

Kathy J. Kolich
Senior Attorney

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Via Federal Express

March 14, 2007

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

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MAR 14 2007

**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:

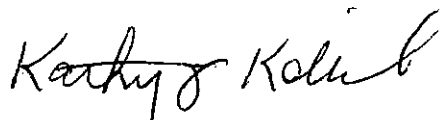
Please be advised that intervenor, FirstEnergy Solutions Corp. will not be filing any exceptions to the Administrative Law Judge's February 23, 2007 Recommended Decision issued in the above referenced matter. However, FirstEnergy Solutions Corp. reserves the right to respond to any exceptions filed by other parties, consistent with your February 23, 2007 letter. I am enclosing ten copies of this letter and certificate of service. Please date stamp the extra copy and return it to me in the enclosed self-addressed stamped envelope.

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

**DOCUMENT
FOLDER**

DOCKETED
MAR 16 2007

Respectfully submitted,



Kathy J. Kolich (Reg. No. 92203)
Senior Attorney
FirstEnergy Service Company
Attorney for FirstEnergy Solutions Corp.

KJK:kag

cc: Honorable Marlane Chestnut - via Federal Express
All Parties of Record - via First Class U.S. Mail

59

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. : Docket No. P-00062227
PPL Electric Utilities Corporation :

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CERTIFICATE OF SERVICE

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

I hereby certify that I have served a true copy of FirstEnergy Solutions Corp.'s March 14, 2007 letter to Secretary McNulty on the parties of record listed below by electronic and first class mail, and Administrative Law Judge Chestnut by electronic mail and Federal Express this 14th day of March, 2007, in accordance with the requirements of § 1.54 (relating to service by a participant).

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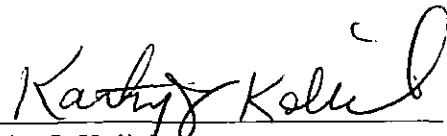
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Dated this 14th day of March, 2007.



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March 15, 2007

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**DOCUMENT
FOLDER**

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2007 MAR 15 PM 3:38
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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:

Reliant Energy, Inc. will not be filing Exceptions to the Recommended Decision issued in this proceeding. Copies of this letter have been served upon all parties of record as indicated in the attached Certificate of Service.

Very truly yours,

Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/eh

Enclosure

cc: Certificate of Service

DOCKETED
MAR 19 2007

BTL

68

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies of the foregoing 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 15th day of March 2007.

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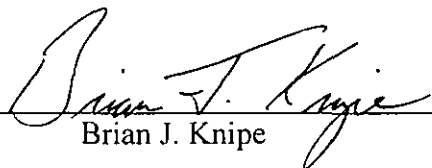
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March 15, 2007

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DOCUMENT
FOLDER

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

Dear Secretary McNulty:

Please be advised that the Office of Consumer Advocate will not be filing
Exceptions to the Recommended Decision, in the above-referenced proceeding. The Office of
Consumer Advocate does reserve the right to file Reply Exceptions.

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

Sincerely,

DOCKETED
MAR 19 2007

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

BTL

Enclosures

cc: Honorable Marlane R. Chestnut
Parties of Record

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2007 MAR 15 PM 4:05
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63

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 letter that the Office of Consumer Advocate will not be filing Exceptions to the Recommended Decision, 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 15th day of March, 2007.

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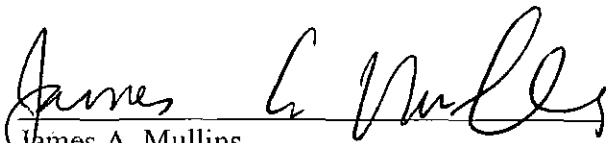
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March 15, 2007

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DOCUMENT
FOLDER

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

Dear Secretary McNulty:

Citizens for Pennsylvania's Future will not be filing exceptions to the
Recommended Decision issued on February 23, 2007 in this matter. Hard copies will
follow to the parties by first class mail, as per the attached Certificate of Service.

If you have any questions, please contact me at (412) 258-6684.

Sincerely,

A handwritten signature in black ink, appearing to read "George Jugovic Jr.", is written over a light background.

George Jugovic Jr.
Senior Attorney
PA Id. No. 39586

DOCKETED
MAR 19 2007

cc: All parties

BTL

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P.U.C.
SECRETARY'S BUREAU

5

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing document on the following participants electronically and by first class mail on the date set forth below:

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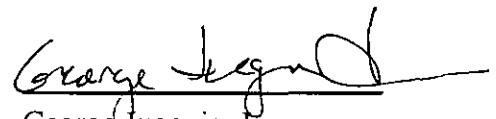
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DATE: December 15, 2007



George Jugovic, Jr.
Senior Counsel
PA ID No. 39586

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March 15, 2007

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**DOCUMENT
FOLDER**

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SECRETARY'S BUREAU

Re: Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan; Docket No. P-00062227; **EXCEPTIONS OF DOMINION RETAIL, INC.**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Dominion Retail, Inc.'s Exceptions to the Initial Decision of Marlane R. Chestnut in the above-captioned matter, which was issued on February 23, 2007.

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

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail Inc.

BTL

TSS/bks

Enclosures

cc: The Honorable Marlane R. Chestnut, ALJ
Per Certificate of Service

65

ORIGINAL

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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EXCEPTIONS OF
DOMINION RETAIL, INC.

**DOCUMENT
FOLDER**

Dominion Retail, Inc. ("Dominion Retail") by and through its counsel, Hawke McKeon Sniscak & Kennard LLP, in the above-captioned matter, hereby Excepts to the Recommended Decision ("R.D.") of Presiding Administrative Law Judge Marlane R. Chestnut entered in the above-captioned matter issued on February 23, 2007. Dominion Retail submits these Exceptions pursuant to 52 Pa. Code § 5.533, *et seq.*

I. Introduction

Dominion Retail's Exceptions focus on the failure of the R.D. to give any weight to arguments made by competitive suppliers with regard to the negative competitive impacts of PPL Electric Utilities, Inc.'s ("PPL") proposed competitive bridge plan ("CBP") and to instead accept completely the hollow assurances of PPL's positions with regard to those negative impacts. The R.D. endorses the concept of laddered rates, albeit in a nontraditional sense, and authorizes PPL to reconcile its rates. As has been shown repeatedly in other jurisdictions (New Jersey and Maryland) and other similar industries (natural gas), when default service is provided under such conditions, the competitive market withers.

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MAR 19 2007

This Commission has an opportunity in this case to embrace *retail* competition as the best means of ensuring that customers pay a just and reasonable rate for electricity, rather than returning to the days of rate regulation and energy cost rate cases, prudence reviews and the like.¹ The notion that retail competition will ensure that customers pay a just and reasonable rate is embodied in the *Electricity Generation Customer Choice and Competition Act*, 66 Pa. C.S. § 2801, et seq. (“Competition Act”), and is directly reflected in the sections dealing with default service. The Competition Act, requires that electric distribution companies (“EDC”), or other default service providers, acquire electricity to serve default customers at prevailing market prices and recover fully all reasonable costs. 66 Pa. C.S. § 2907(e)(3). This simply worded and often debated section puts EDCs on the same footing as electric generation suppliers (“EGS”) that operate the same way—that is, they go into the wholesale market, buy electricity to meet their customers’ needs, and then sell that energy to customers at a price that must recover all the costs of providing the service, plus some profit potential, or the EGS can’t stay in business.

Dominion Retail’s position in this case has been that the Commission should require that EGSs and EDCs be put on the same footing; that there be no elaborate regulatory scheme for buying and pricing energy, including such regulatory schemes as reconciliation, so that customers have a choice, between default service from the utility or service from an EGS. PPL’s plan, as the R.D. has proposed to approve it, would continue the legacy of regulatory rate setting, and delay any sort of competition in favor of perpetuating the continuation of yesterday’s regulatory goals—regulators acting to mitigate prices rather than letting the market control. Dominion Retail submits that such an approach is contrary to the letter and spirit of the

¹ There can be no doubt that if the EDCs desire the risk-free certainty of dollar-for-dollar recovery, then the *quid pro quo* must be the same sort of annual prudence review that attaches to § 1307(f) gas companies.

Competition Act. Accordingly, Dominion Retail respectfully requests that the R.D. be reversed on the two key issues of reconciliation and laddered rates.

II. Exceptions

Exception 1. The ALJ erred in adopting PPL's proposal to ladder its purchases of energy over a three-year period for sale in a single year. (R.D. at pp. 32-39.)

As described in the R.D., PPL Electric Utilities, Inc., ("PPL") has proposed as part of its "interim bridge plan" to obtain supply for residential and small C&I customers through an RFP process that would incorporate six separate solicitations spread out over a three-year period, prior to the year in which the energy is intended to be delivered to customers. (R.D. p. 32.) The intent of this approach, according to the R.D., is to "mitigate the price volatility associated with purchasing electrical energy on a single date. . ." (R.D. p. 32.) The R.D. contends that because there are no final regulations interpreting the phrase "acquire electric energy at prevailing market prices" that there is "no legal impediment to the use of multiple solicitations as proposed." (R.D. p. 33.) The R.D. then contends that because there is "no legal impediment" to the adoption of such a procurement program by PPL, the only other issue is to determine whether it is appropriate to approve such a process. (R.D. p. 33.) Finally, the R.D. goes onto agree with PPL and others that the laddered acquisition process proposed by PPL should be approved because it is "a reasonable interim mechanism" and that the "laddered approach is a useful and valuable feature of the plan to mitigate the timing risk associated with the procurement of a single year's supply." (R.D. p. 34.)

Dominion Retail submits that the R.D. is incorrect on both bases for its decision. That is: 1) the Competition Act specifically prohibits the use of a laddering approach and, therefore, a legal impediment to its use does exist; and, 2) not only will PPL's laddered approach not ensure the elimination of rate shock, nor can it guarantee to dampen the effect of price volatility, and its

goals are contrary to the plain language of the Competition Act. Dominion Retail does agree, however, that requiring PPL to purchase its entire needs on a single day is not a sound policy. But as the record shows, there are many ways to avoid the “worst day” problem without going as far as a three-year laddered approach. As discussed at length in Dominion Retail’s Main Brief (Dominion Retail Main Brief, pp. 14-19), and Reply Brief (Dominion Retail Reply Brief, pp. 2-6), the term “prevailing market price” can mean only the price of energy that prevails at the time the energy is consumed. This interpretation is the only reasonable interpretation that is discernable from the Competition Act when one reads the entirety of § 2807(e)(3) which reads:

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

66 Pa. § 2807(e)(3). This statutory section clearly sets up a scenario where the EDC purchases energy in much the same way as an EGS, as it needs it, and is clearly intended not to authorize reconciliation, but to ensure reasonable default service rates, that is no price gauging, in order to protect customers that are taking service for which they may not have affirmatively signed-up. If and when there is a need to buy electricity for customers then the utility buys the energy at prevailing market prices.

The obvious goal of the Competition Act is that all customers purchase energy from the competitive market and that default service would only be a temporary state. The Act clearly does not envision a scenario where the vast majority (or in the case of PPL, all customers) would be taking default service and the utility would engage in the same old regulatory scheme of approving rates beforehand to serve those customers. While Dominion Retail concedes that a change from 12+ years of capped rates to market based rates may require an appropriate

transition period, PPL's plan, based upon its clear intention to perpetuate its laddered rate purchasing, would ensure that there was no transition to market based rates for customers, but rather a transition from one form of regulated rate to another. Such a scheme is contrary in every respect to the provisions of the Competition Act and must be rejected.

Dominion Retail proposed an alternative which would allow for a three-year transition but would ensure that during those three-years that customers paid something that was actually close to the prevailing market price during those three-years although it would be a fixed price for three-years. The ALJ rejected that plan without good reason. Nonetheless, the R.D. misinterprets and misapplies the plain language of the Competition Act in determining that there is no legal impediment to an acquisition program where PPL would acquire energy to serve default customers three-years ahead of any determined need for that energy. Such an interpretation misapplies the law and must be reversed.

Not only does the R.D. fail to appropriately apply the correct legal standard and accordingly reject the three-year laddered rate proposal as being contrary to law, the R.D. also contends that PPL's plan is good public policy. As is shown by the testimony of Dominion Retail's witness, Mr. Butler, and as argued in Dominion Retail's Main Brief at page 16, PPL's proposal would be highly detrimental to the development of a competitive retail market in PPL's service territory. Perhaps the most critical public policy reason why PPL's approach is bad policy in that it divorces market prices from customer retail rates. As is shown in every other industry, customers can only react to changes in market prices if the market prices change. This fundamental concept is critical to the implementation of any type of conservation effort.

Without exposure to a market price, customers will do the economically logical thing and continue to consume energy even when wholesale prices may be high because they don't know

that prices are high. PPL's proposal, to acquire energy over a three-year period to shield customers from the effects of the competitive market would make any demand side management program impossible. Presuming that there is some future point, after the one year transition, that PPL might actually change to a scheme where customers did pay market prices, customers would then experience rate shock having been protected from any changes in the market that occurred over the previous four years. Moreover, such a lack of sensitivity to the market price makes it impossible for suppliers to make offers that compete. The ALJ completely disregards the fact that PPL's plan would essentially lock suppliers out of PPL's market for another year and that a longer term adoption of PPL's laddered rate scheme would preclude suppliers from ever entering that market.

PPL's plan also lacks transparency, which also will harm suppliers, because PPL will not provide marketers or the market with the actual bid prices. As a result, marketers will have no basis upon which to determine what PPL's rate might be at the end of the three-year period. Such a lack of transparency will deter marketers from any meaningful opportunity to purchase energy at the same increments as PPL in order to develop a portfolio that could compete with PPL. It is clear that divorcing the wholesale market price from the retail rate so that customers have no actual price signals is bad public policy and will harm competitive suppliers.

In conclusion, the R.D. fails to recognize that the phrase "prevailing market price" is not subject to interpretation and means only that EDCs or other default service providers must acquire energy in time with the consumption of that energy, and pass those prices directly onto customers, and can mean nothing else. The R.D.'s failure to recognize PPL's plan as being contrary to this specific statutory language and, therefore, being prohibited by the statute, is an error of law which cannot stand. Moreover, when one considers all the negative public policy

effects of PPL's plan, and the fact that a goal of long-term price mitigation for customers is found no-where in the Competition Act, one clearly has no choice but to determine the R.D.'s approval of PPL's laddered rate proposal must be reversed.

Exception 2. The ALJ erred in adopting PPL's reconciliation proposal. (R.D. at pp. 47-51.)

Beginning on page 47 of the R.D., the ALJ points out that Dominion Retail and RESA are the only parties to this proceeding that oppose PPL's proposal to reconcile its generation supply charge. The ALJ goes onto discount Dominion Retail and RESA's reliance upon the Commission's determination in the Penn Power case and the Commission's proposed regulations, which were pending at the time, as being misplaced and argues that reconciliation is permitted under the Competition Act.

The R.D. commits clear legal error in determining that reconciliation is authorized or even permitted by the Competition Act. Moreover, for all the reasons set forth in Dominion Retail's Main and Reply Briefs, reconciliation is bad policy and will harm the development of competitive markets in the Commonwealth of Pennsylvania. The R.D. incorrectly determines that "the Competition Act at 66 Pa. § 2807(e)(3) does not specifically mention a reconciliation mechanism but does provide that the supplier of POLR service shall recover fully all reasonable costs" and it goes on to conclude that "reconciliation represents the best mechanism to ensure that the full recovery provision of the statute is fully satisfied." (R.D. pp. 47-48.)

Dominion Retail submits that the R.D. is incorrect on both counts: 1) reconciliation of default service rates is prohibited by the Competition Act; and, 2) reconciliation is bad policy and clearly is not the only, or even the best way, of ensuring that customers pay the actual cost of

providing default service. Accordingly, Dominion Retail submits that the R.D. must be reversed on this point.

- a. The Competition Act not only does not authorize reconciliation for default service rates, rather, the Rules of Statutory Construction operate to prohibit reconciliation.**

It is axiomatic that when the language of a statute is clear, there is no need to ascertain the legislative intent.² Moreover, it is also clear that a statute is to be read *in pari materia*, that is, as a cohesive act.³ In this case, the Public Utility Code and more specifically, the Competition Act, must be read as a cohesive whole and the legislative intent must be derived from the whole statute.

The Legislature did authorize reconciliation of certain classes of costs in the Competition Act, but it did not authorize reconciliation of default service costs. Rather, the Legislature authorized reconciliation only for stranded costs.⁴ More recently, the Legislature authorized reconciliation of compliance costs in the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.3(a)(3). In fact, in both pieces of legislation, the Legislature specifically identifies Section 1307(f) as the provision that provides the reconciliation requirements. In contrast, when it came to addressing the recovery of the costs of providing default service, the Legislature did not use the word “reconciliation” nor did it refer to Section 1307(f).

It is obvious, based upon the language of Section 2808(f) and 73 P.S. § 1648.3(a)(3), that the Legislature knows how to use the word “reconciliation” and knows how to invoke Section 1307(f) when it intends to do so, and that it did not do so in the context of the recovery of the costs default service in the rates for that service. At the threshold, the Competition Act does not

² 1 Pa. C.S. § 1921(b).

³ 1 Pa. C.S. § 1932.

⁴ 66 Pa. C.S. § 2808(f).

authorize the Commission to approve reconciliation of default service rates. This concept is important because, as a creature of statute, the Pennsylvania Public Utility Commission is only empowered to do what the Legislature specifically authorizes by statute or that which may be determined by reasonable implication from the clear words of the statute.⁵

The only other legal question to be addressed then is whether the authority to order reconciliation can reasonably be inferred from the Competition Act. That is, can one reasonably infer that the Legislature intended that the Commission be allowed to approve reconciliation of default service costs? Again, the plain answer is no. Not only do the words of the same Act, the Competition Act, provide for reconciliation of a certain type of costs, namely stranded costs, and not provide for reconciliation of default service costs, but the rules of statutory construction and the principles developed there-under, make it absolutely clear the mention of a thing in one place in a statute implies the exclusion of things not mentioned and the exclusion of that thing in other places. This principle known as *expressio unius est exclusio alterius*,⁶ and for the purpose of this case would not allow authority to authorize reconciliation to be read into one part of a statute where it is not even mentioned, when the same requirement is expressly stated in another section of the very same statute.

The fact that reconciliation is specifically permitted in Section 2808(f) and is not mentioned, let alone authorized in Section 2807(e)(3) makes it clear the legislative intent was that reconciliation not be permitted for recovery of default service costs. Clearly, the legislature intended that the phrase “recover fully all reasonable costs” means something other than reconciliation. To the contrary, Dominion Retail believes that this provision allows the utility to

⁵ *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977).

⁶ *Commonwealth v. Spotts*, 716 A.2d 580 (Pa. 1998).

recover all reasonable costs associated with default service, in default service rates, and protects customers by allowing some review, with the operative word being “reasonable.”

As Dominion Retail has stated elsewhere before this Commission, one means of ensuring that the utility will recover fully all reasonable costs is to set rates on a more frequent basis than annually, that is, monthly. Moreover, if the utilities were to align their purchases or at least a significant portion of their purchases with that same pricing period, i.e., the utilities purchase from a monthly index, a month ahead, and the index is transparent to all parties, the utility will have no difficulty in setting its rates to recover the costs of energy.

However, nowhere does the Competition Act authorize reconciliation and reconciliation cannot be substitute for the clear requirement of the Act that the utilities purchase on such a real time basis and recover those costs in rates in real time as well. Accordingly, the R.D. must be reversed and its legal determination that the Competition Act permits reconciliation of rates at the discretion of the Commission must also be reversed.

b. Reconciliation harms competition and is otherwise bad policy.

As discussed at length by Dominion Retail in its Main Brief (p. 22), reconciliation will ensure that there will never be a match or even close connection between the costs and risks of providing default service, and the rates that customers pay to compensate the default service provider. (Dominion Retail Statement No. 1 at p. 7-13). As explained by Mr. Butler, EGSs must acquire energy at prevailing market prices and pass those prevailing market prices, including all the risks of providing service, to customers in their prices to customers. Otherwise, the EGS cannot remain in business. The language of the Competition Act clearly requires the EDC or alternative POLR provider to behave in the same fashion.

The R.D. contends that one reason why reconciliation is a “good idea” is that it “will ensure that customers do not pay excessive POLR rates.” (R.D. p. 48.) If this statement is intended to suggest that customers will pay a “fair” price if reconciliation is permitted such a suggestion is ill-founded. Under PPL’s proposal, customers would inevitably end up paying interest on under-recoveries, which also are inevitable under a reconciliation scheme. Accordingly, customers would pay rates in excess of what they would otherwise pay if the rates were market based and there were no reconciliation. If the intention is to suggest that customers will pay only the exact costs of energy and, therefore, not excess costs of energy, again, this contention also is not correct because of the potential for interest and because reconciliation will divorce customers from real time price signals and allow the utilities rates to be non-reflective of the actual market at almost any point in time. It is far more damaging to customers to have the inaccurate price signal of reconciliation in times of rising prices, because customers ultimately will be responsible for paying higher costs for energy, while their ability to respond to the price signal and reduce consumption will have been eliminated if rates are reconciled. Finally, if the intention was to suggest that customers will pay a more fair rate because they will only pay a dollar-for-dollar actual cost of the energy used to serve them, that statement is also incorrect because as noted above, customers will pay interest on under-recoveries and will be damaged in their ability to control their behavior. Finally, the statement implies that the phrase “recover fully all reasonable costs” implies dollar-for-dollar recovery, which begs the question of whether the EDC should be entitled to recovery at all. Such a contention clearly is not supported by any fact in the record or by the law itself. No such inference is permitted under the Rules of Statutory Construction. Moreover, it is obvious that utilities can set rates in a fashion that would

recover fully all reasonable costs but which may run the risk of the utility earning a profit which is not prohibited by the Competition Act.

The R.D. commits one final egregious error in proposing to approve reconciliation, by wrongly suggesting:

[T]here is no record of evidence to support any conclusion that an EGS really put at any disadvantage whatsoever [by reconciliation]. Either it can adopt a reconciliation mechanism of its own or it can market itself as having a competitive advantage if it does not have some type of reconciliation.

(R.D. 50.) Such a statement clearly reflects a lack of understanding of how competitive markets work—EGSs could never realistically make an offer to a customer that says “the price is x today, but next year we might change the price to as much as y and then back-bill you for the difference.” In short, the R.D. suggests that suppliers violate the Commission’s regulations by attempting to collect from customers, after the fact, increased costs that a supplier may experience in the market place, after those customers had already paid for the service.⁷ Even without the obvious illegality, EGSs can only charge customers what the customer agreed to upfront. Moreover, it is hardly likely that the Commission would allow an EGS to change its price to customers after the fact and demand payment from customers of those charges. That is exactly what the R.D. suggests and it errs in doing so.

Finally, while it is true as a provider of last resort, PPL must stand ready to serve all customers, it can stand ready to serve those customers and recover the costs of standing ready to serve those customers without resort to reconciliation. That is because PPL will know the month before whether it is switching any customers off of its service and will be able to change its acquisition program in response to that switching risk. Assuming, of course, that PPL will adopt

⁷ The Commission’s regulations require that the “agreed upon price and the disclosure statement shall reflect the marketed prices and the billed prices.” 52 Pa. Code § 54.5(a).

a monthly pricing and purchasing mechanism. Accordingly, PPL's presentation in this case overstated those risks in the face of a monthly pricing regimen. Accordingly, Dominion Retail believes that PPL's proposal should be rejected and it should be instead required to price its default service on a monthly basis.

III. Conclusion

The Electricity Generation Customer Choice Act clearly envisions putting EDCs on the same footing as EGSs by requiring them to purchase the energy as they go, and by recovering the costs as they go, in a manner similar to that of EGSs. The imposition of an overbroad and competition harming regulated rate setting methodology as proposed by PPL and approved by the R.D., in the form of laddered rates and reconciliation, would be a grave departure from the statutory scheme and is prohibited in fact by that statutory requirement. Moreover, as has been shown clearly, by Dominion Retail and others, both proposals will do undeniable and permanent harm to the development of competition of PPL's service territory and potential statewide. Accordingly, for all the reasons set forth herein, and in its Main and Reply Briefs, Dominion Retail requests that the Commission grant its Exceptions and reverse the R.D. in its approval of laddered rates and in its approval of reconciliation as proposed by PPL.

Respectfully submitted,



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Dated: March 15, 2007

Counsel for Dominion Retail, Inc.

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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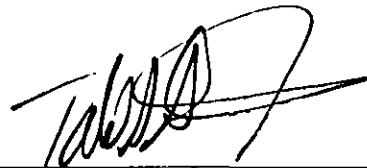
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Dated this 15th day of March, 2007.

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March 15, 2007

VIA HAND DELIVERY

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

**DOCUMENT
FOLDER**

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

Dear Secretary McNulty:


Enclosed for filing with the Commission are the original and nine (9) copies of the Exceptions of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding. In addition, please find an electronic version of the Exceptions 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 document. Please date stamp the extra copies of this letter and the Exceptions, and kindly return them to our messenger for our filing purposes. Thank you.

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Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Adam L. Benshoff

Counsel to the PP&L Industrial
Customer Alliance

BTL

ALB/lhi

- c: Administrative Law Judge Marlane R. Chestnut (via First Class Mail)
- Cheryl Walker Davis, Esq., Director, Office of Special Assistants (via hand delivery w/ diskette in Word Format)
- Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

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

**EXCEPTIONS OF
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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

The Hershey Company
High Industries, Inc.
Lafarge Whitehall Cement
Magee Rieter Automotive Systems
Mount Joy Wire Corporation
Praxair, Inc.
Strochmann Bakeries
TIMET North America
Wegmans Food Markets, Inc.

**DOCUMENT
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DOCKETED
MAR 19 2007

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Counsel to the PP&L Industrial Customer
Alliance

Dated: March 15, 2007

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 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. On February 23, 2007, Administrative Law Judge ("ALJ") Marlane R. Chestnut issued a Recommended Decision ("R.D.") in this proceeding.¹

PPLICA generally supports the ALJ's well-reasoned R.D. with regard to the Company's large commercial and industrial ("Large C&I") POLR plan. The R.D. has appropriately recognized the interim and non-precedential nature of this one year plan. See R.D. at 32. In addition, the ALJ has importantly recommended the adoption of PPL's proposal to include both a default hourly-price service as well as a necessary fixed price service option for Large C&I customers. See R.D. at 16-17.

PPLICA files these limited Exceptions to address the ALJ's recommendations in regard to three issues: (1) the lack of a day-ahead hourly priced option for Large C&I customers; (2) the treatment of Rate Schedules IS-P and IS-T; and (3) the impact of the Commission's Final Provider of Last Resort ("POLR") Regulations. As set forth in detail below, PPLICA respectfully requests certain clarifications in regard to these issues.

¹ PPLICA submitted both a Main Brief (hereinafter, "M.B.") and a Reply Brief (hereinafter, "R.B.").

II. EXCEPTIONS

A. Exception No. 1: The R.D. Erred in Rejecting PPLICA's Recommendation For the Commission to Consider the Addition of a Day-Ahead Hourly Price Option for Large Commercial and Industrial Customers.

The R.D. summarily rejected PPLICA's request for the Commission to consider the addition of a day-ahead hourly price option for Large C&I customers. See R.D. at 53-54. The only reason provided for this conclusion, however, is that PPLICA's proposal was not fully developed on the record. See id. As discussed below, given the potential benefits of the proposal, the significant amount of time until the Company's plan will be implemented, as well as the number of outstanding issues that PPL must continue to work with interested parties to resolve, there is no valid reason that a day-ahead hourly price alternative cannot be explored by the Company.

As discussed in detail in PPLICA's M.B., the majority of PPL's Large C&I customers are currently unable to adequately respond to real-time hourly market prices.² See PPLICA M.B., pp. 6-8. Many of these customers, however, may be able, even if only to a limited extent, to take advantage of a day-ahead hourly option. See id. at 10-11; see also Direct Testimony of Kevin S. Wilkie (hereinafter, "PPLICA St. 1"), p. 5. Therefore, the inclusion of a day-ahead hourly price option would provide these customers with a workable default service alternative if they do not opt-in for the fixed price within the 30-day enrollment period under the Large C&I plan. See PPLICA M.B., pp. 10-11.

Because the CBP is for POLR service in 2010, the details of a specific day-ahead hourly price option, including the necessary tariff formula, can be addressed through compliance filings

² PPLICA strongly supports the ALJ's appropriate and necessary recommendation to approve PPL's inclusion of a fixed-price option for Large C&I customers. See R.D. at 42.

or a stakeholder process after Commission resolution of this proceeding.³ Therefore, contrary to the recommendation of the ALJ, the Commission should grant PPLICA's exception, and require the Company to work with stakeholders to develop a day-ahead hourly price option.

B. Exception No. 2: The R.D. Erred in Finding PPLICA's Proposal to Continue Rate Schedules IS-P and IS-T Unnecessary.

The R.D. erred in finding PPLICA's proposal to continue Rate Schedules IS-P and IS-T to be "unnecessary." See R.D. at 54. The ALJ, however, did properly conclude that nothing in this proceeding impacts the distribution portion of these rate schedules, and stated that this issue should appropriately be dealt with in PPL's next distribution base rate proceeding. See id. PPLICA accepts the ALJ's recommendation, but excepts to the incorrect characterization of PPLICA's proposal as "unnecessary."

In the Petition, PPL appeared to propose a discontinuation of Rate Schedules IS-P, IS-T, and other "legacy" supply service offerings. See Petition, p. 23. PPLICA sought merely to inform the Commission of the significant rate impact that the sudden elimination of these interruptible rate schedules may have on these customers. See M.B., p. 14. Based on the current forward market prices for generation in 2010, PPL has projected a system average rate increase of approximately 30%. Id. Because customers who are currently on Rate Schedules IS-P and IS-T pay generation rates that are lower than the system average in exchange for the interruption potential, many of PPL's industrial customers face significant energy cost increases that may exceed the 30% "rate shock" projected by PPL in 2010. Id. PPLICA appropriately sought clarification from the Company and the Commission that the proposal in this proceeding to

³ In the R.D., the ALJ already recommends that PPL address the formula for hourly-priced service, the implementation of demand side response programs, and the transmission service charge in this manner. See R.D. at 17-18, 20-21, and 53.

eliminate the "legacy" rates did not extend to the distribution portion of the bill, which would have resulted in additional rate shock for distribution service in 2010.

Although PPLICA disagrees with the ALJ's conclusion that its proposal was "unnecessary," the R.D. has provided the required clarification with regard to the continuation of Rate Schedules IS-P and IS-T. See R.D. at 54.

C. Exception No. 3: The R.D. Misinterprets PPLICA's Position on the Impact of the Final POLR Regulations on PPL's Competitive Bridge Plan.

The R.D. appears to misinterpret PPLICA's position regarding the Commission's final POLR regulations and possible revisions to the PPL's 2010 Competitive Bridge Plan. See R.D. at 54. The ALJ improperly concluded that PPLICA's proposal was "inappropriate" and "unnecessary" in light of the fact that she was "sure that the Commission will provide appropriate guidance to all utilities with approved interim plans regarding adoption of the new regulations." Id. Again, PPLICA supports the ultimate recommendation of the ALJ and wishes only to clarify its original position.

PPL had maintained throughout this proceeding that it intended to fully comply with the Commission's final POLR regulations, even to the extent those regulations are issued and require the Company's compliance during 2010. See PPL St. 1-R, p. 7. As appropriately recognized in the R.D., it is not certain that the proposed regulations will be in effect in sufficient time for PPL to effectively develop an approved POLR plan. See R.D. at 31. In light of this, PPLICA had proposed to utilize the filing requirements and timelines that may appear in the Commission's final POLR regulations as a benchmark to determine whether adequate time exists for revision of the 2010 Competitive Bridge Plan. See PPLICA M.B., pp. 15-16. In the event the Commission's final POLR regulations do specifically address previously approved interim POLR

plans, however, PPLICA supports the ALJ's recommended deferral to the regulations in that regard.

III. CONCLUSION

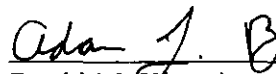
WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (1) deny the R.D.'s recommendation and appropriately order PPL to consider the addition of a day-ahead hourly price option for POLR service;
- (2) note PPLICA's clarified position in regard to continuance Rate Schedules IS-P and IS-T for the purposes of distribution billing during the 2010 CBP; and,
- (5) clarify PPLICA's position that the Commission approved 2010 CBP should be eligible for revision only if the changes can be accomplished within the time frame for POLR proceedings under the final POLR regulations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: March 15, 2007

CERTIFICATE OF SERVICE

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

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Page 2

Docket No. P-00062227

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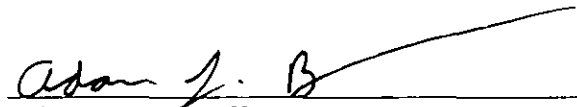
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March 15, 2007

HAND DELIVERED

ORIGINAL

James J. McNulty, Secretary
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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:

Please be advised that the Office of Small Business Advocate will not be filing Exceptions to the Recommended Decision of Judge Marlane Chestnut, issued on February 23, 2007, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any questions, please contact me.

**DOCUMENT
FOLDER**

Sincerely,

Steven C. Gray
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Enclosures

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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 foregoing document, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise indicated) upon the persons addressed below:

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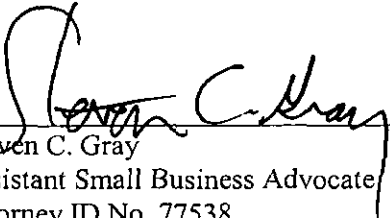
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MAR 15 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 15, 2007

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
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Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105

**DOCUMENT
FOLDER**

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

Dear Secretary McNulty:

Please find enclosed an original and nine (9) copies of the Exceptions of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. in the above-referenced proceeding. As evidenced by the enclosed Certificate of Service, all parties to the proceeding are being duly served.

Respectfully submitted,

Glen Thomas

Glen R. Thomas
Christopher A. Lewis
BLANK ROME LLP

BTL

Counsel for Constellation Intervenors:
*Constellation Energy Commodities Group,
Inc. and Constellation NewEnergy, Inc.*

Enclosures

cc: Honorable Marlane R. Chestnut (w/enc.)
All parties on attached Certificate of Service (w/enc.)

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82

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

EXCEPTIONS OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.
TO THE RECOMMENDED DECISION

DOCKETED
MAR 19 2007

Glen R. Thomas, Esquire
Christopher A. Lewis, Esquire

Counsel for Constellation Intervenors:
Constellation Energy Commodities Group, Inc.
and Constellation NewEnergy, Inc.

BLANK ROME LLP
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215-569-5500

Dated: March 15, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.
TO THE RECOMMENDED DECISION**

Constellation Energy Commodities Group, Inc. (“CCG”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, “Constellation”) hereby submit their Exceptions to the Recommended Decision issued February 21, 2007 (“Recommended Decision”),¹ by the Honorable Administrative Law Judge (“ALJ”) Marlane R. Chestnut, with regard to the Petition of PPL Electric Utilities Corporation (“PPL”) for Approval of a Competitive Bridge Plan (“Proposed Bridge Plan”) for Provider of Last Resort (“POLR”) supply, submitted in the above referenced proceeding.

I. SUMMARY OF ARGUMENT

**THE RECOMMENDED DECISION REGARDING DEFAULT PROVISIONS IS
INCONSISTENT WITH COMMISSION PRECEDENT AND WILL NOT PROMOTE
THE MOST ROBUST PARTICIPATION IN PPL’S PROCUREMENTS TO OBTAIN
POLR SUPPLY.**

The ALJ in her Recommended Decision finds that PPL’s Proposed Bridge Plan, as modified by PPL’s rebuttal testimony and the provisions of the various stipulations, is reasonable and should be adopted for the interim period.² Constellation largely supports the ALJ’s decision, and herein makes only the following important exception:

¹ *Recommended Decision in Re: Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Commission Docket No. P-00062227 (issued Feb. 21, 2007) (“Recommended Decision”).

² Recommended Decision at p.6.

1. Constellation urges the Commission to approve all of the ALJ's rulings, except her ruling that "it is reasonable and appropriate for the [Supplier Master Agreement ("SMA")] to contain a unilateral default provision." Constellation asks the Commission to overturn the ALJ's decision on this issue and require PPL to revise the SMA to include industry-standard two-way default provisions, as supported by the evidence on the record.

Constellation argues herein that: (1) the ALJ's conclusion regarding the SMA's default provision is inconsistent with prior Commission decisions approving SMAs that include two-way default provisions; (2) any policy decision to utilize such a non-standard, "unilateral default provision" is better left to be made by stakeholders in the separate proceeding, *Standardization of Request for Proposal Documents and Supplier Master Agreements in the Context of Default Service* ("Standardized SMA-RFP Proceeding"), that the Commission already has established to develop uniform SMA and RFP documents;³ and (3) the ALJ's decision and findings regarding the provision are not supported by the evidence in the record. Absent the industry-standard two-way default provision proposed by Constellation, wholesale suppliers potentially will not participate as robustly in PPL's procurements, compromising the competitiveness of the procurements, resulting in a less competitive price for POLR supply, to the detriment of PPL's customers.

³ *Standardization of Request for Proposal Documents and Supplier Master Agreements in the Context of Default Service*, Commission Docket No. M-00061960 ("Standardized SMA-RFP Proceeding").

II. ARGUMENT

A. THE ALJ'S RECOMMENDED DECISION WHICH INCLUDES PPL'S UNILATERAL DEFAULT PROVISION IS INCONSISTENT WITH PRIOR COMMISSION DECISIONS APPROVING SMAs THAT INCLUDE TWO-WAY DEFAULT PROVISIONS.

Constellation stresses the need for the Commission to remain consistent with its prior rulings regarding SMAs. As Constellation notes in its Main Brief⁴ and Reply Brief⁵ in this proceeding, “even in Pennsylvania, ‘the supply agreement used recently in the Penn Power solicitations . . . has a two way default provision.’”⁶ In that proceeding (the “Penn Power Proceeding”), the Honorable ALJ Larry Gesoff approved, and the Commission upheld, Pennsylvania Power Company’s use of a SMA containing a two-way default provision to obtain its POLR supply requirements.⁷ ALJ Gesoff ruled, and his decision was not contested, that:

The SMA reflects an acceptable and commercially reasonable way to address contract defaults by allowing a non-aggrieved party to set off or withhold amounts it owes to the defaulting part.⁸

ALJ Gesoff in this way recognized that under Penn Power’s SMA, the two-way default provisions possibly could result in a payment to a defaulting party, and that the Penn Power SMA’s method of addressing contract defaults, which method included two-way default provisions, “reflects an acceptable and commercially reasonable” method. **No parties in that proceeding objected to the decision to include two-way default provisions.**

⁴ 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”).

⁵ See Reply Brief of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Commission Docket No. P-00062227 (filed Jan. 19, 2007) (“Constellation Reply Brief”).

⁶ Constellation Main Brief at p.6; Constellation Reply Brief at p.6 (citing to 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”) at p.5 (lines 12-14).

⁷ See *Recommended Decision in Re: Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Commission Docket No. P-00052188 (issued Feb. 10, 2006) (“Penn Power Recommended Decision”); see also *Opinion and Order in Re: Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Commission Docket No. P-00052188 (issued Apr. 20, 2006)

⁸ Penn Power Recommended Decision at p.94.

The Recommended Decision in the current proceeding, which rules that “it is reasonable and appropriate for the SMA to contain a *unilateral* default provision,”⁹ is directly in opposition to the ruling in the Penn Power proceeding, which was upheld by the Commission. Constellation urges the Commission to remain consistent with its decision last year in the Penn Power Proceeding to approve a SMA including two-way default provisions.

B. ANY POLICY DECISION TO UTILIZE SUCH A NON-STANDARD, “UNILATERAL DEFAULT PROVISION” IS BETTER LEFT TO BE MADE BY STAKEHOLDERS IN THE SEPARATE PROCEEDING THAT THE COMMISSION ALREADY HAS ESTABLISHED TO DEVELOP STANDARDIZED SMA AND RFP DOCUMENTS.

As explained above and in Constellation’s Main Brief and Reply Brief, this Commission has approved SMAs which include two-way default provisions, rather than unilateral default provisions. In addition, and as also explained in Constellation’s Main Brief and Reply Brief:

Two-way default provisions . . . are industry-standard, *especially* for the type of “load following product” which PPL will be seeking under its POLR RFPs . . . More importantly: “in most of the [POLR] procurements in the mid Atlantic, New Jersey Delaware, District of Columbia, and in Illinois, which [are in PJM Interconnection, L.L.C. (“PJM”)], they all have [a two-way default] provision and it is for this specific load following product.”¹⁰

Note that *all* of these jurisdictions are in the PJM footprint, the very same independent system operator in which PPL’s system is found.¹¹ Moreover, the ALJ herself finds in her Recommended Decision that “it may be standard for POLR contracts to contain two-way default provisions”¹²

⁹ Recommended Decision at p.53 (*emph. added*).

¹⁰ Constellation Main Brief at pp.5-6 (*citing* Hearing *In re: Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Commission Docket No. P-00062227 (“Hearing Transcript”) at p.269 (lines 2-14)).

¹¹ Note that a portion of Illinois also falls into the Midwest Independent System Operator’s footprint.

¹² Recommended Decision at p.52.

Constellation argues that any policy decision to replace such an industry-standard POLR SMA provision with a non-standard, “unilateral default provision” is better left to be made by stakeholders in the Commission’s Standardized SMA-RFP Proceeding. The Commission for that proceeding has ordered that stakeholders develop and file by July 1, 2007, standardized SMA, RFP and related documents to be used by all of Pennsylvania’s electric distribution companies (“EDCs”), in order to procure POLR supply requirements.¹³ The Standardized SMA-RFP Proceeding provides a proper forum in which all stakeholders – EDCs such as PPL, wholesale suppliers such as CCG, consumers and any other interested parties – are able to participate to jointly develop standard SMA and RFP documents. The Commission can ask parties to consider in that proceeding whether industry-standard two-way default provisions should continue to be utilized for POLR SMAs in Pennsylvania.

However, until the stakeholders in the Standardized SMA-RFP Proceeding have been able to complete their work and deliver recommendations to the Commission, the Commission should not endorse significant disparities among POLR SMA’s in the Commonwealth. Such a result flies in the face of the very consistency that the Commission is striving for in its recently released *Proposed Policy Statement on Default Service and Retail Electric Markets*.¹⁴ The use of unilateral or two-way default provisions is a policy discussion for the Commission to entertain and the Commission has the perfect forum for that debate in the Standardized SMA-RFP Proceeding. However, for purposes of this proceeding and until the stakeholder group has

¹³ See *Proposed Policy Statement on Default Service*, Commission Docket Nos. M-00072009 and L-00070183 (issued Feb. 8, 2007) (“Proposed Default Service Policy Statement”) at p.6 (the Commission directs that the working group in the Standardized SMA-RFP Proceeding should provide its recommendations by July 1, 2007).

¹⁴ See Proposed Default Service Policy Statement at proposed § 69.1807(1) (the Commission states that parties “should use standardized [RFP] documents and [SMAs] approved by the Commission for use in the default service procurements”).

completed its deliberations, the Commission should be consistent with its prior decisions and adopt industry-standard two-way default provisions.

C. PPL'S UNILATERAL DEFAULT PROVISION AND THE ALJ'S FINDINGS REGARDING THE PROVISION ARE NOT SUPPORTED BY THE EVIDENCE IN THE RECORD.

The ALJ incorrectly rules that:

Given the nature of the service to be supplied, it is reasonable and appropriate for the SMA to contain a unilateral default provision, in order to provide sufficient deterrence to a supplier default.¹⁵

As explained above, the Commission itself has found that two-way default provisions for this POLR service “reflect an acceptable and commercially reasonable way to address contract defaults.”¹⁶ Moreover, as explained in more detail below, the ALJ incorrectly implies in this statement that two-way default provisions encourage supplier defaults.

Constellation argues that the Recommended Decision stated above, ordering unilateral default provisions, is based on the following erroneous findings by the ALJ:

- “While having a two-way default provision on the surface appears symmetrical, it provides just as much opportunity for suppliers to gain an advantage as Constellation contends exists for [PPL] under the unilateral provision”;¹⁷
- “I assume that [two-way default provisions] were developed as an integral part of [POLR contracts that have such provisions] . . . [and that] is quite a bit different from ordering such an isolated change to the proposed [PPL] SMA, which might have to have other change made in order to make it comparable”;¹⁸ and

¹⁵ Recommended Decision at p.53.

¹⁶ Penn Power Recommended Decision at p.94.

¹⁷ Recommended Decision at p.52.

¹⁸ *Recommended Decision* at p.52.

- Two-way default provisions are not necessary because: “Constellation’s scenario of [PPL] using the unilateral termination provision to advantage itself by ‘catching a supplier in a technical default,’ is addressed by the curative provisions contained in the SMA . . . [and PPL] has suggested that the SMA should be revised to account for recovery of payments for service provider prior to default.”¹⁹

The ample expert evidence in the record, based on widely-held industry beliefs ascertained through Constellation’s substantial experience, refutes each of these findings as well as PPL’s arguments against two-way default provisions, as explained below, and add further support for the Commission to rule that two-way default provisions should be included in PPL’s SMA.

1. The ALJ Errs in Ruling that Two-Way Default Provisions Provide as Much Opportunity for Suppliers to Gain an Advantage as PPL Has Under a Unilateral Provision.

Two-way default provisions place both the supplier and PPL on equal contractual footing, and do not provide either party an advantage over the other. The ALJ bases her erroneous finding on the statement from PPL which she cites to, in which PPL states that:

Although appearing to be symmetric and bilateral, [two-way default provisions] would provide a significant potential financial windfall to the defaulting party and would, thereby, improperly encourage suppliers to breach their power agreements with [PPL] to the ultimate detriment of its customers and the Commonwealth.²⁰

In fact, as Constellation argues succinctly in its Reply Brief, two-way default provisions operate to encourage parties to *uphold* their obligations under the SMA, rather than providing one party an advantage and an incentive to default. As Constellation states in its Reply Brief:

PPL’s proposed SMA contains several contractual provisions, which Constellation does not propose to change, and Constellation proposes

¹⁹ Recommended Decision at pp.52-53.

²⁰ Recommended Decision at p.52 (citing Reply Brief of PPL Electric Utilities Corporation, Commission Docket No. P-00062227 (filed Jan. 19, 2007) at p.32).

several additional provisions, all of which discourage a party from taking [action to default on obligations under a SMA with two-way default provisions]. 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;²¹
- 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;²² 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,”²³ including any “unascertained” obligations, which “the Non-Defaulting Party may in good faith estimate”;²⁴ and (2) “withhold payment of the Termination Payment to the Defaulting Party” if transactions “are not yet liquidated.”²⁵

. . . For these reasons, industry-standard, Commission-endorsed two-way default provisions, along with existing provisions in PPL’s proposed SMA, actually will serve to *encourage* both parties to maintain their obligations under the SMA.²⁶

Moreover, as Constellation reiterates in Reply Brief, even if no existing supplier steps into a defaulting supplier’s SMA at the contracted-for price, two-way default provisions, unlike unilateral provisions, assure that such supplier’s default will never result in the “ultimate detriment of [PPL’s] customers and the Commonwealth” because:

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

²¹ Hearing Transcript at p.257 (lines 22-25) and p.258 (lines 1-13) (quoting Mr. Cavicchi).

²² 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”).

²³ Exhibit MRP-3 (Ms. Philips’ suggested SMA changes reflecting PPL’s transmission proposal) at Section 12.7(i).

²⁴ Exhibit MRP-3 at Section 12.7.

²⁵ Exhibit MRP-3 at Section 12.7(ii).

²⁶ Constellation Reply Brief at pp.4-5.

contracted-for price of POLR supply from the defaulting supplier, then the defaulting supplier will be obligated to pay PPL for the difference.²⁷ In other words, PPL will *not* have to seek recovery of incremental costs from its POLR customers . . . 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 service²⁸

For all of the above reasons, the record supports the notion that two-way default provisions actually *preserve* the “balance of the agreement” struck by two parties, also ensuring that “the buyer will never be obligated to pay more than [the contracted-for price].”²⁹

2. The ALJ Errs in Finding that Constellation’s Proposed Revisions to Include Two-Way Default Provisions May Not Be Sufficient to Make the SMA Comparable to Other POLR SMAs Which Include Two-Way Default Provisions.

The ALJ erroneously concludes that Constellation requests “an isolated change to the proposed SMA” and that Constellation has not provided other necessary changes “which [the proposed SMA] might have to have . . . in order to make it comparable”³⁰ to other POLR contracts which contain two-way default provisions. Constellation responds, however, that PPL admits that it used the Maryland Standard Offer Service Full Requirements Services Agreement (“Maryland SMA”), the equivalent of PPL’s proposed SMA, as the *starting point* for the PPL SMA,³¹ and that Constellation’s evidence and arguments on the record merely demonstrate that one of the few changes that PPL made to the Maryland SMA is incorrect, as explained in more detail below, because it is inconsistent with the rest of the *contractual* provisions in that form of SMA as well as industry standards. Constellation provides in its testimony *all* of the changes

²⁷ See Exhibit MRP-3 at § 12.3(a)(ii).

²⁸ Constellation Reply Brief at p.7.

²⁹ See Constellation Main Brief at p.12 (Section II.C.2.d.) (quoting Ms. Philips, Hearing Transcript at p.270 (lines 3-6)).

³⁰ Recommended Decision at p.52.

³¹ See Hearing Transcript at p.249 (lines 18-25) and p.250 (lines 1-12) (Mr. Cavicchi admits that most of the SMA’s provisions are taken almost verbatim from the Maryland SMA).

necessary to make PPL's proposed SMA include two-way default provisions which operate in the *exact same way* as:

the [Maryland SMA], the equivalent of PPL's proposed SMA,³² and the *very same* document which [PPL witness] Mr. Cavicchi *concedes*³³ is the basis for PPL's proposed SMA.³⁴

As Constellation explains in its Main Brief, Exhibit MRP-3, submitted along with CCG witness Ms. Marjorie Philips' surrebuttal testimony provides clear, concrete evidence of this, as Exhibit MRP-3 is a markup of "PPL's proposed SMA at Sections 12.3(a)(ii) and 12.7 to include the standard two-way default provisions [utilized in Maryland]." Moreover, because PPL's proposed SMA was based on the Maryland SMA, the proposed SMA already contained the other sections of the Maryland SMA which were necessary to correctly implement two-way default provisions.

As Constellation summarizes in its Reply Brief:

Constellation . . . in its Main Brief³⁵ . . . points out clearly that PPL's existing SMA language combined with CCG's proposed revisions already address [the ALJ's concerns] . . . 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

³² Exhibit MRP-3 at §§ 12.3(a)(ii) and 12.7.

³³ See Hearing Transcript at p.249 (lines 18-25) and p.250 (lines 1-12) (Mr. Cavicchi admits that most of the SMA's provisions are taken almost verbatim from the Maryland SMA).

³⁴ Constellation Main Brief at pp.6-7 (*emph. added*).

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.

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

- 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.³⁹

The ALJ explains that “PPL Electric notes that these steps are inadequate. For example, step-up rights (in which another supplier may step up and replace the defaulting supplier) are voluntary, while to expect [PPL] to waive defaults is not in the public interest.”⁴⁰ However, as explained above, Constellation provides evidence that, absent another supplier “stepping-up” into the shoes of the defaulting supplier, the SMA nevertheless contains appropriate protections for PPL and its customers. As Constellation notes above:

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.⁴¹

These same provisions provide appropriate protections in the event that PPL does not waive a default. PPL may declare a default and, if necessary and such default is not cured by the

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

³⁸ Exhibit MRP-3 at Section 12.7.

³⁹ Constellation Reply Brief at pp.8-9.

⁴⁰ Recommended Decision at p.52.

⁴¹ Constellation Reply Brief at p.7 (*citing* Exhibit MRP-3 at § 12.3(a)(ii)).

supplier, PPL may go to the market to purchase replacement POLR supply while – pursuant to two-way default and related provisions included in the SMA – having a guarantee that PPL will never be responsible for any costs greater than the price originally contracted-for with the defaulting supplier.

As explained in more detail in Constellation’s Main Brief, PPL does not provide adequate evidence in the record to support its decision to delete the two-way default provisions from the Maryland SMA – provisions which the ALJ finds may be standard in the industry for POLR SMAs – and replace them with unilateral default provisions when adopting the document for PPL’s own procurements.⁴² The PPL proposed SMA, as it is based on the Maryland SMA, already includes many of the provisions necessary to correctly support two-way default provisions; Constellation requests that the Commission order PPL to reinsert the remaining provisions from the Maryland SMA which are necessary to implement two-way default in PPL’s SMA, as proposed in CCG’s testimony.

3. The SMA’s Curative Provisions for Preventing PPL from “Catching a Supplier in a Technical Default,” and PPL’s Suggested Change to Account for Payments for Service Provided Prior to a Default Does Not Sufficiently Placate the Needs that Suppliers Have for Industry-Standard Two-Way Default Provisions.

The ALJ seems to suggest that two-way default provisions are not necessary because:

Constellation’s scenario of [PPL] using the unilateral termination provision to advantage itself by ‘catching a supplier in a technical default,’ is addressed by the curative provisions contained in the SMA . . . [and PPL] has suggested that the SMA should be revised to account for recovery of payments for service provider prior to default.⁴³

⁴² Constellation Main Brief at pp.11-14 (Section II.C.d.).

⁴³ *Recommended Decision* at pp.52-53.

Constellation notes that, to the contrary, the SMA's current curative provisions and PPL's suggested additional change do not adequately address suppliers' concerns regarding the absence of two-way default provisions in the SMA.

For example, the strong industry-wide desire to include such provisions in agreements is due, in part, to credit agencies' view that such provisions are "very critical," as explained by Ms. Philips.⁴⁴ With two-way default provisions, with respect to PPL and a winning supplier, credit agencies will see that both PPL's POLR supply requirements and the supplier's forward load obligations, respectively, are more certain.⁴⁵ Thus, as Ms. Philips indicates, without two-way default provisions in the SMA, wholesale suppliers may be less likely to participate in PPL's procurements⁴⁶ and, if they participate, may add a premium to their bids to account for the additional credit risks to which they are exposed.⁴⁷ In this way, reduced participation and higher bid premiums related to one-way default provisions inevitably will lead to higher prices for consumers.⁴⁸

III. CONCLUSION AND REQUESTED RELIEF

Constellation is confident that its proposed industry-standard, two-way default provision, found in POLR contracts previously approved by the Commission, is supported by substantial evidence in the record before the Commission, and should be approved as appropriate to include

⁴⁴ Hearing Transcript at p.269 (lines 15-22).

⁴⁵ Hearing Transcript at p.270 (lines 2-6) (Ms. Philips explains that a two-way default provision "protects the buyer in that when the credit agency looks at its contracts, that the buyer will never be obligated to pay more than that, and it protects the seller because it guarantees the seller that it will have this forward income").

⁴⁶ Hearing Transcript at p.271 (lines 18-21) (Ms. Philips states that PPL's RFP "would be much less attractive" if the SMA maintains a one-way default provision rather than CCG's proposed two-way provision).

⁴⁷ Hearing Transcript at p.271 (lines 1-4) (Ms. Philips states that "if [a one-way default provision] hurts [a supplier's] credit, which it would because [the supplier] no longer [has] that two-way guarantee, [the supplier is] going to have to add a premium").

⁴⁸ Hearing Transcript at p.270 (lines 24-25) (Ms. Philips states that a one-way default provision "will add to the cost to consumers").

in PPL's SMA. A policy decision to utilize a non-standard, "unilateral default provision" is better left to the stakeholders in the Commission's Standardized SMA-RFP Proceeding, in which a recommendation on standardized SMAs is due to be made by July 1 of this year. For purposes of this proceeding, Constellation specifically asks the Commission remains consistent with precedent, revises the Recommended Decision and enters an Order that:

1. Overturns the ALJ's ruling that "it is reasonable and appropriate for the SMA to contain a unilateral default provision"; and
2. Requires PPL to revise the SMA to include industry-standard two-way default provisions, as proposed by Constellation and supported by the evidence on the record.

Respectfully Submitted,



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Dated: March 15, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

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

MAR 15 2007

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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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March 15, 2007

VIA FEDERAL EXPRESS

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MAR 15 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


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 Exceptions of the Retail Energy Supply Association, Direct Energy Services LLC and Strategic Energy LLC ("RESA *et al.*") in the above-referenced matter. 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)

BTL

HAR:71952.1/MID051-240956*

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

:
:
:
:

Docket No. P-00062227

RECEIVED

MAR 15 2007

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**EXCEPTIONS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY SERVICES LLC**

and

**DOCUMENT
FOLDER**

STRATEGIC ENERGY LLC

DOCKETED
MAR 19 2007

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March 15, 2007

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I. INTRODUCTION

On August 2, 2006, PPL Electric Utilities Corporation ("PPL") filed a petition requesting Pennsylvania Public Utility Commission ("PUC" or "Commission") approval of its "Competitive Bridge Plan" ("CBP") to obtain all of the generation supply needed to meet its post-transition period provider of last resort ("POLR") obligations in 2010, after its generation rate caps expire on December 31, 2009. The proceeding was assigned to Administrative Law Judge ("ALJ") Marlane R. Chestnut.

Various parties intervened, served prepared written testimony and participated in the hearings held December 19-21, 2006. PPL's CBP was revised by PPL's rebuttal testimony and by stipulations between: PPL and Reliant Energy, Inc.; PPL and the Commission's Office of Trial Staff; PPL and the Office of Consumer Advocate; PPL and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group; PPL and Citizens for Pennsylvania's Future; and the Sustainable Energy Fund of Central Pennsylvania.

Parties that did not enter into stipulations with PPL include: the Retail Energy Supply Association ("RESA")¹; Strategic Energy LLC ("Strategic"); Direct Energy Services LLC ("Direct Energy"); and Dominion Retail, Inc. ("Dominion Retail"). RESA, Direct Energy and Strategic Energy,² submitted Main and Reply briefs in opposition to PPL's revised CBP. Nonetheless, ALJ Chestnut recommended approval of PPL's revised CBP. RESA *et al.* submit these exceptions to ALJ Chestnut's February 21, 2007 Recommended Decision ("RD").

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.

² Referred to collectively as "RESA *et al.*"

II. SUMMARY

Despite characterizing PPL's revised CBP – which lacks the support of *retail* (as opposed to wholesale) competitive suppliers³ – as "non-precedential," this case is of the utmost importance to the success of the competitive retail electric market throughout the Commonwealth of Pennsylvania for many reasons.

First, approval of PPL's special additional, one-year transition plan will treat PPL differently than all other electric distribution companies ("EDCs") whose generation rate caps have not yet expired. This special treatment is unnecessary because the Commission has made clear that it will adopt its final post-rate cap Default Service regulations well in time for PPL to submit a plan in accordance with these final regulations for the first year after its rate caps expire on December 31, 2009.⁴

Second, PPL's revised CBP is certain to produce POLR rates that will be materially divorced from prevailing market prices in 2010, when the POLR service is taken. In addition to being contrary to the requirement that post-rate cap POLR (or Default Service) rates reflect prevailing market prices, PPL's revised plan will: (i) not reduce the risks of locking in short term wholesale price spikes; (ii) not guarantee lower or necessarily more stable POLR rates for residential and small commercial customers in 2010; (iii) not permit the long-term fixed POLR rates for residential and small commercial and industrial ("C&I") customers to flex down if wholesale prices mitigate after the solicitations are held; and (iii) not provide these customers

³ RESA *et al.* Reply Brief ("RB") at 10-12.

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) Advance Notice Of Final Rulemaking Order*, Docket No. L-00040169, Order entered February 9, 2007, at 6 ("*ANOFR*").

with competitive alternatives to mitigate the effects of higher post-rate cap wholesale prices which PPL and all other parties agree are the basis for PPL's additional transition plan.

Thus, if approved, PPL's revised, one-year transition plan will create the worst of both worlds for PPL's market for 2010. It will neither protect customers from significantly increased wholesale prices and POLR rates, nor provide customers with POLR rates adjustable downward if prevailing market price mitigate nor provide customers with competitive retail alternatives to mitigate higher POLR rates. These scenarios will produce a public outcry, as previously heard in Maryland, Delaware and Pike County, that retail competition is not working. This public outcry will erroneously blame retail competition for this predicament, and the "non-precedential" label on PPL's revised plan will mean nothing. Accordingly, the exceptions of RESA *et al.* should be granted, and the ALJ's Recommended Decision rejected.

III. EXCEPTIONS

- A. **Exception No.1 The ALJ erred in concluding that PPL's special, experimental, additional one-year transition POLR service plan is necessary, prudent and appropriate. (RD at 30-32, 57-58; Conclusions of Law Nos. 2-4, 9).**

The ALJ concluded that PPL's revised plan is prudent and appropriate due to uncertainty whether the final POLR regulations will be effective in time to govern PPL's POLR obligations for the first year after its rate caps expire. The ALJ rejected the arguments of RESA *et al.* that PPL's special, experimental, additional one-year POLR service program is both premature and unnecessary.⁵

Any alleged uncertainty has been resolved by the Commission's final-form Default Service regulations adopted at the Commission's February 8, 2007 Public Meeting. No matter what, if any, substantive changes are made to the final-form regulations as a result of the

⁵ RESA *et al.* Main Brief ("MB") at 2, 11-13; RESA *et al.* RB at 1-3.

comments and reply comments, it is clear that the Commission intends to submit the final-form regulations to the Independent Regulatory Review Commission ("IRRC") by mid-2007: "This will provide needed regulatory certainty to these EDCs preparing this first default service plan, who collectively save the majority of Pennsylvania ratepayers."⁶ This timeframe will permit the reviews by IRRC, the standing committees of the General Assembly and the Office of Attorney General to be completed so that the final regulations are effective by the end of calendar year 2007, or by early 2008.

This timeframe demonstrates that PPL will have sufficient time to prepare its first post-rate cap Default Service program (to include 2010) in accordance with the final Default Service regulations. If the final regulations are effective by the end of the first or second quarter of 2008, PPL would be required to submit its initial post-rate cap Default Service program by September 30, 2008, 15 months before its rate caps expire on December 31, 2009. The Commission's decision on PPL's filing would be made, at the latest, six (6) months later, or by March 31, 2009.

The procedural time frames under the Commission's proposed final-form regulations clearly envision providing Default Service Providers ("DSPs") at least nine (9) months prior to the end of their rate caps to begin procurement of power for their initial post-rate cap periods. Neither the Commission nor any other interested stakeholder has suggested that these plans are to operate retroactively. Thus, the earliest that the Commission's proposed final-form regulations envision any DSP procuring power for its initial post-rate cap period is within nine (9) months of the expiration of its rate caps. There is no need for the Commission to treat PPL any differently than the other EDCs⁷ that will be required to submit Default Service programs – for the first year

⁶ ANOFR at 6.

⁷ PECO Energy Company, Metropolitan Edison Company and Pennsylvania Electric Company (*Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail*

after their rate caps expire – in accordance with the final Default Service regulations, and no reason to permit PPL to begin procuring POLR power for 2010 in 2007 and 2008.

The ALJ erred in rejecting RESA's argument that the Commission's *POLR NOPR* demonstrated the Commission's intent to apply the final Default Service regulations to those EDCs, like PPL, whose rate caps have not expired before the final regulations are effective.⁸ As RESA *et al.* pointed out in their Reply Brief, only the Commission can resolve this threshold issue.⁹ RESA submits that the ALJ erred in adopting PPL's "uncertainty" argument, in the same manner as the ALJ erred in concluding that "it is likely that the deadline [for adopting the final form regulation] will be extended to March 2009 by IRRC as a result of the Commission's action in allowing additional comments to be filed on or before March 2, 2007."¹⁰ The ALJ's conclusion concerning IRRC's deadline is irrelevant in view of the Commission's statement that it intends to submit the final-form regulations to IRRC in mid-2007.

RESA requests that the Commission reaffirm its intent, expressed in both the *POLR NOPR* order¹¹ and the *ANOFR* order,¹² that the final Default Service regulations will govern PPL's POLR obligations beginning the first year after its rate caps expire, the same as for the

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, at 11, n.2 ("POLR NOPR") and West Penn Power Company (Petition of West Penn Power Company for Issuance of a Second Supplement to its Previous Qualified Rate Orders Under Sections 2808 and 2812 of the Public Utility Code, Docket No. R-00039022, Application of West Penn Power Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, Docket No. R-00973981, Order entered May 11, 2005).

⁸ RESA *et al.* MB at 11-13.

⁹ RESA *et al.* RB at -3.

¹⁰ RD at 31.

¹¹ *POLR NOPR* at 1, 10-11.

¹² *ANOFR* at 6.

other EDCs whose rate caps have not yet expired. Accordingly, RESA requests that the Commission reject the ALJ's recommendation and reject PPL's special, experimental, additional one-year transition plan for 2010.

B. Exception No. 2. The ALJ erred in adopting the multi-year laddered solicitations proposed by PPL for residential and small C&I customers. (RD at 32-39, 57-58; Conclusions of Law Nos. 2-4, 9).

If the Commission decides that PPL needs a special, experimental, additional one-year transition plan for 2010, the Commission should reject the ALJ's adoption of PPL's multi-year, laddered procurement plan for residential and small C&I customers for any one of many reasons. First, this procurement plan is contrary to the requirement of Section 2807(e)(3) of the Electric Choice Act that POLR rates in the post-rate cap period reflect prevailing market prices.¹³ The ALJ erred in concluding that there is no legal impediment to the multi-year laddered procurement plan proposed by PPL. The existence or absence of the Commission's final regulations has no effect on the statutory requirement because the regulations must be consistent with the statute. The final-form regulations cannot authorize a procurement method that is contrary to the statute.

The ALJ also erred in concluding that PPL's multi-year laddered procurement will mitigate the risk of locking in short term wholesale price spikes. The ALJ completely ignored PPL's admission and RESA *et al.*'s argument that PPL's procurement method is subject to external market forces beyond its control, and will not be changed even if a catastrophic event occurs before the scheduled procurements.¹⁴ Thus, it is clear that PPL's methodology does not

¹³ RESA *et al.* MB at 4-7; RESA *et al.* RB at 4-6.

¹⁴ RESA *et al.* MB at 7-9; RESA *et al.* RB at 6-8.

mitigate the risk of locking the effects of short term wholesale price spikes in PPL's annual fixed POLR rates for residential and small C&I customers.

The ALJ also erred in concluding that this procurement method will essentially guarantee lower or more stable POLR rates for PPL's residential and small C&I customers for 2010. The ALJ ignored the evidence and RESA *et al.*'s argument that this methodology has not done so in other jurisdictions.¹⁵ In rejecting RESA's proposal for more market responsive monthly pricing for residential and small C&I customers, the ALJ ignored the evidence that PJM monthly average LMP prices, properly adjusted, were lower for residential customers in 32 of the 49 months analyzed by PPL.¹⁶

Finally, in adopting PPL's procurement plan for residential and small C&I customers, the ALJ ignored the evidence that this methodology will not provide these customers with competitive alternatives to mitigate the higher POLR rates expected by PPL. In addition, the certainty that this methodology will produce POLR rates for 2010 divorced from prevailing market prices in 2010 will prevent competitive suppliers from entering or remaining in PPL's market,¹⁷ and this will not promote the development of retail competition.

Accordingly, if the Commission decides that PPL needs a special POLR plan for 2010, the Commission should reject the ALJ's recommendation and modify the residential and small C&I portion of PPL's plan to require monthly pricing as recommended by RESA *et al.* In rejecting this proposal, the ALJ ignored the evidence of retail market development and benefits to customers of monthly pricing, as well as the evidence that monthly pricing can accommodate

¹⁵ RESA *et al.* MB at 7-9; RESA *et al.* RB at 7-8.

¹⁶ RESA *et al.* RB at 7-8.

¹⁷ RESA *et al.* MB at 2-3, 8-10; RESA *et al.* RB at 8-10.

budget billing and low income customer assistance plans.¹⁸ As suggested by RESA *et al.*, the Commission could order a workshop to address any concerns about possible extraordinary price spikes being reflected in monthly prices.¹⁹

C. **Exception No. 3. The ALJ erred in adopting a fixed rate option for large C&I customers. (RD at 39-42, 57-58; Conclusions of Law Nos. 3-5, 9).**

The ALJ erred in recommending adoption of a fixed rate option for PPL's large C&I customers, based on the conclusion that PPL's large C&I customers "deserve the same fixed price option that was provided to Duquesne's [large C&I] customers."²⁰ The ALJ misconstrued the evidence and argument that during 2010 when PPL's special plan will be in effect, Duquesne's large C&I customers will not have a fixed price option because it will have expired May 31, 2007 – and that competitive suppliers immediately stepped up in Duquesne's market to provide fixed price service to large C&I customers.²¹ There is no reason to believe that the same result will not occur if PPL's hourly priced service ("HPS") for large C&I customers is the only option. The ALJ also ignored evidence that where HPS is the only default service for large C&I customers, robust competition among numerous competitive suppliers has developed to deliver real benefits to these customers.²² Accordingly, the Commission should reject the ALJ's recommendation and reject PPL's fixed rate option for large C&I customers.

¹⁸ RESA *et al.* MB at 13.

¹⁹ *Id.*

²⁰ RD at 42.

²¹ RESA *et al.* MB at 13-15.

²² *Id.* at 13-14.

D. Exception No. 4. The ALJ erred in not rejecting PPL's GRA for 2010. (RD at 42-47, 57-58; Conclusions of Law Nos. 3-5, 9).

Although PPL withdrew its proposed changes to its generation rate adjustment ("GRA") tariff, the ALJ rejected the argument of RESA and others that PPL's existing GRA should be eliminated for 2010. Aside from erroneously concluding that the parties opposing continuation of PPL's existing GRA failed to establish "that gaming will not occur [or] that the GRA is no longer necessary," the ALJ erred in rejecting the fundamental legal problem with PPL's GRA – it treats customers returning from shopping differently than new customers.²³ The ALJ concluded: "An existing customer who has been or POLR service for more than twelve months is free to switch to an EGS, without being subject to a GRA, and therefore is in the same position as any new customer."²⁴

The ALJ's conclusion is wrong because it misses the point. Any new customer is free to switch to an EGS without being subject to the GRA and without being required to be on POLR service for twelve months, but an existing customer *returning from shopping* is not free to switch to an EGS without being subject to the GRA until after being on POLR service for twelve months. This is clearly prohibited by Section 2703(e)(4) of the Electric Choice Act and the Commission's Duquesne POLR III decision.²⁵ For this reason, as well due to the anticompetitive

²³ RESA *et al.* MB at 16-17.

²⁴ RD at 45 (emphasis added).

²⁵ *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Order entered August 23, 2004 at 26-27; *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service* *Petition for Reconsideration of Duquesne Light Company* *Petition for Reconsideration of Constellation NewEnergy, Inc. and Constellation Power Source, Inc.*, Docket No. 00032071, Order entered October 5, 2004 at 13-14.

effects of the GRA as set forth in RESA *et al.*'s Main Brief,²⁶ the Commission should reject the ALJ's recommendation and reject continuation of PPL's existing GRA "exit" fee into PPL's post-rate cap period.

E. Exception No. 5 The ALJ erred in permitting reconciliation of PPL's Generation Supply Charge. (RD at 47-51, 57-58; Conclusions of Law Nos. 3, 4, 9).

The ALJ approved reconciliation of PPL's Generation Supply Charge over the objections of the competitive suppliers. The ALJ erred in concluding that "[t]here is *no* record evidence to support *any* conclusion that a EGS will be put at *any* disadvantage whatsoever" by PPL's reconciliation mechanism.²⁷ The ALJ's hyperbolic conclusion is wrong. The ALJ's suggestion that an EGS can adopt a reconciliation mechanism of its own reflects a lack of understanding of EGS products and pricing, and is not supported by the record. There is no evidence that an EGS has ever offered a product with a reconciliation mechanism. The ALJ's suggestion that an EGS can market itself as having a competitive advantage if it does not have some type of reconciliation also reflects a fundamental misunderstanding of the effect of the reconciliation mechanism and EGS pricing – it is the reconciliation mechanism that provides the competitive advantage to the EDC by permitting inclusion and recovery of out-of-period costs. The Commission should reject the ALJ's recommendation and reject the reconciliation of PPL's POLR supply costs and charges.²⁸

IV. CONCLUSION

The Commission should reaffirm its intention to apply the final Default Service regulations to the first year of the post-rate cap period of those EDCs, including PPL, whose rate

²⁶ RESA *et al.* MB at 16-17.

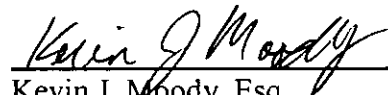
²⁷ RD at 50 (emphasis added).

²⁸ RESA *et al.* MB at 16.

caps have not yet expired, and reject PPL's Competitive Bridge Plan outright because it is premature and unnecessary – and is also bad policy and not consistent with the Electric Choice Act.

If the Commission nonetheless decides that PPL needs a special, experimental, additional, one-year transition plan, PPL's 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, with no fixed rate option. This is the POLR market structure that will ensure market-reflective POLR pricing as required by the Electric Choice Act. Only then will PPL's customers be positioned to obtain the benefits of a properly functioning and workable competitive retail electricity market in PPL's service territory.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Exception 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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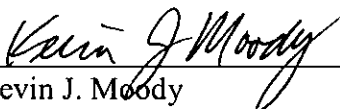
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