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August 30, 2013

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

**VIA ELECTRONIC FILING**

**RE: PPL Electric Utilities Corporation Transmission Service Charge  
Effective June 1, 2011; Docket No. M-2010-2213754**

**PPL Electric Utilities Corp. Transmission Service Charge; M-2011-2239805**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Petition for Clarification and/or Reconsideration of the PP&L Industrial Customer Alliance in 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

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Enclosures

c: Certificate of Service

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**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).

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Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Dated this 30<sup>th</sup> day of August, 2013, at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PPL Electric Utilities Corp. Proposed Transmission :  
Service Charge (TSC) Reconciliation for the : M-2010-2213754  
12 Months Ended November 30, 2010 :  
  
PPL Electric Utilities Corp. Transmission Service : M-2011-2239805  
Charge

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**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF THE  
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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Pursuant to Sections 703(f) and (g) of the Pennsylvania Public Utility Code, and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or Commission") regulations, the PP&L Industrial Customer Group ("PLLICA") files this Petition for Clarification and/or Reconsideration of the Opinion and Order of the Commission entered August 15, 2013, in the above-captioned proceeding ("Final TSC Order"). 66 Pa. C.S. § 703(f), (g); 52 Pa. Code § 5.572.

**I. INTRODUCTION**

1. On August 15, 2013, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Final TSC Order addressing both an ongoing Investigation into PPL Electric Utilities Corporation's ("PPL" or "Company") Transmission Service Charge ("TSC") reconciliation methods and a Petition for Approval to Refund Certain Transmission Charges ("TSC Refund Petition") filed by PPL on June 7, 2013, at Docket No. M-2011-2239805.

2. The Final TSC Order provides a general summary of the relevant procedural history and is incorporated herein by reference.<sup>1</sup> As summarized in further detail therein, PPL recovers transmission service costs for its default service customers subject to a Section 1307(e) reconciliation.<sup>2</sup> For its Large Commercial and Industrial ("C&I") customers, PPL's TSC rates include both demand ("TSCd") and energy ("TSCe") components.<sup>3</sup> Pursuant to the Pennsylvania Electricity Generation and Customer Choice Act ("Competition Act"), PPL unbundled its transmission service costs from base rates through a base rate proceeding approved by the Commission in 2004.<sup>4</sup> Following appeals to the Commonwealth Court filed by PPLICA and the Office of Small Business Advocate ("OSBA"), the specific methodology for PPL's allocation and reconciliation of its unbundled transmission service costs became the subject of litigation between several parties including PPL, PPLICA, OSBA, the Office of Consumer Advocate ("OCA") and the Bureau of Investigation and Enforcement ("I&E").<sup>5</sup>

3. After the Commonwealth Court determined that PPL must allocate and reconcile its transmission costs on a non-discriminatory class-specific basis, and remanded the proceeding to the Commission to that end, the parties reached a Settlement ("Remand Settlement") on the terms for PPL's TSC charges and reconciliation methods.<sup>6</sup>

4. As detailed in the Final TSC Order, PPL self-reported errors in its Final 2010 TSC Reconciliation Report in March 2011, just after receipt of a February 8, 2011, Recommended Decision ("RD") advising the Commission to approve the reconciliation calculation. The disclosed errors prompted the Commission to delay consideration of the RD

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<sup>1</sup> See Final TSC Order, pp. 3-16.

<sup>2</sup> 66 Pa. C.S. § 1307(e); see also Final TSC Order, p. 4.

<sup>3</sup> Final TSC Order, p. 4.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> See *Id.* at 4. At the time, the Bureau of Investigation and Enforcement was known as the Office of Trial Staff.

<sup>6</sup> See *id.* at 7.

and enter an Order at Docket No. M-2011-2213754 commencing an Investigation into PPL's 2010 TSC ("TSC Investigation Order").<sup>7</sup>

5. The TSC Investigation Order identified two issues to be addressed by PPL and other parties: (1) PPL's use of estimated 2008 TSCd usage for the 2010 TSC Reconciliation instead of more recent 2009 data; and (2) whether PPL should be using per-class actual TSCd usage and expense for the TSC Reconciliation to avoid inter-class subsidies between customer classes. The TSC Investigation Order also required PPL to furnish additional data related to the Company's 2010 reconciliation, and invited parties to submit Comments following receipt of PPL's data request responses.

6. After reviewing the data provided by PPL, PPLICA submitted Comments on June 20, 2011, asserting that PPL's 2010 TSC Reconciliation "does not ensure that reconciliation of the TSC occurs for each class separately as required by PPL's tariff and Paragraph 23(d) of the Settlement on Remand, and appears to result in interclass cost shifting."<sup>8</sup>

7. Notably, PPLICA's Comments followed its prior Complaint ("January Complaint") filed at Docket No. M-2009-2139375, on January 19, 2010.<sup>9</sup> The January Complaint addressed overcollections occurring in 2009, but also requested that PPL "adduce substantial evidence to justify and substantiate its proposed reconciliation methodology and the 2010 TSC rate."<sup>10</sup> On June 15, 2011, following commencement of the TSC Investigation, PPLICA submitted a Petition for Leave to Withdraw Complaint at Docket No. M-2009-2139375,

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<sup>7</sup> Id. at 13; also on May 19, 2013, the Commission issued an Order ("Statewide Order") at Docket No. M-2011-2239714, commencing an investigation into statewide TSC reconciliation practices to develop prospective guidelines for all EDCs ("Statewide Investigation").

<sup>8</sup> PPLICA Comments, p. 4.

<sup>9</sup> See PPLICA Complaint, Docket No. M-2009-2139375.

<sup>10</sup> Id. at 8.

noting its intention to address issues regarding PPL's reconciliation process in the TSC Investigation and the Statewide Investigation.<sup>11</sup>

8. After July 20, 2011, the Investigation remained before the Commission for an extended two-year period. In the meantime, PPLICA urged the Commission to expeditiously complete the TSC Investigation in a related case concerning PPL's proposal to implement a migration rider.<sup>12</sup> Additionally, despite the continued pendency of the TSC Investigation, PPL filed the TSC Refund Petition on June 7, 2013, which PPLICA followed with an Answer requesting that the Commission resolve the pending TSC Investigation and Statewide Investigation before authorizing refunds of PPL's 2010 TSC Reconciliation.<sup>13</sup>

9. Following receipt of PPL's TSC Refund Petition and PPLICA's Answer, the Commission entered the Final TSC Order addressing both proceedings. Unfortunately, while appropriately requiring PPL to correct the self-reported errors, the Commission unjustifiably excused PPL from issuing refunds for the Company's use of estimated TSCd costs for each class, rather than actual TSCd costs, to reconcile its 2010 TSC revenues.

10. PPLICA is concerned that the Commission's decision to approve PPL's 2010 TSC Reconciliation to estimated TSCd usage is inconsistent with Section 1307(e). Section 1307(e) entitles customers, on a per-class basis, to refunds for revenues exceeding actual costs except for good cause shown. In this case, Commission precedent and the record in this proceeding clearly establish that PPL was obligated to reconcile TSCd revenues to actual TSCd usage and expense, in order to ensure that the Section 1307(e) requirements are met. Further, following an investigation initiated before final approval of PPL's 2010 TSC Reconciliation, the Commission determined that PPL used estimated TSCd usage resulting in significant interclass subsidies.

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<sup>11</sup> See PPLICA Petition for Leave to Withdraw Complaint, Docket No. M-2009-2139375.

<sup>12</sup> PPLICA Main Brief, Docket No. P-2011-2256365, p. 21.

<sup>13</sup> Final TSC Order, p. 16.

Nothing in the record compiled in this proceeding constitutes good cause for denying refunds necessary to correct the interclass subsidies created by PPL's use of estimated TSCd usage in the 2010 TSC Reconciliation.

11. Because of the issues noted above, and for reasons discussed more fully herein, PPLICA respectfully submits this Petition for Clarification and/or Reconsideration of the Final TSC Order.

## **II. LEGAL STANDARDS**

12. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order.<sup>14</sup> Similarly, Section 5.572 of the Commission's Regulations sets for the procedures for petitioning for clarification or reconsideration of a Commission Order.

13. The Commission enumerated its standard for reconsidering orders in Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that a "petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part," and that the Commission "expect[s] to see raised in such petitions . . . new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id.

14. PPLICA submits that each argument or consideration set forth in this Petition is either new and novel, was overlooked, or not addressed by the Commission in rendering the Final TSC Order. Therefore, the standards of Duick have been satisfied, and PPLICA respectfully requests that the Commission exercise its discretion to grant this Petition for

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<sup>14</sup> See 66 Pa. C.S. § 703(g).

Clarification and/or Reconsideration and issue a new or amended order incorporating the changes discussed herein. PPLICA also reserves the right to pursue an appeal of any and all issues previously raised in its briefs, Exceptions or Reply Exceptions, regardless of whether those items are discussed herein.

### III. ARGUMENT

#### A. **The Commission should Reconsider the Final TSC Order to Reflect the Statutory Duty to Issue Refunds for TSC Overcollections Except for Good Cause Shown.**

15. Upon review of the Final TSC Order, it appears that the Commission overlooked the legal standard pertinent to its review of Section 1307(e) reconciliation proceedings. The Public Utility Code sets forth a higher obligation to refund overcollections related to automatic adjustment clauses than the more discretionary standard applied to traditional rate collections.<sup>15</sup> In declining to issue the refunds for PPL's use of estimated TSCd allocators instead of actual TSCd usage and expense, the Commission made no mention of the applicable statutory standard. Accordingly PPLICA requests that the Commission reconsider its Final TSC Order to apply the appropriate statutory standard, which indicates that refunds should be issued for PPL's reconciliation of its 2010 TSC revenues to estimated TSCd costs, rather than actual class TSCd usage costs.

16. Generally, the Commission's authority to issue refunds is both limited and discretionary. Rates approved pursuant to the Commission's general ratemaking authority under Section 1308 of the Public Utility Code are final, with the Commission's authority to issue

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<sup>15</sup> 66 Pa. C.S. § 1307(e). Even if this standard applied, PPLICA respectfully submits that it would be an abuse of discretion to deny the appropriate refunds under the present circumstances. See Peoples Natural Gas Co. v. Pennsylvania Pub. Util. Comm'n, 116 Pa. Cmwlth. 512, 516, 542 A.2d 606, 608 (1988) aff'd, 523 Pa. 370, 567 A.2d 642 (1989). As stated in Peoples Natural Gas, "An agency's failure to interpret statutes, regulations or orders consistent with their clear and plain meaning constitutes an abuse of discretion." *Id.*

Peoples Natural Gas Co. v. Pennsylvania Pub. Util. Comm'n, 116 Pa. Cmwlth. 512, 516, 542 A.2d 606, 608 (1988) aff'd, 523 Pa. 370, 567 A.2d 642 (1989)



refunds limited to revenues exceeding a public utility's tariff rates or revenues collected pursuant to non-tariff rates.<sup>16</sup> As long as a public utility charges rates authorized by a Commission tariff, such rates may be collected with relative certainty.<sup>17</sup> However, even when a public utility is found to have collected non-tariff rates, or if rates approved in a Section 1308 case are found to be unjust, unreasonable or discriminatory. Section 1312 of the Public Utility Code merely authorizes the Commission to issue refunds, but imposes no duty to do so.<sup>18</sup>

17. To the contrary, for automatic adjustment clauses such as PPL's TSC Rider, revenues are collected pursuant to Section 1307(e), which includes the following language:

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.<sup>19</sup>

Where the general rule under Section 1312 confers "power and authority" to issue refunds, the Section 1307(e) language creates an additional obligation, stating that refunds "shall" be issued "absent good reason being shown to the contrary."<sup>20</sup> This higher duty has been recognized by the Pennsylvania Supreme Court in Allegheny Ludlum Steel Corp. v. Pennsylvania Pub. Util. Comm'n, 501 Pa. 71, 77, 459 A.2d 1218, 1221 (1983). Upon review of a challenge to the

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<sup>16</sup> 66 Pa. C.S. §§ 1308, 1312.

<sup>17</sup> 66 Pa. C.S. § 1303.

<sup>18</sup> Id.

<sup>19</sup> 66 Pa. C.S. § 1307(e)(3).

<sup>20</sup> 66 Pa. C.S. §§ 1308, 1307(e). Notably, Section 1307(e) does not supplant Section 1312, but rather adds an additional obligation for refunds derived from automatic adjustment clause rates. See Pennsylvania Power Co. v. Pennsylvania Pub. Util. Comm'n, 155 Pa. Cmwlth. 477, 625 A.2d 719, 727 (1993). In Pennsylvania Power Co. the Commonwealth Court found that overcollections accrued from an energy adjustment clause were refundable due to managerial incompetence under either the Commission's general authority under Section 1312 or the more specific terms of Section 1307(e).

Constitutional validity of Section 1307(e) automatic adjustment clauses, the court referenced the obligation to issue refunds as a key safeguard preserving customers' due process rights:

Safeguards are, however, afforded through a subsequent, year-end, automatic proceeding for final determination and adjustment of rate increases allowing full participation by all interested parties, and requiring refunds, with interest, calculated at the prevailing rate, [Citation omitted] of overpayments in the event previous ECR increases are determined to have been excessive. See Section 1307(e), [Citation omitted]. These are factors of significance to the procedural due process inquiry. (Emphasis added).<sup>21</sup>

As established by the Pennsylvania Supreme Court, the Commission's duty to order refunds of revenues overcollections is a critical customer protection to the lawful operation of Section 1307 automatic adjustment clauses.

18. Despite binding precedent to the contrary, the Commission's Final TSC Order declined refunds for PPL's failure to reconcile its 2010 TSCd revenues to actual TSCd usage, without reference to the Section 1307(e) refund standard.<sup>22</sup> As the Final TSC Order overlooked or failed to consider binding statutory language, PPLICA respectfully requests that the Commission modify the Final TSC Order to incorporate and address the Commission's Section 1307(e) duty to issue refunds absent good cause shown.

**B. The Commission Should Further Clarify Or Reconsider the Final TSC Order As Necessary to Confirm PPL's Obligation to Reconcile TSC Revenues to Actual Usage Pursuant to the Remand Settlement.**

19. The Final TSC Order reviewed the Remand Settlement establishing PPL's TSC reconciliation process and confirmed that both the Joint Petition submitted by the parties and the ALJ's RD approving the Settlement specifically and unambiguously stated that revenues from

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<sup>21</sup> Allegheny Ludlum Steel Corp., 459 A.2d at 1221; see also Barasch v. Pennsylvania Pub. Util. Comm'n., 119 Pa. Cmwlth. 81, 98, 546 A.2d 1296, 1304 opinion modified on denial of reargument, 119 Pa. Cmwlth. 81, 550 A.2d 257 (1988).

<sup>22</sup> Final TSC Order, p. 25.

PPL's TSC will be reconciled to actual costs for each customer class.<sup>23</sup> However, the Final TSC Order also referenced "ambiguity" regarding the type of reconciliation to be applied by PPL creating by differing opinions among parties to the TSC Investigation. As the Remand Settlement language is unambiguous, the opinions and intentions of parties are irrelevant under Pennsylvania law. Accordingly, the Commission should clarify the Final TSC Order to confirm that PPL was and remains bound by the Remand Settlement to reconcile TSCd revenues to actual TSCd usage.

20. The Final TSC Order appropriately recognized that PPL's Remand Settlement is clear and unambiguous on the appropriate manner of reconciliation for PPL's TSC, but unreasonably proceeded to consider extrinsic evidence adduced by other parties to the TSC Investigation proceeding. The Remand Settlement affirmed that "[a]s set forth in PPL Electric's direct testimony on remand, the actual costs and revenues by customer class will be reconciled, and amounts will be refunded or recouped, with interest, on a kWh basis through the TSC E-factor."<sup>24</sup> The RD adopted by the Commission reflected the same clear directive.<sup>25</sup> The Final TSC Order initially drew the same conclusion, stating that "reconciliation was to be based on actual costs and actual revenues on a class basis" before inappropriately tying PPL's Settlement obligations to parties' intent.<sup>26</sup>

21. Despite its correct assessment of the Remand Statement, the Final TSC Order proceeded to rely on PPL, OCA, and OSBA allegations of an understanding that PPL would reconcile TSCd revenues to estimated usage, and unfortunately concluded these allegations

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<sup>23</sup> Id. at 6-7.

<sup>24</sup> Id. at 6.

<sup>25</sup> Id. at 7.

<sup>26</sup> Id. at 8, 22, 25.

introduce ambiguity concerning the reconciliation method to be applied by PPL.<sup>27</sup> However, as stated in the Final TSC Order, none of the parties produced any documentation indicating that the Remand Settlement required PPL to reconcile TSCd revenues to estimated usage.<sup>28</sup> To the contrary, the Remand Settlement itself contains unambiguous language directly contradicting the alleged understandings or interpretations espoused by PPL, OCA, and OSBA.<sup>29</sup>

22. Pennsylvania law does not permit consideration of opinions or external evidence when interpreting unambiguous language in settlement agreements. The Commonwealth Court addressed this issue in Vern's Elec., Inc. v. Mount Lebanon Sch. Dist., 1197 C.D. 2007, 2008 WL 9398643 (Pa. Commw. Ct. Sept. 12, 2008). The Court definitively concluded that the "plain meaning" doctrine controls interpretation of unambiguous settlement language, stating that:

[Appellant] argues that in interpreting the Settlement Agreement, this Court should look not only to the plain meaning of the Settlement Agreement itself, but to the extrinsic evidence showing the alleged intent of the parties. We disagree.

Generally, settlements are governed by contract law. [Citation omitted]. While [Appellant] attempts to argue that it did not intend to waive the Davis claims, the parol evidence rule bars evidence of such intention unless the agreement is ambiguous.<sup>30</sup>

As such, the Commission's reliance on extrinsic understandings and interpretations from PPL, OCA, and OSBA is inappropriate where the Remand Settlement clearly states that PPL must reconcile TSCd revenues to actual TSCd usage on a per-customer class basis.<sup>31</sup> Accordingly, the Commission should clarify or reconsider its Final TSC Order to confirm that no ambiguity exists with regard to PPL's obligation to reconcile TSCd revenues to actual TSCd usage.

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<sup>27</sup> Id. at 22.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> See Vern's Electric Inc., \*4 (citing Porreco v. Maleno Developers, Inc., 761 A.2d 629, 632–33 (Pa.Cmwlt. 2000)).

<sup>31</sup> Final TSC Order, p. 25.

**C. The Commission Should Clarify or Reconsider the Final TSC Order to Confirm That Section 1307(e) Prohibits PPL From Reconciling TSC Revenues to Estimated TSCd Usage.**

23. Similar to the references to parties' interpretations and opinions of the Remand Settlement, the Final TSC Order includes various statements appearing to legitimize PPL's reconciliation to estimated TSCd usage. However, the Commission's Statewide Order, issued contemporaneously with the Final TSC Order, extensively addressed the requirements of Section 1307(e) and confirmed that the statute unambiguously requires Electric Distribution Companies ("EDCs") to reconcile TSCd revenues to actual TSCd usage on a per-class basis. Accordingly, the Commission should modify or reconsider its Final TSC Order to confirm that the appropriate measure of reasonableness of PPL's 2010 TSC Reconciliation is whether customers paid costs in excess of, or below, actual usage on a per-class basis.

24. The Final TSC Order includes several statements appearing to suggest that PPL's use of estimated usage is permissible for inapplicable reasons. First, the TSC Order observes that "[n]either PPL nor any other Party has asserted that PPL either experienced a shortfall or collected a windfall from customers compared to what it paid PJM for [transmission demand costs] in 2010."<sup>32</sup> Similarly, the Final TSC Order notes that PPL's tariff TSC rates were sufficient to pay its transmission costs.<sup>33</sup> Additionally, the Final TSC Order makes multiple references to the Auditor's Report showing that PPL's reconciliation of TSCd revenues to TSCd usage was mathematically correct.<sup>34</sup> While each of these statements is independently correct, none has any bearing on whether PPL's 2010 TSC Reconciliation should be corrected to protect customers from unjust and unreasonable charges, and discriminatory interclass cost shifting, under Section 1307(e).

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<sup>32</sup> Final TSC Order, p. 23.

<sup>33</sup> Id.

<sup>34</sup> Id. at 21.

25. The Commission's Statewide Order left no room for doubt as to the obligations created by Section 1307(e) and relevant to evaluating a Section 1307(e) reconciliation. Therein, the Commission declared that:

EDCs must realize that the 1307(e) reconciliation process is not a budgeting tool used to true-up revenue to cash flow projections. The 1307(e) reconciliation process is a statutory method by which adjustable rates remain just and reasonable. This is the case no matter how frequently adjusted the forecasts may be. The reconciliation must compare actual revenues collected pursuant to tariff rates to actual costs based on actual usage.<sup>35</sup>

To further solidify the issue, the Commission added:

Truing-up actual costs to assigned, estimated, or projected demand, rather than to actual demand, is contrary to Section 1307(e) and does not reconcile actual revenue to actual cost based on actual demand and tariff rates.<sup>36</sup>

While the Statewide Order concerned prospective TSC reconciliations for all EDCs, the statements therein are equally applicable to the Commission's Investigation into PPL's 2010 TSC Reconciliation.<sup>37</sup> The Statewide Order did not modify or amend Section 1307(e), but merely articulated the statutory standard in effect throughout PPL's 2010 TSC period. Moreover, as summarized above, the Statewide Order only reiterated the same obligations previously acknowledged by the Pennsylvania Supreme Court in Allegheny Ludlum and further reinforced by the Remand Settlement.<sup>38</sup>

26. Therefore, to the extent that the Commission based its disposition of PPL's 2010 TSC Reconciliation on any factors other than whether customers paid TSCd revenues in excess of actual TSCd usage, the Commission should clarify or reconsider the Final TSC Order to

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<sup>35</sup> Statewide Order, p. 14. The above-referenced language was provided in direct response to PPL's Comments in the Statewide Investigation docket asserting that reconciliation to estimated usage provides a fair allocation to customer classes. Id.

<sup>36</sup> Id. at 10.

<sup>37</sup> See id.

<sup>38</sup> Allegheny Ludlum Steel Corp., 459 A.2d at 1221; see also Final TSC Order, pp. 6-8.

evaluate the reasonableness of PPL's 2010 TSC Reconciliation based on whether the per-class TSCd revenues collected by PPL exceeded customers' per-class TSCd usage and expenses.

**D. Upon Consideration of the Section 1307(e) Refund Provisions and PPL's Obligation to Reconcile TSCd Revenues to Actual Usage Under the Remand Settlement and Section 1307(e), the Commission Should Reconsider and Reverse Its Decision to Approve PPL's 2010 Reconciliation to Estimated TSCd Usage**

27. The Final TSC Order approved PPL's 2010 Reconciliation despite the Company's use of estimated TSCd usage. This decision conflicts with the provisions of Section 1307(e), because no good cause exists for declining to correct PPL's reconciliation error. The Commission properly investigated the Company's 2010 TSC Reconciliation and determined that PPL's use of estimated demand allocators created significant interclass subsidies. The fact that PPL applied the same erroneous reconciliation method in 2008 and 2009 in no way relieves the Commission of its statutory obligation to reconcile PPL's 2010 TSCd revenues to actual TSCd usage, particularly upon a showing that the 2010 per-class revenues did not correspond to per-class usage.

28. As no good cause exists for declining to correct PPL's use of estimated usage for its 2010 TSC Reconciliation, PPLICA requests that the Commission reconsider its approval of the 2010 TSC Reconciliation and require PPL to issue refunds to Large C&I customers, with interest, commensurate with the overcollections from the erroneous use of estimated usage.

**a. The Commission Initiated the TSC Investigation in a Timely Fashion and Consistent with Its Section 1307(e) Authority, thereby Justifying Refunds for Observed Reconciliation Deficiencies.**

29. In 2011, consistent with Section 1307(e), the Commission suspended consideration of the RD in this proceeding and initiated prompt investigations into PPL's proposed reconciliation of its 2010 TSCd revenues before entering a Final Order. As the

Investigation was conducted pursuant to Section 1307(e) procedures, issuance of refunds based on findings therein is not unreasonable under the circumstances.

30. While not directly stated, the Final TSC Order suggests that the timing of the Commission's investigation contributed to the purported unreasonableness of granting refunds for PPL's use of estimated TSCd usage. Specifically, the Final TSC Order claimed that elements of the proceeding began as far back as 2004 with the Remand Settlement and concluded that refunds would be unreasonable based on "consideration of the circumstances."<sup>39</sup> While the facts from that proceeding are relevant, the instant proceeding concerns the Investigation of PPL's 2010 TSC Reconciliation, which was timely commenced in accordance Section 1307(e) procedures.<sup>40</sup> As referenced in the Final TSC Order, a hearing was held on February 8, 2011, within 60 days of PPL's submission of its Final 2010 TSC Reconciliation Report on December 14, 2010.<sup>41</sup> Further, the RD approving PPL's 2010 TSC Reconciliation specifically noted that such approval remained "subject to such further review and revision as may be found necessary by the Commission."<sup>42</sup>

31. Although Section 1307(e) also requires the Commission to issue its Order within 60 days of an RD, the Commission found good cause for delay. First, in March 2011, PPL self-reported and self-corrected its mistaken use of 2008 usage estimates instead of 2009 estimates.<sup>43</sup> Second, and more importantly, the TSC Investigation Order entered on May 19, 2011, recognized the Company's correction of its use of 2008 TSCd usage allocators in favor of more recent 2009 data, but also pointed to an additional concern with PPL's general practice of reconciling to TSCd revenues to historical TSCd usage as follows:

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<sup>39</sup> Final TSC Order, p. 25.

<sup>40</sup> Id. at 12-13; see also 66 Pa. C.S. § 1307(e).

<sup>41</sup> Id. at 11-12; see also 66 Pa. C.S. § 1307(e).

<sup>42</sup> Id. at 12.

<sup>43</sup> Id. at 12, 13.



Second, and potentially more significant, is a policy issue regarding the manner in which PPL allocates demand for TSC reconciliation purposes. PPL allocated its 2010 actual TSC demand charges based on allocators calculated using historical 2009 TSC demand usage. Staff review of this matter indicates that using 2009 demand allocators may have resulted in a misalignment between certain costs and cost causers and may have created inter-class subsidies. [Emphasis added].<sup>44</sup>

Therefore, the Commission, consistent with Section 1307(e), reviewed PPL's use of estimated TSCd usage for its 2010 TSC reconciliation and observed that the reconciliation may be unjust and unreasonable due to the use of estimate TSCd usage. At that point, the Commission put PPL and all parties on notice that the 2010 reconciliation would be investigated and potentially modified upon conclusion of the formal TSC Investigation.<sup>45</sup>

32. As the Investigation was conducted consistent Section 1307(e) procedures, the procedural timing does not constitute good cause for denying refunds for PPL's erroneous use of estimated TSCd usage.

**b. Following the Lengthy Review Period, the TSC Investigation Confirmed that PPL's Unauthorized Application of Estimated Usage Imposed Significant Overcollections From Large C&I customers, for which Refunds are Necessary.**

33. Although the TSC Investigation initially began on a relatively expedited schedule, the proceeding remained before the Commission for extended review. The Commission directed PPL to respond to the Commission's data requests within 15 days of entering the TSC Investigation Order.<sup>46</sup> Similarly, other parties were given 15 days from the date of PPL's response to provide Comments.<sup>47</sup> Despite the compressed initial filing deadlines, the Commission's review of PPL's reconciliation and parties' comments continued for a period of

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<sup>44</sup> TSC Investigation Order, p. 3.

<sup>45</sup> As noted above, the Commission also commenced the Statewide Investigation on the same date.

<sup>46</sup> Id.

<sup>47</sup> Id.

approximately two years.<sup>48</sup> In the end, however, the Final TSC Order confirmed that PPL's use of estimated usage resulted in interclass subsidies and significant overcollection from PPL's Large C&I and Small C&I default customer class.<sup>49</sup> Consistent with Section 1307(e), refunds are necessary to correct unjust and unreasonable rates paid by Large C&I and Small C&I customers.

34. The Final TSC Order confirmed the adverse customer effects originally identified in the May 19, 2011, TSC Investigation Order.<sup>50</sup> Additionally, the Final TSC Order quantified the interclass subsidies resulting from PPL's use of estimated demand allocators to reconcile the 2010 TSC.<sup>51</sup> The below table illustrates the drastic rate differences between PPL's erroneous 2010 reconciliation using estimated demand costs and the corrected results incorporating actual demand costs:

Table 1<sup>52</sup>

	<b>Residential</b>	<b>Small C&amp;I</b>	<b>Large C&amp;I Primary</b>	<b>Large C&amp;I Transmission</b>	<b>Large C&amp;I (Total)</b>
<b>2010 Reconciliation to Estimated TSC Costs</b>	56.4%	27.2%	9.4%	7.0%	16.4%
<b>2010 Reconciliation to Actual TSC Costs</b>	72.9%	24.9%	1.4%	1.1%	2.5%
<b>Approx. Cost Impact of Reconciling to Actual Costs</b>	+\$14 Million	-\$7.5 million	-\$4 million	-\$2.5 million	-\$6.5 million

<sup>48</sup> Id.

<sup>49</sup> See Id. at 13.

<sup>50</sup> TSC Investigation Order, p. 3; see also Final TSC Order, p. 8.

<sup>51</sup> Final TSC Order, p. 8.

<sup>52</sup> See Id. at 8; see also PPL June 3, 2011, Responses to PUC Data Requests, Attachment 4, Schedule 3.

After investigating PPL's 2010 TSC reconciliation to determine whether the Company's use of estimated demand allocators "may have resulted in a misalignment between certain costs and cost causers and may have created inter-class subsidies,"<sup>53</sup> the Commission has now proved that PPL's use of estimated TSCd usage created substantial cost shifting between customer classes. This result is contrary to the terms of the Remand Settlement and Section 1307(e).

35. As PPL's 2010 TSC collected TSCd revenues from Large C&I customer in excess of the class actual TSCd usage, refunds are necessary to ensure compliance with the Remand Settlement and Section 1307(e).

**c. PPL's Unchallenged Reconciliation to Estimated TSCd Usage in 2008 and 2009 Does Not Affect the Commission's Obligation to Order Refunds for PPL's 2010 TSC Overcollections.**

36. In denying refunds for PPL's use of estimated demand allocators to reconcile its 2010 TSC revenues, the Commission appears to have placed great weight on PPL's historical use of the same methodology in 2008 and 2009. This position overlooked Commission precedents establishing that rates and reconciliations applied under automatic adjustment clauses remain subject to future modification.<sup>54</sup> Therefore, the Commission should reconsider its finding that PPL's prior reconciliation to estimated demand costs in 2008 and 2009 justified continued use of the practice in 2010. Particularly as the 2010 reconciliation presented circumstances not present in prior reconciliations, the Commission should find that the prior erroneous reconciliations to estimated demand do not constitute good cause for declining to correct the 2010 reconciliation.

37. The Final TSC Order appears to apply claim preclusion to justify PPL's reconciliation to estimated TSCd usage based on past use of the methodology in 2008 and 2009. The Commission reasoned that PPL's use of estimated TSCd usage in 2010 would preserve

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<sup>53</sup> TSC Investigation Order, p. 3.

<sup>54</sup> Final TSC Order, p. 12.

consistency with the 2008 and 2009 reconciliations.<sup>55</sup> Of greater concern, the Final TSC Order suggested that parties waived their right to protest PPL's 2010 reconciliation to estimated TSCd usage by failing to do so in 2008 and 2009.<sup>56</sup>

38. The Commission has addressed the relevance of prior automatic adjustment reconciliations to claims raised in future proceedings and held that claim preclusion is inapplicable to reconciliation proceedings.<sup>57</sup> The Commission has previously described its reasoning on claim preclusion claims within the context of automatic adjustment clauses as follows:

We conclude that this doctrine is simply not applicable in 1307(f) proceedings, other than possibly after the Commission has issued an Order under Section 1307(f)(5) after reaching its determinations (reconciliation) regarding projected versus actual historic costs. Our reading of Section 1307(f) shows a clear Legislative intent that the costs underlying Section 1307(f) rates are never "cast in stone" and may be questioned in a subsequent Section 1307(f) proceeding.<sup>58</sup>

39. While Peoples involved a Section 1307(f) proceedings regarding natural gas supply costs, the substantive provisions are analogous to the Section 1307(e) reconciliation at issue here. Therefore, consistent with the findings in Peoples, PPL's use of estimated TSCd usage in the 2008 and 2009 reconciliations does not divest parties of their right to lawful reconciliations when an investigation into a subsequent TSC period confirms that the Company's use of estimated TSCd usage caused interclass subsidies.<sup>59</sup> Like its counterpart provisions in Section 1307(f), Section 1307(e) proceedings are limited in scope, addressing simply "whether the EDC collected more or less from each class than its actual TSC costs for that class during the

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<sup>55</sup> Id. at 23.

<sup>56</sup> Id. at 25.

<sup>57</sup> Pennsylvania Public Utility Com'n v. Peoples Natural Gas Co., 62 Pa.P.U.C. 56, 64 (1986).

<sup>58</sup> Peoples Natural Gas Co., 62 Pa. P.U.C. at 64; see also Kentucky West Virginia Gas Co. v. Pa. PUC, 721 F. Supp. 710 (E.D. Pa. 1989).

<sup>59</sup> Peoples Natural Gas Co., 62 Pa. P.U.C. at 64.

period in question." (Emphasis added).<sup>60</sup> As such, the issues raised or not raised in prior reconciliations do not divest parties of any rights to relief based on the calculations and circumstances presented in subsequent reconciliations.

40. The inapplicability of claim preclusion is particularly apt where, as is the case with PPL's 2010 TSC Reconciliation, unique circumstances are present.<sup>61</sup> As recounted in the Final TSC Order and further emphasized in PPLICA's Comments, the transition to competitive supply occurring in January 2010 introduced high levels of migration from default service within the Large C&I class.<sup>62</sup> These circumstances distinguish the 2010 TSC Reconciliation from prior proceedings because the same reconciliation error that might have generated mild to moderate interclass subsidies in the 2008 and 2009 reconciliations, created substantial interclass subsidies in 2010.<sup>63</sup> Accordingly, more severe redress is not only warranted for the 2010 TSC Reconciliation, but necessary under Section 1307(e).

**d. Conclusion**

41. In summary, PPL's 2010 TSC Reconciliation failed to comply with Section 1307(e) and the express terms of the Company's Remand Settlement by reconciling TSCd revenues to estimated TSCd usage. This practice generated substantial interclass subsidies in the 2010 period, for which, despite conducting an investigation confirming the subsidies, the Commission's Final TSC Order declined to correct. As the record in this proceeding contains no evidence of good cause for denying refunds to the Large C&I customers incurring overcollections through PPL's 2010 TSC, the Commission should clarify or reconsider the Final

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<sup>60</sup> Statewide Order, p. 11.

<sup>61</sup> See Final TSC Order, p. 24-25.

<sup>62</sup> Id. at 25; PPLICA Comments, p. 5.

<sup>63</sup> See Final TSC Order, p. 25.

TSC Order to award refunds, with interest, commensurate to the overcollections recovered due to PPL's unauthorized use of estimated TSCd usage.<sup>64</sup>

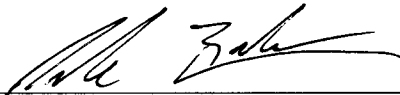
#### IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission: (1) clarify that PPL is required to refund, on a per-class basis, overcollections of TSCd revenues in excess of actual TSCd costs except for good cause shown; (2) clarify that PPL is required to reconcile TSCd revenues to actual TSCd costs under both the Remand Settlement and Section 1307(e); (3) reconsider its approval of PPL's 2010 TSC Reconciliation method and order the Company to issue refunds to Large C&I customers, with interest, commensurate with the overcollections from the erroneous use of estimated TSCd usage.

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<sup>64</sup> PPLICA reserves the right to respond to additional arguments that may be raised by other parties.