



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1712
abakare@mwn.com

October 5, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2013 through May 31, 2015; Docket No. P-2012-2302074

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") is the Main Brief of the PP&L Industrial Customer Alliance ("PPLICA") concerning the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Enclosures

c: Administrative Law Judge Susan D. Colwell (via E-mail and First Class Mail)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

David B. MacGregor, Esq.
Post & Schell PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dmacgregor@postschell.com

Michael W. Hassell, Esq.
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mhassell@postschell.com

Matthew J. Agen, Esquire
Post & Schell PC
Suite 600
607 14th Street NW
Washington, DC 20005
matthewagen@postschell.com

Paul E. Russell, Esq.
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
perussell@pplweb.com

Todd S. Stewart, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
welehman@hmslegal.com

Steven Gray, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
sgray@pa.gov

James A. Mullins, Esq.
Erin L. Gannon, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1921
jmullins@paoca.org
egannon@paoca.org
tmccloskey@paoca.org

Regina L. Matz, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
rmatz@pa.gov

Charles E. Thomas, III, Esq.
Norman J. Kennard, Esq.
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108
cet3@thomaslonglaw.com
nkennard@thomaslonglaw.com

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
ericepstein@comcast.net

Brian J. Knipe, Esquire
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101
brian.knipe@bipc.com

Docket No. P-2012-2302074, *et al.*
Page 2

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Dr.
Greensburg, PA 15601
aklodow@firstenergycorp.com

Patrick M. Cicero, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111-6933
kmickens11@verizon.net

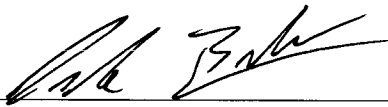
Melanie J. Elatieh, Esq.
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
ElatiehM@ugicorp.com

Deanne M. O'Dell, Esq.
Eckert Seamans Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com

Daniel Clearfield, Esq.
Eckert Seamans Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com

Divesh Gupta, Esq.
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
divesh.gupta@constellation.com

Stephen L. Huntoon, Esq.
NextEra Energy Inc.
801 Pennsylvania Avenue NW, Suite 220
Washington, DC 20004
shuntoon@fpl.com



Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Dated this 5th day of October, 2012, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities	:	
Corporation for Approval of a Default	:	
Service Program and Procurement	:	Docket No. P-2012-2302074
Plan for the Period June 1, 2013	:	
Through May 31, 2015	:	

**MAIN BRIEF OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Pamela C. Polacek (I.D. No. 78276)
Adeolu A. Bakare (I.D. No. 208541)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
abakare@mwn.com

Counsel to the PP&L Industrial Customer
Alliance

Dated: October 5, 2012

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
A. Summary and Statement of Position.....	1
B. Background Information and Procedural History	1
II. SUMMARY OF ARGUMENT.....	2
III. ARGUMENT.....	4
A. Legal Standards	4
1. Burden of Proof.....	4
2. Standards Applicable To Default Service.....	5
B. The Proposed Default Service Program	5
1. Class Procurements	5
2. Rate Design.....	5
a) Residential and Small C&I Customer Classes - Fixed Rate Option	5
b) Residential and Small C&I - Reconciliation.....	5
c) Large C&I Customer Class - Rates	5
d) Large C&I Customer Class - Reconciliation	5
e) The Green Power Program.....	5
f) Optional Monthly Pricing Service.....	6
g) Price to Compare Calculation Date.....	6
h) Recovery of Transmission and Other Related Charges.....	6
(1) Costs to be Included in the TSC or GSC	6
(2) Non-Bypassable Structure.....	6

a) <i>RESA's proposal to implement a \$0.005 Default Service Adder would result in unjust and unreasonable rates and must be rejected.....</i>	22
3. Requested Ruling Pursuant to 66 PA. C.S. § 2102.....	24
4. Requested Waivers.....	24
IV. CONCLUSION	25

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<i>Investigation of Pennsylvania's Retail Electricity Market, Intermediate Work Plan – Final Order</i> , Docket No. I-2011-2237952 (Order Entered March 2, 2012).....	19
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs</i> , Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Aug. 16, 2012).....	2, 6, 14, 15, 16, 19, 20, 24
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs</i> , Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Sept. 27, 2012).....	2, 6, 10
<i>Lloyd v. Pa. PUC</i> , 904 A.2d 1010 (Pa. Cmwlth. 2006).....	24
<i>Pa. Pub. Util. Comm'n v. Jackson Sewer Corp.</i> ; Docket No. R-00005997 (Nov. 13, 2001).....	4
<i>Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)</i> , Docket No. L-00040169, Proposed Rulemaking Order (Dec. 16, 2004).....	23
<i>Samuel J. Lansberry, Inc.</i> , 578 A.2d 600 (Pa. Commw. 1990).....	4
<i>Se-Lin Hosiery, Inc. v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	4
 <u>Statutes and Rules:</u>	
52 Pa. Code § 54.182.....	7
52 Pa. Code § 54.187(d).....	7
66 Pa. C.S. § 1307(a).....	22
66 Pa. C.S. § 2802.....	7

	<u>Page</u>
66 Pa. C.S. § 2802(13).....	7, 9
66 Pa. C.S. § 2802(16).....	7
66 Pa. C.S. § 2802(8).....	14
66 Pa. C.S. § 2804(3).....	7, 9
66 Pa. C.S. § 2807(e)(3.1).....	13
66 Pa. C.S. § 2807(e)(3.4).....	13
66 Pa. C.S. § 2807(e)(3.9).....	22
66 Pa. C.S. § 315(a).....	4
66 Pa. C.S. § 332(a).....	4
66 Pa. Code § 2807(e).....	23

I. INTRODUCTION

A. Summary and Statement of Position

See Section II, *infra*.

B. Background Information and Procedural History

On May 1, 2012, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013, through May 31, 2015. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015*; Docket No. P-2012-2302074 (May 1, 2012) (hereinafter, "Petition").

On June 4, 2012, the PP&L Industrial Customer Alliance ("PPLICA") filed a Petition to Intervene and Answer to the Company's Petition. The Office of Consumer Advocate ("OCA") also filed an Answer to the Petition. The Office of Small Business Advocate ("OSBA") and the Bureau of Investigation and Enforcement ("I&E") assumed active roles in this proceeding. A Prehearing Conference was held on June 6, 2012, before Administrative Law Judge ("ALJ") Susan D. Colwell.

PPLICA received the Company's Direct Testimony on May 15, 2012. Pursuant to the procedural schedule, on July 20, 2012, PPLICA received Direct Testimony from the following parties: the OCA; the OSBA; Constellation NewEnergy, Inc. and Exelon Generation Company, LLC ("Constellation"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); FirstEnergy Solutions Corp. ("FES"); Dominion Retail, Inc. and Interstate Gas Supply, Inc. ("Dominion"); the Retail Energy Supply Association ("RESA"); and Sustainable Energy Fund ("SEF"). On August 17, 2012, PPLICA received Rebuttal Testimony from the following parties: the Company; the OCA; the OSBA; Constellation; FES; Dominion;

and RESA. On August 31, 2012, PPLICA received Surrebuttal Testimony from the Company; the OCA; the OSBA; Constellation; CAUSE-PA; FES; Dominion; RESA; and SEF.

Evidentiary hearings were held in this proceeding on September 7, 10 and 11, 2012, for the purposes of presenting testimony and performing cross-examination. During the hearings, PPLICA entered two Cross-Examination Exhibits into the record, and the parties confirmed the process for submitting Briefs. Pursuant to the procedural schedule, PPLICA submits this Main Brief to address various issues raised in this proceeding.

II. SUMMARY OF ARGUMENT

Generally, PPLICA supports PPL's Default Service Program ("DSP") as filed. As such, the arguments set forth in this Main Brief address proposals from certain intervenors to this proceeding, each of which seeks to modify PPL's DSP in a manner that would detrimentally impact Large Commercial and Industrial ("C&I") customers. For the most part, the issues raised by PPLICA have been substantively addressed by the Commission in the recent *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Aug. 16, 2012) ("FirstEnergy Order")¹.

Specifically, PPLICA files this Main Brief in order to set forth its opposition to: (1) Constellation, OSBA, and RESA's proposals to recover certain supply-related costs from all customers on a non-bypassable basis; (2) RESA's proposal to implement a \$0.005/kWh surcharge for default service supply; and (3) PPL, RESA, FES, and Dominion's proposals to

¹ Following the FirstEnergy Order, the Commission subsequently issued an Order on Reconsideration. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Sept. 27, 2012) ("FirstEnergy Reconsideration Order").

recover retail market enhancement ("RME") costs from customers rather than electric generation suppliers ("EGS").² PPLICA reserves the right to address additional arguments raised by other parties, but not addressed in this Main Brief, in Reply Brief.

The proposals to recover supply-related costs charged by PJM Interconnection, L.L.C. ("PJM") on a non-bypassable basis mirrors similar proposals rejected by the Commission in the FirstEnergy Order. As explained herein, Constellation, OSBA, and RESA's proposals inappropriately re-bundle supply-related costs with EDC rates, harm customer choice for Large C&I customers, and expose customers to transitional risks without adequate protections. The Commission correctly denied similar riders in the FirstEnergy proceeding and must again reject any proposal to recover supply-related costs through a non-bypassable rider.

RESA's proposal to implement a \$0.005/kWh surcharge was also considered and rejected in the FirstEnergy Order. RESA has not modified the default service surcharge proposal since the FirstEnergy Order. RESA's proposed surcharge violates numerous statutes and Commission regulations. The surcharge would subject customers to default service rates devoid of cost causation or just and reasonableness and must be rejected as was the preceding request in the FirstEnergy Order.

Finally, the FirstEnergy Order also dismissed the RME program costs recovery proposals of PPL, RESA, FES, and Dominion. In the FirstEnergy Order, the Commission directed the parties in that proceeding to determine an appropriate method for recovering RME program costs from EGSs. Conversely, PPL, RESA, FES, and Dominion each argue that the Company should recover some or all of its RME program costs from customers. RESA and Dominion further suggest that PPL recover RME program costs from customers on a non-bypassable basis.

² PPL proposes limited recovery of RME costs from customers while RESA, FES, and Dominion support full recovery of RME costs from customers.

PPLICA submits that all RME program costs should be recovered from EGSs, but in no event should any RME program costs be assessed upon customers ineligible to participate in such programs. Accordingly, any proposal to assign responsibility for RME program costs to Large C&I customers must be rejected.

III. ARGUMENT

A. Legal Standards

1. Burden of Proof

Burden of proof standards applicable to Commission proceedings are well settled. Section 332(a) of the Public Utility Code provides the following with respect to burden of proof: "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). Under Section 315, "[i]n any proceeding... involving any proposed or existing rate of any public utility... the burden of proof to show that the rate involved is just and reasonable shall be upon the utility." *Id.* § 315(a).

According to the PUC, the "party seeking a rule or order from the Commission has the burden of proof" in a proceeding. *Pa. Pub. Util. Comm'n v. Jackson Sewer Corp.*; Docket No. R-00005997, at pp. 5-7 (Nov. 13, 2001). In carrying this burden, a complainant must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof. *Samuel J. Lansberry, Inc.*, 578 A.2d 600, at 602 (Pa. Commw. 1990). The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).

Based on the above standards, PPLICA does not bear the burden of proof with respect to the issues addressed in this proceeding. As PPL did not propose to modify its methodologies for

collection of NMB transmission costs or default service costs, Constellation, OSBA, and RESA bear the burden of proof as to the proposals to collect supply-related costs on a non-bypassable basis or implement the \$0.005 default service surcharge. Similarly, PPL bears the burden of proof as to the reasonableness of its proposals for recovery of RME program costs.

2. Standards Applicable To Default Service

The statutory or regulatory standards applicable to the issues addressed by PPLICA are provided within the individual subsections.

B. The Proposed Default Service Program

1. Class Procurements

PPLICA has no position on this issue.³

2. Rate Design

a) Residential and Small C&I Customer Classes - Fixed Rate Option

PPLICA has no position on this issue.

b) Residential and Small C&I - Reconciliation

PPLICA has no position on this issue.

c) Large C&I Customer Class - Rates

PPLICA has no position on this issue.

d) Large C&I Customer Class - Reconciliation

PPLICA has no position on this issue.

e) The Green Power Program

PPLICA has no position on this issue.

³ As noted above, PPLICA reserves the right to address arguments raised in other parties' Main Briefs, but not addressed herein, in Reply Brief. *Supra*, p. 3.

f) Optional Monthly Pricing Service

PPLICA has no position on this issue.

g) Price to Compare Calculation Date

PPLICA has no position on this issue.

h) Recovery of Transmission and Other Related Charges

PPLICA has no position on this issue.

(1) Costs to be Included in the TSC or GSC

PPLICA has no position on this issue.

(2) Non-Bypassable Structure

Although PPL did not propose any changes to its methods for recovering transmission costs, Constellation proposes that PPL assume responsibility for recovering Network Integration Transmission Service ("NITS"), Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-Firm Point-to-Point Transmission Service Credits, Regional Transmission Expansion Plan ("RTEP"), Generation Deactivation, and Economic Load Response ("ELR") Costs (collectively "PJM Charges" or "NMB Charges") for both shopping and default service customers. As recognized in the FirstEnergy Reconsideration Order, recovery of PJM charges through a non-bypassable structure effectively re-bundles transmission, supply and distribution costs in violation of Pennsylvania law and the Commission's regulations.⁴ FirstEnergy Reconsideration Order, p. 10. Additionally, the resulting transfer of cost collection responsibility for PJM Charges from EGSs to PPL would eliminate competitive supply options currently enjoyed by Large C&I customers. Finally, as recognized by the Commission in the FirstEnergy

⁴ While only Constellation offers extensive testimony on the recovery of PJM Charges, both OSBA and RESA support Constellation's position. See RESA Stmt No. 1-R; OSBA Stmt. No. 1, p. 8. Accordingly, all references to Constellation's arguments regarding recovery of PJM Charges on a non-bypassable basis apply with equal force to RESA and OSBA.

Order, the implementation of the non-bypassable structure would expose Large C&I customers to transitional risks and issues. FirstEnergy Order, p. 81. For the above reasons, the Commission must reject Constellation's proposal for PPL to adopt a non-bypassable structure for recovery of PJM Charges.

(a) *Constellation's proposal to collect PJM Charges through a non-bypassable rider is contrary to the statutory requirement to unbundle generation, transmission, and distribution rates.*

In 1996, Pennsylvania adopted the Electricity Generation Customer Choice and Competition Act ("Competition Act") to encourage more affordable, safe, and reliable electric service, as well as promote business and industry throughout the Commonwealth. *See generally* 66 Pa. C.S. § 2802. In order to allow EGSs to sell electricity directly to customers in the Commonwealth, the Competition Act provided for the unbundling of generation, transmission, and distribution services, which had previously been offered as a bundled product by EDCs. *Id.* at § 2802(13); *see also id.* at § 2804(3). As a result of this unbundling, customers could negotiate with competitive retail suppliers (*i.e.*, EGSs) who would provide such "shopping" customers with both generation and transmission service, while the customer would continue to receive distribution service from the EDC. Conversely, "non-shopping" customers, who chose to remain with the EDC, would receive generation and transmission service under the EDC's "provider of last resort" default service in addition to distribution service. *See id.* § 2802(16). Moreover, the PUC adopted regulations, consistent with the Competition Act, that assign responsibility for generation and transmission service to the same entity, *i.e.*, the EDC must provide generation and transmission service for non-shopping customers, and the EGS must provide generation and transmission service for shopping customers. 52 Pa. Code § 54.182; *see also id.* at § 54.187(d).

Stated another way, Commission regulations appropriately designate transmission service and other PJM costs as supply-related expenses, meaning that the entity providing a customer's generation service must also take responsibility for the PJM costs and transmission expenses of the account. Constellation's proposal to modify PPL's TSC or otherwise recover PJM Charges through a non-bypassable mechanism effectively converts these costs to distribution costs. This is contrary to the unbundling required by the Competition Act.

(i) *The costs that Constellation seeks to have recovered through the NMB rider are supply-related costs charged by PJM to the Load-Serving Entities.*

Constellation's proposal to transfer cost collection of certain NMB charges for all customers to PPL must be rejected because the identified charges are supply-related. To develop a robust competitive market, the Commission required EDCs to unbundle generation, transmission, and distribution services, thereby enabling market participants to identify the actual costs of providing generation and transmission services. Accordingly, PPL's filed DSP proposes to continue recovering supply-related costs through tariff riders for default service customers only, with EGSs taking responsibility for recovering supply related costs from shopping customers. As previously recognized by the Commission in the FirstEnergy Reconsideration Order, the PJM Charges underlying Constellation's proposal are supply-related and must remain appropriately unbundled.

The market structure developed through the Competition Act demonstrates that the PJM Charges underlying Constellation's proposal are supply-related. Following implementation of the Competition Act, the PUC retained jurisdiction over EDCs' provision of distribution service, but the Federal Energy Regulatory Commission ("FERC") regulates the terms and conditions of transmission service, including wholesale transmission rates. To that end, PJM is charged with

the safe and reliable operation of the PJM transmission region, which includes PPL's service territory. *See* Operating Agreement of PJM, Third Revised Rate Schedule FERC No. 24, Second Revised Sheet No. 32, Section 7.7(i)(A). The PJM Charges are FERC-jurisdictional charges that PJM collects from the Load Serving Entity ("LSE") for the customer's account. When PPL is providing default service, it is the LSE for the account and is billed by PJM for the PJM Charges. For customers that shop, the EGS is the LSE, and the EGS is billed for the PJM Charges. PJM Open Access Transmission Tariff, Sept. 21, 2012 *available at: <http://www.pjm.com/documents/~~/media/documents/agreements/tariff.ashx>* (last visited Oct. 1, 2012); *see also* Constellation Stmt. No. 1, pp. 23-24. Accordingly, under the existing competitive retail market, the PJM Charges are unbundled supply-related costs.

(ii) *The Commission has previously determined that recovering PJM Charges through a non-bypassable rider re-bundles supply costs with distribution service and is therefore contrary to the Competition Act*

In the instant proceeding, Constellation undertakes the remarkable step of proposing to re-bundle transmission and distribution costs. The Competition Act provides for "the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." 66 Pa. C.S. § 2802(13); *see also id.* § 2804(3). As appropriately determined in the Commission's FirstEnergy Reconsideration Order, the proposed re-bundling of distribution and transmission is contrary to the plain language of the Competition Act, harmful to Large C&I customers, and must be rejected.

To support a competitive marketplace, the Competition Act requires EDCs such as PPL to unbundle generation, transmission, and distribution charges. Accordingly, PPL customers utilizing an EGS for competitive supply currently receive distribution service from PPL through tariff rates while the EGS is responsible for generation and transmission service, including the

collection of PJM Charges. Constellation Stmt. No. 1, pp. 23-25. Similarly, a customer taking default service receives distribution service from PPL under the same tariff rates, but PPL also provides default service customers with generation and transmission services under separate tariff riders. *Id.* Under this unbundled market structure, the responsibility for providing generation and transmission services and collecting the related costs moves from PPL to the selected EGS when a customer switches from default service to competitive supply. *See* Constellation Stmt. No. 1-R, p. 8. Constellation's proposal would upset this balance and require PPL to retain cost responsibility for supply-related PJM Charges even when the customer receives only distribution service from PPL and takes competitive supply from an EGS. Constellation Stmt. No. 1, pp. 23. As previously recognized by the Commission, this result would frustrate the clear intent of the Competition Act to create a fully unbundled market structure. PPLICA fully supports the Commission's prior determination that "[c]onsistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGSs." FirstEnergy Reconsideration Order, p. 10.

Consistent with recent precedents, the Commission should deny any proposal seeking to reverse the unbundling principles enshrined in the Competition Act. The FirstEnergy Order and FirstEnergy Reconsideration Order conclusively determined that EGSs should recover supply-related costs for shopping customers, while EDCs appropriately recover such costs only for default service customers. Therefore, Constellation's proposal to require PPL to collect PJM Charges for both shopping and default service customers must be rejected.

(b) Constellation's proposal to collect PJM Charges through a non-bypassable rider is contrary to the Competition Act and harmful to customer choice.

As noted above, the General Assembly passed the Competition Act to provide more affordable, safe and reliable electric service for the benefit of all customers in the Commonwealth. The Competition Act seeks to accomplish these objectives by permitting customers to purchase supply service directly through competitive retail markets. Since the inception of competitive retail markets in the Commonwealth, customers have enjoyed an expansion of electricity service options, including the ability to select pass-through or fixed-price payment arrangements for PJM Charges. See Constellation Stmt. No. 1, pp. 14-15. Constellation's proposal to require PPL to collect PJM Charges for all customers would reverse the expansion of customer service options by eliminating customers' ability to choose a fixed-price payment arrangement for PJM Charges. Adoption of Constellation's proposal would further harm existing shopping customers by imposing a new cost recovery structure without providing adequate transitional protections. Therefore, the proposal must be rejected by the Commission.

(i) Approval of Constellation's proposal will unnecessarily eliminate competitive retail options currently available to Large C&I customers.

Since the Competition Act granted customers the ability to directly negotiate for competitive retail services, the retail market for Large C&I shopping customers has generally developed two options for recovering transmission costs: (1) a pass-through transmission arrangement; or (2) a fixed-price transmission arrangement. See Constellation Stmt. No. 1-SR, p. 6. Under a pass-through transmission arrangement, the EGS directly flows through to the customer its actual transmission costs incurred by the customer based upon the individual

customer's transmission obligation. *See id.* Because this is a direct "flow-through" of such costs, the EGS does not incur any risk in the event that transmission costs either increase or decrease over the course of the customer's contract. *See* Constellation Stmt. No. 1-R, p. 7 Rather, the customer takes the risk of changing transmission costs, but the customer is able to avoid any "risk premium" that might be included by the EGS in its energy price if this direct pass-through did not occur.

By contrast, under a fixed-price transmission product, the EGS includes transmission and the other PJM Charges in the fixed rate that is stated in the customer's contract. In exchange, the EGS may include a "risk premium" in the customer's overall price that would allow the EGS to hedge fluctuating transmission costs over the course of a contract. Constellation Stmt. No. 1-SR, p. 6; PPL Stmt. No. 1-R, p. 29. In return, however, the customer pays for cost stability. Constellation Stmt. No. 1, p. 14.

Constellation's proposal would force customers to pay PJM Charges through regulated distribution rates, which would eliminate the availability of the fixed-price option that is currently available to shopping customers. For Large C&I customers, both fixed-price and pass-through arrangements are available on the existing market. Constellation Stmt. No. 2-SR, p. 6. As the default service provider, PPL currently offers to Large C&I customers only a pass-through mechanism for recovery of PJM Charges. *Id.*; *see* PPLICA Cross-Examination Ex. No. 1. Therefore, as acknowledged by Constellation, requiring PPL to collect PJM Charges for both shopping and non-shopping customers would eliminate the freedom to select fixed-price arrangements currently enjoyed by Large C&I shopping customers. Constellation Stmt. No. 2-SR, p. 6.

The elimination of fixed-price arrangements harms Large C&I customers by removing a valued and desirable market product. Currently, EGSs operating in PPL's service territory may add premiums to supply contracts in order to account for the risk of variable costs, including PJM Charges. Constellation Stmt. No. 1, p. 24-25. Constellation suggests that EGS recovery of PJM Charges through fixed-price arrangements harms market transparency because PJM Charges are not recovered through fixed-price arrangements for default service customers. Constellation Stmt. No. 1, p. 25. Constellation alleges that existing shopping customers with fixed-price arrangements for PJM Charges cannot effectively compare their rates to default service rates because of the risk premium embedded in their EGS contract. *Id.* What Constellation fails to acknowledge is that opportunity to incorporate PJM Charges into a fixed-price arrangement exemplifies the customer choice principles essential to the Competition Act. 66 Pa. C.S. § 2807(e)(3.4). As envisioned by the framers of the Competition Act, EGSs have developed fixed-price products offering stable pricing in exchange for the customer's agreement to pay a risk premium.⁵ *See* Constellation Stmt. No. 1, p. 14. As EGSs are not currently compelled to offer fixed-price arrangements for PJM Charges to Large C&I customers, the very existence of the mechanism shows that Large C&I customers desire the product and are willing to pay the risk premium set by the EGSs in return for price stability. *See* Constellation Stmt. No. 1, p. 25. Conversely, as the default supplier under the terms of the Competition Act, PPL does not offer such an array of customizable supply options to current default service customers. *See* 66 Pa. C.S. § 2807(e)(3.1); *see* PPLICA Cross-Examination Ex. No. 1.

⁵ Interestingly, Constellation acknowledges the value and desirability of fixed-price contracts, observing that "[i]f customers are interested in budget certainty and avoidance of market volatility, competitive supplies can offer them fixed price contracts." Constellation Stmt. No. 1, p. 14. This statement reveals the market harm that would occur under Constellation's proposal. A Large C&I customer willing to pay a risk premium to secure budget certainty for PJM Charges would no longer have such products readily available on the market. *See* Constellation Stmt. No. 1-SR, p. 6.

(ii) *Constellation's proposal creates transitional issues and complications for existing shopping customers.*

Constellation's proposal to require PPL to collect PJM Charges for shopping and default service customers also raises fundamental transitional issues for customers that have competitive supply contracts, which include a transmission component, extending beyond the June 1, 2013, effective date of the proposed DSP. If Constellation's proposal were adopted, all such customers would be at risk of being over-charged for transmission-related services and would thus need to negotiate with their EGSs so that they would be charged PJM Charges only once. No party to this proceeding, including Constellation, who bears the burden of proof, has presented a compelling plan to ensure that currently shopping customers are not adversely affected by Constellation's proposal. Accordingly, PPL recommends that transitional issues can be more easily and fairly addressed within the Commission's end-state default service proceeding. Moreover, Constellation's position on transitional issues arising from non-bypassable recovery of PJM Charges was rejected by the Commission in the FirstEnergy Order. Based on the recent precedent, the Commission should reject Constellation's proposal to implement non-bypassable recovery of PJM Charges without adequate transitional protections for customers.

The Competition Act requires that transitional issues arising with the evolution of the competitive market must be resolved "in a manner that is fair" to all customers. 66 Pa. C.S. § 2802(8). With the risk of shopping customers being over-charged for transmission under Constellation's proposal, the Commission must ensure that shopping customers are fairly treated, including not being over-charged for transmission. A shopping customer's exposure to transitional over-charges under Constellation's proposal may depend on the customer's choice of fixed-price or pass-through arrangements, but either contract structure carries transitional risks.

If Constellation's proposal were adopted, customers with fixed-price supply arrangements would have to attempt to renegotiate shopping contracts with their EGSs to avoid a double-collection of the PJM Charges embedded in their fixed-price contract, spending time and resources to remove the costs from their contracts. FirstEnergy Order, p. 81; *see* PPL Stmt. No. 1-R, p. 29. In the FirstEnergy DSP proceeding, the Commission addressed the collection of PJM Charges through a non-bypassable rider and determined that "these proposals would increase the likelihood of double cost collection by the Companies and EGSs while increasing the risk for customers." FirstEnergy Order, p. 81. In addition to a heightened risk of double-collection, shopping customers currently under fixed-price arrangements also risk losing the "benefit of the bargain" to the extent that a fixed-price contractual arrangement includes payment of a premium for absorbing the risks of variable PJM Charges. Even a customer that is able to reach agreement with an EGS as to the amount of its fixed-price obligation applicable to PJM Charges and the removal of such amount from the contract payment, *i.e.* avoiding a double-collection, may still suffer transitional over-charges due to the risk premium embedded in its supply contract. PPL Stmt. No. 1, p. 29. This is particularly concerning because risk premiums can be structured to cover all manner of risks, making the process of itemizing the specific risk premium attributable to PJM Charges difficult at best. *See* PPLICA Cross-Examination Ex. No. 2. Due to the difficulty in identifying the appropriate risk premium, the EGS may still collect the risk premium even after implementation of the non-bypassable rider.

Customers under pass-through arrangements should not face the same explicit risk of double-collection, but some exposure still exists. Upon transfer of cost collection responsibility for PJM Charges to PPL, a well-administered pass-through mechanism for such costs should be set to \$0. However, customers must still contend with any unexpected errors. Therefore, pass-

through arrangements may reduce the risk of double-collection, but the risk is certainly not eliminated.

Both PPL and the Commission disagree with Constellation and recommend rejecting the proposed non-bypassable rider on grounds of failing to provide transitional protections for customers affected by the regulation. PPL proposes to address any changes to cost recovery of PJM Charges within the Commission's end-state default service proceeding. PPL Stmt. No. 1, p. 29. Further, the Commission specifically rejected similar proposals in the FirstEnergy Order on the basis of transitional concerns, finding that collection of PJM Charges through non-bypassable riders would "increase the likelihood of double cost collection by the Companies and EGSs while increasing the risk for customers." FirstEnergy Order, p. 81. As a result of the unacceptable transitional risks to customers, the Commission rejected the proposed non-bypassable riders in the FirstEnergy proceeding and should deny all such proposals here. *Id.*

Finally, the inadequacy of Constellation's proposal is most clearly illustrated by Constellation's attempt to justify immediate consideration of its request. In response to PPL's recommendation to address recovery of PJM Charges within the Commission's forthcoming end-state default service proceeding, Constellation claims that the Commission's commitment to immediately reform retail markets was made evident in the ongoing Retail Markets Investigation ("RMI") and should carry-over to prompt approval of the non-bypassable rider. Constellation Stmt. No. 1-SR, p. 7. Constellation's argument ignores that fact that the RMI proceeding afforded affected parties with a comprehensive and focused review process, including multiple comment periods and a statewide working group. *Id.* The Commission's end-state default service proceeding will provide a similarly balanced and structured review process to enable resolution of cost recovery issues in a manner that considers the transitional impacts upon

customers. The OSBA, although supportive of Constellation's proposal, also agreed that postponing consideration of any changes to PPL's recovery of PJM Charges until the end-state default service proceeding is a reasonable approach. OSBA Stmt. No. 3, p. 3.

Constellation has failed to propose a transitional plan in compliance with the requirements of the Competition Act. Without a transition plan, any implementation of Constellation's proposed NMB Rider would risk overcharging Large C&I customers for PJM Charges. At minimum, if the Commission finds any merit in recovering PJM Charges through a non-bypassable rider, consideration of Constellation's proposal should be deferred to the end-state default service proceeding.

(c) Conclusion

In summary, Constellation's proposal to require PPL to collect PJM Charges for shopping and default service customers fails to comply with the unbundling requirements of the Competition Act or provide benefits to all customers. If Constellation's proposal is adopted, Large C&I customers would lose access to competitive products available through the existing retail market. In addition to placing customers on a backwards trajectory, the proposal would impose the additional burden of transitional issues. The Commission rightfully rejected similar proposals in the FirstEnergy Order and should continue protecting customers by issuing the same decision in this matter.

(3) Reconciliation

PPLICA has no position on this issue.

3. Time of Use Rate Option

PPLICA has no position on this issue.

4. Other Default Service Program Issues

PPLICA has no position on this issue.

a) Supply Master Agreement and RFP Process and Rules

PPLICA has no position on this issue.

(1) Revisions to the Supply Master Agreement

PPLICA has no position on this issue.

C. Retail Market Enhancements and Customer Referral Programs

PPLICA takes a limited position on cost recovery issues related to PPL's proposed RME programs. PPLICA agrees with PPL's proposal to recover RME program costs from EGSs. However, PPLICA opposes any proposal to recover RME program costs from customers, including PPL's proposal to recover approximately \$3 million in capital costs associated with its proposed Standard Offer Referral Program. If the Commission determines that any RME program costs should be recovered from customers, PPLICA respectfully requests that the Commission confirm that PPL can recover RME program costs only from customers that are eligible to benefit from such programs.

1. New and Moving Customer Program

PPLICA has no position on this issue.

2. Customer Referral Mailing

PPLICA has no position on this issue.

3. Opt-In Auction / Aggregation Program Design

PPLICA has no position on this issue.

4. Standard Offer Referral Program Design

PPLICA has no position on this issue.

5. Timing of the Retail Market Enhancements and Customer Referral Programs

PPLICA has no position on this issue.

6. Cost Recovery for the Retail Market Enhancements and Customer Referral Programs

- a) RME program costs should be recovered from EGSs or, at minimum, recovered only from customers eligible to participate in the programs.*

In March of 2012, the Commission issued an Order directing EDCs in the Commonwealth to implement RME programs and recover costs primarily from EGSs. *Investigation of Pennsylvania's Retail Electricity Market, Intermediate Work Plan – Final Order*, Docket No. I-2011-2237952 (Order Entered March 2, 2012) ("IWP Final Order"), pp. 32, 78. In response to the IWP Final Order, PPL proposes to implement three RME Programs: a Customer Referral Mailing Program, a Retail Opt-In Auction Program, and a Standard Offer Referral Program. PPL Stmt. No. 4, pp. 20, 23, 29. All three initiatives are targeted at residential and small commercial customers. PPL generally proposes to recover RME costs from EGSs participating in a program. PPL Stmt. No. 4, pp. 20, 23, 29. With regards to the Standard Offer Referral Program, however, PPL proposes to recover approximately \$3 million in capital costs through its next base rate case. *Id.*, at 29. As noted above, the Commission's IWP Final Order recognized that EGSs are the primary beneficiaries of RME programs and should therefore bear responsibility for program costs. IWP Order, pp. 32, 78. The Commission's FirstEnergy Order further confirmed that RME programs are appropriately assessed to EGSs. FirstEnergy Order, p. 136. Consistent with the IWP Final Order and the FirstEnergy Order, PPLICA supports the OCA's recommendation to require PPL to recover all RME costs from EGSs. In the event that the Commission determines that any RME costs should be recovered from customers, PPLICA submits that RME program costs are recoverable only from customers eligible to participate in such programs.

PPL's proposed cost recovery method should be approved as modified by the OCA's recommendation to recover all RME costs from participating EGSs. PPL appropriately determined that EGSs should pay the costs for the proposed Customer Referral Mailing Program and the Retail Opt-In Program. *Id.*, at 20, 23. However, the proposed Standard Offer Referral Program would recover non-capital costs from EGSs, while recovering approximately \$3 million in capital costs from customers through PPL's next base rate case. PPLICA agrees with OCA that this element of PPL's request should be modified to ensure that capital and non-capital costs for implementation and operation of the Standard Offer Referral Program are recovered from EGSs. OCA Stmt. No. 2-R, p 15. As correctly observed by the Commission in the IWP Final Order the purpose of RME programs is to increase EGS market penetration. Essentially, RME program costs are avoided marketing expenses. This position was further clarified in the FirstEnergy Order, where the Commission disposed of cost recovery issues by determining that:

the Companies, with the cooperation of the EGSs, are directed to resubmit a plan or proposal within sixty days for Commission review regarding how *EGSs* will pay for the Standard Offer Customer Referral Program and the redesigned ROI Aggregation Program.

Consistent with the FirstEnergy Order, the Commission should modify PPL's proposal to mandate recovery of all RME costs from EGSs.

Contrary to the IWP Order, the FirstEnergy Order, and the cost recovery recommendations of OCA and PPLICA, several EGSs have argued that customers should bear some or all of the costs of RME. RESA proposes that PPL recover RME program costs from default service customers through a \$0.005/kWh surcharge. RESA Stmt. No. 2, pp. 27, 40. As an alternative, RESA joins Dominion and FES in recommending that customers pay for *all* RME costs through a non-bypassable surcharge. Dominion Stmt. No. 1, pp. 9, 12; RESA Stmt. No. 2,

pp. 27; FES Stmt. No. 1, pp. 20, 25. The proposals are directly contrary to the Commission's guidance in the IWP Order and the FirstEnergy Order that EGSs should bear these costs and should be rejected.

Moreover, RESA and Dominion suggested that PPL recover costs of its RME programs through non-bypassable charges applicable to all customer classes.⁶ RESA Stmt. No. 2, p. 27; Dominion Stmt. No. 1, pp. 9, 12. PPL's RME program descriptions exclude Large C&I customers from participation in the Customer Referral Mailing, Opt-In Auction, and Standard Offer Referral Programs. PPL Stmt. No. 1, pp. 19, 20, 25. Accordingly, PPL agrees with PPLICA that any RME costs not borne by EGSs should be recovered from only those customers eligible to benefit from the programs. Tr. 109.

As evidenced by the plain language of PPL's RME proposals, Large C&I customers are ineligible for participation in PPL's proposed RME programs and therefore should not be assessed any program costs. Therefore, the Commission should reject any proposal to collect RME program costs from Large C&I customers.

7. CAP Customer Participation in the Retail Market Enhancements

PPLICA has no position on this issue.

D. Additional Issues

1. Issues for CAP Customers Currently Served by EGSs

PPLICA has no position on this issue.

⁶ FES also supports recovery of RME program costs from customers, but clarified that costs should be recovered only from customers eligible to participate in the programs. FES Stmt. No. 1, pp. 20, 25.

2. Proposed 5 mils/kWh Charge Added to Default Service Rates

- a) RESA's proposal to implement a \$0.005 Default Service Adder would result in unjust and unreasonable rates and must be rejected.*

RESA proposes to charge default service customers a \$0.005/kWh adder ("Adder") to recover variable costs incurred by PPL in the provision of default service and the costs of providing RME programs pursuant to the Commission's IWP Final Order. Under the terms of RESA's proposal, PPL would collect the \$0.005 charge from default service customers, retain up to 10% of the funds collected, and refund any remaining balances to both default service and shopping customers. RESA Stmt. No. 2, p. 40. PPLICA opposes RESA's request and concurs with PPL and OCA that the Adder would recover excess costs from default service customers, artificially inflate the price-to-compare ("PTC"), inappropriately refund costs recovered from default service customers to all customers, and collectively violate numerous statutes and Commission regulations. PPL Stmt. No. 1-R, p. 14, OCA St. No. 1-R, p. 8. Accordingly, consistent with the precedent established in the FirstEnergy Order, the Commission must reject RESA's Default Service Adder.

PPL is designated by the Commission as a default service provider because an alternative default service supplier has not been approved by the Commission in the Company's service territory. As such, PPL is permitted to recover the costs of procurement pursuant to the terms of its procurement plans; however, such costs may only be collected if they are "reasonable." 66 Pa. C.S. § 2807(e)(3.9); *see also id.* § 1307(a). Accordingly, the Adder, which would be collected by PPL through an automatic adjustment mechanism, can only be approved by the Commission if it is just, reasonable, and otherwise consistent with the Public Utility Code.

RESA's proposal for PPL to collect \$0.005 per kWh from default service customers bears no rational relationship to PPL's incurred expenses and therefore falls outside of the parameters

of reasonableness under the Public Utility Code. *See* 66 Pa. Code § 2807(e). RESA argues that the Adder will provide a mechanism for recovering unbundled default service costs and the costs of PPL's RME programs. RESA Stmt. No. 1, p. 40. However, PPL avers that its default service costs are fully unbundled and that it would have "no costs to be recovered through the proposed 5 mill/kWh charge." PPL Stmt. No. 1-R, pp. 14-15. Even assuming that PPL recovers the full costs of its RME programs through the Adder, a position opposed by PPLICA and addressed in Section C.6.(a) *supra*, the Company's expenses for RME programs would fall grievously short of the approximately \$49 million that PPL is projected to recover in annual revenues through the \$0.005/kWh Adder. OCA Stmt. No. 2-R, p. 8. As observed by OCA Witness Richard Hahn, the proposed Adder is "arbitrary and not related to any cost for implementing default service or the retail market enhancements." *Id.*, at 7.

The Commission has found that a fully competitive market must include a default service option "designed to avoid distortions in the market." *See Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169, Proposed Rulemaking Order (Dec. 16, 2004), p. 3. An arbitrary increase to the default service price to encourage shopping certainly creates a distorted market, in which increased customer shopping and EGS presence would be based on artificially-inflated prices, rather than genuine market participation. OCA St. No. 1-R, p. 8. In addition, the presence of the Adder could trigger EGSs, who compare their prices to default service prices, to offer higher prices to shopping customers, guaranteeing that the Adder's negative consequences would be pervasive throughout the competitive market. *See id.*

Additionally, the proposal to recover the costs of the Adder from default service customers and then recoup any refunds to the Company and all customers flatly contradicts cost causation principles and must be rejected. Implementation of RESA's proposed Adder turns the Commission's commitment to cost-based rates on its head, reversing the cost causation principles established by *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

Finally, the Commission rejected the proposed Adder in the FirstEnergy Order, finding that RESA failed to produce empirical evidence of any actual costs to be recovered through the Adder. FirstEnergy Order, pp. 62-63. The instant case compels the same result, as RESA has yet to identify any costs not otherwise recovered through other PPL rates and charges. PPL Stmt. No. 1-R, pp. 14-15.

RESA's proposed Adder is directly contrary to the Public Utility Code. It is unjust, unreasonable, and completely detached from cost causation principles. There is no implicit approval of such a device hidden in the Commission's Regulations. The Adder inappropriately encourages competition through market distortion at the expense of all customers. As appropriately done in the FirstEnergy Order, RESA's proposed Adder must be rejected by the Commission in this proceeding.

3. Requested Ruling Pursuant to 66 PA. C.S. § 2102

PPLICA has no position on this issue.

4. Requested Waivers

PPLICA has no position on this issue.

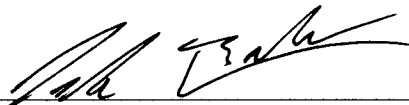
IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Deny any proposal for PPL to modify its Transmission Service Charge or implement an NMB Rider to recover NITS, Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-Firm Point-to-Point Transmission Service Credits, RTEP, Generation Deactivation, or ELR costs on a non-bypassable basis from all customers;
- (2) Deny RESA's proposal for PPL to collect a \$0.005/kWh Adder from all default service customers;
- (3) Order PPL to collect all RME program costs, including capital costs arising from the proposed Standard Offer Referral Program, from EGSs, or alternatively, deny any proposal to collect RME program costs from customer classes ineligible to participate or unable to benefit from RME programs; and
- (4) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (I.D. No. 78276)
Adeolu A. Bakare (I.D. No. 208541)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
abakare@mwn.com

Counsel to the PP&L Industrial Customer Alliance

Dated: October 5, 2012