

**Paul E. Russell**  
Associate General Counsel

**PPL**  
Two North Ninth Street  
Allentown, PA 18101-1179  
Tel. 610.774.4254 Fax 610.774.6726  
perussell@pplweb.com



**E-Filing**

August 30, 2016

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

**Re: Comments of PPL Electric Utilities Corporation on the Proceeding to  
Evaluate Transition to Corrected Non-Solar Tier 1 Calculation Methodology  
Docket No. M-2009-2093383**

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Dear Ms. Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") is an original of PPL Electric's comments in the above-captioned proceeding. These Comments are being filed pursuant to the Tentative Order issued on August 11, 2016 in the above captioned proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on August 30, 2016, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions regarding these comments, please call me at (610) 774-4254 or Bethany Johnson – Manager, Regulatory Operations at (610) 774-7011.

Very truly yours,

Paul E. Russell

Enclosures

cc via email: Tanya J. McCloskey, Esquire  
Mr. John R. Evans  
R. Kanaskie, Esquire  
Scott Gebhardt  
Kriss Brown

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding to Evaluate Transition to Corrected : Docket No. M-2009-2093383  
Non-Solar Tier I Calculation Methodology :

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**COMMENTS OF  
PPL ELECTRIC UTILITIES CORPORATION**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**I. INTRODUCTION**

By Tentative Order entered August 15, 2016, the Pennsylvania Public Utility Commission (“Commission”) requested comments on options for potential remedial actions to address the significant increase in the non-solar Tier I Alternative Energy Credit (“AEC”) obligation for the 2015-2016 compliance year that resulted from a correction of an error in the calculation of the quarterly adjustment of non-solar Tier I AECs. Comments are due within 15 days from the date of the Tentative Order, *i.e.*, on or before August 30, 2016. Consistent with the Tentative Order, PPL Electric Utilities Corporation (“PPL Electric”) submits these Comments for the Commission’s consideration.

The Alternative Energy Portfolio Standards Act (“AEPS Act”)<sup>1</sup> and the Commission’s implementing regulations<sup>2</sup> require all electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) to obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. *See* 73 P.S. § 1648.3(e); 52 Pa. § Code 54.182. Section 5 of Act 129 of 2008, P.L. 1592, added Section 2814 to the Pennsylvania

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<sup>1</sup> Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§ 1648.1-1648.8.

<sup>2</sup> *See* 52 Pa. Code §§ 75.11, *et seq.*

Public Utility Code, 66 Pa.C.S. § 2814. Section 2814 expanded and further defined the type of sources that qualify as alternative energy sources under the AEPS Act. Pertinent to these Comments, Section 2814(c) of the Public Utility Code requires the Commission to quarterly increase the percentage of Tier I AECs required to reflect any new low impact hydropower and biomass resources that qualify as Tier I alternative energy sources (hereinafter the “Act 129 Adjustment”). 66 Pa.C.S. § 2814(c).

By Secretarial Letter dated July 8, 2016, the Commission advised that it identified an error in how the Commission’s AEC program administrator calculated the Act 129 Adjustment over the past six years. The July 8, 2016 Secretarial Letter notified all EDCs and EGSs that the annual non-solar Tier I AECs required for the 2015-2016 compliance year would be increased. As a result of the Commission’s correction to the Act 129 Adjustment, PPL Electric will need to acquire a total of 30,360 additional non-solar Tier I AECs to meet its AEPS Act obligation for the 2015-2016 compliance year.<sup>3</sup> Given that roughly 73.30%<sup>4</sup> of the customer load in PPL Electric service territory is served by EGSs, PPL Electric estimates that these EGSs that served load during the 2015-2016 compliance year collectively would need to acquire a total of approximately 113,700 additional non-solar Tier I AECs to meet their AEPS Act obligation for the 2015-2016 compliance year. Accordingly, the Commission’s correction of the Act 129 Adjustment results in a significant increase in the number of non-solar Tier I AECs needed by

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<sup>3</sup> The total additional number of non-solar Tier I AECs required is calculated by multiplying the Company’s total load for the 2015-2016 reporting period by the Act 129 Adjustment (8,164,723.38 kWh total load x 0.00371836 = 30,359.38, which rounds up to 30,360 AECs).

<sup>4</sup> According to the Pennsylvania Electric Shopping Statistics prepared by the Pennsylvania Office of Consumer Advocate, a total of 73.30% of customer load in PPL Electric’s service territory was served by EGSs as of July 1, 2016. See Pennsylvania Electric Shopping Statistics As of 7/1/2016, available at: <http://www.oca.state.pa.us/Industry/Electric/elecstats/July20.PDF> (Last visited 8/18/16).

both PPL Electric and the EGSs serving retail load in the Company's service territory for the 2015-2016 compliance period.

All AECs for the 2015-2016 compliance year, including the newly increased non-solar Tier I AECs, must be deposited in the appropriate Generator Attribute Tracking System ("GATS") account by September 1, 2016. However, as a result of concerns expressed by many stakeholders, the Commission issued a Secretarial Letter on August 9, 2016, that extended the true-up period for the newly increased non-solar Tier I AECs from September 1, 2016 to November 30, 2016.<sup>5</sup> The Commission further stated that this extension of time provides the Commission with additional time to address, with input from all stakeholders, the impact of the unanticipated increase in the non-solar Tier I AEC requirements and any potential options to mitigate that impact on EGSs and EDCs for the 2015-2016 and/or subsequent compliance years.<sup>6</sup>

In its Tentative Order, the Commission proposed two options for remedial action to consider. The first option proposed by the Commission would require each EDC to procure additional non-solar Tier I AECs needed to meet the 2015-2016 AEPS Act obligation for all load serving entities (LSEs) operating in the EDC's distribution zone, and to recover the costs of this procurement through a preexisting non-bypassable charge applicable to all rate classes (hereinafter, the "First Option").<sup>7</sup> The second option proposed by the Commission is to delay the true-up period to give the LSEs more time to procure the additional non-solar Tier I AECs required by the Commission's correction to the Act 129 Adjustment (hereinafter, the "Second

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<sup>5</sup> The extended true-up period applies only to the additional non-solar Tier I AECs required as a result of the Commission's correction to the Act 129 adjustment. It does not apply to any other AECs. *See* Tentative Order, pp. 3-4.

<sup>6</sup> *See* Tentative Order, p. 4.

<sup>7</sup> *See* Tentative Order, p. 5.

Option”).<sup>8</sup> In addition to requesting comments on the First and Second Options proposed by the Commission, the Tentative Order also requested that commenters present other remedial options that stakeholders deem viable to address the Commission’s correction to the Act 129 Adjustment for the 2015-2016 compliance year.

PPL Electric is an “electric distribution company” as that term is defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, and the AEPS Act, 73 P.S. § 1648.2, and is subject to the regulatory jurisdiction of the Commission. PPL Electric is and has been an active supporter of alternative energy within the Commonwealth. As explained above, the Commission’s correction to the Act 129 Adjustment results in a very significant increase in the non-solar Tier I AECs as compared to prior years. Importantly, but for the significant increase in the non-solar Tier I AECs required as a result of the Commission’s correction to the Act 129 Adjustment, PPL Electric would have all of the non-solar Tier I AECs needed to be in compliance for the 2015-2016 reporting year. However, PPL Electric currently does not have sufficient additional non-solar Tier I AECs to comply with the Commission’s correction to the Act 129 Adjustment for the 2015-2016 compliance year. Thus, PPL Electric will need to acquire additional non-solar Tier I AECs needed to comply with the corrected Act 129 Adjustment and recover the associated costs.

PPL Electric appreciates the Commission’s efforts to address the issues and difficulties created for both EDCs and EGSs by the July 8, 2016 correction to the Act 129 Adjustment for the 2015-2016 compliance year. PPL Electric offers the following comments for the Commission’s consideration to provide further guidance and clarity. Importantly, as further explained below, PPL Electric already has a Commission-approved process in place that will

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<sup>8</sup> See Tentative Order, p. 5.

permit the Company to fully comply with the corrected Act 129 Adjustment by the extended November 30, 2016 deadline.

## II. COMMENTS

### A. THE COMMISSION'S PROPOSED OPTIONS

#### 1. **First Option Proposed by the Commission - EDC Procurement of AECs for all LSEs and Non-Bypassable Cost Recovery**

The First Option proposed by the Commission would require EDCs to procure all additional non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment for all LSEs operating in the EDCs distribution zone during the 2015-2016 compliance period. Under this proposal, the EDC would procure all AECs needed through either the spot market or a competitive bidding process, and would recover the costs of this procurement through a preexisting non-bypassable charge applicable to all rate classes.<sup>9</sup> For the reasons explained below, the Company opposes the EDC procurement of AECs for all LSEs.

Under the First Option proposed by the Commission, the EGSs' AEPS Act obligations would be shifted from the EGSs to the EDCs. However, it is unclear whether the Commission has authority to shift the EGSs' AEPS Act obligation to the EDCs. The AEPS Act on its face appears to impose the obligation to acquire AECs on both EDCs and EGSs. *See* 73 P.S. § 1648.3(e). Likewise, the Commission's regulations implementing the AEPS Act clearly require both EDCs and EGSs to acquire the AECs needed to comply with the AEPS Act obligation. *See* 52 Pa. Code § 75.61(b) ("For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period..."). The AEPS Act and the Commission's regulations both appear to contemplate that EDCs and EGSs each have an AEPS Act obligation.

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<sup>9</sup> *See* Tentative Order, p. 5.

Importantly, there is nothing in either the AEPS Act or the Commission's regulations that appear to grant the Commission authority to shift the EGSs' AEPS Act obligation to EDCs, or vice versa. For these reasons, PPL Electric questions whether the Commission has the requisite statutory authority to shift the EGSs' AEPS Act obligation to the EDCs as contemplated by the First Option proposed by the Commission.<sup>10</sup>

Relatedly, both the AEPS Act and Commission's implementing regulations clearly provide that each EDC and EGS that does not meet its AEPS Act obligation will be subject to alternative compliance payments. *See* 73 P.S. § 1648.3(f); 52 Pa. Code § 75.65(b). PPL Electric submits that these provisions add further doubt to whether the Commission has the requisite statutory authority to shift the EGSs' AEPS Act obligation to the EDCs. A further difficulty in this regard under the First Option is whether the EDC could be subject to an alternative compliance payment in the event it is unable to acquire all the additional non-solar Tier I AECs required for all LSEs operating in the EDC's distribution zone.

Both EGSs and EDCs appear to be required under the AEPS Act and Commission's implementing regulations to acquire the AECs necessary to meet their respective AEPS Act obligations as explained above. To date, PPL Electric has only procured the AECs necessary to meet its AEPS Act obligation for the default service load. Requiring PPL Electric to procure AECs for the entire zone would expand the Company's obligation beyond default service supply.

PPL Electric submits that EGSs should not be excused from this statutory obligation simply because the Commission's AEC program administrator made an error in the Act 129 Adjustment. The Commission's correction to the Act 129 Adjustment impacts both EDCs and

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<sup>10</sup> Such uncertainty in the Commission's statutory authority, if challenged, could result in the need for appellate review, which could further and significantly delay the resolution of the Commission's correction to the error in the Act 129 Adjustment.

EGSs. The First Option proposed by the Commission, however, would excuse the EGSs from compliance and force the EDCs to bear the entire burden of the error made by the Commission's AEC program administrator. PPL Electric submits that this is an unreasonable result that unduly penalizes the EDCs for an error that was no fault of their own.

Even assuming such a proposal is within the Commission's statutory authority, PPL Electric is concerned that the First Option proposed by the Commission would set a bad precedent. Section 2814(c) of the Public Utility Code requires the Commission to quarterly increase the percentage of Tier I AECs required to reflect any new low impact hydropower and biomass resources that qualify as Tier I alternative energy sources. 66 Pa.C.S. § 2814(c). In theory, this Act 129 Adjustment could and likely will increase the non-solar Tier I AEC during future compliance years, which could require both EDCs and EGSs to acquire additional non-solar Tier I AECs during the future true-up periods. The First Option, if adopted, could set a bad precedent that would open the door for EGSs to request to be excused from acquiring additional AECs needed to meet future Act 129 Adjustments and, instead, force the EDCs to satisfy the shortfall in EGSs' AEPS Act obligation on a continuing basis.

Based on the foregoing, PPL Electric does not support a proposal that EDCs be required to acquire the additional non-solar Tier I AECs needed for all LSE in the EDCs' respective zones. PPL Electric believes that each EDC and EGS should be required to obtain the AECs needed to meet its respective AEPS Act obligation as set forth in both the Act and the Commission's implementing regulations.

For completeness, PPL Electric will next address the spot market, competitive bid process, and non-bypassable cost recovery aspects of the First Option. However, this discussion should not in any way be construed as support for the First Option proposed by the Commission.

In the Tentative Order, the Commission states that its proposal for the EDCs to acquire all the AECs for all LSEs in the EDC's zone could be implemented through (1) spot market purchases or (2) a competitive bid process. In the event that the Commission directs the EDCs to acquire all the AECs for all LSEs in the EDC's zone, which the Company opposes for the reasons explained above, PPL Electric strongly recommends the Commission adopt the spot market approach over the competitive bid process.

Section 75.61(e) of the Commission's regulations provides that EDCs and EGSs not in compliance with the AEPS Act obligations at the end of the reporting period may acquire additional AECs during the true-up period. 52 Pa. Code § 75.61(e). Further, Section 75.67(c)(7) provides that the costs incurred during the true-up period shall be recovered during the reporting period in which the costs were incurred.<sup>11</sup> 52 Pa. Code § 75.67(c)(7). PPL Electric submits that these regulatory provisions contemplate the use of spot market purchases/brokers to obtain compliance during the true-up period. Indeed, the Company believes it would be very difficult to develop and hold an auction between the time that the Commission's AEC program administrator notifies an EDC or EGS of noncompliance and the end of the true-up period.

Based on the Company's contacts with market participants, it appears that AECs are readily available and can be purchased from the spot market. By its very nature, the price paid for AECs purchased from the spot market will be competitive and reflective of the market price in effect at the time. Importantly, use of the spot market is relatively simple and will not require the time and expense needed to develop, hold, and review the results of a new separate non-solar Tier I AEC auction. For these reasons, PPL Electric prefers the use of the spot market and/or

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<sup>11</sup> The true up period occurs after the end of the reporting period, *i.e.*, during the next reporting period. Thus, the costs incurred during the true-up period would be recoverable during the current reporting period, *i.e.*, costs for the 2015-2016 true-up would be recoverable during the 2016-2017 reporting period.

brokers to acquire the additional non-solar Tier I AECs (whether acquired for the EDC alone or for all LSEs in the EDC's zone).

In further support, PPL Electric notes that it currently does not have authority to hold a non-solar Tier I AEC auction under its Commission-approved DSP III Program. As a result, new bid documents (*e.g.*, an appropriate Request for Proposals) would need to be developed by PPL Electric and approved by the Commission before any such auction could take place. In addition, it would take additional time to hold the auction, review the results, select a winning bidder, and present this information for Commission review and approval/rejection. Not only would this increase the administrative costs incurred to acquire the AECs needed, it could substantially delay the date of the Company's compliance. For these reasons, PPL Electric does not support the use of a competitive auction to acquire the additional non-solar Tier I AECs (whether acquired for the EDC alone or for all LSEs in the EDC's zone).

Finally, PPL Electric has concerns over the use of a non-bypassable rider to recover the costs incurred to acquire the additional non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment. As explained above, PPL Electric believes that each EDC and EGS should be required to obtain the AECs needed to meet its respective AEPS Act obligation as set forth in both the Act and the Commission's implementing regulations. PPL Electric is also concerned that using a non-bypassable rider to cover costs needed to meet an EGS's obligation would set a bad precedent. For these reasons, PPL Electric does not support the use of a non-bypassable rider to recover these costs.

In addition, PPL Electric has concerns about the Commission's proposal that EDCs should recover the costs under the First Option through a preexisting non-bypassable charge, such as a competitive enhancement rider, solar photovoltaic alternative energy credit rider, or

other tariff mechanism as deemed optimal by individual EDCs, so long as the charge is applicable to all rate classes. The only existing Commission-approved non-bypassable rider currently in PPL Electric's tariff that is applicable to all rate classes is the Competitive Enhancement Rider ("CER"). PPL Electric questions whether recovering the costs incurred to acquire AECs exceeds the intended purpose of the CER.<sup>12</sup> Additionally, the CER currently is a fixed charge that is applicable to all rate classes, meaning that all rate classes pay the same fixed charged under the CER. However, because the percentage of AECs required is based on the amount of load served (kilowatt-hours) and each rate class represents a different proportion of load on the Company's system, the use of the fixed charge in the CER to recover the costs under the First Option would result in cross-subsidization among the various rate classes. Therefore, if the Commission adopts the First Option and directs PPL Electric to recover the costs through the CER, the Company will have to modify the CER to provide for proper cost recovery from each customer class or, alternatively, develop a new non-bypassable rider.

Based on the foregoing, PPL Electric does not support the First Option proposed by the Commission. As discussed in more detail below, PPL Electric believes there are several other viable and more prudent options to address the concerns raised by the Commission's correction to the Act 129 Adjustment.

## **2. Second Option Proposed by the Commission - Delay the True-Up Period for the Non-Solar Tier I AECs**

The Second Option proposed by the Commission is to delay the true-up period to give the LSEs more time to procure the additional non-solar Tier I AECs required by the Commission's correction to the Act 129 Adjustment. PPL Electric strongly supports this proposal and, as

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<sup>12</sup> The CER is intended to recover costs associated with enhancing competition -- not to recover the costs incurred by EGSs to meet their statutory obligation required to compete in the Pennsylvania competitive market.

explained in Section II.B.2 of these Comments, PPL Electric already has a Commission-approved process in place that will permit the Company to fully comply with the corrected Act 129 Adjustment by the extended November 30, 2016 deadline.

The 2015-2016 compliance period ended May 31, 2016. The Commission corrected the Act 129 Adjustment via Secretarial Letter issued on July 8, 2016, *i.e.*, after the compliance period had ended. The Commission's correction to the Act 129 Adjustment resulted in a significant increase in the non-solar Tier I AECs required for the 2015-2016 compliance period. The correction to the Act 129 Adjustment impacts all EDCs and EGSs serving retail customers in Pennsylvania.<sup>13</sup>

All EDCs do not have the same default service procurement plans, and all EGSs do not necessarily have the same business models. As a result, each will likely have different preferred approaches to complying with the Commission's correction to the Act 129 Adjustment. For example, one EDC's Commission-approved default service plan may contemplate acquisition of additional needed AECs through the spot market, while another EDC's Commission-approved default service plan may provide for any shortfall in AECs to be acquired in subsequent auctions. In short, given the diverse business models (and perhaps default service plan measures), PPL Electric submits that the appropriate remedy to address the Commission's correction to the Act 129 Adjustment may not be a "one size fits all" approach.

Given the timing and significant impact of the Commission's correction to the Act 129 Adjustment, and the diverse business models and default service plans throughout the Commonwealth, PPL Electric supports delaying the compliance date to allow each EDC and

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<sup>13</sup> As explained above, PPL Electric believes that each EDC and EGS should be required to obtain the AECs needed to meet its respective AEPS Act obligation as set forth in both the Act and the Commission's implementing regulations.

EGS sufficient time to develop and implement its own individual plans to acquire the additional non-solar Tier I AECs needed. Again, recognizing that each entity may have a different business model or default service plan, including when the AECs can be procured and when the costs can be recovered (*e.g.*, an EGS may need to add the costs into the pricing of future contracts or an EDC may need to add the additional AECs into future default service solicitations), a uniform deadline for all EDCs and EGSs may not be appropriate.

For these reasons, PPL Electric strongly supports delaying the compliance date for an appropriate time to allow EDCs and EGSs more time to procure the AECs needed to comply with the Commission's correction to the Act 129 Adjustment. As explained in detail below, PPL Electric will be able to fully comply with the Commission's correction to the Act 129 Adjustment by the extended November 30, 2016 deadline by using the mechanism already approved by the Commission.

## **B. OPTIONS PROPOSED BY PPL ELECTRIC**

### **1. The Correction to the Act 129 Adjustment Should Apply Prospectively Only**

The 2015-2016 compliance period ended May 31, 2016. The Commission corrected the Act 129 Adjustment via Secretarial Letter issued on July 8, 2016, *i.e.*, after the compliance period had ended. The Commission's correction essentially resulted in a retroactive increase in the number of non-solar Tier I AECs required for the 2015-2016 compliance period.

As a preliminary matter, PPL Electric questions whether Section 2814(c) of the Public Utility Code authorizes the Commission to make retroactive adjustments to the non-solar Tier I AECs required. Section 2814(c) provides as follows:

Increase in Tier I.--The commission shall at least quarterly increase the percentage share of Tier I alternative energy sources required to be sold by an electric distribution company or electric generation supplier under section 3(b)(1) of the Alternative Energy

Portfolio Standards Act to reflect any new biomass energy or low-impact hydropower resources that qualify as a Tier I alternative energy source under this section. No new resource qualifying as biomass energy or low-impact hydropower under this section shall be eligible to generate Tier I alternative energy credits until the commission has increased the percentage share of Tier I to reflect these additional resources.

66 Pa.C.S. § 2814(c) (emphasis added).

The plain language of Section 2814(c) provides that the Commission shall at least quarterly increase the percentage of Tier I AECs required to reflect the new alternative energy systems that qualified as Tier I alternative energy sources. Section 2814(c) goes on to provide that these Tier I alternative energy sources cannot generate Tier I AECs until after the Commission has increased the percentage of Tier I AECs. PPL Electric submits that these provisions, when read together as they must, contemplate that the quarterly adjustment in Tier I AECs required is prospective only -- the Commission must first increase the Tier I AECs and then the alternative energy system can generate the AECs. Moreover, there is nothing in Section 2814(c) to suggest that the quarterly increase “reaches back” to the beginning of the quarterly period (or even the beginning of a compliance period) to increase the number of AECs required for that quarterly period (or compliance period). For these reasons, PPL Electric submits that there is a serious legal question as to whether the Act 129 Adjustment can apply retroactively.<sup>14</sup>

Even if the Commission has authority to apply the Act 129 Adjustment retroactively, the Commission should decline to do so under the unique circumstances presented here. As a result of the timing of the Commission’s correction to the Act 129 Adjustment, EDCs and EGSs were unable to anticipate the very significant increase in the number of non-solar Tier I AECs that

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<sup>14</sup> Such uncertainty in the Commission’s statutory authority, if challenged, could result in the need for appellate review, which could further and significantly delay the resolution of the Commission’s correction to the error in the Act 129 Adjustment.

would be required for the 2015-2016 compliance period. This significant increase in the number of non-solar Tier I AECs is retroactively being imposed on EDCs and EGSs through no fault of their own but, rather, due to the correction of an error by the Commission's AEC program administrator. As the Commission noted in the Tentative Order, stakeholders have raised several concerns with the adverse impact that this unanticipated increase in the non-solar Tier I AECs will have on their business models.<sup>15</sup> Indeed, EGSs were unable to add the costs of these AECs into the pricing of their contracts that existed during the 2015-2016 compliance period. Similarly, EDCs may be unable to include this increased AEC requirement in their wholesale contracts in effect during the 2015-2016 compliance period. For example, and as explained in greater detail in the next section of these Comments, PPL Electric's Commission-approved default service plan specifies the percentages of AECs to be provided by the wholesale supplier and cannot be changed during the contract term.

PPL Electric submits that all of the issues and concerns with the Commission's correction to the Act 129 Adjustment can be fully eliminated if the correction is made prospective only -- meaning that the correction to the Act 129 Adjustment becomes effective on the date issued and applies to the total number of AECs needed to meet the AEPS Act obligation at the end of the 2016-2017 reporting period. Unlike the effects of retroactively increasing the number of non-solar Tier I AECs required for the 2015-2016 compliance period after the period has ended, the prospective application of the corrected Act 129 Adjustment provides EDCs and EGSs with advance notice of what is expected at the end of the 2016-2017 compliance. This will allow EDCs and EGSs to adequately prepare for, acquire, and recover the costs associated with the significant increase in the number of non-solar Tier I AECs due to corrected Act 129 Adjustment

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<sup>15</sup> See Tentative Order, p. 3.

by the end of the 2016-2017 compliance year. Indeed, EGSs will be able to add these costs into their future contract pricing. Similarly, EDCs can include the increased number of AECs in future default service auctions.

PPL Electric recognizes that the non-solar Tier I AECs required each compliance year could potentially increase as a result of the Act 129 Adjustment. However, the significant increase set forth in the July 8, 2016 Secretarial Letter was attributable to an error in how the Commission's AEC program administrator calculated the Act 129 Adjustment over the past six years. It was not due to new low impact hydropower and biomass resources that qualified as Tier I alternative energy sources during the 2015-2016 compliance period. *See* 66 Pa.C.S. § 2814(c). Given that the error has now been corrected, PPL Electric submits that it is highly unlikely that the future increases due to the Act 129 Adjustment will be as significant as the increase attributable to the correction of the error in the Act 129 Adjustment.

For these reasons, PPL Electric recommends that the Commission's correction to the Act 129 Adjustment be applied prospectively only to determine the total amount of non-solar Tier I AECs required by EDCs and EGSs for the 2016-2017 compliance period. The prospective application of the Act 129 Adjustment eliminates the issues and concerns raised by stakeholders and appears to comport with the plain language of Section 2814(c) of the Public Utility Code.

**2. PPL Electric Plans to Implement the Mechanism Already Approved by the Commission to Acquire the Additional Non-Solar Tier I AECs Needed**

Under its third Commission-approved Default Service Program and Procurement Plan ("DSP III Program"), the Company currently has a mechanism to acquire the additional non-solar Tier I AECs needed if the true-up period is delayed. Therefore, in the event that the Commission declines to make the correction to the Act 129 Adjustment prospective only, as discussed above, PPL Electric proposes to follow the process already approved by the

Commission in the Company's DSP III Program to fully comply with the Commission's correction to the Act 129 Adjustment by the extended November 30, 2016 deadline.

Consistent with its obligations as a default service provider, on April 18, 2014, PPL Electric filed a Petition requesting Commission approval of its DSP III Program. On September 12, 2014, the active parties submitted a Joint Petition for Approval of Partial Settlement. The Partial Settlement resolved all of the issues and concerns among the Parties except for two issues that were reserved for litigation and are not relevant to these Comments.<sup>16</sup> On October 30, 2014, the Commission issued the Recommended Decision of Administrative Law Judge Susan D. Colwell, which recommended, *inter alia*, approval of PPL Electric's DSP III Program as modified by the Partial Settlement and addressed the two issues reserved for litigation. On January 15, 2015, the Commission entered an Opinion and Order that approved PPL Electric's DSP III Program as modified by the Partial Settlement and resolved the two issues reserved for litigation. On January 30, 2015, PPL Electric submitted its compliance filing to implement the Commission-approved DSP III Program.

Under the Commission-approved DSP III Program, nearly all of PPL Electric's default service supply is procured through load-following, full requirements contracts. These products obligate a wholesale electricity supplier to provide a fixed-percentage (referred to as a "tranche") of PPL Electric's default service hourly load during every hour of a product's term.<sup>17</sup> Pertinent to these Comments, these load-following fixed-price and spot market default service supply

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<sup>16</sup> The two issues reserved for litigation were (i) PPL Electric's proposal to change the Commercial & Industrial demand split from 500 kW to 100 kW and (ii) the issue of the cost responsibility for Non-market-based Transmission Service Charges. These issues are not pertinent to these comments.

<sup>17</sup> By assuming this obligation, wholesale suppliers are responsible for managing the acquisition of energy, capacity, transmission (other than defined non-market based transmission services), ancillary services, AECs, and any other related products (net of transmission and distribution losses) to meet Default Service customers' hourly load.

contracts require each default service wholesale supplier to provide a proportional share of AECs to fulfill PPL Electric's AEPS Act obligation, in accordance with the terms of the DSP III Program Supply Master Agreement ("SMA").<sup>18</sup>

The AEPS Act obligation for the DSP III Program is set forth in Exhibit 2 of the DSP III Program SMA, which is attached hereto as **Appendix A**. Pursuant thereto, each default service wholesale supplier is required to procure fixed percentages of AECs, including a set percentage of non-solar Tier I AECs, during each solicitation as part of its obligation under the load-following, full requirements contracts. Stated otherwise, the default service wholesale suppliers are advised in advance of the AECs needed to be procured as a percentage of load before they submit their competitive bids during each auction. The specified fixed percentages may be changed prospectively with each solicitation, based upon changes in the amount of AECs required by law. *See Appendix A*.

Using the load-following, full requirements contracts described above, PPL Electric successfully acquired all AECs as explicitly set forth in Exhibit 2 of the Commission-approved DSP III Program SMA for the 2015-2016 compliance year. However, as explained above, the Commission made a correction to its Act 129 Adjustment for the 2015-2016 compliance year. Importantly, the Commission's correction to the Act 129 Adjustment for the 2015-2016 compliance year is a very significant increase in the number of non-solar Tier I AECs required as compared to any prior Act 129 Adjustment. Indeed, this July 8, 2016 correction results in PPL Electric being required to acquire and transfer an additional 30,359.38 non-solar Tier I AECs to the GATS to meet the Company's AEPS Act obligation.

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<sup>18</sup> Each wholesale supplier is required to transfer the AECs acquired into PPL Electric's GATS account on a quarterly basis. *See DSP III Program SMA, Appendix D ¶ 5.*

In the event that the percentages of AECs needed for a compliance period is different or changed from the total percentage of AECs actually procured through an auction, Exhibit 2 of the DSP III Program SMA provides as follows:

The percentages set forth above may be revised for future DS Solicitations to reflect changes in law or other applicable regulatory requirements. DS Supplier shall provide the percentages set forth above in order to comply with its obligation under Full Requirements Service and the Company shall adjust the quantities/products being procured in future DS Solicitations to make up any shortfall or utilize any excess AECs resulting from such change. Any such adjustments will be made known to bidders prior to the conclusions of the applicable DS Solicitation.

*See Appendix A* (emphasis added).

Pursuant to Exhibit 2 of the DSP III Program SMA, the Company may use banked or excess AECs available to meet changes in regulatory requirements and may adjust the number of AECs in future solicitations to make up for any shortfall, *i.e.*, increase the percentages of AECs required in future solicitations to make up for shortfall in the number of AECs needed to meet the Company's AEPS Act obligation. Notably, Exhibit 2 does not authorize the Company to retroactively increase the percentage of AECs required by each wholesale supplier in previous auctions, nor does it obligate the wholesale suppliers in previous auctions to make up any shortfall. Rather, Exhibit 2 of the DSP III Program SMA only permits the Company to use banked AECs and then prospectively increase the number of AECs required in future auctions to make up for any shortfall. Absent Commission approval otherwise, Exhibit 2 of the DSP III Program SMA currently is the only Commission-approved mechanism for PPL Electric to acquire additional non-solar Tier I AECs if the total number of AECs required for a compliance period is changed due to applicable regulatory requirements, such as the Commission's correction to the Act 129 Adjustment explained above.

The Company currently does not have sufficient excess banked non-solar Tier I AECs to comply with the Commission's correction to the Act 129 Adjustment. Therefore, PPL Electric proposes to implement and follow the terms of the Commission-approved DSP III Program SMA to prospectively revise the percentage of AECs required in future load-following, full requirements contract solicitations to acquire the additional non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment. Importantly, PPL Electric will be able to obtain full compliance by the extended November 30, 2016 deadline using the process already approved in the Company's DSP III Program SMA.

To implement the terms of the Commission-approved DSP III Program SMA and obtain compliance with the corrected Act 129 Adjustment by the extended November 30, 2016 deadline, PPL Electric proposes to do the following:

- (i) All existing non-solar Tier I AECs with a vintage between June 2013 and May 2016 procured under the DSP III Program load-following, full requirements contracts will be transferred to the appropriate GATs account by no later than September 1, 2016;
- (ii) The non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment will be obtained from the load-following, full requirements contracts that became effective June 1, 2016,<sup>19</sup> and will be transferred to the appropriate GATs account by no later than November 30, 2016, using a first-in, first-out approach;

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<sup>19</sup> Appendix D to the DSP III Program SMA requires Default Service Suppliers to transfer AECs into PPL Electric's GATS account on a quarterly basis. Thus, the AECs procured through the existing load-following, full requirements contracts that became effective June 1, 2016, will be transferred and available to the Company by no later than October 1, 2016.

- (iii) Any shortfall in the number of non-solar Tier I AECs needed for the 2016-2017 compliance period resulting from the use of the load-following, full requirements contracts effective June 1, 2016, will be made up and acquired during the Company's next DSP III Program solicitation scheduled for October 11, 2016 in accordance with the terms and conditions of Exhibit 2 of the DSP III Program SMA in order to ensure the Company has sufficient non-solar Tier I AECs for the 2016-2017 compliance period.<sup>20</sup>

The above-described process, together with the previously extended November 30, 2016 deadline, will enable the Company to fully comply with the Commission's correction to the Act 129 Adjustment without the need for a formal amendment to the Company's DSP III Program, a new or modified cost recovery mechanism, development and approval of a new separate non-solar Tier I AEC auction, or the need to address concerns regarding the uncertainty of the Commission's statutory authority.

Based on the foregoing, in the event the Commission declines to make the corrected Act 129 Adjustment prospective only, PPL Electric proposes to implement and follow the process already approved by the Commission in the Company's DSP III Program to acquire the

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<sup>20</sup> The AECs procured through the existing load-following, full requirements contracts that became effective June 1, 2016, will be used to meet the corrected Act 129 Adjustment. Because these AECs were procured during the 2016-2017 compliance period, there will be a shortfall in the total number of AECs available at the end of the 2016-2017 compliance period. To address this issue, the Commission-approved DSP III Program SMA authorizes the Company to increase the AECs required in the 2016-2017 solicitations to obtain any shortfall in AECs needed for compliance for the 2016-2017 compliance period.

additional non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment by the extended November 30, 2016 deadline.<sup>21</sup>

**3. Allow EDCs and EGSs to Use the Spot Market/Brokers to Meet their Individual Non-Solar Tier I AECs Obligation**

In the event the Commission declines to make the corrected Act 129 Adjustment prospective only and also rejects the Company's proposal to implement and follow the process already approved in its DSP III Program, PPL Electric recommends that EDCs and EGSs be permitted to use the spot market/brokers to meet their individual non-solar Tier I AECs obligations under the corrected Act 129 Adjustment by the extended November 30, 2016 deadline.

As explained above, PPL Electric submits that Sections 75.61(e) and 75.67(c)(7) of the Commission's regulations contemplate the use of spot market purchases/brokers to obtain compliance during the true-up period.<sup>22</sup> Thus, under these regulatory provisions, it appears the Commission has authority to direct each EDC and EGS to obtain the additional non-solar Tier I AECs needed to comply with the corrected Act 129 Adjustment through the spot market and/or brokers, and to recover the associated costs during the 2016-2017 period (*i.e.*, through the EGS pricing in shopping contracts and EDC default service rates in effect during the 2016-2017

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<sup>21</sup> In the event that the Commission makes the corrected Act 129 Adjustment prospective only or directs LSEs to use the spot market to acquire the AECs needed for the 2015-2016 compliance period, the AECs procured during the October 11, 2016 solicitation could be banked and used to meet the requirements for the 2016-2017 compliance year and/or to offset future increases in the non-solar Tier I AEC requirement, including future Act 129 Adjustments.

<sup>22</sup> Section 75.61(e) provides that EDCs and EGSs not in compliance with the AEPS Act obligations at the end of the reporting period may acquire additional AECs during the true-up period. 52 Pa. Code § 75.61(e). Further, Section 75.67(c)(7) provides that the costs incurred during the true-up period shall be recovered during the reporting period in which the costs were incurred. 52 Pa. Code § 75.67(c)(7).

period). Such an approach would avoid the need to amend current default service plans and/or develop, approve, and implement new non-solar Tier I AEC auctions.

As explained above in Section II.A.1, PPL Electric currently does not have a Commission-approved auction for non-solar Tier I AECs and it is unlikely that such an auction could be developed and approved by the extended November 30, 2016 deadline. However, PPL Electric currently is utilizing a contingency plan in its current DSP III Program to procure Tier II AECs through the use of brokers (*i.e.*, the spot market). The Company's plan utilizes market costs, is semi-competitive (as the plan requires the Company to seek out and obtain at least 3 broker quotes and choose the lowest cost), and requires significantly less time than a typical energy auction to develop and complete. PPL Electric has experience using brokers to acquire AECs and recommends that it be permitted to follow this same process to acquire the non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment.

Again, based on its contacts with market participants, the Company believes that there are sufficient non-solar Tier I AECs available from the spot market/brokers for each EDC and EGS to acquire and meet its individual AEPS Act obligation under the corrected Act 129 Adjustment by the extended November 30, 2016 deadline. Accordingly, in the event the Commission declines to make the corrected Act 129 Adjustment prospective only and also declines to permit the Company to implement and follow the process already approved in its DSP III Program, PPL Electric recommends that each EDC and EGS be permitted to use the spot market/brokers to meet its respective non-solar Tier I AECs obligation under the Commission's correction to the Act 129 Adjustment by the extended November 30, 2016 deadline.

### **III. CONCLUSION**

PPL Electric appreciates the opportunity to provide comments to the *Final Rulemaking Order*. For the reasons explained above, PPL Electric respectfully requests that the Pennsylvania

Public Utility Commission: (1) consider the Comments and Reply Comments on an expedited basis, and (2) approve options to address the additional non-solar Tier I AECs needed to comply with the Commission's correction to the Act 129 Adjustment consistent with these Comments.

Respectfully submitted,

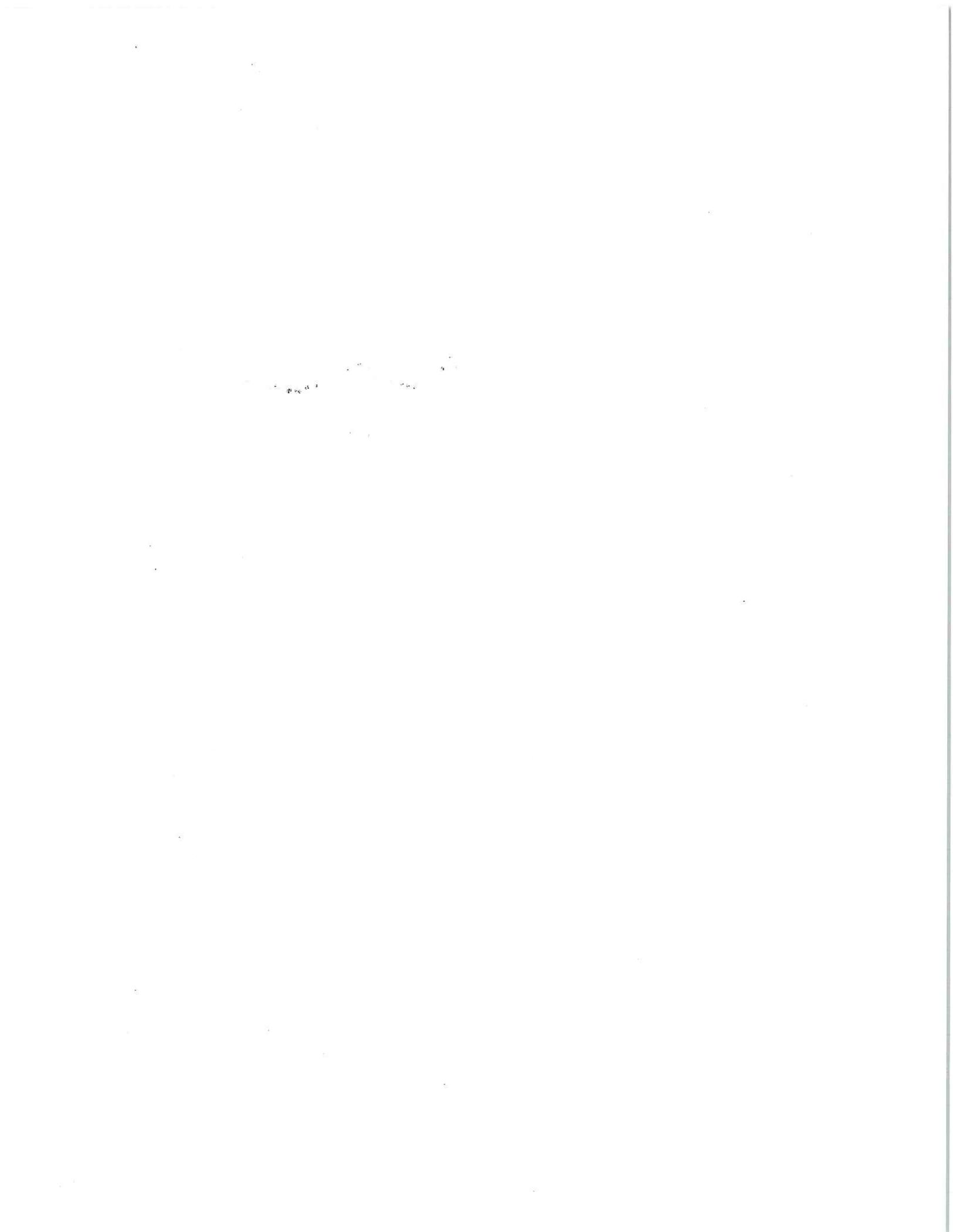


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Paul E. Russell (Pa. Bar I.D. 21643)  
Kimberly A. Klock (Pa. Bar I.D. #89716)  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-4254  
Fax: 610-774-6726  
E-mail: perussell@pplweb.com  
E-mail: kklock@pplweb.com

Dated: August 30, 2015

Attorneys for PPL Electric Utilities Corporation



## EXHIBIT 2 – ALTERNATIVE ENERGY PORTFOLIO STANDARD OBLIGATION

This Exhibit 2 shall confirm the Alternative Energy Portfolio Standards obligation of the Transaction agreed to on \_\_\_\_\_ ("Transaction Date").

**Residential Load Obligation:**

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/16 to 5/31/17	6.0%	0.1467%	8.2%
6/1/17 to 5/31/18	6.5%	0.1700%	8.2%

**Small Commercial & Industrial Load Obligation:**

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/16 to 5/31/17	6.0%	0.2933%	8.2%
6/1/17 to 5/31/18	6.5%	0.3400%	8.2%

**Large Commercial & Industrial Load Obligation:**

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/16 to 5/31/17	6.0%	0.2933%	8.2%
6/1/17 to 5/31/18	6.5%	0.3400%	8.2%

The percentages set forth above may be revised for future DS Solicitations to reflect changes in law or other applicable regulatory requirements. DS Supplier shall provide the percentages set forth above in order to comply with its obligations under Full Requirements Service and the Company shall adjust the quantities/products being procured in future DS Solicitations to make up any shortfall or utilize any excess AECs resulting from such change. Any such adjustments will be made known to bidders prior to the conclusion of the applicable DS Solicitation.

