

ORIGINAL

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January 23, 2007

VIA HAND DELIVERY

James J. McNulty  
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Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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FOLDER

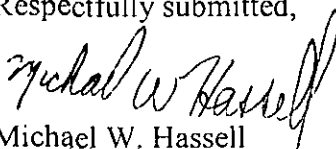
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**RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation Re: Petition of PPL Electric Utilities Corporation for Approval of A Competitive Bridge Plan, Docket No. P-00062227**

Dear Mr. McNulty:

Enclosed, please find the original and three (3) copies of the Motion of PPL Electric Utilities Corporation to Strike Reply Brief of Eric Joseph Epstein, *Pro Se*, 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

MWH/skr  
Enclosures

cc: Honorable Marlane R. Chestnut  
Certificate of Service

BTL

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MOTION OF PPL ELECTRIC UTILITIES CORPORATION  
TO STRIKE REPLY BRIEF OF ERIC JOSEPH EPSTEIN, *PRO SE***

TO ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT:

PPL Electric Utilities Corporation ("PPL Electric" or the "Company") hereby files this Motion to Strike the Reply Brief of Eric Joseph Epstein, *pro se* ("Mr. Epstein"), and in support thereof, states the following:

**I. INTRODUCTION**

1. On August 2, 2006, PPL Electric filed its Petition for Approval of a Competitive Bridge Plan ("CBP") with the Pennsylvania Public Utility Commission ("Commission").

2. A late-filed Petition to Intervene was filed by Mr. Epstein on or about September 9, 2006.

3. A prehearing conference was held on September 22, 2006, with Administrative Law Judge Marlane R. Chestnut (the "ALJ") presiding. At the prehearing conference, PPL Electric did not oppose the late filed Intervention of Mr. Epstein, and he was permitted to participate in the proceedings. In addition, at the Prehearing Conference, the ALJ adopted a schedule for submission of testimony, hearings and briefing.

4. Mr. Epstein submitted no written or oral testimony in the proceeding, did not attend the scheduled hearings (and, thus, did not cross examine any witnesses) and did not submit a Main Brief. On January 19, 2007, Mr. Epstein filed a Reply Brief. The Reply Brief was not responsive to arguments set forth in any party's Main Brief, and instead, for the first

time in this proceeding, proposed a series of meetings to include only PPL Electric, Mr. Epstein, the Office of Consumer Advocate (“OCA”) and the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) to develop details and a timeline for PPL Electric’s expenditure of the \$875,000 consumer education budget for its CBP.

## II. ARGUMENT

### A. **Mr. Epstein’s Reply Brief Should Be Stricken Because All It Contains Is A Late Filed Proposal To Modify The Revised CBP.**

5. As explained above, Mr. Epstein offered nothing for the record in this proceeding, and submitted no Main Brief. The first time Mr. Epstein has presented his proposal in any formal fashion was in his Reply Brief.

6. It is improper to offer a proposal for the first time in a Reply Brief. It deprives all other parties of any opportunity to offer a response to the proposal. *See Enron Capital and Trade Resources Corporation v. The Peoples Natural Gas Company*, 1998 Pa. PUC LEXIS 199, \*46 (proposal offered for first time in briefs rejected on procedural grounds). Thus, Mr. Epstein’s proposal should be stricken on procedural grounds for submitting a proposal too late in the proceeding.

### B. **Mr. Epstein’s Reply Brief Should Be Stricken Because It Improperly Offers Selective Descriptions Of Settlement Negotiations.**

7. Mr. Epstein presents his own selective description of the timing and general content of discussions held and electronic communications undertaken between Mr. Epstein and PPL Electric’s Associate General Counsel. The apparent reason for this effort is to infer that Mr. Epstein’s comments in settlement negotiations were disregarded. As explained in the next portion of this Motion, such an inference would be incorrect. PPL Electric would also ask the ALJ to take note that Mr. Epstein’s detail of communications demonstrates that such

communications principally occurred at a time when PPL Electric was preparing its reply brief in response to the arguments of parties that had submitted testimony and briefs in this proceeding.<sup>1</sup>

8. Section 5.231(d) of the Commission's Rules of Procedure, 52 Pa. Code § 5.231(d), provide:

Offers of settlement, of adjustment or of procedure to be followed, and proposed stipulations not agreed to by every party ... will not be admissible in evidence against a counsel or party claiming the privilege.

9. The principle enunciated in the foregoing rule should be applied to strike Mr. Epstein's Reply Brief. Settlement discussions are confidential, and any details of those discussions, disclosed with an intent to try to ascribe "blame" to a party for failing to settle, would not be admitted as evidence and likewise should not be permitted in Mr. Epstein's brief.

**C. PPL Electric's Revised CBP Already Provides All Parties With An Opportunity To Participate In Discussions Regarding Education Funding.**

10. Mr. Epstein's proposal to establish a process limited to PPL Electric, OCA, SEF and Mr. Epstein is duplicative of, and more restrictive than, the collaborative process to develop the Company's consumer education process that is contained in PPL Electric's Revised CBP.

11. Mr. Krall's rebuttal testimony states:

The Company would welcome the participation of the other parties and Commission staff, as we have in past consumer education efforts, to help define program objectives and efforts. Accordingly, if the Commission approves the CBP, the Company will facilitate a collaborative process to develop a more detailed design of the consumer education program within the \$875,000 budget.

\* \* \*

Given that both the Company and OCA agree the education programs need to be further defined in certain areas, it would also

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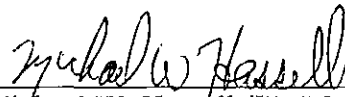
<sup>1</sup> PPL Electric did finalize ongoing settlement negotiations with SEF during this time, which enabled both parties to avoid reply briefs on issues of importance to SEF.

seem reasonable to expect the cashflows to be adjusted as the programs are further defined. Accordingly, PPL Electric is willing to address cash flows as a part of the collaborative process I discussed previously.

(PPL Electric St. 1-R, pp. 34-35). Thus, as Mr. Krall's testimony indicates, all parties and the Commission staff would be offered the opportunity to discuss collaboratively the education to be provided within PPL Electric's budgeted amount. No other party now challenges this process, and it is inappropriate, in a Reply Brief, for Mr. Epstein to offer a proposal that limits the participation of other parties.

WHEREFORE, for all of the foregoing reasons, the Reply Brief of Mr. Epstein should be stricken.

Respectfully submitted,



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Of Counsel:

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Date: January 23, 2007

Attorneys for  
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**CERTIFICATE OF SERVICE**

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

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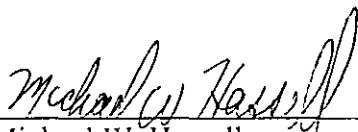
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Date: January 23, 2007

  
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Michael W. Hassell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

**ORIGINAL**

**Reply of Eric Joseph Epstein, *Pro se*  
to PPL's Motion to Strike  
Eric Joseph Epstein's Reply Brief**

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

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Commonwealth Avenue and North Street  
Harrisburg, PA 17105-3265

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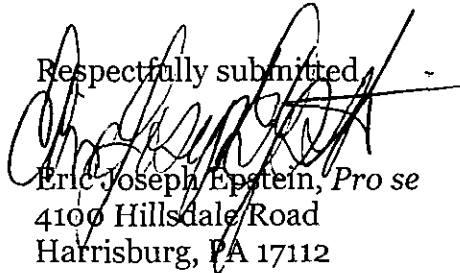
**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Dear Secretary McNulty:

Eric Joseph Epstein ("Epstein" or "Mr. Epstein") hereby submits an original and three (3) copies of the Reply of Eric Joseph Epstein, *Pro se*, to PPL's Motion to Strike Eric Joseph Epstein's Reply Brief in the above-captioned proceeding.

**DOCUMENT  
FOLDER**

Respectfully submitted



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**DATE: January 26, 2006**

**DOCKETED**  
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## I. Introduction

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

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

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

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

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

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

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

6) On January 19, 2007, Eric Joseph Epstein filed a Reply Brief.

7) PPL filed a Motion to Strike Eric Joseph Epstein Reply Brief on January 23, 2007.

## **II. Argument**

### **A. Mr. Epstein Narrowed the Scope of His Involvement, Negotiated in Good Faith, and Communicated Outstanding Concerns to PPL In A Timely Manner.**

8) Mr. Epstein's narrowed the outstanding issues from his preliminary review to include:

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

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

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

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

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

**B. PPL Should Not Be Rewarded for Failing to Respond to Epstein's Modest Proposals Submitted in a Timely Fashion.**

12) Eric Joseph Epstein did not participate in Evidentiary Hearings or submit a Main Brief based on an anticipated resolution with PPL to resolve the above-identified consumer issues.

13) However, numerous parties did not cross examine witnesses or engaged in limited cross examination and opted to stipulate testimony.

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

15) PPL failed to respond in a timely manner to telephonic, electronic, and written communications to finalize provisions relating to the consumer education project after Mr. Epstein dropped all other aspects of his proposal. (2)

16) Mr. Epstein's repeated requests **were not attached with any confidential caveats.**

17) PPL unilaterally decided when and how it would respond to Mr. Epstein's proposals, and made opted to "stonewall" Epstein until the period when the Reply Briefs were due.

18) PPL's unwillingness to respond to Mr. Epstein's non-confidential communications can not be camouflaged under the sanctuary of Rule 5.231 (d) of the Commission's Rules of Procedure, 52 Pa Code § 5.231 (d).

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<sup>2</sup> On December 15, 2005, the Commission announced the revision of its rules of practice and procedure to balance the interest of all parties, "The Commission's final rules of practice and procedure strike a balance between utilities, consumers and the public without imposing unnecessary delays, burdens or costs. The rules also strike a balance between proceedings where the parties are represented by attorneys and proceedings where the parties represent themselves." (Pa PUC Release)

19) All Active Parties in the proceeding have well established spheres of interest; and as such, none have joined PPL and suggested that Mr. Epstein's model be stricken from the record.

### **III. Conclusion**

20) Mr. Epstein's interests in this proceeding relate to consumer education. Epstein submitted several proposals to PPL and the Parties to modify the initial Bridge Filing. Mr. Epstein is amenable to the general prescription offered by the Company, and simply requested explicit stake holder involvement in the consumer education effort.

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

22) Mr. Epstein offered to continue to negotiate, settle, and even stipulate a settlement agreement modeled on the Sustainable Energy Fund agreement announced on January 18, 2007.

23) The Company's assertion regarding the stipulation of an agreement with the Sustainable Energy Fund ("SEF") (3) would lead other parties to believe that the value of a stipulation is limited to a procedural maneuver, and presumes that: a) PPL is accurately representing another party's interests; and, b) Proffers the naive presumption that the Fund and PPL had not invested time, money, or resources in the preparation of "reply briefs of importance to SEF." (PPL's Motion to Strike, Page 3, Footnote 1)

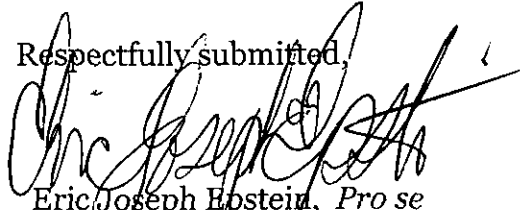
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<sup>3</sup> PPL's characterization of the SEF is also subject to Rule 5.231 (d) of the Commission's Rules of Procedure, 52 Pa Code § 5.231 (d).

24) Mr. Epstein respectfully requests that the Commission adopt the Proposed Ordering Paragraph in his Reply Brief. (4)

WHEREFORE, for all of the foregoing reasons, PPL's Motion to Strike the Reply Brief of Eric Joseph Epstein, *Pro se* should be rejected.

Respectfully submitted,



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JAN 26 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

4 52 Pa Code § 1.2. Liberal construction.

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a participant.

## CERTIFICATION OF SERVICE

\_\_\_\_ I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery or electronic transmission in accordance with the requirements of Section 1.54.

Honorable Marlane R. Chestnut  
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