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File #: 178868

November 2, 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:

Enclosed for filing are the Replies of PPL Electric Utilities Corporation to the Other Parties' Exceptions in the above referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Lindsay A. Berkstresser

LAB/jl
Enclosures

cc: Office of Special Assistants
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.

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Date: November 2, 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 From June 1, 2021 through May 31, 2025	: : :	Docket No. P-2020-3019356

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE OTHER PARTIES' EXCEPTIONS

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Dated: November 2, 2020

Attorneys for PPL Electric Utilities Corporation

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I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions filed by: (1) Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources LLC, WGL Energy Services, Inc., and Direct Energy Services, LLC (collectively, "EGS Parties"); (2) Inspire Energy Holdings, LLC ("Inspire"); (3) the PP&L Industrial Customer Alliance ("PPLICA") and Industrial Energy Consumers of Pennsylvania ("IECPA"); (4) the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); and (5) Starion Energy PA, Inc. ("Starion") in the above-captioned proceeding concerning PPL Electric's fifth Default Service Program and Procurement Plan ("DSP V Program"), which covers the period June 1, 2021, through May 31, 2025 ("DSP V Program Period").

In the Recommend Decision ("RD"), Administrative Law Judge Elizabeth H. Barnes (the "ALJ") approved the Partial Settlement and ruled on the issues reserved for litigation, which were: (1) all Standard Offer Program ("SOP") issues except for the use of guidelines and scripts in PPL Electric's and a third party administrator's communications with customers; (2) all Customer Assistance Program ("CAP") SOP issues; and (3) the continued use of the five coincident peak ("5 CP") method as opposed to a one coincident peak ("1 CP") method to calculate Network Service Peak Load ("NSPL"), a primary input to calculating charges for Network Integration Transmission Service ("NITS"), which is a Federal Energy Regulatory Commission ("FERC") approved rate for wholesale interstate transmission service.

In the well-reasoned RD, the ALJ recommended approval of PPL Electric's proposed changes to its SOP and the Company's proposal to require CAP customers to receive default service. The ALJ also found that the Commission lacks jurisdiction to adjudicate the issue raised

by PPLICA and IECPA about PPL Electric's allocation of interstate transmission costs to load serving entities ("LSEs") using the 5 CP method instead of the 1 CP method.

On October 26, 2020, the EGS Parties, Inspire, CAUSE-PA, and Starion separately filed Exceptions to the RD. PPLICA and IECPA also filed Joint Exceptions to the RD.

As explained herein, the other parties' Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Pennsylvania Public Utility Commission ("Commission") deny the other parties' Exceptions and adopt the RD without modification.

II. REPLIES TO EXCEPTIONS

A. THE ALJ CORRECTLY FOUND THAT THE COMMISSION SHOULD APPROVE PPL ELECTRIC'S PROPOSED CHANGES TO THE STANDARD OFFER PROGRAM (SOP)

In this proceeding, PPL Electric proposed two changes to its SOP that are still subject to litigation: (1) upon expiration of the SOP contract, a customer who fails to make an affirmative election of a new contract with the existing electric generation supplier ("EGS") or a new EGS would be automatically transferred to default service at the Price to Compare ("PTC"); and (2) implementing a new, two-step communication process, which would further inform customers about their shopping options after their SOP contracts expire and would remind SOP customers that they would be returned to default service at the end of their SOP contracts if they fail to make an affirmative shopping choice. (PPL MB at 17.)

The Company proposed these changes because a significant number of all SOP customers (approximately 20%) do not affirmatively elect to continue shopping at the end of their SOP contracts. Therefore, after the SOP contracts expire, those customers are placed on roll-over contracts, with price increases well in excess of the PTC. (PPL MB at 16.) In fact, as the ALJ found, over 50% of those customers end up on roll-over contracts requiring them to pay at least 25% over the PTC. (RD at 28.)

All of the residential and small commercial customer advocates in this proceeding (*i.e.*, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), and CAUSE-PA) support these proposals. After thoroughly reviewing the parties' evidence and arguments, the ALJ recommended that the Commission approve PPL Electric's proposed changes to the SOP. Nevertheless, the EGS Parties and Starion dispute this recommendation in their Exceptions. (*See* EGS Exceptions, pp. 1-9; Starion Exceptions, pp. 4-17.)

As explained in the following sections and in the well-reasoned RD, the Commission should adopt the ALJ's recommendation and approve PPL Electric's proposed changes to the SOP.

1. Reply to EGS Parties Exception No. 1 – The ALJ Properly Adopted Findings of Fact Nos. 8, 9, 10, and 11 Because They Are Supported by Substantial Evidence and Nothing in the Record Contradicts Them

In their Exceptions, the EGS Parties aver that the ALJ erred by adopting Findings of Fact Nos. 8, 9, 10, and 11. (EGS Exceptions, pp. 1-3.) Specifically, these Findings of Fact state:

> 8. Twenty percent of the Standard Offer Program (SOP) customers are still on roll over contracts, and are paying excessively high rates, four months after the end of their SOP contract, and another 22% are on roll over contracts 1-3 months after their SOP contract expired. PPL Electric St. No. 4-R, p. 12.
>
> 9. More than 50% of the customers who switch between one and four months after their SOP contract expired are paying rates 25% or more above the PTC during those intervening months. PPL Electric St. No. 4-R.
>
> 10. Nearly all (93%) residential customers who remained with their SOP EGS after the conclusion of their contract were paying at or above the Price to Compare (PTC) in the first month after their SOP contract expired, and over 50% of those customers were paying at least 25% over the PTC. PPL Electric St. No. 4-R, p. 12.
>
> 11. Even four months later, most of these customers continued with their SOP Supplier at a non-SOP rate, and the vast majority continued to be paying rates 10% or more above the PTC. PPL Electric St. No. 4-R, p.12.

(RD at 11.) The EGS Parties believe these findings are being used to "end-run the Commission's clearly stated rationale for SOP programs." (EGS Exceptions, p. 2.) They aver that "a very small group of SOP customers, 20% or less, remain on a hold over contract after 4 months," so those customers' experiences do not warrant a policy change. (EGS Exceptions, p. 3.) The EGS Parties also state that "protect[ing]" customers from being charged more than the PTC after the SOP contract expires "would eviscerate the entire premise of the 'Customer Choice and Competition Act'."[1] (EGS Exceptions, p. 2.) None of these arguments have any merit.

The fundamental flaw with this Exception is that nothing in the record contradicts these findings. Thus, the EGS Parties cannot dispute the veracity of these facts. Instead, the EGS Parties try to criticize the ALJ's reliance on these findings in recommending the approval of PPL Electric's proposed changes to the SOP. (*See* EGS Exceptions, pp. 1-3.) However, the ALJ properly determined that the Company's proposed changes to the SOP should be approved. (RD at 28-34.)

The SOP currently results in many customers complaining to PPL Electric about large increases in their energy charges after their SOP contracts end. (PPL MB at 14.) Such large price increases concern PPL Electric and should concern the Commission because they can lead to customers becoming payment troubled. (PPL MB at 14-15.) The large price increases also contravene the SOP's entire purpose—to provide customers who have not shopped previously with a positive shopping experience by guaranteeing them savings of 7% of the PTC effective when the customer enters into the SOP contract over that contract's term. (PPL MB at 14-15.)

As a result, PPL Electric undertook an analysis of customers who reached the end of their SOP contracts from 2015 through 2019. (PPL MB at 15.) That analysis resulted in the uncontroverted evidence adopted by the ALJ in Findings of Fact Nos. 8, 9, 10, and 11 that a

[1] *See* Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2815 ("Choice Act").

significant number of customers were experiencing substantial price increases (many over 25% higher than the PTC) when the customers were placed on month-to-month contracts after their SOP contracts ended. (PPL MB at 15-16; RD at 28-29.) Thus, the customer's initial savings off the PTC can quickly be wiped away in just a few months post-SOP. (PPL MB at 16-17.)

PPL Electric's two proposed changes to the SOP are intended to address this problem of customers failing to make affirmative choices upon expiration of their SOP contracts. (PPL MB at 17.) However, the EGS Parties' solution is to deny that a problem exists. The EGS Parties focus on how "20% or less" of SOP customers "remain on a hold over contract after 4 months." (EGS Exceptions, p. 3.) Therefore, the EGS Parties characterize the issue as only affecting a "very small group of SOP customers." (EGS Exceptions, p. 3.)

The Commission should flatly reject the EGS Parties' attempt to minimize this foundational issue with the current SOP. Although a majority of SOP customers (62%) do make an affirmative election regarding shopping prior to the conclusion of their SOP contract, it is indisputable that a significant minority (38%) of all SOP customers do not. (PPL MB at 21.) Even after four months, approximately 20% of all SOP customers (which equates to approximately 8,000 customers) still have not made an affirmative decision. (RD at 28; PPL St. No. 4, pp. 3, 11-12.) Further, the impact of the SOP's current design on those customers is drastic. As the ALJ found, over 90% of the customers on roll-over contracts are paying rates in excess of the PTC upon the conclusion of their SOP contracts, with a striking number (over 50%) of those remaining customers paying in excess of 25% over the PTC. (RD at 28.) Thus, this is not some miniscule problem affecting a small number of customers that can be disregarded. This issue, "if not resolved properly, will harm the reputation of PPL and the retail energy markets generally." (RD at 29.)

Moreover, if, as the EGS Parties alleged in testimony, 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 MB at 21.) The SOP should not be a marketing tool designed to capture unaware customers at excessive rates after the initial term expires. (PPL MB at 21.) The SOP should prevent such customers from experiencing substantial price increases after the end of their SOP contracts, as those large increases can lead to high bill complaints and payment difficulties. (PPL MB at 21.)

Finally, PPL Electric's proposal would not "eviscerate" customer choice, as alleged by the EGS Parties. (EGS Exceptions, p. 2.) Under the Company's proposal, customers would be completely free to continue receiving service from the current EGS or to select a new EGS when the SOP contract ends. (PPL MB at 17.) Nothing would require the customers to return to default service if they do not want to return. Also, the Company would explain this potential return to default service to customers during the SOP enrollment process and would remind those customers before their SOP contracts expire. (PPL MB at 17-19.) Given that SOP is a voluntary program, the customer would still have to choose to receive service under an SOP contract going forward. The only difference would be that the customer would know that the account would be returned to default service if the customer makes no affirmative decision to continue shopping. Thus, the Company's proposal preserves the customer's right to choose under the Choice Act.

For these reasons, the Commission should deny EGS Parties Exception No. 1.

2. Reply to EGS Parties Exception No. 2 – The ALJ Soundly Held that the Price to Compare (PTC) Is an Appropriate Measure of Whether the Current SOP Design Is Successful

The EGS Parties also dispute the ALJ's conclusion that the PTC is an appropriate measure of whether the current SOP design is successful. (EGS Exceptions, pp. 3-4; *see* RD at 29-30.)

Among other things, the EGS Parties contend that such a comparison is inappropriate because "an EGS must recover its entire cost of doing business through its rates, while the default service provider, here PPL, need only recover its incremental costs of energy and a few other expenses in the PTC." (EGS Exceptions, p. 3.) Their arguments are unsupported and without merit.

It is called the "Price to Compare" for a reason. The indisputable fact is that when a customer does not shop, the customer pays the PTC, and when the customer does shop, the customer avoids the PTC and pays the EGS rate. (PPL RB at 6.) If the EGS rate exceeds the PTC, the customer's bill is higher. (PPL RB at 6.) As intended, the "Price to Compare" provides a benchmark for customers to compare prices and evaluate their shopping options. Therefore, it is appropriate to use the PTC when evaluating the current SOP design.

Further, as the ALJ observed, "[t]he EGS Parties failed to submit any evidence that PPL Electric's PTC is incorrectly calculated." (RD at 30.) The EGS Parties only "offer[ed] general assertions . . . that portions of PPL Electric's distribution costs, such as facilities, salaries, billing and collections, should be allocated to the PTC." (RD at 30.) They never presented any "facts regarding what portion of distribution costs are to be allocated to the PTC, or any basis for such allocation." (RD at 30.) And the EGS Parties' own witness "stated that this DSP proceeding was not an appropriate proceeding to examine the 'true' cost of default service." (RD at 30.) Without such evidence, the EGS Parties' argument is completely unsupported.

In addition, notably absent from the EGS Parties' Exceptions is any mention of how the Commission and the Commonwealth Court recently rejected a very similar proposal to allocate these categories of distribution costs to the PTC.[2] The omission of these decisions is even more

[2] *See Pa. PUC v. PECO Energy Co. – Elec. Div.*, Docket No. R- 2018-3000164, p. 74 (Order entered Dec. 20, 2018), *affirmed, NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936 (Pa. Cmwlth. 2020), *petition for allowance of appeal pending*, Docket No. 359 MAL 2020.

curious, given that one of the EGS Parties, *i.e.*, NRG Energy, Inc., was the entity who presented that cost allocation proposal in that other proceeding. Thus, the ALJ properly rejected the EGS Parties' arguments and held that the SOP should be evaluated using the PTC. (RD at 29-30.)

Based on the foregoing, the Commission should deny EGS Parties Exception No. 2.

3. Reply to EGS Parties Exception No. 3 – The EGS Parties Erroneously Claim that PPL Electric's Proposal to Return SOP Customers to Default Service if Those Customers Do Not Affirmatively Elect to Continue Shopping Is Impermissible Because It Treats SOP Shopping Customers and Non-SOP Shopping Customers Differently

The EGS Parties also alleges that the ALJ erred by authorizing PPL Electric to implement a different end-of-contract rule for SOP customers than for all other customers. (EGS Exceptions, pp. 4-7.) According to the EGS Parties, the Commission's *Final Work Plan Order*[3] indicates that SOP customers should be treated the same as any other customer at the end of the SOP contract's term. (EGS Exceptions, pp. 4-5.) Further, the EGS Parties maintain that the Company's proposal contravenes the Commission's end-of-contract regulations. (EGS Exceptions, p. 4); *see* 52 Pa. Code § 54.10(3). The EGS Parties' arguments lack merit.

First, the ALJ correctly found that "nothing in the *Final Work Plan Order* preclude[s] PPL Electric from proposing, or the Commission amending the SOP design." (RD at 30.) Because "[t]he SOP is not a mandated program" under the Choice Act, "the Commission has the jurisdictional authority to change, or even eliminate, the SOP at any time." (RD at 30.) The ALJ also noted how the *Final Work Plan Order*'s provisions on SOP design "are specific as *guidelines*, and not requirements." (RD at 30) (emphasis in original) (citing *Final Work Plan Order*, p. 31). The EGS Parties also overlook how the *Final Work Plan Order* states that "implementation and logistical" details "will be determined during the default service plan proceedings for each EDC,"

[3] *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered Mar. 1, 2012) ("*Final Work Plan Order*").

such as the instant proceeding. (RD at 30-31) (quoting *Final Work Plan Order*, p. 31). To the extent that any waivers of Commission regulations or modifications of Commission orders are necessary to implement these changes, the Commission clearly possesses that authority. *See, e.g.*, 66 Pa. C.S. §§ 501(a), 703(g); 52 Pa. Code § 5.43. In fact, as the ALJ observed, "the Commission approved changes to CAP shopping rules" in the Company's DSP IV proceeding when those changes "were justified by the evidence." (RD at 31.) Therefore, it is more than appropriate for the Commission to approve changes to the Company's SOP design in this proceeding.

Second, the different treatment of SOP and non-SOP customers is reasonable and justified because SOP and non-SOP customers are, in fact, different. (PPL MB at 19-20; PPL RB at 8-9.) SOP is a special discount rate, designed to focus on customers who do not shop. (PPL MB at 19.) Unlike non-SOP contracts, SOP contracts are required to have certain standard terms and conditions such as contract length, a fixed price, an initial price at 7% below the current PTC, and no early cancellation fees. (PPL MB at 19-20.) PPL Electric also can only describe the SOP to existing shopping customers who specifically inquire about the program. (PPL MB at 19.) Therefore, since SOP and non-SOP customers are already treated very differently, the Company's proposal should not be rejected simply because it does not apply to non-SOP customers as well.[4]

For these reasons, the Commission should deny EGS Parties Exception No. 3.

4. Reply to EGS Parties Exception No. 4 – The ALJ Correctly Determined that PPL Electric Should Be Able to Send Notifications to SOP Customers Nearing the End of Their SOP Contracts

The EGS Parties also dispute the ALJ's finding that PPL Electric should be able to "educate" SOP customers as to their options near the end of their SOP contracts. (EGS Exceptions,

[4] PPL Electric also notes that Section 1502 of the Public Utility Code does not prohibit all forms of discrimination in service between customers, only "unreasonable preference[s] or advantage[s]" or "unreasonable prejudice[s] or disadvantage[s]." 66 Pa. C.S. § 1502 (emphasis added). Based on the evidence presented in this proceeding, it is more than reasonable to treat SOP and non-SOP customers differently.

pp. 7-9.) The EGS Parties allege that the ALJ has "opened the door to potential misconduct" because "[t]he RD proposed no process for which to review the 'not yet available' materials," which will force suppliers to "file a complaint and bear the costs of litigation when PPL inevitably puts something objectionable in the 'educational' materials." (EGS Exceptions, pp. 7-8.) They also suggest that if the Company should do anything, PPL Electric should only direct its "education efforts" to customers who have failed to make affirmative decisions upon the SOP contracts' expiration. (EGS Exceptions, p. 8.) The EGS Parties' arguments should be rejected.

As found by the ALJ, PPL Electric's proposed education materials clearly are intended to encourage customers to shop for competitive electric generation supply service and make informed decisions. (RD at 33-34.) In rebuttal testimony, PPL Electric explained that the Company's "intent with the proposed education material" is "to empower customers to shop on their own after having an opportunity to experience the competitive marketplace through the SOP." (RD at 34.) PPL Electric also does not profit from default service and, thus, has no incentive to "market" that service to customers. (PPL MB at 23.) Therefore, the education materials will not be anti-competitive or tout default service over shopping. To the contrary, the materials will encourage the SOP customers to shop and provide them with the resources to evaluate options.[5]

The EGS Parties also incorrectly argue that the Company should send the education materials only to the "passive" SOP customers. (EGS Exceptions, p. 8.) It is true that PPL Electric's communication proposal focuses on SOP customers who end up rolling over into high-priced, month-to-month contracts when their SOP contracts end, so that those customers can shop intelligently after experiencing the competitive marketplace through the SOP. (PPL MB at 23.)

[5] Moreover, any increased education about shopping options should be viewed as a positive action. (PPL MB at 23.) The competitive market works best when customers are well-informed. Assuming EGSs agree that improved customer education is beneficial, they should join with PPL Electric to educate their customers early and often. (PPL MB at 23.)

However, under the EGS Parties' recommendation, the Company should wait until those SOP customers fail to act. PPL Electric's approach is intended to be proactive and educate the customers before that occurs, or else the customers will roll over onto higher priced contracts.

Notwithstanding, PPL Electric recognizes that the education materials have yet to be developed, and that the EGS Parties are concerned about not having an opportunity to review those materials before they are sent to customers. In the RD, the ALJ observed that "PPL Electric is willing to provide the material to all interested parties, and the Commission, in advance, to receive helpful feedback." (RD at 34.) The Company also is willing to submit the proposed materials as a separate compliance filing in this proceeding. The parties could then file comments and reply comments on the materials, after which the Commission would review and approve them.

Based on the foregoing, the Commission should deny EGS Parties Exception No. 4.

5. Reply to Starion Exception No. 1 – Starion Incorrectly Asserts that PPL Electric's Proposed Changes to the SOP Would End the SOP for All Customers

Starion argues that the ALJ overlooked evidence showing that the Company's SOP proposals would end the SOP for all customers. (Starion Exceptions, pp. 4-9.) Starion asserts that an EGS's potential retention of SOP customers when the SOP contracts expire factors into the EGS's decision to participate in the SOP. (Starion Exceptions, pp. 5-8.) Further, Starion avers that the Company's communication proposal "would create significant customer confusion." (Starion Exceptions, p. 6.) Starion believes these changes, collectively, would result in EGSs choosing not to participate in the SOP and, therefore, effectively ending the SOP. (Starion Exceptions, pp. 4-9.) Starion's arguments entirely lack merit.

As explained previously in Section II.A.1., *supra*, the SOP should not be a marketing tool designed to capture unaware customers at excessive rates after the initial term expires. (PPL MB at 21.) If an EGS's participation in the SOP is predicated on employing such tactics, then that

EGS should not participate because it is plotting for customers to have negative shopping experiences. The SOP should show the competitive market's benefits, not its detriments.

The record also shows that a majority of SOP customers make affirmative shopping choices before their SOP contracts end, and PPL Electric's proposed changes will not affect these customers. (PPL RB at 9.) Therefore, SOP EGSs will continue to retain these customers. (PPL RB at 9.) The only customers affected by PPL Electric's proposal will be those who fail to make an affirmative choice to continue to shop. (PPL RB at 9.) With respect to these customers, SOP EGSs will have had a year to convince them to remain with their EGSs. (PPL RB at 9.) The EGSs should be expected to try to retain these customers, rather than hope they roll over into higher-priced, month-to-month contracts. (PPL RB at 9.) Also, nothing supports the claim that EGSs would avoid the modified SOP. Starion's own witness stated the EGSs risk their reputation if rates substantially increase after the SOP contract ends. (PPL RB at 9.) As such, claims that EGSs will avoid the SOP unless they retain passive customers should be rejected.

Likewise, the Company's communication proposal will not contribute to EGSs declining to participate in the SOP, nor will it confuse customers. Starion appears to believe that the Company's notification near the end of the SOP contract's expiration will only inform "the SOP customer that he or she will be returned to default service." (Starion Exceptions, p. 6.) As explained in Section II.A.4., *supra*, the Company's education materials will encourage customers to shop and enable them to make informed decisions in the competitive market. Therefore, the Company's notice will not conflict with the EGS's notice informing "the SOP customer of the EGS offers and what will happen following contract expiration." (Starion Exceptions, p. 6.) The two notices will work in concert to help ensure that the SOP customers are fully apprised of their options. If Starion still has concerns about the substance of the Company's notification, PPL

Electric is willing to submit the education materials as a separate compliance filing subject to other parties' comments and the Commission's review and approval, as described previously.

For these reasons, the Commission should deny Starion Exception No. 1.

6. Reply to Starion Exception No. 2 – The ALJ Properly Disregarded Starion's "Alternatives" to Address the Issues with the Current SOP Design

Starion also believes that the ALJ overlooked alternatives to address concerns with the current SOP. (Starion Exceptions, pp. 9-12.) Specifically, Starion asserts that "an alternate way of addressing PPL's stated concerns would be for PPL to ask the customer being enrolled in SOP for permission to share" the customer's "contact information such as a telephone number and e-mail address" with the SOP EGS. (Starion Exceptions, p. 10.) According to Starion, providing real-time, current contact information to EGSs is a better approach than PPL Electric's proposed changes to SOP. (Starion Exceptions, p. 12.) The Commission should reject Starion's arguments.

First, Starion's recommendation would violate distribution customers' expectations of privacy. (PPL MB at 23-24.) Customers have a heightened degree of privacy expectation with respect to telephone numbers and email addresses. (PPL MB at 24.) Indeed, customers have the right to opt-out of having their telephone numbers listed in the Eligible Customer List ("ECL"). (PPL MB at 24); *see* 52 Pa. Code § 54.8. The Commission also does not provide a process for customers to authorize the EDCs' release of their email addresses. (PPL MB at 24.) Thus, customers certainly would object to PPL Electric's release of this information, particularly if the customers restricted the release of their telephone numbers in the ECL. (PPL MB at 24.)

Second, EGSs should not be granted the ability to bypass the Commission's ECL regulation by making the release of customer telephone numbers and email addresses a condition of the SOP. (PPL MB at 24.) Effectively, Starion is asking that the Commission establish a

separate, duplicative process for PPL Electric to obtain customer consent to release certain information to EGSs. Such a process should not be established in a DSP proceeding.

Third, Starion never explains why the SOP EGS cannot request this information from the customer on its own. (PPL MB at 24.) The SOP EGS serves the customer and has a contract with the customer, so it clearly can ask the customer to provide this information itself. (PPL MB at 24.)

Based on the foregoing, the Commission should deny Starion Exception No. 2.

7. Reply to Starion Exception No. 3 – PPL Electric's Proposed Changes to the SOP Are Permitted by Law

Starion alleges that PPL Electric's SOP proposal cannot be legally adopted because the proposal: (1) is an "illegal regulation of EGS pricing"; and (2) is anti-competitive and discriminatory in violation of the Choice Act since it would give PPL Electric "competitive advantages over EGSs.." (Starion Exceptions, pp. 13-17.) Neither of these claims has any merit.

First, PPL Electric's proposal deals only with the non-price terms of the SOP, specifically what happens to a customer who reaches the end of their SOP contract without making an affirmative shopping choice. (PPL RB at 10.) No aspect of PPL Electric's proposal seeks to control what price EGSs may offer to customers outside of the SOP or post-SOP. (PPL RB at 10.) EGSs can offer whatever contract price they want to SOP customers reaching the end of their contracts. (PPL RB at 10.) The only difference is that if a customer does not make an affirmative shopping decision, the customer will be returned to default service. (PPL RB at 11.)

Starion's argument also is contradictory. On one hand, Starion accepts that the mandated 7% initial discount off the PTC contained in the SOP terms is not regulation of EGS pricing, while on the other hand, Starion claims that PPL Electric's proposal to return SOP customers to default service if they fail to make an affirmative decision is regulating EGS pricing. (PPL RB at 10.) It

is illogical to consider one SOP contract term (the mandated 7% discount) as legal and the other (the potential return to default service) as illegal regulation of EGS pricing. (PPL RB at 10-11.)

Second, PPL Electric's proposals are not anti-competitive and discriminatory. (PPL RB at 12-14.) PPL Electric's proposals are neither designed nor intended to discourage customers from shopping.[6] (PPL RB at 13.) The SOP will continue to be offered, with the same discount, to encourage customers to shop. (PPL RB at 13.) PPL Electric will educate customers about their competitive options, near the end of their SOP contract term, to encourage active, knowledgeable shopping. (PPL RB at 13.) Customers will be returned to default service only if they fail to make an active shopping choice. (PPL RB at 13.) Nothing is anti-competitive or discriminatory about this approach, which is designed to facilitate well-informed shopping decisions. (PPL RB at 13.)

Also, the SOP is not established by statute, and there are no regulations mandating the terms of an SOP. (PPL MB at 19.) The Commission directed electric utilities to establish SOP programs in 2012, following a review of initiatives to encourage customer shopping. (PPL MB at 19.) Since the Commission established the SOP, the Commission has the power to modify the program's parameters, including what occurs at the end of the SOP contract. (PPL MB at 19.)

For these reasons, the Commission should deny Starion Exception No. 3.

B. THE ALJ PROPERLY CONCLUDED THAT FUTURE PARTICIPATION IN PPL ELECTRIC'S CUSTOMER ASSISTANCE PROGRAM (CAP) SHOULD BE CONDITIONED ON THE CUSTOMERS' RECEIPT OF DEFAULT SERVICE AND THAT THE CAP SOP SHOULD BE ENDED

Today, the only option for an existing CAP customer to shop is through the Company's CAP SOP. (PPL MB at 28.) In this proceeding, PPL Electric proposed ending the CAP SOP, primarily because of minimal and inconsistent participation by EGSs. (PPL MB at 28.) The

[6] To the contrary, ss explained in Section II.A.4., *supra*, PPL Electric's communication proposal will actually encourage customers to continue shopping for competitive electric generation supply service.

Company also proposed conditioning customers' participation in the Company's CAP (*i.e.*, OnTrack) on their receipt of default service. (PPL MB at 32.) As support, the Company presented evidence that the CAP SOP has been unsuccessful in protecting customers from the harms of pre-program CAP shopping at prices higher than the PTC. (PPL MB at 28-31.) Specifically, shopping customers can enroll in CAP with existing contracts with much higher prices than the SOP contract price. (PPL MB at 30.) In aggregate, the additional costs that CAP shopping customers incurred under these non-SOP contracts far exceeded the savings CAP shopping customers received under the SOP contracts. (PPL MB at 30.) Consequently, CAP shopping cost the OnTrack program approximately $30 million from 2013 through January 2020. (PPL MB at 30.) The additional $30 million was paid directly to EGSs but recovered from residential customers. (PPL MB at 30.)

Based on the record evidence, the ALJ correctly found that PPL Electric's proposals to end CAP SOP and require all CAP customers to receive default service should be approved. (RD at 29, 35-37.) However, the EGS Parties and Inspire dispute this finding in their Exceptions. The Commission should deny their Exceptions and adopt the ALJ's recommendation without modification.

1. Reply to EGS Parties Exception No. 5 – PPL Electric's Proposed Restriction on CAP Shopping Is Legally Permissible under the Choice Act and Appellate Precedent

The EGS Parties argue that the ALJ erred in recommending the approval of PPL Electric's proposed CAP shopping restriction, because it would deny CAP customers their "statutory right" to choose an EGS.[7] (EGS Exceptions, pp. 9-10.) The EGS Parties' argument should be rejected.

[7] The EGS Parties also allege that the Company should have "consider[ed] alternatives" to its proposal, such as the ones recommended by the EGS Parties' witness. (EGS Exceptions, p. 10.) As explained in PPL Electric's Main Brief, the EGS Parties' recommended "alternatives" would exacerbate the issues currently experienced by the Company. (PPL MB at 36.) Therefore, the RD properly weighed these alternatives against PPL Electric's proposal and ultimately rejected them. (RD at 36.)

PPL Electric's proposal does not prohibit any customer who wishes to shop with an EGS from doing so. (PPL RB at 16.) PPL Electric's proposal merely requires that any customer who elects CAP benefits receive default service while enrolled in CAP. (PPL RB at 16.) If a CAP customer wishes to shop for any reason, the customer may do so after leaving CAP. (PPL RB at 16.) Therefore, PPL Electric is not prohibiting any customer from shopping. The Company simply is proposing to place conditions on a customer's eligibility to receive CAP benefits.

The Commission also has the power to impose restrictions on CAP customers' ability to shop for competitive electric generation supply. (RD at 35-36.) In *Coalition*,[8] the Commonwealth Court held that the Commission has authority under the Choice Act to impose CAP rules that limit a participating customer's ability to choose an EGS and remain eligible for CAP benefits. (PPL MB at 33; CAUSE-PA MB at 6.) In fact, the Choice Act requires CAP to be cost-administered in a cost-effective manner for both CAP and non-CAP customers. *See* 66 Pa. C.S. § 2804(9).

Here, PPL Electric's proposal to restrict CAP customers from shopping is consistent with this requirement. (PPL RB at 18.) Both CAP customers and all residential customers suffer "significant financial harms" when CAP customers shop. (RD at 36.) 68% and 62% of CAP shopping customers were paying more than the PTC in 2018 and 2019, respectively. (RD at 36.) When CAP customers shop at rates above the PTC, they exceed their maximum CAP credit amount at a faster pace, which causes the CAP customers to lose the benefit of the program more quickly. (RD at 36.) CAP customers shopping at rates above the PTC also creates a higher CAP shortfall amount, thereby increasing the amount other residential customers must pay to cover the CAP shortfall. (RD at 36.) As a result, CAP shopping customers caused other residential customers to pay additional costs of $4.3 million and $2.9 million in 2018 and 2019, respectively. (RD at 36.)

[8] *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087, 1103 (Pa. Cmwlth. 2015), *appeal denied*, 2016 Pa. LEXIS 723 and 2016 Pa. LEXIS 724 (Pa. Apr. 5, 2016) ("*Coalition*").

PPL Electric's proposal would eliminate the additional costs caused by CAP shopping because CAP customers would receive default service at the PTC. (RD at 36.) PPL Electric's proposal benefits both CAP customers and other residential customers by ensuring that (1) CAP customers do not exhaust their CAP credits more quickly by shopping at rates above the PTC and (2) other residential customers are not responsible for higher CAP shortfall amounts. (RD at 36.) Thus, PPL Electric's proposal is factually supported and consistent with the Choice Act.

Based on the foregoing, the Commission should deny EGS Parties Exception No. 5.

2. Replies to Inspire Exception Nos. 1 and 2 – The ALJ Correctly Rejected Inspire's Arguments Against the Company's Proposed Restriction on CAP Shopping and the Company's Proposal to End CAP SOP

In its Exceptions, Inspire first alleges that the ALJ erred in recommending approval of PPL Electric's proposed restriction on CAP shopping because CAP SOP is a superior alternative to requiring low-income customers to forego financial assistance in order to receive competitive supply. (Inspire Exceptions, pp. 3-6.) According to Inspire, "by decreasing the overall energy bills for CAP participants, the amounts other ratepayers are required to subsidize are also less." (Inspire Exceptions, p. 3.) Next, Inspire claims that the record does not show that CAP SOP has been "ineffective" because, among other reasons, the program is in its "infancy" and the data is "unreliable" due to the alleged lack of monthly notices to EGSs on the customers who have enrolled in CAP. (Inspire Exceptions, pp. 5-7.) Neither of these Exceptions has merit.

The Company determined that it should end CAP SOP because of EGSs' minimal and inconsistent participation. (PPL MB at 28.) From June 1, 2018, through February 29, 2020, no EGSs were participating in CAP SOP. (PPL MB at 28.) As of March 1, 2020, one EGS was participating. (PPL MB at 28.) This lack of consistent participation causes customer confusion and has also made the CAP SOP difficult for PPL Electric to administer. (PPL MB at 28.)

After the CAP SOP ends, the record supports restricting CAP customers from shopping. For example, the benefit from customers who have paid less than the PTC through the CAP SOP has been far outweighed by the costs associated with CAP customers who have shopping contracts that are above the PTC. (PPL RB at 19.) Even when the savings associated with CAP customers shopping at less than the PTC are factored in, the net costs associated with CAP customer shopping was approximately $4.3 million and $2.9 million in 2018 and 2019, respectively. (PPL RB at 19.) Therefore, while individual CAP customers' bills may have been reduced by participating in the CAP SOP, the participation by shopping customers with contracts above the PTC has drastically and adversely affected the funding of PPL Electric's OnTrack program.

Furthermore, CAP SOP has been in place long enough to accurately evaluate its effects. (PPL RB at 20.) The trend of CAP customers paying more than the PTC continued even after the CAP SOP was implemented. (PPL RB at 20.) Even as CAP customer shopping declined in 2018 and 2019, the percentage of CAP customers paying rates exceeding the PTC remained above 60%. (PPL RB at 20.) Thus, the CAP SOP has not protected against the harms of CAP shopping, and customers should not be forced to continue enduring those harms. (PPL RB at 20.)

Inspire also incorrectly claims that PPL Electric's data is unreliable because PPL Electric allegedly does not provide the monthly notice to EGSs identifying those customers who have enrolled in CAP. On the contrary, PPL Electric provides this information to EGSs even more frequently than on a monthly basis. (PPL RB at 21.) Specifically, the customer lists available through the supplier portal inform the supplier if a particular customer is enrolled in OnTrack. (PPL RB at 21.) These lists are updated every business day. (PPL RB at 21.) In addition, the ECL is updated every Sunday, and suppliers can use it at any time to determine if a customer is enrolled in OnTrack, so long as the customer has not opted out of the ECL. (PPL RB at 21.) As

such, these automated processes are available to EGSs and are far superior to a manually-compiled monthly notice. Thus, PPL Electric's data is reliable and should be used in this proceeding.

For these reasons, the Commission should deny Inspire Exceptions Nos. 1 and 2.

3. Reply to CAUSE-PA Exception No. 1 – The Commission Should Not Adopt CAUSE-PA's Recommended Changes to PPL Electric's CAP

In its Exceptions, CAUSE-PA only argues that the Commission should amend the RD to permit low-income shopping customers to apply for CAP and return to default service concurrently upon enrollment and without financial penalty. (CAUSE-PA Exceptions, pp. 2-10.) However, CAUSE-PA's proposed modifications to PPL Electric's CAP should not be adopted.

The critical problem with CAUSE-PA's proposal is that 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. (PPL MB at 39.) Consequently, PPL Electric cannot waive the termination fee for a customer that has already entered a non-CAP SOP shopping contract. (PPL MB at 39.)

Nevertheless, when a shopping customer applies for CAP, PPL Electric will direct the customer to check with the customer's EGS to determine if any fees will apply for ending the supplier contract. (PPL MB at 39.) This way, customers can make an informed decision whether to enter OnTrack now regardless of any termination fees or wait until the EGS contract expires. (PPL MB at 39.) If a customer chooses to wait until their EGS contract ends, they will be eligible to reapply for CAP at that time. (PPL MB at 39.) By helping customers make informed decisions about entering OnTrack, this approach is better than CAUSE-PA's modifications. (PPL RB at 23.)

Based on the foregoing, the Commission should deny CAUSE-PA Exception No. 1.

C. THE COMMISSION LACKS JURISDICTION TO REQUIRE PPL ELECTRIC TO CHANGE ITS METHOD FOR ALLOCATING TRANSMISSION COSTS

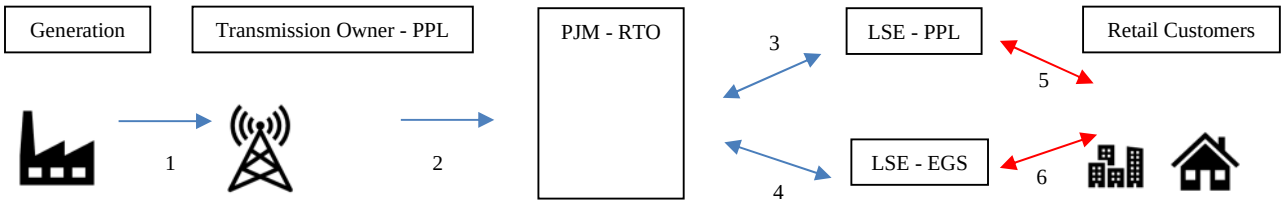
1. Reply to PPLICA/IECPA Exception No. 1 – The ALJ Properly Found that the Commission Lacks Jurisdiction over This Issue, and Even If

the Commission Has Jurisdiction, PPL Electric Should Use the 1 CP Methodology Instead of the 5 CP Methodology

The ALJ correctly concluded that "the Commission has no jurisdiction to require PPL Electric to change its method for allocating transmission costs from a 5 CP methodology for determining NPSL, to a 1 CP methodology and recalculate NITS rates accordingly." (RD at 38.) Importantly, the ALJ appropriately delineated between what PPLICA and IECPA have attempted to challenge in this proceeding (*i.e.*, the use of the 5 CP methodology to calculate an LSE's Network Service Peak Load ("NSPL" or "NITS tag") used by PJM to determine its network integration transmission service charge ("NITS")) and what the Commission has jurisdiction over (*i.e.*, the allocation of transmission costs to retail customers through PPL Electric's Transmission Service Charge ("TSC")). (*See* RD at 38-39.)

In their Joint Exceptions, PPLICA and IECPA argue that the ALJ erred by concluding that the Commission lacked jurisdiction over their request to modify "PPL's calculation of customers' NSPL to use a 1 CP" methodology. (PPLICA-IECPA Exceptions, p. 3.) However, as explained below and in PPL Electric's Briefs, both PPLICA and IECPA conflate (1) the payment of NITS charges by an LSE, which are calculated using an NSPL with (2) the allocation of transmission charges to retail electric service customers through either (a) PPL Electric's TSC for default service customers or (b) the private electric supply service contract between an EGS and a shopping customer. (PPL MB at 43-46; PPL RB at 28-30.)

PPL Electric fully explained the functions of PJM Interconnection LLC ("PJM"), PPL Electric as a transmission owner, and the role of LSEs in its Main Brief. (*See* PPL MB at 43-35.) Also, on page 44 of its Main Brief, PPL Electric provided a graphical depiction of these functions, reproduced below, which identified the aspects of the market challenged by PPLICA and IECPA.



Wholesale Market

1 – Generator provides electricity to transmission, to be sold into wholesale market.

2 – PJM operates the transmission system, to coordinate 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.

4 – PJM coordinates the transmission of power over transmission owners' facilities LSE (EGS as energy supplier) pays PJM for NITS.

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 customers pay PPL for transmission service, i.e., NITS, through the TSC.

6 – LSE (EGS) supplies power to retail customer. Retail customer pays for the generation service and transmission service via privately negotiated energy supply contract.

Importantly, PPLICA and IECPA do not dispute the allocation of transmission charges to retail electric service customers through PPL Electric's TSC (No. 6 in the above graph) , which is the only aspect of transmission service that is subject to Commission jurisdiction. (*See* PPL MB at 44-46; PPL RB at 31.)[9] Instead, PPLICA and IECPA repeatedly take issue with the use of a 5 CP methodology to determine the NSPL for purposes of calculating a NITS charge (Nos. 3 and 4 in the above graph), on the basis that the Commission and FERC have "concurrent jurisdiction" over transmission service. (PPLICA-IECPA Exceptions, pp. 4-5.)

PPLICA and IECPA's argument should be rejected. Although the Commission may have jurisdiction over the transmission rates that PPL Electric charges default service customers through the TSC (*i.e.*, No. 5 in the graphic above), PPLICA and IECPA are specifically challenging the calculation of NITS and the use of a 5 CP methodology to determine the NSPL variable involved

[9] Indeed, the demand-related portion of the Company's TSC states that the charges are all FERC-approved charges and "are allocated to each customer class based upon the contribution of that class to the 5 coincident peaks used by PJM to establish such demand-related charges." Tariff Electric Pa. PUC. No. 201, Supplement No. 237, Twelfth Revised Page No. 19Z (emphasis added).

in this calculation (*i.e.*, Nos. 3 and 4 of the graphic above). Both numbers 3 and 4 are part of the wholesale market and, therefore, within FERC's exclusive jurisdiction.

In addition, for shopping customers, EGSs provide retail generation and transmission service to their customers and charge for that service through private contracts, over which the Commission has no jurisdiction. (PPL MB at 46.) The Commission has stated that it lacks jurisdiction over the rates charged by an EGS to retail customers, such as the customers that comprise PPLICA and IECPA. (PPL MB at 48-49.) Therefore, in this proceeding, PPLICA and IECPA's issues are not within the Commission's jurisdiction.

PPLICA and IECPA also incorrectly assert that FERC's order in *Commonwealth Edison Co.*, 133 FERC ¶ 61,118, 61,596 (2010) supports their position. (PPLICA-IECPA Exceptions, pp. 5-6.) In *Commonwealth Edison*, FERC rejected claims by the Illinois Commerce Commission ("ICC") that the proposed tariff provisions, which specified methodologies for inputs to FERC-jurisdictional charges assessed by PJM to LSEs, would limit the ICC's ability to address "how LSEs bill retail customers for such charges." *Id.* Here, however, PPLICA and IECPA are not challenging (a) PPL Electric's TSC or (b) how EGSs bill retail customers for transmission charges—*i.e.*, how an LSE would bill a retail electric customer for transmission service. (PPL MB at 44, 48.) Rather, they are challenging the input (the NSPL) used to calculate the NITS charge, which is the subject of FERC's jurisdiction.

Similarly, PPLICA and IECPA misrepresent FERC's decision in the *Amtrak Order on Reconsideration*.[10] PPLICA and IECPA erroneously claim that FERC did not intend its ruling as a "finding of *exclusive* jurisdiction" over the Company's NSPL methodology. (PPLICA-IECPA Exceptions, pp. 6-7.) On the contrary, FERC declared that "[t]he fact that a Commission-

[10] *National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection*, 173 FERC ¶ 61,043 at P 25 (Oct. 15, 2020) ("*Amtrak Order on Reconsideration*").

jurisdictional methodology may also be included in a state commission tariff does not convey any jurisdictional finding." *Amtrak Order on Reconsideration*, at P 25. Including the methodology used to calculate the NITS charge or the NSPL input in a state commission tariff does not alter FERC's exclusive jurisdiction or grant jurisdiction over these issues to the Commission. Thus, as explained in PPL Electric's Briefs, FERC's jurisdiction over both NITS rates and the methodology used by PPL Electric to determine NSPL contributions preempts Commission regulation.

The Commission also should reject PPLICA's and IECPA's argument that the Commission's Order in *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, at Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020), somehow extended the Commission's jurisdiction to reach the methodologies and inputs used to calculate the NITS charge. (PPLICA-IECPA Exceptions, pp. 3-4.) The ALJ correctly concluded that the Commission is a "creature of statute" and "cannot extend its jurisdiction beyond that which has been granted to it by the General Assembly in the context of a market investigation order." (RD at 39; *see also* PPL RB at 28.)

Finally, if the Commission ultimately were to consider the merits of this issue or avoid the jurisdictional analysis, then it should reject the 1 CP method and affirm PPL Electric's continued and longstanding (since 2011) use of the 5 CP method because: (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 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 versa; (4) the 5 CP method is consistent with all relevant precedent; and (5) the 5 CP method properly limits individual customers' ability to avoid cost

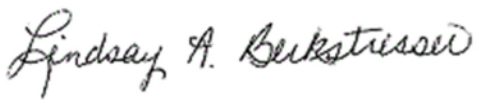
responsibility for the transmission system (and thereby effectively receive free transmission service) if they can shift their load to avoid the single system peak. (PPL MB at 42-43.)

Based on the foregoing, PPLICA-IECPA Exception No. 1 should be denied.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by the other parties and adopt the Recommended Decision without modification.

Respectfully submitted,



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