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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
ISSUED: MARCH 20, 2001

IN REPLY PLEASE  
REFER TO OUR FILE

C-00003811  
R-00006034; R-00006034C0001

DOCUMENT  
FOLDER

PAUL E RUSSELL GENL CNSL  
2 NORTH NINTH STREET  
ALLENTOWN PA 18101-1179

Hofmann Industries, Inc., V. PPL Electric Utilities Corporation  
C-00003811  
Pennsylvania Public Utility Commission V. PPL Electric Utilities Corporation  
(Supplement No. 12 to Tariff-Electric Pa. P.U.C. No. 201)  
R-00006034  
PPL Industrial Customer Alliance V. PPL Electric Utilities Corporation  
R-00006034C0001

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge George M. Kashi and Chief Administrative Law Judge Robert A. Christianson.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Third Floor; and a copy in the hands of each party of record no later than **March 30, 2001 by 4:30 P.M.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, no later than **April 6, 2001 by 4:30 P.M.** as well as served upon the parties. A certificate of service shall be attached to the filed exceptions.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,

FG  
Encls.  
Certified Mail  
Receipt Requested

James J. McNulty  
Secretary

See Attached Listing for Additional Parties of Record

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Hofmann Industries, Inc.	:	
	:	
v.	:	C-00003811
	:	
PPL Electric Utilities Corporation	:	
	:	
Pennsylvania Public Utility Commission	:	
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	
(Supplement No. 12 to Tariff-Electric	:	
Pa.P.U.C. No. 201)	:	R-00006034
	:	
PPL Industrial Customer Alliance	:	
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	R-00006034C0001

RECOMMENDED DECISION

Before  
George M. Kashi  
Administrative Law Judge

And  
Robert A. Christianson  
Chief Administrative Law Judge

This matter has been before ALJ Kashi for some time. It has been a rather unusual proceeding, mainly because it started as a complaint proceeding and because of various settlement attempts. However, the parties were not able to reach a general settlement and briefs were filed by three parties. According to an Order signed by ALJ Kashi on January 9, 2001, he was to issue a decision on March 2, 2001 and the matter was to go to Public Meeting on April 5, 2001. Various industrial customers are especially interested in the timing of this matter. Because of illness, ALJ Kashi did not meet the March 2<sup>nd</sup> deadline. He has since been hospitalized. However, he had drafted part of his decision and this part deals with the central issue of this proceeding, the "one-year renewable" provision. I incorporate the attached draft of ALJ Kashi into this Recommended Decision.

This proceeding appears to raise some policy choices for the Commission.<sup>1</sup> At least some of the parties indicate that these choices should be made promptly.<sup>2</sup> I do not expect that this matter can be decided by the Commission on April 5, 2001, as had been projected in January. However, the Commission might be able to reach a result by its Public Meeting of April 19, 2001. The issues appear to be reasonably straightforward and the positions of the parties are clearly expressed. I ask counsel to keep any exceptions and reply exceptions clear and brief. I add the observation that two settlements were offered, one mainly by the industrial customers (see their main brief, page 7) and the other mainly by PPL (see its main brief, page 11). I suggest that PPL and the industrial customers append their settlement documents to their exceptions.

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<sup>1</sup> This general topics associated with this proceeding have been raised in proceedings involving various other electric distribution companies.

<sup>2</sup> The Commission allowed a PPL one-time waiver but this has a limited impact. See the Commission Order at P-00011866, adopted and entered January 24, 2001. This Order includes an interesting discussion of relevant issues.

At least one party suggested that this matter be certified directly up to the Commission without a Recommended Decision. However, I prefer to provide an OALJ contribution, especially because ALJ Kashi has been very active in this proceeding and has produced at least a partial draft of his decision. To facilitate the preparation of exceptions I am adopting the PPL positions stated in the Conclusion at page 43 of its main brief. There PPL requests that the Commission (1) approve the PPL Stipulation in Partial Settlement, (2) approve PPL's proposed Generation Rate Adjustment rider,<sup>3</sup> (3) dismiss the Hofmann complaint with prejudice and (4) close this proceeding. The parties, in their exceptions, may refer to my "PPL" conclusions and to ALJ Kashi's reasoning.

Accordingly: THE FOLLOWING ORDER IS RECOMMENDED:

1. That the PPL Stipulation in Partial Settlement is approved.
2. That the PPL Generation Rate Adjustment rider is approved.
3. That the complaint of Hofmann Industries at C-00003811 is dismissed.
4. That the proceeding at R-00006034, including the complaint at C0001, is closed.

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<sup>3</sup> The Commission Order at R-00006034, adopted and entered January 24, 2001 (which set this matter for hearing), contains the following description, at page 2: Under PPL's proposed GRA Rider, customers can exit PLR service within a one-year term by paying a GRA equal to the net positive difference between the market-based cost of serving the customer over the period and the monthly tariff charges during the same period. The GRA is proposed to be reset to zero annually on the customer's anniversary date. The GRA is proposed to be based on actual data; forecasts will not be used. Finally, PPL proposes that since the GRA is a new, optional service, it will not be subject to the rate caps established by the Competition Act.

5. That PPL shall file any appropriate tariff supplements.

Dated: 3/19/01

Robert A. Christianson  
ROBERT A. CHRISTIANSON  
Chief Administrative Law Judge

## I HISTORY OF THE PROCEEDING

On June 23, 2000, Hofmann Industries, Inc. (“Hofmann”) filed a Complaint with the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) against PPL Electric Utilities Corporation (“PPL” or the “Company”). The Complaint objected to a provision in PPL’s Commission-approved electric tariff which requires commercial and industrial customers returning to provider of last resort (“PLR”) service to retain that service for successive one-year terms. PPL filed a timely Answer to the Complaint.<sup>1</sup>

On August 3, 2000, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement. On August 11, 2000, the PP&L Industrial Customer Alliance (“PPLICA”) filed a Petition to Intervene. The Commission’s Office of Trial Staff (“OTS”) filed a Notice of Appearance on August 17, 2000, and a revised Notice on August 18, 2000. On August 15, 2000, Exelon Energy (“Exelon”) filed a Petition to Intervene. On October 10, 2000, the Mid-Atlantic Power Supply Association (“MAPSA”) filed a Petition to Intervene and Statement of Position.

This matter was assigned initially to Administrative Law Judge Ky Van Nguyen. A prehearing conference was held in Philadelphia on August 21, 2000, at which time a litigation schedule was established. By notice dated September 19, 2000, the matter was re-assigned to this Administrative Law Judge, and a further telephonic prehearing conference was held before the undersigned on October 13, 2000.

On October 3, 2000, the Complainant and intervenors filed their direct testimony in this proceeding, as follows:

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<sup>1</sup> PPL also filed a Motion to Dismiss because the Complainant is a corporation and was not represented by counsel as required by 52 Pa.Code § 1.21(b). Complainant thereafter retained counsel, and PPL’s Motion became moot.

Hofmann St. 1:	Testimony and Exhibits of Bernard Hofmann
OTS St. 1:	Testimony and Exhibits of Paul J. Metro
OSBA St. 1:	Testimony and Exhibits of Brian Kalcic
PPLICA St. 1:	Testimony and Exhibits of James H. Rooney
PPLICA St. 2:	Testimony and Exhibits of Victor Sawicki
PPLICA St. 3:	Testimony and Exhibits of Larry Stalica
Exelon St. 1:	Testimony and Exhibits of R. Scott Brown

On November 3, 2000, PPL filed responsive testimony of three witnesses: Douglas A. Krall, PPL Manager – Customer Choice Implementation (PPL Hofmann St. 1 and Exhibits DAK-1 through DAK-4); Joseph M. Kleha, PPL Manager – Regulatory Projects (PPL Hofmann St. 2 and Exhibits JMK-1 and JMK-2); and Dr. Scott T. Jones, Senior Vice President, Lexecon Inc. (PPL Hofmann St. 3 and Exhibits STJ-1 and STJ-2). No party filed rebuttal testimony.

The parties thereafter engaged in extensive settlement negotiations which we facilitated. Initially, these negotiations did not produce a settlement, but did result in a series of stipulations submitted by the parties at a final prehearing conference on November 16, 2000. PPLICA/PPL Exhibit 1. These stipulations obviated the need for live cross-examination of the witnesses. All of the testimony and exhibits were admitted into evidence by stipulation, and the record was closed.

On December 18, 2000, PPL filed with the Commission a proposed Generation Rate Adjustment rider (the “GRA”). Copies of this filing were served on all parties to the Hofmann proceeding and all parties to PPL’s electric restructuring proceeding at Docket No. R-00973954. On January 8, 2001, PPLICA filed a Complaint against PPL’s proposed GRA rider. On January 29, 2000, PPL filed a timely Answer.

In late December 2000, the parties advised that some, but not all, of the parties to the Hofmann proceeding had reached an agreement in principle to settle all issues in the Hofmann case and the GRA proceeding. On January 9, 2001, we issued an

order consolidating the Hofmann and the GRA proceedings and establishing a schedule for further litigation in these proceedings with the non-settling parties.

In accordance with that schedule, on January 12, 2001, PPL filed the direct testimony of Mr. Krall (PPL GRA St. 1) in the GRA proceeding and filed a Stipulation in Partial Settlement, which resolved all issues in the Hofmann and GRA proceedings, between PPL, Hofmann, OTS and OSBA.<sup>2</sup> On January 22, 2001, PPLICA and Exelon filed comments and testimony opposing PPL's GRA rider and the Stipulation in Partial Settlement. MAPSA filed comments seeking clarification of certain issues. On January 29, 2001, PPL filed reply comments in the form of rebuttal testimony from Mr. Krall (PPL GRA St. 1-R and Exhibits DAG-1R and DAG-2R) and Dr. Jones (PPL GRA St. 2 and Exhibit STJ-1).

In accordance with the schedule established in our January 9, 2001 Order, Briefs and Reply Briefs have been submitted in these consolidated proceedings.

## II. Summary of Parties Proposals

PPL interprets its current tariff as mandating that a commercial or industrial customer returning to PPL for PLR service after purchasing supply service from an EGS must enter into an automatically renewing twelve-month supply service contract with

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<sup>2</sup> One provision of the Stipulation would permit all commercial and industrial customers currently taking PLR service from PPL or who might return to PLR service the opportunity to choose an alternative supplier regardless of the anniversary date of their return to PLR service until the end of April 2001. Stipulation ¶ 12.h. Because of the need to continue litigation of the Hofmann case and the GRA proceeding with the non-settling parties, it was not practical to obtain a final PUC Order approving the partial settlement until April, which would have rendered this "open window" for shopping moot. To avoid this result, on January 12, 2001, PPL filed a Petition for Temporary,

PPL. PPL asserts that this is a plain reading of the language. See PPL Statement No. 1-GRA, p. 6. As a result of the automatic renewal, unless a customer contracts for alternative supply from an EGS beginning on the anniversary date of the customer's return to PLR service, the customer remains on PLR service for an additional twelve months. This series of automatic rollovers of the twelve-month supply service commitment will continue indefinitely.

PPL submitted a proposed GRA mechanism, agreed to by the other parties to the proceeding, that would allow the customer to "buy-out" this commitment and reenter the competitive supply market prior to expiration of the twelve months. See PPL Statement No. 1-GRA, p. 8. This "buy-out" essentially results in the customer compensating PPL for additional generation charges to reflect "market-based" rates for the period the customer purchased PLR supply from PPL. PPL has entered into a Stipulation in Settlement that would result in approval of its GRA mechanism (as proposed) and affirmation that its current tariff contains a renewing twelve-month supply service commitment for customers returning to PLR service.

As explained in section "B" of its Main Brief, PPLICA disagrees with PPL's tariff interpretation. Arguing that the contracting and service commitments in PPL's tariff apply only to the monopoly distribution service that customers are required to purchase from PPL. PPLICA asserts that, neither PPL's tariff nor the Competition Act authorize the Company to require a customer that returns to PLR to commit to remain for twelve months in order to exercise its statutory right to be charged generation supply charges that are consistent with the rate caps. PPLICA Main Brief Pages 9 & 18.

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One-Time Waiver of the one-year renewable provision of its tariff. On January 24, 2001, the PUC approved this waiver.

Hofmann, the OSBA, PPLICA, and Exelon developed a compromise proposal ("Joint Proposal") to address the appropriate treatment of commercial and industrial customers that return to PPL for PLR service during PPL's stranded cost recovery period. The Joint Proposal is as follows:

1. PPL will be permitted to require commercial and industrial customers that return to [PLR] service to remain on [PLR] supply for an initial twelve months. PPL will be permitted to modify its tariff language to explicitly include and inform customers of this requirement. If the customer fulfills its twelve-month requirement, chooses an alternative supplier, and later returns again to [PLR] service, the customer will once again be required to remain on [PLR] service for a single twelve-month period, subject to the [generation rate adjustment ("GRA")] option described in subparagraph 3 below.

2. After the customer fulfills the initial twelve-month [PLR] supply service commitment, it will be treated in a non-discriminatory manner, just as PPL would treat a new customer to the system or a customer that had never accessed competitive supply, and will be permitted to access competitive supply at any time without penalty or application of a GRA.

3. PPL will implement a GRA mechanism as soon as technically feasible. The design of the GRA mechanism will be jointly developed by the Parties, PPL, appropriate Commission staff and other interested parties. This mechanism will balance the two principles voiced in the Commission's [PLR] Guidelines Order issued on June 22, 2000, at Docket No. M-00960890F0017 [{"PLR Order"}] by (1) enabling PPL to avoid potential economic impacts resulting from short-term return by commercial and industrial customers to [PLR] service during high-cost periods, while (2) affording commercial and industrial customers flexibility in reentering the competitive supply market following such a return. This GRA option will be available at any time during the returning customer's twelve-month [PLR] supply service commitment.

See PPLICA Exhibit No. JHR-2, pp. 3-4. Witnesses for all four parties endorsed the Joint Proposal as an acceptable resolution to this issue. PPLICA Statement No. 1, p. 9; PPLICA Statement No. 2, p. 17; PPLICA Statement No. 3, p. 12; Hofmann Statement No. 1, p. 5; OSBA Statement No. 1, p. 7; Exelon Statement No. 1-Hofmann, p. 6.

The Parties agreed to advocate for adoption of the Joint Proposal without modification as an acceptable alternative to their litigation positions but without prejudice to those positions. Consistent with PPLICA's commitment and the statements by PPLICA's witnesses, PPLICA continues to support this Joint Proposal as a policy compromise that is fully consistent with the Commission's June 22, 2000, Order regarding Guidelines Addressing Return of Customers to Provider of Last Resort Service at Docket No. M-00960890F0017 ("PLR Order") and that appropriately balances the interests of PPL, its shareholders, EGSs and consumers during the transition to greater competition in the electricity generation supply market, consistent with Section 2802(8) of the Competition Act, 66 Pa. C.S. § 2802(8).

PPLICA argues, however, that the Joint Proposal must be adopted without modification to gain PPLICA's commitment (as set forth in the Joint Proposal) to refrain from challenging the Commission's decision regarding this issue. See PPLICA Exhibit No. JHR-2, p. 3. To the extent the Joint Proposal is modified PPLICA will revert to its litigation position and legal arguments that the Competition Act does not authorize any restriction on the ability of customers to return to PLR service at capped rates and re-access the competitive market at any time without penalty, restriction or the payment of an exit fee. PPLICA Main Brief Page 9.

### III. PPL's Tariff

Each commercial and industrial rate schedule in PPL's tariff contains the following provision regarding the term of service (PPL Hofmann St. 1, p. 5):

"Service under this rate schedule is for an initial term of one (1) year from the date service is first rendered and thereafter for one (1) year terms until cancelled by one month's prior written notice."

Thus PPL argues, that on its face, its Commission-approved tariff requires service under its commercial and industrial rate schedules for renewable one-year terms. PPL Hofmann St. 1, p. 5.]

The question first becomes whether the tariff is a “Commission–approved tariff.”

A public utility’s tariff duly filed and approved by the Commission is binding upon the utility and its customers. Section 1303 of the Public Utility Code states: “No public utility shall, directly or indirectly, by any devise whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part.” 66 Pa C.S. § 1303.<sup>3</sup>

A utility compiles its rules and regulations into its tariff, which it submits to the Commission for review and approval. Brockway Glass Co. v. Pa. P.U.C., 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981). Approved tariff provisions are binding upon both the utility and its customers. Id. at 243, 437 A.2d at 1070. See also Scranton Electric Co. v. Avoca School District, 155 Pa. Super., 270, 37 A. 2d 725 (1944). The burden of showing that a Commission-approved tariff is either unreasonable or discriminatory is upon the party making that claim. Brockway, 63 Pa. Commonwealth Ct. at 243, 437 A. 2d at 1070. This burden is very heavy because tariff provisions which properly

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<sup>3</sup> Under Section 102 of the Public Utility Code, 66 Pa.C.S. Section 102, “rate” is defined to include “any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll or rental.” Therefore, the tariff language that PPLICA here seeks to avoid is subject to Section 1303 of the Public Utility Code.

submitted to and approved by the Commission are prima facie reasonable. Shenango Township Board of Supervisors v. Pa. P.U.C., 686 A. 2d 910, 914 (Pa. Cmwlth. 1996). Pennsylvania appellate courts consistently have rejected attempts by customers to obtain unilateral waivers of approved tariff provisions. See, e.g., Pennsylvania Electric Co. v. Pa. P.U.C., 663 A. 2d 281 (Pa. Cmwlth. 1995) (holding that tariffs have the force of law and are binding upon both the utility and the customer).

The Brockway decision is particularly instructive on this point. In that case, the Commonwealth Court held that the Commission properly rejected a customer's request that a Commission-approved tariff provision be declared unlawful. The tariff provision in question required the customer to give the utility one year's notice of termination of service. The customer terminated operations at one of its major facilities, without giving the required notice. As a result, substantial demand charges were applied by West Penn Power Company under the notice provisions of its tariff even though the customer's usage had been reduced substantially. The Commission and the Commonwealth Court declined to declare the tariff provision unreasonable or unlawful despite the additional charges imposed on the customer. The Commission and the Commonwealth Court both held that the tariff was binding upon the customer, as well as the utility.

Based on Section 1303 of the Public Utility Code and the foregoing precedent, the Commission must review and interpret the service terms of the Company's commercial and industrial rate schedules without considering extrinsic evidence and policy arguments proffered by various witnesses in this proceeding. As explained above, the tariff language clearly and unambiguously establishes a one-year renewable service term and should be affirmed.

Several PPLICA witnesses argue that the tariff provision in question applies only to “distribution service” and not to PLR generation service. PPLICA St. 1, p. 4; PPLICA St. 2, p. 10. Indeed, the Joint PPLICA/PPL stipulation describes the issue in this proceeding, as follows:

Under PPLICA’s interpretation of the tariff, commercial and industrial customers have a contract period requirement under the language in the applicable rate schedules limited only to distribution service. Under PPL’s interpretation of the tariff, commercial and industrial customers have contract periods under PPL’s tariff for distribution service and for generation service.

Unfortunately, PPLICA provides absolutely no support for its interpretation of the tariff. Each commercial and industrial rate schedule in PPL’s tariff offers two distinct services, distribution service and generation service, and the tariff sets out separate rates for each type of service. In regard to the contract period, the tariff states that “service” under the applicable rate schedule shall be for one-year renewable terms. The one-year term requirement is not limited to distribution service; rather, it applies to all service provided under commercial and industrial rate schedules, including both distribution service and generation service. In fact, Tariff Rule 1B of the Company’s tariff specifically defines “electric service” to include both distribution service and generation service.<sup>4</sup> The tariff is clear and unambiguous, and must be applied according to its terms.

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<sup>4</sup> “B. SUPPLY OF ELECTRIC SERVICE – The supply of electric service includes distribution service and also may include basic utility supply [PLR] service.” PPL Tariff, Rule 1B. PPLICA appears to attach some significance to the fact that PLR service is “optional” rather than mandatory. PPLICA Baron Affidavit ¶9. The optional nature of PLR service simply reflects the fact that customers, under the Competition Act, have the choice of taking generation service from PPL or from the competitive market. The optional nature of this service has no bearing on the fact that PPL offers two distinct services in its tariff, and that the one-year renewable service term requirement applies to each service.

PPLICA's argument also is inconsistent with the unbundling of rates and service mandated by the Competition Act. As explained by Mr. Krall (PPL Hofmann St. 1, p. 8):

[A] central purpose of PPL's restructuring proceeding was to unbundle "generation service" from "wires service." PPL's tariff now includes two services and customers must comply with the terms and conditions of the tariff with respect to each service they take under the tariff. To do otherwise would effectively "rebundle" generation services and wires service into a single service. This is clearly inappropriate.

The PPLICA witnesses also note that contracts they entered into prior to 1999 did not contain one-year renewable service terms (PPLICA St. 3, p. 6), and that "traditionally" PPL did not require renewable one-year terms. PPLICA Comments, pp. 2-3. This is true but irrelevant. As explained by Mr. Krall, PPL instituted the renewable one-year term of service for the first time in its restructuring proceeding in order to avoid unfair and inappropriate "seasonal gaming" by customers and marketers. PPL Hofmann St. 1, p. 6. The renewable one-year service term was effective for the first time on January 1, 1999. References by PPLICA to contracts entered into prior to that date have no relevance to the interpretation and application of this new tariff provision.

PPLICA witnesses also note that PPL has not required written contracts with renewable one-year term provisions for customers returning to PPL for PLR service. PPLICA St. 2, pp. 8-9; PPLICA Baron Affidavit ¶ 9. This is again true, but again irrelevant. PPL's tariff provides that it "may" require a written contract with its customers. PPL Tariff Rule 1(B)(1). PPL, applying the discretion afforded in its Commission-approved tariff, has elected not to require written contracts from customers returning to PLR service. This fact, however, has no relevance to the issues presented in this proceeding.

The plain language of PPL's Commission-approved tariff clearly and unambiguously establishes a one-year renewable contract term for service to commercial and industrial customers returning to PLR service. This tariff provision should be applied in accordance with its terms, and the Hofmann Complaint should be dismissed.

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