
Lindsay A. Berkstresser
Associate

lberkstresser@postschell.com
717-612-6021 Direct
717-731-1977 Direct Fax
File #: 178868

September 3, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing is the Main Brief of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) and the Pennsylvania Public Utility Commission's March 20, 2020 Emergency Order at Docket No. M-2020-3019262.

VIA E-MAIL

David T. Evrard, Esquire
Aron J. Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
devrard@paoca.org
abeatty@paoca.org

Gina L. Miller, Esquire
PA Public Utility Commission
Bureau of Investigation & Enforcement
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265
ginmiller@pa.gov

Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 N. 10th Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
*Counsel for Intervenors
EGS Parties*

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111
Kmickens11@verizon.net
*Counsel for Intervenor
Sustainable Energy Fund*

Pamela Polacek, Esquire
Adeolu A. Bakare, Esquire
Jo-Anne S. Thompson, Esquire
McNees, Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
ppolachek@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com
Counsel for Intervenor PPLICA

Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Ria Pereira, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
emarxpulp@palegalaid.net
Counsel for Intervenor CAUSE-PA

Deanne M. O'Dell, Esquire
Kristine E. Marsilio, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th floor
Harrisburg, PA 17101
dodell@eckertseamans.com
kmarsilio@eckertseamans.com
*Counsel for Intervenor Starion Energy PA,
Inc.*

Gregory L. Peterson, Esquire
Thomas F. Puchner, Esquire
Kevin C. Blake, Esquire
Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701-4907
gpeterson@phillipslytle.com
Counsel for Intervenor StateWise

Derrick Price Williamson, Esquire
Barry A. Naum, Esquire
Spilman Thomas & Battle
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
Counsel for Intervenor IECPA

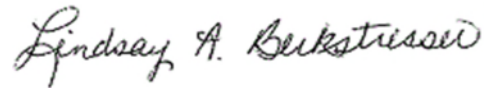
Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com
Consultant for OSBA

Barbara Alexander
Consumer Affairs Consultant
83 Wedgewood Drive
Winthrop, ME 04364
barbalex@ctel.net
Consultant for OCA

John F. Lushis, Jr., Esquire
Norris McLaughlin P.A.
515 West Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com
*Counsel for Intervenor Calpine Retail
Holdings LLC*

Lauren M. Burge, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
Counsel for Intervenor Inspire Energy

Dr. Steven L. Estomin
Dr. Serhan Ogur
Exeter Associates, Inc., Suite 300
10480 Little Patuxent Parkway
Columbia, MD 21044
sogur@exeterassociates.com
sestomin@exeterassociates.com
Consultants for OCA



Date: September 3, 2020

Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

**MAIN BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Kimberly A. Klock (Pa. Bar I.D. 89716)
Michael J. Shafer (Pa. Bar I.D. 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-5696
Fax: 610-774-4102
E-mail: kklock@pplweb.com
E-mail: mjshafer@pplweb.com

Michael W. Hassell (Pa. Bar I.D. 34851)
Lindsay A. Berkstresser (Pa. Bar I.D. 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6029
Fax: 717-731-1985
E-mail: mhassell@postschell.com
E-mail: lberkstresser@postschell.com

Dated: September 3, 2020

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE CASE.....	2
III.	QUESTIONS PRESENTED	6
IV.	LEGAL STANDARDS	7
V.	SUMMARY OF ARGUMENT	9
VI.	ARGUMENT	11
A.	STANDARD OFFER PROGRAM.....	11
B.	PPL ELECTRIC’S PROPOSAL TO END THE CAP SOP AND REQUIRE THAT ALL CAP CUSTOMERS RECEIVE DEFAULT SERVICE AT THE PRICE-TO-COMPARE SHOULD BE APPROVED.	25
C.	INTERSTATE TRANSMISSION COST ALLOCATION METHODOLOGY	40
1.	Introduction.....	40
2.	Background Regarding the Calculation of NITS Rates.....	43
3.	The Commission Has No Jurisdiction Over The Request To Require PPL Electric to Use A 1 CP Methodology To Calculate Interstate Transmission Rates.	46
a.	FERC Has Exclusive Jurisdiction Over Interstate Transmission Service Including The Calculation Of NITS Rates.....	46
b.	The Commission Lacks Jurisdiction Over The Rates Charged By An EGS To Retail Customers Via A Private Contract.	48
c.	The Commission Has No Jurisdiction To Grant The Relief Sought By PPLICA And IECPA.	49
D.	THE COMMISSION SHOULD AFFIRM PPL ELECTRIC’S USE OF THE 5 CP METHODOLOGY.....	50
1.	Introduction.....	50
2.	PPL Electric’s 5 CP Methodology Properly Reflects The Seasonal Nature Of Its Peak Loads.....	51

3.	PPL Electric’s Methodology Is Fully Consistent With Cost Causation Principles.....	55
4.	The 1 CP Methodology Increases Rate Instability and Uncertainty.....	58
5.	The 1 CP Methodology Will Lead To Manipulation and Unduly Discriminatory Rates That Favor A Limited Number of Customers Without Benefitting The Transmission System.....	60
6.	PPL Electric’s Long-Standing Methodology Should Continue.....	62
VII.	CONCLUSION.....	65

Appendix A - Proposed Findings of Fact

Appendix B - Proposed Conclusions of Law

Appendix C - Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

Page(s)

Federal Authorities

Federal Power Act.....	10, 46, 47
Federal Energy Regulatory Commission Minimum Offer Price Rule Order issued December 19, 2019	36
U.S. Const. art. VI, cl. 2.....	47
United States Constitution Supremacy Clause	10, 47

Federal Court Decisions

<i>Commonwealth Edison Co.</i> , 133 FERC ¶ 61,118 (2010)	42, 48, 54
<i>Duke Energy Ohio, Inc.</i> , 155 FERC ¶ 61,163 (2016).....	54
<i>Farina v. Nokia, Inc.</i> , 625 F.3d 97 (3d Cir. 2010)	47
<i>National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC</i> , FERC Docket No. EL18-78-000, 171 FERC ¶ 61,237 (2020).....	42
<i>New York v. FERC</i> , 535 U.S. 1 (2002)	46, 47
<i>PJM Interconnection, L.L.C. and Virginia Electric and Power Company</i> , 172 FERC ¶ 61,054 (2020).....	59, 62

Pennsylvania Court Decisions

<i>Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Board</i> , 923 A.2d 1220 (Pa. Cmwlth. 2007)	8
<i>Borough of E. McKeesport v. Special/Temporary Civil Service Commission</i> , 942 A.2d 274 (Pa. Cmwlth. 2008)	8
<i>Brown v. Commonwealth of Pa.</i> , 940 A.2d 610 (Pa. Cmwlth. 2008).....	7
<i>Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC</i> , 120 A.3d 1087 (Pa. Cmwlth. 2015)	57
<i>Commonwealth of Pa. v. Williams</i> , 557 Pa. 207, 732 A.2d 1167 (1999)	7

<i>Delmarva Power & Light Co. v. Commonwealth</i> , 582 Pa. 338, 870 A.2d 901 (Pa. 2005)	49
<i>District of Columbia’s Appeal</i> , 343 Pa. 65, 21 A.2d 883 (1941).....	8
<i>FERC v. Elec. Power Supply Assoc.</i> , 136 S. Ct. 760 (2016)	46
<i>Hughes v. Talen Energy Mktg., LLC</i> , 136 S. Ct. 1288 (2016).....	46
<i>Kyu Son Yi v. State Board of Veterinarian Medicine</i> , 960 A.2d 864 (Pa. Cmwlt. 2008)	8
<i>Lloyd v. Pa. PUC</i> , 904 A.2d 1010 (Pa. Cmwlt. 2006).....	55
<i>McCloskey v. Pa. PUC</i> , 225 A.3d 192 (Pa. Cmwlt. 2020)	55
<i>McDonald v. Pa. Railroad Co.</i> , 348 Pa. 558, 36 A.2d 492 (1940).....	8
<i>Met-Ed Indus. Users Group v. Pa. PUC</i> , 960 A.2d 189 (Pa. Cmwlt. 2008)	8
<i>Pa. Trout v. Dep’t Env’tl. Prot.</i> , 863 A.2d 93 (Pa. Cmwlt. 2004).....	62
<i>Philadelphia Suburban Transportation Co. v. Pa. P.U.C.</i> , 3 Pa. Cmwlt. Ct. 184, 196, 281 A.2d 179 (1971)	63
<i>Retail Energy Supply Ass’n. v. Pa. Public Utility Commission</i> , 185 A.3d 1206 (Pa. Cmwlt. 2018)	33, 37
<i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlt. 1990).....	7

Pennsylvania Administrative Agency Decisions

<i>Application of Pennsylvania-American Water Company for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pennsylvania</i> , Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Opinion and Order entered Oct. 29, 2008)	8
<i>Commonwealth of Pa., et. al. v. IDT Energy, Inc.</i> , Docket No. C-2014-2427657, 2014 Pa. PUC LEXIS 715 (Order entered Dec. 18, 2014)	49, 50
<i>Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order</i> , Docket No. M-2018-3006578 (February 28, 2019)	31
<i>Investigation Into Default Service and PJM Interconnection, LLC Settlement Reforms</i> , Docket No. M-2019-3007101 (January 23, 2020), p. 9	12, 35, 41

<i>NRG Energy, Inc. v. Pa. PUC</i> , 2020 Pa. Commw. LEXIS 420 (Cmwlth Ct. 2020)	51
<i>Pa. P.U.C. v. Breezewood Telephone Company</i> , Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991)	51
<i>Pa. PUC, et al. v. Duquesne Light Company</i> , Docket No. R-821945, et al. (January 28, 1983)	63
<i>Pa. PUC v. Metropolitan Edison Co., et al.</i> , Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007)	<i>passim</i>
<i>Pa. PUC, et al. v. Metropolitan Edison Co.</i> , Docket No. R-822249, (October 19, 1983)	63
<i>Pa. P.U.C., et. al. v. National Fuel Gas Distribution Corporation</i> , Docket No. R-2017-2582461 (Order entered July 12, 2017)	58, 60
<i>Pa. P.U.C. v. PECO, et al.</i> , Docket No. R-891364, 19909 Pa. PUC LEXIS 155 (May 16, 1990).....	51
<i>Pa. P.U.C. v. PECO Energy Co. – Electric Division</i> , Docket No. R-2018-3000164, et al., 1990 Pa. PUC LEXIS 155 (May 16, 1990).....	51, 57, 58
<i>Pa. P.U.C. v. Pennsylvania Power & Light Co.</i> , 55 PUR 4th 185	55
<i>Pa. P.U.C. v. Philadelphia Gas Works</i> , Docket Nos. R-00061931, et al., 2007 Pa. PUC LEXIS 45 (September 28, 2007).....	51
<i>Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023</i> , Docket Nos. P-2017-2637855 (Order entered February 28, 2019)	12, 35
<i>Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs</i> , 2012 Pa. PUC LEXIS 1348 (Pa. PUC 2012).....	58
<i>Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021</i> , Docket No. P-2016-2526627 (Order entered October 27, 2016).....	28, 38

Pennsylvania Statutes and Regulations

66 Pa. C.S. § 102.....	49
66 Pa.C.S. § 332(a)	7, 50

66 Pa. C.S. §§ 1301, 1304.....	58
66 Pa. C.S. § 2804(9).....	10, 27, 33, 40
66 Pa. C.S. §§ 2809 – 2810.....	49
52 Pa. Code §§ 5.501 and 5.502	2
52 Pa. Code § 54.8	24
52 Pa. Code § 54.10	13

Other Authorities

<i>Default Service and PJM Interconnection, LLC. Settlement Reforms</i>	35, 36, 41
---	------------

I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) submits this Main Brief on the specific issues reserved for litigation in the above-captioned proceeding. In this proceeding, PPL Electric requests Pennsylvania Public Utility Commission (“Commission”) approval of its fifth Default Service Program and Procurement Plan (“DSP V Program”) to establish the terms and conditions under which PPL Electric will acquire and supply Default Service or provider of last resort service (“Default Service”), from June 1, 2021 through May 31, 2025 (the “DSP V Program Period”). PPL Electric’s proposed DSP V Program, *inter alia*, consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits (“AECs”) during the DSP V Program Period; an implementation plan; a proposed rate design, including a Time-of-Use (“TOU”) rate option for Default Service during the DSP V Program Period; a proposal to modify the Company’s current Standard Offer Program (“SOP”); a proposal to require Customer Assistance Program (“CAP”) customers to take Default Service during the DSP V Program Period; and a contingency plan for the DSP V Program.

The active parties to this proceeding reached a partial settlement on all issues raised in this proceeding except for the following issues, which are reserved for litigation: (1) all SOP issues except for the use of guidelines and scripts in PPL Electric’s and a third-party administrator’s communications with customers;¹ (2) all CAP SOP issues; (3) and the use of 1 coincident peak (“1 CP”) versus a five coincident peak (“5 CP”) methodology for calculating Network Service Peak Load (“NSPL”), a primary input to calculating charges for Network Integration Transmission Service, a Federal Energy Regulatory Commission (“FERC”) approved rate for wholesale interstate transmission service. Contemporaneously with the filing of Reply Briefs, a Joint Petition for Partial

¹ As first established in the Company’s DSP II proceeding, the Company uses a third-party to provide details of the SOP program and to enroll customers who elect SOP. PPL Electric Statement No. 4, p. 4.

Settlement (“Partial Settlement”) will be filed on September 17, 2020, by PPL Electric, the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and other parties to this proceeding (hereinafter, collectively “Signatory Parties”). None of the parties oppose the Partial Settlement. This Partial Settlement resolves all of the issues and concerns raised by the active parties in the instant proceeding except for those issues reserved for litigation. Therefore, the Signatory Parties will request that Administrative Law Judge Elizabeth H. Barnes (“ALJ”) and the Commission approve the proposals set forth in PPL Electric’s proposed DSP V Program, subject to the terms and conditions of the Partial Settlement and a decision on the issues reserved for litigation.

The parties engaged in extensive discussions with respect to the issues reserved for litigation. Regarding the SOP and CAP SOP issues, the parties were unsuccessful in reaching settlement of these issues partly because multiple parties had conflicting positions on these issues. PPL Electric presented in litigation what it believes to be a reasonable middle ground to the various parties’ positions on these issues. Regarding the 1 CP versus 5 CP issue, the Commission has no jurisdiction over this issue and there is no basis on this record to support a change from PPL Electric’s long-standing use of the 5 CP method.

Pursuant to Sections 5.501 and 5.502 of the Commission’s regulations, 52 Pa. Code §§ 5.501 and 5.502, and the ALJ’s May 15, 2020 Procedural Order, PPL Electric herein submits this Main Brief on the issues reserved for litigation.

II. STATEMENT OF THE CASE

On March 25, 2020, PPL Electric filed a Petition requesting Commission approval of its proposed DSP V Program. PPL Electric Exhibit No. 1. Copies of a Default Service Request for Proposals Process and Rules (“RFP”), Default Service Supply Master Agreement (“SMA”), Block Energy Request for Proposals Process and Rules (“Block RFP”), Block Energy Supply Master

Agreement (“Block SMA”), Alternative Energy Credit Request for Proposals Process and Rules (“AEC RFP”), Alternative Energy Credit Supply Master Agreement (“AEC SMA”) were included with the Petition as Attachments A through F, respectively. The Petition also contained *pro forma* tariff provisions for the Generation Supply Charge-1 (“GSC-1), the Generation Supply Charge-2 (“GSC-2), and the Transmission Service Charge (“TSC”) to implement rates under the DSP V Program. (PPL Electric Exhibit No. 1, Attachment G), as well as *pro forma* tariff provisions for the proposed Renewable Rate Program (PPL Electric Exhibit No. 1, Attachment H).

Also on March 25, 2020, PPL Electric filed the following prepared direct testimony, with related exhibits in support of the DSP V Program: PPL Electric Statement No. 1, Direct Testimony of James R. Rouland; PPL Electric Statement No. 2, Direct Testimony of A. Joseph Cavicchi; PPL Electric Statement No. 3, Direct Testimony of Melinda Stumpf; and PPL Electric Statement No. 4, the Direct Testimony of Michelle LaWall-Schmidt. Therein, PPL Electric more fully explained the details of the proposed DSP V Program and why the Company believes that the proposed DSP V Program includes and/or addresses all of the elements prescribed by Section 2807(e) of the Public Utility Code, the Commission’s regulations, and the Commission’s policies for a Default Service plan.

On April 10, 2020, the Commission issued a notice scheduling a prehearing conference in the above-captioned matter for May 15, 2020.

On April 18, 2020, notice of PPL Electric’s DSP V Petition was published in the *Pennsylvania Bulletin*, 50 Pa.B. 2164.

I&E filed a Notice of Appearance. Notices of Intervention and Answers were filed by the OCA and OSBA. Petitions to Intervene were filed by the Coalition for Affordable Utility Service in PA (“CAUSE-PA”), Sustainable Energy Fund (“SEF”), Calpine Retail Holdings, LLC (“Calpine”), Statewise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively “StateWise”),

Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc, Vistra Energy Corp., ENGIE Resources LLC, WGL Energy and Direct Eergy Services, LLC (collectively, the “EGS Parties”), Starion Energy PA, Inc. (“Starion”), Inspire Energy Holdings, LLC (“Inspire”), Industrial Energy Consumers of Pennsylvania (“IECPA”) and PP&L Industrial Customer Alliance (“PPLICA”).²

An initial prehearing conference was held before the ALJ on May 15, 2020. The active parties filed prehearing memoranda identifying potential issues and witnesses. A litigation schedule was established at the prehearing conference and adopted in a Scheduling Order issued on May 15, 2020.

On May 28, 2020, PPL Electric filed a Motion for Protective Order, which was granted on June 1, 2020.

On June 25, 2020, certain parties other than PPL Electric served the following direct testimony, with accompanying exhibits: I&E served the Direct Testimony of Christopher Keller, I&E Statement No. 1; OCA served the Direct Testimony of Steven L. Estomin, OCA Statement No. 1, and the Direct Testimony of Barbara R. Alexander, OCA Statement No. 2; OSBA served the Direct Testimony of Robert D. Knecht, OSBA Statement No. 1; CAUSE-PA served the Direct Testimony of Harry Geller, CAUSE-PA Statement No. 1; SEF served the direct testimony of John M. Costlow, SEF Statement No. 1; PPLICA served the Direct Testimony of Michael Peters, PPLICA Statement No. 1; IECPA served the Direct Testimony of David F. Ciarlone, IECPA Statement No. 1; EGS Parties served the Direct Testimony of Christopher H. Kallaher, EGS Parties Statement No. 1; Inspire served the Direct Testimony of Aaron Jacobs-Smith, Inspire Statement No. 1; and Starion served the Direct Testimony of Pete Muzsi, Starion Statement No. 1. No other party served direct testimony.

On July 23, 2020, the following rebuttal testimony was served by certain parties: PPL Electric served: the Rebuttal Testimony of James R. Rouland, PPL Electric Statement No. 1-R, the Rebuttal

² Retail Energy Supply Association (“RESA”) initially intervened in the proceedings, but subsequently withdrew its intervention.

Testimony of A. Joseph Cavicchi, PPL Electric Statement No. 2-R, the Rebuttal Testimony of Melinda Stumpf, PPL Electric Statement No. 3-R, the Rebuttal Testimony of Michele LaWall-Schmidt, PPL Electric Statement No. 4-R, the Rebuttal Testimony of Gary M. Hartman, Jr., PPL Electric Statement No. 5-R and the Rebuttal Testimony of Scott R. Koch, PPL Electric Statement No. 6-R; OCA served the Rebuttal Testimony of Steven L. Estomin, OCA Statement No. 1-R and the Rebuttal Testimony of Barbara R. Alexander; OSBA served the Rebuttal Testimony of Robert D. Knecht, OSBA Statement No. 1-R; CAUSE-PA served the Rebuttal Testimony of Harry Geller, CAUSE-PA Statement No. 1-R; PPLICA served the Rebuttal Testimony of Michael Peters, PPLICA Statement No. 1-R; EGS Parties served the Rebuttal Testimony of Christopher H. Kallaher, EGS Parties Statement No. 1-R; and Calpine served the Rebuttal Testimony of Becky Merola, Calpine Statement No. 1. No other parties served rebuttal testimony.

The following surrebuttal testimony was served by certain parties on August 6, 2020: PPL Electric served the Surrebuttal Testimony of James R. Rouland, PPL Electric Statement No. 1-SR, and the Surrebuttal Testimony of Melinda Stumpf, PPL Electric Statement No. 2-SR; I&E served the Surrebuttal Testimony of Christopher Keller, I&E Statement No. 1-SR; OCA served the Surrebuttal Testimony of Richard S. Hahn, OCA Statement No. 1-SR, and the Surrebuttal Testimony of Barbara R. Alexander, OCA Statement No. 2-SR; OSBA served the Surrebutal Testimony of Robert D. Knecht, OSBA Statement No. 1-S; CAUSE-PA served the Surrebuttal Testimony of Harry Geller, CAUSE-PA Statement No. 1-SR; SEF served the Surrebuttal Testimony of John M. Costlow, SEF Statement No. 1-SR; PPLICA served the Surrebuttal Testimony of Michael Peters, PPLICA Statement No. 1-SR; IECPA served the Surrebuttal Testimony of David F. Ciarlone, IECPA Statement No. 1-SR; EGS Parties served the Surrebuttal Testimony of Christopher H. Kallaher, EGS Parties Statement No. 1-SR; Inspire served the Surrebuttal Testimony of Aaron Jacobs-Smith, Inspire

Statement No. 1-SR; and Starion served the Surrebuttal Testimony of Pete Muzsi, Starion Statement No. 1-SR. No other parties served surrebuttal testimony.

On August 10, 2020, the following rejoinder testimony was served: PPL Electric served the Rejoinder Testimony of Gary M. Hartman, Jr., PPL Electric Statement No. 5-RJ and the Rejoinder Testimony of Scott R. Koch, PPL Electric Statement No. 6-RJ. No other parties served rejoinder testimony.

An evidentiary hearing was held on August 13, 2020. The active parties agreed to waive cross examination and moved their respective testimonies and exhibits into the record. CAUSE-PA and Starion entered into a Stipulation that was admitted into the record. CAUSE-PA and Inspire also entered into a Stipulation that was admitted into the record. (Tr. p. 44)

As a result of settlement discussions, the active parties were able to achieve a partial settlement in principle. The Partial Settlement will be filed by the Signatory Parties contemporaneously with the filing of Reply Briefs on September 17, 2020. With the exception of the three issues identified above that are reserved for litigation, the Partial Settlement represents a resolution of all issues and concerns raised by the parties that actively participated and presented testimony in this proceeding.

III. QUESTIONS PRESENTED

1. Whether PPL Electric's proposal to return customers to default service at the end of the SOP contract terms unless the customer affirmatively elects otherwise should be approved?

Suggested answer: in the affirmative.

2. Whether PPL Electric's proposal that EGSs be required to commit to a semi-annual SOP enrollment, which would correspond to the semi-annual PTC price change, should be approved?

Suggested answer: in the affirmative.

3. Whether Starion's and the EGS Parties' proposal that PPL Electric be required to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer should be denied?

Suggested answer: in the affirmative.

4. Whether PPL Electric's proposal to end the CAP SOP and require all CAP customers to receive default service at the PTC should be approved?

Suggested answer: in the affirmative.

5. Whether the Commission lacks jurisdiction to change the peak load inputs used to calculate wholesale interstate transmission rates, which are within the exclusive jurisdiction of the FERC?

Suggested answer: in the affirmative.

6. Whether PPL Electric's long-standing use of the 5 CP method to calculate Network System Load for the purpose of allocating transmission costs should be continued?

Suggested answer: in the affirmative.

IV. LEGAL STANDARDS

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 preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pa. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614, n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *McDonald v. Pa. Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (1940). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission produce additional evidence in order to sustain its burden of proof. *District of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (1941); *Application of Pennsylvania-American Water Company for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pennsylvania*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Opinion and Order entered Oct. 29, 2008).³

In this proceeding, PPL Electric requests Commission approval of the proposals set forth in its DSP V Program. All of PPL Electric's proposals set forth in its DSP V Program have been resolved by the Partial Settlement except for those issues reserved for litigation. Therefore, PPL Electric bears the burden of proof on its unsettled proposals. However, a party who raises an issue that is not included in a public utility's filing bears the burden of proof on that issue. *See, e.g., Pa. PUC v. Metropolitan Edison Co., et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007) at *111-12.

³ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Although substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established," *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Board*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

V. SUMMARY OF ARGUMENT

PPL Electric's Main Brief addresses the three issues reserved for litigation in this proceeding. The issues reserved for litigation relate to PPL Electric's SOP, CAP shopping, and the proper allocation of interstate transmission costs.

With respect to the SOP, PPL Electric has discovered that a meaningful number of customers fail to take action at the end of their SOP contract, and as a result are converted to month-to-month contracts at prices above, and in many cases substantially above, the Price to Compare ("PTC"). When this happens, PPL Electric often receives complaints from customers questioning why PPL Electric would allow this to happen. This is also a concern because customers who convert to contracts with prices substantially above the PTC could become payment troubled.

To address this concern, PPL Electric proposed modifications to its SOP. First, PPL Electric proposed, as a term of the SOP, that if a customer does not make an affirmative election at the end of their SOP contract term, the customer will return to default service, rather than be converted to a month-to-month contract with their existing SOP EGS. A second related proposal is to undertake an educational campaign to reach out to customers prior to the conclusion of their SOP contract, to advise them of their shopping options and available resources, and to remind them that they will be returned to default service at the PTC if they do not make an affirmative election. These changes to the currently effective SOP should be approved because they preserve the SOP's purpose to introduce customers to the competitive market, incentive customer participation and educate customers how to competitively shop independent of the SOP. At the same time, these proposals will protect those customers who, through inaction, would otherwise pay rates considerably higher than the PTC. PPL Electric has also proposed to change the EGS enrollment term from quarterly to semi-annually, which should be approved because it coincides with the semi-annual PTC rate changes.

Prior to submitting PPL Electric's DSP V proposal, PPL Electric undertook an analysis of CAP shopping in its service territory. This analysis revealed that substantial harm occurs as a result of CAP shopping. Experience has shown that the CAP SOP has been ineffective in preventing customers from shopping at rates above the PTC while in CAP. This is because customers are entering CAP with preexisting shopping contracts that are not CAP SOP-compliant. Not only are CAP customers harmed when they shop at rates above the PTC, other Residential customers also pay more to cover the additional costs. PPL Electric's analysis demonstrated that other Residential customers have paid approximately \$30 million to EGSs from 2013 through January 2020 as a result of CAP customers shopping at prices above the PTC. CAP customers shopping at rates above the PTC is inconsistent with the requirement that universal service programs be managed in a cost-effective manner. 66 Pa. C.S. § 2804(9). As a result, PPL Electric proposed to eliminate the CAP SOP and require CAP customers to receive default service at the PTC. No other party presented a viable alternative to PPL Electric's proposal that would effectively address the harms that result when CAP customers shop at rates above the PTC. Therefore, PPL Electric's proposal to end the CAP SOP and require all CAP customers to take default service at the PTC should be approved.

For many years, PPL Electric has used the 5 CP method to determine individual customer contributions to Network Service Peak Load. This calculation is a primary input to calculating charges for Network Integration Transmission Service ("NITS"). NITS is a FERC-regulated service provided by PJM and is subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. FERC recently considered this issue in connection with claims by Amtrak that PJM and PPL Electric were miscalculating Amtrak's contribution to Network System Load and its resulting NITS charges. FERC asserted jurisdiction over these issues and rejected Amtrak's Complaint. Any Commission jurisdiction over these issues has been preempted by the Federal Power Act and the Supremacy Clause of the United States Constitution.

If the Commission determines to resolve this issue on the merits, PPL Electric’s long-standing use of the 5 CP method should be affirmed, and the 1 CP method proposed by PPLICA and IECPA should be rejected. The 5 CP method properly and reasonably reflects the fact that PPL Electric is a “mixed peaking” utility, *i.e.*, its coincident peak may occur in either the summer or the winter. The 5 CP method is fully consistent with long-standing principles of cost allocation and properly reflects the fact that transmission costs on PPL Electric’s system are “caused” by both its summer and winter peaks and not its single peak. The use of the 5 CP method also reduces rate volatility for all customers and appropriately limits the ability of larger and more sophisticated customers from shutting down operations on the single system peak and thereby avoiding any transmission cost allocation and receiving “free” transmission service at the expense of other customers. Such an unfair and discriminatory result should not be sanctioned by the Commission.

VI. ARGUMENT

A. STANDARD OFFER PROGRAM

1. Introduction

PPL Electric has operated a generally successful SOP since the Commission directed Electric Distribution Companies to establish SOPs in 2012. Over the past three years, an average of approximately 42,000 customers per year enrolled in the SOP. PPL Electric St. No. 1, p. 3. However, while the SOP has introduced many customers to the experience of shopping with an Electric Generation Supplier (“EGS”), and the opportunity to reduce energy costs, the SOP has not been without pitfalls. The primary pitfall that PPL Electric has identified, through interactions with its customers, is that a meaningful number of customers fail to take action at the end of their SOP contract, and as a result are converted to month-to-month contracts at prices above, and in many cases substantially above, the PTC. When these customers recognize they are paying very high electric

bills, often months after the end of their SOP contract, they complain to PPL Electric for sponsoring a program that would allow this to happen.

In response to this adverse effect and the resulting customer complaints, PPL Electric proposed several changes to its Standard Offer Program. One change is to include, as a term of the SOP, that if a customer does not make an affirmative election at the end of their SOP contract term, the customer will return to default service, rather than be converted to a month-to-month contract with their existing SOP EGS. A second related change proposed by PPL Electric is to undertake an educational campaign to reach out to customers prior to the conclusion of their SOP contract, to advise them of their shopping options and available resources, and to remind them that they will be returned to default service at the PTC if they do not make an affirmative election. PPL Electric St. No. 4, pp. 7-16.

The Company also proposed several other changes to the SOP that are intended to improve the SOP process. These include: 1) replacing specific SOP scripting used by PPL Electric Customer Service Representatives (“CSRs”) with guidelines to navigate the customers through the SOP process, while providing flexibility to modify the precise words if there is customer confusion about the program; 2) updating the scripting used by the third-party manager of the SOP enrollment process, to reflect changes made to the SOP; and 3) changing the EGS enrollment term from quarterly to semi-annually, which coincides with the semi-annual PTC rate changes. PPL Electric St. 4, p. 6. The guidelines and scripting to be used will be consistent with the Commission’s suggestions set forth in its Secretarial Letter dated January 23, 2020, at Docket No. M-2010-3007101, with respect to SOP scripting. PPL Electric St. No. 4, p. 7.⁴

⁴ The Commission’s Secretarial Letter further suggested that EDCs review the scripting approved in *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855 (Order entered February 28, 2019) (“*FirstEnergy Order*”).

During the course of this proceeding, other parties raised several issues concerning the Company's SOP. The Parties achieved agreement on certain of these issues. Specifically, the Parties have settled issues concerning the guidelines to be used by PPL Electric's CSRs and the scripts to be used by its third-party administrator. Other SOP issues have been reserved for litigation.

2. Current SOP Design

The SOP was established in PPL Electric's DSP II proceeding, in accordance with the Commission's retail market enhancement order. *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*). The SOP is available to residential customers, excluding CAP customers, and Small Commercial and Industrial ("Small C&I") customers under 25 kW peak demand.⁵ The SOP provides participants with a standard 7% discount off the then-current PTC, and fixes that rate for a 12-month term. A customer who elects to participate in the SOP may choose to receive service from a particular EGS that is participating in the program, or will be randomly assigned to an EGS if they do not choose a specific EGS. PPL Electric Statement No. 4, p. 3. Customers may exit their SOP contract at any time without penalty, either to re-enroll in the SOP with a new EGS, select another EGS or return to default service.

EGSs participating in the SOP program are responsible for notifying customers of the SOP contract's end and the terms and conditions of the new post-SOP contract before the customer's contract expires. 52 Pa. Code § 54.10. The customer's post-SOP affirmative options include re-enrolling in the SOP, entering into a new contract with their existing EGS, entering into a new contract

PPL Electric's existing scripts, both internally and as used by the third-party administrator of the SOP enrollment, already communicate all of the key themes addressed in the *FirstEnergy Order*.

⁵ PPL Electric only informs customers about the SOP in certain situations, such as when a customer calls with a billing complaint or a shopping question. However, PPL Electric will provide information about the SOP at any time upon customer request, and all eligible residential and Small C&I customers may participate in SOP. PPL Electric St. No. 4, p. 3.

with another EGS, or choosing to return to default service. PPL Electric St. No. 4, p. 3. If a customer fails to make an affirmative election, the customer is automatically enrolled in a new month-to-month contract with the customer's existing supplier at a new rate specified by the EGS in the customer's notice provided 30 days prior to the end of the SOP contract. PPL Electric St. 4-R, p. 3. EGSs must affirmatively elect to participate in the SOP each quarter,⁶ and must continue to accept new SOP contracts during the time they are enrolled. PPL Electric St. No. 4, p. 4; PPL Electric Exhibit No. MLS-3, Article 6.3.1.

Customers may elect the SOP program either online, through PPL Electric's web portal, or telephonically. For telephonic enrollments, the Company's CSRs will initially explain the available option of enrolling in the SOP. If a customer indicates to the CSR that they are interested in learning more about the program, the customer is transferred to a third-party service provider, who will describe the details of the SOP and enroll the customer upon the customer's consent. EGSs are charged \$28 per customer referred to them by the SOP third-party manager. PPL Electric St. No. 4, p. 5.⁷

3. PPL Electric's Proposed Modifications Related to the End of the SOP Contract Term

a. Many Customers Remaining on SOP Through the End of Their Contract Term are Paying Substantially More than the PTC

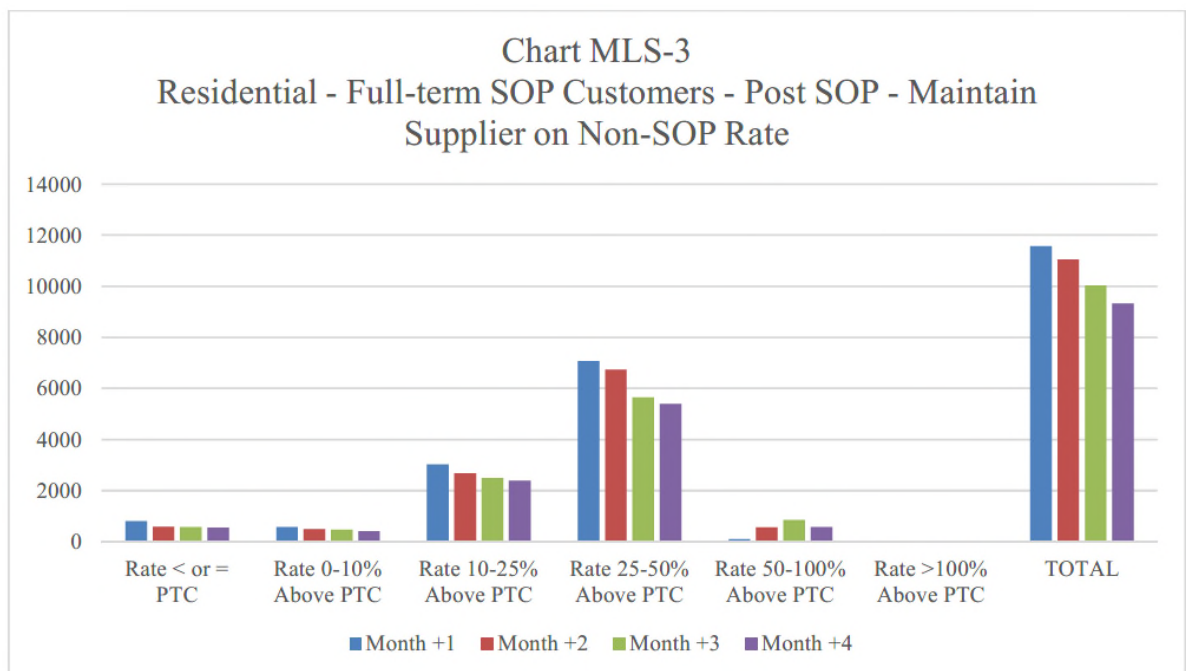
PPL Electric had become aware, through complaints filed with the Commission and customers' calls received by PPL Electric's CSRs, that some percentage of customers were experiencing a substantial increase in their energy charges following the conclusion of their SOP contract. PPL Electric St. No. 4, p. 13; PPL Electric St. No. 4-R, p. 14. This is a concern to PPL

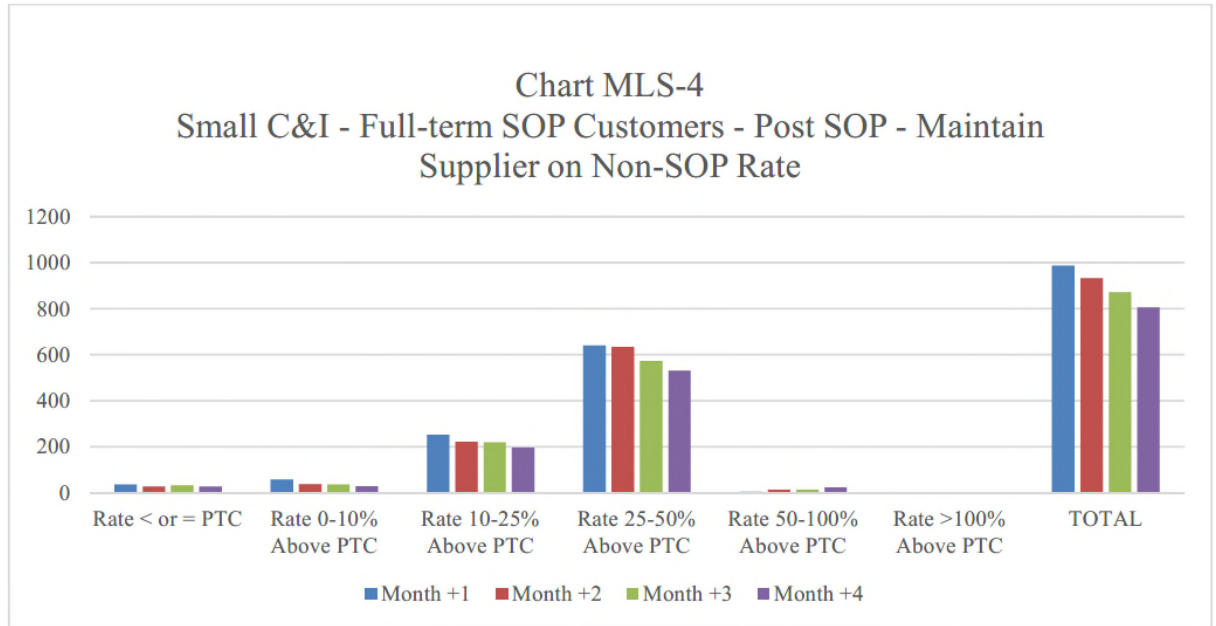
⁶ SOP quarters are the three calendar months beginning March 1, June 1, September 1 and December 1. PPL Electric St. No. 4, p.4.

⁷ The use of a third-party manager, and the \$28 per referral fee, were approved by the Commission as part of the initial SOP design in DSP II. PPL Electric St. No. 4, p.4, n.4. There is no referral fee charged to an EGS if a customer enrolls on-line. PPL Electric St. No. 4, p. 5.

Electric because it can lead to customers becoming payment troubled. PPL Electric St. No. 4, p. 13. It is also a concern to PPL Electric because customers criticize the Company for sponsoring a program that allows the customer to be charged a higher rate after the initial contract term is concluded. PPL Electric St. No. 4, p. 13. In addition, PPL Electric considers substantial price increases following the end of the SOP contract term to be contrary to the purpose of the SOP. The SOP was developed to provide customers who have not shopped or are reluctant to shop an opportunity to experience shopping. PPL Electric St. No. 4-R, p. 4. However, an adverse experience, through large, unexpected increases in prices at the end of an SOP contract, will not incentivize further shopping.

As a result of these concerns, PPL Electric undertook an analysis of customers who reached the end of their SOP contracts from 2015 through 2019. The review examined these customers' decisions for the four months following the expiration of their SOP contract. PPL Electric St. No. 4, pp. 8-12. The data demonstrated a substantial concern about the rates being paid by customers who remained with their SOP EGS after the conclusion of the SOP contract. The following charts graphically depict the concern:





PPL St. No. 4, pp. 11-12.

As these charts demonstrate, 93% of residential customers who have remained with their SOP EGS after the conclusion of their SOP contract are paying a rate at or above the PTC in the first month after their SOP contracts ended, with over 50% of those customers paying at least 25% over the PTC, and over 80% paying at least 10% over the PTC. Similar results are found with respect to Small C&I customers. By the fourth month following the end of the customers' SOP contract, a small percentage of those customers had elected another option rather than remaining with their EGS. However, of those residential customers still remaining with the SOP Supplier, over 94% were still paying rates at or above the PTC, with over 89% paying 10% or more above the PTC. Again, comparable results are seen with respect to the experience of Small C&I customers. PPL Electric St. No. 4, p. 12.

PPL Electric is concerned that these customers are simply failing to act upon, or are ignoring, notices advising them their contract is expiring, and as a result are unwittingly being placed on high priced, month-to-month contracts. PPL Electric St. No. 4, p. 12. Further, the slow pace at which these customers move off these contracts indicates they are not managing their shopping choices. The

initial savings off the PTC that these customers are receiving through the SOP⁸ can quickly be wiped away when a customer is paying 25%, 50% or in some cases an even higher percentage above the PTC in just a few months post-SOP. PPL Electric St. 4-R, p. 6. This is a fundamental attribute, and flaw, of the SOP structure, which burdens customers who fail to make an affirmative election at the end of the SOP contract term, with generation prices significantly above the PTC.

b. PPL Electric's Proposal to Revise the Rules Governing the End of the SOP Contract Term

To address the problem of customer inaction upon expiration of their SOP contract, which has led to a large number of customers being placed on month-to-month contracts at substantially higher rates, PPL Electric proposes two changes. The first is that when a SOP customer fails to make an affirmative election of a new contract with their existing or a new EGS upon the expiration of the customer's SOP contract, the customer will automatically be transferred to default service at the PTC. PPL Electric St. No. 4, p. 13. Associated with this proposal, PPL Electric's second change is to undertake a new, two-step communication process, with the goals of further educating customers of their shopping options after the expiration of their SOP contract and reminding the SOP customers that they will be moved back to default service at the end of their 12-month contract term if they fail to make an affirmative shopping choice. PPL Electric's witness, Ms. LaWall-Schmidt, described the communications as follows:

First, three months prior to the end date, PPL Electric will undergo an outreach campaign including calls, letters, emails and/or text messages (according to customer preference) to discuss the options available to the customer. The materials will help the customer become a proficient shopper after the SOP contract expires. This will include a reference to the PaPowerSwitch.com website, and a discussion of key shopping terms. The goal is to teach customers how to properly evaluate offers so they can become confident shoppers.

⁸ It is to be emphasized that the SOP only guarantees savings of 7% of the PTC in effect when the customer enters into an SOP contract. There is no guarantee that the customer will in fact save 7% off the PTC over the entire one-year SOP contract term.

PPL Electric also proposes to issue notification to customers that they will be transferred to default service at the PTC upon the expiration of the contract 30 days prior to the expiration of the SOP contract.

PPL Electric St. 4, p. 14.

Through these proposed changes, PPL Electric preserves the SOP's purpose to introduce customers to the competitive market, incentivize customer participation and educate customers how to competitively shop independent of the SOP. At the same time, the proposals will protect those customers who, through inaction, would otherwise pay rates considerably higher than the PTC.

c. Objections to PPL Electric's End of SOP Contract Term Proposals are without merit

Witnesses for OCA, CAUSE-PA and OSBA all supported PPL Electric's proposals for customers who are reaching the end of their SOP contract term. As OSBA witness Knecht observed:

[A] significant minority of participants remained with their SOP EGS, most of whom faced rates far in excess of the PTC. As the SOP is sponsored by PPL Electric and approved by the Commission, it may very well be that these customers were incorrectly relying on the Commission's imprimatur to protect them from price gouging.

OSBA St. No. 1-R, p. 7.

However, witnesses for Starion and for the EGS Parties opposed PPL Electric's proposal, offering a variety of reasons. These reasons are without merit and should be rejected.

A primary contention of Starion and the EGS Parties is that PPL Electric's proposals are in some manner illegal or improper. Starion alleges that it would be illegal "slamming" to return SOP customers who have not made an affirmative election to default service at the end of the SOP contract term. Starion St. No. 1, p. 5-6. Starion further asserts that protecting SOP customers who fail to make an affirmative election from the harm of higher rates is not within the authority of the Commission. Starion St. No. 1, p. 6. In a similar fashion, the EGS Parties claim that the proposal "violates the

principle of the primacy of customer choice” where there is no countervailing benefit. EGS Parties St. No. 1, p. 19.

These assertions are erroneous. The SOP is not established by statute, and there are no regulations mandating the terms of an SOP. The Commission directed electric utilities to establish SOP programs in 2012, following an examination into initiatives to encourage customer shopping. As the SOP was established by the Commission, the Commission clearly has the authority to modify the parameters of the program, including what occurs at the end of the SOP contract.

Furthermore, no “slamming” would occur under PPL Electric’s proposal. Customers will be advised at the time they enter into SOP contracts that they will be returned to default service unless they make an affirmative election to continue to shop at the end of their SOP contract term. PPL Electric St. No. 4-R, p. 7. In addition, PPL Electric’s communications proposal will clearly explain to customers, well in advance of the end of their SOP contracts, their shopping options and what will occur if the customer makes no affirmative decision to continue to shop. PPL Electric St. No. 4, p. 14. The Company’s proposal is structured to encourage active customer choice, and thereby protect the “primacy of customer choice.” PPL St. No. 4-R, pp 13-14.

The EGS Parties further contend that the Company’s proposal is improper because it treats SOP customers differently from customers who shop outside the SOP. EGS Parties St. No. 1, p. 13. However, this difference is not a basis to reject PPL Electric’s proposal. As PPL Electric’s witness explained:

PPL Electric acknowledges that customers who shop outside of the SOP are unaffected by PPL Electric’s proposal to return SOP customers to default service if they do not affirmatively enter into a new contract with their EGS. However, customers who shop through the SOP are not the same as customers who shop outside the SOP. SOP is a special discount rate, designed to focus on customers who do not shop. In fact, PPL Electric is only allowed to describe the SOP to existing shopping customers who specifically inquire about the program. Unlike non-SOP contracts, SOP contracts are required to

have certain standard terms and conditions such as contract length, be fixed price, have an initial price at 7% below current PTC, and cannot have early cancellation fees. This is because the SOP is a program created by the Commission, and the Commission has the authority to direct different terms from non-SOP contracts. PPL Electric believes that one of those terms should be to prohibit passive roll over into month to month contracts, where the evidence supports such a change.

PPL Electric St. No. 4-R, p. 11.

Starion contends that PPL Electric's proposal to return SOP customers who do not make an affirmative shopping election back to default service at the end of the SOP contract term is improper because there may be reasons why a customer may choose to remain with an EGS and pay higher rates. Starion St. No. 1, p. 6. Starion's contention misstates the scope of PPL Electric's proposal. As PPL Electric explained in direct testimony, its proposal will not, and is not intended, to interfere with customers' affirmative decisions to elect to remain with an EGS, even if that election results in higher rates. The proposal addresses only a distinct subset of shopping customers: those SOP customers who fail to make an affirmative shopping choice at the expiration of their SOP contracts. The proposal protects "passive" customers from paying rates higher, and in most cases much higher, than the PTC simply because they enrolled in the SOP and failed to act before their SOP contract expired. PPL Electric St. No. 1, pp 15-16. As PPL Electric witness Ms. LaWall-Schmidt further explained:

I agree that a customer might have reasons to make an affirmative decision to remain with an EGS at a rate higher than the PTC. PPL Electric does not propose to affect that affirmative decision. However, PPL Electric's concern is for customers who do not make an affirmative choice and end up paying higher month to month rates at the conclusion of their SOP contract.

PPL Electric St. 4-R, p. 7.

The EGS Parties' further response to the data presented by PPL Electric is to deny there is any problem. The EGS Parties' witness, Mr. Kallaher, asserts that because a majority of SOP customers do make an affirmative election prior to the end of their SOP contract, the program is

working “exactly as intended.” EGS Parties St. No. 1, p. 17. Mr. Kallaher goes on to assert that he is not “particularly troubled” by the extremely high rates being paid by customers who failed to make an affirmative election prior to the end of their SOP contract. EGS Parties St. No. 1, p. 16. Mr. Kallaher further contends that if EGSs cannot retain SOP customers who fail to make affirmative elections, this would undermine or destroy the SOP. EGS Parties St. No. 1, p. 16.

PPL Electric strongly disagrees with the EGS Parties’ dismissive attitude toward this problem. While it is correct that a majority of SOP customers (62%) make an affirmative election regarding shopping prior to the conclusion of their SOP contract, a significant minority do not. PPL Electric St. No. 4-R, p. 12. As the data above demonstrate, over 90% of those remaining residential and Small C&I customers are paying rates in excess of the PTC upon the conclusion of their SOP contract, with a striking number (over 50%) of those remaining customers paying in excess of 25% over the PTC. See Charts MLS-3 and MLS-4, reproduced above. This is not an outcome that encourages long-term shopping. Moreover, if, as Mr. Kallaher alleges, EGSs will not continue to participate in the SOP unless they can continue to catch unaware customers at the conclusion of an SOP contract, then the whole concept of the SOP as a tool to introduce customers to shopping should be reconsidered. PPL Electric St. 4-R, p. 13. The SOP should not be a marketing tool designed to capture unaware customers at excessive rates after the initial term expires. PPL Electric St. No. 4-R, p. 13. The SOP should be modified to prevent inattentive, passive customers from being hit with unanticipated bill increases following the end of their SOP contract, which can lead to high bill complaints and payment difficulties.

Starion and the EGS Parties also dispute PPL Electric’s concern that its reputation is harmed by an SOP program structure that allows customers to be switched to high-priced month-to-month contracts after the conclusion of their SOP contracts. EGS witness Kallaher asserts that only a small number of formal and informal complaints have been received by the Commission, and therefore

there is no demonstrated reputational harm to PPL Electric. EGS Parties St. No. 1, p. 19. Starion witness Mr. Muzsi similarly asserts that any issues about customer complaints can be resolved through improved handling of customer complaints by the Commission. Starion St. No. 1, p. 10. Both contentions miss the point. PPL Electric is not asserting that SOP EGSs are engaging in improper actions in billing customers at month-to-month contracts with high rates following the conclusion of SOP contracts. Therefore, it is not surprising that relatively few customer complaints have been filed with the Commission, and nothing about the Commission's complaint process can be revised to cure the high rates being charged. As PPL Electric's witness explained:

Moreover, in many instances customers do not go through a formal or informal complaint process at the Commission. The customer first contacts PPL Electric, and the Company must describe the situation that the customer's EGS has increased the rate of the post-SOP contract. At that point, the reputational harm to PPL Electric is already made, and explaining to the customer that they need to discuss high bill issues with their supplier does not change the customer's opinion with respect to PPL Electric, or a program it operates.

PPL Electric St. No. 4-R, p. 9. PPL Electric cannot separate itself from the SOP, as it must operate the program, and is responsible for customer enrollment. PPL Electric has received numerous calls complaining about high rates following the end of the SOP. PPL Electric St. 4-R, p. 14. While PPL Electric explains to customers that the rates are charged by the SOP EGS, and are not within PPL Electric's control, customers continue to criticize PPL Electric for establishing a program that allows this result to occur. PPL Electric St. 1-R, p. 8. Reputational harm is real and will continue if the SOP continues to operate as it does currently.

Starion and the EGS Parties also criticize PPL Electric's proposal to communicate to SOP customers about their options prior to the end of the SOP. Starion criticizes PPL Electric's proposal to first reach out to customers approximately 90 days prior to the end their SOP contracts, to inform customers of their options and advise what will occur if they do not make an affirmative choice

regarding shopping prior to the end of the SOP contract term. Starion St. No. 1, pp. 12-13. Starion asserts that this is an attempt to “market” default service before EGSs communicate with the customer and “win back” the customer. Id. Such assertion is without merit. PPL Electric does not profit from default service, and thus has no incentive to “market” that service to customers. PPL Electric St. No. 4-R, p. 10. Any increased education about shopping options should be viewed as a positive action, and assuming EGSs agree with this statement, they should join with PPL Electric to educate their customers early and often. The EGS Parties assert that this further education to SOP customers about their end-of-term shopping options is not needed, and any education should be focused on increasing shopping among customers who do not shop. EGS Parties St. No. 1, p. 21. However, PPL Electric already has a robust program to encourage non-shopping customers to shop, and this is demonstrated by the high percentage of shopping customers on PPL Electric’s system and the number of customers who sign up for SOP. PPL Electric St. No. 4-R, p. 14. PPL Electric’s communication proposal is intended to focus on SOP customers who passively allow themselves to roll into high priced month-to-month contracts, in order to empower these customers to shop actively and wisely, after experiencing the competitive marketplace through the SOP. PPL Electric St. 4-R, p.14.

PPL Electric’s proposals with respect to SOP customers who reach the end of the SOP contract are an important improvement to the current SOP. The objections of Starion and the EGS Parties are without merit and should be rejected.

4. The Company Should Not be Required to Provide the Phone Numbers and E-Mail Addresses of SOP Customers to EGSs

Starion and the EGS Parties propose that PPL Electric be required to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer. Starion St. No. 1, p. 9; EGS Parties St. No. 1, p. 39. PPL Electric strongly opposes these

proposals, which would violate distribution customers' expectations of privacy. As PPL Electric explained:

The Company receives the information in its role as the customer's distribution company. The Company uses that information to inform customers of outages and restoration of service. Customers have a heightened degree of privacy expectation with respect to telephone numbers and email addresses, as demonstrated by the fact that the Eligible Customer List ("ECL") established pursuant to Commission direction allows customers to opt out of providing telephone numbers and does not even provide for the release of email addresses. Customers receive a substantial amount of unsolicited offers for goods and services by telephone and email, and it is inappropriate to direct PPL Electric to release that information to EGSs. I believe that customers who make a specific election to not have PPL Electric release their telephone numbers through the ECL would certainly find it objectionable to find that this election was voided once they decided to shop. I would further observe that, as recognized by Mr. Kallaher, the customers at issue here are those customers who are being served by the EGS. Mr. Kallaher offers no reason why the EGS, which serves the customer and has a contract with the customer, cannot request this information itself from its customer.

PPL Electric St. No. 4-R, p. 25.

The Commission's regulations, at 52 Pa. Code § 54.8, establishes the rights of customers to restrict release of this customer information. EGSs should not be granted the ability to bypass this regulation by making the release of customer telephone numbers and e-mail addresses a condition of the SOP.

5. EGS SOP Enrollment Term

As explained previously, under the current terms of the SOP, an EGS must enroll quarterly to participate in the SOP. The enrollment is a simple process, with the EGS stating its desire to participate in the SOP for the upcoming quarter, meeting basic certification requirements and acknowledging its compliance with the requirements of the SOP. PPL Exhibit No. MLS-3, Article 4. Enrollment is necessary in order for PPL Electric to know which EGSs are accepting referrals from the SOP. PPL Electric has proposed that EGSs be required to commit to a semi-annual SOP

enrollment, which would correspond to the semi-annual PTC price change. PPL Electric St. No. 1, p. 21. The PTC price establishes the SOP price.

Starion supports the change to the SOP enrollment term. Starion St. No. 1, p. 4. However, the EGS Parties oppose the change, and propose that EGSs should be permitted to opt into the SOP on a monthly basis. EGS Parties St. No. 1, p. 18. PPL Electric opposes the monthly opt in proposal for EGSs to participate in the SOP. An accurate and timely EGS participant list is crucial to the operation of the SOP. However, monthly opt ins would add time and cost to the SOP process and increase the possibility of errors. PPL Electric St. No. 4-R, p. 24. The PTC, which defines what the SOP price will be, is effective for a six-month period, and EGSs that wish to participate in the SOP should sign up semi-annually.

B. PPL ELECTRIC’S PROPOSAL TO END THE CAP SOP AND REQUIRE THAT ALL CAP CUSTOMERS RECEIVE DEFAULT SERVICE AT THE PRICE-TO-COMPARE SHOULD BE APPROVED.

1. History of CAP shopping in PPL Electric’s service territory.

As part of its universal service programs, PPL Electric offers a low-income residential Customer Assistance Program (“CAP”) called the OnTrack Program. PPL Electric Exhibit No. 1, p. 30. Eligible customers who are enrolled in the OnTrack Program receive a discounted payment amount and arrearage forgiveness for remaining current on their OnTrack payments. The difference between a CAP customer’s required payment and their undiscounted bill is referred to as a “CAP credit.” PPL Electric Exhibit No. 1, p. 30. CAP customers receive a maximum CAP credit amount, to be used over an 18-month period, based upon their income as a percentage of the Federal Poverty Level (“FPL”). PPL Electric Statement No. 3, p. 4. If a CAP customer exceeds their allowed CAP credits, then they are placed on the OnTrack Budget Billing program, where they continue to be eligible for preprogram arrearage forgiveness but do not receive a discounted bill. PPL Electric Statement No. 3, p. 5. The costs associated with the OnTrack Program are recovered from the

Residential Customer Class through the Universal Service Rider (“USR”). The costs recovered through the USR include the difference between a customer’s fixed OnTrack monthly payment and the CAP customer’s monthly energy charges, including EGS charges. PPL Electric Exhibit No. 1, p. 30. This amount is referred to as the “CAP shortfall.” The amount recovered through the USR also includes arrearage forgiveness and costs associated with the program. PPL Electric Statement No. 3, p. 5.

CAP customers in PPL Electric’s service territory have been eligible to shop with a competitive electric generation supplier (“EGS”) since 2010. PPL Electric Exhibit No. 1, p. 30. Since that time, CAP customers have been consistently exposed to harm as a result of CAP shopping. While CAP customer shopping does not directly affect an OnTrack customer’s payment amount, OnTrack customers are limited to the maximum CAP credits that they may receive. Thus, if a CAP customer shops at a rate higher than the PTC, the customer will exceed their maximum allowable CAP credit at a faster pace, risking removal from CAP and increasing the likelihood that the customer could become payment troubled. PPL Electric Statement No. 3, p. 5. The maximum CAP credits for the current program are listed in the table below:

Table 1. – OnTrack Credit Details.

FPL Tier/Level Federal Poverty Level (FPL)	Account Classification	Maximum Credit Amount That Could Be Used Over 18 Months
0% to 50%	Electric Heat	\$4,027
51% to 100%	Electric Heat	\$3,661
101% to 150%	Electric Heat	\$3,328
0% to 50%	Non-Electric Heat	\$1,585
51% to 100%	Non-Electric Heat	\$1,441
101% to 150%	Non-Electric Heat	\$1,310

CAP shopping at rates higher than the PTC also increases the costs borne by other Residential customers. When CAP customers shop at a rate higher than the PTC, there is necessarily a higher program shortfall amount which is recovered through the USR. PPL Electric Statement No. 3., p. 5. In addition, if a customer exceeds their maximum credit amount and cannot pay the unsubsidized bill amount, all Residential customers pay for the uncollectible amounts resulting from the CAP customer default. PPL Electric Statement No. 3, p. 6. The resulting impact of CAP customers shopping at rates that are higher than the PTC is inconsistent with the purpose of CAP, which is to provide payment assistance to low-income customers in a manner that is cost-effective. *See* 66 Pa. C.S. § 2804(9) (universal service programs subject to administrative oversight of the Commission to ensure that the programs are operated in a cost-effective manner).

Prior to PPL Electric's DSP IV Program, there were no restrictions on a CAP customer's ability to shop. As part of PPL Electric's DSP IV Plan, the Company conducted a comprehensive review of CAP customer shopping from January 1, 2013 through October 31, 2015. PPL Electric Statement No. 3, p. 6. PPL Electric's analysis showed that over the thirty-four-month period, an average of 49% of OnTrack customers were shopping, and 55% of OnTrack shoppers were paying above the PTC. For those OnTrack shopping customers paying above the PTC, the average monthly energy charges were \$31 higher per month than they would have been had the customer not shopped. Although these shopping customers' OnTrack payment amounts did not change, those customers paying above the PTC exceeded their CAP credits at a faster pace. PPL Electric Statement No. 3, p. 6. For a Tier 1 OnTrack heating customer, \$31 per month over the 18-month term of OnTrack is \$558, or nearly 14% of their allowed CAP credits of \$4,027.

As a result of PPL Electric's DSP IV proceeding, PPL Electric implemented a CAP Standard Offer Program ("CAP SOP") with the goal of mitigating the harmful impacts of CAP customer

shopping. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (Order entered October 27, 2016). The CAP SOP was implemented on June 1, 2017 and will remain effective through May 31, 2021. PPL Electric Statement No. 3, p. 7. The CAP SOP requires that any EGS participating in the program serve customers at a 7% discount off the PTC at the time of enrollment. The rate remains fixed for twelve months. However, customers may terminate the CAP SOP contract at any time without penalty. At the conclusion of the twelve-month CAP SOP contract, customers must be reenrolled in a new CAP SOP contract at a new discounted rate unless the customer requests to be returned to default service or is no longer in CAP. PPL Electric Statement No. 3, p. 7.

2. The CAP SOP has been unsuccessful in protecting customers from the harms of pre-program CAP shopping at prices higher than the PTC.

The only option for an existing CAP customer to shop is through the CAP SOP. However, eligible customers may enter CAP even if they are obligated to a preexisting supplier contract that does not meet the requirements of CAP SOP. Pursuant to the terms of the CAP SOP approved in PPL Electric's DSP IV proceeding, CAP customers who are enrolled with an EGS prior to entering CAP are permitted to remain with their existing supplier until the end of their contract term. PPL Electric Statement No. 3-R, pp. 1-2. Experience has demonstrated that these newly enrolled CAP customers frequently bring with them shopping contracts with prices that are above the PTC.

EGS participation in the CAP SOP has been minimal and inconsistent. When the CAP SOP began, there were two EGSs participating from June 2017 through November 2017. From December 2017 through May 2018, one EGS participated in the CAP SOP. From June 1, 2018 through February 29, 2020 there were no EGSs participating the CAP SOP. During this time, customers who were already enrolled in CAP could not shop because there were no CAP SOP participating suppliers.

However, customers could still enter the CAP even if they had a preexisting shopping contract with a non-CAP SOP supplier. As of March 1, 2020, there is one EGS participating in the CAP SOP. PPL Electric Statement No. 3, p. 8. The lack of consistent supplier participation causes customer confusion and has also made the Program difficult for PPL Electric to administer. PPL Electric Statement No. 3, p. 9.

As part of its proposed DSP V Plan, PPL Electric conducted an updated analysis of CAP shopping in its service territory. This analysis demonstrated that the harms of CAP shopping that existed prior to CAP SOP have continued even after the implementation of CAP SOP. As of January 2020, there were 7,975 CAP customers shopping with an EGS outside of CAP SOP because they entered CAP with a preexisting shopping contract. PPL Electric Statement No. 1, p. 8.⁹ PPL Electric's data shows that 62% of these customers were paying rates in excess of the PTC. PPL Electric Statement No. 3, p. 11.

The CAP SOP has been ineffective in protecting CAP customers from paying rates that are higher than the PTC and thereby exceeding their CAP credits at a faster pace than the customers would have had they not been shopping. Even with the protections of the CAP SOP, on average, CAP customers who are shopping continue to pay significantly higher rates than the PTC. In 2019, an average of 62% of CAP customers who were shopping paid a rate above the PTC. PPL Electric Statement No. 3, p. 11. The table below reflects the OnTrack customer shopping rates relative to the PTC.

⁹ As of January 2020, no CAP customers were enrolled in a CAP SOP contract because no EGSs had elected to participate since June 2018.

Table 3. – OnTrack Customer Shopping Rates Relative to PTC

Year	Avg. # of Cust. Shopping	Avg. Rates Above PTC	Avg. Rates Below PTC
2013	16,752	67%	33%
2014	19,115	51%	49%
2015	23,385	49%	51%
2016	27,786	83%	17%
2017	24,848	64%	36%
2018	18,824	68%	32%
2019	10,932	62%	38%
2020*	7,975	62%	38%

**Y2020 values includes January 2020 only.*

While some CAP customers who are shopping pay rates that are below the PTC, the realized savings for these customers pale in comparison to the costs incurred as a result of CAP customer paying rates above the PTC. PPL Electric Statement No. 3, p. 12. This is because customers who are eligible for CAP are entering the program with preexisting shopping contracts that are not CAP SOP compliant. PPL Electric Statement No. 3, pp. 9-11. OnTrack shopping has cost the OnTrack program approximately \$30 million from 2013 through January 2020. PPL Electric Statement No. 3, p. 12, Table 4. This additional \$30 million is paid directly to suppliers but is recovered from all residential customers who pay for the OnTrack program. PPL Electric Statement No. 3-R, pp. 2-3. The table below illustrates the net costs and savings from CAP shopping since 2013.

Table 4. – Shopping OnTrack Customer Net Costs and Savings.

Year	Incremental Costs Above PTC	Incremental Savings Below PTC	Net Incremental Cost/(Savings)
2013	\$ 3,102,101.99	(\$ 577,626.58)	\$ 2,524,475.41
2014	\$ 7,075,886.90	(\$ 1,260,702.83)	\$ 5,815,184.07
2015	\$ 4,143,051.93	(\$ 1,824,797.73)	\$ 2,318,254.20
2016	\$ 7,754,048.98	(\$ 299,675.37)	\$ 7,454,373.60
2017	\$ 5,733,675.86	(\$ 925,870.45)	\$ 4,807,805.41
2018	\$ 4,801,337.09	(\$ 519,755.99)	\$ 4,281,581.10
2019	\$ 3,163,412.20	(\$ 255,326.71)	\$ 2,908,085.49
2020	\$ 265,270.32	(\$ 43,797.44)	\$ 221,472.88
Grand Total	\$ 36,038,785.27	(\$ 5,707,553.10)	\$ 30,331,232.16

*Y2020 values includes January 2020 only.

The only way to fully address the problem of customers entering CAP with non-CAP SOP contracts at a rate above the PTC is to either require customers entering CAP to drop their supplier and receive default service at the PTC or to convert the terms of any preexisting shopping contract to require the EGS to serve the CAP customer at a price at or below the PTC at all times. However, PPL Electric cannot unilaterally change the terms of a contract between a customer and an EGS.

3. PPL Electric’s Proposal to Require all CAP customers receive default service will protect customers from the harms of pre-program CAP shopping.

In the Commission’s Proposed Policy Statement Order on CAP Shopping, the Commission directed electric distribution companies such as PPL Electric to address the mechanics of CAP shopping in their next default service plan proceedings. *See Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order*, Docket No. M-2018-3006578 (February 28, 2019) at p. 6 (“CAP Shopping Proposed Policy Statement Order”).¹⁰ In the *CAP Shopping Proposed Policy Statement Order*, the Commission recognized the following:

¹⁰ If the Commission issues an order on its Proposed Policy Statement at Docket No. M-2018-30006578 during the DSP V period, PPL Electric will seek to amend the DSP V with respect to CAP shopping so that it is in compliance with the Commission’s directives.

[T]wo forms of harm resulted from CAP shopping: (1) those CAP participants paying a rate greater than PPL's PTC were exceeding their CAP credits at a faster rate, which put those CAP participants at risk of being removed from CAP; and (2) that non-CAP participant ratepayers who subsidize CAP participants were bearing increased costs related to CAP.

CAP Shopping Proposed Policy Statement Order, p. 3. To eliminate the significant and persistent harm associated with CAP customer shopping, PPL Electric proposes to end the CAP SOP and require that customers entering CAP receive default service at the PTC beginning on June 1, 2021. PPL Electric believes that its proposal to require that all customers entering CAP receive default service is in the best interest of PPL Electric's customers. PPL Electric Exhibit No. 1, pp. 32-33.

Specifically, PPL Electric proposes to inform shopping customers who apply for CAP that they must terminate their supplier contract or wait for the contract to expire before entering CAP. PPL Electric will inform these CAP applicants that they should contact their supplier to determine what, if any, termination or cancellation fees may apply so that they can make an informed decision regarding whether to end their supplier contract and join CAP or continue with their supplier contract outside of CAP. PPL Electric Statement No. 1, p.16. For those customers who are currently enrolled in CAP and are shopping, PPL Electric will not automatically remove those customers from CAP. Those customers will be permitted to remain in CAP with their existing shopping contract until the earlier of the contract expiring or the need to recertify CAP eligibility. PPL Electric Statement No. 3, pp. 16-17.

PPL Electric presented substantial evidence in this case that the CAP SOP has not sufficiently protected against the harms of CAP shopping at rates above the PTC. This evidence supports eliminating the CAP SOP and requiring that all CAP customers receive default service at the PTC. PPL Electric's proposal to require all CAP customers receive default service at the PTC will resolve the problem of customers entering CAP with pre-program shopping contracts that are above the PTC.

As a result, CAP customers will be protected from paying prices that are above the PTC, thereby exceeding their CAP credits more quickly. In addition, other Residential customers will no longer be responsible for subsidizing the large shortfall amounts that accumulate when CAP customers shop at rates above the PTC.

PPL Electric’s proposal is consistent with the Commission’s authority to “ensure that the [universal service] programs are operated in a cost-effective manner.” 66 Pa. C.S. § 2804(9). The \$30 million that Residential customers have paid from 2013 through January 2020 as a result of CAP customers’ EGS choices is not cost-effective. The Commonwealth Court has held that the Commission can place conditions under which CAP participants are eligible to receive CAP benefits. *See Retail Energy Supply Ass’n. v. Pa. Public Utility Commission*, 185 A.3d 1206, 1217 (Pa. Cmwth. 2018) (“RESA”) citing *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087,1103 (Cmwth. 2015) (“CAUSE-PA”). In *CAUSE-PA*, the Commonwealth Court stated:

The [Commission] has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the [Commission] to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.

PPL Electric’s proposed CAP rule – that customers entering and remaining on CAP must receive default service at the PTC – will further the goal of ensuring that universal service plans are adequately funded and cost-effective. Moreover, if customers choose to shop, they may continue to do so outside of CAP where other Residential customers are not responsible for any shortfall that results.

4. Inspire's opposition to PPL Electric's proposal is without merit.

Inspire opposes PPL Electric's proposal to end the CAP SOP. According to Inspire, requiring CAP customers to receive default service eliminates CAP customers' ability to leverage the competitive market to further reduce costs. Inspire Statement No. 1, p. 3. Inspire fails to recognize that a CAP customer's bill amount is based on ability to pay. The CAP customer receives no further bill reduction or increase by shopping. Thus, there is no direct incentive to reduce costs further. When CAP customers shop with EGSs at rates higher than the PTC, they do so at the expense of other Residential customers.

The fact is that CAP customers have not effectively used the competitive market to reduce costs. In fact, the opposite is true. While shopping at a high rate does not change the amount a CAP customer pays on their bill, CAP shopping has resulted in higher actual bill amounts for CAP customers and increased costs for Residential customers who pay for the CAP shortfall. As PPL Electric has demonstrated, any savings resulting from CAP shopping has been far outweighed by the costs incurred by CAP customers shopping at prices that are above the PTC. PPL Electric Statement No. 1, p. 11. This hurts both CAP customers who exceed their CAP credits at a faster pace and other Residential customers who subsidize the amounts not paid by CAP customers. Requiring that CAP customers receive default service is necessary to protect against the harms of CAP shopping.

Inspire also opposes eliminating CAP SOP because customers have already paid to implement the program. Inspire Statement No. 1, p. 4. The cost to implement CAP SOP was approximately \$400,000. PPL Electric Statement No. 3-R, p. 13. By comparison, CAP customers shopping at rates above the PTC has cost the Residential customers who pay for the OnTrack Program approximately \$30 million in net costs from 2013 through January 2020. PPL Electric Statement No. 1, p. 12. Allowing Residential customers to continue paying for the higher costs of CAP shopping simply because there was an initial cost to implement the program does not make sense.

Inspire also criticizes PPL Electric's proposal as not allowing low-income customers to shop for renewable energy. Inspire Statement No. 1, p. 6. This is not the case. A low-income customer may shop with a supplier that offers a renewable option. However, they cannot do so while participating in CAP. This way, other Residential customers will not be responsible for subsidizing a CAP customer's decision to shop for renewable energy at a higher rate than the PTC.

5. The EGS Parties' opposition to PPL Electric's proposal is without merit.

The EGS Parties oppose PPL Electric's proposal and offer several alternatives. First, the EGS Parties suggest that PPL Electric require CAP SOP customers to receive a rate at or below the currently effective PTC throughout the duration of their contract. EGS Parties' Statement No. 1, pp. 10-11. This is the structure used in the FirstEnergy model. The Commission previously directed utilities to review how CAP shopping was addressed in the FirstEnergy proceeding at Docket No. P-2017-2637855. *See Investigation Into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (January 23, 2020), p. 9. PPL Electric has actively followed all CAP shopping proceedings in Pennsylvania, including the FirstEnergy proceeding. PPL Electric Statement No. 1, pp. 95-97. There is no evidence that the FirstEnergy program is successful. While PPL Electric supports CAP customers paying rates that are always at or below the effective PTC, there is no basis to conclude that FirstEnergy's Program would work to solve the problems that PPL Electric has experienced in its service territory with lack of EGS participation and CAP customers paying prices that are above the PTC due to preexisting contracts. PPL Electric Statement No. 3-R, p. 18.

The EGS Parties suggest that a possible reduction to the 7% discount may be needed to increase supplier participation. EGS Parties' Statement No. 1, p. 11. However, the EGS Parties have not identified what rate would be needed to encourage supplier participation in CAP SOP. CAP SOP has been available for suppliers to participate since 2017, yet suppliers have chosen not to participate

for the majority of the time that the program has been in place. PPL Electric Statement No. 1, pp. 8-9. In fact, some supplier parties stated in the Default Service and PJM Market Reforms proceeding that they would only participate in an EDC CAP SOP if they were allowed to charge up to 20% *above* the PTC. PPL Electric Statement No. 3-R, p. 19. PPL Electric does not support investing more time and money into a program that will likely remain dormant because of lack of supplier participation. PPL Electric further opposes adoption of a CAP shopping model that would result in even faster use of CAP credits and even higher costs to non-CAP customers who pay the cost of CAP. Moreover, the EGS Parties' proposals do not address the core of the problem, which is customers entering CAP with non-CAP SOP compliant supplier contracts.

The EGS Parties also propose that EGSs be permitted to retain their CAP SOP customers at the end of the 12-month CAP SOP contract so long as the EGS agrees to serve the customers at or below the PTC. EGS Parties' Statement No. 1, p. 11. It is unclear from the EGS Parties' proposal whether the rate would change throughout the contract as the PTC changes. The EGS Parties also do not specify how long the EGS would be agreeing to serve the customer at a rate at or below the PTC. Because the customer would no longer be on a CAP SOP contract, PPL Electric would not have oversight with respect to the contract between the EGS and the CAP customer. Thus, this proposal would only further exacerbate the problem PPL Electric currently faces with pre-existing EGS contracts and the inability to monitor when they expire. The EGS Parties' proposal is insufficient to protect CAP customers from paying higher rates at the conclusion of the CAP SOP contract term.

Finally, the EGS Parties contend that excluding CAP customers from the retail market may violate the Federal Energy Regulatory Commission's ("FERC") Minimum Offer Price Rule ("MOPR").¹¹ EGS Parties' Statement No. 1, pp. 4-8. This is incorrect. First, the MOPR is not

¹¹ Federal Energy Regulatory Commission Minimum Offer Price Rule Order issued December 19, 2019, at Docket Nos. EL16-49-000 and EL18-178-000 (*consolidated*).

applicable to this proceeding because EDC Default Service Plans are not subject to the FERC MOPR, and the FERC proceeding is not yet final. Second, PPL Electric is not prohibiting any customer from shopping. The restriction on shopping applies only if the customer elects to enroll in CAP. However, any customer may choose to shop rather than to enroll in CAP. PPL Electric Statement No. 1-R, pp. 53-56. These restrictions on CAP shopping are permissible. *See RESA*, 185 A.3d 1206, 1217; *CAUSE-PA*, 120 A.2d 1087,1103.

6. OCA’s proposed modifications to PPL Electric’s proposal should not be adopted.

The OCA is generally supportive of PPL Electric’s proposal but with certain modifications. First, the OCA recommends that customers should be permitted to enter CAP with a supplier contract and remain on their existing contract until the contract expires or is terminated, at which time the supplier should be required to return the customer to default service. OCA Statement No. 2, p. 21. The OCA’s recommendation would not remedy the harms caused by customers entering CAP with preexisting shopping contracts.

When a customer shops with a supplier outside of CAP SOP, PPL Electric is not aware of the contract terms, termination fees, or length of the contract between the CAP customer and the non-SOP supplier. Only the supplier and the customer have this information. Without this information, PPL Electric has no way of monitoring when the customer should be dropped by the supplier and returned to default service because the shopping contract has ended. PPL Electric Statement No. 3-R, p. 5. Although PPL Electric has in place procedures to alert EGSs daily that their customers have been enrolled in CAP,¹² there have been instances in which the EGS has failed to drop a customer at the expiration of the pre-CAP contract. This results in the CAP customer remaining on the non-CAP

¹² So that EGSs know when to drop a customer at the end of their contract because the customer has enrolled in CAP, PPL Electric updates customers’ CAP status on the suppliers’ customer lists every business day. The suppliers’ customer lists are available through the supplier portal. PPL Electric Statement No. 3-R, p. 7.

SOP compliant contract without PPL Electric's knowledge. PPL Electric Exhibit No. MS-2, p. 8. When PPL Electric learns that a supplier has not dropped a CAP customer at the end of the contract term, PPL Electric will take action to return that customer to default service. However, there is no way for PPL Electric to proactively monitor every contract that was entered into prior to the customer entering CAP. PPL Electric Statement No. 3-R, p. 7. Based on PPL Electric's experience, allowing CAP customers to remain on non-CAP SOP compliant contracts would continue to result in non-CAP customers paying several million dollars annually in CAP costs.

The OCA also recommends that PPL Electric communicate to CAP customers with month-to-month supplier contracts that they must be dropped by their supplier and returned to default service without penalty within 120 days.¹³ OCA Statement No. 2, p. 21. OCA fails to recognize that suppliers already are supposed to do this. PPL Electric has no way to ensure that this happens because when a customer enters CAP with a pre-existing EGS contract, PPL Electric is not privy to the supplier contract terms to know whether the customer is on a month-to-month contract. PPL Electric Statement No. 3-R, pp. 5-6. OCA's suggestion also does not address the transition period – up to 120 days – in which the OnTrack customer could still be paying a price above the PTC under the supplier contract and during which time CAP customers could be exceeding their CAP credits.

The OCA's recommendations do not adequately protect CAP customers or the Residential customers that pay for the CAP shortfall. The better approach to avoid CAP customers continuing to contract with EGSs for prices that are significantly above the PTC is to have customers end their shopping contracts before entering CAP.

¹³ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (Order entered February 9, 2018).

7. CAUSE-PA's suggested modifications to PPL Electric's proposal should not be adopted.

Like OCA, CAUSE-PA is also generally supportive of PPL Electric's proposal but with certain modifications. CAUSE-PA expressed concern with the possibility of customers incurring a termination fee to drop their supplier before they can enter CAP. CAUSE PA Statement No. 1, p. 28. PPL Electric cannot waive the termination fee for a customer that has already entered a non-CAP SOP shopping contract because PPL Electric has no authority over the terms of supplier contracts, including cancellation fees, for those contracts that are not part of the CAP SOP. However, when a shopping customer applies for CAP, PPL Electric will notify the customer that they should check with their supplier to determine if any early termination or cancellation fees will apply for ending their supplier contract. This way, customers can make an informed decision whether to enter OnTrack regardless of any termination fees or wait until the EGS contract expires to enter OnTrack. If a customer chooses to wait until their supplier contract ends, they will be eligible to reapply for CAP at that time. PPL Electric Statement No. 3-R, p. 8.

CAUSE-PA recommends amending the CAP application to include an option for customers to elect to be returned to default service without going through their supplier. CAUSE PA Statement No. 1, p. 29. This approach is problematic because it could result in a customer dropping their supplier without fully understanding the potential consequences, such as early termination fees. PPL Electric Statement No. 3-R, p. 9. CAUSE-PA also recommends that PPL Electric should require customers to switch to default service immediately after entering CAP instead of prior to entering CAP. CAUSE PA Statement No. 1, p. 29. PPL Electric disagrees with this approach because it could result in the unintended consequence of a customer entering CAP with a supplier only to then realize that they are responsible for a cancellation or early termination fee because they are required to drop the supplier. Rather, PPL Electric submits that the customer should be advised to contact their

supplier up front for information regarding possible termination fees because PPL Electric does not have this information for non-CAP SOP contracts. PPL Electric’s proposal protects customers from a scenario in which the customer cancels their supplier contract to enter CAP and then receives an unexpected cancellation fee from their supplier. PPL Electric Statement No. 3-R, pp. 9-10.

8. Conclusions with respect to CAP Shopping.

The problem of CAP customers shopping at prices above the PTC has been ongoing since the beginning of the retail electric market. In PPL Electric’s last default service proceeding, the Company implemented CAP SOP with the goal of mitigating the harms caused by unrestricted CAP shopping. Experience has shown that CAP SOP has been ineffective in preventing customers from shopping at rates above the PTC while in CAP. The Commission has recognized that not only are CAP customers harmed when they shop at rates above the PTC, other Residential customers also end up paying more to cover the additional costs. CAP customers shopping at rates above the PTC is inconsistent with the requirement that universal service programs be managed in a cost-effective manner. 66 Pa. C.S. § 2804(9). Based on the substantial evidence of harm to CAP customers and other Residential customers who subsidize CAP as a result of CAP shopping, PPL Electric respectfully requests that the ALJ and Commission adopt PPL Electric’s proposal to end the CAP SOP and require all CAP customers to take default service at the PTC.

C. INTERSTATE TRANSMISSION COST ALLOCATION METHODOLOGY

1. Introduction

PPL Electric, in response to questions from the Commission, explained in its direct testimony how it determines each customer’s contribution to Network Service Peak Load to establish customer “tags” which are used to determine the wholesale interstate transmission rates charged by PJM Interconnection, LLC (“PJM”) for Network Integration Transmission Service (“NITS”) to Load Serving Entities (“LSEs”) in PPL Electric’s service territory. *See* PPL Electric Statement No. 1, pp.

85-86. Specifically, on January 23, 2020 the Commission issued a Secretarial Letter that included a series of requests to EDCs for information to be included in each EDC’s next default service plan filing. Among other things, the Commission requested that “Large EDCs provide information and analysis on their Network Service Peak Load (‘NSPL’) and Peak Load Contribution (‘PLC’) cost allocation calculations and why each allocation is used.” PPL Electric Statement No. 1, p. 85; *see also Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, at Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020). In response, PPL Electric explained that for the NSPL it determines each customer’s contribution to the NSPL based on each customer’s usage during the five highest coincident peaks during the relevant 12-month period, applying loss and reconciliation factors, and averaging the results.¹⁴ PPL Electric Statement No. 5-R, pp. 3-4. PPL Electric uses the results of this allocation to establish a NITS tag, expressed in megawatts, for each customer. PPL Electric Statement No. 5-R, pp. 3-4.

IECPA and PPLICA propose that PPL Electric change the methodology used to create NITS¹⁵ tags. *See* PPLICA Statement No. 1, pp. 3-7; *see also* IECPA Statement No. 1, pp. 5-9. Specifically,

¹⁴ PPL Electric also explained how it allocates PLC, which is associated the generation capacity market. PPL Electric Statement No. 1, pp. 86-88. For this calculation, PPL Electric uses the 5 CP method but it is limited to summer months. PPL Electric Statement No. 1, pp. 86-88. No party has challenged this calculation, and it is not at issue in this proceeding.

¹⁵ According to FERC:

NITS is a “transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the PJM Region” PJM is required to include the Network Customer’s Network Load in transmission system planning, and transmission owners shall “endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer’s Network Resources to serve its Network Load” PJM provides “firm transmission service over the Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads”

The Network Customer designates both the Network Resources and the Network Loads for NITS. A Network Resource is any generating resource owned, purchased, or leased by a Network Customer, or subject to a firm power sales agreement with a Network Customer, and designated to serve Network Load. Network Load includes all load, retail and wholesale, served by the output of any Network Resource

both PPLICA and IECPA argue that PPL Electric should change its method for allocating transmission costs from a 5 CP methodology to a 1 coincident peak 1 CP methodology and recalculate the NITS tags accordingly. *See* PPLICA Statement No. 1, pp. 6-7; *see also* IECPA Statement No. 1, pp. 8-9.

There are substantial legal, factual and policy flaws with PPLICA's and IECPA's proposal. Chief among these flaws is that FERC has exclusive jurisdiction over both "the NITS charges assessed by PJM...as well as the related PPL methodology for determining Network Service Peak Load Contributions." *National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, FERC Docket No. EL18-78-000, 171 FERC ¶ 61,237 at P 34 (2020) ("*Amtrak Order*") (citing PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002); *Commonwealth Edison Co.*, 133 FERC ¶ 61,118 at PP 6, 11 (2010)). FERC's assertion of jurisdiction over both NITS rates and the methodology used by PPL Electric to determine NPSL contributions (*i.e.*, NITS tags) preempts Commission regulation.

Should the Commission wish to consider the merits of this issue or avoid the jurisdictional analysis, then the Commission should reject the 1 CP method and affirm PPL Electric's continued use of the 5 CP method for the following reasons: (1) PPL Electric's method properly reflects the seasonal nature of its peak load, *i.e.*, PPL Electric's peak can occur in the summer or the winter; (2) the 5 CP method is fully consistent with long-standing principles of cost causation; (3) the 5 CP method reduces the risk of rate volatility for individual customers when the peak shifts from summer to winter and vice-a-versa; (4) the 5 CP method is fully consistent with all relevant precedent; and (5)

designated by the Network Customer. The Network Customer's NITS charge is based on the sum of the Network Customer's individual wholesale and retail customer Network Loads at the time of the annual peak of the zone in which the load is located.

Amtrak Order at Paragraph Nos. 37-38.

the 5 CP method properly limits the ability of individual customers to completely avoid cost responsibility for the transmission system (and thereby effectively receive free transmission service) if they are able to shift their load to avoid the single system peak.

For these reasons and as more fully explained below, the Commission lacks jurisdiction to adopt PPLICA's and IECPA's request to alter PPL Electric's methodology to determine NPSL contributions and in the alternative, the Commission should reject these requests on the merits.

2. Background Regarding the Calculation of NITS Rates.

In order to better understand the crux of the dispute regarding PPL Electric's allocation of transmission costs to LSEs using a 5 CP methodology, it is necessary to understand the role of PJM, PPL Electric, EGSs operating in PPL Electric's service territory, and industrial customers in PPL Electric's service territory.

PPL Electric owns transmission facilities throughout its service territory in Pennsylvania; however, those transmission facilities are operated by PJM. PJM is a Regional Transmission Operator ("RTO") authorized by FERC to direct the operation of the interstate transmission system and coordinate the movement of wholesale electricity in all or parts of thirteen states and the District of Columbia. PPL Electric Statement No. 5-R, p. 7.

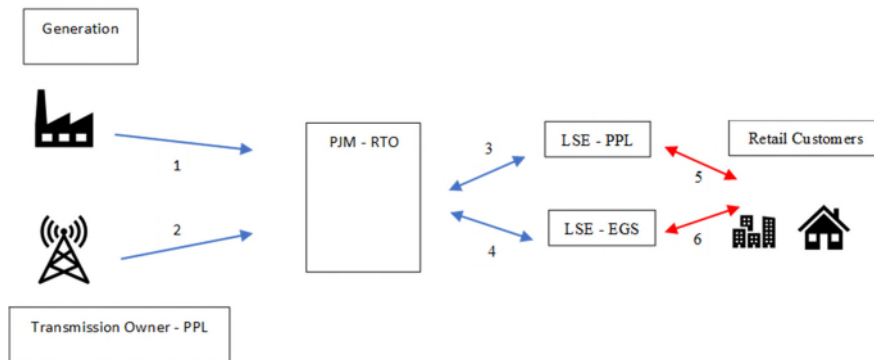
PPL Electric serves two roles within the transmission market. First, as noted above, PPL Electric owns transmission facilities that are operated by PJM. PPL Electric's transmission rate is set via a formula rate approved by FERC, and its transmission facilities are used to provide transmission service to LSEs, who provide service to retail customers. PJM charges these rates to LSEs and then pays the amounts collected to PPL Electric in its role as the transmission owner. PPL Electric Statement No. 1, p. 88.

Second, PPL Electric acts as an LSE within the PJM wholesale power market, by purchasing wholesale electric power and transmission service from PJM, which it then sells to retail customers

as the default service provider in its Pennsylvania electric service territory. PPL Electric recovers the cost of providing default service through its Commission-approved Generation Service Charge (“GSC”) and Transmission Service Charge (“TSC”). PPL Electric uses the 5 CP method to allocate transmission costs to its retail customers.¹⁶

The other major LSEs in PJM are Electric Generation Suppliers (“EGSs”) who purchase generation and transmission service through PJM and then resell that electricity to Pennsylvania retail shopping customers, pursuant to private contracts between the EGSs and owners. Importantly, PPLICA and IECPA are composed of industrial customers that are all shopping customers who take both generation and transmission service from EGSs and not PPL Electric.

The functions of PJM, PPL Electric as a transmission owner and the role of LSEs, are graphically depicted below.



→ **Wholesale Market**
 1 – Generator provides electricity to be sold into wholesale market.
 2 – Transmission Owners coordinate with PJM and PJM manages the wholesale sale and transmission of power.
 3 – PJM coordinates the transmission of power over transmission owners' facilities. LSE (PPL as the default service provider) pays PJM for NITS. PJM then pays the Transmission Owner based on the FERC-approved formula rate.
 4 – PJM coordinates the transmission of power over transmission owners' facilities. LSE (EGS as energy supplier) pays PJM for NITS. PJM then pays the Transmission Owner based on the FERC-approved formula rate.
→ **Retail Market**
 5 – LSE (PPL as the default service provider) supplies power to retail customer. Retail customer pays for generation service at the Price To Compare through the GSC; retail customer pays for transmission service, i.e., NITS, through the TSC.
 6 – LSE (EGS) supplies power to retail customer. Retail customer pays the EGS for the generation service and transmission service via privately negotiated energy supply contract with EGS.

¹⁶ No party has challenged the use of the 5 CP method for calculating the TSC.

The specific cost allocation methodology challenged by IECPA and PPLICA relates to network transmission service, numbers 3 and 4 in the chart, both of which are a part of the wholesale market and as explained below, subject to the exclusive jurisdiction of FERC.

More specifically, PJM charges all load serving entities in the PPL Electric Zone, including PPL Electric as an LSE, for transmission service (NITS) and remits the proceeds to PPL Electric as transmission owner pursuant to a PPL Electric FERC formula rate. *See* PPL Electric Statement No. 5-R, p. 4. PJM calculates the NITS rate based on total zone transmission costs divided by the zonal system peak for the relevant zone. This produces an overall cost per megawatt for NITS in a particular zone. As applied to PPL Electric, PJM multiplies the total transmission costs for the PPL Zone by the 1 CP for the PPL Zone to establish the NITS charge per megawatt. PPL Electric's role in this process is to establish each individual customer's contributions to NSPL. PPL Electric does this by calculating each customer's contribution to the average of its 5 highest coincident peaks during the relevant 12-month period and then "scales up" the result to equal the 1 CP for the PPL Zone. PPL Electric Statement No. 5-RJ, pp. 2-3.¹⁷ This assignment is used to establish a NITS tag for each customer, reflecting the customer's contribution to peak load. PJM then uses this tag to determine the NITS charge for LSEs.

Importantly, all of the charges and calculations described above relate solely to interstate transmission service and not to retail transmission service. With respect to retail transmission service, PPL Electric provides retail transmission service to default service customers, allocates those costs to customer classes based on the 5 CP method and collects these costs through its PUC-approved Transmission Service Charge ("TSC"). For shopping customers, EGSs provide retail generation and

¹⁷ By definition, the average of the 5 highest coincident peaks will be less than the highest coincident peak. This scaling process assures that the NITS charge calculated by PJM using the 1 CP for the PPL Zone produces the full revenue requirement for transmission service. *See* PPL Electric Statement No. 5-RJ, pp. 2-3.

transmission service to their customers and charge for that service through private contracts, over which the Commission has no jurisdiction. No party has challenged the use of 5 CP method for allocating retail transmission costs in the TSC for default service customers. And, of course, no party has challenged the retail transmission rates EGSs charged to shopping customers since those rates are set by private contract over which the Commission has no jurisdiction.

3. The Commission Has No Jurisdiction Over The Request To Require PPL Electric to Use A 1 CP Methodology To Calculate Interstate Transmission Rates.

a. FERC Has Exclusive Jurisdiction Over Interstate Transmission Service Including The Calculation Of NITS Rates.

The Federal Power Act authorizes FERC to regulate the transmission of electric energy in interstate commerce. 16 U.S. § 824. The Supreme Court of the United States held the following with respect to FERC’s jurisdiction under the Federal Power Act:

In particular, the FPA obligates FERC to oversee all prices for those interstate transactions and all rules and practices affecting such prices. The statute provides that “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with” interstate transmissions or wholesale sales — as well as “all rules and regulations affecting or pertaining to such rates or charges” — must be “just and reasonable.” §824d(a).

FERC v. Elec. Power Supply Assoc., 136 S. Ct. 760, 767 (2016). Moreover, the Supreme Court of the United States has held that FERC’s jurisdiction under the Federal Power Act is exclusive. *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016).

In addition, FERC’s jurisdiction over unbundled interstate transmissions of electricity extends to both wholesale and retail transactions. *New York v. FERC*, 535 U.S. 1, 19-21 (2002). In *New York v. FERC*, the Supreme Court of the United States held:

The Federal Power Act thus unambiguously authorizes FERC to assert jurisdiction over two separate activities—transmitting and selling. It is true that FERC’s jurisdiction over the sale of power has been specifically confined to the wholesale market. However, FERC’s

jurisdiction over electricity transmissions contains no such limitation. Because the FPA authorizes FERC's jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC's exercise of this power is valid.

Id. at 19 – 20. (emphasis in original text). In this respect, the Federal Power Act preempts state jurisdiction over interstate transmission of electricity. *New York*, 535 U.S. at 18-19.

Relatedly, the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, invalidates state law that interferes with or is contrary to federal law. *Farina v. Nokia, Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). In *Hughes v. Talen*, the Supreme Court of the United States explained:

The Supremacy Clause makes the laws of the United States “the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U. S. Const., Art. VI, cl. 2. Put simply, federal law preempts contrary state law. “Our inquiry into the scope of a [federal] statute’s pre-emptive effect is guided by the rule that the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Altria Group, Inc. v. Good*, 555 U. S. 70, 76, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008) (internal quotation marks omitted). A state law is preempted where “Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law,” *Northwest Central Pipeline Corp. v. State Corporation Comm’n of Kan.*, 489 U. S. 493, 509, 109 S. Ct. 1262, 103 L. Ed. 2d 509 (1989), as well as “where, under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Crosby v. National Foreign Trade Council*, 530 U. S. 363, 373, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000)

Id. at 1297. Therefore, the Supreme Court of the United States held in that Maryland’s payments of subsidies to certain generators was preempted by FERC’s exclusive jurisdiction over wholesale power sales under the Federal Power Act.

Likewise, in *New York v. FERC*, the Supreme Court of the United States held that FERC’s open access transmission requirements in Order No. 888, which required public utilities that had unbundled rates to transmit competitor’s energy on the same terms that the utility transmitted their

own electricity, preempted state regulation over unbundled interstate transmissions of electricity. *New York*, 535 U.S. at 18-24.

More recently, FERC specifically analyzed the nature of its jurisdiction of PPL Electric's allocation of transmission charges using the 5 CP methodology in the *Amtrak Order*. In that proceeding, Amtrak alleged that it was being assessed unreasonable and unjust PPL-related charges for NITS and that PJM, which has responsibility for administering the PJM Tariff, had not prevented PPL Electric's unjust, unreasonable, and unduly discriminatory actions. *Amtrak Order*, at P 2. FERC expressly asserted jurisdiction over all claims raised by Amtrak and held:

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

Amtrak Order, at Paragraph 34 (emphasis added) (citing PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002); *Commonwealth Edison Co.*, 133 FERC ¶ 61,118 at PP 6, 11 (2010)). Importantly, FERC expressly held that it not only had jurisdiction over the NITS rates charged by PJM, but also the related PPL Electric methodology used to determine NPSL contributions. Therefore, the Commission is preempted from exercising jurisdiction over (a) the capacity and transmission charges assessed by PJM and (b) PPL Electric's methodology used to determine the NITS tag and ICAP tag that factors into these wholesale charges.

b. The Commission Lacks Jurisdiction Over The Rates Charged By An EGS To Retail Customers Via A Private Contract.

Importantly, many of PPL Electric's large commercial and industrial customers (such as the customers that comprise PPLICA and IECPA) shop for retail electrical service and, therefore, receive generation and transmission services from EGSs rather than PPL Electric. These rates are established

by contract and, as explained below, are not subject to the Commission's jurisdiction. The rates and terms of EGS service to customers are not regulated by the PUC. EGSs are not public utilities. 66 Pa. C.S. § 102. In addition, the Supreme Court of Pennsylvania has held that the Commission can only regulate EGSs under Sections 2809 – 2810 of the Public Utility Code, 66 Pa. C.S. §§ 2809 – 2810. *Delmarva Power & Light Co. v. Commonwealth*, 582 Pa. 338, 870 A.2d 901 (Pa. 2005).

Likewise, the Commission has explained:

At the outset, we note that the Commission does not have traditional ratemaking authority over competitive electric generation suppliers and does not regulate competitive supply rates. The Commission also does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of contract has occurred.

Commonwealth of Pa., et. al. v. IDT Energy, Inc., Docket No. C-2014-2427657, 2014 Pa. PUC LEXIS 715 (Order entered Dec. 18, 2014).

As noted above, EGSs are also LSEs who are responsible for paying the wholesale capacity and transmission costs charged by PJM pursuant to PJM's FERC-approved tariffs. Indeed, the EGS Parties' witness Mr. Kallaher explained that an EGS, acting as an LSE, is responsible for paying the NITS charge on a customer's behalf and "must include in its [contract] pricing some accounting" for the charge. *See* EGS Parties' Statement No. 1, pp. 34-35. Mr. Kallaher further explained that the NITS charge is for a "service that provide[s] energy consumers access to generation supply" and that "NITS rates are formula-based rates adjusted annually through FERC-approved formula rate filings." EGS Parties' Statement No. 1, p. 30 (emphasis added).

c. The Commission Has No Jurisdiction To Grant The Relief Sought By PPLICA And IECPA.

Both PPLICA and IECPA have sought to leverage PPL Electric's Default Service Petition to revise the wholesale rates charged by PPL Electric and the method used by PPL Electric to calculate NSPLs used by PJM to assign wholesale interstate transmission costs to LSEs. However, the

Commission's jurisdiction over both the rate (i.e., the NITS tag) and the methodology used to determine that rate (i.e., the 5 CP methodology) are subject to the exclusive jurisdiction of FERC. *See, e.g., Amtrak Order*, at P 34. Moreover, to the extent that the members of PPLICA and/or IECPA purchase electric supplies at retail from EGS rather than PPL Electric, such purchases are made pursuant to private contracts that the Commission is not authorized to regulate by the Public Utility Code. *Commonwealth of Pa., et. al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657, 2014 Pa. PUC LEXIS 715 (Order entered Dec. 18, 2014). In either scenario, PPLICA and IECPA have sought relief that the Commission is without jurisdiction to grant and, therefore, their requests should be denied.

D. THE COMMISSION SHOULD AFFIRM PPL ELECTRIC'S USE OF THE 5 CP METHODOLOGY.

1. Introduction

To the extent that the Commission determines to resolve the cost allocation methodology issue on the merits, the Commission should affirm PPL Electric's long-standing use of the 5 CP methodology and reject the 1 CP method proposed by IECPA and PPLICA. These parties repeatedly mischaracterize the issue presented as one of cost causation, asserting that the 1 CP method follows cost causation and PPL Electric's 5 CP method does not. This is not accurate. All parties agree that transmission costs are demand related costs. The question presented is the selection of a reasonable cost allocation methodology that adequately addresses the seasonal load and operating conditions on PPL Electric's system, avoids large year to year swings in transmission rates and prevents sophisticated entities from manipulating the process to avoid reasonable transmission cost responsibility. As explained below, the 5 CP method meets these criteria; the 1CP method does not.

In reviewing this issue, it is important to note that while PPL Electric has the burden of proof to support its Petition, Section 332(a) of the Code establishes a separate burden of proof for those entities that propose a rule or order. 66 Pa.C.S. § 332(a). Although the ultimate burden of proof does

not shift from the utility, a party proposing a change to a ratemaking claim bears the burden of presenting some evidence or analysis demonstrating the reasonableness of the adjustment. *See, e.g., Pa. P.U.C. v. PECO*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. P.U.C. v. Brezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991). The Commission has held that a utility has the burden of proving entitlement to its own cost allocation proposal, but the burden of proving that changes should be made to the current cost allocation methodology rests on the challenging party to show the reasonableness of the alternative proposal. *See Pa. P.U.C. v. PECO Energy Co. – Electric Division*, Docket No. R-2018-3000164 *et al.*, Opinion and Order at p. 67 (December 20, 2018). The Commonwealth Court recently affirmed this standard in *NRG Energy, Inc. v. Pa. PUC*, 2020 Pa. Commw. LEXIS 420 (Cmwlth Ct. 2020). Further, a party challenging a previously approved provision bears the burden to demonstrate that the Commission’s prior approval is no longer justified. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ’s discussion on burden of proof in a general base rate case proceeding).

In this proceeding PPL Electric has not proposed to change the methodology it has consistently relied upon to allocate costs in the three most recent DSP proceedings prior to the current proceeding. Rather, PPLICA and IECPA have proposed a change to the cost allocation methodology, and therefore they bear the burden of showing that their proposal to adopt the 1 CP methodology is reasonable and superior to PPL Electric’s long-standing, PJM authorized 5 CP method. As described below, PPLICA and IECPA have failed to meet their burden in this proceeding.

2. PPL Electric’s 5 CP Methodology Properly Reflects The Seasonal Nature Of Its Peak Loads.

PPL Electric is responsible for calculating its transmission revenue requirement and utilizes a FERC-regulated formula rate to do so. PPL Electric is also responsible for allocating transmission

costs to Load Serving Entities, who provide wholesale interstate transmission service to nearly 1.5 million retail individual customers, and for doing so in a way that is reasonable and consistent with the operating and load characteristics of its service territory. In order to assign transmission costs to Load Serving Entities, PPL Electric uses the 5 CP methodology to determine each customer's responsibility for its share of transmission costs. PPL Electric Statement No. 5-RJ, p. 3.

The PPL Zone experiences peaks during both the winter and summer seasons. The Company has historically peaked during extended periods of either extreme cold, where electric heating is in use, or extended periods of extreme heat and humidity, where air conditioning is in use. PPL Electric Statement No. 5, p. 6. The 5 CP method provides reasonable assurance that cost allocation will reflect both summer and winter peaks. The 1 CP method does not.

It has long been recognized that the single system peak method of allocating demand costs may fail to reflect the diversity of peak loads on a particular system, and that multiple peaks should be considered in the analysis. As stated in the 1973 NARUC *Electric Utility Cost Allocation Manual* (commonly referred to as the "Green Book") (emphasis added):

The methods of allocating costs based on the use of coincident demands consist of the allocation of expense and rate base items in accordance with the demand of each customer group at [the] time of system peak or peaks. These methods of allocating demand costs are premised on the assumption that the capacity requirement of the system is determined by the peak load or loads and therefore demand-related costs should be apportioned in accordance with the allocated group demand at [the] time of system peak or peaks.

Initially, the annual system peak only was used as a basis for such allocation (peak responsibility method). However, many of the present electric utilities have two or more significant system peaks. Therefore, other methods have developed to reflect these multiple type peaks where appropriate.

In these modified peak responsibility methods, demand-related costs are allocated to each customer group in proportion to the customer group coincident demands at the time of two or more monthly system peaks. Where there are significant summer and winter peaks, two or

more peaks considered to represent loads in the most critical months have been used. The use of allocations based on the average or 12 monthly coincident demands at the time of system monthly peak loads recognize the important effect on the total capacity requirement of scheduling maintenance for generation equipment throughout the year. The relationship between the minimum monthly peak load, the 12-month average peak load, and the maximum monthly system peak load may also be significant in utilizing averages of monthly system peaks. Such data would provide the basis for analysis of system operations to determine whether the average of the 12-months' peaks is, in fact, the most equitable method of apportioning diversity benefits. Another factor to be considered in connection with a peak responsibility method is the relative size and frequency of the peaks. For example, in some areas of the country, system peaks air-conditioning loads may result in monthly system peaks which vary by more than two to one. In such cases, consideration should be given to attributing greater weight to the peak months or to separate allocations for any specifically designed capacity for meeting such peak loads.

PPL Electric is one of the “many . . . electric utilities” that have “two or more significant system peaks.” Therefore, as referenced in the NARUC Cost Allocation Manual, the 1 CP method is not appropriate and a method using multiple peaks should be adopted.

Applying this analysis, the Commission has repeatedly adopted multi-peak methods for allocating demand costs. For example, the Commission has previously approved the 12 CP method for demand costs for PPL Electric, *Pa. PUC v. Pennsylvania Power and Light Company*, Docket No. R-822169, *et al.*, 1983 Pa. PUC LEXIS 22 (order entered August 19, 1983); and the 4 CP method for PECO Energy, *Pa. PUC v. PECO Energy Company*, Docket No, R-00973877 *et al.*, 1997 Pa. PUC LEXIS 26 (Order entered May, 22, 1997). PPL Electric’s use of the 5 CP method is entirely consistent with this precedent and properly reflects the seasonal differences in peak loads on PPL Electric’s system.

PJM has recognized that utilities have different system needs and enables the use of the 5 CP methodology by providing the underlying data for the peak periods. PJM Manual 19, Section 4,

provides a description of the identification and calculation of PJM unrestricted coincident peaks as follows:¹⁸

4.3 Peak Load Allocation (5CP)

Zonal weather-normalized RTO-coincident summer peak loads are allocated to the wholesale and retail customers in the zones using EDC-specific methodologies that typically employ the customer's shares of RTO actual peaks. The resulting Peak Load Contributions are then used in the determination of capacity obligations. PJM establishes and publishes information, referred to as the 5CP, to aid EDCs in the calculation of Peak Load Contributions (also known as "tickets"). For each summer:

- Hourly metered load and load drop estimate data are gathered for the period June 1 through September 30
- RTO unrestricted loads are created by adding load drop estimates to metered load
- From the unrestricted values, the five highest non-holiday weekday RTO unrestricted daily peaks (5CP) are identified

This language recognizes that the 5 CP methodology is likely to be relied upon by the members of PJM. In fact, within PJM there are a number of other utilities that use the 5 CP methodology. *See, e.g., Commonwealth Edison Co.*, 133 FERC ¶ 61,118 (2010); *Duke Energy Ohio, Inc.*, 155 FERC ¶ 61,163 (2016); *PJM Interconnection, L.L.C.*, Docket No. ER14-2340-000 (Aug. 7, 2014) (accepting Attachment M-2 of PECO Energy Company); *PJM Interconnection, L.L.C.*, Docket No. ER14-2339-000 (Aug. 6, 2014) (accepting Attachment M-2 of Baltimore Gas and Electric Company); *Duke Energy Ohio, Inc.*, Docket No. ER16-1150-001 (Jul. 27, 2016) (accepting Attachment M-2 of Duke Energy Ohio, Inc.). FERC itself has recently affirmed that transmission providers may adopt alternate allocation proposals. *See PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 169 FERC ¶ 61,041 (Oct. 17, 2019) *citing* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736 (“[W]e recognize that alternate allocation proposals may have merit and welcome their submittal by

¹⁸ Language taken from PJM Manual 19, referenced in PPL Electric Statement No. 1, p. 87, note 49.

utilities in future rate applications. They will be evaluated on a case-by-case basis and decided on their merits.”).

The use of five data points to determine the customer’s obligation reduces the chance that a group of similarly situated customers will bear a disproportionate share of transmission system costs. PPL Electric Statement No. 5, p. 5. The 5 CP methodology better reflects an individual customer’s typical peak period usage, which protects all customers from the cost impacts of atypical usage during the single peak hour.

3. PPL Electric’s Methodology Is Fully Consistent With Cost Causation Principles.

A principal argument raised by IECPA and PPLICA is that PPL Electric’s 5 CP method is inconsistent with PJM’s use of the 1 CP method and therefore should be rejected. As explained below, PPL Electric’s 5 CP method is fully consistent with relevant cost causation principles and should be approved.

Cost is the “polestar” of Pennsylvania rate regulation. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020-21 (Pa. Cmwlth. 2006) (“*Lloyd*”). As the Court recognized in *Lloyd*, there is no single correct method of cost allocation, because cost allocation requires a considerable amount of judgement; it is an art rather than a science. *See, e.g., Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185 (Order dated Aug. 19, 1983). Where it has jurisdiction, the Commission has wide discretion on technical issues, particularly complex financial determinations and weighing and interpreting statistical and economic evidence, such as the appropriate methodology for allocating zone-wide transmission costs to individual customers. *See, e.g., McCloskey v. Pa. PUC*, 225 A.3d 192, 202-03 (Pa. Cmwlth. 2020); *see also Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087, 1095 (Pa. Cmwlth. 2015).

The primary goal of a cost allocation study is to allocate costs to customers or classes of customers based on the factors that cause a cost to be incurred or cause a cost to vary. As explained above, PPL Electric is a mixed peaking utility and can record system coincident peaks in the summer or the winter. Transmission costs are incurred to meet peak demand whenever it may occur. The 5 CP method reasonably can be expected to capture PPL Electric's system peaks whether they occur in the summer or the winter and therefore is consistent with fundamental principles of cost causation. The 1 CP method, by definition, cannot capture both summer and winter peaks and is not consistent with principles of cost causation.

In order to deflect attention from this fundamental flaw in the 1 CP method, PPLICA and IECPA repeatedly reference PJM's use of the 1 CP method to calculate NITS charges. This argument fails to reflect the different roles played by PJM and PPL Electric. As explained by Mr. Hartman:

PPL Electric and PJM are fulfilling different roles in utilizing these methodologies. PPL Electric's responsibility is to assign costs to customers and provide those values to PJM. PJM's responsibility is to collect the identified dollars from the suppliers serving the customers in order to pay the transmission owners. PPL Electric uses the 5 CP methodology to determine each customer's responsibility for their share of transmission costs on a typical peak day. PJM uses the 1 CP value to ensure that the transmission costs collected from suppliers are equal to the total amount owed to the transmission owner. PJM's approach ensures no reconciliation exists between collected dollars and dollars owed.

PPL Electric Statement No. 5-RJ, pp. 2-3.

IECPA and PPLICA also argue that these costs are caused by PJM's 1 CP allocation methodology, and therefore the use of a different methodology does not reflect cost causation principles. IECPA Statement No. 1, pp. 7-8; PPLICA Statement No. 1, p. 5. This is not correct. Rather, the transmission costs are incurred to provide transmission service on the PPL system which was built to meet demand on the PPL Electric system throughout the year. The demand allocator PPL Electric selects should reflect that its transmission costs are caused by peak demands occurring

throughout the year, so that these transmission costs are fairly recovered from all customers consistent with their use of the PPL Electric transmission system. Said simply, PJM's 1 CP cost allocation methodology does not reflect the transmission cost causation of customers in the PPL Zone.

It also should be noted that PPL Electric cannot simply adopt the 1 CP utilized by PJM. The sum of the customer tag values will never equal the single peak from the prior year. This is because the peak values are calculated using meters located at substations which measure generation and/or energy flow entering and exiting the PPL Zone, and the customer tags are calculated using individual customer meters. PPL Electric Statement 5-R, p. 3. Additionally, the mix of customers changes over time, because businesses or residences enter or exit the PPL Zone and establish or cancel their service with the Company, and so the allocation must be continuously adjusted. PPL Electric Statement 5-R, p. 3. Despite these factors, the total submission values must equal the single peak in order to collect the transmission costs from all Load Serving Entities in total. PPL Electric Statement 5-R, p. 3. The Company must use scaling, which is the process of allocating an equal percentage share to all suppliers to account for the difference between the single peak (target) value and the sum of all customer tag values, and would need to use scaling whether it used a 1 CP methodology or a 5 CP methodology to align its values with those identified by PJM.

Finally, the question of reliance on a 1 CP methodology or a 5 CP methodology is simply a choice of demand allocators. There are three parts to a cost of service study: functionalization, classification, and allocation. *See Pa. P.U.C. v. PECO Energy Co. – Electric Division*, Docket No. R-2018-3000164 *et. al.*, Opinion and Order at p. 72 (December 20, 2018). On the first of these three parts, the utility determines whether costs are generation, transmission, or distribution related. Once the costs are functionalized, the utility must then classify the costs as either customer related, demand related, or energy related. Finally, the utility allocates the costs using its desired methodology. Where

the Commission has jurisdiction, it is authorized with broad discretion to select an allocation methodology.

PPL Electric has fully supported the ways in which the 5 CP methodology is the appropriate cost allocation methodology to address its particular operating circumstances. The 5 CP methodology addresses the Company's need for a season-neutral approach that ensures all customers are paying their fair share of the transmission costs incurred to provide reliable service. The public interest is served by both the appropriate allocation of costs among customers and the recovery of those costs through the correct rates. 66 Pa. C.S. §§ 1301, 1304. *See also Pa. P.U.C. v. PECO Energy Co. – Electric Division*, Docket No. R-2018-3000164 *et. al.*, Opinion and Order at p. 69 (December 20, 2018). The Competition Act does not require a specific default service rate design methodology. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, 2012 Pa. PUC LEXIS 1348, *9 (Pa. PUC 2012). PPL Electric has used the 5 CP method over the past nine years without any expressed concern that the Company's methodology violates cost causation principles. PPL Electric is using the 5 CP methodology to accurately charge customers for their share of transmission costs, and to ensure customers pay for the cost of transmission system improvements that benefit them.

4. The 1 CP Methodology Increases Rate Instability and Uncertainty.

Rate stability is an important function of rate design. The Commission has held that “sound ratemaking practices should promote stability and predictability of rates.” *See, e.g., Pa. P.U.C., et. al. v. National Fuel Gas Distribution Corporation*, Docket No. R-2017-2582461, at p. 40 (Order entered July 12, 2017). Good ratemaking seeks to achieve “stability and predictability of the rates themselves, with a minimum of unexpected changes seriously adverse to ratepayers and with a sense of historical continuity.” Principles of Public Utility Rates, Second Edition, Bonbright, James C.,

Albert Danielsen, David R. Kamerschen: Public Utilities Reports, Inc., 1988, p. 383. Changes to the cost allocation methodology will disrupt rate stability, revenue allocation and rate design, which should be avoided. FERC has specifically recognized that reducing rate volatility is a legitimate basis for selecting an appropriate cost allocation methodology. *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 172 FERC ¶ 61,054 at Paragraph 46 (2020) (In adopting a 12 CP methodology and rejecting a 1 CP methodology, FERC found “Dominion provided ample evidence that such load reductions lead to yearly volatility in transmission usage charges, and to cost avoidance and cost shifting by its Network Customers.”).

The use of the 1 CP methodology will open customers up to significant rate volatility. For example, if PPL Electric were required to use the 1 CP methodology and the single peak occurs during a summer month, some of PPL Electric’s large customers, such as ski resorts, who would have little to no use of the transmission system during the summer, would receive little or no allocation of transmission costs. However, and conversely, if the 1 CP occurred in the winter months, ski resorts would receive a much higher allocation of transmission costs. The use of the 5 CP methodology reduces the rate volatility customers will experience in the allocation of transmission costs, particularly to seasonal use customers. It is important to ensure that all customers, including those with more significant seasonal use, pay a fair allocation of the costs of maintaining and improving the transmission system. PPL Electric Statement No. 5-RJ, p. 4.

Using the 1 CP method in the PPL Zone could cause customers to experience large swings in their cost allocation if the single peak occurred in a different season than the one previously used to establish transmission cost responsibility. Further, when a customer shifts costs, either through seasonal swings or manipulation, then other customers are left paying a larger share of the total transmission cost allocation. These potentially significant fluctuations, which are not tied in any way to overall transmission cost causation, indicate a cost allocation methodology that is improper. These

potentially significant fluctuations can be harmful to customers, and violate the general preference expressed by the Commission for rate stability. *See, e.g., Pa. P.U.C., et. al. v. National Fuel Gas Distribution Corporation*, Docket No. R-2017-2582461, at p. 40 (Order entered July 12, 2017).

The 5 CP methodology, unlike the 1 CP methodology, reduces the likelihood of significant cost shifts or swings. Utilizing season neutral peaks reduces or eliminates concerns with seasonal use. The use of the 5 CP methodology, while it does not entirely eliminate the risk of rate volatility, does make it much more unlikely that a customer will either unintentionally or intentionally shift their transmission cost obligations. Finally, the use of an average approach creates a more representative metric by which to allocate transmission costs, so that customers are less likely to be unfairly allocated costs that are greater or less than their fair share.

As PPL Electric has shown, its methodology allocates costs fairly to customers and reduces rate instability compared to the 1 CP method.

5. The 1 CP Methodology Will Allow Certain Customers To Avoid Responsibility For Their Use Of The PPL Electric Transmission System.

If the 1 CP method is adopted, it will provide certain larger, more sophisticated customers with the opportunity to seek to forecast when the 1 CP will occur and reduce or shut down their operations during that period. PPL Electric Statement No. 5-RJ, pp. 6-7. If successful, these customers would substantially reduce or eliminate their contribution to the NSPL and correspondingly reduce or eliminate their transmission charges. PPL Electric Statement No. 5-RJ, p. 5. This loss of revenue would be transferred to other customers who will pay higher transmission rates. PPL Electric Statement No. 5-RJ, p. 5.

Most PPL Electric customers cannot forecast and reduce load during peak periods. PPL Electric Statement No. 5, p. 5. However, any customer who is able to do so will avoid paying for transmission costs, and will shift their share of the payment responsibility to other customers, because

the total annual transmission costs are not meaningfully reduced. PPL Electric Statement No. 5-RJ, p. 5. As acknowledged by Mr. Ciarlone and Mr. Peters, having the ability to forecast the peak period and reduce system use requires resources, sophistication, and some amount of risk in order to achieve atypical load during the single peak hour. IECPA Statement No. 1-SR, p. 5; PPLICA Statement No. 1-SR, pp. 3-4. If a single atypical peak were to be used to allocate transmission costs, rather than the 5 CP average, it would be possible for customers with atypically low usage to avoid paying for maintaining and improving the transmission system. PPL Electric Statement No. 5-RJ, p. 4. This would unfairly burden the many PPL Electric customers who cannot shift their use during a single peak period. PPL Electric's 5 CP methodology is less susceptible to this type of cost shifting behavior.

In essence, PPLICA and IECPA are asking the Commission to adopt a cost allocation methodology which would make it easier for certain customers to avoid transmission costs that should properly be allocated to them. PPL Electric Statement No. 5-RJ, pp. 6-7. It is undisputed that a 1 CP methodology makes it easier for a customer to reduce usage during the single period used to allocate costs, resulting in the customer paying lower transmission rates, while not actually reducing that customer's cost impact on PPL Electric's system. PPL Electric Statement No. 5-RJ, p. 5. It is worth noting that IECPA's witness stated that customers undertake significant costs and risk in reducing load during peak periods. IECPA Statement No. 1-SR, p. 5. This fact indicates that customers who are reducing load during peak periods are changing their typical business operations to attempt to avoid future transmission costs. If customers want to reduce their future transmission cost obligations, using PPL Electric's 5 CP methodology will encourage these customers to invest in energy efficiency that would reduce their usage amounts year-round, which would be reflected by a reduction in their cost allocation value and would produce more overall benefits. PPL Electric Statement No. 5-RJ, p. 6.

FERC recently recognized the risks of the load and cost shifting that occurs under the 1 CP methodology. Specifically, FERC approved the use of a 12 CP cost allocation methodology in *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 169 FERC ¶ 61,041 (Oct. 17, 2019). In its Order on Rehearing in that proceeding, FERC noted that the 1 CP method advanced by protesting parties will lead to load reduction during the coincident peak that “obscures actual transmission usage and results in cost shifting and avoidance among customers, as well as yearly volatility in service charges.” *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 172 FERC ¶ 61,054 at Paragraph 44 (2020).

The 1 CP methodology is vulnerable to inappropriate and discriminatory actions that will shift costs among customers. This outcome is far less likely under the 5 CP methodology which relies on multiple peaks to determine a customer’s cost responsibility for a transmission system that was designed to meet both summer and winter peaks.

6. PPL Electric’s Long-Standing Methodology Should Continue.

As part of this proceeding, PPL Electric did not propose to alter its current methodology for allocating transmission costs, which has been the basis for Company’s approach since 2011. PPL Electric believes that the 5 CP methodology strikes an appropriate balance in allocating costs that are incurred for the benefit of all customers while limiting the ability to shift costs between customers.¹⁹ In considering whether to modify a long-standing practice, agencies are not strictly bound by their past precedent. *Pa. Trout v. Dep’t Env’tl. Prot.*, 863 A.2d 93, 107 (Pa. Cmwlth. 2004). However, an agency “must render consistent opinions and should either follow, distinguish or overrule its own precedent.” *Id.* Moreover as noted above, IECPA and PPLICA, as proponents of a change in

¹⁹ PPL Electric does not contend that the 5 CP is the only reasonable method for allocating transmission costs or that the 5 CP method could never be changed if there were a valid reason to do so. It is clear, however, that PPLICA and IECPA have not shown that the 1 CP method is reasonable and appropriate given the specific operating conditions on PPL Electric’s system.

methodology, bear the burden of producing evidence to support their claim. They have failed to meet this burden and their 1 CP proposal should be rejected.

In particular, IECPA and PPLICA do not show how their methodology would impact customers. They do not provide any cost of service studies, or any cost impact studies of any kind. Both witnesses assert that the Company's use of the 5 CP methodology does not align with PJM's 1 CP methodology, but they provide no quantification or explanation for what that means. They do not address PPL Electric's testimony noting that any methodology would require a mathematical adjustment, and that no methodology will ever exactly match the PJM identified peak without such an adjustment. Further, and more critically, IECPA and PPLICA do not provide any basis for concluding that the 1 CP methodology more accurately aligns cost allocation with cost causation. In fact, just the opposite is true.

The lack of such evidence is a critical error. The Commission has regularly based its choice of a cost allocation methodology on a rationale that considers factors such as economic impact, rate continuity, and service considerations in addition to cost. *See, e.g., Pa. PUC, et al. v. Metropolitan Edison Co.*, Docket No. R-822249, et. al., p. 172 (October 19,1983); *Pa. PUC, et al. v. Duquesne Light Company*, Docket No. R-821945, et al., p. 73 (Jan. 28, 1983). When considering how to develop an appropriate rate structure, the Commonwealth Court has held that:

Rate structure, which is an essential, integral component of rate-making, is not merely a mathematical exercise applying theoretical principles. Rate structure must be based on the hard economic facts of life and a complete and thorough knowledge and understanding of all the facts and circumstances which affect rates and services; and the rates must be designed to furnish the most efficient and satisfactory service at the lowest reasonable price for the greatest number of customers, i.e., the public generally.

Philadelphia Suburban Transportation Co. v. Pa. P.U.C., 3 Pa. Cmwlth. Ct. 184, 196, 281 A.2d 179, 186 (1971). PPLICA and IECPA have presented no evidence to meet this standard. On the contrary,

adoption of their 1 CP proposal will benefit a few customers and harm the rest and will not produce “the lowest reasonable price for the greatest number of customers, *i.e.*, the public generally.”

Rather than support their methodology by showing its impact on all customers, both witnesses make statements that show the inherent flaws of the 1 CP proposal. Mr. Peters states in his testimony that if PPL Electric continues to use the 5 CP methodology, customers with load management capabilities will be just as incentivized to curtail load during the other four peaks. PPLICA Statement No. 1-SR, pp. 3-4. This statement indicates that the customers are reducing usage during peak periods primarily to avoid being allocated transmission costs, and that they are capable of accomplishing that whether or not PPL Electric uses the 1 or 5 CP methodology. PPL Electric Statement No. 5-RJ, p. 4. The unspoken assumption in Mr. Peters’ testimony is that the preference to move to a 1 CP methodology is because it is easier for certain customers to avoid transmission costs. PPL Electric Statement No. 5-RJ, p. 4. Further, Mr. Ciarlone states that “it should not matter whether...costs at a specific time may deviate from typical usage.” IECPA Statement No. 1-SR, p. 4. This, of course, indicates that the true purpose of the 1 CP methodology is not long-term reductions in transmission costs. Instead, certain sophisticated customers would artificially lower their use at the time of the projected 1 CP and thereby avoid being allocated transmission costs, shifting those costs onto other customers less capable of timing the peak or lowering their demand. The testimony submitted by IECPA and PPLICA shows that their primary concern in this proceeding is selecting a methodology that makes it easier for certain customers to avoid paying for transmission costs, even if that is through measures that are atypical or do not provide lasting system-wide benefits.

Without record evidence supporting the conclusion that the 1 CP methodology allocates transmission costs in a way that is more accurate based on the operation of the PPL Electric system, or more just and reasonable, the Commission should find that PPLICA and IECPA have failed to carry their burden in this proceeding.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes issue an Initial Decision recommending that the Pennsylvania Public Utility Commission:

- (a) Adopt the Proposed Findings of Fact attached hereto as Appendix A;
- (b) Adopt the Proposed Conclusions of Law attached hereto as Appendix B;
- (c) Adopt the Proposed Ordering Paragraphs attached hereto as Appendix C;
- (d) Approve the proposals set forth in the “Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025” and the related attachments, as modified by the terms and conditions of the Partial Settlement;
- (e) Approve PPL Electric’s proposal to end the CAP SOP and require CAP customers to receive default service at the PTC;
- (f) Approve PPL Electric’s proposal to return customers to default service at the end of the SOP contract terms unless the customer affirmatively elects otherwise;
- (g) Deny Starion’s and the EGS Parties’ proposal that PPL Electric be required to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer;
- (h) Approve PPL Electric’s proposal that EGSs be required to commit to a semi-annual SOP enrollment, which would correspond to the semi-annual PTC price change; and
- (i) Deny PPLICA’s and IECPA’s proposal to change the method for allocating transmission costs from a 5 coincident peak methodology to a 1 coincident peak methodology.

Respectfully submitted,

Lindsay A. Berkstresser

Kimberly A. Klock (Pa. Bar I.D. 89716)
Michael J. Shafer (Pa. Bar I.D. 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-5696
Fax: 610-774-4102
E-mail: kklock@pplweb.com
E-mail: mjshafer@pplweb.com

Michael W. Hassell (Pa. Bar I.D. 34851)
Lindsay A. Berkstresser (Pa. Bar I.D. 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6029
Fax: 717-731-1985
E-mail: mhassell@postschell.com
E-mail: lberkstresser@postschell.com

Dated: September 3, 2020

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

**PROPOSED FINDINGS OF FACT OF
PPL ELECTRIC UTILITIES CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

PPL Electric Utilities Corporation (“PPL Electric”) respectfully requests that Administrative Law Judge Elizabeth H. Barnes (“ALJ”) and the Pennsylvania Public Utility Commission (“Commission”) adopt the following findings of fact in the above-captioned proceeding:

A. BACKGROUND

1. PPL Electric furnishes electric distribution, transmission and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. (PPL Electric Exhibit No. 1, p. 3)

2. PPL Electric is a “public utility,” an “electric distribution company” (“EDC”), and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803. (PPL Electric Exhibit No. 1, p. 3)

3. On January March 25, 2020, PPL Electric filed a Petition requesting Commission approval of its fifth Default Service Program and Procurement Plan (“DSP V Program”) to establish the terms and conditions under which PPL Electric will acquire and supply Default

Service or provider of last resort service (“Default Service”), from June 1, 2021 through May 31, 2025 (the “DSP V Program Period”). (PPL Electric Exhibit No. 1, *passim*)

4. The DSP V Program, *inter alia*, consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits (“AECs”) during the DSP V Program Period; an implementation plan; a proposed rate design, including a Time-of-Use (“TOU”) rate option for Default Service during the DSP V Program Period; a proposal to modify the Company’s current Standard Offer Program (“SOP”); a proposal to require Customer Assistance Program (“CAP”) customers to take Default Service during the DSP V Program Period; and a contingency plan for the DSP V Program. (PPL Electric Exhibit No. 1, *passim*)

5. Copies of a Default Service Request for Proposals Process and Rules (“RFP”), Default Service Supply Master Agreement (“SMA”), Block Energy Request for Proposals Process and Rules (“Block RFP”), Block Energy Supply Master Agreement (“Block SMA”), Alternative Energy Credit Request for Proposals Process and Rules (“AEC RFP”), Alternative Energy Credit Supply Master Agreement (“AEC SMA”) were included with the Petition as Attachments A through F, respectively. (PPL Electric Exhibit No. 1, Attachments A-F)

6. The Petition also contained pro forma tariff provisions for the Generation Supply Charge-1 (“GSC-1), the Generation Supply Charge-2 (“GSC-2), and the Transmission Service Charge (“TSC”) to implement rates under the DSP V Program. (PPL Electric Exhibit No. 1, Attachment G), as well as pro forma tariff provisions for the proposed Renewable Rate Program (PPL Electric Exhibit No. 1, Attachment H).

7. PPL Electric proposes to continue the four-year plan format that was successfully used in DSP IV. (PPL Electric Statement No. 1, p. 15)

8. PPL Electric DSP V Program is for a period of four years, from June 1, 2021 through May 31, 2025. (PPL Electric Statement No. 1, p. 15)

B. COMPETITIVE PROCUREMENT PLAN

9. PPL Electric will procure Default Service supply separately for its three Customer Classes: Residential; Small C&I; and Large C&I. (PPL Electric Statement No. 1, pp. 14, 18-19)

10. Under the proposed DSP V Program, PPL Electric will acquire default service supply for the Residential and Small C&I Classes through a series of 6 and 12 month fixed-price, load-following, full requirements supply contracts. (PPL Electric Statement No. 1, pp. 14, 18-20)

11. PPL Electric will procure 100 MWs for Block Energy supply through staggered 5-year contracts to be used in serving the Residential customer class. (PPL Electric Statement No. 1, p. 14)

12. For the Large Commercial and Industrial (“Large C&I”) Customer Class, PPL Electric will enter into annual contracts with suppliers for the provision of the default service spot market full requirements supply contracts. (PPL Electric Statement No. 1, p. 24)

C. PRUDENT MIX

13. PPL Electric’s proposed DSP IV Program will acquire a fixed percentage of the Company’s Residential and Small C&I default service load on a semiannual basis through short and medium-term 6- and 12-month contracts. (PPL Electric Statement No. 1, p. 48)

14. The DSP IV Program procurement schedule includes procuring a large percentage of supply through short-term, 6-month, contracts which enable more market-reflective rates while continuing to moderate price volatility through the procurement of 12-month contracts. (PPL Electric Statement No. 1, p. 49; PPL Electric Statement No. 2, pp. 6-7)

15. PPL Electric’s DSP V Program procurements are consistent with the “prudent mix” requirement. (PPL Electric Statement No. 1, p. 45; PPL Electric Statement No. 2, pp. 21-22)

D. ADEQUATE AND RELIABLE SERVICE TO CUSTOMERS

16. PPL Electric's Default Service load-following, full requirements products obligate a wholesale electricity seller to provide a fixed-percentage (referred to as a "tranche") of PPL Electric's default service hourly load during every hour of a product's term. (PPL Electric Statement No. 2, p. 4)

17. By assuming this obligation, sellers are responsible for managing the acquisition of energy, capacity, transmission (other than non-market based transmission services), ancillary services, AECs, and any other related products (net of transmission and distribution losses) to meet Default Service customers' hourly loads. (PPL Electric Statement No. 2, p. 4)

18. PPL Electric's Default Service load-following, full requirements products will ensure that PPL Electric will be able to provide adequate and reliable Default Service to customers. (PPL Electric Statement No. 2, pp. 4-7; pp. 17-20)

E. LEAST COST TO CUSTOMERS OVER TIME

19. The fixed-price, load-following supply for Residential and Small C&I Default Service customers will be procured through widely advertised, well-defined solicitations where the overarching objective is to seek out the lowest-cost suppliers. (PPL Electric Statement No. 2, p. 33)

20. By obtaining the Residential and Small C&I Default Service supplies through competitive solicitations in the form of an auction, PPL Electric obtains default supplies at the least cost for the product being procured. (PPL Electric Statement No. 2, p. 33)

21. Wholesale competition among suppliers of the spot market-priced product will ensure that PPL Electric provides default service for Large C&I customers at the least cost. (PPL Electric Statement No. 2, p. 21)

22. PPL Electric's DSP V Program procurements are consistent with the "least cost to customers over time" requirement. (PPL Electric Statement No. 2, pp. 31-33)

F. TIME OF USE

23. PPL Electric currently provides a TOU rate option to Residential and Small C&I customers through its tariff, which relies upon an auction as its primary plan to set TOU rates. (PPL Electric Statement No. 1, p. 60)

24. PPL Electric is proposing three changes to its TOU rate option under the DSP V Program. (PPL Electric Statement No. 1, p. 64)

25. The current TOU contingency plan employed under the DSP IV will become the new primary plan under DSP V. (PPL Electric Statement No. 1, p. 64)

26. The release of TOU rates will be in conjunction with the issuance of the PTC, 30 days in advance of the TOU and PTC rates going into effect. (PPL Electric Statement No. 1, p. 64)

27. PPL Electric is restricting TOU eligibility to a small subset of grandfathered water-heating customers based upon their complex configuration. (PPL Electric Statement No. 1, p. 65)

G. ALTERNATIVE ENERGY CREDITS

28. Under the DSP V Program, PPL Electric will procure all of its default service AECs obligations through separate competitive auctions, divided by solar, Tier I non-solar, and Tier II. (PPL Electric Statement No. 1, p. 15) This will be operated as a pilot program for the DSP V program period subject to full cost recovery. (Partial Settlement ¶ 23)

29. PPL Electric will utilize a sealed-bid auction process for the AEC auction. (PPL Electric Statement No. 1, p. 30)

30. AEC auctions will occur each July and January using a 'forecast and reconciliation' process, whereby PPL Electric will forecast anticipated AEC needs for the June to November or

December to May period, whichever is closest to the auction, and reconciliation for the June to November or December to May period just exited. (PPL Electric Statement No. 1, p. 30)

31. The DSP V Program fulfills PPL Electric's AEPS obligation. (PPL Electric Statement No. 1, p. 30)

H. INDEPENDENT EVALUATOR

32. PPL Electric has retained NERA Economic Consulting as the independent third-party manager to administer each procurement, analyze the results of the solicitations for each customer class, select the supplier(s) that will provide services at the least cost and submit all necessary reports to the Commission. (PPL Electric Statement No. 1, pp. 55-56)

I. CONTINGENCY PLAN

33. In this proceeding, PPL Electric proposed to continue the contingency plan from the DSP IV Program for previously offered products. (PPL Electric Statement No. 1, p. 58)

34. PPL Electric will implement different contingency plans for block energy contracts and AEC contracts. (PPL Electric Statement No. 1, pp. 59-60)

J. RATE DESIGN

35. The costs incurred by PPL Electric to provide Default Service to the Residential and Small C&I Customer Classes will be recovered through the Generation Supply Charge-1 ("GSC-1"), separately computed with respect to each Customer Class. Costs recovered in the GSC-1 will include, among other costs, those costs incurred under the various supplier contracts, AEC-only contract costs, and costs incurred to acquire the supply and administer the DSP V Program. (PPL Electric Statement No. 1, p. 23)

36. The costs incurred by PPL Electric to provide Default Service to the Large C&I Customer Class will be recovered through the Generation Supply Charge-2 ("GSC-2"). Costs recovered in the GSC-2 will include PJM spot market energy, PJM capacity charges, the suppliers'

charge for all other services based upon winning bids in the annual solicitation, the AEC-only contract charges allocated to the Large C&I class, and PPL Electric's costs to acquire the supply and administer the DSP V Program. (PPL Electric Statement No. 1, p. 25)

K. CONSISTENT WITH RTO

37. PPL Electric's DSP V Program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of PJM Interconnection, LLC ("PJM"). (PPL Electric Statement No. 1, pp. 56-57)

38. PPL Electric's DSP V Program aligns with the PJM's planning period, *i.e.*, begins June 1. (PPL Electric Statement No. 1, p. 57)

L. STANDARD OFFER PROGRAM

39. The SOP was developed to provide customers who have not shopped or are reluctant to shop an opportunity to experience shopping. (PPL Electric St. No. 4-R, p. 4)

40. The SOP provides participants with a standard 7% discount off the then- current PTC, and fixes that rate for a 12-month term. (PPL Electric Statement No. 4, p. 3)

41. Over the past three years, an average of approximately 42,000 customers per year enrolled in the SOP. (PPL Electric St. No. 1, p. 3)

42. The customer's post-SOP affirmative options include re-enrolling in the SOP, entering into a new contract with their existing EGS, entering into a new contract with another EGS, or choosing to return to default service. PPL Electric St. No. 4, p. 3. If a customer fails to make an affirmative election, the customer is automatically enrolled in a new month-to-month contract with the customer's existing supplier at a new rate specified by the EGS in the customer's notice provided 30 days prior to the end of the SOP contract. (PPL Electric St. 4-R, p. 3)

43. PPL Electric had become aware, through complaints filed with the Commission and customers' calls received by PPL Electric's CSRs, that some percentage of customers were

experiencing a substantial increase in their energy charges following the conclusion of their SOP contract. (PPL Electric St. No. 4, p. 13; PPL Electric St. No. 4-R, p. 14)

44. Customers have criticized PPL Electric for sponsoring a program that allows the customer to be charged a higher rate after the initial contract term is concluded. (PPL Electric St. No. 4, p. 13)

45. PPL Electric's data shows that 93% of residential customers who have remained with their SOP EGS after the conclusion of their SOP contract are paying a rate at or above the PTC in the first month after their SOP contracts ended, with over 50% of those customers paying at least 25% over the PTC, and over 80% paying at least 10% over the PTC. Similar results are found with respect to Small C&I customers. (PPL St. No. 4, pp. 11-12)

46. PPL Electric proposed to include, as a term of the SOP, that if a customer does not make an affirmative election at the end of their SOP contract term, the customer will return to default service, rather than be converted to a month-to-month contract with their existing SOP EGS. (PPL Electric St. No. 4, pp. 7-16)

47. PPL Electric proposed to undertake an educational campaign to reach out to customers prior to the conclusion of their SOP contract, to advise them of their shopping options and available resources, and to remind them that they will be returned to default service at the PTC if they do not make an affirmative election. (PPL Electric St. No. 4, pp. 7-16)

48. PPL Electric proposed to change the EGS enrollment term from quarterly to semi-annually, which coincides with the semi-annual PTC rate changes. (PPL Electric St. 4, p. 6)

M. CAP SHOPPING

49. As part of its universal service programs, PPL Electric offers a low-income residential Customer Assistance Program ("CAP") called the OnTrack Program. PPL Electric Exhibit No. 1, p. 30.

50. Eligible customers who are enrolled in the OnTrack Program receive a discounted payment amount and arrearage forgiveness for remaining current on their OnTrack payments. The difference between a CAP customer's required payment and their undiscounted bill is referred to as a "CAP credit." PPL Electric Exhibit No. 1, p. 30.

51. CAP customers receive a maximum CAP credit amount, to be used over an 18-month period, based upon their income as a percentage of the Federal Poverty Level ("FPL"). PPL Electric Statement No. 3, p. 4. If a CAP customer exceeds their allowed CAP credits, then they are placed on the OnTrack Budget Billing program, where they continue to be eligible for preprogram arrearage forgiveness but do not receive a discounted bill. PPL Electric Statement No. 3, p. 5.

52. The costs associated with the OnTrack Program are recovered from the Residential Customer Class through the Universal Service Rider ("USR"). The costs recovered through the USR include the difference between a customer's fixed OnTrack monthly payment and the CAP customer's monthly energy charges, including EGS charges. PPL Electric Exhibit No. 1, p. 30. This amount is referred to as the "CAP shortfall." The amount recovered through the USR also includes arrearage forgiveness and costs associated with the program. PPL Electric Statement No. 3, p. 5.

53. CAP customers in PPL Electric's service territory have been eligible to shop with a competitive electric generation supplier ("EGS") since 2010. PPL Electric Exhibit No. 1, p. 30.

54. If a CAP customer shops at a rate higher than the PTC, the customer will exceed their maximum allowable CAP credit at a faster pace, risking removal from CAP and increasing the likelihood that the customer could become payment troubled. PPL Electric Statement No. 3, p. 5.

55. CAP shopping at rates higher than the PTC increases the costs borne by other Residential customers. When CAP customers shop at a rate higher than the PTC, there is necessarily a higher program shortfall amount which is recovered through the USR. PPL Electric Statement No. 3., p. 5. In addition, if a customer exceeds their maximum credit amount and cannot pay the unsubsidized bill amount, all Residential customers pay for the uncollectible amounts resulting from the CAP customer default. PPL Electric Statement No. 3, p. 6.

56. As a result of PPL Electric's DSP IV proceeding, PPL Electric implemented a CAP Standard Offer Program ("CAP SOP") with the goal of mitigating the harmful impacts of CAP customer shopping. The CAP SOP was implemented on June 1, 2017 and will remain effective through May 31, 2021. PPL Electric Statement No. 3, p. 7.

57. The CAP SOP requires that any EGS participating in the program serve customers at a 7% discount off the PTC at the time of enrollment. The rate remains fixed for twelve months. PPL Electric Statement No. 3, p. 7.

58. Pursuant to the terms of the CAP SOP approved in PPL Electric's DSP IV proceeding, CAP customers who are enrolled with an EGS prior to entering CAP are permitted to remain with their existing supplier until the end of their contract term. PPL Electric Statement No. 3-R, pp. 1-2.

59. EGS participation in the CAP SOP has been minimal and inconsistent. The lack of consistent supplier participation causes customer confusion and has also made the Program difficult for PPL to administer. PPL Electric Statement No. 3, p. 9.

60. As of January 2020, there were 7,975 CAP customers shopping with an EGS outside of CAP SOP because they entered CAP with a preexisting shopping contract. PPL Electric

Statement No. 1, p. 8. PPL Electric's data shows that 62% of these customers were paying rates in excess of the PTC. PPL Electric Statement No. 3, p. 11.

61. While some CAP customers who are shopping pay rates that are below the PTC, the realized savings for these customers pale in comparison to the costs incurred as a result of CAP customer paying rates above the PTC. PPL Electric Statement No. 3, p. 12.

62. OnTrack shopping has cost the OnTrack program approximately \$30 million from 2013 through January 2020. PPL Electric Statement No. 3, p. 12, Table 4. This additional \$30 million is paid directly to suppliers but is recovered from all residential customers who pay for the OnTrack program. PPL Electric Statement No. 3-R, pp. 2-3.

63. To eliminate the significant and persistent harm associated with CAP customer shopping, PPL Electric proposed to end the CAP SOP and require that customers entering CAP receive default service at the PTC beginning on June 1, 2021. PPL Electric Exhibit No. 1, pp. 32-33.

64. PPL Electric proposes to inform shopping customers who apply for CAP that they must terminate their supplier contract or wait for the contract to expire before entering CAP. PPL Electric will inform these CAP applicants that they should contact their supplier to determine what, if any, termination or cancellation fees may apply. PPL Electric Statement No. 1, p.16.

65. For those customers who are currently enrolled in CAP and are shopping, PPL Electric will not automatically remove those customers from CAP. Those customers will be permitted to remain in CAP with their existing shopping contract until the earlier of the contract expiring or the need to recertify CAP eligibility. PPL Electric Statement No. 3, pp. 16-17.

66. When a customer shops with a supplier outside of CAP SOP, PPL Electric is not aware of the contract terms, termination fees, or length of the contract between the CAP customer

and the non-SOP supplier. Only the supplier and the customer have this information. Without this information, PPL Electric has no way of monitoring when the customer should be dropped by the supplier and returned to default service because the shopping contract has ended. PPL Electric Statement No. 3-R, p. 5.

N. TRANSMISSION COST ALLOCATION

67. PPL Electric explained how it allocates costs in determining wholesale interstate transmission rates. PPL Electric Statement No. 1, pp. 85-86.

68. PJM charges all load serving entities in the PPL Electric Zone, including PPL Electric as an LSE, for transmission service through a FERC-approved formula transmission rate. PPL Electric Statement No. 5-R, p. 4.

69. PPL Electric has developed a transmission calculation process through which it recovers the wholesale transmission costs assigned by PJM. PPL Electric Statement No. 1, p. 86.

70. The NITS tag is determined using a 5 CP methodology. PPL Electric Statement No. 1, pp. 86-90.

71. PPL Electric calculates each customer's contribution to the average of PPL Electric's 5 highest coincident peaks during the relevant 12-month period and then "scales up" the result to equal the 1 CP for the PPL Zone. PPL Electric Statement No. 5-RJ, pp. 2-3.

72. PJM collects the identified dollars from the LSEs serving retail customers by assigning the total zone transmission costs divided by the zonal system peak for the relevant zone. PPL Electric Statement No. 5-RJ, p. 3.

73. There are numerous methodologies used to allocate transmission costs. PPL Electric Statement No. 5-R, p. 8; PPLICA Statement No. 1-SR, p. 4; *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 172 FERC ¶ 61,054 at Paragraph 44 (2020).

74. Most PPL Electric customers cannot forecast and reduce load during peak periods. PPL Electric Statement No. 5, p. 5.

75. Any customer who is able to do so will avoid paying for transmission costs, and will shift their share of the payment responsibility to other customers, because the total pool of annual transmission costs is not meaningfully reduced. PPL Electric Statement No. 5-RJ, p. 5.

76. It is important to ensure that all customers, including those with more significant seasonal use, pay a fair allocation of the costs of maintaining and improving the transmission system. PPL Electric Statement No. 5-RJ, p. 4.

77. The use of five data points to determine the customer's obligation reduces the chance that a group of similarly situated customers will bear a disproportionate share of transmission system costs. PPL Electric Statement No. 5, p. 5.

78. If a single atypical peak were to be used to allocate transmission costs, rather than the 5 CP average, it would be possible for customers with atypically low usage to avoid paying for maintaining and improving the transmission system. PPL Electric Statement No. 5-RJ, p. 4.

79. A 1 CP methodology makes it easier for a customer to reduce usage during the single period used to allocate costs, resulting in the customer paying lower transmission rates, while not actually reducing that customer's cost impact on PPL Electric's system. PPL Electric Statement No. 5-RJ, p. 5.

80. When a customer avoids their transmission cost allocation obligations, other customers – primarily residential customers who do not have the ability to forecast peaks and reduce system use – will shoulder the additional transmission cost burden. PPL Electric Statement No. 5-RJ, p. 5.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

**PROPOSED CONCLUSIONS OF LAW
OF PPL ELECTRIC UTILITIES CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

PPL Electric Utilities Corporation (“PPL Electric”) respectfully requests that Administrative Law Judge Elizabeth H. Barnes (“ALJ”) and the Pennsylvania Public Utility Commission (“Commission”) adopt the following conclusions of law in the above-captioned proceeding:

A. GENERAL

1. Section 332(a) of the Public Utility 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.

2. A litigant’s burden of proof before the Commission is satisfied by establishing a preponderance of evidence, which requires proof by a greater weight of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Commonwealth of Pa. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999); *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614, n.14 (Pa. Cmwlth. 2008).

3. A party who raises an issue that is not included in a public utility’s filing bears the burden of proof on that issue. *See, e.g., Pa. PUC v. Metropolitan Edison Co., et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007) at *111-12.

B. DEFAULT SERVICE

4. Pursuant to Section 2807(e)(3.1) of the Public Utility Code, a Default Service provider shall provide Default Service pursuant to a Commission-approved competitive procurement plan that includes auctions, RFPs, and/or bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1).

5. Section 2807(e)(3.2) of the Public Utility Code provides that electric power procured by a Default Service provider shall include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts. 66 Pa.C.S. § 2807(e)(3.2).

6. Section 2807(e)(3.4) of the Public Utility Code requires a Default Service provider to provide adequate and reliable service to customers. 66 Pa.C.S. § 2807(e)(3.4).

7. Pursuant to Section 2807(e)(3.4) of the Public Utility Code, Default Service providers are to obtain Default Service supply at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.4).

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

9. The Commission’s Default Service Regulations require that a default service plan include copies of agreements or forms to be used in the procurement of electric generation supply for Default Service customers. *See* 52 Pa. Code § 54.185(e)(6).

10. The Commission’s Default Service Regulations require that a Default Service plan include contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. *See* 52 Pa. Code § 54.185(e)(5).

11. The Commission’s Default Service Regulations require that a Default Service plan include a rate design plan recovering all reasonable costs of Default Service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. *See* 52 Pa. Code § 54.185(e)(3).

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

13. Pursuant to 66 Pa. C.S. § 2807(f)(5), as the default service provider, PPL Electric is required to offer a TOU rate option to its default service customers.

14. PPL Electric’s fifth Default Service Program and Procurement Plan (“DSP V Program”), as modified by the terms and conditions of the Partial Settlement, includes and/or addresses all of the applicable elements prescribed by Section 2807 of the Public Utility Code, the AEPS Act, the Commission’s regulations, and the Commission’s policies for a Default Service plan.

C. STANDARD OFFER PROGRAM

15. The SOP was established in PPL Electric’s DSP II proceeding, in accordance with the Commission’s retail market enhancement order. *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012).

16. The guidelines and scripting to be used for the SOP will be consistent with the Commission's suggestions set forth in its Secretarial Letter dated January 23, 2020, at Docket No. M-2010-3007101.

17. EGSs participating in the SOP program are responsible for notifying customers of the SOP contract's end and the terms and conditions of the new post-SOP contract before the customer's contract expires. 52 Pa. Code § 54.10.

18. PPL Electric has the burden of proof with respect to its proposals concerning the SOP.

19. PPL Electric has met its burden of proof that the SOP should be modified to return customers to default service at the end of the SOP contract terms unless the customer affirmatively elects otherwise.

20. PPL Electric has met its burden of proof that the SOP enrollment term for EGSs should be changed to semi-annual to correspond to the semi-annual Price to Compare change.

21. The Commission's regulations, at 52 Pa. Code § 54.8, establishes the rights of customers to restrict release of this customer information.

22. Starion and the EGS Parties have the burden of proof with respect to their proposal that PPL Electric be required to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer.

23. Starion and the EGS Parties have not met their burden of proof that PPL Electric be required to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer.

D. CAP SHOPPING

24. In the Commission's Proposed Policy Statement Order on CAP Shopping, the Commission directed electric distribution companies such as PPL Electric to address the

mechanics of CAP shopping in their next default service plan proceedings. *See Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order*, Docket No. M-2018-3006578 (February 28, 2019) at p. 6.

25. PPL Electric bears the burden of proof on its proposal regarding CAP customers shopping for competitive electric generation supply.

26. The Commission has authority to impose restrictions on CAP customers' ability to shop for competitive electric generation supply. *Retail Energy Supply Ass'n. v. Pa. Public Utility Commission*, 185 A.3d 1206, 1217 (Pa. Cmwlth. 2018); *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087, 1103 (Pa. Cmwlth. 2015), *appeal denied by Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 2016 Pa. LEXIS 723 and 2016 Pa. LEXIS 724 (Pa. 2016).

27. Universal service programs must be managed in a cost-effective manner. 66 Pa. C.S. § 2804(9).

28. PPL Electric has met its burden of proof that CAP customers should be required to receive default service at the Price to Compare.

E. TRANSMISSION COST ALLOCATION

29. FERC's jurisdiction under the Federal Power Act is exclusive. *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016).

30. FERC's jurisdiction over unbundled interstate transmissions of electricity extends to both wholesale and retail transactions. *New York v. FERC*, 535 U.S. 1, 19-21 (2002).

31. FERC has jurisdiction over the NITS rates charged by PJM and also the related PPL Electric methodology used to determine NPSL contributions. *National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, FERC Docket No. EL18-78-000, 171 FERC ¶ 61,237 at P 34 (2020).

32. The issue of transmission cost allocation raised in this proceeding is outside the Commission's jurisdiction.

33. A utility has the burden of proving entitlement to its own cost allocation proposal, but the burden of proving that changes should be made to the current cost allocation methodology rests on the challenging party to show the reasonableness of the alternative proposal. *NRG Energy, Inc. v. Pa. PUC*, 2020 Pa. Commw. LEXIS 420 (Cmwlth Ct. 2020).

34. There is no single correct method of cost allocation, because cost allocation requires a considerable amount of judgement; it is an art rather than a science. *See, e.g., Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185 (Order dated Aug. 19, 1983).

35. The Competition Act does not require a specific default service rate design methodology. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, 2012 Pa. PUC LEXIS 1348, *9 (Pa. PUC 2012).

36. Sound ratemaking practices should promote stability and predictability of rates. *See, e.g., Pa. P.U.C., et. al. v. National Fuel Gas Distribution Corporation*, Docket No. R-2017-2582461, at p. 40 (Order entered July 12, 2017).

37. To prove that a methodology will create an unreasonable preference, a party must show that the methodology relied upon will collect more than a reasonable rate from some customer(s) with a deficiency created by inadequate rates charged to other customers. *See Park Towne v. Pa. Pub. Util. Comm'n*, 433 A.2d 610, 614 (Pa. Cmwlth. 1981) (citing *Alpha Portland Cement Co. v. Pub. Serv. Comm'n*, 84 Pa. Super. 255 (Pa. Super. 1925)).

38. The Commission has regularly based its choice of a cost allocation methodology on a rationale that considers factors such as economic impact, rate continuity, and service considerations in addition to cost. *See, e.g., Pa. PUC, et al. v. Metropolitan Edison Co.*, Docket No. R-822249, et. al., p. 172 (October 19,1983); *Pa. PUC, et al. v. Duquesne Light Company*, Docket No. R-821945, et al., p. 73 (Jan. 28, 1983).

39. The use of the 1 CP method will increase the volatility of rates.

40. IECPA and PPLICA have not produced evidence to meet their burden in burden on this issue.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation for :
Approval of Its Default Service Plan for the Period : P-2020-3019356
From June 1, 2021 through May 31, 2025 :

**PROPOSED ORDERING PARAGRAPHS
OF PPL ELECTRIC UTILITIES CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

PPL Electric Utilities Corporation (“PPL Electric”) respectfully requests that Administrative Law Judge Elizabeth H. Barnes (“ALJ”) and the Pennsylvania Public Utility Commission (“Commission”) adopt the following ordering paragraphs in the above-captioned proceeding:

1. The Joint Petition for Partial Settlement is approved without modification;
2. The “Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025” and the related attachments, is approved as modified by the Joint Petition for Partial Settlement;
3. PPL Electric’s proposal to end the CAP Standard Offer Program and require CAP customers to receive default service at the PTC is approved;
4. PPL Electric’s proposal to return customers to default service at the end of the Standard Offer Program contract terms unless the customer affirmatively elects otherwise is approved;
5. PPL Electric’s proposal that EGSs be required to commit to a semi-annual SOP enrollment, which would correspond to the semi-annual PTC price change, is approved;

6. Starion's and the EGS Parties' proposal to require PPL Electric to provide EGSs with the telephone numbers and e-mail addresses (if available) of SOP customers to the EGS serving the customer is denied; and

7. PPLICA's and IECPA's proposal to change the method for allocating transmission costs from a 5 coincident peak methodology to a 1 coincident peak methodology is denied.