. §§ 2801-2812.

<sup>9</sup> 66 Pa.C.S. § 2806(a).

on “rates, terms of access and conditions that are comparable to the utilities own use of its system.”<sup>10</sup> The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”<sup>11</sup> Thus – as required by the Competition Act – when an EDC proposes to undertake an action that will impact ability of consumers to choose a competitive option, the Commission must consider whether the proposal is anticompetitive or discriminatory and whether or not it will have a negative impact on competition.

#### **B. BURDEN OF PROOF**

PPL has the ultimate burden of proof in this proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>12</sup> It is axiomatic 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.”<sup>13</sup> A

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<sup>10</sup> 66 Pa. C.S. § 2803 (Direct Access is defined as “The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.”)(emphasis added); 66 Pa. C.S. § 2804(6) (“A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.”) (emphasis added).

<sup>11</sup> 66 Pa. C.S. §§ 2811(a) and (b).

<sup>12</sup> 66 Pa. C.S. § 332(a).

<sup>13</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>14</sup> Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.<sup>15</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>16</sup>

#### **IV. ARGUMENT**

##### **A. BACKGROUND OF THE STANDARD OFFER PROGRAM (“SOP”)**

Since as early as 2007, the Commission has recognized the value of a customer referral standard offer program (“SOP”) to “enhance customer choice and facilitate the development of retail markets” and specifically codified its view in 52 Pa. Code §69.1815.<sup>17</sup> Following this determination, Commission staff (in collaboration with interested stakeholders) embarked upon a nearly three year process to develop an appropriate structure for SOP to be implemented in Pennsylvania.<sup>18</sup> The final result of this effort is detailed in the *RMI Intermediate Work Plan Final Order* which directed the following program structure for SOP in Pennsylvania:<sup>19</sup>

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<sup>14</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>15</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

<sup>16</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

<sup>17</sup> *Default Service and Retail Electric Markets*, Docket No. M-00072009, Final Policy Statement entered February 9, 2007 at 13. 52 Pa. Code §69.1815 states: “The public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.”

<sup>18</sup> *See Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered December 16, 2011 at 9-15 (“*RMI Intermediate Work Plan Tentative Order*”) (details the history of the development of SOP in Pennsylvania).

<sup>19</sup> *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 at 31-32 (“*RMI Intermediate Work Plan Final Order*”) (emphasis added).

- The Standard Offer Customer Referral Program should be voluntary for customers, i.e., “opt-in”, as well as for participating EGSs.
- The standard offer will target/market residential default service customers; however, residential shopping customers will not be excluded if they specifically request to participate. At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI’s Universal Service subgroup.
- The standard offer should be comprised of a 7% reduction from the EDC’s effective DS PTC. The 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.
- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC’s service territory.
- Customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer’s discretion, will be specifically detailed in each EDC’s plan proposal to ensure fairness and impartiality.
- The terms and conditions of the standard offer must be presented to customers before they decide to enter the program.
- The Standard Offer Customer Referral Program should be presented during customer contacts to the EDC call centers, other than calls for emergencies, terminations and the like. We would, however, permit that a customer be presented the standard offer during customer contacts to the EDC call center for high bill issues, only and explicitly after the customer’s concerns were satisfied.
- Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing.
- At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term.
- There will be no termination penalty or fee imposed at any time during the effective period of the standard offer.
- **All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.**
- **At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer’s enrollment with a different EGS or the customer’s return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not**

**be subject to any termination penalty or fee.<sup>20</sup> However, this should not deter an EGS from offering longer, fixed-term prices.**

Subsequently, PPL filed its default service plan for the period to be effective June 1, 2013 in which PPL sought Commission approval of its proposed SOP design.<sup>21</sup> PPL's proposal was generally consistent with the design elements set forth in the *RMI Intermediate Work Plan Final Order* and the Commission also specifically stated that it agreed:

. . . 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.<sup>22</sup>

All of the major EDCs offer SOP programs consistent with the current structure of PPL's program. The Commission has dedicated a specific page on its [PaPowerSwitch](#) website to provide information to Pennsylvania consumers about the SOP and also maintains an up-to-date chart of statistics for the various EDC SOP programs that provides the following information: (1) the number of referrals; (2) the number of enrollments; (3) the number of participating EGSs; and, (4) the SOP rates offered.<sup>23</sup> Over the years, if one of the EDC's SOP programs does not appear to be functioning well, the Commission has taken the initiative to further study the specific EDC's SOP and direct the changes necessary to improve the SOP being offered.<sup>24</sup>

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<sup>20</sup> The decision of the Commission to permit the customer who does not take action to the contrary to remain with the EGS was in direct response to the position of the OCA that "affirmative consent should be required both to enroll in the program and to continue beyond the initial introductory period." See *RMI Intermediate Work Plan Tentative Order* at 12.

<sup>21</sup> *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2013-2302074, Opinion and Order entered January 24, 2013 at 164-171 ("PPL DSP II Final Order").

<sup>22</sup> *PPL DSP II Final Order* at 170-171.

<sup>23</sup> <https://www.papowerswitch.com/about-switching-electricity/standard-offer-program/#>

<sup>24</sup> For example, the Commission most recently referred the SOP of FirstEnergy to a collaborative process lead by the Office of Consumer Market Oversight ("OCMO") for the purpose of addressing "the scripting and training materials" of FirstEnergy's SOP to: "(a) ensure that such scripting and training materials will



The Commission’s long-standing support of the SOP programs, its years-long process to develop the program terms that are in place today and its pro-active action to deal with concerns that lead to a less than functioning program are undeniable. As such, proposals that will have a detrimental impact on the functioning of PPL’s current SOP deserve thorough scrutiny and must not be adopted if they will effectively lead to the demise of the SOP. As discussed in the next section, the record here shows that PPL’s proposal will have that result and, therefore, it must be rejected.

**B. PPL’S PROPOSED REVISIONS REGARDING THE END OF THE SOP CONTRACT WILL FUNDAMENTALLY ALTER THE EXISTING PROGRAM TO ITS LIKELY DEMISE**

Pursuant to PPL’s current SOP (just like the SOPs of all the other major EDCs), SOP customers are informed of their options prior to the expiration of the SOP contract consistent with the Commission’s regulations.<sup>25</sup> Through those notices the EGS informs the SOP customer about the options available to the EGS customer following expiration of the SOP contract. The SOP customer is also informed, consistent with the Commission’s regulations, about the terms of the renewal EGS contract that will be effective if the SOP customer does not take any further action and EGSs provide the customer a new disclosure statement setting forth the renewal terms.<sup>26</sup> The Commission has maintained throughout many proceedings that:

“Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate

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provide sufficient consumer education/protections and disclaimers to customers that are not misleading, and (b) to determine the impacts that such scripting and training materials may have on customer enrollment in the program as well as any other competitive concerns.” *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket No. P-2017-2637855, Final Order entered February 28, 2019 at 7.

<sup>25</sup> 52 Pa. Code § 54.10.

<sup>26</sup> 52 Pa. Code § 54.10(2)(ii) and 52 Pa. Code § 54.5(b)(2).

for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.”<sup>27</sup>

Over the years of development of the SOP and continuing review of the SOP programs, the Commission has consistently maintained that the SOP contract renewal process is to follow this same process as set forth in the Commission’s regulations.<sup>28</sup>

Notwithstanding this long history and clear direction from the Commission, PPL now proposes to completely upend this process. More specifically, PPL proposes to automatically transfer SOP customers to default service upon the expiration of their SOP contract.<sup>29</sup> In furtherance of this proposal, PPL proposes to implement a two-step SOP customer notification process involving: (1) a PPL outreach campaign three months prior to the end of the SOP contract including calls, letters, emails and/or text messages “to discuss the options available to the customer;” and, (2) a PPL notification thirty days prior to the expiration of the SOP contract informing SOP customer that he or she will be transferred to default service upon contract expiration.<sup>30</sup> The unlawfulness of PPL’s proposal will be discussed in the next section; however, as a threshold matter it is important to emphasize that the record has clearly demonstrated how approval of PPL’s proposal could very well lead to the end of SOP for consumers in PPL’s service territory.

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<sup>27</sup> See, e.g., *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered April 3, 2014 at 38.

<sup>28</sup> See, e.g., *PPL DSP II Final Order* at 164-171.

<sup>29</sup> PPL St. No. 4 at 13.

<sup>30</sup> PPL St. No. 4 at 14.

EGS participation in the SOP is voluntary. The fact that “there has never been a period without a participating [EGS] in the SOP in the six-year history of the program”<sup>31</sup> proves the validity of PPL’s current SOP design. If, however, the program is redesigned in an unfavorable way, there is significant risk that EGSs will elect not to participate in the future. EGSs must balance several factors in determining whether or not to participate as an EGS in the SOP program including: (1) the referral fee; (2) the requirement to hold the price below the PTC for 12-months regardless of changing market conditions; and, (3) the opportunity to retain the SOP customer with the EGS at the end of the SOP contract term.<sup>32</sup>

PPL’s proposal reduces the likelihood of SOP customers remaining with the EGS. This is because no affirmative action from the SOP customer will result in a return to default service and PPL proposes to contact the customers to engage in what is essentially a “win-back” campaign before the EGS has any chance to present its renewal terms to its SOP customer.<sup>33</sup> Decreasing the likelihood of an SOP customer remaining with the EGS following the end of the SOP contract is a critical design element of the SOP program – particularly given the costs involved regarding the requirement to pay a \$28 referral fee to PPL and the requirement to hold the SOP contract price for 12-months regardless of market conditions.<sup>34</sup> If PPL’s proposal were to be adopted, Starion would have no choice but to question future participation in PPL’s SOP.<sup>35</sup> EGSs declining to participate in the SOP would lead to its end. Setting aside the unlawfulness of PPL’s proposal (as addressed in the next sections), such result would undercut all the work done

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<sup>31</sup> PPL St. No. 3-R at 13.

<sup>32</sup> Starion St. No. 1-SR at 2; EGS Parties St. No. 1 at 17-18.

<sup>33</sup> Starion St. No. 1 at 12-13; Starion St. No. 1-SR at 2.

<sup>34</sup> Starion St. No. 1 at 4-5.

<sup>35</sup> Starion St. No. 1 at 2.

by the Commission and stakeholders to create a successful SOP for no good purpose but to increase PPL’s default service market share – a result that is antithetical to fostering the development of a competitive market and one that cannot be permitted.

**C. PPL’S PROPOSALS REGARDING SOP RENEWAL CONTRACTS ARE UNLAWFUL AND CANNOT BE APPROVED**

**1. PPL’s Proposed Price Protection Process Is An Illegal Regulation of Generation Prices and Unnecessary Due To Existing Commission Requirements**

Nothing in the Competition Act confers jurisdiction, either explicitly or implicitly, to the Commission to regulate EGS prices or to dictate the prices that are charged. To the contrary, the Legislature made clear that the price of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”<sup>36</sup> Further, as stated in Section 2806(a), “[t]he generation of electricity shall no longer be regulated as a public utility service.”<sup>37</sup> The Commission’s statutory authority for determining whether rates are “just and reasonable” is limited to public utilities, which does not include EGSs.<sup>38</sup>

The Commission has long recognized its lack of jurisdiction to regulate prices charged by EGSs. For instance, the Commission’s regulations require bills for customers who have chosen electric generation services from an EGS to include a statement noting that “[g]eneration prices

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<sup>36</sup> 66 Pa.C.S. §2802(5).

<sup>37</sup> 66 Pa.C.S. § 2806(a).

<sup>38</sup> 66 Pa.C.S. §1301. *See Delmarva Power & Light Co. v. PUC*, 870 A.2d 901 (Pa. 2005) (EGSs are not public utilities except for very limited and inapplicable purposes). The Commonwealth Court has repeatedly confirmed the Commission’s lack of statutory authority to regulate EGS prices and concluded that the Commission does not have jurisdiction to determine whether such prices are just and reasonable. *CAUSE-PA CAP Shopping Order* at 1101; *See also HIKO Energy, LLC v. Pennsylvania Pub. Util. Comm’n*, 163 A.3d 1079, 1082, n. 1 (Pa. Commw. Ct. 2017).

and charges are set by the electric generation supplier you have chosen.”<sup>39</sup> The Commission’s regulations also require EGS disclosure statements to contain this language.<sup>40</sup> The Commission has also declared that “[t]he rates consumers pay in the retail electric market are governed by the terms of their contract with their supplier.”<sup>41</sup> Similarly, the Commission has confirmed its lack of statutory authority to regulate the prices charged by EGSs in the context of litigated proceedings noting that it is “well-settled that the Commission does not have traditional ratemaking authority over competitive suppliers and cannot regulate competitive supply rates.”<sup>42</sup>

Notwithstanding this clear precedent, PPL’s proposed changes to the SOP are intended to “protect” SOP customers from paying an EGS rate that is higher than PPL’s PTC.<sup>43</sup> In support of its proposal, PPL analyzed the EGS prices of SOP customers after expiration of their SOP contracts and claims that SOP customers would not choose to stay with their SOP EGS if doing so “results in a substantial increase in rates.”<sup>44</sup> Thus, the only way to adopt PPL’s proposal is to accept the premise that the Commission can regulate EGS pricing to conclude that prices above PPL’s PTC are too high and, therefore, the EGS’s SOP customers who do not take an affirmative action must automatically be returned to PPL’s default service as some sort of “price protection mechanism.” However, the Commission lacks authority to regulate generation pricing and, therefore, does not have the requisite legal authority to approve PPL’s proposal.

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<sup>39</sup> 52 Pa. Code §54.4(b)(10)(i).

<sup>40</sup> 52 Pa. Code §54.5(f)(1).

<sup>41</sup> *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134, Order entered March 4, 2014, at 3

<sup>42</sup> *CRH Catering Company, Inc. v. Blue Pilot Energy, LLC*, Docket No. P-2014-2451865, Order entered February 24, 2015 at 15-16.

<sup>43</sup> PPL St. No. 4 at 10, 12.

<sup>44</sup> PPL St. No. 4-R at 5.

Arguments that adopting PPL’s proposal do not result in regulating EGS pricing because the SOP is a Commission-approved program are without merit. As a retail market enhancement, the entire purpose of the SOP is to facilitate customer participation in the competitive market by offering the price stability of the 12-month SOP to incentivize consumers to receive supply from an EGS following the end of the SOP contract.<sup>45</sup> However, the 12-month SOP price is only intended to “introduce” customers to the competitive market. Because EGSs may offer other products and services to customers outside of the SOP and may voluntarily choose to participate in the SOP, the 12-month price requirement is not a regulation of EGS pricing. This is remarkably different from PPL’s Customer Assistance Standard Offer Program (“CAP-SOP”) which is a low-income program that is intended to control the costs of electricity for participants in PPL’s customer assistance program.<sup>46</sup> PPL’s customer assistance program participants cannot participate in SOP; therefore, there is no justification for PPL’s proposal to interfere with the EGS prices offered to SOP customers at the end of the SOP contract term. In other words, the SOP is a Commission approved program that is voluntary for EGSs and created with the express purpose of incentivizing shopping (and not providing customers lower priced generation service). This is in stark contrast to an unlawful Commission decision that post SOP contract EGS pricing above PPL’s PTC are deemed to be “too high” and, therefore, the Commission must put a process in place to “protect” those customers from the high pricing. Such result is a regulation of EGS pricing that is not legally permitted and, therefore, PPL’s proposal must be rejected.

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<sup>45</sup> *RMI Intermediate Work Plan Tentative Order* at 9; *Starion St. No. 1* at 4-5.

<sup>46</sup> *Starion St. No. 1-SR* at 8-9.

Finally, even if it were legally permissible (which it is not), the Commission’s regulations already include numerous requirements for the SOP customer to be informed about the pricing post SOP contract term. Pursuant to the Commission’s regulations, EGSs must provide customers an Initial Notice 45-60 days prior to the expiration of the SOP contract<sup>47</sup> and an Options Notice 30 days prior to SOP contract expiration.<sup>48</sup> The Options Notice is required to include the “the specific charges being proposed by the EGS” including “the price to be charged, per kilowatt-hour, for the first billing cycle of generation service.”<sup>49</sup> EGSs are required to provide the renewal contract to the customer which is also required to include specific pricing information.<sup>50</sup> If the SOP EGS customer is converted to a month-to-month contract, then the EGS is required to provide notice of a subsequent change in pricing at least 30 days prior to the new price being charged.<sup>51</sup> EGSs also have the option to offer a renewal price that is fixed for a longer period of time and, if they do so, are not permitted to change the pricing of the fixed-price contract without first notifying the customer and receiving affirmative consent to change the price pursuant to the Commission’s *Fixed Price Label Order*.<sup>52</sup> Thus, through the Commission’s current regulations and structure of the SOP program, SOP customers are well informed about their future EGS pricing and have options to cancel the renewal EGS contract if they are

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<sup>47</sup> 52 Pa. Code § 54.10(1).

<sup>48</sup> 52 Pa. Code § 54.10(2).

<sup>49</sup> 52 Pa. Code § 54.10(2)(i) and (ii).

<sup>50</sup> 52 Pa. Code § 54.10(2)(ii)(A) and 54.5(b)(2).

<sup>51</sup> 52 Pa. Code § 54.10(2)(ii)(A)(I)

<sup>52</sup> *RMI Intermediate Work Plan Final Order* at 32 (“At conclusion, absent affirmative customer action to enter into a new contract...customer will remain w/ the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.”)(emphasis added). *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 at 26 (“*Fixed Price Label Order*”). Starion’s SOP customers who do not select another option are renewed to another fixed, term contract for 12 months. Starion St. No. 1-SR at 4 n. 2.

unsatisfied. As such there is no need for PPL to step in with its proposed price protection mechanism. Thus, PPL's proposed price protection process is an unnecessary, illegal regulation of generation pricing that must be rejected.

**2. PPL's Proposal Ignores Well-Establish Commission Precedent Regarding The Lack Of Affirmative Action By An EGS Customer And Would Result In Slamming**

According to PPL, its proposal to automatically return customers to default service who do not take "affirmative action" to the contrary is necessary because EGS contract renewal notices are "being missed or ignored by many customers" as evidenced by the data PPL produced purporting to show that the EGS rate post-SOP tends to be higher than the SOP rate.<sup>53</sup> However, to accept PPL's proposal, the Commission has to agree that a lack of action on the part of the SOP customer is not an affirmative choice to accept the renewal terms offered by the EGS. Accepting this premise would be contrary to the Commission's well-established precedent and is not supported by the facts in this record.

SOP customers who choose to stay with their supplier make an affirmative choice when they enrolled in the SOP, were informed about the program details of the SOP, and understood the process for renewal that would occur consistent with the Commission's regulations.<sup>54</sup> In the competitive market, there are endless reasons why a consumer may elect to remain with the SOP EGS – even at a rate higher than previously charged.<sup>55</sup> Moreover, the Commission has steadfastly maintained that: (1) providing proper notice to their customers prior to the end of the

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<sup>53</sup> PPL St. No. 4-R at 5-6.

<sup>54</sup> Starion St. No. 1-SR at 4.

<sup>55</sup> Starion St. No. 1 at 10. This truism is easily seen in other markets. For example, a consumer may choose to pay a premium for a dozen of eggs because they are pasture-raised. Another consumer may elect to purchase a product on-line even though the product would cost less in a retail store due to the convenience of having it delivered.



contract; and, (2) not imposing any cancellation fees for a contract that automatically renews are the ways to ensure that a lack of action evidences an EGS customer's affirmative intention to remain with the EGS.<sup>56</sup> Given that the goal of the SOP is to introduce consumers to the competitive market, requirements making it more difficult for consumers to remain in the competitive market upon SOP contract expiration undercut the very purpose for which the SOP was created.

Since the Commission has well-established that EGSs are legally permitted to convert an existing SOP contract consistent with the terms of its contract renewal notices and without the customer taking affirmative action to the contrary,<sup>57</sup> any proposal to ignore this and switch the SOP customer to default service would constitute illegal "slamming." Slamming occurs when a customer's EGS is switched without authorization.<sup>58</sup> In May 1998, the Commission adopted a final rulemaking to establish anti-slamming regulations designed to ensure customer consent to a change of EGS.<sup>59</sup> In adopting the anti-slamming regulations in 1998, the Commission announced a "zero-tolerance" policy on slamming, stating as follows:

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<sup>56</sup> See, e.g., *Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, Docket No. L-00970126, Final Order entered April 30, 1998 ("our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended."); *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered September 23, 2010 at 24 ("customers who fail to respond to a renewal notice from their current supplier [will be provided] the opportunity to cancel, without penalty, any resulting agreement with that supplier.").

<sup>57</sup> The Commission has specifically stated that this process of relying on a customer's inaction as affirmative consent to continue with the EGS is not slamming. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered September 23, 2010 at 23.

<sup>58</sup> 66 Pa. C.S. § 2807(d) requires the Commission to establish regulations to ensure that an EDC does not change a customer's electricity supplier without consent.

<sup>59</sup> 28 Pa.B. 5770; 52 Pa.Code §§57.171-180.

Today, we set in place the “rules of the road” by which customers’ requests to switch electric generation supplier will be processed. We have observed other industries in which unauthorized customer switching, known as “slamming,” has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.<sup>60</sup>

For the past two decades, the Commission has been steadfast in its resolve to prohibit and prevent slamming in any means and any form. It has repeatedly reiterated its long-standing “zero-tolerance” policy on slamming.<sup>61</sup> As promised in 1998, the Commission has levied maximum civil penalties on EGSs who have slammed customers.<sup>62</sup>

To adopt PPL’s proposal here would be to permit slamming because the customer who has affirmatively selected SOP and chosen not to take any action during the renewal period to select a different product will be automatically returned to default service. This would occur notwithstanding the Commission’s clear historical decisions that inaction during the renewal period constitutes customer consent to remain with the EGS. Thus, PPL’s proposal would be changing the SOP customer’s electricity supplier without consent and in violation of Section 2807(d) of the Competition Act and must be rejected.

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<sup>60</sup> Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998) (emphasis added), quoted in *Standards for Changing a Customer’s Electricity Generation Supplier*, 44 Pa.B. 3539 (June 14, 2014).

<sup>61</sup> *See, e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered April 3, 2014.

<sup>62</sup> *See PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, Order entered December 5, 2013 at 9, quoting *PUC v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order entered September 26, 2001 at 5 (the Commission stressed that it does not trivialize slamming allegations and seeks to deter such conduct by instituting firm retaliatory measures).

### 3. PPL's Proposal Is Anti-Competitive and Discriminatory In Contravention of the Competition Act

The need to carefully address the historical monopoly position of the EDCs in a competitive marketplace was well understood at the time the Competition Act was adopted.<sup>63</sup> Specifically, the General Assembly “found and declared” that “the Commonwealth must begin the transition from regulation to greater competition in the electricity generation market” and “competitive market forces are more effective than economic regulation in controlling the costs of energy.”<sup>64</sup> As part of the transition to competition, the Competition Act defines “direct access,” in part, as the right of EGSs to have nondiscriminatory access comparable to the EDC’s own use of its system.<sup>65</sup> The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”<sup>66</sup>

In furtherance of these statutory provisions, the Commission has a long history of approving and implementing policies designed to create a fair and level playing field in Pennsylvania’s retail electricity market. Below are some examples:

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<sup>63</sup> *CAUSE-PA CAP Shopping Order*, 1103-1104, 1106 (Pa. Commw. Ct. 2015), appeals denied, 136 A.3d 982 and 136 A.3d 983 (Pa. 2016).

<sup>64</sup> 66 Pa. C.S. § 2802(5) and (7).

<sup>65</sup> 66 Pa. C.S. § 2803(Direct Access is defined as “The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.”)(emphasis added); 66 Pa. C.S. § 2804(6) (“A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.”) (emphasis added).

<sup>66</sup> 66 Pa. C.S. §§ 2811(a) and (b).

- The decision to allow for utility consolidated billing and purchase of receivables is a market design feature to correct for the advantages that the EDC has in billing, collection and customer care costs by having legacy systems that were fully paid for through regulated rates.
- Policies requiring the EDCs to make customer data available via EDI, EGS web portals and other EDC to EGS operational interfaces are a recognition that the EDC is the “gatekeeper” for customer usage and meter data.
- The Commission’s code of conduct standards preventing the EDC from leveraging its position to disadvantage new market entrants is a market oversight rule intended to create a level playing field.
- Rate design and cost recovery policies<sup>67</sup> that require the EDCs to reflect wholesale generation supply costs in default service rates instead of through distribution rates or non-bypassable charges, is another market design policy to create a level playing field.

Adopting PPL’s proposal would be in direct contravention with statutory requirements and the Commission’s subsequent precedent. As the EDC, PPL has significant advantages over all the EGSs in the marketplace. PPL directly contacts each customer every month by issuing a consolidated bill which contains the EGS charges, PPL has access to important customer data, and PPL – as the default service provider and the EDC – has the ability to recover the full costs of default service from all of its ratepayers.<sup>68</sup> Ironically, the SOP is a way to address some of these advantages by permitting EGSs to voluntarily pay PPL a referral fee to refer customers to their competitive service. Given its role as the distribution provider, PPL’s involvement in managing the SOP is important; however, the purpose of the referral is to encourage customers to “try” the competitive market so that they will continue to participate in the competitive market after expiration of the SOP contract.<sup>69</sup> Rather than encouraging customers to continue their

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<sup>67</sup> 52 Pa. Code § 69.1808 of the Commission’s Policy Statements addresses the costs of default service that should be recovered in the price to compare.

<sup>68</sup> Starion St. No. 1 at 13.

<sup>69</sup> Starion St. No. 1 at 3.

shopping experience at the end of the SOP contract, PPL’s outreach would likely have the opposite effect.

Importantly, PPL proposes to contact the EGS SOP customers (using information that only PPL has in its possession in its role as the EDC) well before the EGSs are required to contact their customer about their renewal options.<sup>70</sup> What this means is that PPL cannot seriously “educate” the EGS customer about EGS options post SOP contract because PPL would not know the offers the EGS will be presenting to the SOP customers. Rather, the only options PPL can be presenting to customers is to be wary of staying with the EGS or come back to PPL and receive the PTC (or do nothing and you will be returned to PPL.) Clearly, PPL is exactly the wrong entity to be “educating” SOP customers about their options and permitting PPL to do this is overtly anticompetitive and discriminatory.

Moreover, by contacting the SOP customers, PPL is proposing to leverage another significant advantage due solely to its role as the EDC and that is access to customer information. PPL proposes to reach out to SOP customers via “calls, letters, emails and/or text messages.”<sup>71</sup> However, PPL only has this information in its role as the EDC and this is not something that EGSs likely have for the SOP customer even though, ironically, one of PPL’s arguments is that it needs to reach out because EGSs do not seem to be reaching their SOP customers through the Commission required contract renewal processes.<sup>72</sup> Because these customers come to EGSs via the SOP program (rather than as a result of the EGS directly contacting the consumer), the only piece of information that EGSs receive from PPL about the

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<sup>70</sup> Starion St. No. 1 at 12.

<sup>71</sup> PPL St. No. 4 at 6, 14.

<sup>72</sup> PPL St. No. 4-R at 7, 10.

SOP customer is the billing address.<sup>73</sup> The only realistic opportunity for EGSs, like Starion, to gather more real-time, current contact information for the SOP referred customer is to send them a request via the mail and ask them to provide their phone number or email address. In addition to requiring extra time and effort, it is likely that the customer will confuse such outreach as unwanted marketing.<sup>74</sup> Thus, adopting PPL's proposed outreach campaign enables PPL to leverage another significant advantage it has over the EGSs to contact the EGS customers. Such outcome is anticompetitive and discriminatory – particularly when there are far less objectionable ways to deal with a lack of information like directing PPL to ask customers during the SOP enrollment process if they would like PPL to share their contact information with the SOP EGS.<sup>75</sup>

Adopting PPL's proposal also has the effect of elevating default service over competitive service. PPL states that a further purpose of its SOP proposed revisions regarding the end of the SOP contract term is to protect PPL from reputational harm whereby PPL is "blamed by customers for the increase in contract price after the SOP contract has expired."<sup>76</sup> As PPL is not proposing to promote the EGS's post SOP contract offers (and could not because of a lack of information), there is no conclusion that can be drawn but that PPL's proposal is intended to elevate default service over competitive options.

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<sup>73</sup> EGSs are not involved in the enrollment of customers into SOP. Rather, they receive an electronic file from PPL. Starion St. No. 1-SR at 5-6.

<sup>74</sup> PPL St. No. 1-SR at 5-6.

<sup>75</sup> As the information belongs to the customer (and not PPL), the customer should have the power to decide whether or not to share it with its future new EGS. Providing EGSs more useful contact information would obviate any need for PPL to reach out directly to these customers to ensure that they are aware of the upcoming expiration of the SOP contract. Starion St. No. 1-SR at 5.

<sup>76</sup> PPL St. No. 4 at 13-14.

Giving default service a competitive advantage by permitting PPL to engage in a winback campaign for default service contravenes long-standing precedent. More specifically, in *MAPSA*, the Commonwealth Court upheld the Commission's action directing PECO to "refrain from . . . marketing practices which promote, solicit and advertise [default service] over competitive alternatives."<sup>77</sup> According to the Commonwealth Court, PECO's marketing activities were "not adequate to enable its customers to make an informed choice about the purchase of services."<sup>78</sup> In sum, the Commonwealth Court in *MAPSA* sought to guard against the anti-competitive effect of permitting PECO, the historical monopoly provider with well-established brand recognition, from: (1) creating a misimpression that default service was superior to the generation service provided by EGSs; and, (2) not presenting adequate information to enable consumers to make an informed choice about the purchase of services.

Adopting PPL's proposal here would implicate the very same issues as the *MAPSA* case. As explained above, PPL's role as the historical monopoly provider, its continuing role as the EDC and default service provider, its access to important customer information and its monthly contact with all customers through the bill mean that when PPL reaches out to customers about the SOP contract expiration, such outreach – by its very nature – creates the misimpression that PPL's default service is superior.

While PPL attempts to save its proposal by claiming that it simply wants to "maximize the customers understanding of the process" as PPL receives "no profit from default service," neither of these claims cure the inherent unlawfulness of what PPL is asking the Commission to

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<sup>77</sup> *The Mid-Atlantic Power Supply Ass'n v. PaPUC*, 755 A.2s 723-24 (Pa. Commw. Ct. 2000) ("*MAPSA*").

<sup>78</sup> *MAPSA* at 726 (emphasis original).

approve.<sup>79</sup> First, as already explained, PPL is not “educating” customers about the SOP process because PPL has no idea about what EGS offers will be available to the consumer after the expiration of the SOP contract term. Rather, the receipt of multiple notifications from two different entities would only serve to create confusion for customers.<sup>80</sup> There are any number of ways better education can be achieved that would not undermine the functioning of the SOP in contravention of the Commission’s policy while tilting the odds of SOP customers returning to SOP.<sup>81</sup> One such example would be to provide EGSs more useful contact information for the SOP customers referred by PPL to the EGS and this could be accomplished by simply asking the consumer for permission to share his or her information with the SOP EGS.<sup>82</sup> If the EGS has a more direct and accurate line of communication with the customer referred through the SOP, then there would be no need for PPL to insert itself into the relationship under the guise of better educating SOP consumers about what will occur upon SOP contract expiration.

Second, PPL’s claim that a lack of profit from default service somehow makes PPL’s proposal less illegal and less objectionable lacks merit. The pricing of default service is not similar to EGS pricing and; therefore, there may be reasons beyond profit for PPL to maximize the number of customers taking default service.<sup>83</sup> Moreover, PPL has clearly stated that a purpose of the proposal is to address a perceived reputational harm confirming that PPL does in fact have a self-interest in returning customers to default service and to do so by creating the

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<sup>79</sup> PPL St. No. 4-R at 10.

<sup>80</sup> Starion St. No. 1 at 13.

<sup>81</sup> Starion St. No. 1-SR at 7.

<sup>82</sup> Starion St. No. 1-SR at 5.

<sup>83</sup> Starion St. No. 1-SR at 6.



misimpression that default service is superior to EGS competitive service. As such, PPL's anticompetitive and illegal proposal must be rejected.

V. **CONCLUSION**

PPL's proposal to automatically transfer SOP customers to default service upon the expiration of their SOP contract is unlawful, a reversal of decades of Commission precedent, and will result in the end of its SOP program. Therefore, Starion respectfully requests that the ALJ issue a Recommended Decision rejecting PPL's proposal to automatically transfer SOP customers to default service upon the expiration of their SOP contract and to implement a two-step SOP customer notification process involving: (1) a PPL outreach campaign three months prior to the end of the SOP contract including calls, letters, emails and/or text messages "to discuss the options available to the customer;" and, (2) a PPL notification thirty days prior to the expiration of the SOP contract informing SOP customer that he or she will be transferred to default service upon contract expiration.

Respectfully submitted,



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Date: September 3, 2020

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# Appendix A

## Proposed Findings of Fact

## APPENDIX A – PROPOSED FINDINGS OF FACT

1. PPL Electric Utilities Corporation (“PPL”) currently offers a standard offer customer referral program (“SOP”). PPL St. No. 4 at 2-3.
2. Starion Energy PA, Inc. (“Starion”) is a retail provider of electricity supply and natural gas service and offers service to residential and commercial customers in many states. Starion received its Pennsylvania electric generation supplier (“EGS”) license in February 2011 and participates in PPL’s SOP. Starion St. No. 1 at 1.
3. For customers electing to participate in the SOP, they receive (from a participating EGS) a standard 7% discount off the then-current Price to Compare (“PTC”) for twelve months. The SOP customer may exit the SOP contract at any time and without penalty. PPL St. No. 4 at 2-3.
4. Participation in the SOP by EGSs is voluntary. EGSs must agree to pay a \$28 referral fee for each SOP customer sent to them by PPL, to comply with specific operational requirement, and to hold the initial SOP contract rate for a period of 12-months notwithstanding market conditions. EGSs must balance these requirements with the opportunity to retain the SOP customer at the end of the SOP term. Starion St. No. 1 at 2-3; Starion St. No. 1-SR at 2.
5. EGSs are not involved in the enrollment of customers into SOP. Rather, they receive an electronic file from PPL. Starion St. No. 1-SR at 5-6.
6. PPL’s existing SOP program design was approved by the Commission as part of its PPL DSP II proceeding in 2013 and is consistent with the SOP design directives set forth in the Commission’s *RMI Intermediate Work Plan Final Order* from 2012. Starion St. No.

1 at 2. See also *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 (“*RMI Intermediate Work Plan Final Order*”) and *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2013-2302074, Opinion and Order entered January 24, 2013 at 164-171.

7. As a retail market enhancement, the entire purpose of the SOP is to facilitate customer participation in the competitive market by offering the price stability of the 12-month SOP to incentivize consumers to receive supply from an EGS following the end of the SOP contract. Starion St. No. 1 at 4-5.
8. PPL’s pre-existing SOP is an excellent customer program designed within the required rules and “there has never been a period without a participating [EGS] in the SOP in the six-year history of the program.” PPL St. No. 3-R at 13; Starion St. No. 1 at 3.
9. PPL is proposing that at the expiration of the SOP contract, the SOP customer will be returned to PPL’s default service unless the SOP customer has affirmatively elected to stay with the SOP EGS or chosen another EGS. To implement this, PPL proposes to: (1) undertake an outreach campaign (calls, letters, emails and/or text messages) three month prior to the expiration of the SOP contract to discuss available options with the SOP customer; and, (2) send SOP customers a notice that they will be transferred to PPL’s default service option upon expiration of the SOP contract thirty days prior to expiration. PPL. St. No. 4 at 6, 14.
10. PPL’s proposed changes to the SOP are intended to “protect” SOP customers from paying an EGS rate that is higher than PPL’s PTC. PPL St. No. 4 at 10, 12.

11. PPL’s proposal reduces the likelihood of SOP customers remaining with the EGS. This is because no affirmative action from the SOP customer will result in a return to default service and PPL proposes to contact the customers to engage in what is essentially a “win-back” campaign before the EGS has any chance to present its renewal terms to its SOP customer. Starion St. No. 1 at 12-13; Starion St. No. 1-SR at 2.
12. Decreasing the likelihood of an SOP customer remaining with the EGS following the end of the SOP contract is a critical design element of the SOP program – particularly given the costs involved regarding the requirement to pay a \$28 referral fee to PPL and the requirement to hold the SOP contract price for 12-months regardless of market conditions. Starion St. No. 1 at 4-5.
13. If PPL’s proposal were to be adopted, Starion would have no choice but to question future participation in PPL’s SOP. Starion St. No. 1 at 2.
14. PPL claims its proposal to automatically return customers to default service who do not take “affirmative action” to the contrary is necessary because EGS contract renewal notices are “being missed or ignored by many customers” as evidenced by the data PPL produced purporting to show that the EGS rate post-SOP tends to be higher than the SOP rate. PPL St. No. 4-R at 5-6.
15. Commission regulations require EGSs to provide customers an Initial Notice 45-60 days prior to the expiration of the SOP contract and an Options Notice 30 days prior to SOP contract expiration. The Options Notice is required to include the “the specific charges being proposed by the EGS” including “the price to be charged, per kilowatt-hour, for the first billing cycle of generation service.” EGSs are required to provide the renewal

contract to the customer which is also required to include specific pricing information.  
52 Pa. Code § 54.10 (1), (2), (2)(i), (2)(ii), 2(ii)(A), 2(ii)(A)(I) and 54.5 (b)(2).

16. If the SOP EGS customer is converted to a month-to-month contract, then the EGS is required to provide notice of a subsequent change in pricing at least 30 days prior to the new price being charged. 52 Pa. Code § 54.10 (2)(ii)(A)(I). EGSs also have the option to offer a renewal price that is fixed for a longer period of time and, if they do so, are not permitted to change the pricing of the fixed-price contract without first notifying the customer and receiving affirmative consent to change the price. *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 at 26 (“*Fixed Price Label Order*”).
17. Starion’s SOP customers who do not select another option are renewed to another fixed, term contract for 12 months. Starion St. No. 1-SR at 4 n. 2.
18. SOP customers who choose to stay with their supplier make an affirmative choice when they enrolled in the SOP, were informed about the program details of the SOP, and understood the process for renewal that would occur consistent with the Commission’s regulations. Starion St. No. 1-SR at 4.
19. In the competitive market, there are endless reasons why a consumer may elect to remain with the SOP EGS – even at a rate higher than previously charged. Starion St. No. 1 at 10.
20. The receipt of multiple notifications from two different entities would only serve to create confusion for customers. Starion St. No. 1 at 13.

21. As the EDC, PPL has significant advantages over all the EGSs in the marketplace. PPL directly contacts each customer every month by issuing a consolidated bill which contains the EGS charges, PPL has access to important customer data, and PPL – as the default service provider and the EDC – has the ability to recover the full costs of default service from all of its ratepayers. Starion St. No. 1 at 13.
22. PPL proposes to contact the EGS SOP customers (using information that only PPL has in its possession in its role as the EDC) well before the EGSs are required to contact their customer about their renewal options. Starion St. No. 1 at 12.
23. PPL is not “educating” customers about the SOP process because PPL has no idea about what EGS offers will be available to the consumer after the expiration of the SOP contract term. Rather, the receipt of multiple notifications from two different entities would only serve to create confusion for customers. Starion St. No. 1 at 13.
24. Because these customers come to EGSs via the SOP program (rather than as a result of the EGS directly contacting the consumer), the only piece of information that EGSs receive from PPL about the SOP customer is the billing address. Starion St. No. 1-SR at 5-6.
25. The only realistic opportunity for EGSs, like Starion, to gather more real-time, current contact information for the SOP referred customer is to send them a request via the mail and ask them to provide their phone number or email address. In addition to requiring extra time and effort, it is likely that the customer will confuse such outreach as unwanted marketing. PPL St. No. 1-SR at 5-6.



26. There are any number of ways better education can be achieved that would not undermine the functioning of the SOP in contravention of the Commission's policy while tilting the odds of SOP customers returning to SOP. One such example would be to provide EGSs more useful contact information for the SOP customers referred by PPL to the EGS and this could be accomplished by simply asking the consumer for permission to share his or her information with the SOP EGS. Starion St. No. 1-SR at 5, 7.
27. PPL states that a further purpose of its SOP proposed revisions regarding the end of the SOP contract term is to protect PPL from reputational harm whereby PPL is "blamed by customers for the increase in contract price after the SOP contract has expired." PPL St. No. 4 at 13-14.

# APPENDIX B

## Proposed Conclusions of Law

## APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction to regulate prices charged by EGSs. 66 Pa.C.S. §§ 2802 (5); 2806 (a). *See, e.g., Delmarva Power & Light Co. v. PUC*, 870 A.2d 901 (Pa. 2005); *HIKO Energy, LLC v. Pennsylvania Pub. Util. Comm'n*, 163 A.3d 1079, 1082, n. 1 (Pa. Commw. Ct. 2017).
2. As long as EGSs provide proper notice to their customers prior to the end of the contract and do not imposing any cancellation fees for a contract that automatically renews, a lack of further action evidences an EGS customer’s affirmative intention to remain with the EGS. *See, e.g., Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, Docket No. L-00970126, Final Order entered April 30, 1998; *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered September 23, 2010 at 24
3. Through the Commission’s current regulations and structure of the SOP program, SOP customers are well informed about their future EGS pricing and have options to cancel the renewal EGS contract if they are unsatisfied. 52 Pa. Code § 54.10 (1), (2), (2)(i), (2)(ii), 2(ii)(A), 2(ii)(A)(I) and 54.5 (b)(2); *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 at 26.
4. Permitting PPL to return an SOP customer back to default service if the SOP customer does not take any contrary affirmative action would constitute slamming. 66 Pa. C.S. § 2807 (d)

5. The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.” 66 Pa. C.S. §§ 2811 (a) and (b).
  
6. PPL’s proposal illegally elevates default service over competitive service. *The Mid-Atlantic Power Supply Ass’n v. PaPUC*, 755 A.2s 723-24 (Pa. Commw. Ct. 2000).

# APPENDIX C

## Proposed Ordering Paragraphs

## **APPENDIX C – PROPOSED ORDERING PARAGRAPHS**

### **IT IS ORDERED:**

1. PPL’s proposal to implement to automatically transfer SOP customers to default service upon the expiration of their SOP contract and to implement a two-step SOP customer notification process involving: (1) a PPL outreach campaign three months prior to the end of the SOP contract including calls, letters, emails and/or text messages “to discuss the options available to the customer;” and, (2) a PPL notification thirty days prior to the expiration of the SOP contract informing SOP customer that he or she will be transferred to default service upon contract expiration is denied.