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Via Federal Express

January 18, 2007

Mr. James J. McNulty
Secretary, Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

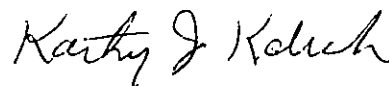
Dear Secretary McNulty:

Pursuant to 52 Pa. Code Section 5.502, enclosed for filing in the above referenced matter is an original and ten (10) copies of the Reply Brief of FirstEnergy Solutions Corp. Please date stamp the extra copy for my files and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions, please call me at 330-384-4580.

Respectfully submitted,

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KJK:kag
Enclosures

cc: Honorable Marlane Chestnut
All Parties of Record

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PPL ELECTRIC UTILITIES :
CORPORATION FOR APPROVAL OF A : DOCKET NO. P-00062227
COMPETITIVE BRIDGE PLAN :

REPLY BRIEF
OF FIRSTENERGY SOLUTIONS CORP.

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I. Introduction.

Intervenor, FirstEnergy Solutions Corp. ("FES") is a wholesale and retail provider of electric generation and related services and is a licensed electric generation service provider in the State of Pennsylvania. (FES Statement 1, p. 2.) Pursuant to Prehearing Order No. 2, FES submits its reply brief in this matter, focusing on two issues related to PPL Utilities Corporation's ("PPL") proposed Provider of Last Resort ("POLR") procurement plan for its large commercial and industrial ("LC&I") customers.

The comments presented in FES' initial brief, as well as in this reply brief, are based on both the assumption that the Commission desires that a fixed price POLR service option be offered in 2010 as a bridge to competition, and FES' belief that, realistically, the market will probably not have the time to develop a fixed price product due to the natural time constraints presented during the one year that the CBP will be in effect. Accordingly, the arguments presented in either FES' initial or reply brief should not be construed as FES agreeing that a fixed price POLR service option should be offered by regulated utilities in the long run.

II. Background and Summary of Arguments.

PPL proposes a two-step POLR procurement plan for its LC&I customers that requires these customers to elect fixed price POLR service before knowing the fixed price that will be offered by PPL. If customers fail to initially elect fixed price service, they will automatically receive hourly priced service, unless and until they shop. Once the fixed price is known, customers will have thirty days in which to elect fixed price POLR service *for a second time*. If customers fail to elect this option again, these customers too will automatically receive hourly priced POLR service unless and until

they elect to take service from an alternative supplier, at which time, they must pay PPL an exit fee. (Tr. 116-117.)

FES and PPL disagree on two major points in PPL's proposed plan. First, FES advocates the elimination of the proposed exit fee, known as the generation rate adjustment ("GRA") charge, while PPL proposes to retain it even though the Commission found in a similar case that such a charge is a barrier to competition, and no other Pennsylvania utility assesses such a charge once its transition costs are recovered. And, second, FES advocates a simple procurement plan that defaults LC&I customers to a fixed price group while PPL proposes a complicated two step process that is confusing and could result in a LC&I customer receiving POLR service under an option that may be detrimental to its business. In order for default POLR service to be meaningful, FES believes that the convoluted "choice" process proposed by PPL must, at a minimum, incorporate the changes recommended by FES.

As more fully discussed below, PPL's rationale for rejecting FES' suggestions is seriously flawed and its plan is detrimental to the long term development of shopping in Pennsylvania's retail electric generation market. Accordingly, if a fixed price POLR service option is to be offered by PPL, FES urges the Commission (i) to deny the proposed GRA charge; and (ii) to simplify the LC&I POLR procurement process as proposed by FES.

III. Argument

A. The GRA Charge is Unlawful and Will Adversely Affect the Development of Competition.

PPL claims to be concerned about "spurring the competitive markets" (PPL Br., p. 41), yet it advocates the assessment of an exit fee for those customers that choose to shop during the CBP period. As explained in detail in FES' initial brief at pages 12-13, the GRA charge proposed by PPL is an unlawful barrier to competition. The Commission has already addressed this issue in *Petition of Duquesne Light Company for Approval of a Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071 (Opinion and Order, p. 26) (August 19, 2004) ("Duquesne POLR Case"), finding that exit fees are "at odds" with Pennsylvania's Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 *et seq.* ("Act").¹ (Duquesne POLR Case at 27-28.) Moreover, the rationale for initially imposing a GRA charge no longer exists. All risks of customers leaving POLR service now reside with winning bidders. This issue is of no concern to PPL. Rather than the Commission attempting to regulate market risks -- something that, in and of itself, is contrary to the Act -- the Commission should allow the market to place these risks where they belong: on the marketers and suppliers that deal with these risks on a daily basis.

PPL argues that the GRA charge protects against "seasonal gaming"² and avoids unnecessary risk premiums that, according to PPL, are unfairly included in the prices

¹ PPL argues that the GRA charge is not a barrier to competition because "any customer who has taken POLR service for a year or longer may shop and not be subject to the GRA." (PPL Br., 56.) This fact, however, provides little solace, given that the CBP will only be in existence for a year.

² Seasonal gaming is a situation in which a customer takes service from an alternative supplier during months in which the price of electric generation is relatively low, and then returns to the utility for POLR service during months in which electric generation prices are generally highest. (Tr. 104.)

charged those customers that elect not to shop. (PPL Br., p. 56.) As a preliminary matter, there is nothing in the record that would indicate that seasonal gaming exists today, or that it will exist three years into the future. Indeed, given that less than 100 of PPL's 1.3 million customers currently shop (Tr. 94), it appears that seasonal gaming is not currently a significant issue. Moreover, even if it is assumed that gaming will exist three years into the future during the one year the CBP is in existence, PPL has not considered less drastic alternatives, such as seasonal rates, risk mitigation measures, or other deterrents considered in the Duquesne POLR Case and adopted in other states. (*See* Duquesne POLR Case, p 28.) And, finally, the risk premiums that may be included in RFP bids are simply another cost of providing fixed price POLR service. Given that all customers have an equal opportunity to leave this POLR service, this charge does not create inequities among these customers. Otherwise, under PPL's logic, no customer, for the same reason, would be able to leave PPL's fixed price POLR service during the 30-day election period -- an outcome that is simply absurd.

In sum, the Commission has already concluded that exit fees, such as the proposed GRA charge, are a barrier to competition. This in and of itself is grounds to summarily reject the GRA charge proposed by PPL. Moreover, the reasons for the GRA charge no longer exist. Not only has PPL failed to demonstrate that seasonal gaming will exist three years into the future, but regardless of whether it does, the risks of seasonal gaming no longer lie with PPL. They reside with marketers and suppliers that deal with market risks on a daily basis. It is not the place of the Commission to try to regulate market risks. Competitive market principles do this. Accordingly the GRA charge should be rejected. Not only will this help to spur competitive markets, but it will also

make PPL's POLR plan consistent with other Pennsylvania utilities' POLR plans. *See e.g. the Duquesne POLR Case; Pennsylvania Pub. Util. Comm'n v. Pennsylvania Power Company*, Docket No. P-00052188.

B. If the GRA Charge is Not Eliminated, Then the 30-Day Period in Which to Leave Fixed Price POLR Service Must Be Significantly Extended.

If the GRA charge is eliminated, then there is no longer a need for the 30-day period in which customers must notify PPL of their intention to leave fixed price POLR service. However, if the Commission does not reject the proposed GRA charge, then it must, at a minimum, significantly extend the period of time in which customers may elect, without penalty, an alternative electric generation supplier. As explained in FES's initial brief at pages 16-17, the time line proposed by PPL will not provide retail marketers with enough time to effectively solicit customers that may benefit from shopping. And without an extension of the proposed 30-day window, retail supplier offers that otherwise would save customers money, could be priced out of the market because of the exit fee. Therefore, if the Commission chooses not to reject the GRA charge proposed by PPL, then, in order to effectively promote shopping during the CBP period, it must significantly extend the period in which customers may elect without penalty an alternative supplier.³

³ Because FES agrees with PPL that the level of risk premiums included in any supplier bid will increase as the time period increases between the submittal of the bids and the commencement of actual power flow (Tr. 113), FES recommends that the Commission eliminate the GRA charge rather than extend the 30-day window.

C. PPL's Proposed LC&I POLR Procurement Plan Does Not Meet the Needs of Its Customers and There is No Evidence that It Will Spur Competition.

Although FES prefers only an hourly priced POLR service product, if a fixed price product is offered by PPL, then it should be the default option for LC&I POLR customers. As discussed below, having the fixed price POLR service as the default option should minimize any frustration and confusion on the part of customers, thus minimizing the potential for customers to formulate any long term unfavorable impressions about retail electric competition.

PPL justifies defaulting its LC&I customers to hourly priced POLR service based on an *assumption* that its approach may "*potentially* spur competitive markets by encouraging [LC&I] customers to focus on their energy decisions." (PPL Br., pp. 40-41.) (italics added.) There are several flaws in PPL's rationale, the most glaring of which is the fact that most of its LC&I customers cannot respond to hourly pricing (RESA Cross Exam. Exh. 1; PPL Br., p. 39), thus leaving no decision under the PPL plan for customers to make.

As more fully explained in FES' initial brief at 5, almost 90 percent of PPL's LC&I customer class take service under PPL's Rate LP-4. PPL admits that customers taking service under this rate include hospitals, schools, government buildings and others with either "limited or no opportunity to take action to avoid high hourly prices." (PPL

Br., p. 39.)⁴ The PP&L Industrial Customer Alliance ("PPLICA") agrees with PPL's assessment and adds that:

Even all industrial facilities do not have the ability to adjust to hourly market prices. Some facilities have machines that take considerable amounts of time and energy to shutdown and restart. See PPLICA St. 1, p. 5. In addition, some facilities are financially constrained by various labor contracts, which include a minimum amount of hours that an employee must be paid once he/she reports to work. Id. Such constraints leave these customers unable to properly respond to market fluctuations, and therefore unable to appropriately manage their energy costs on an hourly-priced product. Accordingly, forcing these customers onto an hourly only pricing option, combined with the already anticipated significant rate increase due to market prices, would effectively eliminate the ability of many larger customers to remain competitive among other businesses and manufacturers. Id. [PPLICA Br. pp. 7-8.]

While PPLICA's observations were made in support of PPL offering a fixed price POLR service option in conjunction with its hourly priced option, PPLICA's arguments clearly demonstrate that other large industrial customers, in addition to 90% of PPL's other LC&I customers, cannot respond to hourly price signals. Therefore, it is ridiculous to force LC&I customers to "focus on their energy decisions" with regard to POLR service when, in fact, no such decision will exist for the vast majority of these customers. Indeed, if there is a decision for customers to make it will not be between the type of POLR service to take. Rather, the decision will be between shopping or not shopping, and the education process surrounding this decision lies with retail marketers. Therefore, there is nothing in the record that supports PPL's assumption that forcing these customers

⁴ In addition to hospitals, schools, and government buildings (which total 169 of the 990 PPL customers currently taking electric service under Rate LP-4), there are 27 department stores, 35 grocery and other food related stores, 23 recreational establishments, such as fitness facilities and theaters, 71 real estate offices, and 26 hotels/motels that also take service under this rate. (RESA Cross Exam. Exh. 1.) The remainder of the LP-4 customers fall into other SIC code categories, the descriptions of which indicate that these customers are equally incapable of responding to hourly price signals. (Id.)

to focus on this non-existent POLR "choice" "will *potentially* spur competition." (PPL Br., p. 41) (italics added.)

PPL also argues that customers will be able to make well informed choices because PPL will focus "on informing and educating customers [citations omitted] in an effort to minimize any customers making an uninformed choice." (PPL Br., p. 41.) As a preliminary matter, PPL's educational plan has yet to be designed (Tr. 110), thus preventing anyone from evaluating the effectiveness of such a program. Notwithstanding, PPL misses the point. Regardless of the effectiveness of PPL's educational program, PPL already knows the POLR choice that almost all of its LC&I customers must make -- the fixed price POLR service option -- simply because these customers cannot respond to hourly price signals. Therefore, there is no POLR choice about which to educate them. And, as previously discussed, the responsibility of educating customers about shopping choices lies with retail marketers. Therefore, the issue with regard to PPL's educational process is not whether they will be properly educated about their non-existent POLR choices. Rather, the issue is whether the process for obtaining their POLR service is more difficult than necessary, thus increasing the odds that a customer could inadvertently be placed (for whatever reason) on a POLR service that could be detrimental to its business. Clearly, PPL's complicated process increases this chance and, therefore, it should be rejected, especially when there is a much simpler approach that can accomplish PPL's stated goal of zing risk premiums.

D. There is a Much Simpler Way to Achieve PPL's Goal to Minimize Volume Risk Premiums Without the Need for a Two-Step Opt-in Process.

PPL justifies its proposed process on the basis that some customers "are likely to select service from an [Electric Generation Supplier]" thus "providing potential bidders with additional information about the load they may serve." (PPL Br., p. 41.) As FES more fully explained in its initial brief at pages 8-9, the same can be accomplished under a much simpler POLR procurement process. The request for proposals ("RFP") will not be issued until sometime in 2009. As PPL Witness Krall testified, there are customers that "have all but decided they're going to sign up with [an alternative] supplier." (Tr. 117-118.) Therefore, rather than designing the first step of the process to require LC&I customers to elect fixed price POLR service before they know the price, PPL should simply survey its LC&I class in 2009 in order to determine these customers' intentions to shop in 2010. If, as PPL claims, customers already know in December, 2006, that they intend to shop in 2010, then PPL should, through a simple survey in 2009, accomplish its goal of providing in its Request for Proposals ("RFP") the then most accurate load shape without jeopardizing a customer's opportunity to receive its preferred choice of POLR service. Further, FES' proposed single opt-in process in which LC&I customers must affirmatively elect hourly priced service provides *at least* as much certainty regarding the fixed price load shape to be served during the CBP period as the tortuous two-step process proposed by PPL -- only with much less confusion and much less risk of a customer receiving a service that could be detrimental to its business.

As more fully explained in FES' initial brief at pages 7-8, PPL's plan does nothing to ensure that customers who initially elect fixed price service will not change their mind

during the proposed 30-day election period. Indeed, given the "take it or leave it forever" approach proposed by PPL, it is logical to assume that most, if not all, customers will hedge their bet and simply select fixed price POLR service in order to keep their options open under the PPL plan. Notwithstanding PPL's assertion to the contrary (PPL Br., p. 412), there is the possibility of a worse result under PPL's plan because PPL's second step forces customers, that for whatever reason fail to elect fixed price POLR service for a second time, onto the hourly priced POLR service after the fixed price generation supply has been procured. Therefore, unlike the single step process advocated by FES, PPL's suggested plan provides both a voluntary *and involuntary* method for customers to be placed on hourly priced POLR service, thus potentially increasing, rather than decreasing, the price risk premiums included in RFP bids.

In sum, the CBP will be in place for one year. Rather than confuse and frustrate customers during this period by forcing them to jump through hoops in order to receive the only true POLR service option available to most of PPL's LC&I POLR customers during the CBP period, the Commission should reject PPL's proposed POLR procurement process in favor of a plan consistent with that described above. Accordingly, FES urges the Commission to modify the LC&I POLR process so that fixed price, rather than hourly priced, POLR service is the default option for these customers.⁵

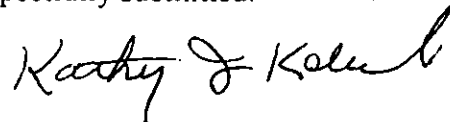
⁵ PPLICA indicated that it could support such a modification. (PPLICA Br., p. 7, fn 9.)

IV. Conclusion

In sum, the GRA charge should be rejected. Not only is it unlawful and anti-competitive, but there is no evidence in the record to support a finding that the underlying reason for it to be assessed (seasonal gaming) exists today or will exist in 2010. Moreover, even if such gaming will exist during the CBP period, it is no longer the concern of PPL or this Commission. The resolution of this issue is now a matter for the competitive market. And, even if gaming should occur in three years, something that know one can foretell with certainty, and it is determined that the Commission has jurisdiction to address the matter, then the matter should be addressed at that time, and not three years in advance. It is bad regulatory policy to authorize charges today based on what *may* happen in three years, especially when it has been demonstrated that other less drastic measures may exist that could alleviate the perceived problem without adversely affecting the development of competition in Pennsylvania's retail electric market. Accordingly, the GRA charge proposed by PPL must be rejected, regardless of the ultimate approach to LC&I POLR procurement approved by the Commission. And, for the reasons discussed above, the Commission should approve the single-step approach proposed by FES in which (i) PPL asks its customers, prior to issuing the fixed price POLR RFP, whether these customers intend to shop; (ii) PPL makes the fixed price POLR service the default option; and (iii) without a GRA charge, PPL eliminates any time constraint in which customers may elect, without penalty, to shop during the CBP period. Or, alternatively, if the Commission approves the GRA charge, PPL extends the 30 day time period in which customers may make such an election without penalty in

order for customers to have sufficient time to participate in the competitive retail market without the need to pay an exit fee.

Respectfully submitted.

A handwritten signature in black ink, reading "Kathy J. Kolich". The signature is written in a cursive style with a large, stylized initial "K".

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CERTIFICATE OF SERVICE

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I hereby certify that a true copy of the reply Brief of FirstEnergy Solutions

Corp. has been served on the Administrative Law Judge by electronic mail and Federal Express Service, and on the parties set forth below by electronic mail and first class U. S. mail, postage prepaid, on this 18th day of January, 2007, in accordance with the requirements of § 1.54 (relating to service by a participant) and Judge Chestnut's Prehearing Order No. 2:

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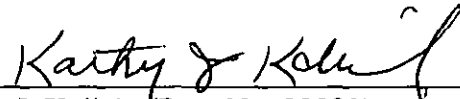
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January 19, 2007

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In re: Docket No. P-00062227
Petition of PPL Electric Utilities Corporation

Dear Secretary McNulty:

Enclosed for filing on behalf of the Sustainable Energy Fund of Central Eastern Pennsylvania are an original and nine (9) copies of its Reply Brief in the above matter addressing its Stipulation with PPL Electric Utilities Corporation. Copies of the Reply Brief are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Marlane R. Chestnut, Presiding

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

REPLY BRIEF OF THE
SUSTAINABLE ENERGY FUND OF
CENTRAL EASTERN PENNSYLVANIA ADDRESSING STIPULATION
WITH PPL ELECTRIC UTILITIES CORPORATION

DOCUMENT
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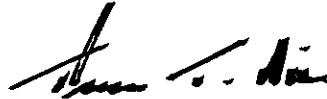
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REPLY BRIEF OF THE
SUSTAINABLE ENERGY FUND OF
CENTRAL EASTERN PENNSYLVANIA ADDRESSING STIPULATION
WITH PPL ELECTRIC UTILITIES CORPORATION

This proceeding concerns PPL Electric Utilities Corporation's ("PPL") Petition filed with the Pennsylvania Public Utility Commission for approval of a Competitive Bridge Plan. The Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") intervened in the proceeding and actively participated presenting testimony addressing the issue of consumer education.

On January 11, 2007, SEF filed a Main Brief addressing consumer education as presented in SEF's testimony and exhibit. PPL also filed a Main Brief addressing various issues including consumer education. Subsequent to the filing of their Main Briefs, SEF and PPL, on January 18, 2007, executed a Stipulation of matters related to this proceeding. PPL distributed the Stipulation to Judge Chestnut and all parties and is offering it into the evidentiary record as PPL Electric Cross Examination Exhibit No. 7. SEF supports the Stipulation in resolution of all issues between SEF and PPL in this proceeding.

Respectfully submitted,



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DATED: January 19, 2007
SEF Reply Brief (Final).wpd

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of January, 2007, served a true and correct copy of the Reply Brief of the Sustainable Energy Fund of Central Eastern Pennsylvania Addressing Stipulation with PPL Electric Utilities Corporation, upon the persons and in the manner set forth below:

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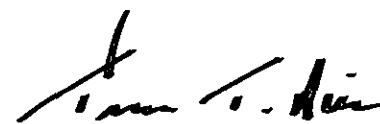
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January 19, 2007

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PA PUBLIC UTILITY COMMISSION
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VIA FEDERAL EXPRESS

James McNulty, Secretary
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2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing are the original and nine copies of the Reply Brief of the Retail Energy Supply Association, Direct Energy Services LLC and Strategic Energy LLC ("RESA *et al.*") in the above-referenced matter. Also enclosed is a disk containing the brief. As evidenced by the attached Certificate of Service, the parties have been served in the manner indicated.

Please contact me if you have any questions regarding this filing.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Hon. Marlane Chestnut (w/enc)
Certificate of Service (w/enc)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Petition of PPL Electric Utilities
Corporation for Approval of
Competitive Bridge Plan

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Docket No. P-00062227

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REPLY BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY SERVICES LLC

and

STRATEGIC ENERGY LLC

DOCKETED
JAN 25 2007

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January 19, 2007

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I. INTRODUCTIONPA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

The Main Brief of the Retail Energy Supply Association ("RESA"),¹ Direct Energy Services LLC ("Direct Energy") and Strategic Energy LLC ("Strategic") (collectively "RESA *et al.*") explains why this case is of the utmost importance to the success of the competitive retail electric market throughout the Commonwealth of Pennsylvania, *if* the Commission determines that PPL Electric Utilities Corporation ("PPL" or "Company") needs an additional, unique transition plan for the first year after its rate caps expire. RESA *et al.*'s Main Brief also explains why the Commission need not venture into the uncharted waters of PPL's experimental (and inappropriately named) "Competitive Bridge Plan."

RESA *et al.* emphasize that the resolution of this matter is simple and straightforward:

Require PPL to be subject to the post-transition POLR regulations in the first year after expiration of its rate cap period.

The threshold question presented by PPL's petition for special treatment for the first year after its rate caps expire is whether the POLR regulations will be finalized and effective for 2010. If so, there is no need for further consideration of PPL's experimental one-year plan because there will be no gap to fill as there was for the other electric distribution companies ("EDCs") for which the Commission approved interim POLR plans. Of course, only the Commission can answer the threshold question, but RESA *et al.* submit that the answer is "Yes".

RESA *et al.* submit that there is ample time for the Commission to adopt final POLR regulations after considering additional public comment on its revised proposed regulations, and

¹ RESA's members include Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The opinions expressed in this filing may not represent the view of all members of RESA, and in particular in this case do not represent the views of Reliant Energy Retail Services, LLC, which did not participate in the preparation of this filing.

for completion of the subsequent review process by the standing committees of the General Assembly, the Independent Regulatory Review Commission, the Office of Attorney General and the Governor's Budget Office. This is especially true in light of the Commission's efforts so far with respect to establishing the POLR framework for the post-transition period – *i.e.*, the POLR Roundtable,² the POLR Notice of Proposed Rulemaking ("NOPR"),³ reopening of the POLR NOPR,⁴ approval of interim transition plans for those electric distribution companies ("EDCs") whose rate caps have already expired,⁵ and the "Price Mitigation" proceeding.⁶

Requiring PPL to be subject to the POLR regulations in the first year after expiration of its rate cap period is fully consistent with the Commission's and the EDCs' approach in implementing EDC-specific transition periods and Restructuring Settlements. The Commission should not permit PPL to contrive a temporal gap for its so-called "Competitive Bridge Plan" to fill when the orderly progression and expiration of its Restructuring Plan and rate caps produces no such gap. The argument that PPL should be placed on the same post-transition period schedule as the EDCs whose rate caps expire one-year later is inconsistent with all of the Commission's actions to implement retail competition on an EDC-by-EDC basis in the

² *Provider of Last Resort Regulations*, Docket No. M-00041792, Public Meeting March 4, 2004, Motion Of Commissioner Glen R. Thomas, MAR-2004-C-5.

³ *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. §2807(e)(2)*, Docket No. L-00040169; *Provider of Last Resort Roundtable*, Docket No. M-00041792, Order entered December 16, 2004.

⁴ *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)*, Docket No. L-00040169; *Petition of Direct Energy Services, LLC To Reopen the Comment Period*, Docket No. L-00040169; *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. M-00051865; Order entered November 18, 2005.

⁵ RESA *et al.* Main Brief at 12, n.30.

⁶ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, Order entered May 24, 2006.

respective EDCs' service territories, and is really a request for special treatment for PPL. This argument is particularly unpersuasive as a reason to adopt a unique, experimental one-year plan that PPL admits is not its preferred long-term solution, may well be inconsistent with the POLR regulations, and if implemented poses a real potential of unnecessarily subjecting customers to sustained price spikes.

"Uniform treatment" of all EDCs does not require approval of PPL's plan – quite the opposite is true. There is no reason PPL should **not** be subject to the regulations in the first year of its post-transition period, as will the other EDCs whose rate caps have not yet expired. The experience of PPL under the new POLR regulations one year in advance of the other EDCs will provide real-world information concerning the operation of the new rules that will provide only benefits to the Commission and interested stakeholders.

The Commission should end the regulatory uncertainty created by PPL's interim plan by rejecting PPL's proposal and confirming that PPL will be treated the same as the other EDCs whose rate caps have not yet expired, that is, make the Company subject to the POLR regulations in the first year after expiration of its rate cap period.

II. SUMMARY OF ARGUMENT

In their Main Brief, the RESA *et al.* argue that PPL Electric Utilities Corporation's ("PPL") Competitive Bridge Plan ("CBP") should not be approved for numerous legal and policy reasons. In addition to being fundamentally inconsistent with the Electric Choice and Competition Act by detaching POLR rates from prevailing market-reflective prices at the time default service is taken, as well as both premature and unnecessary because there is no temporal "gap" between the end of PPL's rate caps and the effective date of the Commission's anticipated

POLR regulations for PPL's plan to fill, RESA *et al.* argue that PPL's revised CBP should not be approved because:

- PPL customers are likely to have higher POLR rates in 2010 under PPL's plan, as PPL's prediction of higher wholesale prices is the premise for its plan;
- PPL's plan will not permit the long-term fixed POLR prices to flex down if wholesale prices mitigate after the solicitations are held; and
- PPL customers will also have no competitive alternatives to mitigate higher prices or to take advantage of lower market prices because electric generation suppliers ("EGSs") will not enter or remain in PPL's market due to the certainty that PPL's point-in-time structure will produce POLR rates for 2010 that are different than prevailing market prices in 2010.

RESA *et al.* point out that this scenario is the worst of both worlds because PPL's plan will neither protect customers from significantly increased POLR rates nor provide customers with competitive retail alternatives.⁷ As shown below, the main briefs of the parties stipulating support for PPL's revised plan actually support these arguments. Moreover, that the so-called "consensus" plan presented by PPL lacks the support of a significant group – *retail* (as opposed to wholesale) competitive suppliers – is an additional significant fact that requires rejection of PPL's plan.

III. ARGUMENT

A. **PPL's Brief Confirms That Its Plan Is Fundamentally Inconsistent With The Pennsylvania Electricity Generation Customer Choice and Competition Act Because It Will Detach POLR Rates From Prevailing Market Prices At The Time The POLR Service Is Taken.**

In their Main Brief, RESA *et al.* argue that PPL's point-in-time "laddered" or "blended" pricing does not comply with the Pennsylvania Electricity Generation Customer Choice and Competition Act's⁸ "prevailing market prices" standard⁹ for post-transition period POLR service

⁷ RESA *et al.* Main Brief at 2-3.

⁸ 66 Pa. C.S. §§ 2801-2812 ("Electric Choice and Competition Act" or "Act").

because it substantially and irrevocably detaches POLR rates from market-reflective prices that will prevail at the time default service is taken.¹⁰

PPL's Main Brief supports this argument. PPL states that its "laddered solicitation is not locking in **2007 prices for 2010 service**. Rather, PPL Electric is obtaining bids for 2010 service, **which will reflect wholesaler's expectations of 2010 prices**, including risk premiums for market uncertainty between now and 2010."¹¹ As shown by PPL's subsequent statements in its brief, this is a distinction without a difference – demonstrating that PPL's point-in-time "laddered" or "blended" pricing will produce POLR rates that are **divorced** from the prevailing market prices at the point in time when the POLR service is taken:

PPL Electric proposes to acquire electric energy through an RFP process, which by its nature, reflects prevailing market prices **at the time of 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.¹²

PPL also asserts (incorrectly) that longer terms between bidding and delivery do not 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."¹³ This is simply incorrect.

PPL's statements make clear that PPL's plan will not produce POLR rates that will reflect prevailing market prices at the time the POLR service is taken, as required by the Electric Choice

⁹ 66 Pa. C.S. § 2807(e)(3).

¹⁰ RESA *et al.* Main Brief at 5-10.

¹¹ PPL Main Brief at 21, n.11 (citations omitted) (emphasis added).

¹² *Id.* at 26 (citations omitted) (emphasis added). Similarly, the OCA argues that "[p]revailing market prices reflect the product which is being acquired, the term of the acquisition, and the price at the time the product is acquired." OCA Main Brief at 15.

¹³ *Id.* at 28 (emphasis added).

and Competition Act. The wholesale suppliers' bids – and the resulting retail POLR prices – will merely reflect the suppliers' **expectations** of what market prices will be, their assessment of market risk and their desired profit. These price expectations and market risk assessments are influenced by unpredictable events and many factors that can change daily; hence, it is clear that establishing POLR rates for service in 2010 based upon solicitations of prices reflecting wholesale suppliers' expectations during the three years preceding 2010 is guaranteed to produce POLR rates are different than the market prices prevailing in 2010.¹⁴ Thus, PPL's own characterization of its procurement scheme demonstrates that the resulting POLR rates will be materially divorced from prevailing market prices.

1. PPL's Plan Will Expose Customers To Higher POLR Rates and Price Shock Risks .

In their Main Brief, RESA *et al.* demonstrate that that PPL customers are likely to have higher POLR rates in 2010 under PPL's plan, as PPL's prediction of higher wholesale prices is the premise for its plan.¹⁵ PPL admits – indeed, *emphasizes* – that its "laddered solicitations provide no guarantee against significant POLR price increases if market prices remain consistently high throughout the RFP period."¹⁶

In addition, RESA *et al.* demonstrate in their Main Brief that PPL's plan will expose customers to the potential of locked in wholesale "price spikes" because PPL admitted that it will not adjust its scheduled procurements even if a catastrophic event that drives up energy prices

¹⁴ PPL's witness defined "actual market prices in 2010" as all of the hourly prices that, looking back, prevail throughout the year 2010 if no purchases were made in advance. Tr. 142:23-143:7.

¹⁵ RESA *et al.* Main Brief at 5-6, 10-11.

¹⁶ PPL Main Brief at 32, n.13.

occurs right before each of the solicitations.¹⁷ Thus, PPL's statement that what its plan "does guarantee is that [POLR] prices will not be unduly influenced by an unusual event"¹⁸ is demonstrably wrong.¹⁹

Similarly, the OCA argues that PPL's plan will produce stable POLR rates. But as Direct Energy witness Mr. Lacey testified, PPL's proposal does not guarantee lower prices in 2010 or lower volatility because no expert can determine with any degree of certainty how much POLR rates will change in 2010 as a result of the process proposed by PPL.²⁰

More important, the OCA has made a policy determination to forego the potential for lower prices for residential customers through monthly pricing in return for (what the OCA apparently believes is) price stability.²¹ Mr. Lacey showed that residential customers would have paid lower prices in 32 of the 49 months analyzed if they had paid the PJM average monthly LMP prices, properly adjusted,²² instead of PPL's tariffed POLR rates with all generation related

¹⁷ RESA *et al.* Main Brief at 5-6, 9.

¹⁸ PPL Main Brief at 32, n.13.

¹⁹ The Commission has recognized that one of the primary factors that determines the extent to which customers will pay more for electricity after generation rate caps expire is the level of wholesale energy prices at the time the rate caps expire, and that in this respect the timing of the acquisition of wholesale supply is important. *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, Order entered May 24, 2006, at 2. As shown by RESA *et al.*, PPL's plan includes substantial timing risk. The Commission stated that another factor – the process by which a POLR service provider acquires electricity for non-shopping customers – "is being addressed in the rulemaking proceeding at L-00040169." *Id.* at 2, n.2. As set forth above, this POLR rulemaking – not PPL's experimental plan - should address this factor for PPL's first post-transition year.

²⁰ Direct Energy Services St. No. 1R at 3:1-5, 16; 3:25-4:1; 5:9-6:1.

²¹ Direct Energy Services St. No. 1SR at 3:1-15.

²² Mr. Lacey adjusted his initial calculation to make an "apples-to-apples" comparison consistent with PPL's adjustments, and no one refuted his adjustments. Tr. 218:20-220:23; 221:18-222:2.

elements – including CTC and ITC – counted.²³ The OCA (and PPL) disingenuously point out that stranded cost charges are non-bypassable²⁴ to mischaracterize Mr. Lacey's testimony and in an attempt to exhibit to avoid the point he made: residential customers would have paid prices lower than PPL's tariffed rates for most of the months analyzed if they had paid the PJM average monthly LMP prices, and it is reasonable to assume that this same relationship between PPL's fixed POLR rates for 2010 and the PJM prices will continue. That the PPL stranded cost charges are non-bypassable is irrelevant to Mr. Lacey's analysis and point. It is irrefutable that the stranded cost charges are generation costs, and any comparison of PPL's POLR rates before and after its rate caps expire must include these generation costs.

Accordingly, PPL's brief supports the conclusion that its plan will likely expose customers to higher POLR rates and the real potential of sustained price spikes (as in Pike County), and will not guarantee lower or stable POLR rates in 2010. Neither the OCA nor PPL has come close to refuting the evidence that Direct Energy's monthly pricing proposal for residential and small commercial customers would most likely result in lower prices for these customers in contrast to the long-term fixed POLR rates that will result from PPL's plan.

2. PPL's Plan Will Fatally Undermine The Structure Necessary To Ensure Robust And Sustainable Retail Competition.

In their Main Brief, RESA *et al.* show that PPL's plan will prevent customers from benefiting from wholesale prices prevailing in 2010 in two ways: (1) the long-term fixed POLR

²³ Tr. 220:7-23; Direct Energy Services Exh. FPL-4. PPL included CTC and ITC charges when calculating the differential in average rates in 2009 between Rate Schedules RS and RTS in response to the OCA's request that PPL maintain the absolute difference in 2006 average rates between these rate schedules. PPL St. No. 1-R at 26:1-28:7; PPL Exh. DAK-4. PPL's Exh. DAK-4 was the basis for MR. Lacey's exhibit (FPL-2) which, in turn, was the basis for PPL's Exh. DAK-4. Direct Energy Services St. No. 1SR at 2:13-26; PPL Main Brief at 34, n.15.

²⁴ OCA Main Brief at 20; PPL Main Brief at 34, n.15.

rates cannot flex down if wholesale prices mitigate after the solicitations are held; and (2) PPL customers will have no competitive alternatives because EGSs will not enter or remain in PPL's market due to the certainty that PPL's point-in-time procurement and pricing structure will produce POLR rates in 2010 that are different than prevailing market prices in 2010.²⁵ Nothing in the main briefs of the parties supporting PPL's plan refutes this, including the mischaracterization of PPL's plan as a "consensus" plan, as explained below.

On cross-examination, Mr. Lacey explained why Direct Energy is not serving retail customers in PPL's market and will not enter if PPL's plan is adopted:

Q. And in your surrejoinder testimony today you presented your analysis that, at least in your view, in most months the fixed price was above the LMP price. I guess my question is: why aren't you serving any of those customers in PPL's service territory today?

A. We aren't serving them for a couple reasons. One is they have these non-bypassable generation charges that are on the bill. **There's also a lot of regulatory uncertainty as to how the market is going to progress. There's no guaranteed value proposition, there's no guarantee that the prices, the LMP prices, will be at a level where we would be able to compete on a long-term basis with the fixed price that the utility is offering.**²⁶

Mr. Lacey's testimony also explains why sustained retail competition has not developed in PPL's market or the markets of the other EDCs during their rate-cap transition periods. Mr. Lacey's explanation is entirely consistent with RESA *et al.*'s opposition to PPL's plan: that regulatory uncertainty and long-term fixed POLR rates that are detached from and not adjustable to

²⁵ RESA *et al.* Main Brief at 2-3, 4-5, 8, 9-10.

²⁶ TR. 229:7-19 (emphasis added).

prevailing market prices prevent competitive retail suppliers from entering the market to enable robust and sustainable retail competition to develop in the first place.²⁷

The OCA argues that Mr. Lacey's testimony shows that retail suppliers are not willing to accept the risks of the uncertainty of the **market**,²⁸ but Mr. Lacey's testimony is clear that it is **regulatory uncertainty**, and not market uncertainty, that has prevented Direct Energy and other retail suppliers from serving customers during the EDCs' rate cap periods. Mr. Lacey's testimony is equally clear that these factors are present in PPL's plan, and will prevent Direct Energy and other retail suppliers from serving customers in PPL's market if PPL's plan is approved.

B. PPL's Revised Plan Is Not A "Consensus" Plan.

PPL incorrectly asserts that the various settlement stipulations in support of its revised plan represent a "consensus" settlement of this matter and a balancing of all represented interests. PPL's labeling of its proposal as a "consensus" plan is a substantial mischaracterization because "pure" retail suppliers – EGSs without generation or who have not subordinated their retail interests to those of their wholesale affiliates, which PPL describes as the "non-joining EGS parties"²⁹ – are not represented in the settlement stipulations and PPL's revised plan. On the contrary, the non-joining EGS parties are unanimous in their opposition to PPL's plan.

Based on the issues the consenting so-called "EGS" parties³⁰ have pursued and settled in this matter, it is fair to say that the retail interests of these settling parties have been subordinated

²⁷ Direct Energy Services St. No. 1 (Lacey) at 3:12-16; 5:10-16; 6:13-16; 8:9-11; St. No. 1R at 2:14-19; 4:13-15; 4:22-5:2.

²⁸ OCA Main Brief at 20.

²⁹ PPL Main Brief at 20 (referring to Dominion Retail, Direct Energy and Strategic Energy, as well as RESA).

³⁰ Constellation and Reliant, described by PPL as "marketers" and "wholesale/retail marketers." PPL Main Brief at 2, 20.

to these parties' wholesale interests. For example, Constellation Energy Commodities Group ("CCG", a wholesale supplier)³¹ and Constellation NewEnergy (a retail supplier) are parties to this matter, but only CCG submitted testimony, and that testimony addressed only wholesale supply procurement issues.³² Reliant, which also settled with PPL, owns over 16,000 MW of generation in North America³³ and, with about 5,300 MW of generation in Pennsylvania, is the third largest generator in Pennsylvania.³⁴

The common thread among the so called "EGS" parties that support PPL's plan is that they either own or are affiliated with companies that own generation, and it is apparent that these companies' interests in selling that generation at wholesale to PPL have predominated over these companies' retail interests in selling that generation to PPL's retail customers. Those EGSs who are primarily concerned with the success of the **retail** electric generation market uniformly and indisputably oppose PPL's plan.

Neither PPL nor any other party offered evidence that PPL's plan would promote customer choice and retail competition. The only evidence PPL has to support its argument that

³¹ CCG "provides wholesale power and risk management services to wholesale customers (distribution utilities, co-ops, municipalities, power marketers, utilities and other large load serving entities), including through participation in load auctions, throughout the United States and Canada, in both regulated and deregulated energy markets." CCG Petition to Intervene, ¶ 9.

³² *See, e.g.*, Constellation Main Brief at 2 ("Ms. Philips' testimony focused on two significant ways in which PPL's Proposed Bridge Plan can be enhanced in order to increase the likelihood that wholesale suppliers will respond with highly competitive bid offers to PPL's Request for Proposals ("RFP")); at 3("In order to promote the most robust and competitive participation by wholesale suppliers in PPL's RFPs, Constellation: (1) requests that the Commission approve the PPL-Constellation Stipulation, as it is in the public interest; and (2) urges the Commission to order PPL to revise the SMA in its Proposed Bridge Plan to include industry-standard "two-way default" language.") (footnotes omitted); PPL Cross-Examination Exh. No. 5.

³³ Reliant Petition to Intervene, ¶ 3.

³⁴ Reliant St. No. 1 at 2:19-21.

its plan will provide "substantial opportunities for competition to take hold in PPL Electric's service territory" is a conclusory statement phrased in negative terms, and based on conjecture:

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.**³⁵

The EGSs who are primarily concerned with the success of the retail electric generation market uniformly dispute this position. There is simply no affirmative showing that PPL's so-called consensus plan will do anything to promote retail customer choice and retail competition.

³⁵ PPL Main Brief at 23-24 (emphasis added).

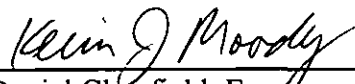
IV. CONCLUSION

The Commission must reject PPL's Competitive Bridge Plan outright because it is premature and unnecessary, bad policy and not consistent with the Electric Choice and Competition Act. As explained above, the main briefs of the parties supporting adoption of PPL's Plan either support, or do not refute, the arguments of RESA *et al.* in opposition to PPL's Plan.

If the Commission nonetheless decides to approve an additional, unique transition plan for PPL, the proposed plan must be modified as proposed by RESA, Direct Energy and Strategic Energy to allow for monthly-priced default service for residential and small commercial customers, and a real-time HPS product for large commercial and industrial customers. This is the POLR market structure that will ensure market-reflective POLR pricing as required by the Choice and Competition Act.

Only then will PPL's customers be positioned to obtain the benefits of a properly functioning and workably competitive retail electricity market in PPL's service territory.

Respectfully submitted,



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January 19, 2007

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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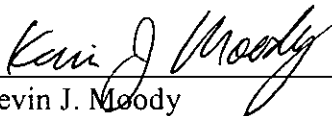
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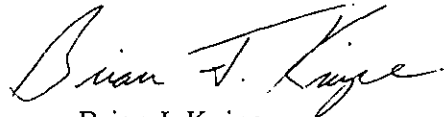
Re: Petition of PPL Electric Utilities Corporation for Approval of a
Competitive Bridge Plan, Docket No. P-00062227

Dear Secretary McNulty:

I have enclosed for filing an original and nine (9) copies of the Reply Brief of Reliant Energy, Inc. in the above-referenced matter, as well as a Microsoft Word copy on disk. Copies have been served upon all parties of record as per the attached Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/eh

Enclosures

cc: The Honorable Marlane R. Chestnut (w/encls.) (via email and hand-delivery)
Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY BRIEF OF RELIANT ENERGY, INC.

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DOCKETED
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY BRIEF OF RELIANT ENERGY, INC.

Reliant Energy, Inc. ("Reliant"), by and through its attorneys, files this Reply Brief with respect to the *Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*.

I. INTRODUCTION

PPL Electric Utilities Corporation's ("PPL" or "the Company") modified Competitive Bridge Plan ("CBP") was the result of extensive negotiations and substantial compromises by a majority of the active parties to this proceeding.¹ As a result, several parties representing a variety of competing interests, including Reliant, have entered into stipulations with PPL.² Reliant and PPL recognized the value of moving from their litigation positions toward a reasonable consensus in the context of this non-precedential, one-year bridge plan for 2010.

Reliant's stipulation with PPL (the "PPL/Reliant Stipulation") provides that, in the context of this one-year, non-precedential bridge plan, Reliant supports PPL's CBP proposal for POLR service to large commercial and industrial ("C&I") customers, as modified by the

¹ PPL lists these parties and the competing interests they represent in its Main Brief at page 2. In addition, on January 18, 2007, PPL entered into a stipulation with The Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), and PPL requested that the stipulation be admitted into the record.

² PPL's Main Brief, in identifying those parties who have not stipulated to support or not oppose the consensus modified CBP, inadvertently included Reliant in its definition of the "four non-joining EGS parties." (PPL Br. at 20.) On January 17, 2007, PPL filed a Correction to its Main Brief which clarifies that Reliant is not among the "non-joining EGS parties," and Reliant stands by the PPL/Reliant Stipulation.

Company's witnesses' rebuttal testimony, and that Reliant does not oppose PPL's CBP proposal for POLR service to small commercial and residential customers.

A handful of parties have continued to litigate a limited number of issues in this matter. These parties' disagreements with the modified CBP vary in degree. On one end of the spectrum, the PP&L Industrial Customer Alliance ("PPLICA") indicates that it "would not object" to PPL's modified CBP proposal for POLR service to large C&I customers,³ but it is reluctant to relinquish its preferred litigation position and stipulate to the modified CBP without the assurance of a global settlement document completely disposing of the case. On the other end is FirstEnergy Solutions Corp. ("FES"), who is unwilling to accept the concessions made by PPL, and who insists it is advocating for its retail marketing group⁴ yet proposes modifications to the CBP which would clearly benefit its wholesale operations⁵ to the detriment of the development of a competitive retail electric market. Reliant's Reply Brief will respond to certain arguments made by these and other "non-joining" parties, and provide important clarifications of Reliant's position.

II. ARGUMENT

A. FES's Proposed Modifications to the CBP Will Prevent the Development of Sustainable Retail Electric Competition

FES is not only a retail electric supplier but a wholesale electric supplier as well.⁶ FES purports to speak on behalf of its retail marketing group⁷ and proposes modifications to PPL's modified CBP proposal for service to large C&I customers. In particular, FES proposes

³ PPLICA Br. at 4.

⁴ FES St. No. 1 at 2:17-18.

⁵ See, e.g., FES Br. at 10-11.

⁶ Id. at 3.

⁷ FES St. No. 1 at 2:18.

reversing PPL's proposed POLR design so that fixed price service ("FPS") would be the default POLR service, rather than hourly priced service ("HPS") which would only be offered as an optional service.⁸ The Commission should reject FES's proposal because making HPS the default POLR service for large C&I customers is absolutely essential to enabling sustainable competitive electric markets to develop.

As Reliant explained in its Main Brief at pages 8-11, offering HPS as the default POLR service for large C&I customers is critical to a successful POLR design. FES's recommendation that PPL offer FPS as its default POLR product would prevent the development of retail competition, in violation of the letter and spirit of the Choice Act.⁹ As explained further in Reliant's Main Brief,¹⁰ the Choice Act declares that competitive electric markets are the most effective way to control the costs of generating electricity and benefit customers.¹¹ To permit robust and sustainable competitive electric markets to develop, the Choice Act requires PPL to "acquire electric energy at prevailing market prices" to provide POLR service and to "recover fully all reasonable costs."¹² Compliance with the "prevailing market prices" standard is the single most important feature of a successful POLR design.¹³

Indeed, the Commission ruled in *Duquesne POLR III*¹⁴ that offering HPS as the default POLR service with FPS as no more than an optional service satisfies the "prevailing market prices" standard because HPS gives customers the freedom to move into the market.¹⁵ At the very least, offering a product with market-responsive POLR pricing such as HPS as the default

⁸ FES Br. at 6.

⁹ The Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812.

¹⁰ Reliant Br. at 9.

¹¹ 66 Pa.C.S. §§ 2802(3), (5), (7).

¹² 66 Pa.C.S. § 2807(e)(3).

¹³ Reliant St. No. 1 at 5:17-22.

¹⁴ *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service ("Duquesne Light POLR III")*, Pa. P.U.C. Docket No. P-00032071 (Order entered Aug. 23, 2004; Reconsideration Order entered Oct. 5, 2004).

¹⁵ *Duquesne Light POLR III* Order at 39; Reconsideration Order at 20.

POLR service is essential to a successful POLR design that complies with the Choice Act. While FES cites *Duquesne Light POLR III* in its arguments against PPL's GRA proposal,¹⁶ FES completely ignores the Commission's conclusion in that very Order that HPS satisfies the Choice Act's "prevailing market prices" standard.

FES's recommendation to make FPS the default service will prevent retail electric competition from developing and will frustrate the Commission in its attempts to fulfill its statutory mandate to move Pennsylvania forward to fully competitive markets. FES says the CBP must not create barriers to competition;¹⁷ however, that is exactly what its proposal for PPL to offer FPS as the default POLR service would do.

Further, FES has failed to meet its evidentiary burden of proof in support of its proposed modification to the CBP. The testimony of FES's witness provides merely an unsupported statement that, in the witness's experience, "the vast majority of customers . . . generally prefer" FPS to HPS.¹⁸ There is no record support for this opinion. The witness neither cites to supporting surveys or studies, identifies any customers nor provides any kind of elaboration or other documentation. Instead, FES attempts to bolster its recommendation by distorting customer statistics provided by PPL. FES's illogical conclusion that "the fact is that almost 90% of all PPL LC&I customers cannot react to hourly pricing,"¹⁹ based merely on PPL witness Krall's testimony that customers taking service on Rate Schedule LP-4 include hospitals, schools and government buildings,²⁰ highlights the lack of evidence to support FES's proposal.

¹⁶ FES Br. at 5.

¹⁷ *Id.* at 4.

¹⁸ FES St No. 1 at 6:15-18.

¹⁹ FES Br. at 8.

²⁰ *Id.* at 7 (citing PPL St. No. 1-R at 13:11-14).

For these reasons and those set forth in Reliant's Main Brief at pages 8-11, the Commission should reject FES's proposal that PPL provide FPS as the default POLR service to large C&I customers.

B. PPL's Modified CBP Proposal for Large C&I Customers Is Acceptable to PPLICA

In its Main Brief, PPLICA indicates its acceptance of PPL's modified CBP proposal for large C&I customers (in which PPL will offer both HPS and FPS) by stating that it "would not object" to its adoption.²¹ While other parties who have reached similar conclusions have executed stipulations with PPL, PPLICA appears reluctant to do so without a global settlement document executed by all the parties. Therefore, while some of PPLICA's Main Brief indicates its willingness to move from its litigation position to a reasonable compromise in the context of this one-year, non-precedential CBP, PPLICA also continues to advance its litigation positions. These positions include a footnote indicating PPLICA's contingent support for FES's proposal to make FPS the default service for large C&I customers,²² a proposal which Reliant has already addressed.

In addition, PPLICA, in arguing that the Commission should approve an interim plan for PPL, discusses the Commission's Orders in the *Duquesne Light POLR III* and *Penn Power Interim POLR*²³ proceedings. PPLICA asserts that, in these Orders, "[w]ithout the benefit of final POLR regulations, the Commission has established interim and bridge plans for various utilities pending finalization of regulations, *each time stating that its decision was not to be*

²¹ PPLICA Br. at 4, *see id.* at 7.

²² *Id.* at 7 n.9.

²³ *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan ("Penn Power Interim POLR")*, Pa. P.U.C. Docket No. P-00052188 (Opinion and Order entered Apr. 28, 2006), at 20.

considered precedential."²⁴ While PPLICA is correct that such a statement appeared in the *Penn Power Interim POLR* order, it is flatly incorrect with respect to *Duquesne Light POLR III*.

In *Penn Power Interim POLR*, the Commission expressly agreed with Administrative Law Judge Larry Gesoff, who had concluded in his Recommended Decision that the applicability of the Commission's Order should be extremely limited:

I agree with Penn Power that that [sic] Commission's decision on the Interim POLR Supply Plan will be legally binding and enforceable on all parties to this case and on all suppliers and marketers licensed to do business in Penn Power's service territory that are not participating in this case, but for the duration of the plan only.²⁵

In contrast, no such statement appears anywhere in the *Duquesne Light POLR III* Order. Therefore, *Duquesne Light POLR III* is controlling authority with respect to PPL's and other electric distribution companies' interim or bridge plans, and the Commission should dismiss PPLICA's statements to the contrary.

C. The Commission Should Reject Dominion Retail's Proposal to Set PPL's POLR Pricing Structure for Three Years in the Context of this One-Year Bridge Plan Proposal

As an alternative to PPL's modified CBP proposal for POLR service to small commercial and residential customers in 2010, Dominion Retail, Inc. ("Dominion") proposes a plan for three years of fixed rates, from 2010 through 2012.²⁶ While Dominion acknowledges its historical

²⁴ PPLICA Br. at 5-6 (emphasis added).

²⁵ *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Pa. P.U.C. Docket No. P-00052188 (Recommended Decision issued Feb. 10, 2006), at 13.

²⁶ Dominion Br. at 20.

opposition to long-term fixed rates, it points to the Commission's use of this alternative in other proceedings such as *Duquesne Light POLR III* and *Penn Power Interim POLR*.²⁷

However, the critical feature of PPL's modified CBP that has allowed so many active parties to reach a reasonable consensus is that the CBP is intended to apply for *one year only*. PPL has proposed the CBP as a one-year plan in order to bring the Company in line with other major Pennsylvania electric distribution companies whose generation rate caps expire at the end of 2010.²⁸ In this proceeding, therefore, it is unnecessary and undesirable to develop a pricing structure for PPL's POLR service that would extend beyond 2010. The POLR pricing structure that the Commission chose in *Duquesne Light POLR III* and *Penn Power Interim POLR* would simply not fit. In addition, Dominion's proposal of long-term fixed rates is not the answer to the fundamental question Dominion raises of how "to enable competition, if not to allow it to flourish."²⁹

Accordingly, the Commission should reject Dominion's proposal to set PPL's POLR pricing structure for three years in the context of this one-year bridge plan proposal.

III. CLARIFICATIONS OF RELIANT'S POSITION

The Main Brief filed by the Retail Energy Supply Association ("RESA"), Direct Energy Services LLC and Strategic Energy LLC correctly identifies Reliant as a RESA member.³⁰ The RESA Main Brief also correctly states that "the opinions expressed in this filing may not represent the view of all members of RESA."³¹ In order to avoid any confusion about Reliant's position in this proceeding, Reliant would like to clarify that it stands by the PPL/Reliant

²⁷ *Id.* at 20-21.

²⁸ PPL St. No. 1-R at 8:16-18.

²⁹ Dominion Br. at 20.

³⁰ RESA Br. at 1 n.2.

³¹ *Id.*

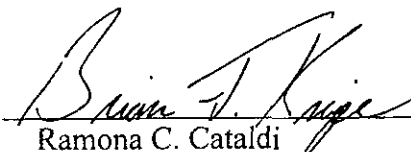
Stipulation, in which Reliant has agreed to support PPL's modified CBP for POLR service to large C&I customers and not to oppose PPL's modified CBP for POLR service to small commercial and residential customers, in the context of a non-precedential, one-year bridge plan, and that Reliant's reasons for entering into the PPL/Reliant Stipulation are limited to those reasons explained in Reliant's Main Brief and this Reply Brief, and do not include arguments made by PPL and others in support of the modified CBP proposal, except where otherwise noted in Reliant's briefs.

IV. CONCLUSION

For all the foregoing reasons, Reliant Energy, Inc. respectfully requests that the Commission find that PPL Electric Utility Corporation's Competitive Bridge Plan proposal for Provider of Last Resort service to large commercial and industrial customers for 2010, as modified by the Rebuttal Testimony of PPL's witnesses and consistent with the PPL/Reliant Stipulation, is reasonable, and that its approval is in the public interest.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply Brief of Reliant Energy, Inc. upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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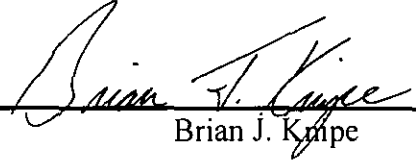
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 Secretary McNulty:

Please find enclosed and filed in accordance with 52 Pa Code § 5.502(a), an original and nine copies of the Reply Brief on behalf of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy Inc. in the above referenced matter. Also enclosed is a disk with an electronic version of the Reply Brief.

Respectfully submitted,


GLEN R. THOMAS

ea

Enclosure

cc: The Honorable Marlane R. Chestnut, Administrative Law Judge (HAND DELIVERY & E-MAIL)
Certificate of Service (REGULAR MAIL & E-MAIL)

54

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REPLY BRIEF
OF CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.

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Dated: January 19, 2007

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.

Constellation Energy Commodities Group, Inc. ("CCG") and Constellation NewEnergy, Inc. ("CNE") (collectively, "Constellation") hereby submit their Reply Brief with regard to the Petition of PPL Electric Utilities Corporation ("PPL") for Approval of a Competitive Bridge Plan ("Proposed Bridge Plan") to meet PPL's Provider of Last Resort ("POLR") supply requirements for the year 2010.

I. HISTORY OF THE PROCEEDING

In the interest of brevity, Constellation will not repeat the History of the Proceeding presented in the Constellation Main Brief.¹ However, Constellation adds that PPL submitted a reply from Mr. Joseph Cavicchi² to CCG witness Ms. Marjorie R. Philips' surrebuttal testimony.³ In addition, on January 12, 2007, Constellation and PPL each submitted Main Briefs in this proceeding.⁴

¹ See Main Brief of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Commission Docket No. P-00062227 (filed Jan. 12, 2007) ("Constellation Main Brief") at pp.1-2 (Section I).

² See PPL Electric Utilities Corporation, Joseph Cavicchi, Reply to Surrebuttal Testimony of Marjorie R. Philips, PPL Statement No. 2-S, Commission Docket No. P-00062227 ("PPL Statement No. 2-S").

³ See Constellation Energy Commodities Group, Inc., Surrebuttal Testimony of Marjorie R. Philips, Constellation Statement No. 1-SR, Commission Docket No. P-00062227 (filed Dec. 15, 2006) ("Constellation Statement No. 1-SR").

⁴ See Main Brief of PPL Electric Utilities Corporation, Commission Docket No. P-00062227 (filed Jan. 12, 2007) ("PPL Main Brief").

II. DISCUSSION

A. STATEMENT OF THE CASE

In addition to the Statement of the Case contained in Constellation's Main Brief,⁵ Constellation notes that, in its Main Brief, Constellation requests that the Commission approve the PPL-Constellation Stipulation,⁶ as it is in the public interest, and urges the Commission to order PPL to revise the Supply Master Agreement ("SMA")⁷ in its Proposed Bridge Plan to include industry-standard, Commission-endorsed "two-way default" language.⁸ PPL in its Main Brief also asks the Commission to approve the PPL-Constellation Stipulation.⁹ With respect to the SMA's default provisions, however, PPL asks the Commission to reject Constellation's proposal to amend the SMA to include industry-standard, Commission-endorsed "two-way default" provisions.¹⁰

B. SUMMARY OF ARGUMENT

Constellation in this Reply Brief responds only to arguments PPL makes in its Main Brief in this proceeding regarding: Constellation's proposal that the Commission order PPL to revise the SMA in its Proposed Bridge Plan to include industry-standard, Commission-endorsed "two-

⁵ See Constellation Main Brief at pp.2-3 (Section II.A.).

⁶ See Stipulation of PPL Electric Utilities Corporation and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., PPL Cross-Examination Exhibit No. 5 ("PPL-Constellation Stipulation").

⁷ See *PPL Electric Utilities Corporation Provider of Last Resort Supply Master Agreement*, PPL Exhibit JC-1, POLR Supply Master Agreement ("PPL Proposed SMA").

⁸ See Constellation Main Brief at p.3. Constellation in its Main Brief also reserved its right to comment on PPL's compliance filing regarding changes to PPL's SMA and Request for Proposals ("RFP") in order to appropriately reflect PPL's proposal to be responsible for transmission and transmission-related charges within PJM. See Constellation Main Brief at pp.14-15 (Section II.C.3.).

⁹ See PPL Main Brief at p.55.

¹⁰ See PPL Main Brief at p.52.

way default” language;¹¹ and revisions to the proposed Request for Proposals (“RFP”)¹² and SMA to appropriately reflect PPL’s proposal to “modify its [Proposed Bridge Plan] to specifically provide that [PPL] will obtain directly from [PJM Interconnection, LLC (“PJM”)] the transmission services required to move POLR supply within PJM”¹³ In addition, Constellation asks the Administrative Law Judge to allow a technical amendment to the PPL-Constellation Stipulation that both PPL and Constellation agree is appropriate.

PPL’s Main Brief only reiterates the inaccurate and misguided arguments made in PPL Statement No. 2-S, Mr. Cavicchi’s reply to Ms. Philips’ surrebuttal testimony. PPL’s arguments should be rejected for many of the same reasons Constellation presents in its Main Brief. In addition, Constellation expresses support for PPL’s discussion of SMA changes to reflect its transmission proposal, including PPL’s request for approval of the PPL-Constellation Stipulation, subject to the revision discussed herein, but Constellation points out one error of fact regarding PPL’s discussion.

Constellation also notes that the arguments in this Reply Brief only supplement those provided by Constellation in its Main Brief and asks the Commission to refer to Constellation’s Main Brief for its full discussion of the issues herein.

¹¹ See *Hearing In re: Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Commission Docket No. P-00062227 (“Hearing Transcript”) at pp.268-271 (questioning of Ms. Philips regarding two-way default provisions).

¹² See *PPL Electric Utilities Corporation Provider of Last Resort (POLR) Request for Proposals (RFP) Process and Rules*, PPL Exhibit JC-1 (“PPL RFP Process and Rules”).

¹³ See Constellation Statement No. 1-SR at pp.6-7 (Ms. Philips’ discussion regarding PPL’s transmission proposal); see also Exhibit MRP-3 (Ms. Philips’ suggested SMA changes reflecting PPL’s transmission proposal).

C. ARGUMENT

1. The Commission Should Reject PPL's Arguments Regarding One-Way Default Provisions and Require PPL to Revise the SMA to Include Industry-Standard Two-Way Default Provisions.

The Commission should approve Constellation's proposal to revise PPL's proposed SMA, as modified in the PPL-Constellation Stipulation, to also include industry-standard two-way default provisions. PPL raises in its Main Brief the very same flawed arguments that Mr. Cavicchi raises in his filed reply to Ms. Philips' testimony. Although Constellation in its Main Brief addresses and refutes arguments in PPL's Main Brief regarding two-way default provisions, Constellation offers further support below that PPL's position should be rejected.¹⁴

a. Two-Way Default Provisions Coupled with Existing SMA Provisions will Help to Encourage Parties to Uphold their Obligations under the SMA.

Just as Mr. Cavicchi incorrectly states in his testimony that "the addition of the two-way default provision could create an economic incentive for a supplier to default" on its obligations to provide POLR supply under the SMA,¹⁵ PPL states in its Main Brief that two-way default provisions represent "poor contract design because [they] potentially would encourage parties to default on their contractual obligations."¹⁶ As Constellation argues in greater detail in its Main Brief, Mr. Cavicchi and PPL fail to understand how two-way default provisions, coupled with the proposed SMA's current provisions, operate.¹⁷ PPL's proposed SMA contains several contractual provisions, which Constellation does not propose to change, and Constellation

¹⁴ See Constellation Main Brief at pp.4-14 (Section II.C.2.) (Constellation's arguments supporting industry-standard two-way default provisions).

¹⁵ PPL Statement No. 2-S at p.3 (lines 6-7).

¹⁶ PPL Main Brief at p.52.

¹⁷ See Constellation Main Brief at pp.7-9 (Section II.C.2.b.) (Constellation explains how two-way default provisions coupled with existing SMA provisions will help to encourage parties to uphold their SMA obligations).

proposes several additional provisions, all of which discourage a party from taking such action.

Such provisions include:

- “Step-up rights” under which other suppliers would step into a defaulting supplier’s shoes in the contract, which “would lead toward a termination payment not being due” to a defaulting supplier;¹⁸
- Provisions outlining that a party does not have the ability to force a default because the Non-Defaulting Party in such cases has the ultimate right to either declare or waive a default;¹⁹ and
- CCG’s proposed provisions under which a Non-Defaulting Party has the right to: (1) “set off against [the] Termination Payment any amounts payable by the Defaulting Party,”²⁰ including any “unascertained” obligations, which “the Non-Defaulting Party may in good faith estimate”;²¹ and (2) “withhold payment of the Termination Payment to the Defaulting Party” if transactions “are not yet liquidated.”²²

In addition, calling two-way default provisions “poor contract design” goes against the evidence in the record, which clearly shows that such contract design is utilized for “almost all transactions today,” including POLR transactions in PJM.²³ For these reasons, industry-standard, Commission-endorsed two-way default provisions, along with existing provisions in

¹⁸ Hearing Transcript at p.257 (lines 22-25) and p.258 (lines 1-13) (quoting Mr. Cavicchi).

¹⁹ Hearing Transcript at p.270 (lines 17-19) (Ms. Philips states that the Non-Defaulting Party “has the right to waive the default and not enforce the [applicable default] provisions”).

²⁰ Exhibit MRP-3 at Section 12.7(i).

²¹ Exhibit MRP-3 at Section 12.7.

²² Exhibit MRP-3 at Section 12.7(ii).

²³ See Hearing Transcript at p.269 (lines 13-15) (Ms. Philips points out that two-way default provisions are included in the Edison Electric Institute Agreement, under which almost all transactions today are conducted, the International Swaps and Derivatives Agreement, and most POLR agreements in PJM).

PPL's proposed SMA, actually will serve to *encourage* both parties to maintain their obligations under the SMA.

b. Two-Way Default Provisions are Industry-Standard, Especially for POLR Procurements in PJM States.

In the same way that Mr. Cavicchi incorrectly states in his testimony that two-way default provisions are “[n]ot necessarily” common in POLR agreements,²⁴ PPL in its Main Brief states that “a two-way default provision would be particularly inappropriate for . . . a contract between a regulated utility and an unregulated supplier.”²⁵ Constellation in its Main Brief cites to evidence in the record that refutes PPL's argument and illustrates that two-way default provisions are industry-standard, *especially* for POLR contracts between regulated utilities and unregulated suppliers.²⁶ More specifically, Constellation notes in its Main Brief that Ms. Philips identifies that:

in most of the [POLR] procurements in the mid Atlantic, New Jersey, Maryland, Delaware, District of Columbia, and in Illinois, which is in PJM, they all have [a two-way default] provision and it is for this specific load following product.²⁷

As Mr. Cavicchi himself notes, even in Pennsylvania, “the supply agreement used recently in the Penn Power solicitations . . . has a two-way default provision.”²⁸ All of such agreements are POLR agreements between regulated utilities and unregulated suppliers.

PPL, in its Main Brief in support of its contention, states *incorrectly* that, under two-way default provisions:

²⁴ See PPL Statement No. 2-S at p.4 (lines 10-11).

²⁵ PPL Main Brief at p.53.

²⁶ See Constellation Main Brief at pp.5-7 (Section II.C.2.a.) (Constellation proves that two-way default provisions are industry-standard, especially for POLR procurements in PJM states); *see also* Hearing Transcript at p.269 (lines 2-14) (Ms. Philips' list of jurisdictions and types of contracts using two-way default provisions).

²⁷ See Constellation Main Brief at p.6 (Section II.C.2.a.) (quoting Ms. Philips, Hearing Transcript at p.269 (lines 11-14)).

²⁸ PPL Statement No. 2-S at p.5 (lines 12-14).

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.²⁹

PPL again misconstrues the clear operation of two-way default provisions. In the event that a supplier defaults and no other supplier steps into the defaulting supplier's contract, and PPL therefore must go to the market to purchase replacement POLR supply, if PPL's costs to procure replacement POLR supply (including transactional costs) exceed the originally contracted-for price of POLR supply from the defaulting supplier, then the defaulting supplier will be obligated to pay PPL for the difference.³⁰ In other words, PPL will *not* have to seek recovery of incremental costs from its POLR customers.

As Constellation explains in its Main Brief, the record supports the notion that two-way default provisions actually *preserve* the "balance of the agreement" struck by two parties, ensuring that "the buyer will never be obligated to pay more than [the contracted-for price], and . . . guarantee[ing] the seller that it will have this forward income"³¹ contracted-for under the SMA. Under two-way default provisions, PPL, as a Non-Defaulting Party, would never have to pass through to its customers more than the originally contracted-for costs for POLR service.

c. PPL Incorrectly Suggests that Constellation's Suggested Revisions to PPL's Proposed SMA Will Be Insufficient to Implement Two-Way Default Provisions.

PPL again incorrectly suggests in its Main Brief that two-way default provisions should not be adopted as proposed by Constellation because other energy supply contracts that contain two-way default provisions "also contain additional protections for the POLR utility not found in

²⁹ PPL Main Brief at p.53.

³⁰ See Exhibit MRP-3 at § 12.3(a)(ii).

³¹ See Constellation Main Brief at p.12 (Section II.C.2.d.) (quoting Ms. Philips, Hearing Transcript at p.270 (lines 3-6)).

the SMA, most particularly liquidated damages.”³² Mr. Cavicchi defines “liquidated damages” as a “termination payment under default conditions.”³³ PPL also claims that Constellation “has provided no . . . evaluation” of what provisions and protections should be included in the SMA along with two-way termination provisions.³⁴ Constellation provides exactly this type of evaluation in its Main Brief,³⁵ in which it points out clearly that PPL’s existing SMA language combined with CCG’s proposed revisions already address PPL’s concerns, including the issue of liquidated damages, as follows:

- PPL’s proposed SMA already includes at Section 12.3(a) a calculation for “liquidated damages”, *i.e.*, a “Termination Payment” to be paid upon the occurrence of an Event of Default,³⁶
- PPL’s proposed SMA already indicates that such Termination Payment should take into account “Default Damages,” including “Costs” as defined by the SMA to include “brokerage fees, commissions, PJM charges, and other similar third party transaction costs and expenses reasonably incurred . . . in terminating any arrangement . . . or entering into new arrangements which replace a Terminated Transaction” as well as “all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction”,³⁷ and

³² PPL Main Brief at p.53.

³³ PPL Statement No. 2-S at p.5 (lines 5-6).

³⁴ PPL Main Brief at p.53.

³⁵ *See* Constellation Main Brief at pp.12-14 (Section II.C.2.d.) (Constellation explains that existing PPL Proposed SMA language combined with CCG’s proposed revisions already address PPL’s concerns and correctly implement two-way default provisions).

³⁶ PPL Exhibit JC-1, POLR Supply Master Agreement, at p. 25.

³⁷ PPL Exhibit JC-1, POLR Supply Master Agreement, at p. 7, 25.

- CCG’s proposed language for new Section 12.7 of the SMA allows the Non-Defaulting Party to “set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between” the parties and “withhold payment of the Termination Payment to the Defaulting Party.”³⁸

Constellation in this way already provides the very evaluation sought by PPL and, moreover, demonstrates that Constellation’s proposal, along with the proposed SMA’s existing provisions, provides the very protections sought by PPL.

d. Failure to Include Two-Way Default Provisions Potentially Will Reduce Supplier Participation in PPL’s RFPs and, More Importantly, Will Lead to Less Competitive POLR Prices for PPL’s Customers.

PPL finally incorrectly argues in its Main Brief that:

[i]t 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] 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.³⁹

Constellation first notes that in its Main Brief, Constellation demonstrates its credibility on this position by providing clear arguments using evidence on the record that suppliers’ strong desire for industry-standard, Commission-endorsed two-way default provisions are tied directly to the credit risks faced by such suppliers, including CCG.⁴⁰ As Constellation points out in its Main Brief, whereas Constellation argues from CCG’s experience as a wholesale supplier, and speaks clearly to the credit risks suppliers face, upon cross-examination, Mr. Cavicchi, PPL’s witness on

³⁸ Exhibit MRP-3 at Section 12.7.

³⁹ PPL Main Brief at p.54.

⁴⁰ Constellation Main Brief at pp.9-11 (Section II.C.2.c.) (Constellation explains that failure to include two-way default provisions potentially will reduce supplier participation in PPL’s RFPs and lead to less competitive POLR prices).

this matter, concedes that he has not analyzed whether the absence of a two-way default provision might influence the willingness of bidders to participate,⁴¹ and that he does not know how credit markets view the difference between one-way and two-way default provisions.⁴²

With respect to PPL's second comment noted above, Constellation points to CCG's credentials as a wholesale supplier in POLR procurements. As indicated in Constellation's Prehearing Memorandum in this proceeding, CCG:

provides wholesale power . . . to wholesale customers (distribution utilities, co-ops, municipalities, power marketers, utilities and other large load serving entities), including through participation in load auctions, throughout the United States and Canada⁴³

That PPL would question the participation of CCG in any of Pennsylvania's utilities' POLR procurements is not only entirely inappropriate in the context of this issue and this proceeding, but also is unsupported by the record. The views that Constellation has expressed with respect to supplier participation are based on widely-held industry beliefs ascertained through CCG's substantial experience in other markets.

PPL with this unsupportable argument avoids addressing the important issue of risk premiums in suppliers' bids that likely will result from the failure to include two-way default provisions. The Commission can eliminate these additional risk premiums and avoid needlessly increasing the price paid by default customers by adopting two-way default provisions – provisions that not only are standard in the industry, but specifically are included in POLR contracts throughout PJM, including those approved by this very Commission.

⁴¹ See Constellation Main Brief at pp.9-10 (Section II.C.2.c.) (citing to Hearing Transcript at p.256 (lines 19-22), where Mr. Cavicchi admits that he has not performed any formal analysis to determine whether the absence of a two-way default provision might influence the willingness of bidders to participate).

⁴² Hearing Transcript at p.261 (lines 1-6) (Mr. Cavicchi states that he does not know how rating agencies or credit markets view one-way default provisions).

⁴³ *Prehearing Memorandum of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.*, Commission Docket No. P-00062227 (filed Sept. 19, 2006) at p.1.

2. Constellation Agrees with PPL's Call for Approval of the PPL-Constellation Stipulation, Especially Regarding Changes to the RFP and SMA to Appropriately Reflect PPL's Proposal to Be Responsible for Transmission and Transmission-Related Charges Within PJM.

Constellation generally takes no issue with arguments in PPL's Main Brief regarding PPL's transmission proposal, and agrees with PPL in calling for approval of the PPL-Constellation Stipulation, subject to the revision discussed below in Section II.C.3.⁴⁴ Constellation points out, however, one misstatement of fact contained in PPL's discussion. PPL states that it:

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.⁴⁵

While Constellation did not file its markup on the record until just prior to the start of hearings, it is not true that PPL was not given sufficient time to review Constellation's proposed changes. Constellation provided and reviewed with PPL such markup of SMA changes several months prior to the start of hearings, in the context of settlement discussions.

3. Constellation Asks that the Administrative Law Judge Allow a Technical Amendment to the PPL-Constellation Stipulation that Both PPL and Constellation Agree Is Appropriate.

The second line of the second paragraph of the PPL-Constellation Stipulation as filed reads:

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 such changes and, if they are approved by the Commission, include them in the compliance filing.⁴⁶

⁴⁴ PPL Main Brief at p.55.

⁴⁵ PPL Main Brief at p.55.

⁴⁶ PPL-Constellation Stipulation at ¶ 2.

Upon further review of this portion of the stipulation, counsels to both PPL and Constellation believe that the current wording could lead to confusion, particularly in regards to the phrase, "if they are approved by the Commission."

In order to avoid such confusion and to maintain the spirit of the parties' agreement, Constellation suggests that the second paragraph of the PPL-Constellation Stipulation be revised to read as follows:

2. 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. If the Commission approves the transmission service changes proposed in this rebuttal testimony, PPL will: (1) adopt any consensus changes to the RFP and SMA and include them in its compliance filing; and (2) to the extent that changes to the RFP and SMA cannot be agreed to, PPL will include such changes as it reasonably 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.

It is Constellation's understanding that PPL will express similar support for this technical clarification in its Reply Brief. As such, Constellation asks that the Administrative Law Judge approve the PPL-Constellation Stipulation with the revised language.

III. CONCLUSION AND REQUESTED RELIEF

Constellation maintains its position from the Constellation Main Brief that it is confident that PPL's Proposed Bridge Plan, including the changes agreed to in the PPL-Constellation Stipulation, along with Constellation's proposal to include a two-way default provision in the SMA, provide a carefully crafted and equitable balance of competing interests and are supported by substantial evidence in the record before the Commission, and should be approved as the appropriate transitional step to acquire power to meet PPL's POLR customers' needs in 2010.

A. PROPOSED FINDINGS OF FACT

1. Please refer to the Proposed Findings of Fact in the Constellation Main Brief.⁴⁷

B. PROPOSED CONCLUSIONS OF LAW

Please refer to the Proposed Conclusions of Law in the Constellation Main Brief.⁴⁸

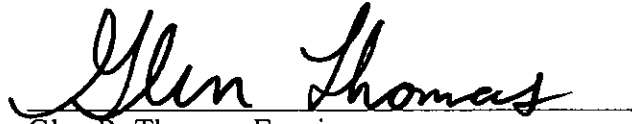
C. PROPOSED ORDERING PARAGRAPHS

1. The Stipulation between Constellation and PPL is APPROVED and ADOPTED as a Settlement in the public interest and it is ORDERED that the terms contained in the Stipulation with the revision to the second paragraph as discussed above be incorporated in PPL's RFP and SMA accordingly; and
2. PPL shall REVISE the proposed SMA to include Constellation's proposed changes to SMA Section 12.3(a)(ii) and new SMA Section 12.7, as identified in Constellation Exhibit MRP-3, in order to incorporate two-way default provisions into the SMA.

⁴⁷ See Constellation Main Brief at pp.15-17 (Section III.A.).

⁴⁸ See Constellation Main Brief at p.17 (Section III.B.).

Respectfully Submitted,

A handwritten signature in cursive script that reads "Glen Thomas". The signature is written in black ink and is positioned above a horizontal line.

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215-569-5500

*On behalf of Constellation Energy Commodities
Group, Inc. and
Constellation NewEnergy, Inc.*

January 19, 2007

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 19 2007

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to serve by a participant), in the manner and upon the persons listed below:

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BLANK ROME, LLP

Counsel for Constellation New Energy and
Constellation Energy Commodities Group

DATED: January 19, 2007



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January 19, 2007

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

VIA HAND DELIVERY

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

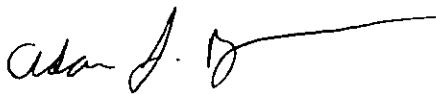
Dear Secretary McNulty:

Enclosed please find the original and nine (9) copies of the Reply Brief of the PP&L Industrial Customer Alliance ("PPLICA"), concerning the above-referenced proceeding. In addition, please find an electronic version of the Reply Brief on diskette in Word Format.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
David M. Kleppinger
Pamela C. Polacek
Adam L. Benshoff

Counsel to the PP&L Industrial
Customer Alliance

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Enclosures
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c: Administrative Law Judge Marlane R. Chestnut (via E-mail and Federal Express)
(2 copies w/ diskette in Word Format)
Certificate of Service

42

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v. :

PPL Electric Utilities Corporation :

Docket No. R-00062227

ORIGINAL

REPLY BRIEF OF
PP&L INDUSTRIAL CUSTOMER ALLIANCE

Air Products and Chemicals, Inc.
Alcoa, Inc.
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BOC Gases
Buckeye Pipe Line Company, L.P.
CertainTeed Corporation
Chamberlain Manufacturing Corp.
Cinram Manufacturing Inc.
Hercules Cement Company

The Hershey Company
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SECRETARY'S BUREAU

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I. INTRODUCTION

On August 2, 2006, PPL Electric Utilities Corporation ("PPL" or "Company") submitted to the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of a Competitive Bridge Plan ("Petition"). In the Petition, PPL requests permission to institute a Competitive Bridge Plan ("CBP") to establish the terms and conditions under which PPL will supply Provider of Last Resort ("POLR") service during 2010. Because of the potentially detrimental impact that an improperly designed CBP may have on large commercial and industrial ("Large C&I") customers in the Company's service territory, on August 28, 2006, the PP&L Industrial Customer Alliance ("PPLICA") filed a Protest and Petition to Intervene in this proceeding.

Pursuant to the procedural schedule, PPLICA filed its Main Brief ("M.B.") in this proceeding on January 12, 2007. PPLICA received Main Briefs from PPL; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); FirstEnergy Solutions Corporation ("FES"); Dominion Retail, Inc. ("Dominion"); Reliant Energy, Inc. ("Reliant"); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("Constellation"); the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"); and jointly from Direct Energy Services, LLC ("Direct Energy"), Strategic Energy, LLC ("Strategic") and the Retail Energy Supply Association ("RESA")(collectively, "RESA EGSs"). PPLICA files this Reply Brief in order to address select arguments raised in the M.B. of the RESA EGSs.¹

¹ PPLICA's Reply Brief will not respond to every argument contained in all of the parties' Main Briefs, but only those issues necessitating additional response. PPLICA's decision not to respond to all arguments should not be construed as agreement with the positions raised by any of the parties on any of the issues currently outstanding in this proceeding.

II. ARGUMENT

As discussed in detail in PPLICA's M.B., PPLICA believes that there are five essential elements to PPL's proposed Large C&I POLR plan: (1) the fixed-price option; (2) the hourly-priced option; (3) the transmission service charge; (4) the treatment of Rate Schedules IS-P and IS-T; and (5) the effect of the future issuance of final POLR regulations. See generally PPLICA M.B., pp. 6-16. While PPLICA did request certain important clarifications with respect to these issues in its M.B., it remains PPLICA's general position that while not optimum, PPL's Large C&I POLR proposal, as modified, is appropriate for a one-year non-precedential transition plan. PPLICA continues to assert that the Commission should approve the Company's proposal for Large C&I POLR service.

While the majority of parties to this proceeding either support, or are at least in non-opposition to the Company's Large C&I POLR plan, the RESA EGSs represent the sole party remaining in opposition to PPL's proposal to offer a fixed-price option for Large C&I customers.² See RESA EGSs M.B., pp. 13-14. PPL's proposed CBP appropriately ensures, however, that all customers who have not elected to obtain service from an electric generation supplier ("EGS") can continue to obtain fixed-price POLR service from the Company. See PPL M.B., pp. 14-15.

The RESA EGSs present two primary arguments for why PPL's plan should be modified to provide only hourly-priced service for Large C&I customers. First, the RESA EGSs claim that offering a fixed-price POLR product will stifle retail competition. See RESA EGSs M.B., pp. 13-14. Second, the RESA EGSs state that a fixed-price POLR product conflicts with the

² As evidenced by parties' Main Briefs, PPL, PPLICA, Constellation, Reliant and FES all now support including a fixed-price option in this non-precedential plan. See PPL M.B., 7; see PPLICA M.B., p. 7; see Constellation M.B., p. 4; see Reliant M.B., p. 7; see FES M.B., p. 5.

policy goals of energy efficiency, and demand side response programs. See id. Because these baseless assertions are neither accurate, nor supported by record evidence in this proceeding, the modifications suggested by the RESA EGSs are inappropriate and should be denied by the Commission.

A. The RESA EGSs Clear Attempt to Obfuscate Their Intention of Creating Price Volatility Under the Guise of Competition is Inappropriate and Should be Rejected by the Commission.

In their M.B., the RESA EGSs claim that a fixed-price POLR alternative would stifle retail competition in the PPL service territory. See RESA EGSs M.B., p. 13-14. Specifically, the RESA EGSs state that where there has only been an hourly-priced POLR product offered, relying on information regarding the Duquesne Light Company ("Duquesne") service territory, "robust competition" among EGSs to provide competitive product alternatives has developed to the benefit of customers.³ See id. As discussed below, as well as in detail in PPLICA's M.B., this recommendation is both unreasonable and unsubstantiated by the record evidence, and as such, should be rejected by the Commission.

Upon closer review, the RESA EGSs' argument is little more than a hollow attempt to obfuscate their true intention of creating unacceptable price volatility for Large C&I customers and an ugly POLR product. The RESA EGSs provide no explanation, nor cite any record evidence, indicating why they would be unable to compete with PPL's fixed-price POLR service, or why such an offering would limit competition. See RESA EGSs M.B., pp. 14-16. In fact, the only record evidence cited by the RESA EGSs is the Direct Testimony of Reliant, which is a party that now supports the Company's CBP. See Reliant M.B., p. 7.

³ The only "testimony" remaining by the RESA EGSs is provided by Direct, which has not provided service to a single Large C&I customer in the "robust" Duquesne market. See Tr. at 230.

What the record evidence does show is that most of PPL's customers are unable to respond to, and do not want, hourly-priced service. See PPLICA M.B., pp. 6-9; see Rebuttal Testimony of Douglas A. Krall (hereinafter, "PPL St. 1-R") p. 12; see FES M.B., p. 5. In addition, to date, there are few EGSs currently operating in the PPL territory, which makes it very important for PPL to offer this necessary fixed-price service during the next stage of retail market development. See PPLICA St. 1, p. 3. In contrast to the record evidence, however, recognizing the potential for significant profit the RESA EGSs state that it is very reasonable to expect that the competitive retail market would immediately offer PPL's Large C&I customers a fixed-price alternative.⁴ See RESA EGSs M.B., p. 14. In other words, the RESA EGSs' members want the opportunity to prey on this price volatility by offering the only fixed-price alternative. This is neither appropriate nor in the spirit of "competition".

As noted above, obviously lacking substantial evidence, the RESA EGSs rely heavily on a comparison with the Duquesne service territory. See RESA EGSs M.B., p. 13. This reliance, however, is misplaced. Contrary to the RESA EGSs' proposal in the current proceeding, Duquesne's Large C&I customers were provided with a transitional fixed-price POLR product. See [Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service](#), Docket No. P-00032071 (Oct. 5, 2006)(hereinafter, "Duquesne POLR III"). In fact, even in Duquesne's service territory, the fixed-price option is not scheduled to terminate until June 1, 2007. See [Duquesne POLR III](#), p. 32. While PPLICA does not dispute that shopping levels in the Duquesne service territory have increased, this has been accomplished during a time when Duquesne offered a fixed-price POLR service. In addition, the final POLR

⁴ As discussed in more detail in section II.B., infra, this statement is in direct conflict with the RESA EGSs' argument regarding energy efficiency and demand side response.

regulations promulgated by the Commission will govern whether Duquesne, PPL or any EDC may (or must) offer a fixed-price POLR alternative to Large C&I customers and those regulations may modify the PUC's non-precedential decision in Duquesne's POLR III case. Therefore, no reason has been presented, nor does one exist, for the Commission to require PPL to be the only major Pennsylvania utility to offer only hourly-priced POLR service in the first year after expiration of its rate caps, especially when the final POLR regulations addressing this issue have not been issued.

B. The RESA EGSs' Argument That Their Recommendation to Offer Only an Hourly-Priced Provider of Last Resort Product Will Support Energy Conservation and Demand Side Response Programs is Flawed and In Conflict With Their Previous Arguments.

In the absence of record evidence to support their claims, the RESA EGSs argue that restricting PPL to offering only hourly-priced POLR service will support policy goals related to efficient energy usage, energy conservation and demand response programs. See RESA EGSs M.B., p. 15. The RESA EGSs explain that hourly-priced service will provide appropriate market responsive price signals to encourage customers to modify their consumption in response to higher prices.⁵ As clearly shown by the record evidence in this proceeding, this argument is both logically flawed and directly in conflict with RESA EGSs prior statements.

As discussed above, the record evidence in this proceeding has shown that most of PPL's customers are unable to respond to, and do not want, hourly-priced service. See PPLICA M.B., pp. 6-9; see PPL St. 1-R, p. 12; see FES M.B., p. 5. As a result, customers will seek a fixed-price service to avoid the necessity of responding to the market price fluctuations and

⁵ The RESA EGSs' citation to the Energy Policy Act of 2005 regarding the value of "real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis" in fact supports PPLICA's proposal regarding the need for an additional day-ahead hourly-priced POLR option. See PPLICA M.B., pp. 10-11; see also RESA EGSs M.B., p. 16. PPL's real-time hourly-priced POLR option that the RESA EGSs argue must be the only POLR option does not provide a price on an advanced or forward basis.

uncertainties inherent in the hourly POLR option. Assuming that EGSs will respond to the demand in the Large C&I market for a fixed-price product, which is an assumption that the RESA EGSs rely upon in their defense of eliminating PPL's fixed-price POLR option, then customers will not see hourly market price changes. In effect, this negates the RESA EGSs' claims that the hourly POLR option will result in demand side management actions by customers.

The Commission should not be fooled by the RESA EGSs' attempt to wrap their position in the cloak of demand side response and energy efficiency initiatives, as they are merely a wolf in sheep's clothing. As the RESA EGSs previously stated, "it is a very reasonable expectation that the competitive retail market will immediately offer PPL's HPS customers competitive options, including fixed price service."⁶ See RESA EGSs M.B., p. 14. The RESA EGSs merely seek to force customers into the market where only EGSs will be able to offer a fixed-price product, the product that customers actually want and need. The only thing promoted by the RESA EGSs in this proceeding is their desire to create a market structure that maximizes their potential profits, at the expense of customers' choices, not the goal of furthering energy efficiency programs. The Commission simply cannot countenance such a blatant and unsupportable proposition under the guise of energy efficiency and demand side response. Therefore, PPLICA respectfully requests the Commission reject the proposal of the RESA EGSs, and approve the appropriate recommendation of PPL to provide both an hourly and fixed-price POLR product.

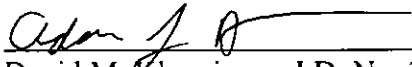
⁶ PPLICA does not agree that it is reasonable to rely on the optimistic market entry projected by the RESA EGSs. See PPLICA M.B., pp. 7-8.

IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully submits that the Pennsylvania Public Utility Commission: (1) reject the unsubstantiated proposal of Direct Energy Services, LLC, Strategic Energy, LLC, and the Retail Energy Supply Association to eliminate the fixed-price Provider of Last Resort product; and (2) approve the Competitive Bridge Plan of PPL Electric Utilities Corporation as clarified in the Main Brief of PPLICA.

Respectfully submitted,

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

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Page 2

Docket No. P-00062227

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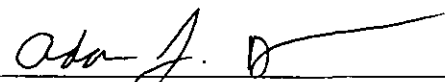
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ORIGINAL
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

Reply Brief
Eric Joseph Epstein, *Pro se*

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

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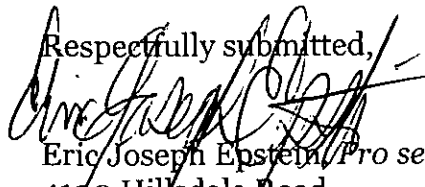
JAN 19 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary McNulty:

Eric Joseph Epstein ("Epstein" or "Mr. Epstein") hereby submits an original and nine (9) copies of his Reply Brief in the above captioned proceeding.

DOCKETED
JAN 25 2007

Respectfully submitted,

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DATE: January 19, 2006

ORIGINAL

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I. History of the Proceeding

On August 12, 2006, the Pennsylvania Public Utility Commission (Commission or PUC) published in the Pennsylvania Bulletin the Petition of PPL Electric Utilities Corporation (PPL) for approval of a competitive bridge plan (CBP) to establish the terms and conditions under which PPL will supply Provider of Last Resort service (POLR) to its customers during calendar year 2010.

On September 9, 2006, Mr. Epstein requested the right to fully participate in the evidentiary proceeding, cross examine PPL witnesses as well as witnesses presented by Active Parties, present his own evidence, prepare direct, rebuttal and sur-rebuttal testimony, and offer arguments on his own behalf. (1)

Judge Marlene R. Chestnut set a deadline for Prehearing Memorandums for 12:00 noon on September 21, 2006, and convened an Initial Prehearing Conference in the above-cited case on Friday, September 22, 2006 at 10:00 a.m.

Mr. Epstein submitted a Prehearing Memorandum, participated in the Initial Prehearing Conference, and was admitted as an Active Party to the Proceeding.

¹ Mr. Epstein has been an active participant in PPL's Restructuring Proceeding pursuant to the Electricity Generation Customer Choice and Competition Act and is a signatory to the Negotiated Settlement that resolved legal challenges to the Pennsylvania Public Utility Commissions Final Order (Docket No. R-00973954). Mr. Epstein participated in prior PPL rate case proceedings including PPL's 2004 distribution and transmission rate filing (Docket No. R-00049255.)

Additionally, Mr. Epstein is currently an active participant in the Petition of PPL Electric Utilities Corporation 2006 Competitive Transition Charge Reconciliation (Filing Docket No. M-FACE 0612.)

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II. Statement of Issues

In general, Mr. Epstein supported the full multifaceted portfolio approach recommended by the Office of the Consumer Advocate (OCA):

...that the PPL competitive bridge program provides a reasonable way forward until such time as the Commission implements its regulations governing the POLR obligation...PPL will also procure renewable resources to meet its obligations under the Alternative Energy Portfolio Standards Act. The approach of multiple RFPs for diverse resources, along with the demand response programs, should assist PPL in securing supply at reasonable prices for the interim period (OCA, Notice of Intervention, August 28, 2006, p.3)

Mr. Epstein's preliminary review of the Company's filing and subsequent testimony indicated the need for the Pennsylvania Public Utility Commission (PUC) to further investigate numerous issues referenced in his Prehearing Memorandum (September 20, 2006) 6) A-O, pp. 3-7.

Mr. Epstein narrowed the outstanding issues to include:

g) Equitable and appropriate increases in funding levels of "Charitable Giving", and economic development programming based on need and regional balance with an open and transparent RFP process for community partnerships...

i) Equitable and appropriate increases in consumer education programming in low- income and middle-income residential sectors based on need and regional balance with an open and transparent RFP process for community and educational partnerships...

Eric Joseph Epstein submitted Three Sets of Interrogatories on October 12, 2006, November 7, 2006, and November 27, 2006.

Mr. Epstein participated in settlement negotiations held at Post & Schell in Harrisburg on November 9, 2006.

Epstein also submitted a proposal on October 18, 2006 as well as a counter proposal on November 7, 2006 to resolve outstanding consumer education issues.

III. Argument

Eric Joseph Epstein did not participate in Evidentiary Hearings or submit a Main Brief based on anticipated resolution and commitments made by PPL to resolve above identified consumer issues.

PPL undertook **selective** “extensive negotiations with...the parties in an effort to resolve all or portions of the proceeding” (PPL Main Brief, p. 5.) (3)

However, PPL failed to respond in a timely manner to telephonic, electronic, and written communications to finalize provisions relating to the consumer education project after Mr. Epstein dropped all other aspects of his proposal.

The Company flatly failed to follow up on Mr. Epstein’s repeated requests to close out modest settlement issues.

2 Mr. Epstein’s most recent attempts to communicate with Mr. Russell included a telephone message to his voice mail on January 12, 2007 at 10: 20 am followed by electronic communications at 6:57 pm on January 16 and another attempt at 5:09 pm January 17, 2007. Finally, on January 18, 2007, at 12:29 pm, Mr. Russell responded to Mr. Epstein with a generalized observation.

3 Mr. Epstein last attempt to contact PPL with a proposal, i.e., **V. Proposed Ordering Paragraph** was sent to Mr. Russell at 12:56 pm on January 18, 2007. PPL responded at 2:48 pm 2006 with a brief narrative.

IV. Conclusion

Mr. Epstein's interests in this proceeding relate to consumer education; and as such, submitted several proposals to PPL and the Parties to modify the initial Bridge Filing. Mr. Epstein is amenable to the general prescription offered by the Company, but is still awaiting PPL's response to the composition and timing relating to explicit stakeholder involvement in the consumer education effort.

PPL has established a parallel paradigm in the DSM program for the Office of Consumer Education and Penn Future (PPL Main Brief, 6. Alternative Energy And DSM, pp. 18-19.)

Mr. Epstein offered to continue to negotiate, settle and even stipulate a settlement agreement (as late as 3:24 pm on January 18, 2007) modeled on the Sustainable Energy Fund agreement announced on January 18, 2007.

V. Proposed Ordering Paragraph

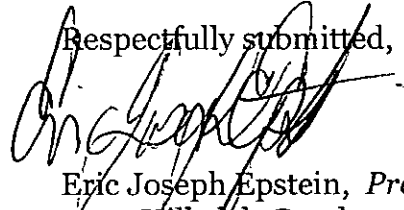
Mr. Epstein respectfully requests that the Commission order PPL to create a consumer education collaborative process that parallels the Alternative Energy and DSM program, and is consistent with the terms of the PPL/SEF stipulation.

a) Establish a process that includes PPL, the Office of Consumer, the Sustainable Energy Fund, and Eric Joseph Epstein;

b) Within six months following the approval of PPL's Competitive Bridge Plan, PPL will conduct a series of three meetings with the above-named active parties to explore, inform, and develop a more "detailed" consumer education program with PPL's Electric \$875,000 budget; and,

c) Within six months following the approval of PPL's Competitive Bridge Plan, PPL agrees to conduct a series of three meetings with the above-named interested parties to explore, inform, and develop a timeline for the expenditures of the consumer education program with PPL's Electric \$875,000 budget.

Respectfully submitted,



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January 19, 2007

VIA HAND DELIVERY

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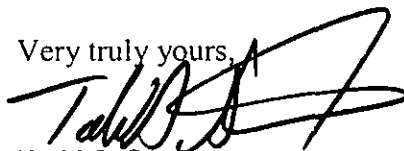
Re: PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR
APPROVAL OF A COMPETITIVE BRIDGE PLAN; Docket No. P-00062227;
REPLY BRIEF OF DOMINION RETAIL, INC.

Dear Secretary McNulty:

Enclosed please find the original and nine (9) copies of the Reply Brief of Dominion Retail, Inc., in the above-captioned matter. As indicated on the attached Certificate of Service, all parties in this proceeding have been served with a copy of this brief.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail, Inc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation:
for Competitive Bridge Plan

Docket No. P-00062227

DOCUMENT
FOLDER

REPLY BRIEF OF
DOMINION RETAIL, INC.

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PA PUBLIC UTILITY COMMISSION
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I. INTRODUCTION AND SUMMARY OF REPLY

It should be obvious at this point that the two contested issues, as far as Dominion Retail is concerned, are primarily questions of statutory interpretation. What does Section 2807(e)(3) of the *Electricity Generation Customer Choice and Competition Act* (“Choice Act”), 66 Pa. C.S. §§ 2801, *et seq.*, require, or permit? Apparently based upon the consideration that they were agreeing only to a one-year plan, and that the Competitive Bridge Plan (“plan” or “CBP”) was non-precedential, many parties have agreed to accept minor modifications to PPL’s plan for provider of last resort (“POLR”) service, in exchange for their support.

For reasons that go beyond merely ensuring that the law is given its proper interpretation, Dominion Retail is not willing to agree, under any circumstances, that laddered rates as proposed by PPL Electric Utilities, Inc. (“PPL”), both for 2010 and beyond, or reconciliation, comply with the statute. In fact, if the Commission were to agree with PPL regarding laddered rates or reconciliation, and were to adopt them statewide later on, it is quite certain that the retail choice in Pennsylvania, for small customers at least, will be severely compromised.

It may be true that laddered rates limit price volatility, but stable prices are not required by the law, rather, the law requires “prevailing market prices.” And while it may be true that PPL intends that its reconciliation mechanism will capture only a miniscule level of costs, that view does not comport with its vigorous insistence on such a mechanism, and cannot overcome Mr. Butler’s testimony here regarding the assignment of the costs of risk, or the experience in other markets where default rates are reconciled that makes it clear that reconciliation does no favor for customers and can singularly impede competition. PPL’s CBP may look harmless because of its supposedly short length and non-precedential value, but it contains provisions that

will harm customers and the market alike. Dominion Retail submits that when it is considered in light of the law, PPL's plan must fail and should be accordingly rejected.

II. REPLY ARGUMENT

A. **Contrary To PPL And The Office Of Consumer Advocate's ("OCA") Argument, Dominion Retail's Positions Are Consistent With The Commission's And Are Properly Supported. (PPL MB pp. 5-6, 20; OCA MB p. 5.)**

PPL's Main Brief ("MB") classifies Dominion Retail as a "non-joining EGS" and otherwise goes to great lengths to point out that the issues in this case are narrow, and that only a few parties (including Dominion Retail) oppose its "non-precedential" one-year plan.¹ The obvious goal of this effort is to suggest that Dominion Retail's positions on the remaining issues are out of the mainstream or are otherwise self-serving and therefore lacking in merit.

It is true that Dominion Retail has not compromised on its positions on two critically important issues in this case, namely that laddered contracts in general, and PPL's proposal to acquire energy for a single year, 2010, over a three year period, in particular, do not comply with the express language of the *Choice Act*, 66 Pa. C.S. § 2807(e)(3), and that reconciled rates for POLR charges are likewise contrary to the law. Contrary to the implications in PPL's brief, however, the Commission's most recent pronouncements on both subjects are more closely aligned with Dominion Retail's point of view.² In both instances, the Commission's statements

¹ It must be noted that the EGSs that have "joined" do not serve smaller customers, as does Dominion Retail.

² *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)*("Proposed Rulemaking Order"), Docket No. L-00040169 (Proposed Rulemaking Order entered December 16, 2004, slip op. at 11)(on the issue of prevailing market price); *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan ("Penn Power POLR")*, Docket No. P-0005218 (Opinion and Order Entered April 28, 2006, slip op. at 100-101)(on the issue of reconciliation).

are properly cited.³ If PPL chooses to view those positions as extreme, it is welcome to do so, but Dominion Retail believes that the statutory language is neither ambiguous nor susceptible to the various interpretations that PPL suggests, and that a more reasonable interpretation, more in line with that expressed by Dominion Retail, previously has prevailed and should continue to prevail.

Similarly, PPL and others take pains repeatedly to point out that this plan is for a single year and will be “non-precedential.” However, as Dominion Retail points out, accepting PPL’s plan means conceding the competitiveness of another market for another year, after that market already has been beyond the reach of competition for 10 years since the *Choice Act*, 66 Pa. C.S. §§ 2801, *et seq.*, was passed. Particularly here, where the plan is merely a prelude to PPL’s final act--a proposal for statewide laddered rates--that will ensure that meaningful competition for small customers never happens, Dominion Retail simply cannot agree to endorse, or even not to oppose, PPL’s interpretation of a law that it believes is clear and contrary to PPL’s position. (Dom. St. 1-SR pp. 2:13-3:7.)

B. Contrary To The Assertions Of PPL And The OCA, The CBP’s Laddered Rate Proposal Is Illegal, Is Bad Policy And Is Unnecessary. (PPL MB pp. 21-30; OCA MB pp. 5-16.)

On Pages 21-30 of its Main Brief, PPL asserts a multiplicity of sometimes contradictory reasons for why the Commission should approve the laddered rate proposal of its CBP. The Office of Consumer Advocate offers tepid support for this position on pages 5-16 of its Main Brief as well. For all of the reasons stated on Pages 14-20 of its Main Brief, Dominion Retail reasserts here that PPL’s CBP is contrary to law, is a bad policy choice for consumers and

³ The Commission made clear in the *Penn Power POLR* case that its decision can be cited as it relates to fundamental issues of statutory interpretation. (*Penn Power POLR*, slip op. at 19-20).

competitors, and will fail to deliver the promised results. PPL promotes its plan as balancing a multitude of interests, but notably absent from those interests is complying with the express language of the statute or satisfying even the most rudimentary needs of developing a competitive retail market in its service territory. (PPL MB at 22.) Importantly, PPL's Main Brief argues that the CBP will "provide substantial opportunities for competition to take hold in PPL's electric service territory" (PPL MB at 23), but the only competition with which it is concerned is wholesale competition. As made clear by Mr. Butler's testimony, the usage information that PPL will be able to make available will not enable suppliers to make lower price offerings and will not entice and encourage suppliers to enter the market. (Dominion Retail Statement No. 1-SR "Dom. St. 1-SR" p. 8:14-19.) Moreover, because the average prices that customers would experience under the CBP are divorced from actual market prices, customers receive no incentive, ever, to conserve, and the effectiveness of any demand management program is compromised.

1. PPL's Laddered Rate Proposal will not Deliver its Purported Benefit. (PPL MB pp. 24-25.)

PPL asserts that the purpose of its laddered rate proposal is to reduce price volatility, that is, the tendency of prices to deviate from an average price. This is different from what PPL asserted previously which is that its proposal was intended to prevent rate shock. (Tr. 87.) However, it is clear that PPL's proposal, as a one-year proposal, will do neither. If the intention is to prevent price volatility during the year 2010, a single procurement in 2009 would satisfy that need because there would be no change in price during 2010. Likewise, it is not likely that PPL's proposal will avoid rate shock because the vast majority of the run up in whole sale prices that has occurred since PPL's rates have been capped already has occurred and there are a mere three years remaining under those capped rates. (Dominion Retail Statement No. 1 "Dom. St. 1,"

p. 5:14; Dom. St. 1-SR pp. 2:13-3:7; 5:9-6:6.) PPL cites the results of auctions in Pike County Light and Power Company and others as evidence of what can happen as a result of a single solicitation. However, even PPL's own witness admits that its proposal is susceptible to the exact same market forces that produced high prices for Pike County. (Tr. 147:21.) It is only when one considers PPL's CBP in the context of its wish for statewide laddered rates after 2010 that PPL's assertion that its proposal will reduce price volatility gains any currency. It also is obvious from the record that there is no compelling evidence that PPL's plan will save customers money as compared to having them pay rates that are adjusted to reflect actual market prices. Moreover, while Dominion Retail believes that laddered rates may reduce volatility over time, it also is aware that because those rates will never reflect prevailing market prices, there is a good chance customers could pay more, and not realize it and so never understand that switching would have saved them money. This simple lack of information, alone, is sufficient reason for not approving PPL's proposal as being contrary to the statute. (Dom. St. 1-SR p. 3:13.)

2. Laddered Rates, as Proposed in the CBP, cannot Comply with the Statutory Requirements. (PPL MB pp. 25-30.)

PPL has based much of its statutory argument on the statutory phrase stating that the default service provider (PPL) "shall acquire electric energy at prevailing market prices" and ignores the remainder of the provision which clearly requires that PPL only purchase energy in a reactive mode, that is, as it is needed. 66 Pa. C.S. § 2807(e)(3). For the reasons discussed in Dominion Retail's Main Brief (Dominion Retail MB pp. 14-16), Dominion Retail believes that this view is contrary to the statute. Moreover, Dominion Retail submits that while it is true that there is no definition of "prevailing market price" in the statute, there need not be one, since the law is clear that statutes be construed using the ordinary meanings of words, 1 Pa. C.S. § 1903,

and that the ordinary meaning of the entire Section 2807(e)(3), 66 Pa. C.S. § 2807(e)(3), is clear. 1 Pa. C.S. § 1921(b). In fact, in its most recent pronouncement on the subject, in the context of its Proposed Rulemaking Order, the Commission makes it clear that more than a one-year difference between the acquisition of the energy and the sale to customers fails to meet the legal standard of prevailing market price which is the standard which controls default service rates.⁴ Dominion Retail has proposed that PPL base its default or provider of last resort rates on a shorter term basis, three months, so those prices will more accurately reflect the prevailing market. If, however, the goal is to achieve a longer period of price stability to ease the transition to a more competitive market, Dominion Retail's alternative proposal goes much further than PPL's proposal towards solving the problem of stable prices. (Dom. St. 1 p. 5:1.)

3. The use of the Plural Term "Prices" Supports Dominion Retail's Position and Refutes PPL's. (PPL MB pp. 27-28.)

PPL makes an argument to the effect that since the statute uses the term "prevailing market prices" in the plural, the legislature was endorsing the idea that there are a number of available market prices, including forward market prices and that the legislature must have intended that electric distribution companies or providers of last resort will avail themselves of these forward market prices. This argument strains credulity. If Section 2807(e)(3), 66 Pa. C.S. § 2807(e)(3), is read in its entirety, it is clear that the use of plural intends that the company shall engage in an ongoing procurement process, as it needs energy. Dominion Retail, describes this correct interpretation in its Main Brief beginning at Page 14. To suggest that the use of the plural term "prices" should negate the remaining requirements of that statutory provision, and that the same section requires the utility to purchase energy far ahead of time at whatever price

⁴ *Rulemaking RE Electric Distribution Company's Obligation to Serve Retail Customers at the Conclusion of the Transition, pursuant to 66 Pa. C.S. § 2807(e)(2)*; Docket No. L-00040169 (Order entered December 16, 2004, slip op. at 11).

might be available at the time of the purchase, and ignore the prevailing market price at the time of the need, is impermissible, if not wishful, statutory construction. 1 Pa. C.S. § 1922(1). A statute must be read to give effect to all its parts, not just one three letter phrase, 1 Pa. C.S. § 1921(a), and particularly not when the interpretation of the three letter phrase as PPL has proposed would negate the remainder of the provision. 1 Pa. C.S. § 1922(1). While it is true that the Commission has approved POLR plans for other electric utilities that have differing time periods, it has never approved a POLR plan in which the acquisition of the energy was more than a year removed from the time in which the energy would begin to be consumed.⁵

PPL's related argument, that the statutory requirement that it "recover fully all reasonable costs" supports its argument that "prevailing market prices" cannot mean only short term prices, is similarly defective. (PPL MB p. 28.) Under PPL's view, adjusting rates every three months to reflect the expected prices for the next three months would not comport with the requirement that it recover all of its costs. To the contrary, if one were to adopt Dominion Retail's proposal, reasonable costs would be recovered because prices would always reflect the prevailing market, as they were using the energy. This construct, where the prevailing market price is immediately passed-on to customers, is how the legislature obviously intended to ensure that the utilities collected all reasonable costs. Engaging in PPL's better mouse trap methodology of averaging prices on a continual basis and then reconciling rates back to the costs, perhaps over multiple years, cannot be contrived from the plain language of the provision in question. Rather, recovery of some costs would be delayed for years. In short, there is no basis in fact or law to support

⁵ *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-0005218 (Opinion and Order Entered April 28, 2006, slip op. at 100-101); *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071 (Opinion and Order entered August 23, 2004 slip op. at 17).

PPL's laddered rate proposal and it must be rejected as being illegal, as being bad public policy, and because it will eliminate any hope for real competition.

C. Contrary To The Views Expressed By PPL And Others, Reconciliation Is Neither Authorized Nor Permitted By The Electricity Generation Customer Choice And Competition Act, 66 C.S. § 2801, et seq. (PPL MB pp. 9; 42-52; OCA MB p. 12.)

Contrary to PPL's suggestion, its proposal to reconcile its customer generation charge ("CGC"), in this case it is neither authorized nor permitted by the *Choice Act* and the Commission is precluded from authorizing any such reconciliation requirement in this case. Moreover, for all the reasons stated in Dominion Retail's Main Brief, reconciliation is contrary to the spirit of the Act, in that it destroys competitive markets and fails to comply with the prevailing market price standard of the act. (Dominion Retail MB pp. 21-25.)

1. Reconciliation Would Improperly Defer the Costs Associated with Many Risks of POLR or Default Service. (PPL MB p. 42.)

Interestingly, PPL admits that its plan to reconcile its CGC is conjoined with its plans to provide POLR rates that do not recover certain risks, and rather, defer those risks for later collection in the reconciliation mechanism. (PPL MB p. 42.) Dominion Retail has made clear that almost all of these risks can and should be passed on to the wholesale market, and properly reflected in wholesale bids. (Dom. St. 1 p. 9:3-21.) The OTS agrees, and believes that passing these risks on to the wholesale supplier puts those bids on a more equal footing with retail marketers. (Tr. 186:21.) Ignoring any risk in the setting of the retail rates and retaining the ability to collect any costs produced by those risks at a later date is harmful to a competitive market because it distorts the price comparison between marketer's offers and the provider of last resort rate. (Dom. St. 1 p. 8:8:19.) That is, customers will see an artificially low POLR rate

because that rate will not include all of the risks. At the same time, customers remain liable for those risk based costs, only at a later date, in the form of a reconciliation “e-factor”.

The fact that a number of parties in this proceeding have supported PPL’s attempt to avoid the specific and strict requirements of the *Choice Act*, that does not provide for reconciliation of POLR costs, does not mean that their interpretation of the statute is correct. In fact, the Commission has expressed the opposite view.⁶ Simply put, if the legislature had intended that EDCs be permitted to reconcile POLR costs, the legislature was under an obligation specifically to state that requirement, since it did so in other sections of the same act, where it obviously intended for costs to be reconciled. (Dominion Retail MB pp 21-22.) In short, authorizing EDC to “recover fully all reasonable costs” is not the same as authorizing reconciliation.

2. Commission Precedent Holds That Reconciliation is not Proper. (PPL MB at 44.)

Contrary to PPL’s argument, the Commission’s recent policy statement on universal service charges⁷ supports Dominion Retail’s position on reconciliation. (PPL MB p. 44.) Other, more relevant Commission precedent also prohibits reconciliation.⁸ In Dominion Retail’s view, the section cited by PPL from the Commission’s recent policy statement (which does not have the force and effect of law), where the Commission states that recovery of universal service costs can be accomplished through a rate, “adjusted frequently” in order to satisfy the requirement to fully recover all reasonable costs; supports its view that POLR rates must be adjusted more frequently to reflect prevailing market prices. Dominion Retail believes that the statute requires

⁶ *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*. Docket No. P-0005218 (Opinion and Order entered April 18, 2006, slip op. at 100-101). This discussion is appropriately considered as precedent. (*Id.* at p. 19-20).

⁷ *Final Investigatory Order*, Docket No. M-00051923 (entered October 19, 2006)

⁸ *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-0005218 (Opinion and Order Entered April 28, 2006, slip op. at 100-101).

PPL to pay prevailing market prices, and recover fully all reasonable costs by charging those same prevailing market prices as directly as possible to customers. Changing rates quarterly to reflect the prevailing market price will ensure full recovery of reasonable costs and compliance with the law. No other interpretation is consistent with the entirety of the statutory section cited.

Finally, any ability to reconcile, that is, to defer the collection of certain elements of cost until tomorrow when the costs are incurred today, distorts the differential between a supplier's offer and the POLR rate which is the basis of competition, and therefore makes competition less likely. (Dom. St. 1-SR pp. 6:11-7:12.) In this case, PPL admits that it intends to defer the collection of a number of risk elements until a later date through the use of its reconciliation mechanism thereby creating a substantial likelihood that those costs will not be collected presently and that the differential may in fact be much larger than PPL otherwise admits. Accordingly, based upon its testimony and its Main Brief in this case, Dominion Retail submits that reconciliation is illegal, is bad public policy and that it will harm competitors and competition. Moreover, and perhaps as importantly, reconciled rates will not provide appropriate price signals to customers, and is otherwise unnecessary and almost every element of risk/cost can be transferred to wholesale bidders. The Commission is a creature of statute and can only do what it is authorized by statute to do. In this case, the Choice Act does not authorize reconciliation, nor does the Commission have the discretion to authorize reconciliation.

D. Contrary To PPL's Assertions, Dominion Retail's Compromise Proposal Is Reasonable, And Similar Proposals Have Been Approved By The Commission. (PPL MB pp. 33-36.)

PPL submits that Mr. Butler's compromise position, wherein PPL would acquire energy through a number of solicitations in 2009 and would fix rates at least for three years from 2010 through 2012, should be disregarded, even though it clearly would provide rate certainty to

customers during that period. Mr. Butler's proposal (Dom. St. 1 p. 5:14), remains a valid solution to the problem of price volatility for customers who will have been under capped rates for fourteen years at the time of the implementation of whatever plan ultimately is approved. (Dominion Retail MB at 20). Moreover, in other similar cases, the Commission has approved plans that require energy to be purchased in one year and delivered in three successive years as meeting the prevailing market price standard, over Dominion Retail's objections to the contrary.⁹ Accordingly, Dominion Retail does not believe that it is unreasonable for the Commission to consider such plan as a one-time alternative in this case.

III. CONCLUSION

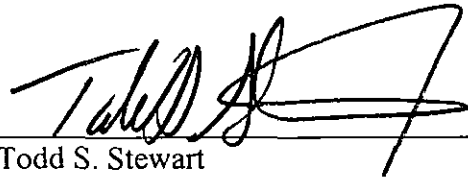
Dominion Retail continues to believe that PPL's competitive bridge plan, with regard to its proposal to ladder rates and with regard to its proposal to reconcile rates, is illegal, unwarranted and unwise and should be rejected in those respects. Dominion Retail submits that in developing its plan, PPL had a choice, it could have sought to make a proposal that was at a minimum competitively neutral, and perhaps even offered some hope for the development of a competitive market. In other words, it could have offered a plan that did no harm to marketers. PPL's other choice was to propose what it did here, a plan that is hostile to competition at the retail, and particularly the small customer level. Dominion Retail asks that PPL be required to come up with a better plan.

Accordingly, for all of the reasons stated in Dominion Retail's Direct and Surrebuttal Testimony as well as its Main Brief and herein, Dominion Retail believes that PPL's proposal to ladder rates violates the express requirements of 66 Pa. C.S. § 2807(e)(3). Dominion Retail believes that this provision must be read in its totality and that PPL's interpretation ignores the

⁹ *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071 (Opinion and Order entered August 23, 2004, slip op. at 17).

plain intent as evidenced in the plain language of that section. Similarly, Dominion Retail believes that PPL's proposal to reconcile rates violates the prevailing market price requirement of the same statutory section. Moreover, the ability to reconcile cannot be "read into" the ability to "recover fully all reasonable costs;" doing so violates the rules of statutory construction in that other parts of the same statute expressly authorize reconciliation, while reconciliation is not authorized for the costs of POLR service. Therefore, reconciliation cannot be read into the statute here. In short, the legislature knows how to authorize reconciliation when it intends to do so and its lack of express authorization in Section 2807(e)(3) is conclusive on the question of that intent.¹⁰ Accordingly, Dominion Retail asks that PPL's CBP be denied as more fully discussed herein.

Respectfully submitted,



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Dated: January 19, 2007

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¹⁰ *Commonwealth v. Spatz*, 716 A.2d 580 (Pa. 1998).

CERTIFICATE OF SERVICE

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

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January 19, 2007

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101-3265

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

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Reply Brief of the
Office of Consumer Advocate, in the above-referenced proceeding.

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

DOCUMENT
FOLDER

Sincerely,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures
cc: Honorable Marlane R. Chestnut (Via Overnight Delivery)
Parties of Record
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ORIGINAL

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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JAN 25 2007

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I. INTRODUCTION

On January 12, 2007, the parties to this proceeding filed their Main Briefs regarding PPL Electric Utilities, Inc.'s (PPL) proposal to implement a Competitive Bridge Plan (CBP) to meet its provider of last resort (POLR) obligation in the year 2010. As PPL explained in its testimony and brief, the CBP is intended to align the timing of PPL Electric's POLR service with the other major utilities. The CBP is intended to be non-precedential for both PPL and the Commonwealth as a whole, and is to be in place to meet the POLR needs for only one year, 2010. PPL anticipates that Commission regulations will be in place to govern the provision of POLR service after 2010.

As PPL notes in its Main Brief, through working with the parties during the course of the proceeding, PPL has been able to resolve differences with most of the parties and arrive at a POLR plan for 2010 for all of the customer groups that represents a plan supported by a broad cross-section of interested parties. PPL M.B. at 1-2. Of particular note, the OCA agrees with PPL witness Krall's assessment of the CBP:

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 St. 1-R at 3.

With respect to the CBP for residential customers, the OCA supports PPL's CBP, as modified in its Rebuttal Testimony and in the Stipulation between the OCA and PPL (OCA/PPL Stipulation). The CBP, while not necessarily the design that the OCA might recommend for the provision of long-term POLR service, has many important features to mitigate the risks inherent in the procurement of supply in the competitive market and allow for the provision of a reasonable and stable price for 2010. Through the use of a laddered procurement strategy over a period of three years, the risk of short term price spikes and abnormal market conditions that can push prices unduly either upwards or downwards can be mitigated. OCA St. 1 at 10; PPL St. 1 at 10; PPL St. 1-R at 17-18; PPL St. 2 at 5-6. In addition, the further development of demand-side response programs and energy conservation initiatives will, among other things, assist customers in managing any increases in their electricity prices. Further, the move toward more simplified pricing structures, mindful of rate dislocations for certain residential customers that have invested in specialized heating equipment for their home, will better prepare customers for on-going POLR service after 2010. The OCA would also note that the Company's commitment to ramp up its Customer Assistance Programs in anticipation of the need for greater enrollment if electric prices increase as expected is a crucial part of the residential CBP.

Only Dominion Retail and Direct Energy continue to oppose the residential CBP. Both Dominion Retail and Direct Energy argue that a laddered procurement such as that contained in the CBP does not meet the "prevailing market prices" standard contained in the Customer Choice Act. 66 Pa.C.S. §2807(e)(3). As discussed in the OCA's Main Brief and PPL's Main Brief, the procurement approach proposed by PPL is fully consistent with the Act. Direct Energy also continues to argue that only a monthly pricing approach for residential

customers will meet the requirements of the Act and enable the development of a retail competitive market. The use of volatile, short-term pricing approaches for residential customers, however, is unsound and creates significant problems for residential customers, including *unaffordable and unmanageable bills*. Finally, *Dominion Retail and Direct Energy* object to the limited reconciliation feature of PPL's CBP. The OCA submits that the limited reconciliation proposed here is not inconsistent with the Customer Choice Act.

The OCA submits that PPL's CBP for residential customers is a reasonable and appropriate mechanism for PPL to meet its POLR obligation in 2010. The CBP strikes a reasonable balance for 2010 while the Commission continues to consider the design of default service through its rulemaking process. The CBP is fully consistent with Pennsylvania law and should be approved.

The OCA discussed many of the arguments forwarded by *Dominion Retail and Direct Energy* in its Main Brief and will not repeat those arguments here. Failure to discuss a particular point or argument in this Reply Brief should not be interpreted as agreement with that point or argument. Also, the OCA will not address each separate finding of fact or conclusion of law advanced by *Dominion Retail and Direct Energy*. Since each finding of fact or conclusion of law rests on the interpretations of the Act forwarded by *Dominion Retail and Direct Energy*, each must fall as must their interpretation of the Act.

II. REPLY TO DOMINION RETAIL, DIRECT ENERGY, RESA AND STRATEGIC

A. Prevailing Market Prices Standard

Both *Dominion Retail* and *Direct Energy* argue that PPL's laddered procurement approach does not meet the prevailing market prices standard of the Act, although both suggest alternatives that they argue meet the requirements of the Act that are quite different. As discussed in the OCA's Main Brief, and as set forth in PPL's Main Brief, the Act does not require the use of short term or volatile pricing to meet the prevailing market prices standard. OCA M.B. at 14-15; PPL M.B. at 26. Dominion Retail's and Direct Energy's arguments that the Act requires the use of short term pricing or purchasing very close to the time of supply should be rejected.

In Section 2807(e)(3), the Act requires that an electric distribution company (EDC) acquire electric energy at prevailing market prices. As explained fully below, the "prevailing market prices" standard applies at the time of acquisition. Moreover, Section 2807(e)(3) cannot be read in isolation from other provisions of the Act, or from the entirety of the Public Utility Code. As PPL notes in its Main Brief, by way of example, the Act also declares: "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). The Act also declares: "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). The Act also is part of the entire Public Utility Code which still requires that rates charged to customers be just and reasonable. 66 Pa.C.S. §1301. As OCA witness Alexander testified, the goal of restructuring was to provide customer benefits. OCA St. 2R at 11.

Dominion Retail and Direct Energy both argue that the use of the term “prevailing” in the Act requires a close temporal connection between the acquisition of supply and the delivery to customers, but Dominion Retail and Direct Energy have very different views of that temporal connection. Dominion Retail, for example, argues that a multi-year supply procurement should be conducted in 2009, but that the procurement could be for supply three years or more in length. In other words, Dominion Retail argues that a procurement of energy in 2009 for delivery in 2012 would be within the parameters of the Act, but a procurement of a portion of energy requirements in 2007 for delivery in 2010 would not. See, Dominion Retail St. 1 at 4-5; Tr. 239-240. Dominion Retail’s position simply cannot be squared, and should not be considered.¹

Direct Energy argues that the phrase “prevailing market prices” in the Act requires that the price of power charged to customers must be reflective of market prices at the time the power is delivered to customers. As OCA witness Estomin explained, however, Direct Energy’s argument proves too much. Mr. Estomin stated:

Mr. Lacey’s argument, if taken to its logical conclusion, would suggest that POLR supplies be procured exclusively on the spot market and that the price charged to consumers at any particular time correspond to the spot market price of power at that time. To my knowledge, no Commission has required that POLR service for residential customers be purchased on the spot market and rates be established on spot market prices. In fact, Mr. Lacey does not suggest that this arrangement is appropriate. Rather, Mr. Lacey recommends that POLR suppliers for residential customers be secured one month at a time, two months in advance of the delivery date. There is no assurance, however, that market prices

¹ Dominion Retail also argues that Section 2807(e)(3) is “reactive” in nature so it is only when it can be known with certainty that a customer will not have supply that the purchase can be made. Dominion Retail M.B. at 11-12. Such an argument ignores the fact that when energy is needed, it is too late to then acquire since it must be available *simultaneously to need*. Such an argument would eliminate all planning for POLR service under the Act, a result clearly not in accord with the declaration that this essential service be available on reasonable terms and conditions. 66 Pa.C.S. §2802(9).

two months in advance of delivery would meet the test that Mr. Lacey has established.

OCA St. 1R at 4-5.

As both PPL witness Cavicchi and OCA witness Estomin noted, the market is not made up of just one product or just one price. The market, at any given time, provides an extensive array of products and an extensive array of terms. The plural term “prevailing market prices” in Section 2807(e)(3) reflects the many products, terms and price points in the market. While there is a temporal connection, it is a temporal connection to the time at which the specific product is acquired that is the prevailing market price for that product over the specified term, not the price when any given kilowatthour happens to be delivered to a customer. OCA St. 1R at 2-3; PPL St. 2 at 12. The OCA submits that Dominion Retail’s and Direct Energy’s argument that the prevailing market prices standard must be met at the precise time that supply is delivered to the customer must fail.

For the reasons set forth above, and for the reasons discussed in the OCA’s Main Brief and PPL’s Main Brief, the interpretations of the Act offered by Dominion Retail and Direct Energy prove too much and are incorrect. In this case, PPL’s proposal to acquire supply at prevailing market prices through an open competitive process in the wholesale markets to meet its 2010 POLR obligation clearly meets the requirement of the Act.

B. Monthly Pricing

Direct Energy argues that the price for POLR service should change monthly for residential customers. Direct Energy argues that such changes are necessary to meet the prevailing market prices standard, and to eliminate barriers for electric generation suppliers (EGS). Direct Energy Main Brief at 3, and 5-6. As discussed above, monthly price changes certainly are not necessary to meet the prevailing market prices standard of the Act.

Additionally, monthly market price changes for residential customers would be unsound public policy and would result in a number of problems that compromise residential customers' ability to afford, and/or manage their electric bills. The OCA submits that monthly price changes for residential customers should not be mandated in this proceeding.

Under Direct Energy's proposal in this proceeding, residential customers would experience a new price each month based on an auction for short term, one-month supply bid 60 days in advance. Based on a review of historic PJM locational marginal prices (LMPs), a portion of the cost of supply appearing on the customer's bill, PPL witness Krall made the following observations:

- Because LMPs change every month, it can be expected that customers will see changes in price every month.
- Month to month increases can be as much as 2.2 cents per kWh and decreases can be as much as 2.0 cents per kWh.
- Month to month increases can be as much as 52% and decreases can be as much as 32%.
- The difference within a calendar year can be as much as 4.4 cents per kWh and 200%.

PPL St. 1-R at 21-22. See also, PPL St.1-R, Exh. DAK-3.

This price volatility can have significant impacts on residential customers' ability to afford and manage their electric bills. As OCA witness Estomin testified:

Residential consumers, particularly low-income residential consumers, require price stability to allow for budgeting electric bills. The cost of electricity represents a major monthly expenditure, and volatility in prices seriously erodes the ability of low- and middle-income households to deal with balancing those expenditures with other household expenditures. This would be particularly true of monthly prices were relied upon, as recommended by Mr. Lacey. Those months in which consumption tends to be greatest are the same months in which wholesale prices on the spot market tend to be highest. This relationship between

monthly usage levels and monthly prices serves to exacerbate the difficulties associated with budgeting for electric supply costs, which will only be compounded with the anticipated increases in power supply costs in 2010 relative to current levels (estimated to be between 20 and 30 percent by PPL).

OCA St. 1-S at 6. See also, OCA St. 2-R at 9. The OCA submits that price stability, not short-term, volatile monthly prices, are a key component to the reasonable terms and conditions under which POLR supply for residential customers must be provided.²

There are other practical problems with monthly price changes, particularly concerning budget billing which assists many customers in affording and managing electric service. PPL witness Krall explained the difficulty posed to budget billing:

An additional serious problem with Mr. Lacey's proposal is that it would be totally impractical to offer customers budget billing – a program that many small customers rely on to help them manage their spending. Without knowledge of forward prices, the calculation of a monthly budget amount for customers would be pure guesswork with the result that the annual budget reconciliation would be extremely volatile and, ultimately, defeat the purpose of having a budget. Approximately 155,000 customers (14% of all residential customers) participate in the budget billing program.

PPL St. 1-R at 23. Additional difficulties were identified for determining the customer assistance program (CAP) customer discount and with the CAP costs to be included in any CAP cost recovery mechanism. OCA St. 2-R at 9; PPL M.B. at 35-36.

Despite these significant problems with monthly price changes for residential customers, EGSs continue to advocate for this model suggesting that it should advance retail competition. There is no evidence to support such a claim. OCA witness Alexander reviewed

² The OCA does not suggest that *voluntary* variable or short-term pricing options should not be available to residential customers through either the EDC or EGSs. Voluntary programs entered into by customers with the ability to respond to more frequent price changes can, and should be offered.

the shopping statistics from New York, one state that has used a more volatile monthly approach.

Ms. Alexander testified:

In some New York jurisdictions, the New York Public Service Commission has promoted monthly price changes for default electric service for exactly the reasons put forth by Mr. Lacey. The change in default service procurement and pricing was also accompanied by enrollment programs sponsored by the EDC with discounts that were funded in part by utility ratepayers. The results to date have been less than encouraging. The vast majority of residential customers have remained with their utility. The overall state migration rate for residential customers is about 10%, but this average masks significant differences among the electric utilities. The rate of residential customer migration ranges from 1.2% to 37%, the latter a reflection of the "incentives" program in effect at Orange and Rockland Utilities. Even though the price for default service varies monthly for all Consolidated Edison customers in New York, only 7-8% of the residential customers have migrated to alternative energy suppliers.

OCA St. 2R at 10.

Additionally, monthly price changes are likely to make an informed shopping decision more difficult by the customer, thus hampering informed retail competition. PPL witness 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. Furthermore, even if the customer were to have the POLR price for the entire billing period, that would only be a one month price so the customer would either be faced with shopping month to month (if monthly competitive offers were 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 St. 1-R at 22-23. If the result of monthly pricing is that customers flee their utility POLR service for uneconomic reasons, or out of confusion and frustration, the OCA submits that this can hardly be considered a “success” of the Customer Choice Act.

The OCA submits that there is no basis to adopt a volatile pricing model for residential POLR service. States with retail competition are generally moving away from such short term POLR plans and moving towards policy with longer term, stable pricing. See, OCA St. 2R at 5-8. The problems inherent in such an approach, from the perspective of affordability, management of bills, practicality, and the ability to make an informed shopping decision, strongly argue for the rejection of such a model. The OCA submits that the monthly pricing model proposed by Direct Energy in this case should not be adopted.

C. Reconciliation

Dominion Retail and Direct Energy object to PPL’s use of a limited reconciliation mechanism as part of its Generation Supply Charge (GSC). Under PPL’s proposal, the reconciliation mechanism is to provide for the over-recovery or under-recovery associated with the differences between the Company’s estimated cost to acquire generation supply and its actual costs to acquire supply. PPL St. 3 at 4. For residential customers, except for a supplier default not fully covered by the security requirements, the reconciliation will primarily reflect the imprecision inherent in estimating the billing determinants for each rate schedule, particularly since a differential between the rate schedules is being maintained. OCA witness Estomin explained the reasonableness of this reconciliation mechanism in the current circumstances:

This is particularly the case if at least some portions of residential customers are not paying an average rate precisely equal to the blended cost of the residential procurements. Given my recommendation of a lower absolute rate for RTS customers relative to the blended cost, POLR revenues may not precisely match POLR costs. This imprecision arises because the assumed billing determinants used to set rates in 2010 may not precisely match what actually happens. The difference, however, is not anticipated to be large, and the annual (i.e. post-2010) reconciliation of POLR costs and revenues would eliminate this risk to PPL. Since the Company is not proposing to earn any return on POLR generation costs, a reconciliation arrangement is not unreasonable.

OCA St. 1 at 19.

Dominion Retail and Direct Energy oppose the reconciliation on three grounds. First, they argue that PPL could use the fact of reconciliation to intentionally understate the price charged to customers thus impacting the ability of EGSs to compete. Dominion Retail M.B. at 22-23. Second, they argue that since EGSs cannot reconcile their price, this provides an unfair advantage to the EDC. Dominion Retail M.B. at 22-23; Direct Energy M.B. at 16. Third, they argue that reconciliation is not authorized by the Act and is inconsistent with the Commission's decision in Petition of Pennsylvania Power Company, Docket No. P-00052188, 2006 Pa. PUC LEXIS 56 (Penn Power). None of these arguments support rejection of the reconciliation mechanism for this transition plan.

The EGSs' first argument that the EDC will intentionally establish a low rate and then make up the difference through reconciliation is unsupported by the record and the design of the CBP. PPL's rates in 2010 are the blended rate of all of its procurements for supply, plus its costs of administering the procurements. These costs will be known at the time the rates are designed and the design is intended to recover all costs across the projected sales volumes. PPL St. 3 at 3-4. That design will be subject to Commission review for compliance with the

approved plan at the time. It is not likely that any understatement of the rate would occur under this Plan.

The EGSs second argument, that rejecting a reconciliation mechanism is necessary to “level the playing field” is equally problematic. The reconciliation mechanism is intended to address sales volume changes between the rate schedules, which are expected to be minor. Except for the unlikely instance where a supplier default is not covered by the security provided, the reconciliation will not change the average market price to customers. The bids provided by the wholesale supplier are a flat, cents per kWh for load following service and that price is largely reflected to the customer, but for the small amount of rate differential between Rate RS and Rate RTS intended to smooth the rate dislocation for the 14,000 Rate RTS customers. OCA St. 1 at 19. There is no competitive disadvantage when the rate being charged to the customer so closely reflects the blended cost of supply.

Finally, the OCA submits that the EGS argument that the Act and the Commission’s decision in Penn Power prohibit reconciliation cannot be supported. The Commission’s decision in Penn Power was not intended to set precedent for other proceedings and it is currently on appeal regarding the reconciliation issue. Penn Power at *33. Further, the Act does not specifically prohibit reconciliation of any costs associated with POLR service or address the recovery mechanism of these costs. Rather, the Act provides that the EDC shall recover fully its reasonable costs of POLR service.³ One of those costs is the cost of complying with the Alternative Energy Portfolio Standards Act (AEPS Act). 73 P.S. §1648.1 et seq. The AEPS Act specifically allows for the recovery of the costs of compliance with the AEPS Act through a reconcilable surcharge. 73 P.S. §1648.3. Allowing reconciliation of the limited POLR

³ The Commission recently concluded in a Policy Statement that language in Section 2804(9) that allows an EDC to “fully recover” universal service costs requires a reconcilable or frequently adjusting mechanism. Final Investigatory Order, Docket M-00051923, *slip op.* at 15 (Order entered December 18, 2006).

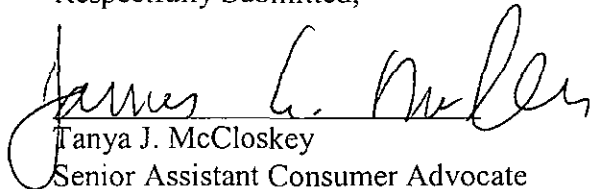
costs in this proceeding is not at odds with Section 2807(e)(3), particularly in light of the AEPS Act.

The OCA submits that PPL's proposal for limited reconciliation as part of its one-year Competitive Bridge Program is reasonable. In light of PPL's agreement to mitigate the rate impact for residential customers of moving from blocked rate designs to flat cents per kWh rates through maintaining the price differential between Rate RS and Rate RTS, and considering further measures for Rate RS if the overall increase exceeds 30%, the limited reconciliation proposed to adjust for any mismatch between estimated sales for the rate classes and the actual sales should be approved.

III. CONCLUSION

For the reasons set forth above, and in the OCA's Main Brief, the OCA submits that PPL's Competitive Bridge Program for residential customers, as modified by PPL's Rebuttal testimony and the OCA/PPL Stipulation should be approved. The modified Competitive Bridge Program reaches a fair balance of the issues and interests in this proceeding for service in 2010.

Respectfully Submitted,



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Dated: January 19, 2007

00092282

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Reply Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of January, 2007.

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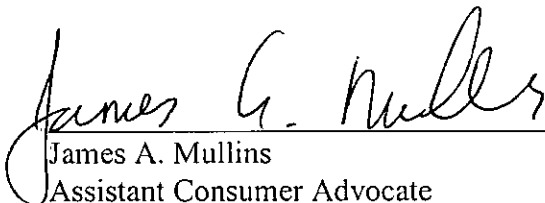
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January 19, 2007

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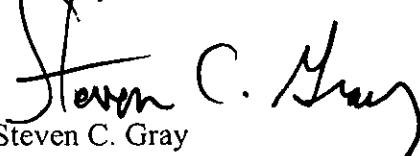
**Re: Petition of PPL Electric Utilities Corporation for Approval of a Competitive
Bridge Plan
Docket No. P-00062227**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PPL ELECTRIC
UTILITIES CORPORATION FOR
APPROVAL OF A COMPETITIVE
BRIDGE PLAN

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DOCKET NO. P-00062227

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REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

DOCKETED
JAN 25 2007

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I. Introduction

On August 2, 2006, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed a Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan (“Petition”). According to the Company, the Petition was filed “to establish the terms and conditions under which PPL will supply Provider of Last Resort (‘POLR’) service during 2010, as a transition to a fully competitive statewide market beginning January 1, 2011.” Petition, at 1. By its Petition, the Company is requesting approval of its Competitive Bridge Plan (“CBP”) under Chapter 28 of the Public Utility Code, 66 Pa. C.S. §§ 2801-2812.

II. Procedural History

On August 2, 2006, PPL filed the Petition.

On August 12, 2006, Notice of the Petition was provided in the *Pennsylvania Bulletin*.

On August 28, 2006, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention.

On September 15, 2006, PPL served the direct testimony of Douglas Krall, Joseph Cavicchi, Joseph Kleha, and Timothy Dahl.

On September 22, 2006, a prehearing conference was held before Administrative Law Judge (“ALJ”) Marlane Chestnut.

Also on September 22, 2006, ALJ Chestnut issued her Prehearing Order # 2.

On November 14, 2006, the OSBA served the direct testimony of Brian Kalcic.

On December 6, 2006, PPL served the rebuttal testimony of Douglas Krall, Joseph Cavicchi, Joseph Kleha, and Timothy Dahl.

Also on December 6, 2006, the OSBA served the rebuttal testimony of Brian Kalcic.

On December 15, 2006, the OSBA served the surrebuttal testimony of Brian Kalcic.

Evidentiary hearings were held before ALJ Chestnut on December 19 and 20, 2006.

On December 20, 2006, PPL served the written rejoinder testimony of Joseph Cavicchi.

On January 12, 2007, the OSBA submitted a main brief.

The OSBA submits this reply brief in compliance with ALJ Chestnut's Prehearing Order # 2.

III. The PPL/PennFuture Stipulation on DSR Programs

PPL and Citizens for Pennsylvania's Future ("PennFuture") have entered into a stipulation on the topics of Demand Side Response ("DSR") and energy efficiency. See PPL Main Brief, at 58.

The PPL/PennFuture Stipulation states that PPL, PennFuture, and interested Electric Generation Suppliers ("EGSs") shall meet "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.*" PPL/PennFuture Stipulation, at 2, Paragraph 5 (emphasis added).

The OSBA supports the voluntary nature of the customer participation in the proposed DSR programs set forth in the PPL/PennFuture Stipulation. See OSBA Statement No. 2, at 6 ("The OSBA is opposed to *mandatory* DSR programs.").

However, the PPL/PennFuture Stipulation is silent on how the DSR programs will be funded. As OSBA witness Kalcic stated:

The OSBA does not oppose voluntary Demand Side Response programs, as long as those participating in such programs pay the associated costs.

OSBA Statement No. 2, at 6 (abbreviations omitted).

Therefore, the OSBA does not oppose the PPL/PennFuture Stipulation with the condition that participants in the DSR programs shall pay the costs of those programs.

IV. The Design of the PPL TSC

The OSBA, in its main brief, observed that PPL's "proposal to recover the cost of transmission service has evolved throughout this proceeding." OSBA Main Brief, at 9. The OSBA documented, in detail, the evolution of PPL's Transmission Service Charge ("TSC") proposal. *Id.*, at 9-12. The PPL TSC proposal will require that POLR suppliers be responsible for all ancillary services charges, will require that POLR suppliers be responsible for all congestion charges, and will require that POLR suppliers deliver their electricity to the PPL zone within the PJM service territory. *Id.*

PPL, in its main brief, recounted a similar history, and arrived at the exact same understanding of the design proposal for the TSC as set forth above. *See* PPL Main Brief, at 54-55.

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation") also discussed the design of the TSC in its main brief, but failed to incorporate the clarifications to the Company's TSC proposal made by PPL witness Joseph Kleha during oral rejoinder. Specifically, in his written rebuttal testimony, Mr. Kleha stated that the delivery point for all POLR suppliers will be anywhere within the PJM service territory. However, in oral rejoinder, Mr. Kleha corrected his rebuttal testimony and clarified that PPL is proposing that the delivery point for all POLR suppliers will be *within the PPL zone*. Transcript, at 159, lines 1-16. It is Mr. Kleha's written rebuttal testimony (*i.e.*, where he states that delivery anywhere in PJM is acceptable) that Constellation cited with approval in its main brief. *See* Constellation Main Brief, at 14, footnote 62. However, the TSC proposal set forth in Mr. Kleha's rebuttal testimony is not the Company's TSC proposal that is before the ALJ and

the Commission. Rather, what is before the ALJ and the Commission is Mr. Kleha's rebuttal testimony as clarified during oral rejoinder. *See* PPL Main Brief, at 54 ("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.").

Therefore, the ALJ and the Commission should be aware of Constellation's misunderstanding of the actual TSC proposal when ruling on this matter.

Furthermore, PPL concludes its discussion of the Company's TSC proposal by observing that "there are no transmission issues to be decided by the ALJ other than approval of the PPL Electric/Constellation stipulation." PPL Main Brief, at 55.

Regardless of the accuracy (or inaccuracy) of that statement, the OSBA observes that the PPL/Constellation Stipulation must be revised in two ways if it is to conform with the testimony and be approved by the ALJ and the Commission.

First, PPL/Constellation Stipulation Paragraph 2 states that the "SMA must be amended to reflect transmission service changes proposed by PPL rebuttal witness Kleha." That sentence should include the phrase: "and as modified by him in his oral rejoinder testimony."

Second, PPL/Constellation Stipulation Paragraph 7 is extremely broad and of dubious enforceability, especially given the number of parties in this proceeding:

"To the extent testimony presented by PPL is inconsistent with this Stipulation, PPL agrees that this Stipulation shall supersede any such testimony."

PPL/Constellation Stipulation, at 2, Paragraph 7.

It is difficult to ascertain precisely how the PPL/Constellation Stipulation overlays the entirety of PPL's testimony. To simplify this issue, the OSBA suggests that PPL

should be held to the TSC proposal set forth in its main brief. *See* PPL Main Brief, at 54-55. Consequently, the OSBA requests that the ALJ and the Commission consider only the specific TSC proposal as summarized in the Company's main brief. Any subsequent redesign of the TSC by side agreement between PPL and Constellation should be disregarded and disallowed.

V. **Prevailing Market Price and POLR Supply Procurement**

Dominion Retail, Inc. (“Dominion”) stated, in its main brief:

As a matter of law, Dominion Retail submits that acquiring energy in advance over a three-year period to serve a single year simply cannot comply with the statutory requirement that the energy to fulfill the requirements [of] the provider of last resort be purchased at ‘prevailing market prices.’

Dominion Main Brief, at 15. The Retail Energy Supply Association, Direct Energy Services LLC, and Strategic Energy LLC (collectively, “RESA *et al.*”) concur with Dominion’s statutory analysis. *See* RESA *et al.* Main Brief, at 4.

The OSBA respectfully disagrees with Dominion and RESA *et al.* Nothing in Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3), prohibits the use of a multi-year procurement strategy as proposed by PPL. Specifically, under Section 2807(e)(3), an electric distribution company (“EDC”) such as PPL must “acquire electric energy at prevailing market prices.” Section 2807(e)(3) does not define “prevailing market prices”; it does not spell out how those “prevailing market prices” are to be determined; it does not state the procurement methodology that must be used; and it does not specify the time period for which default service rates are to be set.

Furthermore, Section 2807(e)(2) requires the Commission to “promulgate regulations to define the electric distribution company’s obligation to . . . acquire electricity” at prevailing market prices. In promulgating those regulations, the Commission has the authority to set the procurement methodology by which an EDC may acquire energy. For example, the Commission could, by regulation, determine that default service rates that are based upon a one-year procurement process are acceptable, but that rates based upon a longer procurement process are not. However, until those

regulations have been promulgated, there is no limit on the timeframe for the procurement of POLR energy as long as each procurement occurs through a competitive process.

In addition, Dominion recommended that PPL be ordered to adopt either a “no more than one year in advance of its use” procurement strategy,¹ or the second alternative proposed by Dominion witness Butler (whereby PPL would procure its supply in 2009 and fix the price for that supply for at least three years). *See* Dominion Main Brief, at 16. *See also* Dominion Statement No. 1, at 5-6. RESA *et al.* advocated a monthly pricing plan for residential and small commercial customers. *See* RESA *et al.* Main Brief, at 13.

Once again, the OSBA respectfully disagrees with the proposals of Dominion and RESA *et al.* First, OSBA witness Kalcic responded to the RESA *et al.* procurement proposal as follows:

Ironically, such an approach would expose POLR customers to more, rather than less, price volatility than PPL’s proposed CBP since virtually all short-term movements in energy prices would be reflected in monthly POLR prices. In addition, a monthly procurement plan would result in higher administrative costs (due to the frequency of the required POLR supply auctions), which would presumably need to be recovered from POLR customers.

OSBA Statement No. 2, at 2. The OSBA submits that introducing more price volatility while simultaneously raising the cost of procurement is not an appropriate POLR supply solution for PPL’s small commercial and industrial (“Small C&I) customers.

¹ A “no more than one year in advance of its use” procurement strategy differs from the first alternative recommended by Mr. Butler: he preferred a “monthly or quarterly non-reconciled price.” Dominion Statement No. 1, at 6.

Second, Mr. Kalcic responded to the procurement options set forth by Dominion:

With respect to Mr. Butler's first alternative [monthly or quarterly pricing], I would simply state that my previous comments with respect to [RESA *et al.*'s] proposed monthly pricing model would also apply here.

With respect to Mr. Butler's second alternative, I would note that PPL would be required to obtain three (3) years of POLR supply via competitive procurements beginning no earlier than January 1, 2009. While Mr. Butler explicitly allows for 2-3 solicitations, it is not clear that such few solicitations would be sufficient to protect POLR customers from the outcome experienced by Pike customers, particularly given the fact that all solicitations would be constrained to take place within one year. Moreover, to the extent that PPL is not able to avoid price spikes in the wholesale market, POLR customers could be saddled with a Pike-like outcome for multiple years.

OSBA Statement No. 2, at 3. Mr. Kalcic recommended the rejection of both the Dominion and RESA *et al.* procurement proposals. *Id.*, at 4.

The OSBA submits that the CBP procurement proposal complies with the requirements of Section 2807(e)(3), and is the most reasonable plan for obtaining supply for PPL's Small C&I customers. Consequently, the OSBA respectfully requests, for the limited purposes of this CBP, that the ALJ and the Commission approve the CBP proposal to conduct an RFP using six separate bids spread out over three years for the Small C&I customer class.

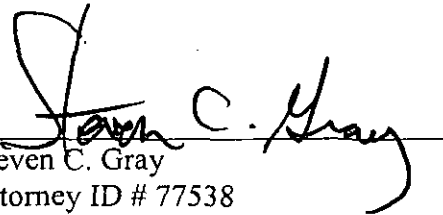
VI. Conclusion

Therefore, for the reasons set forth both herein and in the OSBA main brief, the OSBA respectfully requests that the ALJ and the Commission approve the Company's Petition such that PPL will:

- 1) Obtain PPL's POLR supply by separately bidding out the residential, Small C&I, and Large C&I customer classes;
- 2) Eliminate the demand and the declining block energy charges and replace those charges with a flat-rate consumption charge applicable to all usage for the Company's Small C&I customers;
- 3) Conduct an RFP using six separate bids spread out over three years for the Small C&I customer class;
- 4) Implement the proposed TSC wherein POLR suppliers will be responsible for all ancillary services charges, will be responsible for all congestion charges, and will be required to deliver their electricity to the PPL zone within the PJM service territory;
- 5) Continue to require the Company's residential customers to be solely responsible for funding PPL's universal service programs (other than Operation HELP);
- 6) Require that each successful bidder in the RFP process must provide load-following supply;
- 7) Make the winning supplier responsible for compliance with the act of November 30, 2004 (P.L. 1672, No. 213); and
- 8) Require that participation in an "early phase-in" program, if any, will be at

the option of the individual customer, not PPL, and that if a customer opts for the "early phase-in" of the higher rates, that customer will receive a refund of any overpayments made during the 2007 through 2009 timeframe with interest.

Respectfully submitted,



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For:

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Dated: January 19, 2007

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PA PUBLIC UTILITY COMMISSION
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-mail and overnight delivery (unless otherwise indicated) upon the persons addressed below:

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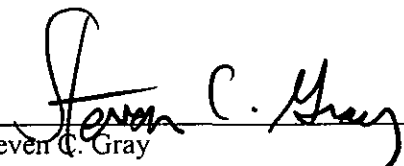
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