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January 12, 2007

VIA HAND DELIVERY

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RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation re: Petition of PPL Electric Utilities Corporation for Approval of A Competitive Bridge Plan, Docket No. P-00062227

Dear Mr. McNulty:

Enclosed, please find the original and nine (9) copies of the Main Brief of PPL Electric Utilities Corporation, as well as a copy of the Main Brief on a disk, in the above-referenced proceeding. As indicated on the enclosed certificate of service, copics have been served on the parties in the manner indicated.

Respectfully submitted,

Michael W. Hassell

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MWH:skr

Enclosures

cc: Honorable Marlane R. Chestnut
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Petition of PPL Electric Utilities :
Corporation for Approval of a Competitive : Docket No: P-00062227
Bridge Plan :

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I. INTRODUCTION

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A. Summary And Statement Of Position

PPL Electric Utilities Corporation ("PPL Electric" or the "Company") has filed a Petition with the Pennsylvania Public Utility Commission ("Commission") requesting approval of a Competitive Bridge Plan ("CBP"). If approved, the CBP will establish the terms and conditions under which PPL Electric will provide Provider of Last Resort ("POLR" or "default") service during 2010. The CBP is necessary because PPL Electric's current generation rate caps and its contract with PPL Energy Plus, LLC, under which it currently obtains supply to meet POLR requirements, both expire on December 31, 2009.

The CBP is a proposal for POLR service only for the Year 2010, as a transition to a fully competitive statewide market beginning January 1, 2011. At that time, all of the remaining major electric distribution companies' ("EDCs") generation rate caps are scheduled to expire. Approval of the CBP, therefore, will properly align PPL Electric's POLR service with POLR service for the rest of the Commonwealth.

The CBP, as revised during the course of this proceeding, provides for the following major components:

- A three-year competitive procurement program, beginning in 2007, to meet residential and small commercial and industrial ("Small C&I") POLR requirements in 2010;
- A single procurement in 2009 to offer an optional, fixed rate service to large commercial and industrial ("Large C&I") customers, with a default real-time hourly program;
- Reconciliation of POLR revenues and costs for 2010, to assure that customers pay the actual cost of providing POLR service, no more and no less;
- The elimination, with limited exceptions in the Residential class to avoid rate dislocation, of demand charges and block rates for generation;

- Enhancements to existing Demand Side Management (“DSM”) programs and commitments to increase conservation and energy efficiency;
- A three-year consumer education program;
- A commitment to increase assistance for low-income customers, to be implemented in future proceedings.

Throughout the proceeding, PPL Electric has worked with parties to resolve differences. Although not entirely successful, the Company has achieved stipulations or statements in support of its Revised CBP from a number of major parties, including OTS (representing the public interest), OCA (representing residential customers), OSBA (representing Small C&I customers), PPLICA (representing Large C&I customers), Reliant and Constellation (representing marketers) and Citizens for Pennsylvania’s Future (representing environmental interests and alternative energy industry). As a result, the Revised CBP is properly characterized as a consensus position, with support from a broad cross-section of interested parties.

The stipulations also have substantially narrowed the number of remaining contested issues. Indeed, at this point, only three major issues need to be resolved by the ALJ and the Commission: (1) the proposed acquisition of supply during 2007-2009 to serve Residential and Small C&I customers in 2010; (2) the proposed acquisition of supply during 2009 to provide Large C&I customers with an optional, fixed rate service and default real-time hourly service; and (3) PPL Electric’s proposed reconciliation of its Generation Supply Charge (“GSC”).

With respect to the supply acquisition process for Residential and Small C&I customers, PPL Electric’s proposed laddered solicitation, consisting of six solicitations spread over three years, is in the public interest and should be approved. The solicitation process fully satisfies the statutory requirement to acquire POLR supply at “prevailing market prices” while at the same time reducing the risks of price volatility through diversification.

PPL Electric's revised plan for Large C&I customers is reasonable and should be adopted. The revised plan establishes real time hourly pricing as the default service, but provides Large C&I customers with the opportunity to elect a fixed price service, in late 2009, for service in 2010. An optional fixed price service for 2010 is critically important to certain customers who cannot effectively manage an hourly-only service and others who are concerned about the actual availability of competing offers in the first year following the end of rate caps.

Finally, PPL Electric's proposal to reconcile its GSC is supported by most parties to this proceeding, is mandated by the Electricity Generation Customer Choice and Competition Act ("Competition Act"), benefits customers, is fully consistent with development of a competitive market, is consistent with applicable precedent and is particularly appropriate for a one-year, non-precedential program. It therefore should be approved.

For the reasons set forth below, the Revised CBP is in the public interest and should be approved on an expedited basis to permit PPL Electric to begin the first solicitation in the Spring of 2007.

B. Procedural History

On August 2, 2006, PPL Electric filed its CBP with the Commission. Included with the filing was a proposed Request for Proposals ("RFP") Process and Rules ("RFP Rules") and a proposed POLR Supply Master Agreement ("POLR SMA"). Notice of the filing was published in the August 12, 2006 edition of the Pennsylvania Bulletin (36 Pa.B. 4576). In accordance with this Notice, protests and petitions to intervene were to be filed on or before August 28, 2006.

Timely interventions were submitted by the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), PPL Industrial Customer Alliance ("PPLICA"), Citizens for Pennsylvania's Future, Char Magaro and Jan Jarrett (collectively, "PennFuture"), Strategic Energy, LLC ("Strategic"), International Brotherhood of

Electrical Workers, Local 1600 (“IBEW Local 1600”), Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (jointly, “Constellation”), Reliant Energy, Inc. (“Reliant”), Metropolitan Edison Company and Pennsylvania Electric Company (jointly, “MetEd/Penelec”), Dominion Retail, Inc. (“Dominion”) and First Energy Solutions Corp. (“FES”). In addition, Reliant submitted an Answer and New Matter, along with a Motion to Dismiss PPL Electric’s CBP Petition. PPL Electric filed timely answers to the New Matter and Motion to Dismiss.¹

Subsequent to the deadline for filing interventions, Petitions to Intervene/Protest out of time were received from Exelon Corporation, PECO Energy Company and Exelon Generation Company (jointly “the Exelon Companies”), Eric Joseph Epstein, *pro se* (“Epstein”), the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) and Direct Energy Services, LLC (“Direct Energy”).

On September 15, 2006, PPL Electric submitted the Direct Testimony and Exhibits of its witnesses Douglas Krall, Joseph Cavicchi, Joseph Kleha and Timothy Dahl.

A prehearing conference was held on September 22, 2006, with Administrative Law Judge Marlane R. Chestnut (the “ALJ”) presiding. PPL Electric did not object to any of the Petitions to Intervene, and all such interventions were granted. In addition, the ALJ denied Reliant’s Motion to Dismiss. (Prehearing Order No. 2, p. 3). The ALJ adopted a schedule for submission of testimony, hearings and briefing, and also adopted modified rules for discovery.

In compliance with the discovery rules, PPL Electric responded to approximately 185 discovery requests from other parties. In accordance with the procedural schedule, direct testimony was submitted by other parties on November 15, 2006. Both prior to, and subsequent

¹ The crux of Reliant’s Motion to Dismiss is that the Commission may adopt final Default Service regulations that would moot PPL Electric’s CBP Petition. This issue is addressed in Section III.B.3 of this Brief.

to, the submission of other parties' testimony, PPL Electric undertook extensive negotiations, collectively and individually, with the parties in an effort to resolve all or portions of the proceedings. Although the parties were unable to achieve a full settlement, PPL Electric incorporated into its rebuttal testimony a series of modifications to its original CBP, responsive to proposals of other parties, in an effort to narrow the issues in this case. (PPL Electric St. 1-R, pp. 4-7). Several other parties also submitted rebuttal testimony in response to testimony of other parties. Surrebuttal testimony was submitted on December 15, 2006.

Two days of hearings were held on December 19-20, 2006. Immediately prior to and during the hearings, PPL Electric continued to work with individual parties to achieve agreements with respect to the Revised CBP. As a result of those efforts, written stipulations in support of, or in non-opposition to, the Revised CBP were entered into with OTS, OCA, PennFuture, Reliant and Constellation. (PPL Electric Cross-Examination ("C.E.") Exh. 2-6, Tr. 56, 207-208, 212). Several of these stipulations included additional commitments by PPL Electric, which will be described in greater detail in the next section of this Brief. In addition, PPLICIA and OSBA made representations in support of the Revised CBP. (Tr. 133-34, 211). IBEW Local 1600 requested and was granted permission to withdraw from the proceeding, based upon the Union's determination that no issues in the proceeding would have any effect upon the Union's workforce. (IBEW Local 1600 Petition to Withdraw, ¶3). The Exelon Companies and MetEd/Penelec took no active role in the proceedings.

As a result of the foregoing efforts, the only parties who oppose the Revised CBP are Dominion, Direct Energy, RESA, Strategic, SEF and FES. It is noted that RESA and Strategic have submitted no testimony. SEF's objection appears to be limited to the education component of the Revised CBP. FES appears only to object to the "opt in" provision of the fixed price

option for Large C&I customers and the Company's rate procedure to discourage customers from "swinging" onto POLR service for short periods. In addition, Constellation has reserved for litigation a limited issue related to certain specific terms of the POLR SMA. Constellation's reserved issues, while important, do not affect the basic structure of the Revised CBP.

II. DESCRIPTION OF PPL ELECTRIC'S CBP

A. The CBP As Filed

1. The Request For Proposal Process.

PPL Electric's basic proposal is to issue six competitive Requests for Proposals ("RFPs"), two per year in 2007, 2008 and 2009, to meet the annual 2010 POLR requirements of its residential² and Small C&I customers.³ (PPL Electric St. 2, p. 6). PPL Electric's original proposal also provided for two solicitations for the *Large C&I customer group*⁴ to be held in 2009. Under the original plan, the Large C&I Customers would have been required to "preselect" the fixed price service prior to the solicitations being held. Large C&I Customers who did not opt in to the annual service would default to a real time hourly service. (PPL Electric St. 2, pp. 6-7). PPL Electric also proposed to modify its tariff to provide that, if a Large C&I Customer subsequently chose to leave the optional fixed price service to shop any time in 2010, the customer would be charged the Generation Rate Adjustment ("GRA"), a charge that is based upon differences between market prices and POLR prices, for each of the months of 2010 that the customer left the fixed rate service. (Tr. 104 and 137-38).

² The residential group is comprised of customers served under PPL Electric's Rate Schedules RS, RTS and RTD (PPL Electric Exh. JC-1, RFP Rules, p. 4).

³ The Small C&I Customer group is comprised of customers served under Rate Schedules GS-1, GS-3, GH-1, GH-2, IS-1, BL, SA, SM, SHS, SE, TS, SI-1, and Standby service for the foregoing schedules. (PPL Electric Exh. JC-1, RFP Rules, p. 4).

⁴ The Large C&I Customer group includes customers served under Rate Schedules LP-4, ISP, LP-5, LP-6, LPEP, IST, ISM and Standby service for the foregoing schedules. (PPL Electric Exh. JC-1, RFP Rules, p. 4-5).

Potential wholesale bidders will be required to comply with the POLR RFP Rules, will be required to execute the POLR SMA and will be required to post security as protection against supplier default. (PPL Exhibit JC-1, PPL Electric St. 2, p. 9). The RFP Rules and the POLR SMA were developed using, as models, documents previously approved for use in RFP processes by this Commission and the Maryland Public Service Commission, adapted where appropriate to fit PPL Electric's proposed solicitations. (PPL Electric St. 2, pp. 3-4; Tr. 249).

Each RFP will procure pro rata portions of the estimated POLR load for each customer class. The number of portions, or tranches, is designed to be a fixed percentage of each classes' POLR load. A total of 60 tranches would be purchased for the residential group (6 solicitations of 10 tranches each), 42 tranches for the Small C&I group (6 solicitations of 7 tranches each) and 38 tranches for the Large C&I group (2 solicitations of 19 tranches as originally proposed). (PPL Electric St. 2, p. 8). The supply must be load following, and, as such, each wholesale supplier is responsible for the risk of all changes in load, including shopping risk and risk due to weather or conservation. (PPL Electric St. 2, p. 8; PPL Electric St. 3-R, p. 9). Bidders may submit bids for any or all three classes, but bids must be submitted by class and cannot be contingent upon the bidder being a successful bidder in another class. (PPL Electric Exh. JC-1, RFP Rules Section 1.1.14, p. 7).

As originally proposed, the winning wholesale suppliers would have been required to provide all costs of supply, including both generation and all transmission costs. (PPL Electric St. 2, p. 8). As part of this proposal, PPL Electric revised its TSC charge to include a provision allowing PPL Electric to recover any indirect transmission service charges that might be billed to PPL Electric (PPL Electric St. 3, p. 7). The winning suppliers also must include verification of

compliance with PPL Electric's 2010 obligations under the Alternative Energy Portfolio Standards Act ("AEPS Act"). 73 P.S. §§ 1648.1-1648.8.

Under the RFP Rules, an individual bidder cannot bid on more than 85% of each customer class's POLR load offered in each solicitation. This limitation was included to encourage further development of the competitive wholesale market by ensuring that smaller competitors will not refuse to bid due to perceptions about their ability to win any tranches. (PPL Electric St. 2, p. 9; PPL Electric St. 2-R, pp. 9-11).

PPL Electric proposes that the Company be authorized to hire an independent party to administer the solicitation process. This would remove any potential concerns of bias in the selection of winning bidders. The independent party would report directly to, and would coordinate its oversight with, personnel at the Commission. The independent party would present the results of the bids to the Commission following each solicitation, and the Commission would have two days to decide whether to accept the bid results. (PPL Electric St. 2, pp. 10-11; PPL Electric Exh. JC-1, POLR RFP Rules Section 7.5.1, pp. 27-28).

The bids received for each class for each solicitation will be ranked and analyzed to determine the least cost combination of bids for all tranches in the solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.4, pp. 26-27). If insufficient bids were received in a solicitation, the unfilled tranches would roll over to the next solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.5.2, p. 28). The POLR Rules also establish a process for filling any unserved tranches remaining after the last solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.3.2, p. 28).

2. The Generation Supply Charge.

The winning results of the six solicitations will be totaled by class, and that cost, plus the costs incurred by PPL Electric to administer the solicitations for the respective customer classes,⁵ will be divided by projected sales for each customer class to develop the rate by class to be included in the Generation Supply Charge (“GSC”). (PPL Electric St. 3-R, pp. 4, 6). As originally proposed, PPL Electric intended that the GSC would be a flat rate for each class, and all demand and block rate generation charges would be eliminated.

The GSC, like the currently-existing Transmission Service Charge (“TSC”), will be fully reconciled. (PPL Electric St. 3-R, pp. 6-7). This assures that the customer will pay the actual cost incurred by PPL Electric to provide POLR service – no more and no less – and, because reconciliation assures PPL Electric of full cost recovery, the Company has included no adder for the risk of underrecovery of POLR costs. (PPL Electric St. 3, pp. 6-7). However, the amount of any mismatch between costs and recoveries should be small, because load risk falls upon the wholesale suppliers. (PPL Electric St. 3-R, pp. 9-10).

3. Requested Rulings.

The Company also requested three specific rulings with respect to the CBP solicitations. First, PPL Electric requested a waiver of the Commission’s final POLR regulations, if those regulations become effective prior to 2011, to the extent necessary to honor any agreements for 2010 POLR supply previously entered into under the CBP. (PPL Electric St. 1, p. 13). This limited waiver is necessary to provide potential wholesale bidders in the various solicitations with the assurance that their contracts would be honored. Absent such a provision, potential bidders may conclude that the risk of bidding is too great, resulting in failed solicitations. (PPL

⁵ This includes the costs to undertake the RFP processes, the costs of the third party administrator and the costs of implementation. (PPL Electric St. 3-R, p. 4).

Electric St. 1-R, pp. 19-20). On a prospective basis, PPL Electric would comply with regulations that are effective prior to 2011. (PPL Electric St. 1, p. 13; PPL Electric St. 1-R, pp. 5, 19-20).

Second, PPL Electric requested that the Commission approve the POLR SMA as an affiliated interest agreement. PPL Electric's unregulated generation affiliates will be permitted to participate in the solicitations. If any of those affiliates is a successful bidder for one or more tranches, PPL Electric will need to enter into the POLR SMA with that affiliate. It would be impractical to review the POLR SMA as an affiliated interest contract after the bidding results are announced, because the solicitation structure assumes a short turnaround time for finalizing the contract, and because the simplified structure of the process assumes that all bidders will be subject to the same standardized form of contract. (PPL Electric St. 1, pp. 9-10).

The Company's third request is that the Commission commit that it will neither order nor approve any wholesale or retail "opt out" customer aggregation plan for PPL Electric's service territory during the 2007-2010 period. (PPL Electric St. 1, p. 10). These plans assign customers to an EGS and require customers to affirmatively "opt out" of the assignment to remain a POLR customer. The problem with an "opt out" customer aggregation plan, in the context of an RFP solicitation proposal that places shopping risk on the wholesale bidders, is that many wholesale suppliers consider this type of aggregation to present an increase in financial risk that cannot effectively be hedged. The opt out aggregation plan thus will increase the risk premium built into any bids, and also may reduce the number of participants in the bid process. (PPL Electric St. 1, p. 10).

4. Other Aspects Of The CBP.

Although the principal purpose of the CBP is to acquire POLR supply for 2010, PPL Electric incorporated several other related components into its CBP. One component was a proposal to enhance several experimental Demand Side Management ("DSM") programs. The

Demand Side Response Rider – Residential provides customers with a rate incentive to shift load from on-peak to off-peak periods in the summer months. The Company proposes to double the limit on participation in 2008 and 2009, and remove participation limits in 2010. The Company also proposes to expand the program to a year-round program in 2010, with pricing revised to more fully reflect competitive market prices. (PPL Electric St. 1, pp. 18-19). The Demand Side Initiative Rider is an experimental DSM program for large commercial and industrial customers. The program allows customers to designate a portion of their load served at a fixed price, and the remaining portion of their load at actual hourly prices. (PPL Electric St. 1, p. 19). PPL Electric proposed to extend this existing Rider from 2007 through the end of 2010. (PPL Electric St. 1, p. 19).

PPL Electric also proposed to end, on December 31, 2009, certain other legacy DSM programs which have been closed to new customers under the settlement of PPL Electric's restructuring proceeding. (PPL Electric St. 1, p. 16). These include interruptible service rates and an experimental price response service for industrial customers, and off peak water heating (Rate RTD) and thermal storage programs (Rate RTS) for residential customers. (PPL Electric St. 1, pp. 15-16). These programs provided energy related discounts where customers either shifted or interrupted generation service during periods of peak demand. (PPL Electric St. 1, p. 17). As explained above, PPL Electric's CBP is designed to obtain simple, single rate POLR pricing. Therefore, PPL Electric will not solicit interruptible or time-variant price bids. (PPL Electric St. 1, p. 17). PPL Electric also supports the general concept that such products should be provided by EGSs.⁶ (PPL Electric St. 1, p. 18).

⁶ As explained in Section III.A of this Brief, PPL Electric has installed a state of the art metering system that will enable EGSs to accurately track actual hourly usage, thereby facilitating interruptible and time of day billing options.

In its filing, PPL Electric also proposed to implement a consumer education program beginning in 2007 to educate customers about the end of the generation rate cap, the CBP and the opportunities to shop. The Company requested permission to fund this education program using the approximately \$875,000 remaining in its current customer choice education account. PPL Electric proposed to ramp up spending over the three year period leading up to 2010, with the education focus changing each year. (PPL Electric St. 1, p. 21; PPL Electric Exh. DAK-2).

The final aspect of the CBP involves expected enhancements to PPL Electric's low-income assistance programs. Because of expected increases in rates, PPL Electric believes that its current rate allowances of \$13.2 million for its OnTrack (Customer Assistance Program) and \$6.25 million for its WRAP (weatherization and energy conservation education) universal service programs will be insufficient. In fact, the Company 2006 estimated funding level for these two programs combined is \$26.3 million. (PPL Electric St. 4, p. 6). PPL Electric recommended that the funding for those two programs through residential customers' rates be increased to \$31.5 million by 2010. (PPL Electric St. 4, p. 7).⁷

B. PPL Electric's Revisions To Its CBP And Stipulations With Parties

1. The Revised CBP Plan Is Non-Precedential.

As explained previously, PPL Electric made various modifications to its CBP following review of other parties' testimony and as a result of discussions with parties, individually and collectively. Further modifications were made to the CBP as a result of individual stipulations with several parties.

First and foremost, PPL Electric confirmed, both in its rebuttal testimony and in four of its individual stipulations, that the CBP is intended to be non-precedential and to apply only

⁷ The Company also offers low-income assistance through Operation Help, which is funded by shareholder, employee and customer contributions. (PPL St. 4-R, p. 5).

during 2010 as a one-year bridge. (PPL Electric St. 1-R, p. 8; PPL Electric C.E. Exh. 2; PPL Electric C.E. Exh. 3; PPL Electric C.E. Exh. 4; PPL Electric C.E. Exh. 6). PPL Electric recognizes that the Commission has designated several of its approvals of other interim POLR plans as non-precedential, and PPL Electric concurs with the view that each interim plan should be viewed on its own merits, and should not be cited as support for, or against, any single provision in this, or any future, interim POLR plan. As the Commission stated in *Petition of Penn Power Company*, P-00052188, 2006 Pa. P.U.C. LEXIS 56 *32-33:

The regulations arising out of our default service rulemaking proceeding ultimately will govern POLR service in the Commonwealth, not the interim plans approved for the individual EDCs prior to issuance of final default service regulations. This Commission has considered and approved a variety of methodologies for setting POLR rates in previous post-transition POLR cases and in doing so stated that these proceedings were not precedent setting. This being said, it is, however, possible to rely on the basic fundamental policies underlying the Competition Act, namely, that competition is more effective than economic regulation in controlling the cost of electric generation; that a POLR provider must acquire electricity at prevailing market prices to serve non-shopping customers; and, that the POLR provider shall fully recover the reasonable cost of providing service.

PPL Electric's Revised POLR Plan should be reviewed under the same standards and should not be considered precedential.

2. Revised Small Customer Proposal.

The basic structure of the CBP for small customers remains unchanged: PPL Electric will undertake a series of six solicitations over three years to develop the POLR price separately for the residential and Small C&I classes. (PPL Electric St. 1-R, pp. 4-6).

In response to concerns raised by OCA, PPL Electric did agree to limit the rate increase for the Rate Schedule RTS customers by maintaining the absolute difference in 2009 average generation rates between Rate Schedules RTS and RS. That differential is 1.35 cents per kWh

and, contingent upon the Commission approval of reconciliation, PPL Electric agrees to design 2010 POLR rates for Rate Schedule RTS customers that would be 1.35 cents per kWh lower than Rate Schedule RS rates. (PPL Electric St. 1-R, pp. 27-28). Because there are only approximately 14,000 Rate Schedule RTS customers compared to over 1 million Rate Schedule RS customers, the increase to those customers above the average residential class GSC rate will be minor, likely about 1 mill. (OCA St. 1, p. 13). In addition, as part of the stipulation with OCA, PPL Electric agreed that if the average increase in rates for all customers under Rate Schedule RS exceeds 30 percent, calculated on a total bill basis, then PPL Electric would meet with OCA to discuss alternative rate designs to mitigate the impact on high use residential customers for the year 2010. However, if any alternative rate design is proposed, all costs of obtaining POLR supply for customers in the residential customer class will be retained in the residential customer class and would not be shifted to other classes. (PPL Electric C.E. Exh. 4). Finally, Rate Schedules RS and RTD generation rates will be equalized. (PPL Electric St. 1-R, p. 28).

In addition, the Company will, through its Automated Meter Reading ("AMR") system, begin to collect and organize customer data in 2007, to provide customers, wholesale bidders and EGSSs, within the limits of the Commission's rules regarding release of individual customer information, with relevant volume and load profile information, in order to provide more useful data and to encourage innovative products. (PPL Electric St. 1-R, p. 6; Tr. 96-97).

3. Revised Large C&I Customer Proposal.

In response to objections of various parties to PPL Electric's original proposal for Large C&I customers, PPL Electric made substantial changes. PPL Electric eliminated the requirement that these customers "pre-select" the fixed rate option prior to the solicitations being undertaken. Instead, PPL Electric will require Large C&I customers to merely express interest in the fixed

rate option, through a sign up process, prior to the solicitation. (PPL Electric St. 1-R, p. 14). PPL Electric would then conduct a single solicitation for fixed price service for the Large C&I customers in October 2009. Large C&I customers who had expressed interest in the option would be advised of the resulting price and would be given 30 days to “opt in” to the fixed price service for 2010. (PPL Electric St. 1-R, p. 14). Customers who did not comply with the foregoing procedures to elect the firm option will receive real time hourly service for 2010 as their POLR default service.⁸ (PPL Electric St. 1-R, p. 14; PPL Electric C.E. Exh. 2, ¶ 2).

Also as part of the change to the fixed price option for Large C&I customers, PPL Electric agreed to eliminate the proposed revisions to its GRA, which would have imposed a real time pricing charge upon Large C&I customers who elected the fixed rate service and subsequently left for EGS service. (PPL Electric St. 3-R, p. 16). PPL Electric’s existing GRA would remain in effect as a deterrent to customer trying to “game” the system by swinging on and off POLR service for short time periods. (PPL Electric St. 3-R, p. 17-18). As a result, Large C&I customers will be permitted to shop without restriction, subject to compliance with the Commission’s switching rules and applicable tariff provisions. (PPL Electric St. 1-R, pp. 14-15).

With respect to the default real-time hourly service for Large C&I Customers, PPL Electric will bid the service to a wholesale supplier. (PPL Electric St. 1-R, p. 16). Suppliers will pass through the Locational Marginal Price (“LMP”) for each hour of service, and their bid will reflect all other costs to provide the service, including administrative costs, ancillary service costs and capacity costs. (Tr. 133). PPL Electric has committed to work with parties to develop the needed RFP and tariff provisions to be clear what services will be included in the supplier’s bid and what costs will be a pass through. (Tr. 134). In addition, as part of its stipulation with

⁸ This would include Large C&I customers who seek to return to POLR service from EGS service. (PPL Electric St. 1-R, p. 14).

Reliant, PPL Electric commits that it will provide the real-time hourly service in the event no suppliers bid on the product or in the event the winning supplier defaults. (PPL C.E. 2, ¶ 5).

4. Revised Transmission Charges.

In another major revision, PPL Electric withdrew its proposed modification to its TSC, and instead amended the bid process to provide that PPL Electric will incur transmission costs for POLR supply within the PPL Zone of PJM and recover those costs through the TSC. (PPL Electric St. 3-R, p. 3).⁹ This change will require some modifications to the POLR SMA, subject to the following general principles described by PPL Electric's witness Mr. Kleha:

The SMA clearly indicates that the delivery point for energy from the supplier is the PPL zone, and from that standpoint PPL Electric will be responsible for network integration transmission service within its zone and from the delivery point to its customers. The supplier, on the other hand will be responsible for transmission service for getting the power to the PPL border, to the point of delivery. In addition to that, the supplier will be responsible for all ancillary services, whether they're outside of the PPL zone or within the PPL zone. From that standpoint, the SMA will have to be modified to reflect those changes and to meet those principles.

(Tr. 264-65). The stipulation with Constellation establishes procedures for PPL Electric to meet with interested parties in an effort to develop these modifications in a consensus fashion:

PPL and Constellation recognize that the Provider of Last Resort Request for Proposals ("RFP") and SMA must be amended to reflect transmission service changes proposed by PPL rebuttal witness Kleha. PPL will meet with interested parties to address the RFP and SMA changes which are required as a result of the changes made to transmission services in Mr. Kleha's rebuttal testimony and will adopt any consensus changes and, if they are approved by the Commission, include them in its compliance filing. To the extent that these changes cannot be agreed to and the Commission approves PPL's proposed transmission service modifications, PPL will include such changes as it reasonably

⁹ PPL Electric confirmed that this modification will not affect the rights and remedies of parties that are currently challenging the allocation of transmission costs to customer classes under the TSC. (PPL Electric St. 3-R, p. 3).

believes are required in its compliance filing and parties will be provided an opportunity to file comments, in accordance with Commission regulations, before the compliance filing is approved by the Commission.

(PPL C.E. 5, ¶ 2).

5. Revisions To RFP Rules And POLR SMA.

As part of the stipulation with Constellation, a major wholesale supplier, PPL Electric agreed to the following modification to Section 8.1.1 of the RFP Rules:

Prior to the submission of any bids and with PUC approval, PPL Electric has the right to withdraw and terminate this RFP without any liability or responsibility to any potential RFP Bidder or any other party, for reasonable cause, including, but not limited to, adverse statutory changes or interpretations, issuance of new PUC orders and/or regulations, market conditions, etc., that preclude this RFP from being implemented in substantially the manner described herein.

(PPL Electric C.E. Exh. 5). The modification recognizes that there may be circumstances which justify cancellation or postponement of a solicitation, but limits PPL Electric's right to terminate an RFP to a date prior to the actual submission of bids, and then only with Commission approval. Several additional minor revisions to the POLR SMA were agreed upon between PPL Electric and Constellation. These include:

- The addition of a new Paragraph 7.6, allowing for netting of mutual debts and payment obligations;
- The addition of further language to Article 10 – Limitation of Remedies, Liabilities and Damages, to adopt additional contract language related to liquidated damages;
- The addition of further language to Paragraph 11.1 – Force Majeure to adopt additional contract language further defining responsibilities in the event of a declaration of Force Majeure;
- The addition of Paragraph 14.7 – Accelerated Payments to incorporate additional contract language related to Seller's rights to demand accelerated payments from Buyer (PPL Electric) in the event of a Buyer Downgrade Event;

- The expansion of Paragraph 16.5 – Confidentiality to incorporate additional contract language further defining each Party's duties and rights related to the maintenance of confidential information.

(PPL Electric C.E. 5, Appendix 1 to Stipulation).

6. Alternative Energy And DSM.

In response to concerns of PennFuture and OCA regarding encouragement of alternative energy and DSM initiatives, PPL Electric modified its CBP to provide that the entire 2010 AEPS solar set-aside obligation for customers within the residential and Small C&I groups would be included in the two scheduled solicitations in 2007. (PPL Electric St. 1-R, p. 6; Tr. 127; PPL Electric C.E. No. 6). Also, as part of the Company's customer education program, the Company agreed to identify and provide notice of available DSM programs to customers representing the top 10 percent of peak load in each customer class. (PPL Electric St. 1-R, p. 6).

In addition, as part of stipulations with PennFuture and OCA, PPL Electric has agreed to undertake several further actions in support of conservation and energy efficiency:

Within six months following the approval of PPL's Competitive Bridge Plan, PPL Electric agrees to conduct a series of three (3) meetings with PennFuture to explore the nature of conservation and energy efficiency programs that PPL Electric may offer to its customers in 2010. The findings and results of these meetings will be documented in a report prepared jointly by PPL Electric and PennFuture and submitted to the Commission at this or other appropriate docket. Notwithstanding the findings and results of that report, PPL Electric agrees to establish and seek approval of at least one new program, to be effective no later than January 1, 2010, to promote conservation and energy efficiency among its residential customers.

PPL Electric C.E. Exh. 6, ¶ 4).

Within six months following the approval of PPL's Competitive Bridge Plan, PPL Electric agrees to conduct a series of three (3) meetings with PennFuture and interested Electric Generation Suppliers ("EGSs") to explore how PPL Electric's Advanced Metering Infrastructure can be used to facilitate EGSs in providing DSR programs to PPL Electric's customers who may elect to

participate in such programs. These meetings will specifically address the compatibility of such programs with programs conducted by PJM Interconnection, LLC. The findings and results of these meetings will be documented in a report prepared jointly by PPL Electric and PennFuture and submitted to the Commission at this or other appropriate docket.

(PPL Electric C.E. Exh. 6, ¶ 5).

PPL agrees to meet with the OCA and other interested stakeholders each year to discuss whether PPL should include Demand Side Response (“DSR”) programs as a separate product in each of the upcoming solicitations for POLR supply. This Stipulation does not require PPL to propose or implement any specific solicitation for DSR programs as part of its CBP.

(PPL Electric C.E. Exh. 4, ¶ 4).

7. Consumer Education.

The Company also concurred with concerns of certain parties that some aspects of its consumer education program lacked definition, and that the timing of its consumer education expenditures could be altered. In response, the Company agreed to facilitate a collaborative process with interested parties and Commission staff to develop a more detailed design of the consumer education program within PPL Electric’s \$875,000 budget. In that context, the parties also will discuss the timing of expenditures.¹⁰ (PPL Electric St. 1-R, pp. 34-35).

8. Low Income Customer Programs.

PPL Electric also clarified in rebuttal several aspects of its low-income customer program. PPL Electric confirmed that this was not the appropriate proceeding to investigate and

¹⁰ PPL Electric notes there are several important considerations to keep in mind with respect to expenditure timing. These include:

1. The base level of spending to carry out required annual choice education.
2. The expected roll out of the customer interface to the AMR System during 2007.
3. The need to educate customers prior to 2010 about energy efficiency and conservation measures, and the availability of certain tax breaks.
4. Notification and education of Large C&I Customers regarding EGS, fixed price and default hourly service elections that need to be made in the latter portion of 2009.

(PPL Electric St. 1-R, p. 35-36).

determine the appropriate funding levels for its low-income programs. (PPL Electric St. 4-R, p. 2). PPL Electric further confirmed that it did not intend to request any deferral of low-income program costs for future recovery. (PPL Electric St. 4-R, p. 3). Rather, PPL Electric will propose, in a future filing, to establish a reconcilable surcharge mechanism for prospective recovery of low-income program costs, in accordance with the Commission Order on universal service program funding at Docket No. M-00051923. (*Final Investigative Order*, Docket No. M-00051923, October 19, 2006, p. 18; PPL Electric St. 4-R, pp. 2-3). In addition, in response to concerns raised by OSBA witness Kalcic, PPL Electric confirmed that PPL Electric contemplates continued recovery of universal service costs from residential customers only. (PPL Electric St. 4-R, p. 7). This is consistent with past practice in PPL Electric rate proceedings and with the Commission's Order at Docket No. M-00051923. (Order, p. 31).

9. The Revised CBP Reflects A Consensus Among Many Parties To This Non-Precedential Plan.

With these modifications, PPL Electric has developed a consensus Revised CBP, which has received the support of a majority of the active parties to this proceeding, including several wholesale/retail marketers who PPL Electric hopes will be active participants in the RFP process and/or as EGSs on PPL Electric's system. As a result of these efforts, PPL Electric and the other consenting parties have substantially resolved all issues related to this non-precedential plan that concerns only POLR service in Year 2010, and the major issues remaining are generally those raised by the four non-joining EGS parties (Dominion, Direct Energy, RESA and Reliant). For reasons explained in the Argument section of this Brief, the remaining objections to the Revised CBP should be rejected.

III. ARGUMENT

A. PPL Electric's Revised CBP Provides An Appropriate Balance Of Competing Interests

As summarized in Section I.A of this Brief, and as explained in greater detail below, there are differing views regarding the fundamental principles governing the acquisition of POLR supply and the recovery of POLR costs from customers. PPL Electric and a majority of active parties in this case believe the Revised CBP achieves a reasonable balance among competing principles as a one-year, non-precedential bridge to full statewide competition in 2011. As summarized by PPL Electric's witness, Mr. Krall:

PPL Electric's CBP strikes an appropriate balance among these competing interests by providing consumers with market-based POLR service that takes into account current policy debates, and provides the opportunity for Electric Generation Suppliers ("EGSs") to enter the market. The objective of the CBP is to provide market-based POLR service that reasonably accommodates the expiration of the current rate capped generation services on December 31, 2009. PPL Electric's CBP achieves this objective by defining POLR services that align customers' future generation prices with the actual demands that they place upon the electricity system while recognizing that customers' POLR rates need not be highly volatile to be market based.

(PPL Electric St. 1-R, p. 3).

As Mr. Krall notes, the key component of the Revised CBP is its reliance upon the market to establish POLR rates. The rates are not developed through negotiations with parties, with risk adders of sometimes unknown value. Instead, the Company will rely on wholesale market bids to determine POLR prices.¹¹ (PPL Electric St. 2, p. 4). Market pricing for POLR

¹¹ As will be explained in further detail later in this Brief, PPL Electric's laddered solicitation is not locking in 2007 prices for 2010 service. Rather, PPL Electric is obtaining bids for 2010 service, which will reflect wholesalers expectations of 2010 prices, including risk premiums for market uncertainty between now and 2010. (PPL Electric St. 2, p. 4).

service will provide opportunities for EGSs to offer competitive prices and services in 2010. (PPL Electric St. 2-R, p. 3).

Although the market is used to set POLR rates, the Revised CBP balances the concerns of parties, including PPL Electric, that a market-pricing plan that has no diversity in acquisition strategy could lead to unacceptably high rate increases. As the Company's consulting expert, Mr. Cavicchi, explained:

As the PUC is aware, there have been substantial political and public concerns regarding POLR rate increases resulting from power procurement procedures that have relied upon supplies obtained from an auction conducted at a single point in time. Prudence dictates that a number of separate procurements should be undertaken over a long enough period of time to mitigate the risk that unique or short-term events would unduly push prices upwards or downwards.

(PPL Electric St. 2, pp. 5-6).

There are various other aspects to the plan that reflect a balancing of interests, including:

- flattening of rates, through elimination of generation demand and generation flat rate charges to simplify shopping;
- maintaining a generation rate differential for Rate Schedule RTS customers;
- establishing real-time hourly service as the Large C&I default rate, while retaining an optional fixed rate service;
- compromises that accommodate parties that want the EDC to be actively involved in DSM activities and parties that believe DSM programs should be provided through the competitive market. (PPL Electric St. 1-R, pp. 10-11).

With respect to this latter point, the Company's development of an Advanced Metering Infrastructure ("AMI") will assist both customers and EGSs in developing innovative products and improving pricing. As explained by Mr. Krall:

Building on this platform, the Company currently is installing a meter data management system that includes the following:

- A customer interface that will permit customers to analyze and better understand their electricity usage and bills,

- A data repository capable of storing two years of hourly reads from all customers,
- A complex billing engine that will be capable of billing customers using hourly data, and
- A settlement system that will permit customers' usage to be settled using their actual hourly data rather than load profile information.

(PPL Electric St. 1-R, pp. 9-10).

The installation of these additional capabilities will provide PPL Electric's customers with increased ability to manage their consumption of electricity and their electric bills by being able to understand how their usage varies, how hourly prices vary, and how they may reduce or shift their usage to their own economic benefit. The new AMI system also will encourage suppliers to offer innovative products to compete against flat, non-time differentiated POLR rates. The opportunity to access actual customer load patterns and usage on an hourly basis will enable EGSs to offer savings to customers through energy efficiency and demand side programs.

(PPL Electric St. 1-R, pp. 10-11).

Finally, PPL Electric's Revised CBP will provide substantial opportunities for competition to take hold in PPL Electric's service territory, as PPL Electric's consulting expert, Mr. Cavicchi explained:

With respect to retail competition, the CBP's laddered procurement (combined with PPL Electric's commitment to provide hourly customer load data to retail competitors) will not prevent retail suppliers from offering supply products with varying terms and conditions. Moreover, to the extent they can develop energy conservation and demand-side management aspects to the product offering, retail suppliers will be able to make lower-priced offerings that will be desirable to customers. During those times where POLR service prices are greater than offers developed by retail suppliers, there will be opportunities to capture smaller customers. And when they are competitive, they will likely be

capable of developing a longer-term relationship with the customer. Contrary to claims that there will be no means to compete against the POLR service, there will be opportunities to compete which will be appropriately driven by the forward market prices, not volatile short-run prices.

The likely longer-term relationship will subsequently benefit the wholesale market by establishing consumer demand in the forward markets. And by using a three-year laddered approach, the forward time span promotes the development of forward capacity markets, which serve an important role in signaling the need for new generation investment. Thus, PPL Electric's plan provides a balanced approach for providing POLR service that does not necessarily place any particular party's interests ahead of another party's interests.

(PPL Electric St. 2-R, pp. 5-6). The Revised CBP plan reflects a good balancing of competing interests, and should be approved as a one-year, non-precedential bridge to full statewide competition.

B. PPL Electric's Proposed Laddered Solicitation Is In The Public Interest And Should Be Approved

1. The Purpose Of Laddering Is To Reduce Price Volatility.

As described above, the core concept underlying PPL Electric's CBP for residential and small C&I customers is to undertake a series of six solicitations for each of the residential and small C&I customer groups over the three year period 2007-2009. In the absence of binding default service regulations, PPL Electric concluded that beginning a solicitation process now was a prudent course of action to minimize placing itself and its customers at risk of large increases in POLR rates resulting from limited numbers of solicitations held during times of extreme market volatility. As this Commission is well aware, electric utilities such as Pike County Light & Power Company, Delmarva Power Company and Baltimore Gas & Electric Company, experienced substantial increases in POLR rates (PPL Electric St. 1, p. 6), due, at least in part, to limited numbers of solicitations that, in retrospect, were undertaken at times of abnormal market

prices. (Tr. 86; Direct Energy St. 1, pp. 3-4). In contrast, experience in New Jersey indicates that if laddered procurements are used, then price increases resulting from extreme events can be ameliorated. (Tr. 86; PPL Electric St. 2, p. 5). PPL Electric believes that undertaking a series of laddered transactions over a period of three years for the Year 2010 will provide the market's average assessment of the expected cost of POLR supply, without undue bias, either high or low, due to unusual events. (PPL Electric St. 2-R, p. 7).

PPL Electric emphasizes that its laddered solicitation does not seek to "time the market" in an effort to understate market prices. (PPL Electric St. 1, p. 7; PPL Electric St. 2-R, p. 4). The goal is to use laddering to capture the benefit of less volatile forward markets and to reduce the risk of short-term price spikes. (PPL Electric St. 2-R, p. 7; PPL Electric St. 1, p. 7).

2. The Laddered Solicitation Satisfies The Statutory Standard Of "Acquiring Energy At Prevailing Market Prices".

PPL Electric's 2010 POLR obligation is governed by the provisions of Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. §2807(e)(3), which provides as follows:

"If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs." (Emphasis supplied.)

66 Pa. C.S. §2807(e)(3). The Company is proposing to obtain POLR supply for 2010 from the *competitive market at prevailing market prices in a series of six individual procurements over a three-year period (2007-2009).*

Application of the foregoing provision, however, has been a matter of considerable controversy. The statute does not define the term "prevailing market prices," leaving that task to the Commission through the issuance of regulations, and the Commission has yet to issue those regulations in final form. Absent definitive guidance from the legislature or the Commission,

PPL Electric has sought to apply the plain language of Section 2807(e)(3) in a manner consistent with Chapter 28 and the overall provisions of the Code. Specifically, PPL Electric proposes to acquire electric energy through an RFP process, which by its nature, reflects prevailing market prices at the time of the solicitation. That is, PPL Electric, in each solicitation, seeks prices for generation supply to be delivered in 2010. Those prices reflect suppliers' current expectations of energy prices in 2010, plus their assessment of market risk and desired profit. (PPL Electric St. 2, p. 4; Tr. 113).

In this proceeding, the non-joining EGSs have contended that the term "prevailing market prices" requires the POLR provider to acquire power only in the short-term market, through monthly, or at most quarterly, solicitations. (Dominion St. 1, pp. 2, 4; Direct Energy St. 1, p. 7). These participants contend that the overriding purpose of Chapter 28 is to establish retail competition and that a "laddered" procurement approach, such as the one proposed by PPL Electric, might adversely affect retail competition and should be rejected. (Dominion St. 1, pp. 4-5; Direct Energy St. 1, pp. 2-3). PPL Electric disagrees with both of these contentions and does not believe they reflect an accurate reading of Section 2807, Chapter 28 and the Public Utility Code as a whole.

As noted above, the term "prevailing market prices," was not defined by the legislature; rather, the legislature directed the Commission to issue regulations interpreting and applying the term. This is clear and compelling evidence that the legislature intended to leave the definition of this term to the Commission's broad administrative discretion. Under well-established case law, an administrative agency has broad discretion in issuing regulations and its exercise of that discretion will be upheld unless the regulations bear no reasonable relationship to the underlying statutory provision on which they are based. *Rohrbaugh v. Pa. P.U.C.*, 556 Pa. 199, 208, 727

A.2d 1080, 1085 (1999) (“In evaluating the ‘reasonableness’ of any discretionary agency action, appellate courts accord deference to agencies and reverse agency determinations only if they were made in bad faith or if they constituted a manifest or flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions.”). Thus, there is no basis to contend that the legislature, in adopting Section 2807, intended to limit the term “prevailing market prices” to short-term, spot market prices.

This is further evidenced by the use of the term “prevailing market prices” in the plural, rather than the singular. As PPL Electric’s expert, Mr. Cavicchi, explained, the electric markets offer a number of prevailing market prices:

[I] can state from experience that at any particular point in time there are many prevailing market prices for electricity representing differences in product term and definition. For example, in most instances electricity products can be procured for terms measured in hours, days, weeks, months, combinations of months, and years. Additionally, there are a wide variety of electricity products, including capacity, load-following energy, on-peak and off-peak block energy, full requirements service, derivatives, swaps, etc. The prevailing market prices at any time will reflect product and term definitions as described above. Moreover, to the extent that various combinations of products are relied upon for service that is received over time, if procured from the wholesale markets, they collectively represent a service established by competitive market prices.

(PPL Electric St. 2, p. 12). By using the plural term, the legislature obviously did not intend to restrict the Commission’s discretion to consider only short-term, ever changing prices in determining prevailing market price. Therefore, the procurement and pricing of POLR service should allow for the use of longer term contracts and a “laddered” procurement process, such as the one proposed by PPL Electric. The Commission previously has recognized that it has discretion to define the term “prevailing market price” and has approved different interim terms for different utilities. *Penn Power, supra.*; *Petition of Duquesne Light Company, 2004 Pa.*

P.U.C. LEXIS 42, *8-10. Finally, it should be noted that the wholesale energy market has many product types. Clearly, the existence of these products demonstrates that the “prevailing” market is not simply a short-term market. As a consequence, limiting POLR service to only short-term products would ignore the true nature of the market and would be contrary to the “prevailing market prices” standard of the Competition Act.¹²

Limiting the term “prevailing market prices” to only short-term prices also is inconsistent with the remainder of Section 2807(e)(3), which directs the POLR provider to recover all reasonable costs. Clearly, the legislature intended that the Commission would adopt, and the POLR entities would implement, a reasoned strategy for purchases. (PPL Electric St. 2, pp. 5-6). PPL Electric’s proposed CBP, which encompasses longer term “laddered” procurements rather than simply acquire power at short-term market prices, meets that standard.

PPL Electric believes that if generation supply for POLR service is procured through a competitive process, as it proposes in this filing, then that supply will be acquired at “prevailing market prices.” The Company does not agree that longer terms between bidding and delivery lead to a divergence from the “prevailing market prices” standard. If the price for POLR supply is tied to the term of the procurement, here the Year 2010, and that supply is obtained through a competitive process, then the “prevailing market prices” standard is fully satisfied.

PPL Electric also does not agree that the purpose of Chapter 28 was to promote retail competition, at all costs. There is no “mandate to promote a robust competitive market” in the

¹² In a twist that even Direct Energy’s witness labeled as “a response to emphasize through exaggeration” (Direct Energy St. 1-R, p. 6), Dominion proposed a 3-5 year fixed price plan. Dominion’s witness, Mr. Butler, asserted under cross-examination that his 3-5 year fixed price plan complies with the “prevailing market price” standard in the statute, “because you buy [power] close to the time you start to consume it.” (Tr. 240). It defies common sense to claim that Dominion’s alternative complies with the statute, while PPL’s CBP does not. PPL Electric’s plan has it making purchases from approximately 3 months to 2 ¾ years from the beginning of the one-year service period. Mr. Butler’s plan would have several solicitations made in 2009 for service extending to 2014, or 4 to 5 years in advance of the last service year.

Public Utility Code, as conceded by Dominion's witness Mr. Butler. (Tr. 236). Although PPL Electric agrees that customer choice and competition are important objectives of the Act, the Company believes that implementation of the POLR provisions of the Act must be based on broader considerations. For example, Item 6 of the Customer Choice Act's Declaration of Policy states: "The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." 66 Pa. C.S. §2802(6). As this statement demonstrates, the legislature considered job retention and expansion to be important purposes of the Act, and the Commission's efforts to implement the POLR provisions in the Act also should advance this purpose.

Similarly, Item 9 of the Customer Choice Act's Declaration of Policy states: "Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions." 66 Pa. C.S. §2802(9). In interpreting the POLR's duty to provide service to customers that do not receive service from an EGS, the Commission has the responsibility to approve POLR acquisition strategies that further this goal of reasonably priced electric service.

Moreover, under generally accepted principles of statutory construction, a statute should be interpreted to give effect to all of its provisions. A particular piece of legislation should be construed as an integral part of the whole and not as a separate portion with independent meaning. 1 Pa. C.S. §1922(2). Although it frequently is identified as the "Competition Act," Chapter 28 of the Code addresses more than competition. For example, the section entitled "standards for restructuring of electric utility industry" identifies many other considerations, including safety, reliability, corporate reorganization, customer discrimination, universal service and energy conservation. 66 Pa. C.S. §2804. Ratemaking considerations in the Competition Act

are broad and include flexible pricing to meet specific needs of a utility customer and Commission-approved performance-based rates. 66 Pa. C.S. §2806(h) and (i). Accordingly, Chapter 28 should be evaluated in the context of this broad interpretation, including rate considerations, as well as competitive concerns.

Finally, the Statutory Construction Act also provides that statutes or parts of statutes are *in pari materia* when they relate to the same persons or things, and statutes *in pari materia* must be construed together, if possible, as one statute. 1 Pa. C.S. §1932. Chapter 28 is a part of the Public Utility Code and, in fact, is only one of 33 chapters in the Public Utility Code. Taken as a whole, the Public Utility Code addresses, in great detail, a wide range of regulatory issues, including establishment of reasonable rates and provision of safe, reliable and adequate service. 66 Pa. C.S. Chapter 13 and Chapter 15. Thus, Section 2807(e)(3) should be construed together with the Public Utility Code as a whole in developing a definition of “prevailing market prices” that takes into account all relevant regulatory concerns.

As demonstrated above, the legal standard of “prevailing market prices” is not limited to a single energy product, and clearly permits multiple year solicitations to establish the price as proposed under PPL Electric’s CBP.

3. The CBP’s Laddered Procurement Is Not Premature.

Several EGSs have argued that it is not yet necessary to consider PPL Electric’s CBP. (PPL Electric St. 1, p. 14; PPL Electric St. 1-R, pp. 17-19; Direct Energy St. 1, p. 6). From their perspective, the Commission’s default regulations “should” be issued by April 7, 2008, and PPL Electric should wait for regulations to be finalized before submitting a plan for 2010.

There are several factual and practical flaws in such an approach. Contrary to the EGSs’ assumptions, there is no requirement that the Commission issue its final POLR regulations by April 7, 2008. The provisions governing the adoption of regulations in Pennsylvania provide

that if final-form regulations are not adopted within two years of the close of the public comment period, the proposed regulations are deemed withdrawn. 1 Pa. Code §307.1(a). The Independent Regulatory Review Commission (“IRRC”), in correspondence to the Commission, only advised the Commission that the two-year period would conclude as of April 7, 2008 (see Attachment “A” to Answer of PPL Electric to Reliant Motion to Dismiss). Thus, while PPL Electric is certain that the Commission is working diligently to finalize regulations, there is no certainty that, due to the complexity and diversity of views, the Commission will meet this deadline. It is possible the Commission will choose to start a new rulemaking process to take comments on substantially altered regulations from the current proposed regulations.

Moreover, even if the Commission does issue final-form regulations by April 7, 2008, there is no assurance that such regulations, in whatever form they are adopted, will be effective in time for PPL Electric to undertake POLR acquisition for 2010. First, under the provisions of the Regulatory Review Act, 71 P.S. §§ 745.1-745.14, any regulation must be reviewed by the applicable standing committees of the Legislature, the Independent Regulatory Review Commission and the state’s attorney general before they become effective. 71 P.S. § 745.5a. As a result, any one of these entities could disapprove the final-form regulation, which could result in the regulations being withdrawn or barred. 71 P.S. § 745.7.

Even if these worst case scenarios do not occur, it would be extremely unwise for PPL Electric to delay its 2010 acquisition to await the final effective date of default service regulations. Several parties have submitted comments in the Commission’s rulemaking docket arguing that new regulations should not become effective for acquisitions undertaken for service prior to January 1, 2011, when all generation rate caps will have expired. Alternatively, based upon comments received and the adverse effects experienced with the single POLR acquisition

experienced with Pike County Light & Power Company, the Commission's final-form regulations could direct or permit multiple-year acquisition processes. Waiting for these unknown regulations to be finalized could compress PPL Electric's procurements into a period of less than one year, thereby increasing the risk of price volatility adversely affecting the resulting POLR prices.¹³

Moreover, the Revised CBP does recognize, and facilitate, the long awaited transition from administratively-based pricing to market based pricing. At the time PPL Electric's CBP rates become effective in 2010, PPL Electric's generation rates will have been subject to administratively determined rate caps for 14 years (1996-2009). (PPL Electric St. 1, p. 6). PPL Electric's laddering approach captures the benefits of less volatile forward markets and encourages the development of longer-term forward markets, which will provide appropriate market signals regarding the need for new generation and reasoned, cost-based decisions related to DSM and improved energy efficiency. (PPL Electric St. 2-R, pp. 6-7).

Waiting until the last minute to acquire generation for 2010 is not wise utility planning; it is rolling the dice and hoping for good luck. (Tr. 88) The proper course is to approve PPL Electric's Revised CBP now and permit the Company to begin the acquisition process, recognizing that if final POLR regulations are adopted to become effective prior to 2010, the acquisition process can be modified prospectively to reflect the new regulations.

4. EGS Proposals To Set POLR Prices For Small Customers On A Monthly Basis Are Improper.

Direct Energy witness Mr. Lacey proposed a process by which PPL Electric would conduct a series of monthly auctions for supply for residential and Small C&I Customers for

¹³ PPL Electric emphasizes that its laddered solicitations provide no guarantee against significant POLR price increases if market prices remain consistently high throughout the RFP period. (PPL Electric St. 1, p. 12). What it does guarantee is that prices will not be unduly influenced by an unusual event.

one-month service periods. (Direct Energy St. 1, p. 7). Dominion's witness Mr. Butler also supported a monthly POLR acquisition process. (Dominion St. 1, p. 4). Under Direct Energy's plan, PPL Electric would hold auctions 60 days in advance of the delivery month, with contracts executed no later than 45 days prior to the delivery month. (Direct Energy St. 1, p. 7). During this 45-day "window" of time, small customers would consider available competitive offers and decide each month whether to stay on POLR service. (Direct Energy St. 1, p. 7). Forcing all customers onto monthly POLR pricing in January 2010, the first month after the end of rate caps that will have been in effect for 14 years, is a prescription for chaos and customer revolt.

The first problem with the proposal is that it will expose all customers on POLR service to extreme price volatility. PPL Electric's witness Mr. Krall demonstrated this volatility by examining monthly average LMPs for the years 2002-2005. (PPL Electric Exh. DAK-3). This data demonstrates that month-to-month LMP can increase by as much as 2.2 cents per kWh and decrease as much as 2 cents per kWh. On a percentage basis, month-to-month increases can be as high as 52% and decreases can be as much as 32 percent. Within a calendar year, the difference can vary as much as 4.4 cents per kWh and 200 percent. (PPL Electric St. 1-R, p. 22). Because the CBP represents a bridge from capped rates to market pricing, customers should not also be forced to deal with monthly price volatility of this magnitude.¹⁴ Even FES witness Prezelj acknowledged that the vast majority of customers generally prefer fixed-price options. (FES St. 1, p. 6).

Direct Energy's witness Mr. Lacey attempted to deflect attention from the price volatility that would be experienced under his monthly POLR proposal for small customers by contending that, with the exception of five months, each of the monthly LMP prices on PPL Exhibit DAK-3

¹⁴ As can be expected, some of largest price increases are seen in the December-January and June-July periods, times of historically high usage. (OCA St. 1-S, p. 6; PPL Electric Exh. DAK-3).

was lower than the 2006 average PPL Electric tariff price. (Direct Energy St. 1-SR, p. 2; Direct Energy Exh. FPL-2). However, as Mr. Krall demonstrated in rejoinder, Mr. Lacey's attempted comparison is inaccurate because he compared LMP, an energy-only price, to PPL Electric's tariffed charges, which include additional costs for capacity, gross receipts tax, energy losses and load following costs. After correcting for Mr. Lacey's errors, Mr. Krall demonstrated that at no time in the last 25 months shown on Exhibit DAK-3 was the monthly LMP a preferable rate to small customers and in only 16 months of the 49 shown on that exhibit was the actual monthly LMP lower than the energy component in PPL's 2006 tariffed rates.¹⁵ (Tr. 65-68).

Another major problem with Direct Energy's monthly pricing proposal is its interaction with cycle billing. As Mr. Krall explained:

Mr. Lacey's proposal would seek monthly supply contracts, but customers are actually billed in 20 billing groups spread through each month in order to levelize meter reading and billing activities and to levelize revenue collections. As a consequence, every customer, except for fewer than 500 who are billed a calendar month basis, will be billed on a price that reflects a pro rating of two successive months. Mr. Lacey describes a customer having 45 days to consider competitive alternatives, but, in reality, that customer may never actually know the price for the second part of the billing period by the time he must commit to a competitive alternative.

(PPL Electric St. 1-R, pp. 22-23).

Direct Energy's witness Lacey responds to this concern by arguing that gas company billing systems can accommodate quarterly bill changes and, thus, PPL Electric should be able to accommodate monthly billing changes. (Direct Energy St. 1-SR, p. 3-4). Mr. Lacey misses the point. PPL Electric was not asserting it could not prorate bills (Tr. 69); rather, PPL Electric was

¹⁵ Mr. Lacey attempted to rehabilitate his exhibit by arguing that Mr. Krall failed to include transition charges in his comparison. (Tr. 219-220; Direct Energy Exh. FPL-4). However, Mr. Lacey's attempted correction is wrong. Transition charges are non-bypassable. (Tr. 221). Thus, customers would pay those charges whether they were a PPL Electric POLR customer on a fixed rate or they paid monthly varying rates based upon LMP. (Tr. 229).

explaining that monthly POLR billing in the context of cycle billing makes it impossible to give customers accurate notice of their new rates 45 days in advance. The result is that customers will be frustrated with shopping, as Mr. Krall explained:

[T]he customer would either be faced with shopping month to month (if monthly competitive offers are actually available) or guessing as to the price of future POLR months. The Company believes that Mr. Lacey's proposal would actually make it more difficult for customers to make educated shopping decisions. Under his proposal, it is conceivable that customers may shop only because they will take the first fixed price offer and not because it is in their best economic interest.

(PPL Electric St. 1-R, p. 23).

Other practical problems associated with the EGSs' proposal for monthly small customer POLR pricing include the treatment of CAP and budget billing customers. Mr. Lacey believes that both CAP and budget billing customers should be included in the monthly pricing program. (Direct Energy St. 1-SR, p. 4; Tr. 226). However, as Mr. Krall explained, Direct Energy does not offer a viable explanation as to how PPL Electric would calculate a reasonably accurate monthly budget for customers when it must undertake twelve separate auctions throughout the year. (PPL Electric St. 1-R, p. 23). Moreover, as Mr. Lacey acknowledged, one of the claimed benefits of forcing PPL Electric to provide monthly POLR pricing for small customers is to give customers current pricing signals. (Tr. 225). Yet that pricing "signal" would be masked by budget billing. (Tr. 225).

With respect to CAP customers, Mr. Lacey admits that EGSs have no obligation to offer such customers discounted rates. (Tr. 223). But Mr. Lacey would force PPL Electric to procure power for these customers on a monthly basis as well. (Tr. 226).¹⁶ As of June 30, 2006,

¹⁶ Mr. Lacey supports this conclusion based upon his previously discredited claim that monthly acquisitions would have procured lower prices than PPL Electric's 2006 tariffed rates. (Tr. 226).

approximately 17,500 customers were enrolled in PPL Electric's OnTrack (CAP) program. (PPL Electric Exh. TRD-1, p. 5). PPL Electric would have to calculate each month the customer's discount and develop a surcharge mechanism to track the discounts.

Finally, there is the matter of cost. The cost to undertake twelve monthly solicitations is obviously greater than the six solicitations over three years proposed by PPL Electric. There also will be substantially greater costs incurred to notify customers monthly of bill changes, to respond to customer inquiries about their monthly bill changes, and the costs to reprogram billing systems to change rates monthly. (Tr. 69, 77-78).

Monthly POLR solicitations and rate changes for all residential and Small C&I customers benefit only one group: EGSs. Forced monthly rate changes may lead customers to elect EGS service, but for the wrong reason. Customers will not be making educated decisions about the lowest cost or most appropriate service for their needs, but will take the first fixed price offer that comes along because they dislike monthly rate changes and receiving notices of further rate changes every month, two months in advance. Add to this the uncertainty of how many EGS may voluntarily choose to market annual fixed price services to small customers (Tr. 222), and the risk of a "train wreck" is obvious. A one-year bridge period to statewide competition is not the time to force all small customers to monthly market pricing. The EGSs' monthly market pricing proposal for residential and small C&I customers must be rejected.

5. Dominion's Proposal For A Three To Five-Year Fixed Rate Should Be Rejected.

As an alternative to his primary proposal for frequent procurements and changing prices in 2010, Dominion's witness Mr. Butler proposed that PPL Electric offer a fixed price set for a period of three to five years, i.e., from 2010 through 2012 or 2014. (Dominion St. 1, pp. 4-6). Mr. Butler's conditions to this proposal include that all solicitations be undertaken in 2009, and

that the rate remain unchanged throughout the three to five-year period. This alternative proposal suffers from numerous flaws and should be rejected.

First, as should be readily apparent, fixing a price for three to five years beginning in 2010 is contrary to PPL Electric's intent that the CBP be a one-year bridge to full statewide competition. (PPL Electric St. 1-R, p. 24). PPL Electric does not support a proposal that could have its POLR rates fixed for five years while the rest of the state's electric utilities potentially operate under significantly different POLR rules.¹⁷

Second, having PPL Electric undertake all its solicitations for this 3 to 5-year period in a single year (2009) still presents the risk that resulting POLR rates could be affected by unusual market events. (PPL Electric St. 1-R, p. 24). Although Mr. Butler contends that this risk is lessened by the fact that he would allow several solicitations during 2009 (Dominion St. 1-R, p. 4), the risk of unusual events affecting prices over one year, which is mitigated by PPL Electric's three-year solicitation plan, is magnified when the resulting rate is then fixed for up to five years. (PPL Electric St. 1-R, pp. 24-25).

Another concern with Dominion's proposal is the risk premium that would be built into bids for a fixed price for 3-5 years, as Mr. Krall explained:

PPL Electric's proposal to have wholesale suppliers provide "tranches," or a fixed percentage of customer requirements, places upon wholesale suppliers all load risk, including all shopping risk. None of the EGSs appear to disagree with this approach. However, the risk associated with customers leaving POLR service in 2010 may be perceived as much less than the risk of customers leaving and returning over a 3 to 5 year period. Similarly, a supplier bidding on a one-year fixed POLR rate is assessing the risk of changes in the number of customers and their usage for a one-year time span, whereas the supplier would have to factor in

¹⁷ Mr. Krall acknowledged during cross-examination that he does not know what the Commission's final POLR rules will provide. (Tr. 92). However, it is obvious that locking in POLR rates for 3 to 5 years carries a far greater risk of a lengthy preemption of final POLR rules than PPL Electric's one-year bridge plan. (Tr. 92).

the expected load shape and growth occurring over the 3 to 5 year fixed-price period. All things being equal, increased risk would translate into increased premiums in the bids, thereby driving up the POLR rates.

(PPL Electric St. 1-R, p. 25).¹⁸

Dominion's alternative long-term fixed price plan should be rejected.

C. PPL Electric's Revised Plan for Large C&I Customers Should be Approved.

1. Introduction.

As explained previously, PPL Electric has proposed substantial modifications to its POLR plan for Large C&I Customers. (PPL Electric St. 1, p. 5). In response to concerns of other parties, PPL Electric eliminated its original proposal to require large customers to elect the fixed rate option in 2008, prior to the rate being determined. PPL Electric also eliminated the proposed new GRA charge for Large C&I customers who elected the fixed rate option and then left the service for an EGS during 2010. PPL Electric's revised proposal now will have a single solicitation in October 2009 for fixed price service to Large C&I customers. Interested customers would be required to sign up for the solicitation in advance, but would not be required to take the service. PPL Electric would then conduct the solicitation and inform those customers who signed up of the resulting prices. Those customers would then have 30 days to affirmatively select the fixed price service. Any Large C&I customer that did not "opt in" to this fixed price service would receive real-time hourly service for 2010 as their POLR default service. This service would be obtained through a separate solicitation process. (PPL Electric St. 1-R, p. 14).

In initially filed direct testimony, only three parties expressed any objections to PPL Electric's original proposal for Large C&I customers: PPLICA, Reliant and FES. Following the

¹⁸ The process further distorts prices by the condition that a single price be fixed, because it requires bidders to assess costs for each year in the 3 to 5-year period, and then create a single bid price. In contrast, PPL Electric's Revised CBP obtains bids for a single service year.

substantial changes to the Large C&I customer proposal made by PPL Electric, Reliant entered into a stipulation with PPL Electric that supports the revised plan.¹⁹ Reliant also withdrew most of its prefiled testimony and submitted a substantially redacted version of direct testimony. PPLICA submitted no further testimony and, in correspondence in lieu of surrebuttal testimony, indicated that it could accept PPL Electric's revised proposal.²⁰

2. The Fixed Price Service.

Although there is no written testimony in opposition to PPL Electric being permitted to offer a fixed price service, PPL Electric anticipates that the non-joining parties may continue to object to this proposal, and therefore will respond to this issue.

PPL Electric's provision of an optional fixed price service for Large C&I customers is in the public interest and should be approved. PPL Electric is not aware of any other Pennsylvania EDCs that have been required to offer only hourly service to Large C&I customers in the initial years following conclusion of generation rate caps. (PPL Electric St. 1-R, p. 12; Tr. 75-77). Furthermore, in 2010, most major EDCs will still be subject to rate caps that provide annual fixed rates for Large C&I customers. (PPL Electric St. 1-R, p. 12).

A fixed-rate option also is important because there are Large C&I customers whose operations provide them with limited or no opportunity to take action to avoid high hourly prices (e.g., schools, hospitals and government buildings), or who previously have not been exposed to an hourly metering process (e.g., Rate Schedule LP-4). (PPL Electric St. 1-R, p. 13; PPLICA St. 1; pp. 2-3). The great unknown is whether EGSs as a group will be prepared to offer an annual

¹⁹ The stipulation includes a commitment by PPL Electric that it would provide the real-time hourly priced service if no wholesale suppliers bid on the solicitation or if the winning supplier were to default. (PPL Electric C.E. Exh. 2, ¶ 5).

²⁰ Through cross-examination, PPLICA received a commitment from PPL Electric that it would work with parties to develop appropriate tariff language to confirm the pricing of the real-time hourly service proposal. (Tr. 132-134).

fixed rate to all Large C&I customers who desire it. (PPL Electric St. 1-R, p. 13). As PPLICA witness Mr. Wilkie cautioned:

A. ... Until we see actual evidence that the EGSs are entering the PPL market, from a business planning perspective Mount Joy Wire must be prudently cautious and assume that PPL may be our only option in 2010 for electric generation supply.

Q. What is the basis for your belief that there are not many electric generation supply competitors in the PPL Territory for large customers?

A. My belief is based primarily on the low number of shopping customers in our category as indicated on the Office of Consumer Advocate ("OCA") shopping statistics and the fact that no EGS has contacted us to present an offer since I have been with Mount Joy Wire.

(PPLICA St. 1, p. 3). Thus, an optional fixed price service from PPL Electric for its one-year bridge plan is a reasonable and appropriate backup in case the market is not fully ready in 2010 to be responsive to all Large C&I customers' requirements.

3. FES's Objections To The "Opt In" Requirements Of The Fixed Rate Option Should Be Rejected.

FES continues to object to PPL Electric's proposed Large C&I Customer plan. The essence of FES's objection is its belief that the default service option for Large C&I customers should be fixed-price service, with hourly service the "opt-in" option. (FES St. 1, p. 6). While PPL Electric strongly supports the existence of a fixed-price option for Large C&I customers, it does not believe that fixed-price service should be the default service. Limited experience to date indicates that the competitive market may develop fastest in the large commercial and industrial market (Tr. 77), and requiring these customers to make an affirmative choice to receive fixed price service is a reasonable requirement. PPL Electric does not want to encourage customers to remain on fixed-rate service from the utility through inaction, and believes its

approach will potentially spur the competitive market by encouraging the Large C&I customers to focus on their energy decisions. (Tr. 119). Moreover, PPL Electric intends to minimize concerns about whether a customer made an affirmative election or merely defaulted by focusing on informing and educating customers (Tr. 110-11) in an effort to minimize any customers making an uninformed choice. (PPL Electric St. 1-R, p. 15).

FES also objects to the process of having Large C&I customers first express interest in the fixed rate option, and then requiring those customers to affirmatively elect the annual fixed rate option within 30 days after being notified of the generation price resulting from the solicitation. (FES St. 1-R, p. 4). FES argues that the first expression of interest step is unnecessary, because all Large C&I customers may express interest to maintain their option. (FES St. 1-R, p. 4, Tr. 117). However, even if all Large C&I customers do express interest, it is no worse a result than if the step had not been taken, and the process still will have served the important purpose of educating customers about the choices they have. Moreover, it is PPL Electric's belief that some, particularly sophisticated, high-use customers with unusual load shapes, are likely to select service from an EGS and will not express interest in the optional fixed rate service. (Tr. 117-18). To the extent that does occur, it will provide potential bidders with additional information about the load they may serve. (Tr. 118).

The revised Large C&I customer plan provides a compromise between customers who want a fixed-price option but who do not want to be locked into the service before rates are known, EGSs who want only an hourly service and wholesale suppliers who want as much knowledge as possible regarding the load they will be serving. PPL Electric's revised proposal is reasonable and should be adopted.

D. PPL Electric's Proposal To Reconcile The GSC For Over/Under Collections Should Be Approved

1. Introduction.

A central part of PPL Electric's CBP is its proposed reconciliation of the GSC. Under PPL Electric's proposal, the GSC for 2010 will be based on the results of competitive market solicitations made in 2007, 2008 and 2009, plus administrative costs of conducting and implementing these solicitations. (PPL Electric St. 3, p. 3). At the end of 2010, PPL Electric will compare revenues collected under the GSC with expenses incurred under the SMA and associated administrative costs, and any difference will be reflected as a surcharge or credit to 2011 POLR charges. (PPL Electric St. 2, p. 4; Tr. 160). PPL Electric's proposal is reasonable and should be approved for the reasons set forth below, and the arguments presented by opposing parties should be rejected.

In addition to these specific arguments, however, it is critically important that PPL Electric's reconciliation proposal not be viewed in isolation from the remainder of the CBP. Reconciliation is essential to several parts of the CBP, including: PPL Electric's proposal to charge POLR rates that do not include an element of profit to reflect risk of under recovery; its proposal to shift certain risks to the POLR supplier schedule; its proposal to phase-in rate changes to Rate RTS customers who could otherwise see very large rate increases in 2010; and its stipulation with OCA, under which PPL Electric agrees to meet with OCA to discuss alternative rate designs for Rate RS if the average increase in rates for that class exceeds 30% on a total bill basis. (PPL Electric C.E. Exh. 4). Without reconciliation, none of these provisions can be maintained. (PPL Electric St. 3-R, pp.7-14).

2. PPL Electric's Reconciliation Proposal Is Supported By Most Parties To This Proceeding, Is Mandated By The Competition Act, Benefits Customers, Promotes The Development Of A Competitive Market, Is Consistent With All Applicable Precedent, And Is Particularly Appropriate For This One-Year, Non-Precedential Bridge Filing.

a. PPL Electric's Reconciliation Proposal Is Supported By Most Parties To This Proceeding.

As with many issues in this proceeding, most parties support, or do not oppose, PPL Electric's reconciliation proposal. All parties who have executed stipulations (OTS, OCA, OSBA and PennFuture) have supported or not opposed reconciliation. OSBA has made a separate statement for the record that it will not oppose the CBP, including reconciliation. (Tr. 211). In addition, several remaining parties who have not entered into stipulations have not presented any testimony opposing reconciliation. These include PPLICA, FES, SEF, Exelon, MetEd/Penelec and Epstein.

As a result, a broad cross-section of parties support or do not oppose PPL Electric's reconciliation proposal. Indeed, at this point, the only parties who actively oppose reconciliation appear to be the non-joining EGSs. As explained below, their testimonies provide no reasonable basis for rejecting the Company's claim.

b. Section 2807(e) (3) Of The Public Utility Code Requires The Commission To Approve PPL Electric's Reconciliation Proposal.

The proper resolution of PPL Electric's reconciliation proposal is governed by Section 2807(e) (3) of the Public Utility Code, which states:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternate supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa.C.S. § 2807(e)(3).

In this regard, the statute is specific and mandatory, providing that with respect to POLR service, the EDC “shall recover fully all reasonable costs.” The statute does not say “partially” recover costs or that the EDC shall be provided the “opportunity” to recover its costs; rather it specifically and clearly states that the EDC “shall recover fully all reasonable costs.”

It is quite clear that without reconciliation, PPL Electric will not be assured full cost recovery. For example, without reconciliation, PPL Electric is at risk for underrecovery for supplier defaults, changes in administrative costs, for its Rate Schedule RTS rate design (in the event RTS sales are higher than projected in the GSC) and, potentially, for its Rate Schedule RS rate design under the stipulation with OCA. (PPL Electric St. 3-R, pp. 12-14; Tr. 181-187). Thus, it is clear and essentially undisputed that without reconciliation PPL Electric will not be assured full cost recovery, which is at odds with the express language of Section 2807(e)(3).

PPL Electric’s interpretation of Section 2807(e)(3) is supported by the Commission’s recent Policy Statement regarding universal service programs. *Final Investigatory Order*, Docket No. M-00051923, October 19, 2006 (“*Policy Statement*”). In this decision, the Commission interpreted Section 2804(9) of the Competition Act. That provision requires the Commission to ensure that universal service and energy conservation policies are appropriately funded and available, and specifically states that: “Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively-neutral cost-recovery mechanisms that *fully recover* the costs of universal service and energy conservation services.” (emphasis added). In the *Policy Statement*, the Commission held that this “fully recover” provision requires more than traditional “at risk” rate recovery: “Accordingly, the Commission must allow recovery through a surcharge that is either reconciled or adjusted frequently to track changes in the level of Cap Costs consistent with the direction

given in the Competition Acts.” *Policy Statement*, p. 15. The “fully recover” language in Section 2804(9) is identical in all relevant respects to the “recover fully” language of Section 2807(e)(3). Therefore, the same result should apply, and PPL Electric’s reconciliation proposal should be approved.

Dominion contends that the risks of under-recovery identified by PPL Electric are small and could be further reduced by revising the CBP to place additional risks on suppliers and to permit PPL Electric to immediately charge market-based rates in the event of a supplier default. (Dominion St. No. 1, pp. 6-7; Dominion St. No. 1-SR, p. 6). Such proposals, if implemented, would clearly impose additional and unnecessary costs on customers (see Section D.2.(c), *infra*) and more importantly, would not eliminate the risk of non-recovery. Even Dominion witness Butler acknowledged in his testimony that his proposals would only eliminate “most” risk (Dominion St. 1, p. 2), and he conceded on cross-examination that PPL Electric would still face some risk of non-recovery. (Tr. 238). Thus, Dominion has effectively conceded that its position on reconciliation does not comply with the “recover fully” language of Section 2807(e) (3).

c. PPL Electric’s Reconciliation Proposal Benefits Customers And Should Be Approved.

By assuring PPL Electric full cost recovery, reconciliation yields important benefits to customers that otherwise would not be available. First, and most importantly, reconciliation assures that customers will pay the actual cost incurred by PPL Electric to provide POLR service, no more and no less. (PPL Electric, St. 3-R, p. 7). And, relatedly, because PPL Electric is assured of full cost recovery, it does not seek, nor will it recover, any profit on its provision of POLR service. Without reconciliation, PPL Electric would be at risk of under-recovery and would require a profit “adder” to compensate it for that risk. (PPL Electric St. 3-R, p. 13). Therefore, reconciliation means lower rates for customers for regulated POLR service.

Assuring full cost recovery also permits PPL Electric to retain certain risks that otherwise would have to be reflected in the POLR price to customers. For example, while the SMA contains rigorous supplier credit provisions, there is a remaining risk of supplier default, particularly in a bankruptcy scenario. (PPL Electric St. 2-R, p. 14). With reconciliation, PPL Electric, in the event of default, would simply go to the market to purchase power and any difference in price would be reflected as an undercollection in the reconciliation provisions of the GSC. Without reconciliation, PPL Electric would have to price out that risk and reflect it as a premium in the POLR price charged to customers.

Similarly, reconciliation permits PPL Electric to phase-in certain rate changes during the 2010 bridge period. For example, the OCA, in its direct testimony, raised a concern that moving to full market prices in 2010 would result in disproportionate rate increases for Rate Schedule RTS customers, due to certain legacy provisions in that rate schedule. (OCA St. 1, p. 13). In its rebuttal testimony, PPL Electric addressed this concern by proposing to phase-in Rate Schedule RTS rates to market during 2010. (PPL Electric St. 1-R, p. 28). Any shortfall would be made up in slightly higher general residential rates. *Id.* However, maintaining this legacy rate design presents some risk of under-recovery. Specifically, under its revised proposal, PPL Electric would pay a flat rate for residential service under the POLR SMA, but the rate design of Rate Schedule RTS will be a rate nearly 1.35¢ per kWh less than the average residential group rate. If sales to this rate schedule are higher than projected, this rate design will cause PPL Electric to under-recover what it must pay to its supplier under the SMA. Without reconciliation, PPL Electric would not be willing to accept that risk. (PPL Electric St. 3-R, pp. 13-14).

As demonstrated above, reconciliation provides important benefits to customers and provides important flexibility to the Company and the Commission in designing POLR rate plans. It, therefore, should be approved.

d. Reconciliation Is Fully Consistent With The Development Of A Retail Competitive Market.

The non-joining EGSs contend that reconciliation is anti-competitive and will inhibit the development of a competitive retail market in PPL Electric's service territory.

In any event, Dominion Retail believes that any reconciliation is anticompetitive because it allows the company the ability to provide services at a lower cost with the ability to recover costs at a later date. ... Competitive suppliers serving mass market customers cannot reconcile their prices. In order for the playing field to be level, POLR service must be treated in the same fashion.

(Dominion St. 1-SR, pp. 6-7) There are several serious problems with this argument.

First, the non-joining EGSs, while complaining mightily, provide no evidence to support their claim, which, in fact, is entirely speculative. PPL Electric witness Kleha explained at length why any over/under collection factor resulting from reconciliation for 2010 is likely to be very small, if not *de minimus*:

[T]he GSC will provide for the annual reconciliation of any over-recovery or under-recovery associated with the difference between the Company's estimated costs to acquire generation supply and its actual costs incurred to acquire generation supply on behalf of its POLR customers. It is important to note that, because of the proposed structure of the Company's POLR supply procurement, PPL Electric expects that the annual reconciliation will be relatively small. Accordingly, reconciliation of the GSC should not have any significant impact on POLR rates and should not adversely affect retail competitive opportunities in PPL Electric's service area.

(PPL Electric St. 3, p. 4). Even Dominion witness Butler agreed that any reconciliation factor is likely to be very small:

The reconciliation proposed by PPL, on its face, appears to present minimal rate impact for customers in PPL's service territory. If the Commission was to accept Dominion Retail's suggestion that the costs of a wholesale supplier default, beyond the security that PPL might require, should be collected immediately by the POLR provider, then PPL's need for reconciliation is greatly diminished.

(Dominion St. 1-SR, p. 6). There is simply no credible evidence to support the claim that a minor surcharge or credit to 2011 POLR rates to reflect 2010 over/under collections will have any effect on the development of a competitive retail market in PPL Electric's service territory.

Second, the non-joining EGSs ignore the fact that the only issue presented for decision in this case is PPL Electric's claim for reconciliation of its 2010 POLR costs. This is a one-year bridge program to place PPL Electric and its customers on the same playing field as the rest of the Commonwealth in terms of retail electric competition. The non-joining EGSs do not, and presumably cannot, explain how approving reconciliation for one-year for one EDC will adversely affect the development of a competitive market in Pennsylvania.

e. PPL Electric's Reconciliation Proposal Is Consistent With All Relevant Practice And Precedent.

As explained below, PPL Electric's specific reconciliation proposal is a matter of first impression, as it has not been ruled upon in a litigated, precedential proceeding. However, there is substantial support for PPL Electric's proposal in related Pennsylvania proceedings and cases from surrounding jurisdictions. First, it should be noted that the Commission already has considered and accepted the reconciliation of a portion of the electricity services provided to customers in PPL Electric's last distribution rate case. In that case, PPL Electric proposed a Transmission Service Charge ("TSC") to permit retail recovery of FERC-approved transmission charges. The TSC, as proposed by PPL Electric, was fully reconcilable. Several parties objected to PPL Electric's proposal. The Commission approved PPL Electric's fully reconcilable TSC. *Pa. P.U.C. v. PPL Electric Utilities Corp.*, 2004 Pa.PUC LEXIS 40, *107-112. The same

procedure should be adopted here. Indeed, since both the GSC and the TSC are part of the price-to-compare, it would be fundamentally inconsistent to reconcile one and not the other.

Second, POLR rates are regulated rates established by the Commission, and there is a long line of Commission practice and precedent permitting reconciliation of costs which are substantial in nature, beyond the utility's control, and where the utility does not seek to earn a return on the costs in question. See *Popowsky v. Pa. P.U.C.*, 869 A.2d 1144 (Pa. Cmwlth. 2005). For example, generation fuel and interchange costs previously were recovered through an Energy Cost Rate, which was fully reconcilable. Emission allowances also were allowed to be recovered through the Energy Cost Rate. 52 Pa. Code § 69.294. Changes in state tax rates are recovered through the reconcilable State Tax Adjustment Surcharge. 52 Pa. Code § 69.51-69.56 (Exhibit A). Stranded costs are recovered through two fully reconcilable charges, i.e., the Competitive Transition Charge and Intangible Transition Charge. (PPL Electric St. 3-R, p. 10). Gas utilities were permitted to recover transition costs incurred under FERC Order 636. 52 Pa. Code § 69.341. The costs at issue here, i.e., the cost of obtaining POLR supply at prevailing market prices, are similar to these costs, i.e., they are substantial, beyond PPL Electric's direct control, and contain no element of return. Reconciliation therefore is consistent with this long line of Commission precedent and should be approved.

Third, PPL Electric's proposed procurement strategy calls for the supplier to meet the standards for alternative energy sources set forth in the AEPS Act. (PPL Electric St. 2, p. 8). Section 1648.3 of the AEPS Act specifically provides that the EDC shall be permitted to recover all costs of compliance through an automatic and reconcilable adjustment clause. (73 P.S. § 1648.3). Reconciliation of the GSC, therefore, also is consistent with this standard.

Fourth, as explained above, PPL Electric's argument that reconciliation is required by the full recovery language in Section 2807(e)(3) is precisely the same argument recently adopted by the Commission in interpreting identical full recovery language in Section 2804(9) of the Code. The same result should apply here.

Finally, a review of surrounding jurisdictions reveals that many states provide for reconciliation of POLR costs. As explained by Mr. Kleha:

It is my understanding that other states in the Mid-Atlantic region, e.g., Connecticut, Delaware, Maryland, Massachusetts, New Jersey and the District of Columbia, provide a means by which utility companies can reconcile, or true-up, revenues to match actual expenditures incurred to provide POLR service. Thus, there are simple pre-approved mechanisms that allow for an accurate, verifiable accounting of expenditures for POLR service against the revenues collected from customers taking that service. Such mechanisms are the norm as opposed to the exception. In other Northeastern states, reconciliation is an integral part of the POLR service rate structure.

(PPL Electric St. 3-R, pp. 11-12). Thus, PPL Electric's reconciliation proposal is fully consistent with the practice of neighboring jurisdictions and should be approved.

The non-joining parties cite the Commission's proposed POLR regulations and the Commission's recent *Penn Power* POLR decision to support their opposition to reconciliation. (Dominion St. 1, pp. 2-3). Neither citation provides any support for their position. First, the Commission's regulations clearly are draft only and do not constitute a final Commission position on any issue, including reconciliation. Second, the *Penn Power* decision was specifically designated by the ALJ and the Commission as non-precedential. See *Petition of Penn Power Company, supra*, p. 13. It therefore cannot and should not be cited as precedent for any issue in this proceeding. Moreover, the *Penn Power* decision on reconciliation is currently on appeal on the grounds that it violates the full recovery provisions of Section 2807(e)(e) of the

Public Utility Code. (*Pennsylvania Power Co. v. Pa. P.U.C.*, Commonwealth Ct. Docket No. 1004 CD 2006, filed May 25, 2006).

For the reasons set forth above, PPL Electric's reconciliation proposal is fully consistent with all relevant and applicable precedent and, therefore, should be approved.

f. Reconciliation Is Particularly Appropriate In This Case Which Establishes Only A One-Year Non-Precedential Program.

PPL Electric repeatedly has emphasized that its program is for one year only and should not be considered precedential in any way for future proceedings or for Commission POLR regulations. It is apparent, however, that the non-joining parties' opposition to reconciliation is largely premised on their concern that it will establish precedent for PPL Electric in the future or for other EDC POLR proceedings. (Dominion St. 1-SR, p. 30). This concern can be easily addressed by simply noting that approval of PPL Electric's reconciliation proposal is for 2010 only and is expressly non-precedential for any future proceedings.

3. If PPL Electric's Reconciliation Proposal Is Rejected, Then The CBP Must Be Substantially Modified.

As explained above, PPL Electric believes that its reconciliation proposal is reasonable and should be approved. However, should this proposal be rejected, other modifications must be made to the CBP. Without reconciliation, PPL Electric will be exposed to risk of non-recovery and must be compensated for that risk through a profit adder to be added to the POLR rate. (PPL Electric St. 3-R, p. 13).

In addition, PPL Electric proposed in its rebuttal testimony to phase in Rate RTS to market prices to avoid disparate impact on these customers. However, this clearly exposes PPL Electric to risk of non-recovery of its POLR costs. Without reconciliation, this phase-in cannot be offered and would have to be withdrawn. (PPL Electric St. 3-R, pp. 13-14).

Finally, there is a clear risk of supplier default, which also is covered by reconciliation. Without reconciliation, the CBP would need to be amended to provide that PPL Electric could immediately begin to charge market prices to customers if it has to go to the market to purchase power in the event of a supplier default that is not covered by the supplier's security (i.e., unsecured credit). (PPL Electric St. 3-R, p. 14).

E. Constellation's Revisions to the SMA

As part of its initial filing, PPL Electric included proposed forms for both the RFP Rules and the POLR SMA. (PPL Electric Exh. JC-1). Other than Constellation, no party has proposed any modifications or changes to these documents. Constellation proposed a number of relatively minor revisions, which PPL Electric, after review, accepted. These revisions are reflected in the PPL Electric/Constellation Stipulation, and are described in Section II.B.5 of this Brief.

Constellation, however, also proposed a more substantial change to the default Section of the SMA. Specifically, Article 12 sets forth a formula for calculation of a Termination Payment which is due and owing upon default by PPL Electric or the Supplier. Under PPL Electric's proposed SMA, the Termination Payment is a "one-way" payment, i.e., it calculates the amount to be paid by the defaulting party to the non-defaulting party. (PPL Electric St. 2-S, p. 1). Constellation proposes to amend this provision so that a Termination Payment also could be made to the defaulting party by the non-defaulting party, i.e., a "two-way default" provision. (PPL Electric St. 2-S, p.2). For the reasons set forth below, Constellation's proposed revision to the SMA should be rejected.

First, PPL Electric believes that a two-way default provision is poor contract design, because it potentially would encourage parties to default on their contractual obligations. Parties should honor their contractual obligations and should not be able to receive a financial reward for breaching those obligations. (PPL Electric St. 2-S, p. 3).

Second, a two-way default provision would be particularly inappropriate for the SMA. The SMA is a contract between a regulated utility and an unregulated supplier. PPL Electric as POLR supplier is entitled, by statute, to fully recover all reasonable costs of 2010 POLR service, and has filed this Petition, in part, to obtain Commission approval for its POLR supply plan. As a result, there is no practical risk of default by PPL Electric. Therefore, the default provisions of the SMA are designed principally to protect against the possibility of a supplier default. (PPL Electric St. 2-S, p. 2). Under the amendment proposed by Constellation, the supplier could default on the contract, force PPL Electric to go to the spot market to buy replacement power, charge customers for that power, and then make a payment to the defaulting supplier, which would presumably also be paid for by customers as a cost incurred by PPL Electric to provide POLR service. This would be an extraordinarily poor policy result that the Commission should not sanction.

Third, it is inappropriate to revise the SMA for this issue on a piecemeal basis. Constellation contends that other energy supply contracts contain a two-way default provision (Tr. 254-55), but as explained by Mr. Cavicchi, these contracts also contain additional protections for the POLR utility not found in the SMA, most particularly liquidated damages. (PPL Electric St. 2-S, p. 5). A two-way default provision should not be added piecemeal to the SMA without a thorough evaluation of the default provisions and protections provided to PPL Electric and its customers. Constellation has provided no such evaluation.

Constellation, in oral rejoinder testimony, lists a parade of adverse consequences if its two-way default proposal is rejected and “violently” opposes PPL Electric’s position. (Tr. 269). It is simply not credible to assert that if a one-way default provision is adopted, Constellation may not bid, or if it does bid, it will add a substantial premium, and that it will be completely

unable to compete against certain financial institutions.²¹ Moreover, if a wholesale supplier seriously will not submit a bid unless the contract provides that it can receive a payment if it defaults on its binding contractual obligations, then PPL Electric submits that it is questionable whether it is in the public interest for such supplier to participate in PPL Electric's or any other Pennsylvania EDC's procurement process.

F. Transmission Service Issues

As part of its original CBP, PPL Electric proposed that the supplier under the POLR SMA provide both generation and transmission services (PPL Electric St. 2, p. 8). OTS and OCA raised concerns regarding this proposal. (OTS St. 2, p. 7; OCA St. 1, pp. 19-20). In rebuttal, PPL Electric addressed these concerns by proposing to move ancillary services to the POLR supplier, with the Company continuing to provide transmission service within the PPL Zone. (PPL Electric St. 3-R, p. 3). OTS and OCA both accepted this alternative; however, OSBA and Constellation raised certain concerns about this revision, which are addressed below.

OSBA expressed concern that if PPL Electric retains transmission service responsibility, it may be difficult to obtain comparable POLR supply bids because of different congestion other transmission charges which may apply depending on the source of generation used to supply POLR load. (OSBA St. 3-SR, p. 4). PPL Electric addressed these concerns in rejoinder testimony by clarifying that the delivery point for supply under the SMA is the PPL Zone within PJM, that there should be no congestion charges imposed within the PPL Zone and that in any

²¹ Ms. Phillips asserted for the first time in an oral reply to surrebuttal testimony that the Financial Netting Improvements Act of 2006 gives certain "competitors" an advantage in the event of a "one way" default provision. (Tr. 271). Such assertion is made in summary fashion, with no explanation of how a "two-way" default provision cures this alleged inequity under this Act. PPL Electric has reviewed the Act and has identified nothing in the Act that references or distinguishes between "one way" or "two way" defaults. In any event, any alleged advantage Congress has chosen to give financial institutions should not be used to justify a payment to a defaulting party in an energy supply agreement.

event, the supplier is responsible for all congestion charges. (Tr. 158, 264-65). OSBA appeared to be satisfied with this explanation, and this issue appears to be resolved. (Tr. 211).

Constellation notes that the proposed revision to PPL Electric's plan regarding transmission service will require certain conforming changes to the POLR SMA. (Constellation St. 1-SR, p. 7). In support of this position, Constellation included in its surrebuttal testimony a proposed markup of the SMA to reflect changes which it believes are necessary to reflect the change in the provision of transmission service. (Constellation Exh. MRP-3). PPL Electric agrees that certain revisions are required to the SMA, but was not able to fully review and respond to the Constellation markup, given that it was supplied on one business day before the start of hearings. (Tr. 263). However, PPL Electric and Constellation have entered into a stipulation, described previously, see Section II.B.3 of this Brief, which establishes a procedural mechanism for input and decision on these issues by means of a collaborative among the parties and if necessary, a decision by the Commission as to any unresolved issues as part of the compliance filing in this case. Thus, there are no transmission issues to be decided by the ALJ other than approval of the PPL Electric/Constellation stipulation.

G. The Objections To PPL Electric's Existing GRA Should Be Denied.

Since June 2001, PPL Electric's Commission-approved tariff has included a GRA, following a fully-litigated proceeding at Docket Nos. C-00003811 and R-00006034. (PPL Electric St. 3-R, p. 17). The original GRA was developed in response to the guidelines set forth in the Commission's Order issued June 22, 2000, at Docket No. M-00960890F0017, in which the Commission authorized EDCs to adopt tariff provisions to protect against "seasonal gaming" (i.e., customers switching from EGS to fixed rate POLR service for short-term price advantage). (PPL Electric St. 3-R, p. 17). The GRA provides such protection by charging customers the difference between market prices and fixed annual POLR prices if the customer returns to POLR

service and then leaves POLR service within a one-year term. (PPL Electric St. 3-R, p. 17; Tr. 136). The GRA is calculated for each month of the less-than-twelve month period that the customer received POLR service. (PPL Electric Exh. DAK-1; Tariff page 201).

FES witness Prezjel objects to retaining the existing GRA, arguing that it is a “barrier” to shopping. PPL Electric disagrees. The existing GRA continues to serve as an important protection against “seasonal gaming” and should be retained. Short-term gaming creates uncertainty for POLR bidders, thereby increasing their bids. This is unfair to customers who choose a fixed rate POLR service for a full year, recognizing that the fixed rate reflects an average of seasonal high and low prices. (PPL Electric St. 3-R, pp. 18-19). Any revenues collected from the GRA related to service in 2010 would be remitted to the wholesale suppliers, by applicable customer class, to compensate them for the cost of this inappropriate behavior.

Contrary to FES’s assertions, the GRA is not an impediment to shopping, as any customer who has taken POLR service for a year or longer may shop and not be subject to the GRA. (Tr. 136-137). The existing GRA is appropriate and should be retained.

H. SEF’s Objections To PPL Electric’s Customer Education Funding Are Without Merit.

SEF has raised several objections to PPL Electric’s funding of customer education. To some degree, SEF’s objections have been mooted by PPL Electric’s agreement to undertake collaborative meetings with interested parties to further develop PPL Electric’s customer education program. (PPL Electric St. 1-R, 34). However, certain objections remain unresolved.

SEF proposed in direct testimony that PPL Electric hire SEF to develop a home energy audit program to provide ratepayers with information regarding ways to reduce energy usage. (SEF St. 1, p. 14). However, SEF’s proposal, in addition to being self-serving, is costly. In discovery, SEF estimated that its program would cost \$1.25 million to provide home inspections

to 7,000 customers as a “first phase”. (PPL C.E. Exh. 1). SEF’s testimony offers no source of funding for this program.

PPL Electric supports the development of a home energy audit process for PPL Electric’s customers; however, it does not need to hire SEF to manage such a process, as Mr. Krall explained:

The customer interface to the meter data management system that I described previously includes a rather sophisticated, web-based, interactive home energy audit that the Company believes will be very useful in helping customers to understand their energy usage and to explore opportunities they have to use energy more wisely and reduce their electricity bills. Because this tool is interactive and web-based, the Company believes that it will be able to provide significant education to customers about the tool and its use within the \$875,000 budget proposed.

(PPL Electric St. 1-R, p. 38).

In response to this explanation by Mr. Krall, SEF presented a revised proposal in surrebuttal in which PPL Electric would set aside “a portion” of its education budget – SEF suggests \$100,000 initially, to undertake on-site home energy audits. This initial funding would be for an initial “phase” of SEF’s proposal, with an “agreement” by PPL Electric to “collaborate” with SEF on funding future phases of SEF’s proposal. (SEF St. 1-SR, p. 4). It appears that SEF has just scaled down the initial number of homes to be inspected, in exchange for an open-ended commitment by PPL Electric to further expand the program.

PPL Electric continues to object to any DSM-type program that is proposed to be undertaken without a source of funding. In *Columbia Gas of Pennsylvania, Inc. v. Pa. P.U.C.*, 613 A.2d 74, 79-81 (Pa. Cmwlth. 1992), the Commonwealth Court rejected a disallowance of certain costs that were incurred between rate cases as a result of a Commission directive to utilities to undertake a new program, without providing funding for the program. Similarly,

Section 2804(9) provides that the costs of energy conservation policies, activities and services must be funded by a cost-recovery mechanism that fully recovers the cost of such services. Even with funding, PPL Electric questions the appropriateness of paying for inspections for selective homeowners with no regard for need for assistance. SEF's home inspection proposals should be rejected.

SEF also has questioned PPL Electric's total education budget of \$875,000. This budget amount represents remaining funds in its current customer choice education account. Limiting the funding to this amount avoids the need to develop a new collection mechanism at this time.

See, Columbia.

Furthermore, PPL Electric believes that this funding level is sufficient to provide necessary information related to the one year CBP, as Mr. Krall explained:

The remaining issue is whether \$875,000 represents enough funding to carry out on-going customer choice education plus new initiatives related to implementation of the CBP; keeping in mind that the CBP will only be in place for a single year and may not reflect the long-term characteristics of POLR regulations. The Company continues to believe that \$875,000 is sufficient for the purpose of educating consumers regarding issues they may face arising from the CBP. The Company does agree with other parties that a more comprehensive consumer education program will be needed to educate consumers consistent with the Commission's final rules on POLR supply. Part of the Company's rationale for advocating a standard statewide POLR process is that such a process can be more effectively communicated to customers using statewide media than processes that are unique to individual service territories. Such a consumer education program should, logically, be part of the implementation of a statewide process and not part of a one-year effort.

(PPL Electric St. 1-R, pp. 37-38).

For reasons explained herein, SEF's objections to PPL Electric's education funding should be rejected.

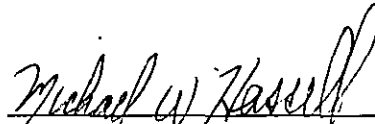
I. Other Issues Resolved By Stipulation.

Various other issues have been resolved by stipulation of the parties, subject to approval of PPL Electric's Revised CBP and adoption of the various stipulations as described in Section II.B of this Brief. PPL Electric will provide brief identification of these resolved issues, and a citation to PPL Electric's response to the issues:

- OTS's objection to 85 percent cap on number of tranches on which suppliers may bid – PPL Electric St. 2-R, pp. 9-11.
- OCA's proposal to retain block rates for Rate Schedule RS – PPL Electric St. 1-R, pp. 25-29.
- PennFuture's proposal for bidding AEPS Tier 1 resources – PPL Electric St. 1-R, pp. 43-45.
- PennFuture's proposals regarding DSR and energy efficiency – PPL Electric St. 1-R, pp. 38-43.

IV. CONCLUSION

PPL Electric's Revised CBP reflects a broad consensus of agreement for a one year, non-precedential bridge to statewide competition in 2011. The Revised CBP, along with the associated stipulations, are in the public interest and should be approved in their entirety. The remaining objections of a limited number of parties should be dismissed.



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Date: January 12, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Petition of PPL Electric Utilities :
Corporation for Approval of a Competitive : Docket No. P-00062227
Bridge Plan :

**APPENDIX A TO THE
MAIN BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

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Proposed Findings of Fact

1. By its terms, the Generation Supply Agreement (“GSA”) between PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) and PPL EnergyPlus, LLC terminates on December 31, 2009, and, after that date, PPL EnergyPlus has no obligation to provide generation supply to PPL Electric. As a result, beginning January 1, 2010, PPL Electric must obtain the generation supply needed to meet its POLR obligations from the competitive market. (PPL Electric St. No. 1, p. 6).

2. The termination of PPL Electric’s POLR rate caps on December 31, 2009, will mark the end of a 14-year period of rate stability. Since 1996, the Company’s POLR rates have changed only to reflect slight adjustments permitted by its restructuring settlement. (PPL Electric St. No. 1-R, p. 8-9).

3. The Company has estimated that the increase in price for generation supply to meet its POLR obligations beginning January 1, 2010 will be on the order of 20% to 30%. This amount could be higher or lower based on actual market prices over the next several years. (PPL Electric St. No. 1, p. 7).

4. The Competitive Bridge Plan will only be in effect for a one-year period and will not set policy or precedent for other companies or for any POLR plans after 2010. (PPL Electric St. No. 1, p. 9).

5. On January 1, 2011, transition periods end for the other major EDCs in Pennsylvania – Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company and West Penn Power Company. (PPL Electric St. No. 1, p. 10).

6. At the end of 2010, PPL Electric will be on the same schedule as the other major EDCs in Pennsylvania. The result of adoption of PPL Electric's Competitive Bridge Plan ("CBP") will be a statewide transition to competitive POLR rates pursuant to Commission POLR regulations that are expected to be in place to guide future supply procurement and cost recovery. (PPL Electric St. No. 1, p. 12).

7. It is anticipated that, before January 1, 2011, the Commission will promulgate comprehensive regulations to address POLR procurement and rate issues for 2011 and beyond. (PPL Electric St. No. 1, p. 11).

8. The Commission's final POLR regulations have not been issued and none of the parties knows when the final regulations actually will be issued. (PPL Electric St. No. 1, p. 14).

9. If the Commission's POLR regulations are effective before 2011, PPL Electric requests in its Petition a waiver of those regulations to the extent necessary to honor any agreements for 2010 POLR supply previously entered into under the CBP. On a prospective basis, PPL Electric would comply fully with the Commission's POLR regulations. (PPL Electric St. No. 1, p. 13).

10. Implementation of the Company's proposed CBP may provide additional information and experience useful in development of the Commission's final regulations. For example, the Company has carefully considered and evaluated POLR procurement processes and governing documents from throughout the Mid-Atlantic region when developing its CBP. (PPL Electric St. No. 1, p. 13).

11. PPL Electric will remain the POLR for its retail customers. (PPL Electric St. No. 2, p. 8).

12. PPL Electric proposes to obtain POLR supply for the following three separate customer classes: (1) residential; (2) small commercial and industrial ("Small C&I") (taking service at secondary voltage levels); and (3) large commercial and industrial ("Large C&I") (taking service at primary and transmission voltage levels). (PPL Electric St. No. 2, p. 6).

13. In its CBP, PPL Electric is seeking bids for three products - fixed price firm service for each of the three customer classes. (PPL Electric St. No. 1, p. 17-18).

14. All of the major utilities in the Commonwealth currently offer a fixed price option of some kind to their largest customers. Most of these utilities' plans are in place through 2010. (PPL Electric St. No. 1-R, p. 12).

15. Customers served under PPL Electric's Rate Schedule LP-4 include hospitals, schools, government buildings, and others that will be unable to respond to hourly prices. (PPL Electric St. No. 1-R, p. 13).

16. The retail market may offer these customers a fixed price alternative, but it would be very risky to assume that this will occur immediately following an extended period during which rates have been capped. (PPL Electric St. No. 1-R, p. 13).

17. PPL Electric proposes to conduct a single solicitation for fixed price service for Large C&I customers for 2010. The solicitation would take place in October 2009. Interested Large C&I customers would sign up for this solicitation in advance. PPL Electric will conduct the solicitation and inform customers of the resulting prices. Customers would then have 30 days to select, or "opt in" to, the fixed price service for 2010. (PPL Electric St. No. 1-R, p. 14).

18. Those customers who do not sign up for the solicitation and those customers who sign up for the solicitation but do not accept the price resulting from the solicitation will receive real time hourly service for 2010 as their POLR default service. (PPL Electric St. No. 1-R, p. 14).

19. Large C&I customers, including those who sign up for fixed price service, will be free to shop in 2010 without restriction, except that (1) they must comply with the existing GRA; (2) they must comply with existing switching rules which require that retail suppliers provide notice of a customer's desire to leave POLR at least 16 days prior to the meter reading when the change in supplier is to take effect; and (3) if they wish to return to POLR they cannot return to fixed price service and must, instead, take real-time hourly POLR service. (PPL Electric St. No. 1-R, p. 14-15).

20. Large customers are more sophisticated in their energy purchases and, therefore, a default to hourly pricing is not unreasonable. (PPL Electric St. No. 1-R, p. 15).

21. PPL Electric's proposal to provide education on the options available to customers, solicit customer interest in a fixed price service, and then seek confirmation from those customers after the price of that service has been determined will minimize the possibility of customers making uninformed decisions. (PPL Electric St. No. 1-R, p. 15).

22. Amounts collected under the GRA will not be retained by the Company, but, instead, will be distributed on a pro rata basis to the suppliers serving the applicable customer class, recognizing that the financial impact of the switching directly affects those suppliers. (PPL Electric St. No. 1, p. 8).

23. The GRA requires customers who return from shopping to remain with the company for twelve months. However, if a customer has received POLR supply for more than twelve months, then thereafter the customer chooses to shop, the GRA would not apply because the customer would have satisfied their twelve month obligation. (Tr. 137).

24. For small and large commercial and industrial customers, the Company's proposal is to replace its existing block pricing for generation with a flat cent per kWh charge. As a consequence, under the CBP, PPL Electric customers would see the same price per kWh for generation regardless of the amount of electricity they consume. Any remaining block structure

pricing that customers experience will be related to the Company's distribution rates, which are not a subject of these proceedings. (PPL Electric St. No. 1-R, p. 21).

25. Because it is impossible to accurately predict future wholesale market prices, some of the Company's procurements will be at higher prices and some will be at lower prices, but, over time, the overall cost will be an average of the year 2010 market prices prevailing at the times of the solicitations. (PPL Electric St. No. 2, p. 4).

26. It is not prudent to wait and buy at one time all the supply necessary for January 1, 2010, because that one day in time may follow a hurricane or other major disruption. (Tr. 86).

27. It is not an appropriate risk to take with 1.3 million customers for an essential service like electricity to attempt to find the "best day" to buy power, given the risk that you might pick the "worst day" to buy power by doing so. (Tr. 88).

28. In each RFP, the Company will procure a pro rata portion of the estimated 2010 POLR load for each customer class. The portion of total POLR supply included in each RFP will be established such that, over the three-year period, a total of 60 tranches will be purchased for the residential class (6 solicitations of 10 tranches each); and a total of 42 tranches will be purchased for the small commercial and industrial class (6 solicitations of 7 tranches each). (PPL Electric St. No. 2, p. 7).

29. Each tranche will be a fixed percentage of the customer class' POLR load, with that percentage estimated to produce tranches of approximately 50 MW. For example, each tranche for the residential class will be approximately 1.7% of the class POLR load based on current Company forecasts. (PPL Electric St. No. 2, p. 7).

30. If insufficient bids were received in a solicitation, the unfilled tranches would roll over to the next solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.5.2, p. 28).

31. The POLR Process and Rules also establish a process for filling any unserved tranches remaining after the last solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.3.2, p. 28).

32. Supply must be load-following and must include generation from renewable sources sufficient to meet the Company's 2010 obligations under the Alternative Energy Portfolio Standard ("AEPS") Act. (PPL Electric St. No. 2, p. 7).

33. PPL Electric will be asking bidders to bid to serve customers at LMP plus an hourly adder. The hourly adder will reflect administrative charges, capacity and estimate of lines losses. (Tr. 131).

34. Potential wholesale bidders will be required to comply with the POLR RFP Process and Rules, will be required to execute the POLR Supplier Master Agreement ("POLR SMA") and will be required to post security as protection against supplier default. (PPL Exhibit JC-1, PPL Electric St. 2, p. 9).

35. PPL Electric proposes that the PUC authorize it to hire an independent third party to administer the solicitation process. That independent third party would report directly to the PUC and would coordinate its oversight activities with PUC personnel. (PPL Electric St. No. 2, p. 10).

36. PPL Electric proposes that the PUC monitor each step of the process, including selection of the third party administrator, implementation of the RFP, evaluation of bids and final selection of winning bidders. (PPL Electric St. No. 2, p. 11).

37. Under the CBP, the supplier or the seller will be responsible for congestion costs, pursuant to Article 4.1 of the Master Supply Agreement. (Tr. 158).

38. PPL Electric will acquire network integration transmission service for its POLR customers. These costs relate to the PPL Electric zone only. The supplier is responsible for supplying energy for delivery to the PPL Electric zone. The SMA indicates that the delivery point for energy from the supplier is the PPL Electric Zone. PPL Electric will be responsible for network integration transmission service within its zone and from the delivery point to its customers. The supplier, on the other hand, will be responsible for transmission service for getting the power to the PPL Electric Zone. (Tr. 173 and 264).

39. The CBP provides that the Company will obtain directly from PJM the transmission services required to move POLR supply within PJM; ancillary services will be obtained by the POLR suppliers. (PPL Electric St. No. 3-R, p. 3).

40. The Company proposes to establish a new rate mechanism, the Generation Service Charge ("GSC"), for each of the three customer classes – residential, small commercial and industrial, and large commercial and industrial.

41. The GSC will provide for the annual reconciliation of any over-recovery or under-recovery associated with the difference between the Companies's estimated costs to acquire generation supply and its actual costs incurred to acquire generation supply on behalf of its POLR customers. (PPL Electric St. No. 3, p. 4).

42. The GSC will replace the generation charges that currently appear on customers' bills. The GSC will be structured as a flat "cents per kilowatt-hour" charge. (PPL Electric St. No. 3, p. 5).

43. The GSC will be calculated separately for each of the three Customer Classes. The GSC will include PPL Electric's other costs of administering the various solicitations for POLR supply, e.g., the costs to undertake the RFP processes, the cost of a third-party administrator/evaluator and PPL Electric's costs of implementation. The GSC rate will be calculated on the basis of the Company's total kWh sales to POLR customers by customer class projected for the computation year (January 1 through December 31, 2010). The GSC will be

grossed up to reflect the Pennsylvania Gross Receipts Tax rate in effect during the billing month. Finally, the GSC will be fully reconcilable on an annual basis, as the GSC will include an "E" factor reflecting the actual net over or undercollection of revenue associated with the acquisition of generation supply for POLR customers as of the end of the 12-month period ending November 30 immediately preceding the computation year. The E-factor will be \$0 for 2010, and any reconciliation amount for 2010 would be reflected in rates for 2011. (PPL Electric St. No. 3-R, p. 4 and 6).

44. The Company will file with the Commission, by December 1 of each year, an annual reconciliation of GSC revenue recovered during the immediately preceding application period. The reconciliation will become effective for service rendered on and after January 1 and will remain in effect for a period of one year, or until new GSC rates are approved by the Commission. Reconciliation of the GSC will be conducted separately for each of the three Customer Classes. (PPL Electric St. No. 3-R, p. 7).

45. The Company is not proposing to earn any return or profit on POLR service; consequently, it should not be exposed to any risk of loss. In proposing reconciliation of the GSC, the Company simply is attempting to recover fully all reasonable costs incurred to obtain POLR supply, as contemplated by the Customer Choice Act. (PPL Electric St. No. 3-R, p. 8).

46. By minimizing, to the extent possible, restrictions on shopping, the Company's Competitive Bridge Plan supports the continued development of competitive retail markets in Pennsylvania. (PPL Electric St. No. 1, p. 8).

47. POLR service that mitigates price volatility does not, in and of itself, discourage retail competition. (PPL Electric St. No. 2-R, p. 3).

48. PPL Electric intends to employ a third party evaluator to run the laddered solicitations and does not intend to independently publish results of the laddered solicitations, other than as would be necessary as part of the publication to the Commission by the evaluator. (Tr. 92).

49. The CBP's laddered procurement, combined with PPL Electric's commitment to provide hourly customer load data to retail competitors, will not prevent retail suppliers from offering supply products with varying terms and conditions. (PPL Electric St. No. 2-R, p. 5).

50. The load cap for solicitations intends to ensure that entry deterrence does not occur, and that robust competition is encouraged among potential suppliers. Entry deterrence is very difficult to detect, and without the load cap it is likely that there would no means by which to assess if small suppliers had been deterred. (PPL Electric St. No. 2-R, p. 9).

51. The SMA agreement has default provisions that include both technical defaults and performance defaults. Under the one-way default provision, in the event of a default by the supplier, the supplier would lose the forward value of the contract, if any. However, the buyer would have discretion in whether it wished to enforce that clause. (Tr. 260).

52. There is no basis to conclude that a one-year forward price established in 2009 for 2010 will be more reflective of actual market prices in 2010 than a three-year laddered acquisition. Supplies obtained at different points in time, if procured from the wholesale markets at competitively established prices, constitute service established by prevailing market prices. (PPL Electric St. No. 2-R, p. 7-8).

53. PPL Electric's POLR service under the Competitive Bridge Program is an appropriately priced market-based service. (PPL Electric St. No. 2-R, p. 3).

54. In this filing, PPL Electric proposes to implement a comprehensive consumer education program (in addition to its existing programs) beginning in 2007 and continuing through 2009. This program will be funded using the approximately \$875,000 that remains in its current customer choice education account. (PPL Electric St. No. 1, p. 21-22).

55. Without knowledge of forward prices, the calculation of a monthly budget amount for customers participating in the budget billing program would be pure guesswork with the result that the annual budget reconciliation would become extremely volatile and, ultimately, defeat the purpose of having a budget. (PPL Electric St. No. 1-R, p. 23).

56. Approximately 155,000 customers (14% of all residential customers) participate in the budget billing program. (PPL Electric St. No. 1-R, p. 23).

57. The Company currently is installing a meter data management system that includes the following:

- A customer interface that will permit customers to analyze and better understand their electricity usage and bills,
- A data repository capable of storing two years of hourly reads from all customers,
- A complex billing engine that will be capable of billing customers using hourly data, and
- A settlement system that will permit customers' usage to be settled using their actual hourly data rather than load profile information.

The installation of these additional capabilities will provide PPL Electric's customers with understanding and tools that will permit them to manage their consumption of electricity and their electric bills in a market environment. (PPL Electric St. No. 1-R, p. 9-10).

58. PPL Electric has been implementing an Advanced Metering Infrastructure project that will provide all of its customers with hourly demand monitoring. This metering system will make available to all PPL Electric customers detailed information on instantaneous and cumulative usage. Subject to appropriate authorization by individual customers, PPL Electric will make these data available to potential EGSs. (PPL Electric St. No. 2-R, p. 3).

59. PPL Electric will start populating the database generated from the advanced metering infrastructure system in 2007. (Tr. 95).

60. It is not appropriate to establish extensive new energy efficiency and conservation programs in the context of a one-year bridge plan for POLR supply. (PPL Electric St. No. 1-R, p. 41).

Conclusions of Law

1. The multiple solicitations under the CBP are in compliance with the “prevailing market price” standard of the Electricity Generation Customer Choice and Competition Act (“Customer Choice Act”), 66 Pa.C.S. § 2807(e)(3).

2. The reconciliation provision under the CBP is in compliance with the provision of the Customer Choice Act that requires that the EDC “shall recover fully all reasonable costs.”

3. A fixed rate option for Large Commercial and Industrial Customers with a real time hourly default service option is appropriate.

4. The Revised CBP shall be considered non-precedential.

5. The Revised CBP appropriately provides for compliance with the Alternative Energy Portfolio Standards Act (“AEPS Act”) by requiring winning bidders to certify compliance with the AEPS Act and requiring subsequent proof of compliance.

Suggested Ordering Paragraphs

1. The Revised Competitive Bridge Plan, as described at pages 12 to 20 of PPL Electric's Main Brief, is approved.

2. The stipulation between PPL Electric and Reliant (PPL C.E. Exh. 2) is adopted.

3. The stipulation between PPL Electric and OTS (PPL C.E. Exh. 3) is adopted.

4. The stipulation between PPL Electric and OCA (PPL C.E. Exh. 4) is adopted.

5. The stipulation between PPL Electric and Constellation (PPL C.E. Exh. 5) is adopted.

6. The stipulation between PPL Electric and PennFuture (PPL C.E. Exh. 6) is adopted.

7. PPL Electric is granted a waiver from the Commission's final POLR regulations, if those regulations become effective prior to 2011, to the extent necessary to honor any contracts for 2010 POLR supply previously entered into under the Revised CBP.

8. The POLR SMA, as finally approved by the Commission, will be approved as an Affiliated Interest Agreement.

9. The Commission will neither order nor approve any wholesale or retail "opt out" customer aggregation plan for PPL's service territory between January 1, 2007 through December 31, 2010.

CERTIFICATE OF SERVICE

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

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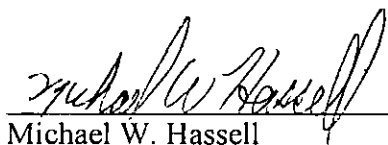
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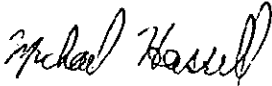
RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation re: Petition of PPL Electric Utilities Corporation for Approval of A Competitive Bridge Plan, Docket No. P-00062227

Dear Mr. McNulty:

On page 20, line 19 of PPL Electric Utilities Corporation's ("PPL Electric's") Main Brief, PPL Electric inadvertently referred to Reliant Energy, Inc ("Reliant") when intending to refer to Strategic Energy, LLC ("Strategic"). Enclosed please find an original and nine (9) copies of the Corrections to the Main Brief of PPL Electric Utilities Corporation, which correct this error. Also please find a corrected copy of page 20. We apologize for any inconvenience.

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

Respectfully submitted,



Michael W. Hassell

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MWH:skr

Enclosures

cc: Honorable Marlane R. Chestnut
Certificate of Service

106

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities :
Corporation for Approval of a Competitive : Docket No. P-00062227
Bridge Plan :
:

PPL ELECTRIC UTILITIES CORPORATION'S CORRECTIONS TO
MAIN BRIEF

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Page 20, LN 19 – Replace “Reliant” with “Strategic”

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Attorneys for PPL Electric Utilities Corporation

determine the appropriate funding levels for its low-income programs. (PPL Electric St. 4-R, p. 2). PPL Electric further confirmed that it did not intend to request any deferral of low-income program costs for future recovery. (PPL Electric St. 4-R, p. 3). Rather, PPL Electric will propose, in a future filing, to establish a reconcilable surcharge mechanism for prospective recovery of low-income program costs, in accordance with the Commission Order on universal service program funding at Docket No. M-00051923. (*Final Investigative Order*, Docket No. M-00051923, October 19, 2006, p. 18; PPL Electric St. 4-R, pp. 2-3). In addition, in response to concerns raised by OSBA witness Kalcic, PPL Electric confirmed that PPL Electric contemplates continued recovery of universal service costs from residential customers only. (PPL Electric St. 4-R, p. 7). This is consistent with past practice in PPL Electric rate proceedings and with the Commission's Order at Docket No. M-00051923. (Order, p. 31).

9. The Revised CBP Reflects A Consensus Among Many Parties To This Non-Precedential Plan.

With these modifications, PPL Electric has developed a consensus Revised CBP, which has received the support of a majority of the active parties to this proceeding, including several wholesale/retail marketers who PPL Electric hopes will be active participants in the RFP process and/or as EGSs on PPL Electric's system. As a result of these efforts, PPL Electric and the other consenting parties have substantially resolved all issues related to this non-precedential plan that concerns only POLR service in Year 2010, and the major issues remaining are generally those raised by the four non-joining EGS parties (Dominion, Direct Energy, RESA and Strategic). For reasons explained in the Argument section of this Brief, the remaining objections to the Revised CBP should be rejected.

CERTIFICATE OF SERVICE

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

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