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April 24, 2012

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: William R. Lloyd, Jr., Small Business Advocate v. PPL Electric Utilities Corporation  
Docket No. C-2011-2245906**

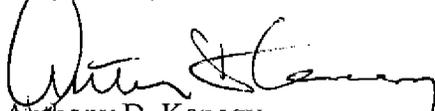
**PPL Electric Utilities Corporation Proposed Generation Supply Charge-1 for the period June 1, 2011 through August 31, 2011  
Docket No. M-2011-2243137**

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Dear Secretary Chiavetta:

Enclosed please find the Exceptions of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

cc: Honorable Susan D. Colwell  
Certificate of Service  
Office of Special Assistants

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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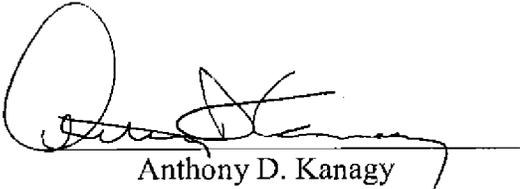
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William R. Lloyd, Jr.	:	
Small Business Advocate,	:	Docket No. C-2011-2245906
Complainant	:	M-2011-2243137
	:	
v.	:	
	:	
PPL Electric Utilities Corporation,	:	
Respondent	:	

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**EXCEPTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION**

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Dated: April 24, 2012

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## **I. INTRODUCTION AND BACKGROUND**

On May 31, 2011, the Office of Small Business Advocate (“OSBA”) filed a complaint with the Pennsylvania Public Utility Commission (“Commission”), challenging PPL Electric Utilities Corporation’s (“PPL Electric” or the “Company”) June 1, 2011 Generation Supply Cost-1 (“GSC-1 Rate”). The central focus of the OSBA complaint was PPL Electric’s methodology for reconciliation of its Generation Supply Charge (“GSC”) and Generation Supply Charge-1 (“GSC-1”) rates.

PPL Electric proposed its initial GSC in its Petition for Approval of a Competitive Bridge Plan (“CBP”), filed with the Commission on August 2, 2006. Under the CBP, the Company requested Commission approval of a plan to acquire default service supply for customers in 2010, as a bridge between the expiration of the Company’s generation rate cap on December 31, 2009, and the expiration of several other electric distribution companies’ (“EDCs”) generation rate caps on December 31, 2010. Specifically, the Company proposed to recover its default service costs through the GSC, which is a reconcilable Section 1307(e) cost recovery mechanism, with reconciliation to be performed on an annual basis. The Commission approved the Company’s CBP proposal, with certain modifications, by Order entered May 17, 2007. *See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Docket No. P-00062227, Order entered May 17, 2007 (“CBP Order”). One of the modifications, which in large part ultimately led to the current complaint proceeding, was to require PPL Electric to implement quarterly, as opposed to annual, reconciliation of the GSC. *See CBP Order*, p. 54. As explained below, this resulted in substantial volatility in the reconciliation of default service costs.

PPL Electric proposed its GSC-1 in 2008 in its POLR II Proceeding. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan*

*for the Period January 1, 2011 Through May 31, 2013*, Docket No. P-2008-2060309. The Commission approved the POLR II Settlement by Order entered June 30, 2009. The POLR II Settlement provided for PPL Electric to recover its default service costs for residential and small C&I customers through the GSC-1. PPL Electric St. No. 1, pp. 5-6.

The GSC was approved by the Commission for service rendered on and after January 1, 2010. Meter readings and the related customer bills occur cyclically throughout each month. As a result, most bills that were sent out in January 2010 reflected service rendered both in December 2009 and in January 2010. Therefore, when PPL Electric prepared its GSC reconciliation calculation for the period January 2010 through December 2010, PPL Electric appropriately excluded from the calculation those billed revenues associated with the service that was provided in December 2009.<sup>1</sup> PPL Electric St. No. 1, p. 9. However, PPL Electric included all billed revenues under the GSC for service provided in 2010 and all expenses that the Company incurred under the GSC for the same time period. This created an under collection for 2010 because PPL Electric did not otherwise recover sufficient revenues for service provided in 2010 to meet its incurred costs.

On February 8, 2011, a Section 1307(e) reconciliation hearing was held regarding PPL Electric's 2010 GSC over or under collection balances for the residential, small C&I, and large C&I customer classes at Docket No. M-2010-2213731. In a Recommended Decision issued on February 28, 2011, Administrative Law Judge Susan D. Colwell recommended acceptance of the Company's reconciliation of the 2010 GSC because it was not disputed. In its Order entered on April 14, 2011, the Commission adopted as its own action the Recommended Decision.

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<sup>1</sup> This procedure is known as proration. This procedure is consistent with long-standing Commission practice and precedent and the Company was required to prorate revenues in order to: (1) ensure that revenues received for service under capped rates in 2009 were not included in the reconciliation mechanism for 2010 service, and (2) avoid violating PPL Electric's generation rate cap, which expired on January 1, 2010.

On May 20, 2011, PPL Electric filed its GSC-1 for the period June 1, 2011 through August 31, 2011 (“Application Period”) with the Commission. The default service rates were set based upon a projection of the Company’s default service costs for the Application Period and also were designed to refund or to recover any prior period over and under collections from each customer class.

On May 31, 2011, the OSBA filed its complaint against PPL Electric’s June 1, 2011 GSC-1 Rate. OSBA argued that basic principles of accounting require matching of default service costs with revenues for the same time period. Therefore, the OSBA argued that PPL Electric should include unbilled revenues in its reconciliation calculation.

Pursuant to the established procedural schedule, PPL Electric and OSBA served Direct Testimony and Rebuttal Testimony. The OSBA served Surrebuttal Testimony and PPL Electric served written Rejoinder Testimony. An evidentiary hearing was held on October 5, 2011, at which time the parties moved their pre-filed testimony and exhibits into the record. In addition, the parties’ witnesses responded to questions posed by the ALJ, as well as follow-up questions by counsel. PPL Electric and the OSBA filed Main and Reply Briefs.

The Recommended Decision (“R.D.”) of Administrative Law Judge Susan D. Colwell (“ALJ”) was issued on April 4, 2012. Therein, the ALJ concluded that OSBA met its burden of proof to establish that the reconciliation methodology used by PPL Electric was unreasonable for purposes of Section 1307(e) of the Public Utility Code. 66 Pa.C.S. § 1307(e). Finally, the ALJ directed that the Commission’s Bureau of Audits conduct an audit of PPL Electric’s GSC-1 expenses and revenues beginning January 1, 2010 to the present day.

PPL Electric herein files these Exceptions to the R.D., pursuant to 52 Pa. Code § 5.533, and the Secretarial Letter dated April 4, 2012. For the reasons explained below, PPL Electric

respectfully requests that the Commission adopt PPL Electric's Exceptions and revise the R.D. accordingly.

## II. SUMMARY OF EXCEPTIONS

### A. Exception No. 1. The Reconciliation Methodology Recommended in the R.D. Is Contrary To Law, Contrary To Over 30 Years of Commission Practice and Would Prevent PPL Electric From Fully Recovering Its Costs.

The primary concern of the R.D. is that PPL Electric's reconciliation methodology creates a mismatch between revenues and expenses for each Application Period. R.D. at 27-28. The R.D. claims that this mismatch is unreasonable for reconciliation purposes. PPL Electric acknowledges that there is an apparent mismatch, but submits that there are good and valid reasons supporting this approach which support its approval. As explained below, PPL Electric's methodology is reasonable because it is consistent with the relevant statute, is consistent with 30 years of practice and precedent by PPL Electric and other electric utilities, and allows PPL Electric to fully recover its costs, including a cash working capital allowance for its POLR costs.

The R.D. accepted the OSBA's arguments that general principles of accounting require matching of default service costs with revenues, including unbilled revenue, which are an estimate of revenues not yet billed to customers, for the same time period, and that PPL Electric's reconciliation methodology which reconciles actual incurred costs with actual billed revenues is unreasonable. R.D. at 24-25. In accepting the OSBA's arguments, the R.D. apparently concludes that PPL Electric should have either: (1) included billed revenues for service provided under capped rates in 2009 in the reconciliation clause for 2010, or (2) that PPL Electric should have included unbilled or "realized revenues" for December 2010 in the reconciliation of its clause. R.D. at 24-25. Neither of these contentions can be accepted.

First, it is clear that PPL Electric properly excluded revenues billed in January 2010 for service provided in December 2009 from the GSC reconciliation mechanism. The end of December 2009 marked a clear demarcation between non-reconciled, capped generation rates provided for under PPL Electric's restructuring settlement and fully reconciled, non-capped generation rates that were offered to default service customers after the generation rate caps expired effective January 1, 2010. PPL Electric St. No. 1, p. 9. It would be completely inappropriate, unreasonable and unlawful for PPL Electric to include those revenues billed for service provided under the capped rate period in the reconciliation of the Section 1307(e) clause that was designed to recover the generation supply costs incurred for service provided after rate caps expired. This approach would prevent PPL Electric from recovering its generation supply costs for service provided under capped rates.

Similarly, it is not appropriate to include unbilled or "realized revenues" in the GSC. This recommendation is inconsistent with the plain language of Section 1307(e) of the Public Utility Code. 66 Pa.C.S. § 1307(e). The plain language of Section 1307(e) requires reconciliation of "revenues received." Unbilled revenues are not included in the reconciliation of a Section 1307(e) cost recovery mechanism because they are merely estimates of revenues. PPL Electric always has reconciled costs with actual billed revenues under its Section 1307(e) cost recovery mechanism.

PPL Electric's reconciliation methodology is consistent with the method it and other utilities have used to reconcile costs and recoveries under Section 1307(e) cost recovery mechanisms for more than 30 years. Any changes to this methodology should not be made for a single utility to a single reconciliation clause. The Commission must carefully consider the affect of any changes to this long-standing practice on not only PPL Electric, but also on the

other utilities that use a similar method. Furthermore, to the extent the Commission believes that it is appropriate to depart from over 30 years of Commission practice and policy, any such unprecedented change to the reconciliation method should only be made on a prospective basis. It is unreasonable to PPL Electric and to other utilities to impose such significant changes on a retroactive basis.

The R.D.'s fundamental concern appears to be that PPL Electric's methodology creates a first year mismatch between revenues and expense for reconciliation purposes, i.e., the first year reconciliation reflects 12 months of expense, but only 11 and one-half months of revenue. PPL Electric acknowledges this "mismatch," but it has a valid and lawful purpose, i.e, it provides PPL Electric with a lawful cash working capital ("CWC") allowance for its default service costs. It is well-established that CWC is a necessary and appropriate part of a utility's revenue requirement. CWC reflects the lag between a utility's payment of its expenses and its recovery of those expenses from customers. PPL Electric and other EDCs have long recovered a CWC allowance on their energy costs through their energy cost reconciliation mechanisms. Prior to deregulation this was done through the Energy Cost Rate reconciliation; after deregulation it is done through the GSC reconciliation. Specifically, the proration and reconciliation method used by PPL Electric creates a first year one-half month "mismatch" in revenues and expenses and rolls this mismatch forward until the specific Section 1307(e) cost recovery mechanism expires, at which point the one-half month of revenue is netted with any over or under collection balance at the expiration date of the mechanism and the balance, if any, is refunded to or recovered from customers. This "reserve" effectively provides for a return on the investment made to cover the lag between payment of default service expenses and receipt of default service revenue from customers. Importantly, PPL Electric has never claimed a CWC allowance on this investment in

base rates; rather, as explained above, it has recovered this CWC allowance through the Section 1307(e) reconciliation method. The R.D. acknowledges that PPL Electric is entitled to a cash working capital allowance on its default service costs, but criticizes PPL Electric for not claiming this cost in its base rates or in a default service proceeding. This is an unfair and inappropriate criticism. PPL Electric, over the past thirty years, has effectively recovered a cash working allowance on its energy costs through the Section 1307(e) reconciliation process. Recovery in a base rate case or in a default service proceeding was unnecessary and indeed, would have constituted a double recovery of costs, and would not have been accepted by the Commission.

The R.D. compounds this error by apparently finding that the GSC is not a Commission-made rate and is therefore potentially subject to refund.<sup>2</sup> This appears to set up the possibility that PPL Electric will be denied a CWC allowance on its default service costs back to January 1, 2010, but will not be able to go back to replace this disallowance with base rate or default service recovery. This would result in an unlawful and inappropriate denial of reasonable and prudent costs. Clearly, if the reconciliation method is changed it should only be done prospectively.

Moreover, the cause of the significant rate increase for the Small C&I customers was not PPL Electric's reconciliation methodology, but, rather, due to the fact that PPL Electric was required to reconcile the over and under collections on a quarterly basis as opposed to an annual basis. PPL Electric has proposed annual reconciliation of over/under collections in its Reconciliation Rider/ Competitive Transition Rider proceeding, and the ALJ has recommended approval of annual reconciliation in that proceeding. This will smooth the reconciliation effects for customers. Finally, the overall amount of the under collection for Small C&I customers has

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<sup>2</sup> The R.D. notes that it is premature to address the refund issue, and that it will be handled directly by the Commission after an audit. R.D. at 33.

been significantly reduced and there is no need to make significant and unprecedented changes to PPL Electric's reconciliation method.

**B. Exception No. 2. The Recommended Decision Erred In Ordering An Additional Audit Of PPL Electric's Reconciliation Method.**

The R.D. granted OSBA's request that the Commission's Bureau of Audits conduct an audit of PPL Electric's GSC-1 expenses and revenues beginning January 1, 2010 to the present day. This remedy should not be accepted for several reasons. As summarized above, and more fully explained below in Exception No. 1, the OSBA failed to meet its heavy burden to establish that PPL Electric's reconciliation methodology is unreasonable. Furthermore, the Bureau of Audits already has completed an audit of PPL Electric's 2010 GSC and 2011 GSC-1. Therefore, the remedy recommended in the R.D. is unnecessary.

**III. ARGUMENT**

**A. Exception No. 1 – The Reconciliation Methodology Recommended In The R.D. Is Contrary To Law, Contrary To Over 30 Years Of Commission Practice And Would Prevent PPL Electric From Fully Recovering Its Costs.**

**1. Introduction**

Preliminarily, it must be remembered that OSBA, as the complainant challenging a Commission-approved reconciliation method, bears a heavy burden. As found by the ALJ, "the rate under consideration here is one which was implemented following Commission approval of the mechanism to determine it...[t]his is an established rate..." R.D. at 19-20. It is well-established that a utility's Commission-approved tariff has the full force of law and is binding on the utility and its customers. *Pa. Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Further, tariff provisions previously approved by the Commission are deemed just and reasonable and, therefore, a party challenging a previously-

approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified. *See, e.g., Pa .P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at \*165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof). The Commonwealth Court has explained that "a complainant seeking to evade the effect of an existing tariff provision ... carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable." *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (internal citations omitted). For the several reasons explained below, the R.D. erred in concluding that the OSBA met its "very heavy burden."

**2. The R.D. Appears To Disallow PPL Electric Recovery of Costs Associated With Providing Generation Service Under Capped Rates For Service Rendered In December 2009.**

It appears from the R.D. that the ALJ is recommending that PPL Electric include revenues billed in January 2010 for service rendered in December 2009 in the reconciliation of its GSC clause. On page 34 of the R.D., the first Recommendation is as follows:

1. That the Complaint of the Office of Small Business Advocate is granted insofar as it seeks a determination that the accounting method used by PPL Electric Utilities Corporation which did not include two weeks of revenues in January 2010 but did include the entire month's expenses was inappropriate for the purposes of Section 1307(e).

This Recommendation is unreasonable because, as explained below, the revenues excluded from January 2010 were **revenues billed for service rendered in December 2009 under capped rates**. PPL Electric St. No. 1, p. 9.

On August 2, 2006, PPL Electric filed the Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227, requesting Commission approval of a plan for acquisition of supply for default service as a one-year "bridge" between

the expiration of its generation rate caps on December 31, 2009, and a fully competitive, statewide market beginning January 1, 2011. By order entered May 17, 2007, the Commission approved PPL Electric's Competitive Bridge Plan ("CBP"). PPL Electric St. No. 1, pp. 4-5.

The CBP established a process for obtaining generation supply needed to serve the Company's default service customers in 2010. Under the CBP, PPL Electric charged for transmission service and for obtaining generation supply needed to serve the Company's default service customers beginning January 1, 2010 and continuing through December 31, 2010. Importantly, the Commission-approved GSC rates were for service rendered on and after January 1, 2010, and not for bills rendered on and after January 1, 2010.<sup>3</sup> PPL Electric St. No. 1, p. 9.

In this case, the service rendered versus bills rendered distinction is particularly important because of the change from capped, non-reconcilable rates in December 2009 to non-capped, fully-reconcilable rates beginning January 1, 2010. Prior to January 1, 2010, PPL Electric was required to provide default service at capped rates with no Section 1307(e) cost recovery mechanism to recover its costs. As of January 1, 2010, PPL Electric's rate caps expired and PPL Electric was authorized to fully recover its costs under a Section 1307(e) cost recovery mechanism. At the end of 2010, PPL Electric performed a reconciliation of the 2010 GSC costs which compared the Company's actual billed revenues for service provided in 2010 with its actual costs incurred for service provided in 2010.

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<sup>3</sup> The difference between "bills rendered" and "services rendered" for purposes of public utility rates is well-settled. Indeed, the Commission often conditions changes in rates to become effective on either a "bills rendered" or "service rendered" basis. See, e.g., *Re North Penn Gas Co.*, Docket No. 850279, 73 P.U.R.4th 63, 65, 61 Pa.P.U.C. 43, 46 (Jan. 29, 1986) ("North Penn Gas Co. may reflect the reduction in the § 1307(f) rate approved by the commission in bills rendered after the effective date of the tariff"); *In re Kentucky Data Link, Inc.*, Docket Nos. A-311413, *et al.*, 2006 WL 4068900 (Dec. 28, 2006) ("The following surcharge rates apply to all customer bills issued on or after July 1, 2006"); *but, cf. Pa. PUC v. Equitable Gas Co.*, Docket Nos. R-2009-2088072, *et al.*, 2010 WL 4904664 (Nov. 4, 2010) ("[T]he purchased gas rates established therein shall become effective for service rendered on and after October 1, 2009."); *Pa. PUC v. Fryburg Water Co.*, Docket Nos. R-2009-2105601, *et al.*, 2010 WL 237771 (Jan. 14, 2010) ("[T]ariff or tariff supplement may be filed on less than statutory notice, and may be filed to become effective for service rendered on and after the date on which the Commission's Order in this case is entered.").

Billed revenues in January 2010 included revenues for service provided in December 2009. PPL Electric was required and authorized by law to prorate revenues or split revenues for service rendered before January 1, 2010, and service rendered on and after January 1, 2010. PPL Electric St. No. 1, pp. 9-10. Due to the effects of proration, the Section 1307(e) cost recovery mechanism for 2010 reconciled 12 months of costs with 11 ½ months of revenue billed for service rendered in 2010, resulting in an under collection of the Company's costs. The under collection for the calendar year 2010 was caused by properly prorating the January 2010 revenues billed to exclude that portion of the revenue billed related to service provided in December 2009 from the Section 1307(e) reconciliation.<sup>4</sup>

Consistent with the tariffed formula, PPL Electric included the under collection related to the service provided in 2010 in its E factor in the next Application Period for January 1, 2011 through May 31, 2011. However, the Company was not able to fully recover the under collection in this Application Period. As a result, a portion of the 2010 under collection balance was carried over to subsequent application periods.<sup>5</sup> The so-called "missing" ½ month of revenue in year one was reflected in the E-factor in subsequent application periods.<sup>6</sup>

If PPL Electric did not prorate revenues in January 2010, this would have caused PPL Electric to include revenues associated with service provided under capped rates in its Section 1307(e) cost recovery mechanism, which recovers costs for providing default service after rate caps expire. This clearly is contrary to law because it would have included billed revenues (for service provided in 2009) that were unrelated to service provided on and after January 1, 2010, in the Section 1307(e) cost recovery mechanism. This approach would artificially inflate PPL

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<sup>4</sup> See PPL Electric Main Brief, Section IV.B.2.

<sup>5</sup> See PPL Electric Main Brief, p. 16.

<sup>6</sup> See PPL Electric Main Brief, pp. 16-17; PPL Electric Reply Brief, pp. 12, 14.

Electric's revenues and not allow it to recover its full costs for providing service after January 1, 2010.

Finally, if PPL Electric did not prorate revenues, this would have caused customers to pay higher than capped rates for service rendered in December 2009 when the rate caps were still in effect. This would have violated the Competition Act and PPL Electric's restructuring settlement. *See* 66 Pa. C.S. § 2804(4).

For these reasons, the R.D. erred in accepting the OSBA's argument that it was unreasonable for PPL Electric in its reconciliation of the 2010 GSC to prorate the billed revenues for January 2010 to eliminate revenues related to service rendered in December 2009.

**3. PPL Electric's Reconciliation Methodology Is Consistent With The Plain Language Of Section 1307(e) Of The Public Utility Code.**

In finding that the OSBA met its burden of proof, the R.D. accepted OSBA's argument that Section 1307(e) requires that the expenses for an application period be compared with the revenues for the *revenues realized* for the identical time period, not the revenues *actually received* in that time period." (R.D. at 27.)

On page 27, the R.D. states as follows:

For example, January, February and March expenses should be compared with the "**revenue realized**" for the identical time period, "**not the revenues actually received**" in the time period.

(Emphasis and quotations supplied.) This Recommendation is directly contrary to and violates the clear and specific language of Section 1307(e), which provides as follows:

(1) Within 30 days following the end of such 12-month period as the commission shall designate, each public utility using an automatic adjustment clause shall file with the commission a statement which shall specify for such period:

(i) the total **revenue received** pursuant to the automatic adjustment clause;

(ii) the total amount of that expense or class of expenses incurred which is the basis for the automatic adjustment clause; and

(iii) the difference between the amounts specified by subparagraphs (i) and (ii).

\* \* \*

(3) Absent good reason being shown to the contrary, the commission shall, within 60 days following such hearing, by order direct each such public utility to, over an appropriate 12-month period, refund to its patrons an amount equal to that by which its **revenues received** pursuant to such automatic adjustment clause exceeded the amount of such expense or class of expenses, or recover from its patrons an amount equal to that by which such expense or class of expenses exceeded the **revenues received** pursuant to such automatic adjustment clause.

66 Pa.C.S. § 1307(e) (emphasis added). The clear and unambiguous language of Section 1307(e) unequivocally provides that a public utility is to reconcile the expenses “incurred” in an application period with the “total revenues received pursuant to the automatic adjustment clause” during that same time period.

Section 1307(e) does not provide for the recognition of “unbilled revenues.” In essence, OSBA seeks to rewrite Section 1307(e) to read in additional language that was not provided by the General Assembly -- that a public utility must include unbilled revenue in its reconciliation calculation.<sup>7</sup> The maxim *expressio unius est exclusio alterius* holds that the express inclusion of one thing implies the exclusion of another; this means that the omission of “unbilled revenue” by the General Assembly was deliberate. See *Commonwealth v. Ostrosky*, 589 Pa. 437, 446 n.7, 909 A.2d 1224, 1229 n.7 (2006); BLACK’S LAW DICTIONARY, 620 (8th ed. 2004).

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<sup>7</sup> See *Melmark Home v. Workers’ Compensation Appeal Board (Rosenberg)*, 946 A.2d 159, 162 (Pa. Cmwlth. 2008) (citation omitted) (courts have “no power to insert words into statutory provisions where the legislature has failed to supply them”); *Kmonk-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 567 Pa. 514, 525, 788 A.2d 955, 962 (2001) (although a court must “listen to what a statute says[:] one must listen attentively to what it does not say”).

Moreover, the Company's witness Mr. Kleha, who is one of the leading experts on reconciliation in Pennsylvania, clearly explained this proceeding that unbilled revenues are **not** included in the reconciliation of a Section 1307(e) reconciliation mechanism. Tr. 51. Unbilled revenues are not actual values but are merely estimates of revenues not yet billed. At the hearing in the proceeding, Mr. Kleha explained as follows:

You can't have a true reconciliation of costs that are actual to revenues that are an estimate. That is not a reconciliation. You can't verify that number. It's going to change because it's an estimate. An actual number is an actual number that can be verified; and, from an audit perspective, that's exactly what the auditors in this agency do....

Tr. 49.

Based on the foregoing, Section 1307(e) permits a public utility to reconcile the expenses incurred during an application period with only the revenues actually "received" during that same time period, *i.e.*, billed revenue. Stated otherwise, any revenues billed for service rendered before the implementation of a new Section 1307(e) cost recovery mechanism or after the expiration of a Section 1307(e) cost recovery mechanism, and any unbilled revenues, are statutorily prohibited from being included in the reconciliation. Accordingly, the R.D. erred in accepting OSBA's argument that Section 1307(e) requires that the expenses for an application period be compared with revenues "realized" for the identical time period, not revenues actually received in that time period.

It is important to note that Act 129 specifically authorizes EDCs to recover default service costs under a Section 1307 reconcilable automatic adjustment clause. 66 Pa.C.S. § 2807(e)(3.9). Therefore, the Company must follow the plain language of Section 1307, the Commission's interpretation of Section 1307 and historical practice when reconciling costs and recoveries under its GSC and GSC-1.

It is undisputed that PPL Electric reconciles expenses incurred during an application period with the actual revenues billed for service rendered during that same time period. See PPL Electric St. No. 1-R, p. 5; Tr. 49. PPL Electric always has reconciled costs with actual billed revenues under its Section 1307(e) cost recovery mechanism. It has never included unbilled revenues in the reconciliation process of any Section 1307(e) cost recovery mechanism. See PPL Electric St. No. 1-RJ, p. 4. As explained above, this is consistent with the plain language of Section 1307(e). For this reason alone, the OSBA failed to meet its heavy burden to demonstrate that PPL Electric's Commission-approved reconciliation method is unreasonable.

**4. PPL Electric's Reconciliation Methodology Is Consistent With Over 30 Years Of Commission Practice And Policy.**

The R.D. discounts that PPL Electric's reconciliation method is identical to the method it and other electric utilities have employed to reconcile costs and recoveries under Section 1307(e) cost recovery mechanisms for more than 30 years. PPL Electric has been following long-established Commission precedent and practice in matching actual billed revenue with actual incurred costs for each application period. Further, the Commission's Bureau of Audits reviews actual billed revenue amounts and actual incurred costs for each Application Period when auditing PPL Electric's GSC and GSC-1.<sup>8</sup>

The R.D. attempts to distinguish over 30 years of practice and precedent for 1307(e) reconciliation by way of policy arguments proposed by the OSBA. R.D. at 29. Specifically, the R.D. cites OSBA's policy arguments that: (1) default service rates are meant to be stable; (2) the GSC is a large part of the customers' bill; (3) the GSC is meant to be a part of the Price To Compare ("PTC") and will have a significant effect on the PTC; and (4) the reconciliation was applied during a time of major rate increase. In addition, the R.D. attempts to distinguish over

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<sup>8</sup> See PPL Electric Main Brief, pp. 17-18, 29-30.

30 years of practice and precedent by claiming that expenses for a certain time period should be compared with “realized revenue” for the time period to ensure consistency. R.D. at 27.

These arguments cannot be accepted because policy objectives cannot trump clear statutory provisions. The alternative reconciliation methodology proposed by OSBA and adopted in the R.D. violates the clear language of Section 1307(e). Therefore, the alternative reconciliation methodology cannot be adopted to promote any policy objective. Moreover, as explained below, there are strong policy reasons for relying on this reconciliation methodology.

**5. PPL Electric’s Reconciliation Methodology Provides A Necessary Cash Working Capital Allowance For Default Service Costs.**

The R.D.’s fundamental concern is that the Company’s reconciliation methodology creates a mismatch between revenues and expenses for reconciliation purposes. R.D. at 28. PPL Electric acknowledges that there is a mismatch. The mismatch is that PPL Electric incurs costs for an Application Period but the initial proration of revenues and utilization of billed revenues in the reconciliation mechanism creates a rolling one-half month difference between billed revenues and actual expenses. However, the mismatch has a valid and lawful purpose, which is to provide PPL Electric with a CWC allowance for default service costs.

The mismatch or timing difference between how billed revenues and actual expenses are reflected in the reconciliation process creates a two-week reserve which effectively provides for a return on the investment made to cover the lag between payment of default service expenses and receipt of default service revenue from customers. No party in this proceeding challenged the fact that: (1) this reconciliation methodology provides for a CWC allowance; (2) the Company is recovering its CWC allowance for default service through the Section 1307(e) reconciliation mechanism; and (3) PPL Electric is not otherwise recovering a CWC allowance for default service in base rates or in default service rates.

PPL Electric clearly is entitled to recover a CWC allowance. The courts have long held that utilities are permitted to recover a CWC allowance in rates. *See Pennsylvania Power & Light Co. v. Commonwealth of Pa.*, 668 A.2d 620, 691 (Pa. Cmwlth. 1995). In addition, the Commission has specifically recognized that CWC is a cost element of providing default service. See 52 Pa. Code 69.1808(a)(4).

The R.D. recognizes that PPL Electric is entitled to a CWC allowance. In fact, the R.D. states that there is “no doubt” that the Company is entitled to it. R.D., p. 30. However, the R.D. also states that the Company should seek Commission approval for the cash working capital allowance. R.D., p. 30. This recommendation is in error for the simple reason that the reconciliation methodology under Section 1307(e), which has been used by the Company and the Commission for over 30 years, already provides a cash working capital allowance. Therefore, PPL Electric had no reason and could not have separately claimed a cash working capital allowance because it was already receiving such an allowance, which is inherent in the Section 1307(e) reconciliation process.

PPL Electric is entitled to full recovery of its default service costs under Act 129, including its cash working capital requirement. 66 Pa. C.S. § 2807(e)(3.9); 52 Pa. Code § 69.1808(a)(4). If the reconciliation methodology is changed, this will eliminate the cash working capital requirement and prevent PPL Electric from fully recovering its costs. As explained in more detail below, if the Commission does revise the reconciliation methodology, it should be done only on a prospective basis after PPL Electric has another methodology in place for recovering its costs.

**6. Any Changes To A Long-Standing And Well-Established Reconciliation Methodology Should Be Made Only After Receiving Input From All Interested Parties.**

The Company's witness, Mr. Kleha, explained in this proceeding that the Company uses its reconciliation methodology for all of its Section 1307(e) cost recovery mechanisms. Mr. Kleha also explained that other EDCs follow the same methodology. It is unclear whether the proposed change recommended in the R.D. would apply to all of the Company's Section 1307(e) cost recovery mechanisms or whether it would eventually apply to all EDCs. It is clear that this change could have significant and broad reaching effect on many EDCs.

PPL Electric does not believe that the change to the reconciliation methodology recommended in the R.D. is permitted by statute. Nonetheless, to the extent that the Commission believes that any changes are appropriate, the Commission must carefully consider the affect of such changes on not only PPL Electric and its customers, but also on the large number of utilities in the Commonwealth that will be affected. Further, the Commission must carefully consider the impacts of any such changes to the Bureau of Audits' reviews of Section 1307(e) cost recovery mechanisms. Due to the potential broad impact, PPL Electric does not believe that any changes should be made on a single utility basis, but, instead, should be made only in a generic proceeding where all utilities have the opportunity to comment.<sup>9</sup>

**7. Any Change To A Long-Standing And Well-Established Reconciliation Methodology Should Be Made Only On A Prospective Basis.**

If the Commission does change the Company's reconciliation methodology, the Commission should do so only on a prospective basis. The R.D. leaves open the question of whether PPL Electric could be required to recalculate its GSC and GSC-1 rates and provide refunds to customers. R.D. at 33. Specifically, the R.D. states that "It is premature to address

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<sup>9</sup> See PPL Electric Main Brief, pp. 29-31.

this issue, and its handling will be directed by the Commission following the receipt of the audit.” *Id.*

PPL Electric disagrees that refunds would be appropriate due to a change in the reconciliation methodology. PPL Electric has been reconciling costs incurred and billed revenues under its Commission-approved GSC and GSC-1 tariff provisions. A change in the tariff reconciliation provisions should not be made on a retroactive basis. This is not a change in actual costs incurred or actual revenues billed but a change in the reconciliation methodology under the tariff. Therefore, the Commission-made rate doctrine is inapplicable. See R.D. at 32-33.

Moreover, any retroactive change in the reconciliation methodology back to January 1, 2010 would prevent PPL Electric from recovering its CWC allowance. PPL Electric would have no way of replacing its CWC allowance because it cannot go back and change base rates or default service rates to recover this allowance. This is unjust and unreasonable because it would violate Act 129’s provision allowing full cost recovery.

In *Batoff v. Bureau of Professional and Occupational Affairs, State Board of Psychology*, 631 A.2d 781 (Pa. Cmwlth. 1993), *affirmed*, 547 Pa. 518, 692 A.2d 139 (1994), the Commonwealth Court explained that a new judicial principle should be applied prospectively when it meets the following three-prong test: (1) the decision establishes a new principle of law by either overruling clear past precedent or involves an issue of first impression, the resolution of which was not clearly foreshadowed; (2) the merits of purely prospective application of the new decision outweigh the disadvantages, based on the history of the rule in question, its purpose and effect, and whether a retrospective application would retard operation of the new law, and (3) the

inequity of a retroactive application of the new rule outweighs the benefit of such an application. *Id.* (citing *Chevron Oil Company v. Huson*, 404 U.S. 97 (1971)).

Clearly, the R.D. meets all three prongs of the Chevron test and should be applied prospectively only. The R.D. recommends that PPL Electric abandon its reconciliation procedures, which are identical to the method it and other electric utilities have employed to reconcile Section 1307(e) cost recovery mechanisms for more than 30 years, and abandon long-standing Commission precedent and practice to implement a significant change in the Company's reconciliation methodology. This recommendation is a significant change with regard to how costs and revenues are calculated in the reconciliation of a Section 1307(e) cost recovery mechanism. Allowing the announced change to be prospective gives notice to future litigants that rely on a similar reconciliation methodology, while not penalizing PPL Electric for following long-established Commission precedent and practice in matching actual billed revenue with actual incurred costs for each application period. Moreover, the merits of prospective application clearly outweigh the disadvantages. It would be extremely difficult to attempt to go back and recalculate all of the GSC and GSC-1 rates for each application period. This would provide little or no benefit to customers because they already have paid the rates in question. Moreover, it would disallow PPL Electric recovery of its cash working capital costs. This would be an unfair and inequitable result. For these reasons, to the extent that the Commission adopts the R.D, this departure from long-standing practice should only be applied prospectively.

**8. The Cause Of The Significant Rate Increase For The Small C&I Customers Was Caused By Quarterly Reconciliation Of Default Service Costs And Not By PPL Electric's Reconciliation Methodology.**

Although the R.D. acknowledges that the cause of the significant rate increase for the Small C&I customers was the requirement that PPL Electric reconcile over and under collections on a quarterly basis, the R.D. failed to give this finding proper weight in concluding that OSBA

met its burden of proof. If PPL Electric had been permitted to adopt annual reconciliation, the GSC-1 rates for Small C&I customers would have been much lower and significantly more stable.

In its CBP proceeding, PPL Electric proposed to reconcile default service costs on an annual basis under its GSC. However, in the CBP Order, the Commission required PPL Electric to reconcile default service costs quarterly, as opposed to annually.<sup>10</sup> The primary reason that PPL Electric has experienced significant volatility in its E-Factor charges associated with its generation supply costs is attributable to the Commission's requirement that PPL Electric reconcile its GSC over and under collections on a quarterly basis. Quarterly reconciliation adjustments can be substantially larger than annual reconciliation adjustments and can cause a much greater distortion. The quarterly reconciliation of the GSC and GSC-1, together with the decreasing default service customer base, has caused continued rate instability for the GSC-1 rates for Small C&I customers.<sup>11</sup>

PPL Electric notes that in a recent Final Order, the Commission specifically agreed that longer reconciliation periods may help to smooth out over/under collections. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Slip Op. p. 54 (December 16, 2011). Consistent therewith, PPL Electric has proposed in a separate, but related proceeding, to modify the provisions of the GSC-1 to permit reconciliation on an annual PJM Planning Year basis (June 1 through May 31), rather than on a quarterly basis. *Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No.

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<sup>10</sup> Similarly, in PPL Electric's DSP Plan approved by the Commission on June 30, 2009, at Docket No. P-2008-2060309, the GSC-1 is an automatic Section 1307(e) cost recovery mechanism that provides for quarterly recalculation of the GSC-1 rates and quarterly reconciliation of any over or under collection of the Company's actual costs incurred to acquire generation supply on behalf of the Residential and Small C&I Customer Classes.

<sup>11</sup> See PPL Electric Main Brief, pp. 21-23.

Docket No. P-2011-2256365.<sup>12</sup> PPL Electric believes that this change should reduce the volatility of the E-Factor, reduce the number of calculations required, and reduce customer confusion.

**9. The Overall Amount Of The Under Collection For Small C&I Customers Has Been Significantly Reduced And As A Result There Is No Need To Make Significant And Unprecedented Changes To PPL Electric's Reconciliation Method.**

OSBA contends that PPL Electric and the Commission should abandon over 30 years of precedent and practice to address a one-time problem that, as anticipated, now has largely been resolved. The under collection amount for small C&I customers has been reduced from approximately \$22.4 million as of April 30, 2011, to approximately \$1.4 million as of August 31, 2011. The significant under collection related to proration is not likely to happen again for the GSC-1, because reconciliation balances of this magnitude generally arise only at the beginning of a new Section 1307(e) cost recovery mechanism. The under collection/proration issue has been resolved under the normal operation of the GSC-1 reconciliation, and PPL Electric does not believe that it is appropriate to overturn 30 years of practice and procedure to remedy a problem that no longer exists, that was caused in large part because of a change in the term of the reconciliation period, and is not likely to recur in the future.<sup>13</sup>

**B. Exception No. 2 – The Recommended Decision Erred In Ordering An Additional Audit Of PPL Electric's Reconciliation Method.**

Having concluded that OSBA's Complaint was supported by substantial evidence, the R.D. granted OSBA's request that the Commission's Bureau of Audits conduct an audit of PPL Electric's GSC-1 expenses and revenues beginning January 1, 2010 to the present day. Although

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<sup>12</sup> ALJ Colwell issued a Recommended Decision on April 4, 2012, recommending that the Commission approve PPL Electric's proposal to proposes to modify the provisions of the GSC-1 to permit reconciliation on an annual PJM Planning Year basis (June 1 through May 31), rather than on a quarterly basis.

<sup>13</sup> See PPL Electric Main Brief, pp. 23, 28.

OSBA offered several alternative reconciliation methods, the R.D. properly rejected these proposals for the reasons set forth in PPL Electric's briefs and, instead, merely directed an audit of PPL Electric's 2010 GSC. This remedy should not be accepted for several reasons.

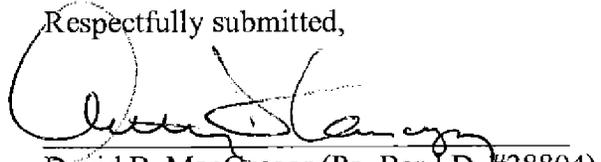
As explained above, the OSBA failed to meet its heavy burden to establish that PPL Electric's reconciliation methodology is unreasonable. The record clearly demonstrates that PPL Electric's reconciliation methodology is inconsistent with the plain language of Section 1307(e), the Commission's definition of the term "revenues received," the rate cap provisions of the Competition Act, the cost recovery provisions of Act 129, and with over 30 years of Commission practice and policy. Further, the cause of the significant rate increase for the Small C&I customers was not PPL Electric's reconciliation methodology, but, rather, due to the fact that PPL Electric was required to reconcile the GSC and GSC-1 over and under collections on a quarterly basis as opposed to annually. In addition, the overall amount of the under collection for Small C&I customers has been significantly reduced and there is no need to make significant and unprecedented changes to PPL Electric's reconciliation method.

Furthermore, the Bureau of Audits already has completed an audit of PPL Electric's 2010 GSC and 2011 GSC-1, which includes default service costs and revenues for 2010. If the Commission's Bureau of Audits identifies any issues with the GSC and GSC-1, PPL Electric will work with audit staff to address such issues. Therefore, the remedy recommended in the R.D. is unnecessary.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Recommended Decision of Administrative Law Judge Susan D. Colwell issued on April 4, 2012, be modified, as discussed above, and that the Pennsylvania Public Utility Commission dismiss the Complaint of the Office of Small Business Advocate.

Respectfully submitted,



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