

November 30, 2022

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Petition for Declaratory Order of the Retail Energy Supply Association and
NRG Energy, Inc.
Docket No. P-2022-_____

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Petition for Declaratory Order of the Retail Energy Supply Association and NRG Energy, Inc. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Certificate of Service (with Enclosures)
Daniel Mumford, Director, Office of Competitive Market Oversight (dmumford@pa.gov)

CERTIFICATE OF SERVICE

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

Via Email Only

Richard Kanaskie, Chief Prosecutor
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
rkanaskie@pa.gov

Patrick Cicero, Consumer Advocate
Pa. Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101
pcicero@paoca.org

NazAarah Sabree, Small Business Advocate
Pa. Office of Small Business Advocate
555 Walnut Street, 1st Floor
Forum Place
Harrisburg, PA 17101
ra-sba@pa.gov
tereswagne@pa.gov

Kimberly Klock, Esq.
Michael J. Shafer, Esq.
PPL Services Corporation
Two North Ninth Street
kklock@pplweb.com
mjshafer@pplweb.com

Date: November 30, 2022

/s/ Karen O. Moury

Karen O. Moury, Esquire
Counsel for Retail Energy Supply Association
and NRG Energy, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Declaratory Order :
of the Retail Energy Supply Association : Docket No. P-2022-_____
and NRG Energy, Inc. :

**PETITION FOR DECLARATORY ORDER
OF THE RETAIL ENERGY SUPPLY ASSOCIATION
AND NRG ENERGY, INC.**

Pursuant to Section 331(f) of the Public Utility Code¹ and Section 5.42 of the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”),² the Retail Energy Supply Association (“RESA”)³ and NRG Energy, Inc. (“NRG”) file this Petition for Declaratory Order (“Petition”). By this Petition, RESA and NRG respectfully request the issuance of a Declaratory Order by the Commission: (i) concluding that communications sent by PPL Electric Utilities (“PPL”) to supply customers of electric generation suppliers (“EGSs”) about their electric supply prices and contracts with EGSs are unlawful; and (ii) directing PPL to immediately cease sending these communications. Due to the likelihood that PPL intends to issue another round(s) of communications to supply customers of EGSs in the near future about matters which are outside

¹ 66 Pa.C.S. § 331(f).

² 52 Pa. Code § 5.42.

³ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

their core distribution functions, RESA and NRG request expedited treatment of this Petition so that it is ruled on by the Commission on January 12, 2023, if not sooner. In further support of this Petition, RESA and NRG further aver as follows.

I. INTRODUCTION AND BACKGROUND

1. By this Petition, RESA and NRG seek to resolve a controversy that has arisen as a result of PPL's electronic communications with EGSs' supply customers regarding their electric supply prices and contracts ("PPL communications"). This controversy arose when RESA and NRG became aware of such PPL communications on or around November 2, 2022. RESA and NRG request that the Commission find that the PPL communications violate the Order entered on December 17, 2020 in *Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025* at Docket No. P-2020-3019356 ("*PPL DSP 5 Order*"), and direct PPL to immediately cease and desist from sending any further such communications.

2. In its default service plan filed in 2020, PPL included a proposal to implement a communication process informing EGS customers about their options after their standard offer program ("SOP") contracts expire.⁴ The communications were proposed to occur 90 days prior to the end of the SOP contract and involve calls, letters, emails and/or text messages.

3. After EGSs raised objections to the proposed communications, on several grounds including the fact that EGSs did not have all of this contact information for their supply customers enrolled via SOP, the Commission expressly rejected PPL's proposal. The

⁴ PPL's SOP is a program approved by the Commission that offers customers a 7 percent discount off the price to compare ("PTC"), also known as PPL's default service rate. Customers can either choose a participating EGS or be automatically paired with an EGS that offers this program. The SOP is for one year, or 12 months, during which time the customer's rate will not change and the customer can switch suppliers or cancel the contract without incurring cancellation fees. At the end of the 12-month period, customers have the option to stay with the EGS at a new rate, shop for a new supplier or return to PPL's default service. <https://www.pplelectric.com/site/Ways-to-Save/Rates-and-Shopping/Standard-Offer-Program>

Commission emphasized that it is the EGS, not PPL as the electric distribution company (“EDC”), that has a relationship with the customer regarding their electric supply and that these notices should be sent by the EGS in accordance with the Commission’s regulations.

4. Despite the Commission’s explicit rejection just two years ago of PPL’s proposal to communicate with EGS customers regarding expiration of the SOP contracts, PPL has ignored the *PPL DSP 5 Order* and unlawfully taken measures into its own hands to inform EGSs’ SOP supply customers of their options following expiration of the contracts. Beyond just ignoring the clear directives regarding SOP customers, PPL has taken this a step further by communicating with presumably all shopping EGS customers (outside of SOP enrollments) about their contracts with EGSs and the supply prices they are paying under those contracts. To be clear, these EGS customers have actively shopped for an EGS and entered into a contract with the EGS that must include specific information as mandated by the Commission’s regulations.

5. Specific regulatory requirements established by the Commission govern how and when EGSs are to communicate with their customers about contract changes and expiration. EDCs do not have any similar contracting or notice requirements regarding default service nor do the Commission regulations require or authorize the EDCs to communicate with EGS customers about the competitive supply contracts. By paving its own path and unilaterally inserting itself into the middle of the EGS-customer relationship, PPL is essentially signaling that the EDC knows better than the Commission as to the customer notice requirements that should be followed.

6. Besides blatantly violating the Commission’s *PPL DSP 5 Order*, the PPL communications inappropriately promote the default service option and imply that the EDC has a superior role in terms of notifying supply customers of EGSs of their options following the

expiration of contracts. PPL's interactions with EGSs' supply customers about their supply contracts and prices are also anticompetitive in that they are interfering with the proper functioning of the competitive retail electric market. Due to contact with EGS customers about their relationships with EGSs for supply service and highlighting the availability of PPL's default service, these communications are actionable as anticompetitive conduct under the Competition Act.

7. Absent Commission action to resolve this controversy and direct PPL to cease sending the communications, RESA and NRG believe that PPL will continue to inject itself into the EGS-customer relationship. This belief is based on PPL's history of communicating with EGS customers about their supply prices, of which the recent communications appear to expand.

8. A copy of this Petition has been served on PPL, as well as the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement, pursuant to the Commission's regulations.⁵

II. PARTIES

9. RESA is an association of diverse competitive energy suppliers devoted to promoting vibrant and sustainable competitive retail energy markets for residential and business customers. Members of RESA include EGSs licensed by the Commission, pursuant to the Electricity Generation Customer Choice and Competition Act ("Competition Act"),⁶ to sell electric generation services to retail customers throughout Pennsylvania and in PPL's service territory. EGSs accomplish these sales pursuant to electric supply contracts entered into with retail customers and, for residential and small business customers, are required to follow the

⁵ 52 Pa. Code § 5.41.

⁶ 66 Pa.C.S. §§ 2801 et seq.

Commission detailed regulations regarding language to be included in the contracts and well as the timing and content of notices to be provided to customers upon pending expiration of the contract or notice of material changes.⁷

10. NRG is one of the largest competitive retailers of electricity supply in the United States by customer count and by volume. Through its subsidiaries licensed by the Commission as EGSs, NRG sells electric generation services to retail customers throughout Pennsylvania and in PPL's service territory.⁸ To facilitate these sales, NRG's subsidiaries enter into electric supply contracts with retail customers. Notices regarding expiration of those contracts must comply with Commission regulations governing content and timing.

11. PPL is an EDC that is responsible for the delivery of electricity to all customers on its distribution system. For customers who do not purchase electric generation services in the competitive market, PPL provides default service in accordance with the Competition Act, Commission regulations and a default service plan approved by the Commission. No Commission regulations require PPL to enter into a contract with its default service customers or to provide specific notices regarding PPL's default service or competitive service provided by an EGS.

⁷ 52 Pa Code §§ 54.5 and 54.10.

⁸ As EGSs in Pennsylvania, NRG subsidiaries hold licenses as follows: Direct Energy Business, LLC – Docket No. A-11025; Direct Energy Business Marketing, LLC – Docket No. A-2013-2368464; Direct Energy Services, LLC – Docket No. A-110164; Energy Plus Holdings LLC – Docket No. A-2009-2139745; Gateway Energy Services Corporation – Docket No. A-200902137275; Independence Energy Group LLC d/b/a Cirro Energy – Docket No. A-2011-2262337; Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business/NRG Retail Solutions – Docket No. A-2010-2192350; Green Mountain Energy Company – Docket No. A-2009-2139745; Stream Energy Pennsylvania, LLC – Docket No. A-2010-2181867; and XOOM Energy Pennsylvania, LLC – Docket No. A-2012-2283821.

III. FACTS

12. PPL has sent at least two types of electronic communications to supply customers of EGSs in recent weeks, as follows:

(a) One type of communication is aimed at SOP customers regarding their options following expiration of their contracts and is labeled as an “Important Notice.” It advises SOP customers to check their energy supply contract and provides the electric supply rate on the last bill. The communication goes on to say that PPL cares about helping the customer manage costs, which is why it is reminding the customer to check the EGS supply contract to see when it expires and what rate the EGS will charge after expiration. PPL further advises the customer that once the annual SOP contract expires, the EGS can change the rate. Finally, the communication informs SOP customers of their options when the 12-month SOP term ends, including calling the current EGS to discuss next steps, checking out PPL’s “smart shopping tips,” and cancelling their contracts with the EGSs, thereby automatically returning to default service through PPL. An example is attached as Appendix A.

(b) A second type of communication, also labeled as an “Important Notice,” was sent to shopping customers receiving supply from EGSs in the competitive market outside the parameters of the SOP. This email lists the shopping customer’s electric supply rate on the last bill and further advises the shopping customer of the identity of its selected EGS and provides a telephone number for contacting them. In the notice, PPL also informs the shopping customer that it is trying to make sure that the bills are as low as possible and reminds the shopping customer to compare the current supply rate with other options that are available. Among the options identified by PPL are to contact the

current EGS, check out PPL's "smart shopping tips" and cancel with the EGS so as to automatically return to default service. An example is attached as Appendix B.

13. The PPL communications: (i) drive customers to EGSs' call centers; (ii) portray the EDC as the expert on "smart shopping tips," without any reference to the Commission's shopping website, Pa.PowerSwitch.com; and (iii) promote default service by encouraging customers to cancel service with the EGSs, thereby automatically returning to default service through PPL. Further, the PPL communications focus on EGS customers obtaining the lowest prices, which overlooks other benefits of shopping beyond price or that the EGS customer may have expressly chosen a higher price than PPL's current PTC due to a variety of factors, including the long-term nature of the plan, a renewable product or other value-added services. Finally, the PPL communications advise supply customers of EGSs regarding the terms of their electric supply contracts, including prices, and offer advice as to actions customers should take concerning the supply contracts.

14. PPL has a history of injecting itself into the EGS-customer relationship and the recent PPL communications are an expansion of that prior outreach focused on supply prices. For instance, in June 2021, PPL sent an email to a shopping customer noting that the customer's price was less than the default service price and describing this an example of "smart shopping." The message further encouraged the customer to stay on top of the supply price to make sure he or she is always getting the best deal possible. Similarly in November 2021, PPL communicated with a shopping customer about the supply price being paid. Another example occurred in October 2022 when PPL sent an email advising a shopping customer to check his or her supply contract to see when it expires and describing the options available to the customer to make a change. These communications are included in Appendix C.

IV. LEGAL STANDARDS APPLICABLE TO DECLARATORY ORDER

15. Code Section 331(f) authorizes the Commission to “issue a declaratory order to terminate a controversy or remove uncertainty.”⁹

16. The Commission’s regulations require petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty to state clearly and concisely the controversy or uncertainty which is the subject of the petition; cite the statutory provision or other authority involved; include a complete statement of the facts and grounds prompting the petition; and include a full disclosure of the interest of the petitioner.¹⁰

17. Declaratory orders carry the same effect as other Commission orders and are appealable to the Commonwealth Court as final adjudications.¹¹

V. CONTROVERSY TO BE DECIDED

18. The controversy to be decided is whether the Commission should direct PPL to cease sending communications to EGSs’ supply customers enrolled via SOP or through their participation in the competitive retail market about their supply contracts and prices, on the basis that the communications violate the directives in the *PPL DSP 5 Order*, improperly promote default service and constitute anticompetitive conduct in violation of the Competition Act.

19. RESA and NRG urge the Commission to resolve this controversy by directing PPL to immediately cease and desist from sending communications to EGSs’ supply customers regarding their contractual terms, including prices for electric supply.

⁹ 66 Pa.C.S. § 331(f). *See also Borough of Olyphant v. Pa. PUC*, 861 A.2d 377 (2004).

¹⁰ 52 Pa. Code § 5.42.

¹¹ *Professional Paramedical Services, Inc. v. Pa. PUC*, 525 A.2d 1274 (Pa. Cmwlth. 1987).

20. The interest of RESA and NRG in this controversy is to have the EGS-customer relationship for electric supply be just that – without any interference from PPL. RESA and NRG view the PPL communications as being directly contrary to the clear direction given by the Commission in the *PPL DSP 5 Order*. Further, by informing customers of the option to cancel their contracts and be automatically returned to default service, PPL is promoting its own default service, which is contrary to prior Commission directives. Finally, by sending non Commission authorized communications to EGS customers when EGSs were required to advise customers as part of the initial contract about the timing and notices the EGSs would send their customers about the customers’ options upon expiration, PPL is confusing customers and unnecessarily driving them to EGS call centers. Through these actions, PPL is interfering with the functioning of the competitive market and is engaged in anticompetitive conduct.

VI. ARGUMENT

A. PPL’s Communications Violate the Commission’s *PPL DSP 5 Order*.

21. In the *PPL DSP 5 Order*, the Commission expressly rejected PPL’s proposal to implement a communication process whereby it would notify customers receiving supply service from EGSs through the SOP as to their options following the expiration of their contracts. *Id.* at 2, 44-45, 92 and 98. In rejecting this proposal, the Commission described SOP as a Commission-approved EGS product offering containing various restrictions on price and terms of service. While the Commission indicated that an EDC is permitted to inform a customer of this EGS product offering, the Commission made clear that once the customer expresses an interest in the product and is transferred from PPL to a third-party service provider that provides more detail and enrolls the customer, “the EDC – PPL Electric – has no further role in administering the SOP.” *Id.* at 93 (emphasis supplied).

22. The Commission went on to explain that after the customer is enrolled with the EGS, it is the EGS, not the EDC, that provides generation supply pursuant to the contract price and terms of service. In addition, the Commission stressed that “it is the EGS, not the EDC, that is required to adhere to existing customer notification requirements, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.” *PPL DSP 5 Order* at 94 (emphasis supplied). Thus, the Commission concluded that although the SOP initially serves to “bridge the gap” between a customer and an EGS, “once a customer is enrolled with the EGS, the customer has a direct relationship with the supplier and the supplier has the responsibility of providing all required notices to the customer relating to the expiration of the SOP fixed duration contract.” *Id.* Importantly, PPL is not required to comply with the same customer disclosure and notice regulations applicable to EGSs and there is no regulatory role for PPL to communicate with EGS customers about the terms and conditions of the customers contract with his or her EGS.

23. In direct contravention of the *PPL DSP 5 Order* and despite the Commission’s explicit rejection of PPL’s proposal to directly communicate with EGSs’ supply customers, PPL has taken it upon itself to send communications to customers enrolled with EGSs for supply service via the SOP regarding their options upon the expiration of the contracts, with a return to default service identified as one of those options.

24. Further, PPL has sent these communications to electronic mail addresses to which it has access as the EDC and which are not shared with EGSs participating in the SOP.¹² By

¹² In the *PPL DSP 5 Order*, the Commission also directed PPL to work with the parties to include an explanation to the SOP customer during the enrollment process that such contact information would be shared, upon customer consent, with the SOP EGS to contact the customer by phone, text or email prior to the contract term expiration. *PPL DSP 5 Order* at 101-102, Ordering Paragraph No. 13. To RESA and NRG’s knowledge, PPL has not undertaken these efforts.

sending these communications well in advance of, or even simultaneously with, the notices EGSs are required by regulation to send their customers about impending contract expirations, PPL is creating unnecessary confusion and unilaterally inserting itself in the middle of the relationship of the EGS and its customers. Given PPL's continuing role as the distribution provider and the default service provider, PPL's notices to customers may be viewed as denigrating the service provided by the EGS and promoting PPL's default service.

25. Although the *PPL DSP 5 Order* specifically addresses communications with EGS customers enrolled via SOP, the sentiments expressed by the Commission therein are equally, if not more, applicable to communications with customers who have actively participated in the competitive market and affirmatively selected EGSs to provide their supply service. While SOP customers were initially referred to the program by PPL, other shopping customers have no link to PPL in terms of purchasing their electric supply. Rather, these customers have actively shopped for an EGS and entered into a contract with the EGS that contains all the Commission required information to include specific details about how and when the EGS will notify the shopping customer about contract expiration or material changes. Indeed, in the same way that PPL has no role in interacting with customers on supply issues once they have enrolled with an EGS through the SOP, PPL has no role in communicating with shopping customers who have selected EGSs in the competitive market about their supply contracts with EGSs. No Commission regulations require or authorize PPL to provide additional or other customer notices to EGS customers about the competitive supply contracts entered into directly between the EGS and the customer.

26. Therefore, PPL's communications with shopping customers who enrolled on their own with EGSs, outside the parameters of the SOP, likewise violate the *PPL DSP 5 Order*.

B. PPL's Communications Run Afoul of Prior Commission Guidance Relating to the Promotion of Default Service.

27. The Commission has previously cautioned against any efforts by the EDCs to promote default service. In *Interim Guidelines Addressing Electric Distribution Companies' Activities Relating to Their Provider of Last Resort Functions*, Docket No. M-00960890F0017, 1998 WL 975764 (Pa. P.U.C.) (Order entered November 19, 1998) ("*PLR Marketing Order*"), the Commission observed that a description of default service as a competitive option would be misleading to consumers. Further, the Commission found that it "has a substantial government interest in creating and promoting the formation of a vibrant and effective competitive market for electric generation," which necessitates constraints on the marketing of default service. *Id.* The Commission recognized that as an incumbent provider, "the EDC possesses an inherent advantage which could be used to undermine competition if unregulated marketing" of the default service role is permitted. *Id.*

28. Also in the *PLR Marketing Order*, the Commission indicated that EDCs should not be permitted to use their customer mailing lists, to which EGSs have limited or no access, to advertise the default service option, because this ensures that EDCs, as incumbent providers, retain an unfair advantage over EGSs. While the issue today does not involve mailing addresses, but rather email addresses and texts, the sentiment is the same – when PPL uses information that is only available to the EDC to communicate with EGS customers about their supply prices and contracts, this practice gives PPL an unfair advantage over EGSs.

29. The PPL communications are at odds with the *PLR Marketing Order* because they promote default service as a competitive option and utilize contact information to reach out to customers that is only available to PPL as the EDC.

C. The PPL Communications Constitute Anticompetitive Conduct

30. Under Section 2806 of the Competition Act, the General Assembly made clear that all customers of EDCs shall have the opportunity to purchase electricity from their choice of EGSs, declaring that “[t]he ultimate choice of the electric generation supplier is to rest with the consumer.”¹³ Interference by PPL in the consumer’s exercise of this choice is unwarranted.

31. The Competition Act places a series of obligations on EDCs regarding the integrity of the distribution system to ensure the provision of safe and reliable service; the issuance of utility consolidated bills; the handling of customer service functions, including meter reading, complaint resolution and collections; and the provision of electric supply service to non-shopping customers.¹⁴

32. Notwithstanding the continuing obligations of EDCs, the Competition Act makes clear that the generation of electricity will no longer be regulated as a public utility function.¹⁵ Indeed, the General Assembly, the Commission and the Commonwealth Court have emphasized that the PUC does not regulate the prices charged by EGSs.¹⁶ As the Commission does not regulate EGS prices, it is well beyond the scope of PPL’s domain to offer any views on those prices or to suggest that consumers should choose the lowest prices.

33. Moreover, the Commission’s regulations already include numerous requirements for the EGS customer to be informed about pricing and options upon contract expiration.

¹³ 66 Pa.C.S. § 2806(a).

¹⁴ 66 Pa.C.S. § 2807.

¹⁵ 66 Pa.C.S. § 2802(14).

¹⁶ 66 Pa.C.S. § 2802(5) (“Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”); *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. PUC*, 120 A.3d 1087, 1094 (Pa. Cmwlth, 2015); *HIKO Energy, LLC v. PUC*, 163 A.3d 1079, 1100 (Pa. Cmwlth. 2017), *aff’d on appeal*, 2019 Pa LEXIS 3139.

Pursuant to the Commission’s regulations, EGSs must provide customers an Initial Notice 45-60 days prior to the expiration of the EGS contract¹⁷ and an Options Notice 30 days prior to EGS contract expiration.¹⁸ The Options Notice is required to include the “the specific charges being proposed by the EGS” including “the price to be charged, per kilowatt-hour, for the first billing cycle of generation service.”¹⁹ EGSs are required to provide the renewal contract to the customer which is also required to include specific pricing information.²⁰ If the EGS customer is converted to a month-to-month contract, then the EGS is required to provide notice of a subsequent change in pricing at least 30 days prior to the new price being charged.²¹ EGSs also have the option to offer a renewal price that is fixed for a longer period of time and, if they do so, are not permitted to change the pricing of the fixed-price contract without first notifying the customer and receiving affirmative consent to change the price pursuant to the Commission’s *Fixed Price Label Order*.²²

34. Despite these statutory provisions, regulatory requirements and Commission directives, PPL has unilaterally inserted itself into the relationship between EGSs and their customers to communicate about electric supply prices and other terms and conditions of their supply contracts. Clearly, the PPL communications are anticompetitive in that they are

¹⁷ 52 Pa. Code § 54.10(1).

¹⁸ 52 Pa. Code § 54.10(2).

¹⁹ 52 Pa. Code § 54.10(2)(i) and (ii).

²⁰ 52 Pa. Code § 54.102(ii)(A) and 54.5(b)(2).

²¹ 52 Pa. Code § 54.10(2)(ii)(A)(I).

²² *RMI Intermediate Work Plan Final Order* at 32 (“At conclusion, absent affirmative customer action to enter into a new contract...customer will remain w/ the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.”)(emphasis added). *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 at 26 (“*Fixed Price Label Order*”).

interfering with the EGS-customer relationships and are focusing solely on one term of service – being the price – to the exclusion of other factors that may have motivated the customer to select the particular EGS product, such as the length of the contract term, renewable products, and other conditions of service, including the lack of a cancellation fee. Of note, the example in Appendix B illustrates a situation in which the customer’s current supply price was slightly above the PPL PTC for default service on November 1, 2022, but also demonstrates that the price will be below the PPL PTC once it changes on December 1, 2022. This nuance is not covered by the PPL communications, which seek to discourage customers from participating in the retail electric market.

35. Given the Commission’s duties to oversee the development of the competitive market, the regulations carefully crafted by the Commission that all EGSs must follow to contract with shopping customers and the PPL practices that have the potential to create customer confusion and adversely affect EGSs, including spikes in calls to their customer service centers and the loss of customers to default service, it is incumbent upon the Commission to direct that PPL cease sending communications to customers of EGSs about their supply contracts and supply prices.

36. Moreover, Section 2811 of the Competition Act obligates the Commission to monitor the market for the supply and distribution of electricity to retail customers and to take steps to prevent anticompetitive conduct.²³ If the Commission has reason to believe that anticompetitive conduct is preventing retail customers from obtaining the benefits of a properly

²³ 66 Pa.C.S. § 2811(a).

functioning and workable competitive retail electric market, the Competition Act mandates referrals to other state and federal agencies.²⁴

37. In *Mid-Atlantic Supply Ass'n v. Pennsylvania P.U.C.*, 755 A.2d 723 (2000), 2000 Pa. Commw. LEXIS 363, the Commonwealth Court affirmed the Commission's order finding that information disseminated by PECO Energy Company to customers created confusion regarding customer choice. The Court further concluded that on that basis, referral to the Attorney General was appropriate.

VII. CONCLUSION

WHEREFORE, based upon the foregoing, RESA and NRG respectfully request the issuance of a Declaratory Order declaring that the communications PPL has sent to supply customers of EGSs about the terms of service and prices in their supply contracts violate the *PPL DSP 5 Order* and the provisions in the Competition Act prohibiting anti-competitive conduct and run afoul of prior guidance issued by the Commission relating to the promotion of default service. On this basis, the Commission should direct that PPL cease and desist from sending any communications to supply customers of EGSs about the terms of service and prices in their supply contracts.

²⁴ 66 Pa.C.S. § 2811(c).

Respectfully submitted,

/s/ Karen O. Moury

Karen O. Moury (Atty ID 36879)
Deanne M. O'Dell (Atty ID 80614)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, Eighth Floor
Harrisburg, PA 17101
717.237.6000 (phone)
717.237.6019 (fax)
kmoury@eckertseamans.com
dodell@eckertseamans.com

November 30, 2022

*Retail Energy Supply Association and
NRG Energy, Inc.*

ATTORNEY VERIFICATION

I, Karen O. Moury, hereby state that as outside counsel for the Retail Energy Supply Association and NRG Energy, Inc., I am authorized to verify that the facts set forth in the Petition for Declaratory Order are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: November 30, 2022

/s/ Karen O. Moury
Karen O. Moury, Esq,

Appendix A

Energy supply rates change Dec. 1

PPL Electric Utilities <email@customerprograms.pplelectric.com>

Tue 11/1/2022 4:29 PM

To [REDACTED]

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



Important Notice

Check your energy supply contract today

Your electricity supply rate on your last bill: 8.316¢/kWh

We're here to provide you with safe, reliable electricity, and we care about helping you manage your costs. That's why we want to remind you that it's important to check your contract to see when it expires and what rate your supplier will charge after that.

As of your most recent electric bill, you are enrolled in our Standard Offer Program. As a reminder, this is a 12-month program where an electricity supplier provides you a 7% discount off the PPL Electric Utilities default rate. Once your annual contract is up, that supplier could change your rate.

Important Note: The Standard Offer Program is currently NOT available and may continue to not be available after December 1. If you want to change your electricity supplier when your 12-month term ends, you'll need to take action. You have options:



Call your current supplier to discuss next steps.



Check out our smart shopping tips, including instructions on how to view your current supplier charges, and shop for a new supplier. [Click here.](#)



Cancel with your current supplier and automatically return to default service through PPL Electric. The default service rate is 12.366¢/kWh until December 1, 2022. On December 1, 2022, that rate will rise to 14.612¢/kWh. Before cancelling, make sure to check your current contract. You don't want to be hit with any unexpected fees.

Like the prices of many products and services across the board, energy supply prices are on the rise. We know that rising prices are a major concern, and we want to help you manage your electricity bills.

- **Save energy:** We have tips, programs, and rebates available to help all customers. [Learn more.](#)
- **Spread out your costs:** Our budget billing program evens out your bills over 12 months and makes payments more predictable. [Log into your account to sign up.](#)
- **Get bill help:** If you're struggling to keep up with your electric bill, we have programs that can help. [Learn more.](#)

Thank you.

Connect with us



Forward this email to a friend

Please do not reply to this automated email. This mailbox is not monitored

[Update your email address](#) or [unsubscribe](#) from these messages. This does not change the email address for your PPL Electric Utilities online account.

PPL Electric Utilities | 2 N. 9th St. | Allentown, Pennsylvania | 18101

[Privacy Policy](#) | [Terms of Use](#) | © 2022 PPL

Appendix B

PPL Electric Utilities <email@customerprograms.pplelectric.com>

11/1/2022 6:40 PM

Price to Compare Changes Dec. 1

To _____@comcast.net

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



Important Notice

Have you checked your energy supply price recently?

Your electricity supply rate on your last bill: **12.490¢/kWh**

As of your most recent electric bill, you have a contract with a third-party energy supplier, Direct Energy Services. You can reach them at 1-888-734-0741.

Like the prices of many products and services across the board, energy supply prices are on the rise.

We want to make sure that your bills are as low as possible. That's why we're reminding you to take a few minutes to compare your current supply rate (noted above) with other options that are available.

If you'd like to make a change, here's what you need to do:



Call your current supplier to discuss next steps.



Check out our smart shopping tips, including instructions on how to view your current supplier charges, and shop for a new supplier. [Click here.](#)



Cancel with your current supplier and automatically return to default service through PPL Electric. The default service rate is 12.366¢/kWh until December 1, 2022. On December 1, 2022, that rate will rise to 14.612¢/kWh. Before cancelling, make sure to check your current contract. You don't want to be hit with any unexpected fees.

We know that rising prices are a major concern, and we want to help you manage your electricity bills.

- **Save energy:** We have tips, programs, and rebates available to help all customers. [Learn more.](#)
- **Spread out your costs:** Our budget billing program evens out your bills over 12 months and makes payments more predictable. [Log into your account to sign up.](#)
- **Get bill help:** If you're struggling to keep up with your electric bill, we have programs that can help, including financial assistance, payment plans, and budget billing. [Learn more.](#)

Thank you.

Connect with us



Forward this email to a friend

Please do not reply to this automated email. This mailbox is not monitored

Update your email address or unsubscribe from these messages. This does not change the email address for your PPL Electric Utilities online account.

PPL Electric Utilities | 2 N. 9th St. | Allentown, Pennsylvania | 18101

[Privacy Policy](#) | [Terms of Use](#) | © 2022 PPL

Appendix C

From: PPL Electric Utilities <email@customerprograms.ppelectric.com>

Date: June 25, 2021 at 2:50:58 PM EDT

To:

Subject: Good news: You're saving on supply

Reply-To: PPL Electric Utilities <reply-fe8a1d717c62007d7d-2714451_HTML-971350397-1019269-0@customerprograms.ppelectric.com>

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



Your current rate: 6.190 ¢/kWh

PPL's Price to Compare as of 6/1/21: 7.544¢/kWh

Shop for electricity supply and save

We have some good news! As of your last bill, your energy supplier is charging you less than PPL's Price to Compare. That means you're getting a good deal on electricity supply. It's an example of what smart shopping can do!

Who is your electricity supplier?

PPL delivers your electricity, but we don't own the power plants where that electricity is generated. In Pennsylvania, you can choose your own energy supplier, based on the rates and plans they provide. Your current supplier is: Better Buy Energy. You can reach them at 972-868-3933.

What is the Price to Compare?

If you do not pick a supplier, PPL purchases supply for you as your default provider. We hold energy auctions twice a year, secure supply at the lowest rate possible at that time, and then pass the cost on to customers at no profit to us. The price we charge for electricity supply is the Price to Compare. It changes every June 1 and December 1. That's the rate you should use to compare supplier offers.

What should you do next?



Nothing. You're all good. But we do encourage you to stay on top of your electricity supply price to make sure you're always getting the best deal possible. You can see what you're paying for supply in any given month by taking a look at your PPL bill, or by logging in to your online PPL account.

It's easy to compare supplier offers online. Visit our Shop Smart website for everything you need to know to shop for electricity and compare rates.

Stay safe and shop smart!

[Shop for supply](#)

Connect with us



[Forward this email to a friend](#)

Please do not reply to this automated email. This mailbox is not monitored

[Update your email address](#) or [unsubscribe](#) from these messages. This does not change the email address for your PPL Electric Utilities online account.

PPL Electric Utilities | 2 N. 9th St. | Allentown, Pennsylvania | 18101

From: **PPL Electric Utilities** <email@customerprograms.pplelectric.com>
Date: Thu, Nov 4, 2021 at 2:35 PM
Subject: Important notice
To:

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



Important Notice

Have you checked your energy supply price recently?

Your rate, as of your last bill: 7.379¢/kWh

PPL delivers your electricity, but we don't own the power plants where that electricity is generated. In Pennsylvania, you can shop around and choose the electricity supply that is right for you. Your current supplier is: Better Buy Energy. You can reach them at 1-833-201-0004.

We've noticed that the prices of many energy supply sources are on the rise due to a variety of external market conditions, including overall inflation. We anticipate these conditions to impact most energy suppliers in some way.

We want to make sure that your bills are as low as possible. That's why we're

reminding you to take a few minutes to check your current supply rate and consider shopping around for a better deal.

Alert: When you **shop, beware** of variable rates, which start small and then increase depending on the price of power. (Visit our Shop Smart site below for more tips.)

It's easy to compare supplier offers online, and we've set up a Shop Smart website to guide you through the process. Click below for more information and be sure to read all the fine print on any contract you sign with a supplier.

[Shop for supply](#)

Stay healthy and stay safe!

Connect with us



[Forward this email to a friend](#)

Please do not reply to this automated email. This mailbox is not monitored

[Update your email address](#) or [unsubscribe](#) from these messages. This does not change the email address for your PPL Electric Utilities online account.

PPL Electric Utilities | 2 N. 9th St. | Allentown, Pennsylvania | 18101

[Privacy Policy](#) | [Terms of Use](#) | © 2021 PPL

From: PPL Electric Utilities <email@customerprograms.pplelectric.com>
Date: Tue, Oct 18, 2022 at 1:03 PM
Subject: Important Notice
To:

Having trouble reading this email? [View email in a browser](#)

[My Account](#) | [Outages](#) | [Ways to Save](#)



**Winter means higher energy use.
Consider your options.**

Dear [REDACTED],

Winter is right around the corner. Cooler temperatures often mean more energy use and higher bills. We know budgets are stretched these days and that affordability is important to you. That's why we wanted to remind you of ways we can help you manage your winter electric bills.

Check your supplier contract: We deliver your electricity, but we don't own the power plants where that electricity is generated. In Pennsylvania, you can shop around for the electricity supplier that is right for your lifestyle, preferences, and budget.

As of your most recent electric bill, you have a contract with a third-party energy supplier. This is the perfect time to check that contract, see when it expires, and make sure you're getting the rate and service that is right for your family.

If you'd like to make a change, you have options.



Call your current supplier to discuss next steps.



Check out our smart shopping tips, including instructions on how to view your current supplier charges, and shop for a new supplier. [Click here.](#)



Cancel with your current supplier and automatically return to default service through PPL Electric. The default service rate is 12.366¢/kWh until December 1, 2022. We'll let you know what the new rate is in early November.

Save energy: We have tips, programs, and rebates available to help all customers. [Learn more.](#)

Get bill help: If you're struggling to keep up with your electric bill, we have programs that can help, including financial assistance, payment plans, and budget billing. [Learn more.](#)

For more ideas, tips, and information to help you manage higher bills this winter, visit pplelectric.com/highbill. If you ever need to give us a call, we're here for you at 1-800-342-5775.

Stay safe and be well.

Connect with us



[Forward this email to a friend](#)

Please do not reply to this automated email. This mailbox is not monitored

[Update your email address](#) or [unsubscribe](#) from these messages. This does not change the email address for your PPL Electric Utilities online account.

PPL Electric Utilities | 2 N. 9th St. | Allentown, Pennsylvania | 18101

