BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

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I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the Company") hereby submits this Reply Brief in response to the Briefs of other parties, principally the joint brief of the Retail Energy Supply Association ("RESA"), Direct Energy Services, LLC ("Direct Energy") and Strategic Energy ("Strategic") (collectively referred to as "RESA et al."), the brief of Dominion Retail, Inc. ("Dominion"), the brief of FirstEnergy Solutions ("FES") and, to a lesser extent, the brief of Constellation Energy Commodities group and Constellation New Energy, Inc. (collectively "Constellation"). PPL Electric anticipated and responded to most of the arguments raised by these parties, and will endeavor not to repeat those responses herein. In addition, a Brief was filed by Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"). Subsequent to the filing of main briefs, however, PPL Electric and SEF entered into a stipulation resolving all outstanding issues and no further briefing is required as to their issues. Briefs also were filed by PPL Industrial Customer Alliance ("PPLICA"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). Those briefs are supportive of PPL Electric's Revised Competitive Bridge Plan ("CBP") and, with limited exceptions, do not require a response in this Reply Brief.

With the addition of SEF, the roster of parties supporting or not opposing the Revised CBP now includes OTS, OCA, OSBA, PPLICA, Reliant, Constellation, PennFuture and SEF. RESA et al. and Dominion are the only parties who oppose the core concepts of the Revised CBP – six solicitations over three years for Provider of Last Resort ("POLR") service in 2010 for Residential and Small Commercial and Industrial ("Small C&I") customer groups; a default real time hourly service and optional fixed rate service for the Large Commercial and Industrial ("Large C&I") customer group; and reconciliation of POLR revenues and costs by class for 2010. RESA et al. and Dominion react as though these concepts will establish binding precedent

for POLR service in PPL Electric's service territory for the next decade or more. They disregard the fact that PPL Electric consistently has stated that this is a non-precedential bridge plan to get to statewide competition in 2011, which has been presented now because of the absence of binding statewide regulations and because waiting for such regulations to become effective could leave PPL Electric in a situation similar to Pike County Light & Power Company, where it can only undertake one or two solicitations to establish POLR rates, which could be affected by abnormal market conditions.

RESA et al. and, particularly, Dominion and FES, refer to the Pennsylvania Public Utility Commission's ("Commission") resolution of various POLR issues in prior interim POLR proceedings and to the Commission's proposed POLR regulations. PPL Electric respectfully requests that the Administrative Law Judge and Commission give no weight to these references. These prior decisions were designated to be non-precedential and, as such, should not be cited as support for any position on the merits of any issue. *Application of PECO Energy Co.*, Docket No. A-00110550F0147, June 22, 2000, p. 9 (rejecting position of witness because support was based on settlement in another utility's case); *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-00005654, February 22, 2001 (Commission indicated its decision was of no precedential value); *Re: USX Corp. – U.S. Steel Group*, Docket No. P-00920585, June 15, 1993 (Commission indicated that due to the unique circumstances in that proceeding that its decision would not carry precedential significance in future cases); *Jt. Petition of Verizon Pennsylvania, et al.*, Docket No. A-310401F7000, April 19, 2004 (Commission indicated its decision should not be construed to be the Commission's Opinion regarding certain matters). Similarly, the proposed regulations, which are at this time only proposed, have no probative value and should be disregarded. *See* Main Brief of PPL Electric, pp. 30-31, (discussing uncertainty of timely

adoption of final regulation). An agency may not interpret a statute based upon unpublished regulations or unpublished statements of policy. *Woods Services v. Dept. Public Welfare*, 803 A.2d 260, 264 (Pa. Cmwlth. 2002). Reliance on proposed regulations by the Commission is contrary to law. "Unless and until Commission regulations are adopted in accordance with applicable statutory requirements, they are a nullity." *Tasker v. PPL, Inc.*, Case 00003249, 94 Pa. P.U.C. 444, August 29, 2000. Moreover, it should be noted that these parties conveniently cite to these prior non-precedential orders only on those issues that are of benefit to them, and conveniently ignore, and are eager to reargue, those proposals previously rejected by the Commission. PPL Electric respectfully requests that such references be disregarded.

For reasons explained below and in PPL Electric's Main Brief, the Revised CBP and associated stipulations should be approved in their entirety, and the various objections of the non-stipulating parties should be rejected.

II. ARGUMENT

A. The Solicitation Process Under The Revised CBP Does Not Violate The Competition Act.

RESA et al. and Dominion both contend that PPL Electric's proposal to acquire generation supply for 2010 through a series of six solicitations over three years is illegal under the Electricity Generation Customer Choice and Competition Act ("Competition Act"). (RESA et al. Brief, pp. 4-7; Dominion Brief, pp. 3, 11-12, 14-16). RESA et al. and Dominion each contend that there is a single, clear definition of the term "prevailing market prices". (Dominion Brief, p. 15; RESA et al. Brief, p. 5). Unfortunately, neither party is quite able to state what that "clear" definition is, and in fact, they appear to reach quite different conclusions regarding what is permitted under the statute.

RESA et al. asserts that: "The word 'prevailing' means that POLR prices must maintain some currency compared to wholesale market conditions at any given point in time." (*Quoting* the concurring statement of then-Chairman Fitzpatrick from *Petition of Duquesne Light Co.* ("*Duquesne POLR III*"), 2004 Pa. P.U.C. LEXIS 42). From this, RESA et al. concludes that POLR prices cannot be fixed long-term (RESA et al. Brief, p. 5), and argues that POLR prices must be set monthly, despite the fact that, in *Duquesne POLR III,* the Commission authorized Duquesne to set POLR prices reaching out three years.

Dominion goes even further than RESA et al. and concludes that the "only price that squarely fits the definition of "prevailing market price" is the price that prevails at the moment the POLR customer uses the energy – *i.e.*, the PJM real time price. (Dominion Brief, p. 15). However, almost immediately after offering the definition, Dominion appears to back away from it, and offers that POLR supply must be acquired "no more than one year in advance of its use" or acquired during a single year with rates fixed for three to five years. (Dominion Brief, p. 16).

The inability of RESA et al. and Dominion to agree upon a definition of "prevailing market price" confirms PPL Electric's assertion, in its Main Brief, that the legislature intended to leave the definition of that term to the Commission's broad administrative discretion, and did not restrict the Commission to consider only short-term pricing proposals. (PPL Main Brief, pp. 25-30). PPL Electric's consulting expert, Mr. Cavicchi, offered a common sense approach to this issue, in the absence of defining regulations:

> The basic issue surrounding the Commonwealth's intention that POLR service be priced at prevailing market prices is whether the word "prevailing" means that POLR service prices should be established as near as possible to when electricity delivery occurs. However, there is no basis to conclude that a one-year forward price established in 2009 for 2010 will be more reflective of actual market prices in 2010 than a three-year laddered acquisition. Thus, taken to the extreme, one could interpret prevailing to mean that all

> customers' electricity pricing ought to be hourly. On the other hand, prevailing can be interpreted as meaning that electricity supplies must be obtained from the wholesale marketplace at a particular point, or points, in time at then prevailing prices, as opposed to, for example, from supply sources where future prices are not specified, but instead are unknown until delivery occurs. An example of this would be a call-option where the electricity price is not explicitly established, but based on a fuel price index at some time in the future. As I stated in my Direct Testimony, in my opinion as an economist, supplies obtained at different points in time, if procured from the wholesale markets at competitively established prices, constitute service established by prevailing market prices.
>
> Q. How can the concerns of other parties in relation to prevailing market prices be reconciled in this proceeding?
>
> A. From an economist's point of view, I believe that the use of the word "prevailing" should be interpreted to provide a degree of policy flexibility to the Commission when making decisions regarding POLR service definition. Using this approach it is possible to view this issue in the context of balancing the interests of the parties to this proceeding. Several different POLR service pricing proposals have been suggested as part of this proceeding. But the basis of POLR service need not be focused on trying to force POLR service customers to switch to EGSs, or obligating utilities to enter into long-term contracts (e.g., five-to-ten-year terms) for POLR service that can be out of step with market prices. Instead, an acceptable approach is to ensure that a reasonably priced, market-based POLR service is available to those consumers who return to the service, or choose not to switch in the first place. As long as the pricing methodology is fair and reflects prevailing market prices at the time of the acquisition, the interests of the parties can be balanced.

(PPL Electric St. 2-R, pp. 7-8).

RESA et al. and Dominion assert that, under PPL Electric's interpretation, if a utility secured a bid for a 20-year purchased power contract, that price would be the "prevailing market price" for the entire 20-year period. (RESA et al. Brief, p. 6; Dominion Brief, p. 18). The Commission need not decide this hypothetical in the context of this proceeding. PPL Electric's Revised CBP is non-precedential, and does not set POLR rates for more than a single year. In

fact, the only party that has proposed to secure bids for multiple years of POLR service is Dominion. Furthermore, PPL Electric's proposal relies upon products that are readily available and transparent in the marketplace (PPL Electric St. 1, p. 8). PPL Electric is not aware of a current market in 20-year contracts. PPL Electric, as explained above, believes that the Commission ultimately has substantial discretion in defining "prevailing market prices" in its final POLR regulations, and in that context, the Commission can determine whether a 20-year contract for power may be reasonable.[1]

RESA et al. asserts, at page 9 of its Brief, that PPL Electric has claimed that because the CBP is "non-precedential", it is not contrary to the Competition Act. Respectfully, PPL Electric has made no such assertion. PPL Electric has emphasized that its CBP is non-precedential to be consistent with prior interim POLR plans, and to recognize that its plan is not intended to override, or be used as precedent against other parties, or against the Commission in approving other interim POLR mechanisms, or in establishing final POLR regulations. (PPL Electric St. 1-R, p. 8; PPL Electric C.E. Exh. 2; PPL Electric C.E. Exh. 3; PPL Electric C.E. Exh. 4; PPL Electric C.E. Exh. 6; PPL Electric Main Brief pp. 12-13).

For the reasons explained above and in PPL Electric's Main Brief, the solicitation process under the Revised CBP is legal under the Competition Act, and should be approved.

B. PPL Electric's CBP Demonstrates Prudent Utility Planning.

RESA et al. contends, at pages 11-13 of its Main Brief, that PPL Electric's Revised CBP is premature and unnecessary. The ALJ previously rejected this argument when it was presented by Reliant in a Motion to Dismiss. (Reliant Motion to Dismiss, p. 2; PPL Electric Answer in Opposition to Motion to Dismiss by Reliant, p. 2; Prehearing Order No. 2, p. 3). PPL Electric

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[1] For example, the Commission could conclude that generation supply under a long-term supply contract with an alternative energy provider is reasonable and in the public interest.

also anticipated, and responded to, this argument at pages 30-32 of its Main Brief. PPL Electric's further responses herein will be limited accordingly.

RESA et al. asserts that the Commission, in its 2004 POLR Notice of Proposed Rulemaking ("POLR NOPR"), concluded that its POLR regulations would govern PPL Electric's POLR obligations after rate caps end. (RESA et al. Brief, pp. 11-12). RESA et al. reaches this conclusion because the Commission's POLR NOPR did not specifically identify PPL Electric as one of the utilities that might need approval of interim plans.

RESA et al. reads far too much into the POLR NOPR. It is evident from the POLR NOPR that the Commission expected to have final regulations approved, if not in place, prior to the end of 2006:

> The Commission also recognizes that the effective date of the final regulations may not directly correspond with the expiration of Penn Power Company's generation rate caps on December 31, 2006. The Commission therefore will need to approve interim default service plans for some of the above named EDC's[2] until final regulations are in effect, as has been done previously. (Emphasis added).

Rulemaking Re: Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period, Docket No. L-00040169, Order entered December 16, 2004.

It is apparent from the foregoing that the Commission was concerned that its final POLR rulemaking order might not be entered until early to mid-2006, and that, with the need to go through the entire regulatory review process, the regulations might not be finalized in time for Penn Power and some other utilities. However, since that time, the deadline for adoption of the final rulemaking at this docket has been postponed to April 8, 2008, and the Commission already

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[2] Citizens Electric Company, Duquesne Light Company, Pike County Light & Power Company, UGI Utilities, Inc. – Electric Division and Wellsboro Electric Company.

has acted to approve additional interim POLR plans. *See* Petition *of Penn Power Co.*, Docket No. P-00052188, 2006 Pa. P.U.C. LEXIS 56, Re: *UGI Utilities, Inc. – Electric Division*, Docket No. P-00062212, June 23, 2006, *Pa. P.U.C. v. Pike County Light & Power Co.*, Docket No. P-00052168, September 23, 2005. Clearly, the POLR NOPR does not bind the Commission to a date for issuance of final regulations, and as the Commission recognized, until final regulations are in effect, interim plans need to be filed, reviewed and authorized. As explained previously in PPL Electric's Main Brief (pp. 30-31), there is no assurance that regulations will be finalized or in effect by the April 8, 2008 date.

It would not be prudent for PPL Electric to delay this filing until final rules are in place. As the Commission recognized from the Pike County situation, a single solicitation is a risky endeavor. *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062204, April 20, 2006, p. 3. PPL Electric, recognizing the problem that had arisen with Pike County, acted prudently and developed a plan for multiple solicitations over a three-year period to cover POLR requirements for 2010. With such a proposal on file, neither the Commission nor the Company will be open to criticism for waiting until the last second to obtain POLR power. PPL Electric should be praised, rather than criticized by a limited group of Electric Generation Suppliers ("EGSs"), for being proactive on this issue.[3]

Dominion does not directly argue that the CBP is premature. However, Dominion does contend that PPL Electric's series of six RFP solicitations is unnecessary because it will not eliminate "rate shock." The difficulty here seems to be one of definition. Dominion appears to view the "rate shock" issue as the primary difference between 2010 rates and current rates, and

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[3] This is especially the case if the Commission decides to encourage multiple year solicitations in its final POLR regulations.

argues that PPL Electric's laddered solicitations for 2010 will not guarantee any protection from that price increase. From this, Dominion asserts that six solicitations over three years is no more likely to eliminate rate increases in 2010 than a single solicitation in 2009. (Dominion Brief, p. 18).

However, PPL Electric has never claimed that its six solicitations over three years will avoid, or necessarily reduce, the generation supply rate increases customers may experience in 2010. In fact, given that all six solicitations are for delivery in 2010, each solicitation will reflect the market's then current expectations for 2010, the sum of the six solicitations will reflect a series of market expectations over the 2007 – 2009 time frame regarding prices in 2010. (PPL Electric St. 2, p. 4). What the series of solicitations is designed to do is to reduce the risk of a short-term price spike, which can occur if the Company is limited to one or two solicitations. (PPL Electric St. 1, p. 7). As Mr. Krall explained during cross-examination:

> As we come to end of the transition period and we come to the end of capped rates and PPL comes to the end of its supply agreement, we're faced on January 1 with having no rates and no supply, and one alternative is to wait and buy all of our supply at one point in time, and that has proven not to work out too well when that one day in time follows hurricanes or other major disruptions could be upset in the OPEC community. Any of those things can cause ripples in the energy market that ultimately affect the price of electricity.
>
> In the context of the en banc hearing, we proposed a number of different ways that the Commission might look to mitigate potential price increases and basically rejected the continuation of rate caps, rejected pre-collections during rate caps, and other similar mechanisms as not really addressing the problem and not really getting us to a market environment.
>
> It occurs to us that the one variable that we have available and have on our side is time. It appears from the New Jersey experience this past year that laddered procurements of staggered periods of time actually can work to mitigate price increases. New

> Jersey buying from the same market saw much less of a price increase because they were only replacing a third of their supply.
>
> Our problem is that New Jersey's system is in place and we have no system in place, so we can't really wait till 2010 and start laddering in supply because we'll only have, to follow the New Jersey model, a third of the electrons we need in 2010. So our proposal is to start early and effectively flip the ladder to the other side of the calendar and ladder in the supply for that bridge year as a way to go to the market multiple times and avoid going on the worst day in the history of mankind, which seems to have been the case in the past.

(Tr. 86-7).

In reply to Mr. Krall, Dominion claims that PPL Electric's witness, Mr. Cavicchi, admitted that each of the six solicitations is subject to the same catastrophic market conditions (Dominion proposed finding of fact 34). However, Dominion conveniently overlooks that its own counsel prefaced his questions by acknowledging that the "probability is small" of all six solicitations being affected by separate events. (Tr. 147 lines 15-20).

Common sense supports Dominion's counsel's concession: a series of solicitations provides greater protection against abnormal events influencing POLR prices. In other words, although six solicitations from 2007-2009 might not produce a different rate from a single solicitation in 2009, those six solicitations provide less risk than a single 2009 solicitation of producing a price that is unrepresentative of 2010 prices because of a hurricane, abnormally warm or cold temperatures or short-term problems in OPEC. (Tr. 86; Direct Energy St. 1, pp. 3-4).

The CBP reflects prudent utility planning. RESA et al.'s and Dominion's claims that the plan is premature or unnecessary should be rejected.

C. PPL Electric's Revised CBP For Small Customers Is Reasonable And Not Harmful To Competition.

1. RESA et al.'s Monthly Plan For Residential Customers Should Be Rejected.

RESA et al. contends that the Revised CBP will "expose residential and small C&I customers to price shock risks and prevent customers from benefiting from wholesale price decreases." (RESA et al. Brief, p. 7). RESA's "solution" is to change small customers' prices on a monthly basis, through a complex and expensive series of monthly RFPs, customer notices and billing rate changes. (RESA et al. Brief, p. 13).[4]

RESA et al. criticizes PPL Electric's plan for smaller customers as a risky point-in-time pricing procurement, and points to the BG&E auction in Maryland, the Delmarva auction in Delaware and the Pike County auction in Pennsylvania as examples of point-in-time procurements that resulted in extremely high POLR prices. However, each of these procurements suffered from precisely the problem that PPL Electric's CBP is designed to avoid – single auctions that, in retrospect, were undertaken at a time of extreme market dislocation. (PPL Electric St. 1, p. 6; Direct Energy St. 1, pp. 3-4). PPL Electric's six procurements for 2010 deliveries should provide a reasonable 2010 price, without undue influence even if one or two of the solicitations are higher, or lower, than the others due to unusual events. (PPL Electric St. 2, p. 4).

What is most striking about RESA et al.'s reference to the BG&E, Delmarva and Pike County auctions is its statement that "... retail customers complained that they had no competitive alternatives." (RESA et al. Brief, p. 7). The question that should most concern the

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[4] RESA's Brief offers nothing but a summary description of its small customer plan, and does not address any of the problems identified in PPL Electric's testimony. As a result, PPL Electric is at somewhat of a disadvantage in responding to the details of RESA et al.'s plan. PPL Electric would refer the Commission to pages 32-36 of the Company's Main Brief for an explanation of many of the practical problems with RESA et al.'s monthly POLR plan for small customers.

Commission is why – when market prices had recovered from abnormal events and were significantly lower than the established POLR prices – EGSs failed to appear and make offers to these customers.[5] It is as if the EGS community refuses to participate even when there is a clear opportunity to profit and to create ties to customers, simply because the POLR process does not satisfy each of the EGSs' demands and provides fixed rates for longer than a month's time. RESA et al.'s excuse for passing up such an opportunity to profit is stated this way: "because a fundamental and significant separation of POLR rates from market-reflective prices, no matter which direction from deviation, is sufficient to prevent competitive suppliers from entering the market ...." (RESA et al. Brief, p. 8). It appears from the foregoing that RESA et al. is saying that POLR prices consistently at market will bring EGSs in, but POLR prices above market will drive them out. The logic of this claim escapes PPL Electric.[6]

RESA et al. also argues that "market responsive" (i.e., monthly) POLR prices will produce "more frequent but less dramatic price changes," which would be more acceptable to customers. In support of this claim, RESA et al. cites to an August 2006 Order of the Maryland Public Service Commission ("Maryland PSC"). PPL Electric has two responses. First, the record evidence in this proceeding debunks RESA et al.'s claim. As explained by PPL Electric's witness Mr. Krall, and as summarized at page 33 of PPL Electric's Main Brief, month-to-month average LMP price changes can vary as much as 52%, and differences within a calendar year can vary as much as 200%. With respect to the Maryland PSC Order, it is noted that this Order

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[5] In the case of Pike County, as this Commission knows, no marketer was willing to make an offer until given an "opt out" aggregation opportunity, and even then prices offered by the EGS were higher than expectations. Statement of Commissioner Bill Shane, *Petition of Direct Energy Services, LLC for Emergency Order*, Docket No. P-00062205, May 4, 2006.

[6] This lends further affirmation to the Large C&I customers concerns that marketers may not be available to offer fixed prices. (PPLICA Brief, p. 8).

concerned large C&I customers, and actually rejected monthly price changes.[7] *In the Matter of the Commission's Investigation into Default Service for Type II Standard Offer services Customers,* Maryland Public Service Commission Case No. 9056, Order 81019 (8/28/06), p. 1. This Order does not support RESA et al.'s extreme proposal.

As explained previously, the point of PPL Electric's use of six solicitations is to avoid single "point in time" pricing, which could result in abnormal prices. RESA et al.'s monthly proposal would expose customers to twelve separate "point in time" price risks within a single year, and this is unacceptable. As the Commission is aware, the market price dislocation resulting from Hurricane Katrina lasted for several months. Apparently recognizing this problem, RESA et al. offers, for the first time in its Brief, a proposal that the Commission "could order a workshop to address" concerns about price spikes in monthly prices. RESA et al. offers no direction as to what this "workshop" would do, but, if its purpose would be to spread the price increase over other months, the result would be much more like an annualized rate which, according to RESA et al., would drive marketers out of Pennsylvania.

For the reasons explained above and in PPL Electric's Main Brief, pp. 32-36, RESA et al.'s monthly proposal should be rejected.

2. Dominion's Criticisms Of PPL Electric's CBP Are Without Merit.

Dominion offers a series of criticisms of PPL Electric's CBP. (Dominion Brief, pp 16-20). Many of these criticisms have been addressed ate pages 21-36 of PPL Electric's Main Brief.

Dominion argues that purchasing and pricing POLR service in advance of the actual time of consumption will not give customers a proper price signal. PPL Electric respectfully suggests that it is completely unreasonable to suggest that the vast majority of residential customers will

[7] The Order set quarterly, reconciled rates for large C&I customers, following a period of time when POLR rates had been set on an annual basis. (Order, p. 1).

ever have the required combination of sophistication, time and desire to monitor and respond to real time energy prices. As PPL Electric explained, its CBP plan was designed to be simple and understandable for all participants – customers, wholesale suppliers and marketers. (PPL Electric St. 2, pp. 3-4). Although PPL Electric supports and encourages DSM and energy conservation programs, it does not have the capabilities to acquire and manage generation supply for large numbers of customers on time-variant products:

> Interruptible service, time-variant pricing, and any other non-firm, non-fixed-price service that is reflected in the legacy programs are, in fact, different products. In order to offer such products, consistent with the Act's mandate that supply be obtained at prevailing market price, PPL Electric believes that it would need to solicit separate bids in the interruptible market, on-peak market, off-peak market, and hourly market. PPL Electric does not have a sophisticated energy trading function to manage such acquisitions or design such products. PPL Electric believes that, in general, such functions should be performed and products should be provided by EGSs.

(PPL Electric St. 1, pp. 17-18). In other words, PPL Electric believes that the competitive market is better able to offer these innovative, DSM and energy conservation products. PPL Electric already is in the process of doing its part to fully support these products by the installation of advanced meters and an Advanced Metering Infrastructure ("AMI") to aid customers and EGSs in that regard. (PPL Electric Main Brief, pp. 22-23; PPL Electric St. 1, pp. 9-11).

However, Dominion itself is not interested in such DSM and energy conservation products, as its witness, Mr. Butler, admitted:

> *While the data that such a system produces may allow suppliers to* offer innovative products to customers, it is not on our list of important criteria that we consider when evaluating whether to enter a particular retail market.

(Dominion St. 1-SR, p. 8). The dichotomy between Dominion's claim that POLR service should reflect hourly or other time-variant rates and its own lack of interest in such a product is a strong indication that Dominion does not believe that the majority of small customers would accept such a service. The logical conclusion is that Dominion is insisting on monthly service as the default service only in an effort to drive customers to EGSs.

At page 17 of its Brief, Dominion criticizes PPL Electric for not providing the results of each of its solicitations to EGSs. This, Dominion argues, will prevent EGSs from even attempting to provide power at prices comparable to the PPL Electric POLR prices. Dominion has misstated PPL Electric's testimony:

> Q. [By Mr. Stewart]: One last question. Does PPL plan to publish the results of each of the solicitations, these laddered solicitations as they occur as far as how much energy they acquired and what the prices were?
>
> A. [By Mr. Krall]: We intend to employ a third-party evaluator who will be reporting to the Commission, and to the extent that publication is part of the Commission's desire in that evaluator's work, that would be the source of any publication.
>
> Q. So you don't have any plans to independently publish them so that suppliers can see what those prices are?
>
> A. We do not. We want this to be run as much as possible by a third party to assure that it is beyond question of fairness or anything like that.

(Tr. 92-3).

Dominion's problem with PPL Electric's small customer proposal is not that Dominion has no opportunities to compete with the CBP in price. Dominion's problem is that it wants guarantees, not opportunities. As Dominion admitted, the CBP would leave marketers "with no <u>guarantee</u> that they would be able to sell the power at the end of the period and break even, let alone make a profit." (emphasis added). (Dominion Brief, p. 17). PPL Electric is aware of

nothing in the Competition Act that guarantees profits to EGSs, and Dominion has offered no proof that the Revised CBP, with its use of wholesale RFPs to set POLR prices for a single year, will in any way inhibit the opportunity for EGSs to compete. Dominion's criticisms are without merit, and should be rejected.

3. Dominion's Three To Five-Year Fixed Rate Plan Should Be Rejected.

Dominion devotes less than a page of space in its Brief in support of its alternative for a three to five-year fixed rate plan, to begin in 2010. (Dominion Brief, pp. 20-21). In that presentation, Dominion does not even attempt to respond to the various arguments presented by PPL Electric in opposition to this alternative. (PPL Electric St. 1-R, pp. 24-25; PPL Electric Main Brief, pp. 36-38).

Dominion's sole defense for its proposal is to cite to interim POLR plans for Duquesne and Penn Power which, as noted previously, should not be relied upon because they are non-precedential, interim plans. PPL Electric further notes that these plans were different from PPL Electric's CBP, in that these plans set POLR rates for multiple years while PPL Electric seeks to set interim POLR rates for a single year.

Dominion also attempts to ascribe to PPL Electric a goal that has never been part of PPL Electric's CBP:

> If PPL truly wishes to shelter customers from additional rate increases during some transitional period, the Commission should order PPL to acquire energy for some longer period of time ....

(Dominion Brief, p. 20). However, as PPL Electric has explained numerous times (PPL Electric St. 1, p. 12; PPL Electric St. 1-R, pp. 17-18; PPL Electric St. 2, pp. 4-5; PPL Electric St. 2-R, p. 5; Tr. 86), PPL Electric's CBP always has been designed to use the wholesale market to develop prevailing market prices for 2010 through a series of RFPs, not with a goal to avoid rate increases, but to use multiple solicitations to avoid abnormal prices caused by unusual events.

Dominion's multiple year price proposal does not serve one of PPL Electric's primary goals in filing the CBP – to acquire power for a one-year period until the entire state has moved to competition at the end of 2010. There is no point in establishing POLR rates for an extended period that would interfere with implementation of the Commission's final POLR regulations.

4. Conclusion.

RESA et al.'s and Dominion's briefs offer various arguments about their supposed needs and interests in a competitive market, and how those needs and interests might be affected by PPL Electric's Revised CBP. However, missing from these arguments is any effort to focus upon customers' needs and interests. PPL Electric's Revised CBP provides a balancing of all the interests in this proceeding, as summarized by Mr. Cavicchi:

> And finally, the CBP recognizes that 2010 POLR service pricing represents a long anticipated transition from administratively established pricing to market-based pricing. At the time 2010 POLR service pricing takes effect, PPL Electric's generation rates will have been subject to administratively determined rate caps for 14 years (1996-2010). Although it is not possible to accurately predict future prices and guard against rate shock, PPL Electric's use of a laddering approach captures the benefits of less volatile forward market pricing and provides a stepping stone for the transition to 2011 POLR service pricing. Experience shows that these transitions can be difficult; PPL's CBP introduces market-based POLR service pricing while taking into account the various interests of the parties to this proceeding.

(PPL Electric St. 2-R, pp. 6-7).

RESA et al. and Dominion's objections to the Revised CBP should be rejected.

D. PPL Electric's Revised Plan For Large C&I Customers Should Be Approved.

1. Introduction.

Only two parties to this proceeding have objected to PPL Electric's revised plan for Large C&I customers. One party – FES – does not object to the proposal for both a fixed rate

and real time hourly service, but argues that the fixed rate service, rather than real time hourly service, should be the default service.[8] The other party – RESA et al. – supports the real time hourly service as the default service, but objects to the fixed rate option. These objections should be rejected and the Large C&I portion of the Revised CBP should be approved.

2. FES's Proposal To Establish The Fixed Rate Option As The Default Service Should Be Rejected.

PPL Electric responded to FES's proposal at pages 40-41 of the Company's Main Brief. This Reply Brief will be limited accordingly.

One of the more striking aspects of FES's proposal is that FES admits that its preferred option is that no fixed rate service be offered, and that hourly service be the default service. (FES St. 1, p. 5; FES Brief, p. 4). PPL Electric's proposal, which makes hourly service the default service and offers the fixed rate service only as an option, is thus much closer to FES's claimed preferred approach than FES's own proposal, which makes fixed price service the default service and relegates hourly service to an optional rate. FES offers no explanation for this difference.

FES asserts, at page 5 of its Brief, that almost 90% of the Large C&I customers will want to be on fixed price service, and thus the fixed price service should be the default rate. FES reaches this conclusion by overstating the record. The record indicates that 990 of 1,107 Large C&I customers take service under PPL Electric's Rate Schedule LP-4, and that there are hospitals, schools, government buildings and others, that would be unable to respond to hourly rates. From this, FES concludes that all of the Rate Schedule LP-4 customers need fixed price

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[8] In a footnote to its Brief, PPLICA indicates it could support FES's proposal. However, FES's proposal is contrary to stipulations entered into between PPL Electric and other parties, particularly Reliant, and is contrary to PPL Electric's position throughout this proceeding. For the reasons explained herein, the FES proposal should not be adopted.

service. However, Mr. Krall made clear, under cross-examination by SEF counsel, that he was not identifying all of the Rate Schedule LP-4 customers as incapable of managing hourly service:

> A. I provided hospitals, schools and government buildings as examples of some entities that might have trouble responding to hourly prices, and there could well be others. I mean, it wasn't a complete enumeration.

(Tr. 108).

There is no record evidence to support FES' assertion that 90% of large C&I customers are unable to respond to hourly service.

FES characterizes PPL Electric's election process for fixed price service as confusing and difficult and is apparently concerned that it may leave customers on an hourly default service that they do not want. However, FES understates, or entirely overlooks, the long established processes which PPL Electric has in place to communicate with its large customers:

> Q. [By FES counsel]: You say you're going to provide education. What type of education? Have these materials been developed yet?
>
> A. No, they haven't.
>
> Q. So we really can't discuss the content of these educational materials at this time?
>
> A. Other than the extent they've been characterized here, to say that we provide education on the options that are available and we've changed those some through the process here. We do have a legacy of marketing programs with large customers that we would re-spin to provide them education.
>
> We have an existing ICS group that we plan to - - ICS being industrial and commercial services. It's a phone bank basically for larger customers to respond to their kind of unique service needs and billing needs, which are different than the average residential customer. And we would look to enhance that function.

But no, other than - - and we've said that, you know, we're willing to talk to other parties in a collaborative format to flesh out the consumer ed program.

Q. Do you envision doing this through mailings to large C and I customers?

A. Certainly there would be mailings involved, but not necessarily only mailings. I know in the past when we've undertaken programs or significant rate changes have come along, I think on the occasion of restructuring, we've actually had meetings throughout the service territory and invited customers to attend.

Q. When you send out mailings, do they just go to the billing account address?

A. In the past, we kept a very good file of marketing contacts, and I think we would go back to that file to see to what extent it was still current.

But as a normal course of business, our mailings do go to the mailing address unless we have another address indicated.

Q. And you also state on line 17 that you'll solicit customer interest in a fixed price service. How do you intend to do this?

A. We would do that initially through mailings but we would probably also have informational meetings throughout the service territory to describe what it is we plan to do and how we would plan to do it.

Q. So the onus would be on the customer to attend one of these meetings?

A. Yes. The mailing would be self-sufficient and we would intend to put information on the Web, since that tends to be a good place for people to get it. As I've said, we would enhance our industrial-commercial services group to be able to respond to more questions, and those would be avenues as well that are available to customers if they choose not to attend the meeting.

> Q. The customer service group, I wasn't quite sure what you meant. That's a customer - - that's where you phone in and ask questions?
>
> A. Yeah, as distinct from our normal phone service for residential customers, what we call our CSRs. The ICS group is staffed by engineers familiar with the needs of large customers and service issues and billing issues.

(Tr. 110-12). FES, as a party to these proceedings, may attend the education collaborative to check upon, or add input to, the education to be provided Large C&I customers. However, it is the intent of PPL Electric to maximize the number of Large C&I customers who are making an affirmative choice between the optional fixed rate and default real time hourly service. (PPL Electric St. 1-R, p. 15).

FES asserts, at page 8 of its Brief, that the process offered by PPL Electric (*i.e.*, first asking Large C&I customers, in advance, of their interest in a fixed price service and then, after bidding the product, asking those interested customers whether they want the service) could result in less accurate information about the prospective Large C&I load than would be the case if the fixed rate were made the default service. However, FES overlooks the fact that, under the Competition Act, if the fixed rate is the default (POLR) rate, then customers would have the right to select the service anytime in 2010, regardless of whether they ever selected the service in 2009. *See* 66 Pa.C.S. §§ 2807(3) and (4). Thus, making the fixed rate service the default service may make load projection even harder, not easier.

Finally, after having objected to the PPL Electric two-step process for Large C&I customers to select the fixed price option, FES proposes, for the first time in its Brief at page 9, that PPL Electric undertake the same type of survey process to determine customer interest in the fixed rate as a default service. Thus, FES now suggests that PPL Electric undertake the same general process it intended to do for the fixed rate option, but with the fixed rate now the default

service. PPL Electric is not proposing to survey other customer classes to determine POLR service interest, and considers it to be the responsibility of the wholesale bidders to assess and price migration risk in their POLR bids. If the fixed rate were to be the default rate for Large C&I customers, which PPL Electric reiterates that it does not support, then it should have no responsibility to survey customer interest in that default service.

For the reasons explained above and in PPL Electric's Main Brief, FES's Large C&I customer proposal should be rejected.

3. RESA et al.'s Objection To The Fixed Rate Option Is Without Merit.

RESA et al. argues, at pages 13 to 16 of its Brief, that hourly priced service should be the only default service.[9]

RESA et al. contends that "robust competition" has developed where hourly priced service is the only default service for Large C&I customers. The only evidence cited for this contention is the substantial percentage of Duquesne's Large C&I customer load that is served by EGSs. (RESA et al. Brief, p. 14). However, the fact that RESA et al. clearly downplays is that, during the period of growth in shopping by Duquesne's Large C&I Customers, an optional fixed price service was offered by Duquesne, and 37 Large C&I customers continued to take that optional service in 2006 (RESA et al. Brief, p. 14, n. 43), two years after *Duquesne's POLR III* filing was approved. *Duquesne Provider of Last Resort Order*, Docket No. P-00032071, August 23, 2004.

PPL Electric's Large C&I customers deserve at least the same fixed price service option as was provided to Duquesne's Large C&I customers, as the Company bridges from capped rates

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[9] PPL Electric interprets RESA et al.'s argument to mean that the only service PPL Electric may offer Large C&I customers is hourly service. As explained previously, real time hourly is the only default service for PPL Electric's Large C&I customers, with the fixed rate service an optional service.

to competition. Although the percentage of load served by EGSs in Duquesne's territory is substantial, it is only one example, reflecting service in and around Pittsburgh. PPL Electric serves a very different part of the state in Central and Eastern Pennsylvania and, thus, there is no assurance that EGSs will quickly provide fixed price service options in PPL Electric's service territory.[10]

RESA et al. also argues that hourly-only pricing will support energy efficiency, conservation and demand response programs (RESA et al. Brief, p. 15). As PPL Electric has previously explained, the Company does support such efforts, but not all customers can alter their usage in response to hourly only pricing. (PPL Electric Main Brief, p. 39). An optional, fixed price service must be in place for Large C&I customers, to provide the necessary "backstop" in the event EGSs are not immediately responsive to customers' demands for fixed price services.

For the reasons explained above, and in PPL Electric's Main Brief at pages 39-40, the fixed price optional alternative for Large C&I customers should be approved.[11]

E. Reconciliation.

1. PPL Electric's Proposed GSC Reconciliation Should Be Approved.

As explained in PPL Electric's Initial Brief, pp. 43-52, reconciliation of the GSC is supported by most parties to this proceeding, is mandated by the plain language of Section 2807(e)(3) of the Competition Act, benefits customers, promotes competition, is consistent with all relevant precedent, and is particularly appropriate for a one-year, non-precedential default

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[10] Even the data offered in RESA et al.'s Brief, p. 14, does not identify what proportion of Large C&I customers in Duquesne's service territory are receiving fixed rate service from EGSs.

[11] PPL Electric notes that PPLICA contends, in its Brief, that if the Revised Large C&I Plan, which is supported or not opposed by a majority of participants in this proceeding, including several EGSs, is not adopted then PPLICA will argue for a day-ahead hourly service. PPL Electric will provide its response in opposition to this proposal later in this Brief.

service plan. Reconciliation either is supported or not opposed by all parties to this proceeding, except Dominion, and RESA, et al. For the reasons set forth below and in PPL Electric's Main Brief, the objections of these parties to reconciliation are without merit and should be rejected.

RESA, et al., devote but one paragraph to reconciliation. Its argument consists solely of citing the Commission's recent decision in the Penn Power POLR proceeding, which rejected reconciliation on the particular facts and circumstances of that case. These parties fail to mention, however, that both the ALJ and the Commission expressly stated that the *Penn Power* decision was non-precedential. *Petition of Penn Power Company*, P-00052188, 2006 Pa. P.U.C. LEXIS 56 *13. The Commission presumably meant what it said. If a case is "non-precedential", it is, by definition, not precedent and may not be cited in other proceedings. The citation of *Penn Power* by RESA, et al. directly violates the Commission's order and should be ignored. RESA, et al., therefore, has offered no credible support for their argument against reconciliation and its position on this issue should be rejected.[12]

This leaves Dominion as the only party to this proceeding to present any substantive arguments against reconciliation. As explained below, Dominion's arguments provide no basis for rejecting reconciliation.

Dominion first contends that the Commission cannot adopt reconciliation because the relevant statute, Section 2807(e)(3) of the Code, does not specifically reference reconciliation. (Dominion Brief, pp. 21-22). Dominion contrasts Section 2807(e)(3) with the AEPS Act and other provisions of the Public Utility Code, which specifically refer to reconciliation. This argument is clearly without merit. The issue in this case is what is required by Section

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[12] These parties may offer additional arguments in their Reply Briefs. This would be inappropriate, as it would provide PPL Electric no opportunity to respond. The Commission has recognized that it is inappropriate to raise new arguments for the first time on Reply Brief. *Phone Talk, Inc. v. Bell Telephone of Pennsylvania*, Docket No. C-882009, 126 P.U.R. 4th 179, 75 Pa. P.U.C. 256, 275, September 12, 1991.

2807(e)(3) of the Code, not what is or is not mentioned in some other statutory provision. Section 2807(e)(3) specifically states that the EDC "shall recover fully all reasonable costs." 66 Pa.C.S. § 2807(e)(3). The issue presented is whether a specific POLR rate proposal meets this statutory mandate. It is undisputed that PPL Electric's reconciliation proposal satisfies this statutory requirement. It also is undisputed that Dominion's proposal does not. Indeed, Dominion's own witness, Mr. Butler, specifically testified that his proposal would eliminate "most" risk of underrecovery, but not all risk (Tr. 238) and, therefore, would put PPL Electric at some risk of under recovery of its reasonable POLR costs. This clearly does not comply with the plain language of Section 2807(e)(3).[13]

Dominion next contends that reconciliation will harm competition because it will distort the POLR price and make it difficult for customers to make accurate price comparisons. Specifically, Dominion states that: "The undisputed testimony shows that existence of a reconciliation mechanism means there potentially will never be a match, or even a close connection, between the costs and risks of providing POLR service, and the rates that customers pay to compensate the POLR provider for those costs and risks." (Dominion Brief, p. 22). There are several problems with this argument. First, it ignores that the fact that PPL Electric's proposal is for a one-year period, *i.e.*, 2010. Thus, it is difficult to understand Dominion's use of word "never" in its argument. Second, the undisputed record evidence shows that the amount to be reconciled will most likely be extremely small. (*See*, PPL Electric Main Brief, p. 47). Dominion asserts that this contention is "speculative", but its own witness stated that: "The reconciliation proposed by PPL, on its face, appears to present minimal rate impact for customers

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[13] Dominion also cites the statutory construction principle *expressio unius est exclusio alterius*, *i.e.*, the reference to one thing in a statute implies the exclusion of things not mentioned. This principle does not support its position. Section 2807(e)(3) does not exclude reconciliation, rather it mandates full cost recovery. Reconciliation is the only proposal presented in this case that satisfies this requirement.

in PPL's service territory." (Dominion St. 1-SR, p. 6). Dominion does not and presumably cannot explain how a one-year reconciliation adjustment, which its own witness described as "minimal", can substantially "harm" competition.

Dominion also argues that allowing PPL Electric reconciliation will provide it with an unfair competitive advantage over EGSs who do not have this option. (Dominion Brief, pp. 22-23). There are several problems with this argument. First, there is no record evidence to support the conclusion that EGSs cannot employ reconciliation provisions in their contracts with customers if they wish to do so. And, in any event, the absence of reconciliation would presumably provide EGSs with a competitive advantage they could market to customers. Second, Dominion's argument is premised on the assumption that "[e]electric generation suppliers must acquire energy at prevailing market prices." (Dominion Brief, p. 22). This is not necessarily true. There is nothing to stop EGSs, or their affiliates, from owning power plants, in which case their cost of acquiring power would be the underlying cost of the particular generating facility used to supply load. Finally, Dominion's argument assumes that the service provided by PPL Electric as POLR provider and the service provided by Dominion as an EGS are the same. They are not. PPL Electric must stand ready to serve all customers who desire POLR service and must have a supply contract capable of meeting this load. EGSs have no such obligation. They can serve who they wish, when they wish and can exit the market at any time of their choosing. Obviously, PPL Electric, as the POLR provider, is in a much different situation in terms of acquiring POLR supply and has a fundamentally different and greater risk of under recovering its costs and, therefore, has a clear need for reconciliation, which Dominion does not.

Finally, Dominion argues that reconciliation is unnecessary because PPL Electric can simply revise its supply arrangements to place all risks on the supplier. (Dominion Brief, pp. 24-25). This argument also should be rejected. First, as noted above, Dominion's own witness admitted that his proposals would only eliminate "most" risk, not all risk. And, second, any such revisions, even if they were effective, would clearly increase the risk borne by suppliers and increase the cost of POLR service to customers. Dominion has not presented any analysis to quantify this price effect and, therefore, has not provided any basis for the adoption of its position.

For these reasons and as more fully explained in PPL Electric's Main Brief, PPL Electric's proposed reconciliation should be approved.

F. The Objections Of FES and RESA et al. To PPL Electric's Existing Generation Rate Adjustment ("GRA") Should Be Denied.

1. The Burden Of Proof With Respect To This Existing Rate Is On Objecting Parties.

FES asserts, as Item 3 of its proposed conclusions of law, that "PPL failed to meet its burden of proof that the GRA charge is necessary . . ." Similarly, in Paragraphs 20 and 21 of its proposed findings of fact, FES asserts that PPL Electric failed to demonstrate why alternative measures instead of the GRA would not protect against customers "gaming" the system, and that PPL Electric failed to demonstrate that customers were "gaming" or would "game" the system in 2010.

FES incorrectly places the burden of proof on PPL Electric with respect to the GRA. The existing GRA was approved by the Commission in June 2001, and PPL Electric's Revised CBP proposed no change to the existing form of the GRA. (PPL Electric St. 3-R, p. 17; PPL Electric

St. 1-R, p. 5).[14] Thus, under the provisions of Section 332 (a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof lies with FES and RESA et al. as the proponents of an order to eliminate an existing rate. *See, e.g. Schellhammer v. Pa. P.U.C.*, 629 A.2d 189, 193 (Cmwlth. Ct. 1993). Likewise, it was not PPL Electric's burden to prove that gaming is or will continue to occur, or that alternative rate measures could be used in place of the GRA. If, as FES asserts, no evidence exists on these factual matters, then it is FES which has failed to meet its burden of proof.

2. FES and RESA et al. Have Improperly Relied Upon The Commission's Ruling In Duquesne's POLR III Case To Challenge PPL Electric's Existing GRA.

The entire argument of RESA et al. and almost all of the argument of FES in opposition to PPL Electric's GRA is the Commission's rejection of certain shopping restrictions and a GRA charge proposed in *Duquesne's POLR III.* As explained previously, the Commission has considered its prior interim POLR proceedings non-precedential and, thus, it is inappropriate to rely upon that decision as precedent in this case. This is particularly the case with respect to the GRA, where the Commission in *Duquesne POLR III* specifically noted the limitations upon its decision on this issue:

> Nor should our action here be interpreted as forever precluding concepts such as seasonal rates and different forms of switching rules in future POLR proceedings. Our decision in this proceeding is grounded in both the statute and the record, with full recognition that Duquesne bears the burden of proof. 66 Pa. C.S. § 322(a).

Duquesne POLR III at 30.

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[14] As part of its initial filing, PPL Electric proposed certain changes to the GRA, applicable only to Large C&I customers (PPL Electric St. 3, p. 7), but these changes were withdrawn as part of the Revised CBP (PPL Electric St. 3-R, p. 16).

In addition, it appears that the series of restrictions that Duquesne proposed to impose were substantially more onerous than PPL Electric's GRA. The Commission described Duquesne's proposal as follows:

> The small Customer Plan proposes a twelve-month minimum stay requirement on residential customers, requiring customers who return to POLR service to stay with POLR service for one year before being allowed to move back into the competitive market. Customers who have never switched to an alternative supplier are permitted to leave POLR service at any time with no restriction
>
> Small C&I Customers have an annually renewing twelve-month minimum stay requirement, but with the opportunity to opt out of the minimum stay requirement upon paying a GRA. The GRA is anniversary based, meaning that, after the first twelve months that a customer is on POLR service, the GRA renews for another twelve months. The GRA is based on the difference in supply costs between the spot prices for supply and the POLR service rate during the period when the customer starts POLR service. The customer is only assessed a GRA fee when the spot prices for supply service exceeds the POLR rate.

Duquesne POLR III, pp. 22-23.

PPL Electric's GRA and switching provisions are much different. First, there is no minimum stay requirement (or GRA) on residential customers. PPL Electric Utilities Corporation, Supplement No. 17, Electric Pa. P.U.C. No. 201, Fourth Revised page No. 15 (Generation Rate Adjustment Rider) ("This Rider is applicable to service under all rate schedules contained in this Tariff, except Rate Schedules RS, RTS and RTD"). Second, PPL Electric does not have an annually-renewing minimum stay requirement for either Small C&I customers or Large C&I customers, nor does it have an annually-renewing GRA for any customers. In PPL Electric's GRA, a customer may freely switch at any time to an EGS. If the customer returns from the EGS, it must pay a GRA only if it subsequently switches from PPL Electric to an EGS within twelve months of returning to PPL Electric. Once the one-year anniversary date on POLR

service is met, the customer is again free to switch to an EGS, without paying a GRA. (Tr. 88-89).

As a result of these differences, PPL Electric's GRA, unlike Duquesne's mechanism, does not violate the anti-discrimination provisions of Section 2807(e)(4) of the Act with respect to Small C&I customers. New customers and existing customers are treated the same under PPL Electric's GRA. In either case, it is only when a customer leaves POLR service, and then subsequently returns to POLR service for a short term (*i.e.*, less than 12 months) that the GRA applies. An existing customer who has been on 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.

The GRA likewise is not discriminatory to Large C&I customers under PPL Electric's revised plan. First of all, it is important to recognize that the Revised CBP plan makes real time hourly service the default service, and the fixed price service an optional service. As such, any new customer, or any existing customer receiving service from an EGS, will be placed on hourly default service if they seek POLR service in 2010. (PPL Electric St. 1-R, p. 14). Only existing customers can voluntarily elect the optional fixed price service,[15] and they would be subject to the GRA in 2010 only in the unusual circumstance that the customer switched from an EGS back to Company service sometime in 2009, and then switched back to EGS service within twelve months in 2010.[16]

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[15] That election must be undertaken in 2009.

[16] For example, if a customer switched from an EGS back to Company service in October 2009, and elected the Fixed Rate service and then left for an EGS in March 2010, that customer would be charged a GRA for 6 months (Tr. 136). If the customer left in November 2010, no GRA would apply (Tr. 137).

3. The GRA Will Not Shift Shopping Risk in 2010.

FES further argues that PPL Electric is shifting shopping risk from wholesale suppliers to customers. This is a substantial overstatement, given the design of PPL Electric's existing GRA. The record indicates that only about 100 PPL Electric customers currently shop. (Tr. 94). If this trend continues into the beginning of 2010, almost all Small and Large C&I customers can leave PPL Electric and shop without paying a GRA, and no residential customers are subject to a GRA or other similar shopping limitations. Thus, all of this shopping risk resides with the wholesale suppliers. Only if a customer leaves to shop, returns to Company service for less than twelve months, and then leaves again to shop will the customer be subject to the GRA, and then only for the months they were on the Company's service.[17] This is a reasonable restriction on gaming, as valid now as when the Commission approved the GRA in 2001. FES's objections are without merit.

4. FES's Proposal To Extend The Signup Period For The Optional Fixed Rate Service Must Be Rejected.

FES, for the first time in its Brief (p. 16), offers as a proposal that if the GRA is not eliminated, then the thirty-day period for Large C&I customers to elect the optional Fixed Rate service must be extended.

FES lists a series of actions that must be taken by EGSs to market to customers, and alleges that the EGSs cannot begin to undertake any of these activities until after the optional fixed price is known. PPL Electric questions why marketers would wait so long to begin marketing efforts, particularly where customers, even now, are examining their energy options.

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[17] Any revenues collected would be paid to the applicable suppliers (Tr. 103).

Nevertheless, FES offers no rational basis to tie its alleged marketing difficulties to the GRA.[18] As noted previously, the GRA is likely to be irrelevant to the vast majority of Large C&I customers who are deciding whether to take EGS service, optional fixed price service or default real time hourly service. For those few customers that may be subject to the GRA, the calculation should be able to be provided quickly, if for some reason it is needed to make a decision.

FES's last minute proposal to extend the thirty-day period for electing optional fixed rate service due to the GRA is without merit and should be rejected.

5. Conclusion.

For all of the foregoing reasons, and the reasons set forth in PPL Electric's Main Brief, PPL Electric's existing GRA should be retained and the arguments by RESA et al. and FES should be rejected.

G. Constellation's Proposed Revision To The Termination Payment Sections Of The SMA Should Be Rejected.

As explained in PPL Electric's Initial Brief, pp. 52-54, Constellations's proposed "two-way default" provision is not in the public interest and should be rejected. Although appearing to be symmetric and bilateral, such a provision would provide a significant potential financial windfall to the defaulting party and would, thereby, improperly encourage suppliers to breach their power supply agreements with PPL Electric to the ultimate detriment of its customers and the Commonwealth. Constellation offers several arguments in support of its position. These arguments are either simply wrong or affirmatively demonstrate the lack of merit in its proposal.

Constellation repeatedly asserts that its proposed "two-way default" provision is "industry standard." (Constellation Brief, p. 9). This is simply not true. Mr. Cavicchi cited

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[18] FES admits that the delay would increase the rates under the fixed rate option. (FES Brief, p. 17).

several examples of contracts with "one-way default" provisions (PPL Electric witness Cavicchi's Reply to Surrebuttal Testimony of Jajorie R. Philips, p. 4), and even Constellation witness, Ms. Phillips, only testified that "two-way default" provisions appear in "most" contracts. (Tr. 269-70)[19]

Moreover, it is clearly improper to compare contracts as to one isolated provision, without looking at the agreements as a whole. As Mr. Cavicchit explained, several of the agreements cited by Constellation which contain "two-way default" provisions also contain substantial additional protections for the POLR utility that do not appear in the PPL Electric SMA. (Tr. 260; PPL Electric witness Cavicchi's Reply to Surrebuttal Testimony of Majorie R. Philips, pp. 4-5). Constellation's piecemeal approach to contract comparison is clearly inappropriate and should be rejected.

Constellation also contends that a "one-way default" provision could encourage PPL Electric to declare a "technical default" in order to take advantage of an innocent supplier. (Constellation Brief, p. 5). There is no evidentiary support for this allegation and, in any event, it has nothing to do with the presence or absence of a "two-way default" provision. More importantly, the SMA has extensive "cure" provisions, which allow the supplier to overcome minor defaults without suffering any adverse consequences. (PPL Electric Exh. JC1, POLR SMA, pp. 23-24).

Constellation's primary support for a "two-way default" provision is as follows: "A SMA with a two-way default provision ensures that 'the buyer will never be obligated to pay more than [the contracted-for price], and . . . guarantees the seller that it will have this forward

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[19] And, even here, some of the examples cited by Ms. Phillips are not on point. For example, the EEI master supply agreement is not a POLR supply agreement, but an industry form agreement for transactions between two unregulated parties. Such agreements ordinarily are not relevant to POLR supply contracts which involve regulated service by a public utility to millions of customers.

income' contracted-for under the SMA." (Constellation Brief, pp. 4-5). (Emphasis supplied). This statement should be carefully considered by the ALJ and the Commission, for it exposes Constellation's position for what it is: a blatant attempt to guarantee the full economic benefits of the SMA to a supplier who breaches its contract. The value of the SMA to a supplier is the forward income stream generated by power sales under the agreement. By Constellation's own admission, a "two-way default" provision "guarantees" that the seller will receive its full anticipated forward income stream, even if it intentionally breaches the contract and refuses to perform. Such a result would be improper under any contract and is particularly troublesome for a POLR SMA, where the supplier is obligated to provide power for POLR service to utility customers who must rely on such supply to meet their basic need for electric service.

Constellation attempts to downplay this problem by pointing out other protections for PPL Electric under the SMA. (Constellation Brief, pp. 7-8). First, Constellation asserts that it would have no economic incentive to breach the contract. This may be true, but if it is, Constellation should have no problem giving up the benefit of its bargain if it does default. Second, Constellation points to so-called "step-up" rights which may protect PPL Electric if Constellation breaches the contract. These rights do exist, but they are voluntary on the part of other suppliers, not mandatory and, therefore, provide no real protection. (PPL Electric Exh. JC1, POLR SMA, p. 18).[20] Finally, Constellation asserts that PPL Electric could avoid making a termination payment to Constellation by simply "waiving the default." This is absurd. If Constellation breaches the contact and refuses to supply power to serve PPL Electric's POLR customers, "waiving" the default will be meaningless. PPL Electric will still have to go to the market to buy power for its customers at whatever short-term price is available, assuming power

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[20] If current market prices are above contract prices, other suppliers are not likely to be interested in exercising "step up" rights.

is available at all. Constellation's assertion that PPL Electric can simply "waive" the default should cause this Commission grave concern and provides compelling support for rejecting its "two-way default" proposal.

Constellation further argues that a "one-way default" provision will increase credit risk and that a "two-way default" provision is "very critical" to credit agencies. (Constellation Brief, p. 9). Constellation, on this point, is precisely correct. If a supplier can enter into a contract that guarantees that it will receive the full benefit of its bargain even if it intentionally breaches the contract, that contract will have less credit risk than one in which the breaching party does not receive such a financial windfall. Fortunately, however, this Commission's role is not to satisfy credit agencies, but to protect customers and assure that they have reliable electric service at reasonable prices.

Constellation continues its credit argument by citing the Financial Netting Improvement Act of 2006. (Constellation Brief, p. 10). Constellation appears to argue that this act provides certain benefits to financial institutions who declare bankruptcy. Constellation alleges that it does not have similar benefits and will be at a competitive disadvantage as compared to financial institutions who may bid in one of the POLR solicitations. The Act is quite complex, but two points appear to be clear. First, Congress has decided to provide certain protections to financial institutions who declare bankruptcy, but has elected not to provide the same benefits to Constellation. This is a policy decision by Congress that has no relevance to this proceeding. Second, the Act says absolutely nothing about the use of one-way vs. two-way default provisions. Indeed, even if a two-way default provision were adopted, financial institutions would still have the same advantage over Constellation. Therefore, the Act is completely irrelevant to this issue and should be ignored.

Finally, Constellation points out that under PPL Electric's proposal a defaulting supplier could be at risk for not recovering payments for services provided before the breach occurred. Upon further review, PPL Electric has concluded that Constellation is correct on this point, and the SMA should be revised to account for recovery of payments for service provided prior to default.[21] However, this does not provide any support for adoption of a two-way default provision.

H. SEF's Objections Have Been Resolved by Stipulation.

PPL Electric and SEF have continued discussions in an effort to resolve their remaining differences regarding customer education funding. Those discussions have been successful, and on January 18, 2007, the two parties submitted their stipulation, which PPL Electric has asked to be admitted into the record as PPL Cross Examination No. 7.

Under the stipulation, SEF agrees to support PPL Electric's Revised CBP, subject to the following additional agreements, as provided in paragraphs 3 and 4 of the Stipulation:

> 3. PPL concurs that some aspects of its consumer education program lack definition and that the timing of its consumer education expenditures could be altered. PPL will establish a collaborative with interested parties, including SEF, and Commission staff to develop a more detailed design of the consumer education program within PPL's $875,000 budget. The collaborative will also address the timing of consumer education expenditures.
>
> 4. Within six months following the approval of PPL's Competitive Bridge Plan, PPL will conduct a series of three (3) meetings with SEF to explore the nature of conservation and energy efficiency programs that PPL and SEF may develop collaboratively to offer to PPL's residential customers in 2010. During these meetings, PPL and SEF will, in addition to other programs that may be considered, specifically explore the joint development of a low-interest loan program for residential customers and a joint home energy audit program to supplement PPL's home energy

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[21] PPL Electric suggests that this unlikely situation could be cured with the following addition to the last sentence of Article 12.3(a) if the POLR SMA: "with the exception for any amount due, after set off, for services provided by the defaulting party prior to the Early Termination date."

> initiatives for residential customers. The findings and results of these meetings will be documented in a report prepared jointly by PPL and SEF and submitted to the Commission at this or other appropriate docket and also to the Commission's demand response working group.

This stipulation, if approved as part of the approval of PPL Electric's Revised CBP and the five other stipulations with other parties, resolves all issues between PPL Electric and SEF, and thus PPL Electric will not offer any further response to SEF's Main Brief.

I. PPL Electric – Constellation Stipulation.

Upon further review of their stipulation, PPL Electric and Constellation have concluded that Paragraph 2 may be confusing with respect to the procedures to be followed to submit to the Commission amendments to the RFP and POLR SMA. Therefore, PPL Electric and Constellation have agreed to the following modification:

> 2. PPL and Constellation recognize that the Provider of Last Resort Request for Proposals ("RFP") and SMA must be amended to reflect transmission service changes proposed by PPL rebuttal witness Kleha. PPL will meet with interested parties to address the RFP and SMA changes which are required as a result of the changes made to transmission services in Mr. Kleha's rebuttal testimony. If the Commission approves the transmission service changes proposed in this rebuttal testimony, PPL will: (1) adopt any consensus changes to the RFP and SMA and include them in its compliance filing; and (2) to the extent that changes to the RFP and SMA cannot be agreed to, PPL will include such changes as it reasonably believes are required in its compliance filing and parties will be provided an opportunity to file comments, in accordance with Commission regulations, before the compliance filing is approved by the Commission.

J. Matters Presented In Briefs Of Non-Objecting Parties.

1. OSBA's Concern About A Possible Early Phase In.

OSBA, at page 13 of its Brief, expresses concern about a statement made in Paragraph 53, page 26 of the original Petition for Approval of the CBP, in which PPL Electric refers to "rate shock" mitigation measures, such as an "early phase in" approach.

PPL Electric assures all parties and the Commission that its Revised CBP has no provision for any such mitigation measures like an "early phase in." PPL Electric does not consider this to be an appropriate proceeding to consider proposals like "early phase in," particularly because the rates in 2010 will not be known until after the solicitations are undertaken. If an "early phase in" proposal is to be made, it will be considered in another context, perhaps in the Commission's Price Mitigation Proceeding at Docket No. M-00061957.

2. PPLICA's Day-Ahead Hourly Proposal Should Be Rejected.

PPLICA, at pages 10-11 of its *Brief*, argues that if the Commission chooses to modify the Revised CBP, it should consider the addition of a day-ahead hourly price option for Large C&I customers.

PPL Electric objects to this proposal, even if it is only contingent upon modification of the Revised CBP. There is essentially no evidence in this record supporting the need for a day-ahead hourly service, and no evidence even describing the terms of such a service. Day-ahead service is a much more complex service than real time hourly service, involving important issues regarding forecasting and/or nominating of next-day requirements, responsibility for reconciling to actual requirements and real time pricing. Several PJM charges are based upon differences between day-ahead forecasts and real time outcomes, and there would need to be a process to track and allocate these costs. None of these issues were explored on the record, and the suggestion of a "stakeholder" process to examine these issues seeks to sidestep the litigation process. This proposal therefore should be rejected.

3. PPLICA's Concern About IS-P and IS-T Distribution Charges.

PPLICA, at pages 13-15 of its Brief, expresses concern about the distribution rate portion of the interruptible IS-P and IS-T rates.

As Mr. Krall confirmed, nothing in this proceeding is intended to affect the distribution portion of these rate schedules (Tr. 131), or for that matter, of any distribution rate schedule.[22] This is a POLR proceeding only, and distribution rates are not the subject of these proceedings. PPL Electric agrees that a base rate proceeding is the appropriate proceeding to consider changes to the distribution charges of these or any other rate schedule.

PPL Electric, however, does not concur with PPLICA's attempt to obtain a commitment, or Commission ruling, that changes to these distribution rate schedules, including any elimination of these rate schedules, may not be considered until a rate case after 2010 (*See* PPLICA Brief, p. 14). This proposal was not made by any party in this proceeding, and PPL Electric certainly never agreed to such a proposal. This is not an appropriate proceeding to set limits on what parties may propose, or the Commission may order, in any future distribution rate proceeding. PPLICA's proposal and proposed ordering paragraphs on this issue are unnecessary in this proceeding and should be rejected.

4. PPLICA's Comments Regarding The Effect Of Final POLR Regulations.

PPLICA asserts that if the Commission's final POLR regulations establish a time frame for filing a new POLR plan, that time frame should govern when PPL Electric implements the new regulations.

PPL Electric has asserted from the very beginning of this proceeding that it sought only a limited waiver from application of the Commission's final POLR regulations. Depending upon the degree of specificity provided in the final regulations, PPL Electric does not necessarily agree that a lengthy lead time is necessary to comply with the new regulations. If the

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[22] For example, in direct testimony, OCA's witness made a proposal to maintain a rate differential for Rate Schedule RTS. PPL Electric, in rebuttal, corrected OCA's calculation to exclude the portion of the rate differential related to distribution rates (PPL Electric St. 1-R, p. 26).

Commission defines the acquisition process, pricing process and full cost recovery process in sufficient detail, PPL Electric does not anticipate that a substantial time period would be needed to adjust PPL Electric's CBP to be in compliance with the new regulations. If and when new regulations are adopted, PPL Electric expects that the Commission will provide appropriate guidance to all utilities with approved interim plans regarding adoption of the new regulations.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, and in PPL Electric's Main Brief, PPL Electric's Revised Competitive Bridge Plan, and the associated stipulations (OTS, OCA, Reliant, Constellation, PennFuture and SEF) should be approved.

Respectfully submitted,

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January 19, 2007

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

Dear Mr. McNulty:

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

Respectfully submitted,

Michael W. Hassell

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Enclosures
cc: Honorable Marlane R. Chestnut
Certificate of Service

CERTIFICATE OF SERVICE

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

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