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January 13, 2005

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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RE: Pennsylvania Public Utility Commission, et al., v. PPL Electric Utilities Corporation; Docket No. R-00049255 C0001-0015

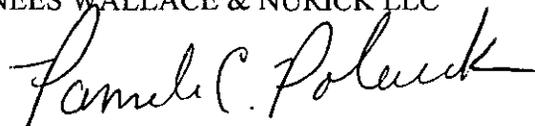
Dear Secretary McNulty:

Enclosed please find the original and three (3) copies of the Answer of the PP&L Industrial Customer Alliance ("PPLICA") to Petition for Reconsideration filed by the PennFuture Parties in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this filing. Please date stamp the extra copies of this transmittal letter and the Answer, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
David M. Kleppinger
Pamela C. Polacek

Counsel for the PP&L Industrial Customer Alliance

PCP/smd
Enclosures

c: Cheryl Walker Davis, Esq., Office of Special Assistants (via Hand Delivery)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
<i>et al.</i> ,	:	
	:	
Complainants,	:	
v.	:	Docket No. R-00049255 C0001-0015
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**ANSWER OF PP&L INDUSTRIAL CUSTOMER ALLIANCE
TO PETITION FOR RECONSIDERATION
FILED BY PENNFUTURE PARTIES**

On January 5, 2005, Citizens' for Pennsylvania's Future ("PennFuture"), Edward M. McGovern, and Char Magaro (collectively, PennFuture Parties) filed a Petition for Reconsideration of a portion of the Public Utility Commission's ("PUC" or "Commission") Order entered December 22, 2004, concerning the Sustainable Energy Fund of Central Pennsylvania ("SEF"). Pursuant to Section 5.572(e) of the Commission's regulations, 52 Pa.Code § 5.572(c), the PP&L Industrial Customer Alliance ("PPLICA") hereby files this Answer opposing the PennFuture Parties' request. Specifically, the possibility that alternative compliance payments will not be available to the SEF under the Pennsylvania Alternative Energy Portfolio Standards Act ("Act 213") does not necessitate continued funding through distribution ratepayer rates of the SEF; rather, if alternative compliance payments are not available to SEF under the Act 213 scheme, then this demonstrates that sufficient Tier 1 and Tier 2 renewable resources as defined in Act 213 are available and that further subsidization of entities such as the SEF through

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distribution rates is unnecessary.¹ In support hereof, PPLICA responds to the specific paragraphs of PennFuture's Petition as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. This paragraph constitutes the PennFuture Parties' interpretation of the ALJ's Recommended Decision. The document speaks for itself and the PennFuture Parties' summary is therefore denied.
5. Admitted.
6. This paragraph sets forth a legal standard to which no response is necessary.
7. Denied. Specifically, PPLICA denies that the arguments set forth by the PennFuture Parties constitute a sufficient basis to revisit the decision or to adopt the requested relief set forth subsequent points of the Petition.
8. Admitted.
9. Denied. Specifically, PPLICA included a reference to the pending legislation in its final form in footnote 1 of PPLICA's Reply Exceptions.
10. Denied. Although PennFuture may be correct that Act 213 does not guarantee alternative compliance payments for the SEF, the legislation requires that adequate Tier 1 and Tier 2 resources be available by creating a mandatory purchase obligation for all electric distribution companies ("EDCs") and electric generation suppliers ("EGSs"). To the extent

¹ As set forth in PPLICA's Petition for Reconsideration filed on January 6, 2005, PPLICA continues to dispute the legality of including funding for the SEF in distribution rates for any period of time and reserves all challenges on appeal. Nothing stated in this Answer should be construed as supporting the funding of the SEF through distribution rates for any period of time.

sufficient and appropriately priced resources do not exist in the market to fulfill the aggregate purchase obligations of all EDCs and EGSs, then alternative compliance payments may be necessary. If, however, sufficient Tier 1 and Tier 2 resources exist in the marketplace and alternative compliance payments are not made by EDCs and EGSs, then this indicates that the legislative intent to encourage the development of sufficient Tier 1 and Tier 2 resources to meet the benchmarks has been fulfilled through the marketplace and that further subsidization of these projects through the SEF is neither necessary nor appropriate. By advocating for continued distribution ratepayer funding of the SEF, the Penn Future Parties are seeking to expand their legislative gain beyond the intention of the General Assembly, which clearly could have specifically mandated both the alternative compliance payments and distribution rates as revenue streams for SEF in Act 213 if that was its intention. Similarly, if the Pennsylvania Sustainable Energy Board does not chose to fund the SEF, then it is obviously due to either the existence of sufficient renewable resources within the PPL territory or the inadequacies of the SEF activities.

11. Denied. See response to paragraph 10 above.

12. Denied. If anything, PPLICA asserts that the adoption of both Act 213 and the funding of the SEF through distribution rates (even for a limited time) will detrimentally harm economic development and the business community through increased energy and distribution costs in excess of reasonable cost of service. Moreover, the PennFuture Parties' own Petition for Reconsideration demonstrates the potential harm of including funding in rates for even a limited time period – the proponents of mandatory subsidization of these projects will never be satisfied with the funding level or duration and will continually seek to add additional organizations, time periods and amounts to the regulated, monopoly distribution rates. As the PennFuture Parties demonstrate through their pleading, such requests will never cease and will in fact grow in the

future, even if the particular organization (i.e., the SEF itself) does not seek reconsideration. The Commission's legal decisions related to the inclusion of the SEF funding in distribution rates has established a very dangerous precedent. If the Commission reconsiders its decision to subsidize the SEF through distribution rates, it should immediately remove all such funding.

WHEREFORE, the Pennsylvania Public Utility Commission should deny the Petition for Reconsideration of PennFuture Parties submitted in the above-referenced proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Dated: January 13, 2005

CERTIFICATE OF SERVICE

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

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Page 2

Docket No. R-00049255

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Dated this 13th day of January, 2005, at Harrisburg, Pennsylvania.



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January 18, 2005

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James J. McNulty
Secretary
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Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission
v.
PPL Electric Utilities Corporation
Docket No. R-00049255

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of the Office of Consumer Advocate to the Petition for Reconsideration and Amendment of the PPL Industrial Customer Alliance, in the above-referenced proceeding.

Copies have been served to the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,


Aron J. Beatty
Assistant Consumer Advocate

Enclosures
cc: Parties of Record
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission

v.

PPL Electric Utilities Corporation

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Docket No. R-00049255

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO
PETITION FOR RECONSIDERATION AND AMENDMENT
OF
THE PPL INDUSTRIAL CUSTOMER ALLIANCE

I. INTRODUCTION

On January 6, 2005, the PPL Industrial Customer Alliance ("PPLICA") filed a Petition for Reconsideration of the Commission's Order entered December 22, 2004 in the above-captioned proceeding. In its Petition, PPLICA sought reconsideration of two issues: 1) the Commission's decision to adopt PPL's proposed uniform transmission service charge ("TSC") and 2) the Commission's decision to eliminate funding for the Sustainable Energy Fund after December 31, 2006 through the imposition of a negative State Tax Adjustment Surcharge ("STAS"). PPLICA argues that as to these issues, the Commission overlooked or did not address issues raised by PPLICA, or introduced a new proposal requiring a further response by PPLICA. The OCA submits that PPLICA's Petition must be denied.

As to the issue regarding the uniform TSC, PPLICA has not raised any new or novel arguments, nor did the Commission overlook or fail to address arguments raised by PPLICA in its Briefs and Exceptions. The Commission thoroughly addressed the issues

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regarding the TSC and correctly concluded that PPL's proposal for a uniform TSC at this time was reasonable and resulted in just and reasonable rates.

As to the issue regarding the proper method to eliminate funding for the Sustainable Energy Fund at the end of the phase out period ordered by the Commission, the OCA submits that PPLICA's proposal that PPL be *required* to file a distribution base rate case, whether needed or not, is not in the public interest and is without any basis. While the OCA agrees that the negative STAS approach proposed by the Commission may not be optimal, the Commission could simply require PPL to file a Rider eliminating the funding or meet with the parties closer to the expiration of the funding to determine the most appropriate method to eliminate the rate effect of the SEF funding if PPL has not filed a base rate case. In reality, though, PPLICA's proposal is an attempt to have the Commission reconsider a PPLICA proposal in the underlying case that rates be adjusted between now and 2009, the end of the transition period, to address what PPLICA sees as "subsidies" in the distribution rate elements. PPLICA Petition, ¶19. The ALJ and the Commission properly rejected this argument and PPLICA has provided no new or novel arguments that warrant reconsideration.

The OCA will discuss these issues in more detail below.

II. ANSWER

A. PPLICA's Petition Does Not Raise Sufficient New And Novel Arguments Regarding The Approved Transmission Service Charge And Should Be Rejected.

The Commission's policy on reconsidering final Orders is well settled. Only new and novel arguments that have not been presented to the Commission, or considerations which appear to have been overlooked or not addressed, may merit reconsideration. See, Duick v. Pa. Gas and Water Co., 56 Pa. P.U.C. 553 (1982). PPLICA's Petition, with regard to the Transmission Service Charge ("TSC") issue, fails to meet this standard.

PPLICA makes two arguments as to why a uniform TSC should be rejected and replaced by the TSC proposal it proposed during the rate proceeding. First, PPLICA argues that the *Electricity Generation Customer Choice and Competition Act* ("Choice Act") requires the Commission to implement the PPLICA TSC proposal. However, as PPLICA acknowledges, the Commission explicitly referenced its contention that the Choice Act requires that the PPLICA proposal be adopted. PPL Order at 77. Despite the Commission's clear acknowledgment of PPLICA's position, PPLICA continues to make the same legal arguments made throughout this proceeding. PPLICA's legal argument received consideration on its merits and was rejected.

In addition, PPLICA argues that the Commission misconstrued its TSC proposal where the Commission stated, "PPLICA focuses its arguments on cost causation principles and the assertion that the PPL proposal will not move swiftly enough to eliminate the subsidy inherent in the transmission rate." Order at 76. However, the Commission's statement accurately captures one of PPLICA's major concerns regarding the TSC. PPLICA argued throughout this proceeding that competition requires that transmission costs match, as closely as possible, PJM's billed transmission charges. The Commission's statement, used by PPLICA to support Reconsideration, is an acknowledgement of PPLICA's own argument that retail transmission rates should match PJM billings.

Importantly, PPLICA acknowledges that pre-January 1, 2005 transmission rates were allocated to the rate schedules using a 12 CP demand allocator (Petition at 6), while PJM assesses transmission charges on a part demand/part usage basis. PPLICA M.B. at 64-68. Under PJM's billing structure, roughly 70% of transmission charges are billed on a demand basis, while roughly 30% are billed on a kWh, or usage, basis. PPL St. 4-R at 29. Under pre-January 1, 2005 transmission rates, PPL did not bill any customer in the same manner that it was billed by PJM.

In this instance, PPLICA has not raised any new, novel, or overlooked issue worthy of reconsideration.

The OCA submits that the TSC issues raised in PPLICA's Petition For Reconsideration do not merit further review. The Commission's well-reasoned analysis on this topic adequately addresses the transmission rate issues involved in this proceeding and how those transmission rates affected overall rate increases to all retail customers. However, if the Commission finds that PPLICA has met the standards required for Reconsideration, then it should reject PPLICA's TSC proposal on the merits.

1. The PPLICA TSC Proposal Produces Extreme Rate Volatility.

If the Commission reconsiders its adoption of a uniform TSC, it must consider the rate volatility inherent in PPLICA's proposal. Under the PPLICA proposal, rate schedules would experience dramatically different transmission service charges based on when PPL peaks. PPL switches from year to year between a winter peaking utility and a summer peaking utility. Rate schedules that peak during the summer months will have higher transmission rates when PPL peaks in the summer, and Rate Schedules that peak during the winter months will have higher transmission rates when PPL peaks in the winter. The following chart prepared from PPL witness Krall's Exhibits DAK3 and DAK4 provides an example of what each rate schedule's TSC rate would look like in a winter peaking year and a summer peaking year using the same total revenue requirement.

TSC RATES UNDER ALTERNATIVE RATE PROPOSALS

(CENTS PER KWH)

	RS	RTS	GS-1	GS-3	LP-4	ISP	LP-5	IST	LP-6	LPEP	GH	SL/AL
Winter Peak	.712	1.097	.541	.470	.459	.456	.455	.389	.393	.490	.765	.604
Summer Peak	.597	.421	.727	.640	.538	.541	.533	.441	.553	.205	.590	.161

Source: PPL Exh. DAK3; PPL Exh. DAK4.

As seen in this chart, under the alternative proposals rate classes would experience significant fluctuations in rates from year to year. For example, Rate Schedule RTS would have a winter peaking transmission rate of 1.097 cents per kWh. PPL Exh. DAK3. This rate is 0.539 cents per kWh more than the average rate that would exist under the Company's original, uniform rate proposal, for a total increase in transmission charges of roughly \$2 million for Rate RTS. Tr. at 895. In a summer peaking scenario, the rate RTS transmission rate would be .421 ¢ per kWh. PPL Exh. DAK4. This represents a rate that is 0.163 cents per kWh lower than would exist under the Company's uniform rate proposal. Id. As a result, rate RTS customers would see more than a 100% swing in rates depending on whether PPL summer or winter peaked.

The OCA submits that the rate volatility present in PPLICA's TSC proposal is not justified at this time. PPLICA witness Baron argued that attempting to pass the PJM bill on to retail customers would benefit shopping (PPLICA St. 1 at 14-5; PPLICA St. 1-R at 6, 10, 18-19). However, the Company demonstrated that there is no evidence as to how an EGS addresses transmission costs for pricing purposes. Moreover, the only party representing competitive suppliers endorsed the Company's uniform TSC proposal. MAPSA M.B. at 1-3. For these reasons, the Commission should not adopt PPLICA's proposal.

2. A Uniform TSC Meets The Legal Requirements Of The Public Utility Code.

PPLICA argues that the Choice Act, in particular Section 2804(6), requires that PPL bill transmission charges according to how PJM passes those costs on to PPL. Petition at 3-6. PPLICA also argues that only way to ensure comparable rates for Large Commercial customers who take service from a competitive EGS is to directly apply PJM's transmission billing methodology to individual POLR customers. Petition at 4. PPLICA cites to the same provision of the Choice Act to support this argument. Id. The Act, however, does not support PPLICA's contention.¹

Section 2804(6) of the Act requires that:

a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

66 Pa.C.S. § 2804(6). The passage is designed to prohibit discrimination, not to track wholesale transmission rates into retail rate design. PPLICA's attempt to read something into the Act that is not there must fail.

In order to accept PPLICA's argument, an assumption must be made that PPL can accurately pass through PJM costs to retail consumers. However, PPL receives one transmission bill from PJM for its entire load. Tr. at 1097. PJM bases the amount billed on PPL's total system load. PJM does not bill PPL on a rate class by rate class basis. PPL then allocates these costs to each class. Tr. at 1097; OCA M.B. at 144.

¹ In its Petition, PPLICA briefly asserts that Federal law and the "filed rate doctrine" may require adoption of its proposal. The OCA submits that the "filed rates" contained in the PJM OATT and approved by the Federal Energy Regulatory Commission apply to Load Serving Entities, such as PPL Electric and licensed EGSs, that purchase transmission service according to that tariff. The filed rates do not apply to PPL's retail POLR customers.

As the OCA has argued, for the majority of PPL's load, and the vast majority of customers, it is not possible to allocate transmission costs in the precise manner PJM employs. OCA M.B. at 143-146. OCA Reply Exc. at 18-19. PJM's total bill is comprised of roughly 70% demand determined charges, and 30% usage determined charges. PPL St. 4-R at 29. However, PPL witness Krall acknowledged the impact usage plays in determining how much demand a customer places on the system, stating, "...fundamentally there's a lot of kilowatt-hour usage that determines the customer's ultimate burden on the system." Tr. at 908. In other words, for a high percentage of the PPL load, the 70% demand portion of the PJM transmission bill must be calculated through usage. PPL recognized the important role usage plays in determining transmission billings when it recommended a uniform TSC.

PPLICA also argues that "comparable" transmission rates for Large Commercial and Industrial customers shopping with an EGS can only be achieved if a direct pass through of the PJM billing methodology occurs. However, it is entirely unclear how an EGS bills a shopping customer for transmission service. As the Company pointed out in its Main Brief, there is no evidence as to how an EGS prices transmission service for its customers. PPL M.B. at 103.

The OCA submits that it is not possible to pass through PJM's wholesale bills to the majority of PPL's retail customers. PPLICA's reading of the Act that requires this result is untenable. As explained above, the Choice Act prohibits discrimination, but does not require retail customers to see PJM charges on their bills. PPLICA's assertion that retail customers must be billed for transmission service in the same manner as PPL is billed by PJM is not required under the Choice Act, and was properly rejected by the Commission.

3. The Overall Revenue Increase Assigned To Large C&I Customers Is Reasonable.

PPLICA also argues that, under the uniform TSC, Large C&I customers are subsidizing residential customers when PPL peaks in the summer and that Large Commercial and Industrial customers are subsidizing small commercial customers when PPL peaks in the winter. Petition at 9. PPLICA's argument that a uniform TSC rate creates interclass subsidies fails to take into consideration the interconnected nature of overall rate increases at issue in this proceeding. The OCA submits that, by its adoption of a uniform TSC, the Commission properly recognized the overall impact of the rate increases at issue in this proceeding and the transition that PPL is undergoing. Order at 78.

The Transmission rate approved by the Commission was an integral part of the overall rate impact of the proceeding. In its Petition, PPLICA has essentially restated its argument that a uniform transmission service charge violates cost causation principles. See PPLICA M.B. at 69. However, the Company properly considered the overall impact of both the transmission and distribution rate increases when it proposed a uniform TSC. The use of a uniform rate was an integral part of the overall rate proceeding and was properly viewed by the Commission in this context.

PPLICA argues that subsidies are increased under the uniform TSC rate, and provides a table to make this point. Petition at 8. However, a presentation of the overall revenue increase on a total bill basis provides a better context for this case. At the Company's proposed revenue requirement, Rate Schedule RS would have received a 9.66% increase on a total bill basis. PPL Exh. Fut. 1, D3 at 7. Rate Schedules LP-4, LP-5 and IS-T would have received increases of 5.97%, 4.9%, and 4.32%, respectively. Id. Contrary to PPLICA's assertion, the

overall rate increases comport with the notion of gradualism and mitigation of rate shock. Petition at 9.

The Company's uniform TSC rate proposal properly balanced the recovery of transmission revenues associated with PJM billings to PPL in order to serve retail customers, with traditional ratemaking principles. The Commission properly considered the impact of the total bill increases that resulted from this proceeding. Order at 78. The OCA submits that a uniform TSC was appropriate in this distribution and transmission rate proceeding. PPLICA's Petition for Reconsideration should be denied on these grounds.

4. PPLICA's Assessment Of Distribution Subsidies Is Flawed.

PPLICA argues that significant subsidies exist in distribution rates and provides a table on Page 10 of its Petition in support of this argument. However, PPLICA fails to acknowledge that PPL is undergoing a transition from a vertically integrated company to a fully unbundled electric distribution company. PPLICA bases its subsidy calculations on the PPL Cost of Service Study at the Company's full revenue request. While the OCA does not support PPL's study and the Commission did not formally adopt PPL's study, the Company recognized that distribution rate of return differentials found in its distribution-only study should be reduced gradually during this transitional period. Of critical importance, rate of return variances in other rate components may go the other way. OCA witness Galligan testified:

I have included Schedule RAG-3, which are the summary pages from PPL's last rate proceeding showing class rates of return for the then vertically integrated PPL operations. This study reflects the same methodological approach to distribution costs that is proposed by PPL in this case. In the last case, PPL calculated that Residential RS customers generated an 80 percent index return, when generation costs and total rates were considered...Now, PPL studies of its distribution only operations show index returns at 41 percent and 60 percent for the future test year under present and proposed rates, respectively. If unbundling services and rates, and

performing a cost of service study addressing only a portion of prior total costs of service, using the same methodology as was previously used prior to unbundling, shows a reduced rate of return for customers continuing to purchase PPL's remaining, limited unbundled distribution service, this suggests higher returns for unbundled operations that are no longer subject to Commission jurisdiction.

OCA St. 4 at 22.

PPL witness Krall agreed with OCA witness Galligan that variances may exist in non-distribution rates when he stated:

OCA witness Galligan observes, correctly in PPL Electric's opinion, that, when viewed as a whole, electric rates remain in a *transitional period until the generation rate cap expires*. It is, therefore, unnecessary and inappropriate to move rapidly to "correct" the allocation of distribution revenue requirements when other bill components that remain capped may continue to be "incorrect." PPL Electric agrees with OCA witness Galligan that "considerations such as gradualism, stability, understandability, acceptance, simplicity, etc." are important issues for commissions to factor into the setting of rates.

PPL St. 4-R at 34.

In prior cost of service studies, it was not separately distinguished as to whether a class was paying a higher rate of return on one component of bundled service, such as generation, and a lower rate of return on another component of service, such as distribution. As Mr. Galligan pointed out, the Residential RS class generated an 80% indexed rate of return on a bundled basis in PPL's last rate case, but only 41% on a distribution-only basis in the current study using the same methodologies. Importantly, the distribution rate increases approved in this proceeding reduce existing distribution variances while incorporating the principle of gradualism. OCA St. 4 at 21.

PPLICA's Petition fails to acknowledge these issues. For the above reasons, the OCA submits that PPLICA's assessment of alleged subsidies is flawed and should not be considered when ruling on the Petition for Reconsideration.

5. Conclusion.

The Commission recognized that PPL is undergoing a continuing transition to full competition. Order at 78. The Commission accepted a uniform transmission charge recognizing this transition in order to ensure that the overall impact of the rate increases resulting from this proceeding were reasonable. The uniform TSC was an integral component of the overall rate proceeding. The OCA submits that a uniform TSC is a reasonable method for collecting PJM billed transmission charges.

B. PPLICA's Proposal That PPL Be Required To File A Base Rate Case To Remove The SEF Funding In 2007 Should Not Be Adopted.

In Paragraphs 14-19 of its Petition, PPLICA seeks reconsideration of the Commission's Order regarding the removal of funding for the Sustainable Energy Fund ("SEF") from distribution rates at the end of the funding period ordered by the Commission. In its December 22 Order, the Commission directed that funding for the SEF be continued at a rate of .01¢/kwh during 2005 and at a rate of .005¢/kwh during 2006. To ensure removal of the SEF funding from distribution rates at the end of this funding period, the Commission directed PPL to institute a negative State Tax Adjustment Surcharge ("STAS") to exclude funding if it had not filed a distribution rate case that would be concluded on or before December 31, 2006. Ordering Paragraph 12. PPLICA requests that the Commission reconsider its decision and order PPL to file a distribution base rate case to be concluded on or before December 31, 2006 to remove the SEF funding and to further address distribution rates and transmission rates to remove any interclass subsidies that may exist. PPLICA Petition at ¶14.

PPLICA states that the use of the STAS mechanism to remove the SEF funding from distribution rates is highly problematic, particularly for Large C&I customers. PPLICA raises both technical and legal concerns with the use of the STAS. While the OCA agrees that the use of the STAS mechanism presents problems for removing the SEF funding from distribution rates, PPLICA's argument that the Commission require PPL to file a distribution rate case at a date certain to remove the funding is wholly without merit.

The OCA submits that there are many ways to address the phase-out of the SEF funding in rates, particularly since the funding mechanism is through a Rider mechanism. The rate in the Rider mechanism can be adjusted to match the amount that is to be collected each year, and then the Rider can be set at zero on January 1, 2007 to eliminate all funding. If the Commission finds that the use of a negative STAS introduces too many problems, the Commission could also require PPL to meet with the parties closer to January 1, 2007 to devise an appropriate mechanism to eliminate the effect of the funding if a distribution base rate case has not been filed. A requirement that the Company file a full-blown distribution rate case at a date certain, however, is not in the public interest and to the OCA's knowledge, has never been done by the Commission.

The OCA submits that requiring a distribution rate case does not serve the public interest, particularly if the Company has no need to increase its rates at the time that the case must be filed. The compilation of the rate case information, preparation of testimony and litigation of the proceeding results in costs to ratepayers in the form of rate case expense and utilizes the resources of all parties, including parties funded through rates, such as the OCA, OSBA and OTS. Causing a company and its ratepayers to incur these expenses when an

increase in rates is not necessary is a waste of limited resources and unnecessarily and improperly increases rates to ratepayers.

Moreover, while the Commission may open a proceeding to examine existing rates under Section 1309, it must be established that existing rates are unjust and unreasonable. There is no basis to conclude at this point in time that rates in 2007 will be unjust and unreasonable. See, 66 Pa.C.S. §1309(b).

PPLICA's proposal, in essence, is an attempt to revive, through the SEF issue, its request in the underlying proceeding that rates be adjusted every year to make progress towards what PPLICA deems "cost-based" rates. See, PPLICA Petition, ¶19. As the OCA set forth in its Main Brief at 132-134, and in its Reply Brief at 48-50, PPLICA's proposal to continually adjust rates fails on technical, legal and policy grounds. Both the ALJ and the Commission properly rejected the PPLICA proposal to continually adjust rates during the remaining transition period. The OCA submits that the issue of the SEF funding cannot be used as a vehicle to attempt to reconsider this issue.

The Commission has determined rates that it has found to be just and reasonable, and it has provided a mechanism to adjust rates to eliminate the SEF funding. Any problems with the negative STAS methodology directed by the Commission can be addressed in a number of ways if PPL does not find it necessary to file a base rate case prior to December 31, 2006. Requiring a base rate case filing by PPL, however, is not a mechanism that is in the public interest. The OCA submits that PPLICA's proposal should be rejected. If the Commission wishes to look at alternative mechanisms, it should either direct PPL to submit appropriate Riders to account for the phase out of the SEF funding or it should direct PPL to work with the

parties closer to December 31, 2006 to arrive at an appropriate mechanism to eliminate the funding from rates if PPL does not file a distribution base rate case.

III. CONCLUSION

For the reasons set forth herein, and for the reasons set forth in the OCA's Main Brief, Reply Brief, and Reply Exceptions, the OCA submits that PPLICA's Petition must be denied.

Respectfully Submitted,



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Dated: January 18, 2005
82500.doc

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission, et al
v.
PPL Electric Utilities Corporation
Docket No. R-00049255

I hereby certify that I have this day served a true copy of the foregoing, the Answer of the Office of Consumer Advocate to the Petition for Reconsideration and Amendment of the PPL Industrial Customer Alliance, on parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of January 2005.

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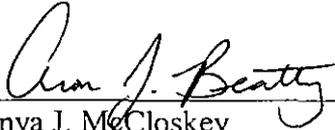
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IN REPLY PLEASE
REFER TO OUR FILE

January 18, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

Re: Pennsylvania Public Utility Commission v.
PPL Electric Utilities Corporation
Docket No. R-00049255

Dear Secretary McNulty:

Enclosed please find for filing an original and three copies of the Office of Trial Staff's Answer to Pennfuture Parties' Petition for Reconsideration in the above-captioned proceeding. Copies have been served according to the certificate of service.

Respectfully submitted,

Richard A. Kanaskie
Prosecutor

Enclosure
cc: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :

v.

Docket No. R-00049255

PPL Electric Utilities Corporation :

**THE OFFICE OF TRIAL STAFF'S
ANSWER TO PENNFUTURE PARTIES'
PETITION FOR RECONSIDERATION**

Johnnie E. Simms
Chief Prosecutor

Richard A. Kanaskie
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Office of Trial Staff
Pennsylvania Public
Utility Commission

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Dated: January 18, 2004

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission**

v.

PPL Electric Utilities Corporation

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Docket No. R-00049255

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**THE OFFICE OF TRIAL STAFF'S
ANSWER TO PENNFUTURE PARTIES'
PETITION FOR RECONSIDERATION**

On January 5, 2005, Citizens for Pennsylvania's Future, Edward M. McGovern and Char Magaro (PennFuture Parties) filed a Petition for Reconsideration with respect to the portion of the Pennsylvania Public Utility Commission (Commission) Order concerning the Sustainable Energy Fund (SEF).

Pursuant to 52 Pa. Code § 5.572(e), the Office of Trial Staff (OTS) files this Answer requesting the Commission deny this petition. PennFuture Parties' request for reconsideration must be denied as it is based on a faulty premise. This petition requires the interpretation that the Commission's decision was based solely on the adaptation of Pennsylvania's Alternative Energy Portfolio Standards Act (Act 213) and that funds resulting from application of this Act will replace ratepayer funds. This basis is misguided and, therefore, the petition must be denied.

The fact that Act 213 may provide additional funding for the SEF in no way alters the basis for the Commission's decision. It is well established that funding for the SEF had a defined ending date. Under the parameters of the settlement reached in the

Restructuring Proceeding, contributions from PPL Electric Utilities Corporation (PPL or Company) were to cease on December 31, 2004 or when the Commission established new distribution rates, whichever was longer.¹ The timing of the completion of the terms of the agreement coincided with the effective date of the Company's rate case filing and is not at issue. Only because of the Company's new proposal has this issue been continued.

SEF was established through settlement of the Company's Restructuring Plan.² It was never intended for SEF to receive funding from PPL past the completion of the original agreement. The allowance to fund the program was based on the goal that SEF would become self-sufficient.³ The Commission clearly affirmed this intention in its Order entered June 2, 2000 when it stated "[i]t is the Commission's intent that these funds become sustainable through efficient management and the leveraging of monies received from other funding sources."⁴ The Commission, in the instant proceeding, has indicated its satisfaction with the progress of SEF and the unnecessary continued application of ratepayer funds in the statement that "the SEF has effectively managed its funding and has a strong balance sheet, showing unrestricted net assets of \$12,203,454 at June 30, 2003 and therefore is achieving a stated goal of this Commission, that the SEF itself become sustainable."⁵ The Commission has clearly evaluated continued funding of this entity in the context of its original goals and has determined that "now is the

¹ Docket Number R-00973954.

² OTS Statement Number 5, p. 2.

³ Id.

⁴ Docket Number R-00973954, p. 2. (Order dated and entered June 2, 2000).

⁵ Docket Number R-00049255, p. 52 (Order adopted December 2, 2004 and entered December 22, 2004).

appropriate time to begin eliminating the use of distribution revenues to support the SEF".⁶ The Commission has consistently stated its goal and is adhering to its goal in this Order.⁷ Funding was established for a finite period and, as a compromise, the Commission has continued contributions for two years to establish a smooth transition to independence. Notwithstanding Act 213, SEF's strong financial situation affirms its self sustainability and supports the Commission decision to terminate funding on a gradual, specifically defined basis.

PennFuture Parties' interest in this funding has been established in the litigated proceeding, but it is noteworthy *that neither PPL, the proponent of continued funding, nor the SEF, the recipient of the funding, has petitioned the Commission to reconsider its Decision.* The Commission has consistently stated its goals with respect to SEF and has determined that the objectives of the original agreement have been satisfied.

Accordingly, OTS files this Answer requesting that the Commission deny this intervening party's petition as it is based on a faulty premise. Additionally, OTS offers the following enumerated comments as further support that PennFuture Parties' Petition be denied:

1. Admitted.
2. Admitted.
3. Admitted.

⁶ Id.

⁷ OTS supports SEF's mission and lauds its endeavors, however, the Commission has consistently determined from its inception that it is in the public interest that SEF be self sufficient and operate separate and apart from ratepayer and/or utilities' monies. OTS continues to support a voluntary contribution from ratepayers as proposed during the underlying proceeding. Notwithstanding SEF's strong balance sheet and achievement of Commission goals, voluntary actions by ratepayers or contributions from shareholder funds are a possible source of additional funding.

4. Admitted. The statement reflects the recommendation of the ALJ in this proceeding. By way of clarification, Exceptions to the ALJ's recommendation were filed on this issue.
5. Admitted.
6. Admitted.
7. Denied. The Commission's evaluation is based on its clearly established goal that SEF become self sustaining.
8. Admitted in Part/Denied in Part. Admitted to the extent that the quoted language reflects the Commission Order. Denied to the extent that PennFuture Parties offer the application of Act 213 as the Commission's sole support for its Decision.
9. Admitted in Part/Denied in Part. Denied to the extent that PennFuture Parties offer that the only relevant discussion establishes Act 213 as the sole reason for the Commission's Decision.
10. OTS is without sufficient knowledge or information to form a belief as to the accuracy of the averments contained in this paragraph.
11. OTS is without sufficient knowledge or information to form a belief as to the accuracy of the averments contained in this paragraph. As a matter of further clarification, PennFuture Parties' pleading is misplaced as it avers that funds from alternative compliance payments under Act 213 are meant to replace the ratepayer contributions and form the basis for the Commission Decision. The finding of whether SEF will receive funds from the provisions of Act 213 does not impact the Commission

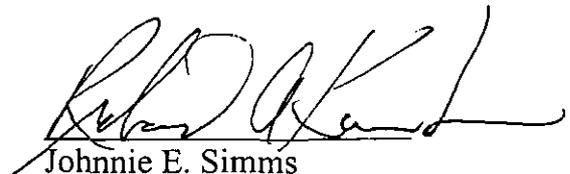
determination that SEF is achieving the Commission's stated goal of becoming sustainable.

12. OTS is without sufficient knowledge or information to form a belief as to the accuracy of the averments contained in this paragraph. PennFuture Parties' averment that discontinued funding of SEF by PPL (or its ratepayers) will hinder economic development in Pennsylvania is unfounded and lacks evidentiary support.

Furthermore, this party's averment that that the Commission erred in reducing SEF funding based on assumptions about Act 213 is in error as it mischaracterizes the basis for the Commission Decision. The balance of the petitioner's concluding paragraph represents a prayer for relief and, as such, does not require a response.

WHEREFORE, for the reasons stated herein, the Office of Trial Staff respectfully requests that the Pennsylvania Public Utility Commission deny PennFuture Parties' Petition to Reconsider its Order with respect to the Sustainable Energy Fund as the petition is based on an improper interpretation of the Commission Decision. The Commission has determined that its goals for SEF are being accomplished, therefore, funding beyond the transition period is unwarranted.

Respectfully submitted,



Johnnie E. Simms
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Dated: January 18, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-00049255
PPL Electric Utilities Corporation :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing Office Of Trial Staff's Answer To Pennfuture Parties' Petition For Reconsideration, dated January 18, 2005, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

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Dated: January 18, 2005
Docket No. R-00049255

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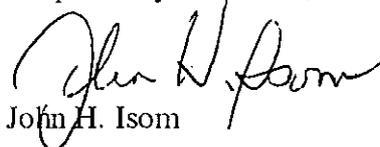
**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket No. R-00049255**

Dear Secretary McNulty:

Enclosed, for filing, are the original and three (3) copies of the "Answer of PPL Electric Utilities Corporation to PP&L Industrial Customer Alliance's Petition for Reconsideration and Amendment" in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on all parties.

Respectfully submitted,


John H. Isom

JHI/jl

Enclosure

c: Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission, :
et al. :

v. :

PPL Electric Utilities Corporation :

Docket Nos. R-00049255, *etc.*

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ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO PP&L INDUSTRIAL CUSTOMER ALLIANCE'S
PETITION FOR RECONSIDERATION AND AMENDMENT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric") hereby answers the "Petition for Reconsideration and Amendment" ("Petition") of the PP&L Industrial Customer Alliance ("PPLICA"). There, PPLICA seeks reconsideration by the Pennsylvania Public Utility Commission ("Commission") of three different holdings in the Opinion and Order entered in this proceeding on December 22, 2004 ("Final Order"). First, PPLICA contends that the Commission is compelled by Section 2804(6) of the Public Utility Code, 66 Pa.C.S. § 2804(6), to adopt PPLICA's proposal for Transmission Service Charges ("TSCs"). Second, PPLICA contends that the Commission improperly created subsidies by adopting PPL Electric's proposed TSCs. Third, PPLICA contends that funding by PPL Electric of the Sustainable Energy Fund ("SEF") should be phased out by requiring PPL Electric to file a distribution base-rate proceeding in 2006 and not through the State Tax Adjustment Surcharge ("STAS") mechanism. For the reasons explained below, PPLICA's Petition should be denied in its entirety.

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II. STANDARDS FOR RECONSIDERATION

1. The Commission established standards for reconsideration of final orders in the oft-cited decision in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982), as follows:

“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. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that ‘[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them’ What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”

As explained more fully below, none of PPLICA’s requests for reconsideration meet the Commission’s standards for reconsideration that were enunciated in *Duick*.

III. TRANSMISSION SERVICE CHARGES

2. PPLICA contends that, under Section 2804(6) of the Public Utility Code, 66 Pa.C.S. § 2804(6), the Commission is required as a matter of law to adopt PPLICA’s proposed TSCs. Petition, pp. 3-6.

3. PPLICA first contends that the Commission “overlooked” the provisions of Section 2804(6). Petition, p. 2. Later, however, PPLICA states that:

“The Commission’s December 22 Order mentions PPLICA’s argument that Section 2804(6) of the Public Utility Code requires PPL to provide access to the transmission system at rates and terms consistent with PPL’s own use of the system. December 22 Order, p. 77.”

Petition, p. 3.

4. PPLICA's contentions are irreconcilably inconsistent. On the one hand, PPLICA claims that the Commission "overlooked" PPLICA's argument. On the other hand, however, PPLICA acknowledges that the Commission itself expressly recognized PPLICA's argument in the Final Order. The Commission cannot have "overlooked" the same argument that it expressly recognized in summarizing PPLICA's contentions in the Final Order.

5. In any event, PPLICA's argument is incorrect on the merits because it misinterprets Section 2804(6) of the Public Utility Code, which provides as follows:

"Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or non affiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system."

By its express language, Section 2804(6) applies to rates for and terms of access for use of PPL Electric's transmission system.¹

6. With regard to access to PPL Electric's transmission system, as circumstances have evolved since the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Ch. 28, became effective on January 1, 1997, access to PPL Electric's transmission system is governed by the Open Access Transmission Tariff ("OATT") of the PJM Interconnection, Inc. ("PJM"). The OATT is subject to regulation by the Federal Energy Regulatory Commission ("FERC").

7. Under the OATT, PPL Electric's transmission facilities, as well as

¹ PPLICA has raised no issue with regard to access to PPL Electric's distribution system.

transmission facilities of other transmission owners participating in the PJM, are operated by PJM. PPL Electric is compensated for the use of its facilities by PJM pursuant to the rates, terms and conditions of the OATT.

8. PJM, in turn, uses transmission facilities of PPL Electric and other transmission owners to make transmission services available to PPL Electric and others under the rates, terms and conditions of the OATT, which are the same for all entities using PJM's transmission services.

9. It is necessary for PPL Electric to use transmission services provided by PJM in order to transmit electricity from electric generation suppliers to PPL Electric's distribution system and ultimately to end-users of electricity. PPL Electric is obligated to provide electricity to customers as the Provider of Last Resort ("POLR") under Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e).

10. When PPL Electric uses transmission services provided by the PJM, PPL Electric pays PJM under the OATT for the use of transmission services.

11. Thus, terms and conditions for access to PPL Electric's transmission system clearly meet the standards of Section 2804(6) because PPL Electric and all other users of PPL Electric's transmission system pay the same rates and must meet the same terms and conditions for access established under PJM's OATT.^{2/}

12. PPL Electric's TSC does not address issues of rates, terms and conditions for access to PPL Electric's transmission system. Instead, the TSC provides recovery by PPL Electric of the cost it incurs under the PJM OATT for use of transmission services provided by the PJM under the OATT. The TSC is not a charge for providing anyone

^{2/} PPL Electric notes that preemption issues could arise if PJM's OATT were inconsistent with Section 2804(6) of the Public Utility Code, but no such inconsistency exists.

access to PPL Electric's transmission system. It is a retail service rate mechanism for recovery of costs that PPL Electric incurs in providing POLR service. Consequently, the TSC is not subject to Section 2804(6) of the Public Utility Code; instead, it is simply a pass through of transmission charges that have been reviewed and approved by the FERC.

13. Thus, PPLICA's contention, that Section 2804(6) of the Public Utility Code compels the Commission to adopt PPLICA's proposed TSCs, is incorrect. For the reasons explained above, Section 2804(6) simply does not apply to the TSC.

IV. SUBSIDIES UNDER THE TRANSMISSION SERVICE CHARGES

14. PPLICA next contends that, in approving PPL Electric's proposed TSC, the Commission improperly created subsidies that favor small, primarily residential, customers at the expense of large, primarily industrial, customers. Petition, pp. 6-10.

15. In considering PPLICA's contentions concerning subsidies, it is appropriate to consider not only these "subsidies," claimed by PPLICA, but also the actual allocation of the rate increase as well.

16. Contrary to the implication of PPLICA's Petition, the Final Order allocated substantial revenue requirement increases to the residential customers. Rate Schedule RS, under which PPL Electric serves the majority of its residential customers, received an overall increase of 8.46 percent. In contrast, large industrial customers served under Rate Schedules LP-4, LP-5 and LP-6 received overall increases of 5.55 percent, 4.84 percent and 4.32 percent, respectively. PPL Electric's Compliance Filing, Section B, Summary Proof of Revenues and Supporting Calculations, p. 6. Thus, the overall increase to residential customers, on a percentage basis, was almost twice the increase to large industrial customers.

17. In an attempt to meet the Commission's standards for reconsideration of a final order, PPLICA contends that the Commission misunderstood its arguments concerning subsidies arising under the TSC. Petition, pp. 6-10. According to PPLICA, it did not claim that subsidies were being eliminated too slowly. Instead, it claimed that the TSC, as proposed by PPL Electric and as adopted by the Commission, created new subsidies. PPLICA's contentions make a distinction without a difference.

18. In terms of the overall conclusion reached by the Commission, PPLICA's contentions are meaningless. Regardless of how PPLICA's arguments are phrased, the conclusion under any description is that PPLICA believes that, under the TSC, there are excessive subsidies benefiting small, primarily residential, customers at the expense of large, primarily industrial, customers. This conclusion remains true regardless of whether an old subsidy is being reduced or a new subsidy is being introduced.

19. Regardless of the phrasing of PPLICA's arguments, the fact remains that the Commission unquestionably considered PPLICA's overall contention that the subsidies are excessive and rejected PPLICA's position based upon principles of gradualism and rate stability. The end result is that, under the Final Order, small, residential customers received almost double the percentage rate increase that large, industrial customers received. Overall, the allocation by the Commission of PPL Electric's revenue requirement among the rate classes was clearly reasonable.

V. SUSTAINABLE ENERGY FUND

20. PPLICA also seeks reconsideration and amendment of the Final Order with regard to the Commission's mechanism for phasing out funding from PPL Electric of the SEF, with funding ceasing after December 31, 2006. The Commission indicated that PPL Electric's rates should be adjusted to reflect the elimination of SEF funding and

that such rate adjustment could be implemented through a future base rate case concluded on or before December 31, 2006. If no such case materialized, the Commission determined that rates should be reduced to reflect the termination of SEF funding through the STAS mechanism. Final Order, p. 104.

21. PPLICA specifically objects to use of the STAS to reduce rates to reflect the termination of SEF funding by PPL Electric. Instead, PPLICA urges that PPL Electric be required to undertake another substantial, expensive base rate proceeding in order to implement rate adjustments to reflect the termination of SEF funding by PPL Electric. Petition, pp. 11-14.

22. PPLICA's concerns are unrealistic. Initially, it must be noted that SEF funding is only an estimated \$3,689,000 for 2005 and half of that amount, or an estimated \$1,844,500, for 2006. Thus, the average annual revenue requirement for the remaining two years of funding is \$2,766,750, which is equivalent to 0.0075¢ per kWh. In comparison, PPL Electric's total jurisdictional annual revenues, at proposed rates, are \$2,921,124,528. Compliance Filing, Section B, p. 8. Thus, the average annual funding level for SEF is less than one one-hundredth of a percent of PPL Electric's total jurisdictional annual revenues. Any proposal that PPL Electric and other parties should be subjected to a potentially major rate proceeding over such a minute refinement to rates is unreasonable, inefficient and impractical.

23. PPLICA also complains that the Commission's procedure for adjusting rates to recognize the phase out of SEF funding is a misuse of the STAS. According to PPLICA, the STAS mechanism is for the purpose of adjusting rates to reflect changes in state taxes, and SEF funding is not a state tax.

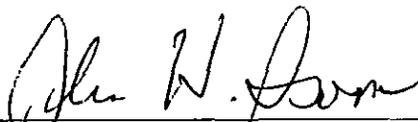
24. PPLICA's contentions are erroneous because they fail to recognize the origins of the STAS. The Commission adopted the STAS Order. *State Tax Adjustment Procedure*, 44 Pa. PUC 545 (1970). It is completely appropriate for the Commission, following a fully litigated proceeding in which all parties had ample opportunity to make proposals concerning SEF funding and rates, to modify the STAS Order for the limited purpose of enabling PPL Electric to modify rates to reflect elimination of SEF funding in a practical, reasonable and efficient manner.

25. Moreover, PPLICA makes it clear that its objections to use of the STAS to adjust rates to reflect the termination of SEF funding are not its principal concern. Instead, PPLICA seeks a further opportunity to advocate elimination of subsidies in the allocation of revenue requirement among rate classes. Petition, p. 13. Indeed, in its case-in-chief, PPLICA proposed that PPL Electric be subjected to several rate cases before the end of the generation rate cap on December 31, 2009, for reduction and elimination of subsidies. Final Order, p. 80. The Commission, however, did not approve of this proposal. PPLICA's Petition, as to SEF funding, is in reality an attempt to reargue PPLICA's rejected proposal for annual rate cases for elimination of subsidies. Because PPLICA is attempting to reargue a previously litigated contention, it does not meet the standards for reconsideration under *Duick* and should be rejected.

VI. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the "Petition for Reconsideration and Amendment" of the PP&L Industrial Customer Alliance be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served two copies of the foregoing "Answer of PPL Electric Utilities Corporation to PP&L Industrial Customer Alliance's Petition for Reconsideration and Amendment" upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

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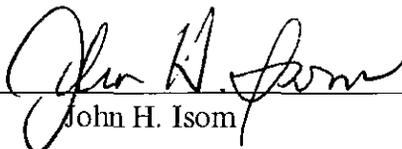
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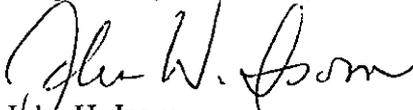
**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket No. R-00049255**

Dear Secretary McNulty:

Enclosed, for filing, are the original and three (3) copies of the "Answer of PPL Electric Utilities Corporation to Office of Trial Staff's Petition for Reconsideration and Clarification" in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on all parties.

Respectfully submitted,


John H. Isom

JHI/jl

Enclosure

c: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
et al. :
 :
v. :
 :
PPL Electric Utilities Corporation :

Docket Nos. R-00049255, *etc.*

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REGISTRY'S BUREAU

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO OFFICE OF TRIAL STAFF'S PETITION FOR
RECONSIDERATION AND CLARIFICATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric") hereby answers the Office of Trial Staff's ("OTS") "Petition for Reconsideration and Clarification" ("Petition"). There, the OTS seeks two objectives. First, OTS seeks reconsideration by the Pennsylvania Public Utility Commission ("Commission") of a portion of the Opinion and Order in the above-captioned proceeding that was entered on December 22, 2004 ("Final Order"). Specifically, OTS seeks reconsideration of the Commission's approval of PPL Electric's use of accrual accounting under the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 87 ("SFAS") for ratemaking purposes. OTS reasserts its preference that the Commission establish PPL Electric's pension expense for ratemaking purposes based upon cash payments instead of SFAS 87 accruals. As explained more thoroughly below, this argument has been repeatedly presented by OTS in this proceeding, as well as in PPL Electric's prior base rate proceeding, and has been consistently rejected. OTS merely repeats arguments in support of its position that the Commission previously considered and rejected.

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Second, OTS recommends, for the first time in its Petition, that the Commission require PPL Electric to deposit annually an amount equal to the pension ratemaking expense allowance in an escrow account to be used in the future when a cash contribution to the pension trust is required. This new proposal is unsupported by any evidence, violates fundamental ratemaking principles and is completely unwarranted.¹ In addition, this issue should have been raised on the record, where PPL Electric and other parties would have the opportunity to cross-examine and respond to the OTS proposal. Indeed, the Commission has held that an issue may not be raised for the first time in brief. *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 57 Pa. PUC 559, 596-97 (1983). It is even more improper to raise an issue for the first time later in a proceeding in a petition for reconsideration.

PPL Electric answers OTS' Petition more fully below.

II. STANDARDS FOR RECONSIDERATION

1. The Commission established standards for reconsideration following final orders in the oft-cited decision in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982), as follows:

“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. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that ‘[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them’
What we expect to see raised in such petitions are new and

¹ Indeed, adoption of the OTS proposal for an escrow account, which was not raised in the record, without any opportunity for PPL Electric to present evidence or cross examine the OTS witness, would violate PPL Electric's right to due process of law.

novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”

As explained more fully below, neither of OTS’ requests for reconsideration meet the Commission’s standards as enunciated in *Duick* for reconsideration.

III. SFAS 87

2. The first contention raised in OTS’ Petition is that the Commission should base PPL Electric’s ratemaking allowance for pension expense on cash contributions to the pension fund, not accrual accounting under SFAS 87. Petition, pp. 4-6.

3. The Administrative Law Judge recommended rejection of OTS’ contentions. Recommended Decision, pp. 63-66. The Commission expressly rejected this contention by OTS in the Final Order, pp. 33-35.

4. A comparison of OTS’ first contention in its Petition with the contentions which it made previously to the ALJ and to the Commission demonstrates that it made precisely these same claims to the ALJ and to the Commission both of which rejected them. *See, e.g.*, OTS Main Brief, pp. 22-24; OTS Reply Brief, pp. 14-15; OTS Exceptions, p. 13. Clearly, OTS has failed to meet the standards for reconsideration of the Commission’s decision to base PPL Electric’s pension expense for ratemaking purposes upon SFAS 87, because it has raised no new or novel argument nor any consideration which the Commission overlooked.

5. The Commission explained the shortcomings of the OTS position most clearly in PPL Electric’s prior base rate proceeding in which PPL Electric initially proposed to base its pension expense for ratemaking purposes upon SFAS 87, the first base rate case after SFAS 87 was implemented in 1987, as follows:

“On review of this issue, we find the recommendation of the ALJ that the Company’s claim for this item [pension] be accepted to be in accord with the evidence as developed in this proceeding. We note that pension expense tends to be an extremely variable cost from year-to-year. As noted by the ALJ, *consistent* use of the accrual should be fair to both ratepayers and stockholders, over the long term. Further, consistent use of the actuarial method will, over time, provide for a more consistent and less variable expense element. We agree with the Company’s position that it makes no sense to calculate pension expense on a cash basis but to calculate retirement benefits other than pensions on an accrual basis.”

“For these reasons, the Exception filed by the OTS on this issue is denied. (Emphasis in original.)

6. In this proceeding, PPL Electric again based its pension expense for ratemaking purposes on SFAS 87 as approved by the Commission in the Company’s prior base rate proceeding. PPL Electric emphasizes, as did the Commission in the Company’s prior base rate case, that fairness to ratepayers and shareholders requires that pension expense be calculated for ratemaking purposes on a consistent basis over time. The Commission’s order in this case maintains that consistency with the results in PPL Electric’s prior base rate case.

7. OTS also reiterates its concern that, in recent years, PPL Electric has not made cash contributions to the pension trust fund. Petition, pp. 4, 5. In fact, in recent years, PPL Electric has not made cash contributions to the pension fund because such contributions were neither required under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. §§ 1001 *et seq.* (“ERISA”) nor deductible under the Internal Revenue Code. That is, PPL Electric would not have received a tax deduction for any cash contributions. Tr. 445. Under these circumstances, it would not have been

reasonable for PPL Electric to have made cash contributions to the pension trust fund.

8. Pension expense for accounting purposes is governed by SFAS 87 whereas, in contrast, cash contributions to pension funds are bounded by ERISA minimum requirements and Internal Revenue Code maximum deductions. The three calculations, as demonstrated by the evidence in this proceeding, can produce very different results. Because the results are so different, it would be inappropriate for pension expense for ratemaking purposes to be determined on different methodologies at different times. OTS' proposed adjustment to pension expense should be rejected again as it was by the ALJ in the Recommended Decision, by the Commission in the Final Order in this proceeding, and by the ALJ and the Commission in PPL Electric's prior base rate proceeding. *Pa. P.U.C. v. Pennsylvania Power & Light Company*, 85 Pa. PUC 306, 329 (1995).

IV. ESCROW ACCOUNT

9. OTS' second contention in its Petition is that PPL Electric should be required annually to deposit the ratemaking allowance for pension expense of \$1,396,976 into an escrow account so that the cash will be available to make contributions to the pension trust fund when such cash contributions are required under ERISA and deductible under the Internal Revenue Code. Petition, pp. 6-8.²

² The OTS Petition is not entirely clear with regard to what would be deposited into the escrow account. PPL Electric believes that the proper interpretation of the Petition is that OTS would have PPL Electric annually deposit the pension allowance of \$1,396,976 into the escrow account, but certain passages of the Petition leave open the interpretation that OTS also would have PPL Electric deposit into the escrow account the approximately \$100 million that OTS claims PPL Electric has collected in rates since its prior rate proceeding. If the Petition is to be construed in this manner, it is improper for the reasons explained below and for the additional reason that the escrow would have an unlawful retroactive effect. Further, it is not correct that PPL Electric has collected \$100 million for pension expense since its last rate case. In years since the rate case, especially in recent years when PPL Electric's rates were subject to a rate cap, PPL Electric did not earn its allowed rate of return or a fair rate of return.

10. OTS' contentions should be rejected for numerous reasons. First, it is unsupported by any evidence. Second, it is contrary to normal ratemaking practices in that it would violate the rule against line-item ratemaking. Third, it does not meet the requirements for reconsideration.

A. No Evidence Supports OTS' Escrow Account Proposal.

11. Despite the fact that OTS submitted a case-in-chief, surrebuttal testimony, a main brief, a reply brief, exceptions and replies to exceptions, OTS never mentioned its escrow account proposal prior to the Final Order in this proceeding. There should be finality in rate proceedings, and parties should not be permitted to raise new contentions after the close of the proceeding without substantial justification.

12. Because OTS did not raise the escrow account contention in a timely manner before the Commission, there is no evidence in the record to support OTS' contention.

13. OTS' contention that PPL Electric should be required to deposit the annual provision for pension expense in an escrow account seems to suggest that there may be some uncertainty with regard to PPL Electric's financial capability of making an appropriate cash contribution to the pension trust fund when such contributions are required under ERISA and may be deducted from taxable income under the Internal Revenue Code. In this proceeding, however, OTS has not contended that PPL Electric is not financially viable or is unable to meet its obligations as they become due. OTS has made no showing factually that there is any necessity for the remedy it has proposed.

B. OTS' Escrow Account Proposal Would Violate the Rule Against Line-Item Ratemaking.

14. Contrary to OTS' contention, its proposal, if adopted, would constitute a violation of the prohibition against line-item ratemaking. Generally, in ratemaking, the Commission makes a series of determinations concerning revenues, rate base, expenses, return, taxes, etc., and derives from these determinations a set of rates that the utility is entitled to charge customers until the next rate case. The individual determination of revenue requirement components, however, is not used for any other purpose. All revenue requirement components are considered together to determine whether an overall level of rates is inadequate or excessive. The components are not considered in isolation.

15. Concepts of line-item ratemaking have been expressly disapproved by the Pennsylvania appellate courts. *Philadelphia Electric Co. v. Pa. P.U.C.*, 93 Pa. Cmwlt. 421, 422, 502 A.2d 722, 727-28 (1985). There, the Commonwealth Court stated:

“The general rule is that there may be no line examination of the relative success or failure of the utility to have accurately projected its particular items of expense or revenue and an excess over the projection of an isolated item of revenue or expense may not be, without more, the subject of the Commission's order of refund or recovery, respectively, on the occasion of the utility's subsequent rate increase requests.

See also National Fuel Gas Distribution Corporation v. Pa. P.U.C., 76 Pa. Cmwlt. 102, 464 A.2d 546, (1983); appeal following a remand under *Welch v. Pa. P.U.C.*, 569 A.2d 413, 131 Pa. Cmwlt. 59, appeal denied, 52 Pa. 666, 583 A.2d 795 (1990).

16. Further, OTS inappropriately has proposed an escrow account deposit which does not change from year-to-year. As explained previously, pension expense is subject to variation from year-to-year which can be substantial. Therefore, although PPL

Electric does not know with certainty what its pension expense under SFAS 87 will be in future years, there is a high degree of likelihood that it will be different than the rate allowance. Thus, OTS' apparent assumption, that PPL Electric's SFAS 87 pension expense remains constant from year to year, is simply erroneous. In addition, OTS' proposal overstates the cash that PPL Electric would have available to place in the escrow account because the Company would be required to pay taxes on the \$1,396,979 pension allowance without any tax deductions.

17. OTS' proposal for an escrow account is completely inconsistent with traditional ratemaking principles. Revenue requirement components are not generally given special treatment in isolation from other revenue requirement components. It is no more appropriate for pension expense to be subject to an escrow account requirement than it would be for labor expense, income taxes, depreciation, return etc. to be subject to an escrow account requirement.

18. OTS, in its Petition, states several times that PPL Electric has collected a hundred million dollars from ratepayers since the 1995 rate case for pension expense. Petition, pp. 1, 3, 4, 5, 7 and 8. For the reasons explained above, OTS' contention is erroneous. As explained previously, all components of rate cases vary from time-to-time. During the ten years since its prior base rate proceeding, PPL Electric has not recovered its cost of providing service. In fact, particularly in recent years toward the end of the expiration of the distribution rate cap, PPL Electric's return on equity has deteriorated seriously. In 2003, the historic test year in this proceeding, PPL Electric's earned return on equity was less than 2 percent, and its return during the future test year, 2004, declined to about 1 percent. OTS' claims that PPL Electric has recovered its pension expense in

each of the ten years since its prior base rate case ignores this economic reality.

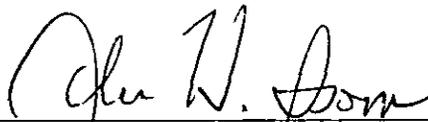
C. OTS' Escrow Account Proposal Does Not Meet the Standards for Reconsideration.

19. As noted above, in *Duick*, the Commission indicated that it may reconsider a determination if a party can demonstrate “new and novel arguments.” OTS’ second argument does not meet this standard. OTS does not raise “new or novel arguments.” Instead, it has used its previously-rejected arguments as a basis for requesting a different remedy. Instead of basing pension expense for ratemaking purposes on cash contributions to pension trust funds, OTS’ alternative proposal would allow PPL Electric to recover the SFAS 87 expense, but require PPL Electric to deposit an equivalent amount of cash each year into an escrow account.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Office of Trial Staff's Petition for Reconsideration and Clarification be denied.

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I hereby certify that I have this day served two copies of the foregoing "Answer of PPL Electric Utilities Corporation to Office of Trial Staff's Petition for Reconsideration and Clarification" upon the participant(s), listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):

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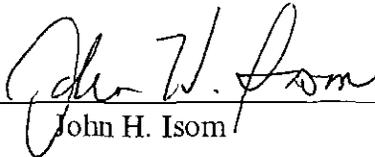
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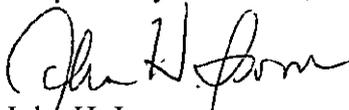
**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket No. R-00049255**

Dear Secretary McNulty:

Enclosed, for filing, are the original and three (3) copies of the "Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration of Citizens for Pennsylvania's Future" in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on all parties.

Respectfully submitted,


John H. Isom

JHI/jl

Enclosure

c: Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission, :
et al. :

v. :

PPL Electric Utilities Corporation :

Docket Nos. R-00049255, *etc.*

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE PETITION FOR RECONSIDERATION OF
CITIZENS FOR PENNSYLVANIA'S FUTURE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric") hereby answers the "Petition for Reconsideration of that Part of the Public Utility Commission's Order Entered on December 22, 2004 Concerning the Sustainable Energy Fund" ("Petition") of the Citizens for Pennsylvania's Future ("PennFuture"). There, PennFuture seeks reconsideration of the Pennsylvania Public Utility Commission's ("Commission") determination that funding for the Sustainable Energy Fund ("SEF") be phased out over a two-year period ending December 31, 2006. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-00049255, p. 52 (December 22, 2004) ("Final Order"). In its Petition, PennFuture contends that the Commission's determination is based upon an incorrect interpretation of Act 213, and PennFuture renews its contention that SEF funding should be doubled. As explained more fully below, PennFuture's Petition should be denied because its first contention is based upon an erroneous interpretation of the Final Order and its second contention does not meet the standards for reconsideration.

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II. ACT 213

1. Initially, PennFuture contends that the Commission improperly relied upon Act No. 213, which was signed into law by the Governor on November 30, 2004. PennFuture contends that the Commission incorrectly concluded that funding from PPL Electric was no longer needed for SEF because substitute sources of funding would become available for SEF under Act 213. PennFuture contends that, contrary to the Commission's assumption, Act 213 may not yield additional funding for SEF.

2. PennFuture's concerns are misplaced. Although it cannot be stated with certainty that SEF will receive additional funding under Act 213, it is clear that Act 213 will result in substantial additional funding for renewable energy sources. The point of the Commission's Final Order on SEF is that there will be substantial funding for renewable energy projects, generally, not that SEF, in particular, will necessarily receive the funding under Act 213. Indeed, such funding for SEF is not necessary, because as the Commission has determined, SEF is becoming sustainable. Final Order, p. 52. Therefore, based on this Commission finding, further funding from PPL Electric is not needed to permit SEF to continue its mission.

III. DOUBLING OF SEF FUNDING

3. PennFuture also contends that the Commission should double PPL Electric's previous level of funding for SEF from 0.01¢ per kWh to 0.02¢ per kWh. Clearly, this contention is nothing more than a restatement of PennFuture's proposal in its case-in-chief, which was rejected by the Commission. See, Final Order, pp. 49, 52. PennFuture has offered no reason for reconsideration of its rejected funding proposal.

4. The Commission established standards for reconsideration of final orders in the oft-cited decision in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982), as follows:

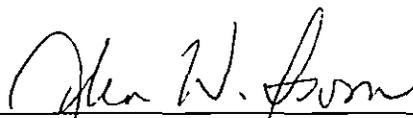
“A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that ‘[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them’ What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”

PennFuture’s request for reconsideration of its SEF funding proposal clearly does not meet the Commission’s standards for reconsideration that were enunciated in *Duick*.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Petition for Reconsideration of Citizens for Pennsylvania's Future be denied.

Respectfully submitted,



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I hereby certify that I have this day served two copies of the foregoing “**Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration of Citizens for Pennsylvania’s Future**” upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

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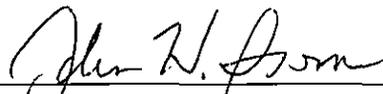
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