

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 10, 2007

Commissioners Present:

Wendell F. Holland, Chairman, Dissenting – Statement attached
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Petition of PPL Electric Utilities Corporation
For Approval of a Competitive Bridge Plan

P-00062227

OPINION AND ORDER

TABLE OF CONTENTS

I.	HISTORY OF THE PROCEEDING	1
II.	DISCUSSION.....	5
A.	Applicable Legal Principles.....	5
B.	Description of the CBP as Filed.....	8
1.	The Request for Proposal Process.....	8
2.	The Generation Supply Charge.....	11
3.	Requested Rulings	11
4.	Other Aspects of the CBP	12
C.	Revised CBP.....	14
1.	The Revised CBP Plan is Non-Precedential	14
2.	Revised Small Customer Proposal.....	15
3.	Revised Large C&I Customer Proposal.....	17
4.	Revised Transmission Charges.....	18
5.	Revisions to RFP Rules and POLR SMA.....	19
6.	Alternative Energy and DSM.....	21
7.	Consumer Education.....	23
8.	Low Income Customer Programs	24
D.	Contested Issues.....	24
1.	Necessity for a One-Year Bridge Program	24
2.	Residential and Small Commercial and Industrial Customers	28
3.	Large Commercial and Industrial Customers	37
4.	Generation Rate Adjustment (GRA).....	42
5.	Reconciliation of the Generation Supply Charge	48
6.	SMA Default Provision.....	54
F.	Other Issues.....	59
1.	Specific Hourly-Priced Formula.....	59
2.	Day-ahead Hourly Price Option.....	60
3.	IS-P and IS-T Rates	61
4.	Effect of Final POLR Regulations.....	62

5. Constellation	63
6. OSBA	64
7. Waivers	65
8. Mr. Epstein.....	68
III. CONCLUSION.....	69

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision of Administrative Law Judge (ALJ) Marlane R. Chestnut issued on February 23, 2007, in the above-captioned Petition filed by PPL Electric Utilities Corporation (PPL Electric). Also before the Commission are the Exceptions and Reply Exceptions filed thereto.

Exceptions to the Recommended Decision were filed on March 15, 2007, by the following Parties: Dominion Retail, Inc. (Dominion); PPL Industrial Customer Alliance (PPLICA); jointly, by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy (Constellation); and jointly, by the Retail Energy Supply Association (RESA), Direct Energy Services, LLC (Direct Energy), and Strategic Energy LLC (Strategic) (jointly, RESA, *et al.*).

The following Parties filed Reply Exceptions on March 26, 2007: PPL Electric, PPLICA, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Sustainable Energy Fund of Central Pennsylvania (SEF).

I. HISTORY OF THE PROCEEDING

On August 2, 2006, pursuant to Chapter 28 of the Public Utility Code, 66 Pa. C.S. §§ 2801-2812 (Competition Act), and Section 5.41 of the Pennsylvania Code, 52 Pa. Code § 5.41, PPL Electric filed with the Commission a Petition for Approval of a Competitive Bridge Plan (Petition or CBP). In the Petition, PPL Electric requested approval of a plan for acquisition of supply for Provider of Last Resort (POLR) service as a one-year “bridge” between the expiration of its POLR rate caps on December 31, 2009,

and a fully competitive, statewide market beginning January 1, 2011.¹ Both the generation rate caps and PPL Electric's contract with PPL Energy Plus, LLC, under which PPL Electric currently obtains supply to meet POLR requirements, expire on December 31, 2009. Under the CBP, PPL Electric proposed, among other things, a three-year competitive procurement program beginning in 2007 for POLR supply in 2010, enhancement of demand-side response (DSR) programs, expanded consumer education, and increased assistance for low-income customers beginning January 1, 2010. PPL Electric requested a 2007 effective date for the CBP although several components, including the new POLR rates, will not take effect until January 1, 2010. Included with the filing were a proposed Request for Proposals Process and Rules (RFP Rules) and a proposed POLR Supply Master Agreement (POLR SMA).

On August 12, 2006, notice of the filing of the Petition was published in the *Pennsylvania Bulletin*. 36 Pa.B. 4576. The notice directed that formal protests or petitions to intervene would be due on or before August 28, 2006.

The following entities filed Petitions to Intervene that were granted by the ALJ: jointly, by Citizens for Pennsylvania's Future, Char Magaro and Jan Jarrett (PennFuture); Strategic; Constellation; the International Brotherhood of Electrical Workers; Local 1600 (Local 1600)²; Metropolitan Edison Company (Met Ed) and Pennsylvania Electric Company (Penelec) (jointly, Met Ed/Penelec); First Energy

¹ On January 1, 2011, transition periods end for other major Electric Distribution Companies (EDCs) in Pennsylvania – Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company and West Penn Power Company. Transition periods have already ended for other EDCs in Pennsylvania, and those EDCs are currently operating under various Commission-approved POLR supply acquisition plans.

² On December 13, 2006, Local 1600's Motion for Leave to Withdraw was granted.

Solutions Corp. (FES); SEF; Eric Epstein; Direct Energy; PPLICA³; RESA⁴; Dominion; Reliant Energy, Inc. (Reliant); and Exelon Corporation (Exelon), PECO Energy Company (PECO), and Exelon Generation Company, LLC (ExGen) (jointly, Exelon Companies). On August 28, 2006, the OCA and the OSBA each filed Notices of Intervention, and the Commission's Office of Trial Staff (OTS) entered its Notice of Appearance on September 7, 2006.

By Hearing Notice dated September 12, 2006, a prehearing conference was scheduled for September 22, 2006. The prehearing conference was held as scheduled. Present, either in person in Philadelphia or telephonically from Harrisburg, were PPL Electric, Local 1600, Strategic, the OTS, Exelon companies, RESA, SEF, Mr. Epstein, the OCA, Dominion, PennFuture, the OSBA, Met Ed/Penelec, Constellation, Direct Energy, PPLICA, Reliant and FES. At the prehearing conference, discovery and other procedural rules were adopted, and a litigation and briefing schedule was established.

In accordance with the schedule, PPL Electric served direct testimony on September 15, 2006. On or about November 15, 2006, direct testimony was served by the OTS, Reliant, Direct Energy, PPLICA, the OCA, the OSBA, Dominion Retail, SEF, PennFuture and FES. Rebuttal testimony was served by PPL Electric, Direct Energy, the OCA, the OSBA and Reliant. Surrebuttal testimony and associated exhibits were served

³ PPLICA's members include: Air Products and Chemicals, Inc.; Alcoa, Inc.; Binkley & Ober, Inc.; BOC Gases; Buckeye Pipe Line Company, L.P.; CertainTeed Corporation; Chamberlain Manufacturing Corp.; Cinram Manufacturing Inc.; Hercules Cement Company; The Hershey Company; High Industries, Inc.; Lafarge Whitehall Cement; Magee Rieter Automotive Systems; Mount Joy Wire Corporation; Praxair, Inc.; Stroehmann Bakeries; TIMET North America; and Wegmans Food Markets, Inc.

⁴ RESA's members include: Consolidated Edison Solutions, Inc.; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc.; and US Energy Savings Corp., although RESA noted that its filings may not represent the view of all members of RESA.

by Dominion, the OTS, PennFuture, the OCA, FES, the OSBA, Constellation, SEF and Direct Energy.

Hearings were held in Harrisburg on December 29 and 30, 2006. Numerous statements and exhibits were admitted into the record, either through adoption by a witness or through stipulation. PPLICIA Cross-Exam. Exh. No. 1 was admitted into the record and is a Stipulation between PPLICIA and PennFuture. Also admitted into the record at PPL Cross-Exam. Exh. Nos. 2, 3, 4, 5, 6 and 7, were stipulations PPL separately entered into with the following Parties: Reliant, the OTS, the OCA, Constellation, PennFuture and SEF, respectively. The record consists of those exhibits and statements, as well as a transcript of 277 pages.

Main Briefs were filed on January 12, 2007, by PPL Electric, SEF, the OCA, the OSBA, PPLICIA, FES, Dominion, Reliant, Constellation, and RESA, *et al.* Reply Briefs were filed on January 22, 2007, by PPL Electric, Reliant, RESA, *et al.*, Constellation, PPLICIA, FES, the OSBA, the OCA, Dominion, SEF, and Mr. Epstein.⁵

By Recommended Decision issued on February 23, 2007, the ALJ found the CBP, as modified by PPL Electric's rebuttal testimony and the provisions of the various stipulations (Revised CBP), to be reasonable and recommended it be adopted for the interim period January 1, 2010, through December 31, 2010.

Exceptions and Reply Exceptions were filed as noted above.

⁵ PPL Electric filed and served a Motion to Strike the Reply Brief of Eric Epstein, contending that it contains a proposal that should have been presented in testimony or a main brief, and because it discloses selective descriptions of settlement negotiations. A Reply to the Motion was filed and served by Mr. Epstein on January 26, 2007. By Order, the ALJ granted the Motion to Strike the Reply Brief.

II. DISCUSSION

A. Applicable Legal Principles

Section 2807(e) of the Public Utility Code (Code), 66 Pa. C.S. § 2807(e), sets forth the obligation of an electric distribution company (EDC) to provide electric service as a result of the implementation of competition in the retail electric market in Pennsylvania. That section provides:

(e) Obligation to serve. -- An electric distribution company's obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer is revised as follows:

(1) While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric service and the production or acquisition of electric energy for customers.

(2) At the end of the transition period, the Commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

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

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local

distribution company shall treat that customer exactly as it would any new applicant for energy service.

66 Pa. C.S. § 2807(e).

On March 4, 2004, the Commission convened a POLR Roundtable at Docket No. M-00041792 as a forum for the discussion of POLR issues. The Commission is now reviewing the results of that Roundtable with a view to crafting final regulations in accordance with Section 2807(e)(2). Until those regulations are promulgated, the instant proceeding must be guided by the more general pronouncements of policy in the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2812 (Competition Act). The following policy declarations of the Competition Act will be particularly helpful in reviewing PPL Electric's Petition:

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the whole-sale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

* * *

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

* * *

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

* * *

(16) It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a

natural monopoly subject to the jurisdiction and active supervision of the Commission. Electric distribution companies should continue to be the provider of last resort to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the Commission.

66 Pa. C.S. § 2802. Also instructive is the Competition Act’s Treatment of customer billing:

(c) **Customer billing.** -- Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the Commission, regardless of the provider of those services.

* * *

66 Pa. C.S. § 2807(c).

A primary innovation mandated by the Competition Act is to provide customers with direct access to a competitive generation market. 66 Pa. C.S. § 2802(3). The reason for this change is the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.” 66 Pa. C.S. § 2802(5); *see, Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Accordingly, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5). Another fundamental policy of the Competition Act is that electric service is an essential service and should be available to all customers “on reasonable terms and conditions.” 66 Pa. C.S. § 2802(9).

The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. The Competition Act requires

that the POLR provider “acquire electric energy at prevailing market prices” and then “recover fully all reasonable costs.” 66 Pa. C.S. § 2807(e)(3).

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

We note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. Description of the CBP as Filed⁶

1. The Request for Proposal Process

PPL Electric’s basic proposal is to issue six competitive Requests for Proposals (RFPs), two per year in 2007, 2008, and 2009, to meet the annual 2010 POLR requirements of its residential⁷ and small Commercial and Industrial (C&I) customers.⁸

⁶ This description of the CBP is taken from PPL Electric’s Main Brief at 6-12, with some changes.

⁷ The residential group is comprised of customers served under PPL Electric’s Rate Schedules RS, RTS and RTD. (PPL Electric Exh. JC-1, RFP Rules, p. 4).

⁸ The small C&I customer group is comprised of customers served under Rate Schedules GS-1, GS-3, GH-1, GH-2, IS-1, BL, SA, SM, SHS, SE, TS, SI-1, and Standby service for the foregoing schedules. (PPL Electric Exh. JC-1, RFP Rules, p. 4).

(PPL Electric St. 2 at 6). PPL Electric's original proposal also provided for two solicitations for the large C&I customer group⁹ to be held in 2009. Under the original plan, the large C&I customers would have been required to "preselect" the fixed price service prior to the solicitations being held. Large C&I customers who did not opt in to the annual service would default to a real-time hourly service. (PPL Electric St. 2 at 6-7). PPL Electric also proposed to modify its tariff to provide that, if a large C&I customer subsequently chose to leave the optional fixed price service to shop any time in 2010, the customer would be charged the Generation Rate Adjustment (GRA), a charge that is based upon the difference between the market prices and POLR prices, for each of the months of 2010 that the customer left the fixed rate service. (Tr. 104 and 137-38).

Potential wholesale bidders will be required to comply with the POLR RFP Rules, to execute the POLR SMA (Supply Master Agreement) and to post security as protection against supplier default. (PPL Electric Exh. JC-1, PPL Electric St. 2 at 9). The RFP Rules and the POLR SMA were developed using, as models, documents previously approved for use in RFP processes by this Commission and the Maryland Public Service Commission, adapted where appropriate to fit PPL Electric's proposed solicitations. (PPL Electric St. 2 at 3-4; Tr. 249).

Each RFP will procure pro rata portions of the estimated POLR load for each customer class. The number of portions, or tranches, is designed to be a fixed percentage of each class's POLR load. A total of 60 tranches would be purchased for the residential group (6 solicitations of 10 tranches each), 42 tranches for the small C&I group (6 solicitations of 7 tranches each) and 38 tranches for the large C&I group (2 solicitations of 19 tranches as originally proposed). (PPL Electric St. 2 at 8). The supply must be load following, and, as such, each wholesale supplier is responsible for the risk

⁹ The large C&I customer group includes customers served under Rate Schedules LP-4, ISP, LP-5, LP-6, LPEP, IST, ISM and Standby service for the foregoing schedules. (PPL Electric Exh. JC-1, RFP Rules, p. 4-5).

of all changes in load, including shopping risk and risk due to weather or conservation. (PPL Electric St. 2 at 8; PPL Electric St. 3-R at 9). Bidders may submit bids for any or all three classes, but bids must be submitted by class and cannot be contingent upon the bidder being a successful bidder in another class. (PPL Electric Exh. JC-1, RFP Rules Section 1.1.14, p. 7).

As originally proposed, the winning wholesale suppliers would have been required to provide all costs of supply, including both generation and all transmission costs. (PPL Electric St. 2 at 8). As part of this proposal, PPL Electric revised its Transmission Service Charge (TSC) to include a provision allowing it to recover any indirect transmission service charges that might be billed to it. (PPL Electric St. 3 at 7). The winning suppliers also must include verification of compliance with PPL Electric's 2010 obligations under the Alternative Energy Portfolio Standards Act (AEPS Act). 73 P.S. §§ 1648.1-1648.8.

Under the RFP Rules, an individual bidder cannot bid on more than 85% of each customer class's POLR load offered in each solicitation. This limitation was included to encourage further development of the competitive wholesale market by ensuring that smaller competitors will not refuse to bid due to perceptions about their ability to win any tranches. (PPL Electric St. 2 at 9; PPL St. 2-R at 9).

PPL Electric proposed that it be authorized to hire an independent party to administer the solicitation process. This would remove any potential concerns of bias in the selection of winning bidders. The independent party would report directly to, and would coordinate its oversight with, personnel at the Commission. The independent party would present the results of the bids to the Commission following each solicitation, and the Commission would have two days to decide whether to accept the bid results. (PPL Electric St. 2 at 10-11; PPL Electric Exh. JC-1, POLR RFP Rules Section 7.5.1, pp. 27-28).

The bids received for each class for each solicitation will be ranked and analyzed to determine the least cost combination of bids for all tranches in the solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.4, pp. 26-27). If insufficient bids were received in a solicitation, the unfilled tranches will roll over to the next solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.5.2, p. 28). The POLR Rules also establish a process for filling any unserved tranches remaining after the last solicitation. (PPL Electric Exh. JC-1, POLR RFP Section 7.3.2, p. 28).

2. The Generation Supply Charge

The winning results of the six solicitations will be totaled by class. That cost, plus the costs incurred by PPL Electric to administer the solicitations for the respective customer classes,¹⁰ will be divided by projected sales for each customer class to develop the rate by class to be included in the Generation Supply Charge (GSC). (PPL Electric St. 3-R at 4, 6). As originally proposed, PPL Electric intended that the GSC would be a flat rate for each class, and all demand and block rate generation charges would be eliminated. The GSC, like the currently existing TSC, will be fully reconciled. (PPL Electric St. 3-R at 6-7).

3. Requested Rulings

The Company requested three specific rulings with respect to the CBP solicitations. First, PPL Electric requested a waiver of the Commission's final POLR regulations, if those regulations become effective prior to 2011, to the extent necessary to honor any agreements for 2010 POLR supply previously entered into under the CBP. On a prospective basis, PPL Electric will comply with regulations that are effective prior to 2011. (PPL Electric St. 1 at 13; PPL Electric St. 1-R at 5, 19-20).

¹⁰ This includes the costs to undertake the RFP processes, the costs of the third party administrator and the costs of implementation. (PPL Electric St. 3-R at 4).

Second, PPL Electric requested that the Commission approve the POLR SMA as an affiliated interest agreement. PPL Electric's unregulated generation affiliates will be permitted to participate in the solicitations. If any of those affiliates is a successful bidder for one or more tranches, PPL Electric will need to enter into the POLR SMA with that affiliate. It would be impractical to review the POLR SMA as an affiliated interest contract after the bidding results are announced, because the solicitation structure assumes a short turnaround time for finalizing the contract, and because the simplified structure of the process assumes that all bidders will be subject to the same standardized form of contract. (PPL Electric St. 1 at 9-10).

The company's third request is that the Commission commit that it will neither order nor approve any wholesale or retail "opt out" customer aggregation plan for PPL Electric's service territory during the 2007-2010 period. (PPL Electric St. 1 at 10). These plans assign customers to an EGS and require customers to affirmatively "opt out" of the assignment to remain a POLR customer. The problem with an "opt out" customer aggregation plan, in the context of an RFP solicitation proposal that places shopping risk on the wholesale bidders, is that many wholesale suppliers consider this type of aggregation to present an increase in financial risk that cannot effectively be hedged. The opt-out aggregation plan thus will increase the risk premium built into any bids, and also may reduce the number of participants in the bid process. (PPL Electric St. 1 at 10).

4. Other Aspects of the CBP

Although the principal purpose of the CBP is to acquire POLR supply for 2010, PPL Electric incorporated several other related components into its CBP. One component is a proposal to enhance several experimental Demand Side Management (DSM) programs. The Demand Side Response Rider – Residential provides customers with a rate incentive to shift load from on-peak to off-peak periods in the summer months. The company proposed to double the limit on participation in 2008 and 2009,

and remove participation limits in 2010. The company also proposed to expand the program to a year-round program in 2010, with pricing revised to more fully reflect competitive market prices. (PPL Electric St. 1 at 18-19). The Demand Side Initiative Rider is an experimental DSM program for large C&I customers. The program allows customers to designate a portion of their load served at a fixed price, and the remaining portion of their load at actual hourly prices. (PPL Electric St. 1 at 19). PPL Electric proposed to extend this existing Rider from 2007 through the end of 2010. (PPL Electric St. 1 at 19).

PPL Electric also proposed to end, on December 31, 2009, certain other legacy DSM programs which have been closed to new customers under the settlement of PPL Electric's restructuring proceeding. (PPL Electric St. 1 at 16). These include interruptible service rates and an experimental price response service for industrial customers and off peak water heating (Rate RTD) and thermal storage programs (Rate RTS) for residential customers. (PPL Electric St. 1 at 15-16). These programs provided energy related discounts where customers either shifted or interrupted generation service during periods of peak demand. (PPL Electric St. 1 at 17). As explained above, PPL Electric's CBP is designed to obtain simple, single rate POLR pricing. Therefore, PPL Electric will not solicit interruptible or time-variant price bids. (PPL Electric St. 1 at 17). PPL Electric also supports the general concept that such products should be provided by EGSs.¹¹ (PPL Electric St. 1 at 18).

In its filing, PPL Electric also proposed to implement a consumer education program beginning in 2007 to educate customers about the end of the generation rate cap, the CBP and the opportunities to shop. The company requested permission to fund this education program using the approximately \$875,000 remaining in its current customer

¹¹ PPL Electric has installed a state of the art metering system that will enable EGSs to accurately track actual hourly usage, thereby facilitating interruptible and time of day billing options.

choice education account. PPL Electric proposed to ramp up spending over the three-year period leading up to 2010, with the education focus changing each year. (PPL Electric St. 1 at 21; PPL Electric Exh. DAK-2).

The final aspect of the CBP involves expected enhancements to PPL Electric's low-income assistance programs. Because of expected increases in rates, PPL Electric believes that its current rate allowances of \$13.2 million for its OnTrack (Customer Assistance Program) and \$6.25 million for its WRAP (weatherization and energy conservation education) universal service programs will be insufficient. The company's 2006 estimated funding level for these two programs combined is \$26.3 million. (PPL Electric St. 4 at 6). PPL Electric recommended that the funding for those two programs through residential customers' rates be increased to \$31.5 million by 2010. (PPL Electric St. 4 at 7).¹²

C. Revised CBP¹³

1. The Revised CBP Plan is Non-Precedential

PPL Electric made various modifications to its CBP following review of other parties' testimony and as a result of discussions with parties, individually and collectively. Further modifications were made to the CBP as a result of individual stipulations with several parties.

PPL Electric confirmed, both in its rebuttal testimony and in four of its individual stipulations, that the CBP is intended to be non-precedential and to apply only during 2010 as a one-year bridge. (PPL Electric St. 1-R at 8; PPL Electric Cross-

¹² The Company also offers low-income assistance through Operation Help, which is funded by shareholder, employee and customer contributions. (PPL St. 4-R at 5).

¹³ This description of the CBP is taken from PPL Electric's Main Brief at 12-20, with some changes.

Examination Exh. 2; PPL Electric Cross-Examination Exh. 3; PPL Electric Cross-Examination Exh. 4; PPL Electric Cross-Examination Exh. 6). PPL Electric recognizes that the Commission has designated several of its approvals of other interim POLR plans as non-precedential, and PPL Electric concurs with the view that each interim plan should be viewed on its own merits and should not be cited as support for, or against, any single provision in this, or any future, interim POLR plan. As the Commission stated in *Petition of Penn Power Company*, P-00052188, 2006 Pa. P.U.C. LEXIS 56, *32-33:

The regulations arising out of our default service rulemaking proceeding ultimately will govern POLR service in the Commonwealth, not the interim plans approved for the individual EDCs prior to issuance of final default service regulations. This Commission has considered and approved a variety of methodologies for setting POLR rates in previous post-transition POLR cases and in doing so stated that these proceedings were not precedent setting. This being said, it is, however, possible to rely on the basic fundamental policies underlying the Competition Act, namely, that competition is more effective than economic regulation in controlling the cost of electric generation; that a POLR provider must acquire electricity at prevailing market prices to serve non-shopping customers; and, that the POLR provider shall fully recover the reasonable cost of providing service.

PPL Electric's Revised POLR Plan has been reviewed under the same standards and will not be considered precedential.

2. Revised Small Customer Proposal

The basic structure of the CBP for small customers remains unchanged: PPL Electric will undertake a series of six solicitations over three years to develop the POLR price separately for the residential and small C&I classes. (PPL Electric St. 1-R at 4-6).

In response to concerns raised by the OCA, PPL Electric agreed to limit the rate increase for the Rate Schedule RTS customers by maintaining the absolute difference in 2009 average generation rates between Rate Schedules RTS and RS. That differential is 1.35 cents per kWh. Contingent upon the Commission approval of reconciliation, PPL Electric agrees to design 2010 POLR rates for Rate Schedule RTS customers that would be 1.35 cents per kWh lower than Rate Schedule RS rates. (PPL Electric St. 1-R at 27-28). Because there are only approximately 14,000 Rate Schedule RTS customers compared to over 1 million Rate Schedule RS customers, the increase to those customers above the average residential class GSC rate will be minor, likely about 1 mill. (OCA St. 1 at 13). In addition, as part of the stipulation with the OCA, PPL Electric agreed that, if the average increase in rates for all customers under Rate Schedule RS exceeds 30 %, calculated on a total bill basis, then PPL Electric would meet with the OCA to discuss alternative rate designs to mitigate the impact on high use residential customers for the year 2010. However, if any alternative rate design is proposed, all costs of obtaining POLR supply for customers in the residential customer class will be retained in the residential customer class and would not be shifted to other classes. (PPL Electric Cross-Examination Exh. 4). Finally, Rate Schedules RS and RTD generation rates will be equalized. (PPL Electric St. 1-R at 28).

In addition, the company will, through its Automated Meter Reading (AMR) system, begin to collect and organize customer data in 2007 to provide customers, wholesale bidders and EGSs, within the limits of the Commission's rules regarding release of individual customer information, with relevant volume and load profile information in order to provide more useful data and to encourage innovative products. (PPL Electric St. 1-R at 6; Tr. 96-97).

3. Revised Large C&I Customer Proposal

In response to objections of various parties to PPL Electric's original proposal for large C&I customers, PPL Electric made substantial changes. PPL Electric eliminated the requirement that these customers "pre-select" the fixed rate option prior to the solicitations being undertaken. Instead, PPL Electric will require large C&I customers to merely express interest in the fixed rate option, through a sign up process, prior to the solicitation. (PPL Electric St. 1-R at 14). PPL Electric would then conduct a single solicitation for fixed price service for the large C&I customers in October 2009. Large C&I customers who had expressed interest in the option would be advised of the resulting price and would be given 30 days to "opt in" to the fixed price service for 2010. (PPL Electric St. 1-R at 14). Customers who did not comply with the foregoing procedures to elect the firm option will receive real-time hourly service for 2010 as their POLR default service.¹⁴ (PPL Electric St. 1-R at 14; PPL Electric Cross-Examination Exh. 2, ¶ 2).

Also, as part of the change to the fixed price option for large C&I customers, PPL Electric agreed to eliminate the proposed revisions to its GRA, which would have imposed a real-time pricing charge upon large C&I customers who elected the fixed rate service and subsequently left for EGS service. (PPL Electric St. 3-R at 16). PPL Electric's existing GRA will remain in effect as a deterrent to customers trying to "game" the system by swinging on and off POLR service for short time periods. (PPL Electric St. 3-R at 17-18). As a result, large C&I customers will be permitted to shop without restriction, subject to compliance with the Commission's switching rules and applicable tariff provisions. (PPL Electric St. 1-R at 14-15).

¹⁴ This would include large C&I customers who seek to return to POLR service from EGS service. (PPL Electric St. 1-R at 14).

With respect to the default real-time hourly service for large C&I Customers, PPL Electric will bid the service to a wholesale supplier. (PPL Electric St. 1-R at 16). Suppliers will pass through the Locational Marginal Price (LMP) for each hour of service, and their bids will reflect all other costs to provide the service, including administrative costs, ancillary service costs and capacity costs. (Tr. 133). PPL Electric has committed to work with the Parties to develop the needed RFP and tariff provisions to be clear what services will be included in the supplier's bid and what costs will be a pass through. (Tr. 134). In addition, as part of its stipulation with Reliant, PPL Electric commits that it will provide the real-time hourly service in the event no suppliers bid on the product or in the event the winning supplier defaults. (PPL Electric Cross-Examination Exh. 2, ¶ 5).

4. Revised Transmission Charges

PPL Electric withdrew its proposed modification to its TSC, and instead amended the bid process to provide that PPL Electric will incur transmission costs for POLR supply within the PPL Zone of PJM and recover those costs through the TSC. (PPL Electric St. 3-R at 3).¹⁵ This change will require some modifications to the POLR SMA, subject to the following general principles described by PPL Electric's witness Mr. Kleha:

The SMA clearly indicates that the delivery point for energy from the supplier is the PPL zone, and from that standpoint PPL Electric will be responsible for network integration transmission service within its zone and from the delivery point to its customers. The supplier, on the other hand will be responsible for transmission service for getting the power to the PPL border, to the point of delivery. In addition to that, the supplier will be responsible for all ancillary services, whether they're outside of the PPL zone or within the PPL

¹⁵ PPL Electric confirmed that this modification will not affect the rights and remedies of parties that are currently challenging the allocation of transmission costs to customer classes under the TSC. (PPL Electric St. 3-R at 3).

zone. From that standpoint, the SMA will have to be modified to reflect those changes and to meet those principles.

(Tr. 264-65). The stipulation with Constellation establishes procedures for PPL Electric to meet with interested parties in an effort to develop these modifications in a consensus fashion:

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 and will adopt any consensus changes and, if they are approved by the Commission, include them in its compliance filing. To the extent that these changes cannot be agreed to and the Commission approves PPL’s proposed transmission service modifications, 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.

(PPL Electric Cross-Examination Exh. 5, ¶ 2).

5. Revisions to RFP Rules and POLR SMA

As part of the stipulation with Constellation, PPL Electric agreed to the following modification to Section 8.1.1 of the RFP Rules:

Prior to the submission of any bids and with PUC approval, PPL Electric has the right to withdraw and terminate this RFP without any liability or responsibility to any potential RFP Bidder or any other party, for reasonable cause, including, but not limited to, adverse statutory changes or interpretations, issuance of new PUC orders and/or regulations, market conditions, etc., that preclude this RFP from being implemented in substantially the manner described herein.

(PPL Electric Cross-Examination Exh. 5). The modification recognizes that there may be circumstances which justify cancellation or postponement of a solicitation, but limits PPL Electric's right to terminate an RFP to a date prior to the actual submission of bids, and then only with Commission approval. Several additional minor revisions to the POLR SMA were agreed upon between PPL Electric and Constellation. These include:

1. The addition of a new Paragraph 7.6, allowing for netting of mutual debts and payment obligations;
2. The addition of further language to Article 10 – Limitation of Remedies, Liabilities and Damages, to adopt additional contract language related to liquidated damages;
3. The addition of further language to Paragraph 11.1 – Force Majeure to adopt additional contract language further defining responsibilities in the event of a declaration of Force Majeure;
4. The addition of Paragraph 14.7 – Accelerated Payments to incorporate additional contract language related to Seller's rights to demand accelerated payments from Buyer (PPL Electric) in the event of a Buyer Downgrade Event;
5. The expansion of Paragraph 16.5 – Confidentiality to incorporate additional contract language further defining each Party's duties and rights related to the maintenance of confidential information.

(PPL Electric Cross-Examination Exh. 5, Appendix 1 to Stipulation).

6. Alternative Energy and DSM

In response to concerns of PennFuture, the SEF and the OCA regarding encouragement of alternative energy and DSM initiatives, PPL Electric modified its CBP to provide that the entire 2010 AEPS solar set-aside obligation for customers within the residential and small C&I groups will be included in the two scheduled solicitations in 2007. (PPL Electric St. 1-R at 6; Tr. 127; PPL Electric Cross-Examination Exh. 6). Also, as part of the company's customer education program, the company agreed to identify and provide notice of available DSM programs to customers representing the top 10% of peak load in each customer class. (PPL Electric St. 1-R at 6). In addition, as part of stipulations with PennFuture, the SEF and the OCA, PPL Electric has agreed to undertake several further actions in support of conservation and energy efficiency:

Within six months following the approval of PPL's Competitive Bridge Plan, PPL Electric agrees to conduct a series of three (3) meetings with PennFuture to explore the nature of conservation and energy efficiency programs that PPL Electric may offer to its customers in 2010. The findings and results of these meetings will be documented in a report prepared jointly by PPL Electric and PennFuture and submitted to the Commission at this or other appropriate docket. Notwithstanding the findings and results of that report, PPL Electric agrees to establish and seek approval of at least one new program, to be effective no later than January 1, 2010, to promote conservation and energy efficiency among its residential customers.

(PPL Electric Cross-Examination Exh. 6, ¶4).

Within six months following the approval of PPL's Competitive Bridge Plan, PPL Electric agrees to conduct a series of three (3) meetings with PennFuture and interested Electric Generation Suppliers ("EGSs") to explore how PPL Electric's Advanced Metering Infrastructure can be used to facilitate EGSs in providing [Demand Side Response] programs to PPL Electric's customers who may elect to participate in such programs. These meetings will specifically address the compatibility of such programs with

programs conducted by PJM Interconnection, LLC. The findings and results of these meetings will be documented in a report prepared jointly by PPL Electric and PennFuture and submitted to the Commission at this or other appropriate docket.

(PPL Electric Cross-Examination Exh. 6, ¶5).

PPL agrees to meet with the OCA and other interested stakeholders each year to discuss whether PPL should include Demand Side Response (“DSR”) programs as a separate product in each of the upcoming solicitations for POLR supply. This Stipulation does not require PPL to propose or implement any specific solicitation for DSR programs as part of its CBP.

(PPL Electric Cross-Examination Exh. 4, ¶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 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.

(PPL Electric Cross-Examination Exh. 7, ¶4).

We find that PPL Electric’s proposals to undertake further dialogue in support of conservation, energy efficiency and advanced metering is reasonable and in the public interest. However, we find that it is vital that this Commission permit all parties to engage in this dialogue to help facilitate decision making on these important

issues. Therefore, the working group meetings specifically identified above in PPL Electric Cross-Examination Exhibits 6 and 7 should not exclude any interested participants from these discussions. PPL is directed to permit such parties to participate in any discussions with regard to energy efficiency, conservation, or advanced metering infrastructure on its system.

7. Consumer Education

PPL Electric also concurred with concerns of certain parties that some aspects of its consumer education program lacked definition and that the timing of its consumer education expenditures could be altered. In response, the company agreed to facilitate a collaborative process with interested parties and Commission staff to develop a more detailed design of the consumer education program within PPL Electric's \$875,000 budget. In that context, the parties also will discuss the timing of expenditures.¹⁶ (PPL Electric St. 1-R at 34-35).

We find that PPL Electric's proposal to establish a collaborative process to develop more detailed consumer education programs is reasonable and in the public interest. As such, we will direct PPL Electric to meet with all interested Parties including

¹⁶ PPL Electric notes there are several important considerations to keep in mind with respect to expenditure timing. These include:

1. The base level of spending to carry out required annual choice education.
2. The expected roll out of the customer interface to the AMR System during 2007.
3. The need to educate customers prior to 2010 about energy efficiency and conservation measures, and the availability of certain tax breaks.
4. Notification and education of large C&I customers regarding EGS, fixed price, and default hourly service elections that need to be made in the latter portion of 2009.

(PPL Electric St. 1-R at 35-36).

the Commission's Bureau of Consumer Services (BCS) within forty-five days of the entry of this Opinion and Order.

8. Low Income Customer Programs

PPL Electric also clarified in rebuttal several aspects of its low-income customer program. PPL Electric confirmed that this is not the appropriate proceeding to investigate and determine the appropriate funding levels for its low-income programs. (PPL Electric St. 4-R at 2). PPL Electric further confirmed that it did not intend to request any deferral of low-income program costs for future recovery. (PPL Electric St. 4-R at 3). Rather, PPL Electric will propose, in a future filing, to establish a reconcilable surcharge mechanism for prospective recovery of low-income program costs, in accordance with the Commission Order on universal service program funding at *Final Investigative Order*, Docket No. M-00051923, October 19, 2006, at 18. (PPL Electric St. 4-R at 2-3). In addition, in response to concerns raised by the OSBA, PPL Electric confirmed that it contemplates continued recovery of universal service costs from residential customers only. (PPL Electric St. 4-R at 7). This is consistent with past practice in PPL Electric rate proceedings and with the Commission's Order at Docket No. M-00051923. (Order at 31).

D. Contested Issues

1. Necessity for a One-Year Bridge Program

a. Positions of the Parties

RESA, *et al.* claimed that the interim plan itself is premature and unnecessary. (RESA, *et al.* MB at 11). RESA, *et al.* stated that PPL Electric proposed its CBP as a vehicle to implement its laddered procurement approach, not as an intermediary measure between the expiration of its generation rate caps and the adoption of the

Commission's POLR regulations. (*Id.*). RESA, *et al.* noted that the Commission in its 2004 POLR Notice of Proposed Rulemaking (*POLR NOPR*) at *Rulemaking Re: Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)*, Docket No. L-00040169 (December 16, 2004), did not specifically identify PPL Electric as one of the utilities that might need approval of an interim plan, and argues that there is no gap to fill between the expiration of PPL Electric's generation rate cap at the end of 2009 and the post-transition period POLR regulations. (RESA, *et al.* MB at 12).

PPL Electric argued that its laddered procurement is timely. The Company noted that the deadline established by the Independent Regulatory Review Commission (IRRC) for adoption of the final POLR rulemaking was extended to April 7, 2008, because it is statutorily mandated that if final-form regulations are not adopted within two years of the close of the public comment period, then the proposed regulations are deemed withdrawn. 1 Pa. Code § 307(a). (PPL Electric MB at 30-31). PPL Electric further noted that there is no requirement that the Commission must issue its final POLR regulations by April 7, 2008. (PPL Electric MB at 30). PPL Electric posited that while it is presumed that the final regulations will be adopted before then, it is not certain that the regulations will be in effect in sufficient time for PPL Electric to acquire supply in time for 2010. (PPL Electric MB at 31).

The OCA opined that, in the absence of final regulations, it is reasonable for PPL to pursue a one-year plan that will result in aligning PPL with the end of the transition period for other major Pennsylvania utilities. (OCA MB at 4). The OCA stated that because competition for residential customers has been slow to develop in states introducing retail choice, an interim mechanism such as the CBP provides a reasonable means to move forward. (OCA MB at 5). OCA witness, Dr. Steven Estomin, found that the multi-year, multi-phase procurement method was a useful and valuable feature of the plan to mitigate the timing risk associated with the procurement of a single

year's supply. (OCA St. 1 at 9). Dr. Estomin further found that the proposal to procure supply for each class individually mitigated the potential for inter-class subsidies. (*Id.*).

PPLICA posited that, due to the unavailability of final POLR regulations, this interim, non-precedential CBP is appropriate. (PPLICA MB at 5-6). PPLICA noted that, if the regulations were finalized in time for the Commission to conduct a proceeding to implement the final regulations for PPL Electric's Large C&I customers in 2010, then the CBP could be modified to conform to the regulations. (PPLICA MB at 6).

b. ALJ Recommendation

ALJ Chesnut concurred with PPL Electric's position that it would be unwise to delay its 2010 acquisition by waiting for the final effective date of the POLR regulations. The ALJ determined that PPL Electric's decision to propose a plan and present it with sufficient time for all Parties and the Commission to thoroughly review it was prudent. (R.D. at 32).

c. Exceptions

RESA, *et al.* argues that the ALJ erred in concluding that PPL Electric's revised plan is prudent due to the uncertainty regarding whether the final POLR regulations will be effective in time to govern the company's POLR obligations for the first year after its rate caps expire. (RESA, *et al.* Exc. at 3). RESA, *et al.* argues that it is clear that the Commission intends to submit the final-form regulations to the Independent Regulatory Review Commission (IRRC) by mid-2007, which will permit reviews by IRRC, the General Assembly and the Office of the Attorney General to be completed so that the final regulations can be made effective by the end of 2007 or early 2008. (RESA, *et al.* Exc. at 4). RESA, *et al.* contends that this time frame gives the utility sufficient time to prepare a program for 2010 acquisition in accordance with the final POLR

regulations. (*Id.*). RESA, *et al.* requests the Commission to reaffirm its intent that the final POLR Regulations will govern PPL Electric's and the other EDC's obligations upon the expiration of their respective rate caps. (RESA, *et al.* Exc. at 5-6).

PPL Electric rejoins that RESA, *et al.*'s contentions are erroneous and should be rejected. PPL Electric states that RESA *et al.*'s timeline for final adoption of the Commission's proposed final regulations would not result in Commission approval of a PPL Electric filing under the regulations until March 31, 2009. (PPL Electric R.Exc. at 3, RESA, *et al.* Exc. at 4). Such a timeline would compress PPL Electric's procurements into a period of less than one year, thereby increasing the risk that an unusual event would adversely affect POLR prices, as occurred with Pike County Light & Power Company. (PPL Electric St. 1, p. 6). PPL Electric notes that the Commission's Advanced Notice of Final Rulemaking Order (ANFRO) discourages the procurement of all POLR supplies for a period of service at a single point in time. (PPL Electric R.Exc. at 4; ANFRO at 4).

d. Disposition

As explained by the ALJ, final POLR regulations have not yet been adopted, and while we are proceeding with all due haste in our review of the comments submitted on March 2, 2007, we are unable to state with 100% certainty what the effective date of the final regulations will be. As such, it would be unwise for PPL Electric to delay its 2010 acquisition to await the final effective date of the regulations. We, therefore, find that a need exists for the Revised CBP. We are cognizant of the fact that the Revised CBP is an interim plan, which has been tailored to fit this transitory period. It is not the company's ultimate default service program. We find that PPL Electric's laddering approach captures the benefits of less volatile forward markets and encourages the development of longer-term forward markets, which will provide appropriate market signals regarding the need for new generation and reasoned, cost-

based decisions related to DSM and improved energy efficiency. (PPL Electric St. 2-R at 6-7). Accordingly, RESA, *et al.*'s Exception on this issue is denied.

2. Residential and Small Commercial and Industrial Customers

a. Positions of the Parties

PPL Electric has proposed, as part of this interim bridge plan, to obtain supply for the residential and small C&I customers (i.e., for all customer classes except the large C&I customers) through an RFP process of solicitations that will use six separate bids spread out over three years. According to the Company, this approach of multiple solicitations was designed to mitigate the price volatility associated with purchasing electrical energy on a single date where there may occur an unexpected convergence of market forces, as happened in the case of Pike County.

According to PPL Electric, its proposal to conduct six solicitations over three years with delivery in 2010 will not eliminate rate shock for its customers, who are likely to see increases in their rates in 2010. PPL Electric stated that, since all the solicitations are for delivery in 2010, each solicitation will reflect the market's then-current expectations for 2010 so that the sum of the six solicitations will reflect a series of market expectations over the 2007-2009 time frames. The Company averred this series of solicitations is designed to reduce the risk of a short-term price spike.

The OCA and the OSBA supported PPL Electric's proposal.

However, both RESA, *et al.* and Dominion Retail are opposed for several reasons. First, they asserted that this approach violates the statutory requirement that the energy used to fulfill the requirements of the provider of last resort be purchased at "prevailing market rates." RESA, *et al.* contended that PPL Electric's laddered approach "substantially and irrevocably divorces POLR rates from any semblance of market-

reflective pricing,” and used a dictionary definition of “prevailing” to mean “most frequent” and “current.” RESA, *et al.* advocated “market responsive pricing” based on monthly procurement for the residential and small C&I customers. (RESA, *et al.* MB at 4).

Similar arguments were presented by Dominion Retail, which maintained that “prices that are charged to customers must prevail in the market at the time the sales are made . . . It may be true that a price may be available in the market place today for energy that could be delivered in 2010, but that price is not likely to prevail during 2010.” Dominion Retail cited the Commission’s determination that more than a one-year difference between the acquisition of energy and the sale to customers fails to meet the legal standard. *POLR NOPR* at 11. (Dominion MB at 3).

Next, Dominion Retail and RESA, *et al.* asserted that PPL Electric’s proposal to obtain supply for these customers over a three-year period should be denied by the Commission because it represents bad policy in that it will not prevent price volatility, will insulate customers from the actual market price, and will prevent the development of a truly competitive retail market. Dominion Retail presented an alternative proposal, purely for the interim period, in which supply is obtained in a single-year acquisition with a three-year fixed rate to customers, explaining that this plan will reflect the effects of more than a decade of capped rates but will nonetheless provide some longer price stability as customers transition to market rates. (Dominion MB at 4).

RESA, *et al.* suggested that, if the Commission considers an interim plan for PPL Electric, the Revised CBP should be modified to require monthly pricing for the residential and small C&I customers. (RESA, *et al.* MB at 13). RESA, *et al.*’s proposal for monthly prices for the residential and small C&I customers is based on a series of monthly solicitations. As explained by RESA, *et al.*, PPL Electric would hold auctions 60 days in advance of the delivery month, with contracts executed no later than 45 days

prior to the delivery month. During this 45-day period of time, the residential and small C&I customers would consider available competitive offers and decide each month whether to stay on POLR service. (Direct Energy St. 1 at 7).

PPL Electric countered, “Forcing all customers onto monthly POLR pricing in January 2010, the first month after the end of rate caps that will have been in effect for 14 years, is a prescription for chaos and customer revolt.” (PPL Electric MB at 33).

The OCA explained that “monthly price changes are likely to make an informed shopping decision more difficult by the customer, thus hampering informed retail competition . . . The problems inherent in such an approach, from the perspectives of affordability, management of bills, practicality, and the ability to make an informed shopping decision, strongly argue for the rejection of such a model. The OCA submitted that the monthly pricing model proposed by Direct Energy in this case should not be adopted.” (OCA MB at 9-10).

b. ALJ’s Recommendation

The ALJ recommended that PPL Electric’s proposal to conduct six solicitations over three years for residential and small C&I POLR service in 2010 should be approved by the Commission for the interim period prior to statewide competition in 2011. She stated that PPL Electric has presented a prudent and reasonable approach to incorporating prevailing market rates while attempting to eliminate the effect of abnormal market conditions. She agreed with PPL Electric and the other Parties supporting the Revised CBP that the procurement mechanism proposed should be approved by the Commission. According to the ALJ, the Revised CBP provides a reasonable interim mechanism for procuring supply for residential and small C&I customers for the one-year period of 2010. (R.D. at 34, 39).

In regard to the “prevailing market rate” argument, the ALJ disagreed with Dominion Retail and RESA, *et al.* According to the ALJ, in the absence of the Commission’s adoption of final POLR regulations, there is no legal impediment to the use of multiple solicitations as proposed. The ALJ stated that nothing in Section 2807(e) (3) of the Competition Act prohibits use of a multi-year procurement strategy as proposed by PPL Electric. She noted that the statute at Section 2807(e)(3) provides that an electric distribution company must “acquire electric energy at prevailing market prices” but does not define how those prevailing market prices are to be determined. The ALJ stated that no limitation on the time frame for the procurement of POLR energy is provided, as long as the procurement occurs through a competitive process. The ALJ found this is not controlling in this case for several reasons, the most obvious being that the regulations are not in effect. According to the ALJ, while the Commission in 2004 may have made that determination in the context of permanent POLR programs, there is no indication that it intended it to apply to the various interim POLR programs, which have incorporated a number of procurement strategies. (R.D. at 33).

In regard to Dominion Retail’s recommended alternative proposal, the ALJ recommended that it should be rejected for several reasons. First, according to the ALJ, it is contrary to the intent that the Revised CBP be a one-year interim bridge to full statewide competition. Second, she averred that having all supply procured in a single year still presents the risk that the resulting POLR rates could be affected by unusual market events. Third, she noted that it distorts prices by requiring that bidders assess costs for each year of the multi-year period and then creates a single price. (R.D. at 38).

The ALJ also recommended rejection of the RESA, *et al.* alternative for several reasons. She stated that the first problem is that it will expose customers to extreme price volatility. According to the ALJ, other problems with this approach are the additional costs to conduct twelve solicitations a year, to notify customers of each monthly price, to respond to customer inquiries about their monthly bill changes and to

reprogram PPL Electric's billing systems to change rates monthly. In addition, she mentioned other potential problems presented by this approach include interaction with the billing cycle, budget billing and CAP rates. (R.D. at 37).

c. Exceptions

Dominion Retail excepts to the ALJ's recommendation claiming that the Competition Act specifically prohibits the use of a laddering approach and, therefore, a legal impediment to its use does exist. Dominion Retail avers that PPL Electric's approach is contrary to the plain language of the Competition Act, will not ensure the elimination of rate shock, nor can it guarantee to dampen the effect of price volatility. Dominion Retail opines that the term "prevailing market price" can only mean the price of energy that prevails at the time the energy is consumed. Dominion Retail opines that this requires the EDC to purchase energy in much the same way as an EGS, if and when there is a need to buy electricity for customers then the utility buys the energy at prevailing market prices. (Dominion Retail Exc. at 3-4).

Next, Dominion Retail criticizes the ALJ for contending that PPL Electric's plan is good public policy and avers that its proposal would be highly detrimental to the development of a competitive retail market in PPL Electric's service territory. Dominion Retail avers the most critical public policy reason why this approach is bad policy is that it divorces market prices from customer retail rates. Dominion Retail maintains that, in every other industry, customers can only react to changes in market prices if the market prices change. Dominion Retail contends that, without exposure to market price, customers will do the economically logical thing and continue to consume energy even when wholesale prices may be high because they do not know that prices are high. According to Dominion Retail, such a lack of sensitivity to the market price makes it impossible for suppliers to make offers that compete. Dominion Retail opines that the

ALJ completely disregards the fact that PPL's plan would essentially lock suppliers out of PPL Electric's market for another year. (Dominion Exc. at 5-6).

Also, Dominion avers that PPL Electric's plan lacks transparency because PPL Electric will not provide marketers or the market with the actual bid prices. Dominion opines that marketers will have no basis upon which to determine what PPL Electric's rate might be at the end of the three-year period, and such lack of transparency will deter marketers from any meaningful opportunity to purchase energy at the same increments as PPL Electric in order to develop a portfolio that could compete with PPL Electric. Dominion maintains that divorcing the wholesale market price from the retail rate so that customers have no actual price signals is bad public policy and will harm competitive suppliers. (Dominion Exceptions at 6).

In its Exceptions, RESA, *et al.* requests that the Commission reject the ALJ's adoption of PPL Electric's multi-year, ladder procurement plan for small customers for many reasons. RESA, *et al.* states that this plan is contrary to the "prevailing market price" statutory requirement. RESA, *et al.* opines that PPL Electric's methodology does not mitigate the risk of locking the effects of short-term wholesale price spikes in its annual fixed POLR rates for residential and small C&I customers as it is subject to external market forces beyond its control. Also, RESA, *et al.* opines that this methodology will not promote the development of retail competition as it will not provide these customers with competitive alternatives to mitigate the higher POLR rates expected by PPL Electric. RESA, *et al.* requests that the Commission should reject the ALJ's recommendation and modify the residential and small C&I portion of PPL Electric's plan to require monthly pricing as it has recommended. RESA, *et al.* suggests that the Commission could order a workshop to address any concerns about possible extraordinary price spikes being reflected in monthly prices. (RESA, *et al.* Exc. at 6-8).

In reply, PPL Electric avers that the use of laddered solicitations for residential and small C&I customers is legal and appropriate. PPL Electric avers that the term “prevailing market prices” is undefined in the statute, leaving it to the Commission to define the term and notes that the use of the plural form of this term in the statute recognizes that electric markets offer a number of prevailing market prices, both in product term and product type. The Company posits that, while customer choice and competition are important objectives of the Competition Act, the Competition Act’s Declaration of Policy identifies other important policy objectives that may be better advanced through longer term procurement strategies. (PPL Electric R.Exc. at 5-6).

PPL Electric avers that RESA, *et al.*’s Exception claiming that the revised CBP would not mitigate risks of locking in wholesale price spikes is mistaken. PPL Electric explains that the six solicitations over three years would mitigate the risk of a single solicitation overstating (or understating) 2010 prices. According to PPL Electric, the six procurements should provide a reasonable 2010 POLR price, even if one or two of the solicitations are higher or lower due to unusual events. In reply to the monthly pricing proposal of RESA, *et al.*, PPL Electric opines that forcing all customers onto monthly POLR pricing in January 2010, after fourteen years of capped generation rates, is a prescription for chaos and customer revolt as it would expose customers to extreme price volatility. PPL Electric avers that the vast majority of customers are not prepared to manage this level of price volatility. PPL Electric discounts RESA, *et al.*’s suggested solution to this volatility of a Commission “workshop” as a way, presumably, of administratively overriding market prices. PPL Electric maintains that a one-year bridge period to statewide competition is not the time to force all small customers to monthly market pricing. (PPL Electric R.Exc. at 6-8).

Next, PPL Electric criticizes Dominion Retail’s suggested proposals as being extreme. The Company notes that first, Dominion Retail asserts that the only authorized mechanism for the POLR provider is to buy all energy on a real-time basis to

serve customers, but alternatively suggests that PPL Electric should undertake one or two solicitations in 2009 for a three to five year fixed price product. PPL Electric opines that Dominion Retail's arguments are inconsistent, without logic and were correctly rejected by the ALJ. PPL Electric maintains that its CBP plan was designed to be simple and understandable for all participants – customers, suppliers and marketers and RESA, *et al.*'s and Dominion Retail's Exceptions should be denied. (PPL Electric R.Exc. at 8-9).

In reply to Dominion's "transparency" assertion, PPL Electric states that it never said that marketers could not know the results of each solicitation, but stated that it would leave to the plan's independent third party evaluator and the Commission to decide whether bid results may be released. PPL avers that this is its position to avoid questions of the involvement of PPL Electric in the process. (PPL R. Exc. at 9).

The OCA replies that RESA, *et al.*'s and Dominion Retail's interpretation of Section 2807(e)(3) must be rejected as the statutory requirement to acquire supply at "prevailing market prices" is not as narrow as these Parties argue, nor is such an interpretation consistent with the wholesale markets where supply is acquired. The OCA opines that prevailing market prices reflect the product which is being acquired, the term of the acquisition and the price at the time the product is acquired and that the "prevailing market prices" standard of the Act reflects the reality of the multiple products in the market. According to the OCA, the ladder approach proposed by PPL Electric is a useful and valuable tool to mitigate the timing risk associated with the procurement of a single year's supply, and is completely in accord with the Act. The OCA also notes its agreement with the ALJ's recommendation to reject the alternative procurement proposals of RESA, *et al.* and Dominion Retail. (OCA R.Exc. at 2-8).

In its Reply Exceptions, the OSBA states that it agrees with the ALJ that PPL Electric's CBP is a reasonable methodology as it can mitigate the price volatility associated with purchasing electrical energy in the current marketplace. However, the

OSBA notes that it does not advocate the adoption of PPL Electric's proposed "six bids over three years" as a paradigm that should serve in any way as precedent for any other proceeding before the Commission. According to the OSBA, the proposal set forth in this proceeding is simply one way to avoid, in as reasonable a manner as possible, a reoccurrence of the "Pike" incident. The OSBA opines that nothing in Section 2807(e)(3) of the Public Utility Code prohibits the use of a multi-year procurement strategy as set forth in the CBP, and until the Commission promulgates regulations regarding such, there is no limit on the time frame for the procurement of POLR energy as long as each procurement occurs through a competitive process. The OSBA further notes its agreement with the ALJ's rejection of RESA, *et al.*'s and Dominion's alternative procurement proposals and opines that PPL Electric's CBP proposal is the most reasonable plan for obtaining supply for small C&I customers for 2010. (OSBA R.Exc. at 4-7).

d. Disposition

Based upon the discussion and rationale presented above, we find that for this limited, one-year interim POLR period, the procurement plan proposed by PPL Electric is appropriate and should be adopted. This proposal provides for a reasonably low level of risk and will reflect prevailing market prices for the interim period of 2010. We find that the arguments of RESA, *et al.* and Dominion concerning the "prevailing market prices" standard as overly restrictive and narrow and inconsistent with the wholesale electric markets where supply is acquired. We are in agreement with the OSBA that nothing in Section 2807(e)(3) prohibits the use of a multi-year procurement strategy proposed by PPL Electric and with the OCA that the laddered approach is a useful tool to mitigate the timing risk associated with the procurement of supply. We note that the OSBA is correct that our adoption of PPL Electric's proposed six bids over three years should not be interpreted as precedent for any other proceeding before the

Commission. Since we find that PPL Electric's CBP proposal is appropriate, we hereby reject the alternative proposals submitted by both RESA, *et al.* and Dominion Retail.

However, we concur with the concerns expressed by Dominion related to the transparency of PPL Electric's plan. We agree that price transparency of the winning supply bids should be enhanced so that consumers can better anticipate and prepare for future POLR service rate increases, and to facilitate market entry by EGSs. Therefore, PPL Electric shall provide the Commission and all parties estimates of retail prices 15 days after the awarding of bids in each round. The Commission finds that, in this manner, individual bidder information would remain confidential, while consumers and other market participants can receive better information on anticipated market prices. Accordingly, we shall adopt the ALJ's recommendation and deny the Exceptions of RESA, *et al.* and deny, in part, and grant, in part, the Exceptions of Dominion Retail.

3. Large Commercial and Industrial Customers

a. Positions of the Parties

PPL Electric substantially modified its original POLR plan for large C&I customers. The Revised CBP provides that there will be a single solicitation in October 2009 for fixed price service to these large customers. Interested customers are required to sign up for the solicitation in advance, but are not required to take the fixed price option. After the solicitation, PPL Electric will provide the resulting prices to those customers who had signed up; they then have 30 days to affirmatively select the fixed price option. Customers who select the fixed price service will be free to shop in 2010 without restriction, except that they must comply with the company's existing Generation Rate Adjustment (GRA). Any large C&I customer that does not opt-in to the fixed price service will receive real-time hourly service for 2010 as its POLR default service, with this supply obtained through a separate solicitation process. PPL Electric proposed to bid out the real-time hourly priced POLR service to a wholesale supplier, with the costs

associated with the hourly-priced POLR service passed through to the customers who select it. (PPL Electric MB at 38; PPL St. 1 at 5; PPL St. 1-R at 14-16).

Two Parties objected to PPL Electric's proposal. FES did not object to the proposal for both a fixed rate service and real-time hourly service for the interim period (although it prefers no fixed price offering in a truly competitive environment), but argued that the fixed rate service, rather than the real-time hourly service, should be the default. FES' position is that the two-step procurement plan proposed by PPL Electric should be rejected in favor of a single-step plan in which all large C&I customers are included in the fixed price option, unless the hourly pricing option is selected. FES explained that any POLR plan adopted by the Commission should be easy for customers to understand and easy for PPL Electric to implement and should address the customers' needs without creating barriers to the development of competition. It asserted that the PPL Electric proposal is unnecessarily complicated, requires a duplication of effort for both the customers and PPL Electric, and does not minimize volume risk and related price premiums and that the fixed price option better meets the needs of the majority of the large C&I customers. (FES MB at 4-10).

RESA, *et al.* supported the real-time hourly service as the default service, but objected to the fixed rate option. RESA, *et al.* argued that there should be no fixed price option, that all POLR service for the large C&I customers should be based on hourly pricing. It asserted that, where this has occurred, "robust competition among numerous EGS providing competitive product alternatives has developed with successful results," citing the experience of Duquesne's large C&I customers. It also claimed that its proposed modifications will support efficient energy usage, energy conservation, and demand response programs. (RESA, *et al.* MB at 13-16).

b. ALJ's Recommendation

The ALJ recommended that PPL Electric's proposal be accepted and that both the FES and RESA, *et al.* positions be rejected. With regard to the FES position, the ALJ stated that there has been no showing on the record that the majority of large C&I customers will find the process proposed by PPL Electric to be difficult or burdensome, or that they would prefer a fixed rate as the pricing default for POLR service during the interim year. The ALJ further noted that FES is correct that there certainly are large C&I customers who would prefer fixed price service; that is why it is important that this type of service be offered as an option. She concluded that, while ease of use by customers is an important consideration, it must be remembered that this is a transition plan designed to accommodate the move to a fully competitive retail market and PPL Electric's proposal will facilitate that process, while not being unduly burdensome for any customer regardless of what pricing option that customer selects. (R.D. at 40-41).

With regard to the RESA, *et al.* position, the ALJ stated that, while FES may have overstated the preference for a fixed price POLR option among PPL Electric's large C&I customers, there is no question that there are customers who are unable to respond to hourly market prices at this time. The ALJ concluded that while RESA, *et al.* cited to the percentage of Duquesne's large C&I customer load that is served by EGSs, it failed to note that, during the transitional period, there is an optional fixed price option offered by Duquesne through June 1, 2007. The ALJ adopted the position of PPLICA in its Reply Brief at 5, "No reason has been presented, nor does one exist, for the Commission to require PPL to be the only major Pennsylvania utility to offer only hourly-priced POLR service in the first year after expiration of its rate caps, especially when the final POLR regulations addressing this issue have not been issued." According to the ALJ, PPL Electric's customers deserve the same fixed price option that was provided to Duquesne's customers. (R.D. at 41-42).

c. Exceptions

RESA, *et al.* excepts that the ALJ erred in adopting a fixed rate option for large C&I customers based on the conclusion that these customers “deserve the same fixed price option that was provided to Duquesne’s customers.” RESA, *et al.* avers that the ALJ misconstrued the evidence and argument that, during 2010 when PPL Electric’s special plan will be in effect, Duquesne’s large C&I customers will not have a fixed price option because it will have expired on May 31, 2007 – and that competitive suppliers immediately stepped up in Duquesne’s market to provide fixed price service to large C&I customers. RESA, *et al.* offers that there is no reason to believe that the same result will not occur if PPL Electric’s hourly priced service for large C&I customers is the only option. RESA, *et al.* argues further that the ALJ also ignored evidence that, where hourly priced service is the only default service for large C&I customers, robust competition among numerous suppliers has developed. RESA, *et al.* requests the Commission to reject PPL Electric’s fixed rate option for large C&I customers. (RESA Exc. at 8).

In reply, PPL Electric avers that RESA, *et al.*’s citation to what Duquesne intends to provide to large C&I customers after five years of post-rate cap POLR service is not relevant to what PPL Electric should provide in its first year of post-rate cap POLR service. PPL Electric notes that RESA, *et al.*’s contention ignores the fact that no Pennsylvania EDC has been required to offer only hourly service to large C&I customers in the initial years following conclusion of the generation rate cap. PPL Electric further maintains that in 2010, the major EDCs surrounding PPL Electric’s service territory will still be subject to rate caps and thus will continue to provide annual fixed rates for large C&I customers. (PPL Electric R.Exc. at 10).

In its Reply Exceptions, PPLICA states that, irrespective of the status of Duquesne’s large C&I customers in 2010, Duquesne has provided its large C&I customers with a transitional fixed-price POLR product. PPLICA avers that Duquesne’s

fixed-price option is not scheduled to terminate until June 1, 2007, nearly five years after the expiration of Duquesne's rate caps. Therefore, according to PPLICA, the comparison to Duquesne's service territory actually supports a transitional fixed-price POLR option. (PPLICA R.Exc. at 2-3).

PPLICA next avers that, to date, there are very few EGSs currently operating in the PPL Electric territory, making it all the more important for PPL Electric to offer this necessary fixed price option during the next stage, and future stages, of retail market development. PPLICA opines that RESA, *et al.* fails to provide any explanation indicating why they, or any other EGS, would be unable to compete with PPL Electric's fixed price POLR service. PPLICA alleges that RESA, *et al.* simply wants the opportunity to offer the only fixed-price alternative and avers that forced shopping can hardly be cloaked in the spirit of "competition." PPLICA maintains that the ALJ's acceptance of PPL Electric's fixed price option for large C&I customers is appropriate and necessary. (PPLICA R.Exc. at 3-4).

d. Disposition

Based upon the evidence of record, we are in agreement with the ALJ's recommendation that PPL Electric's fixed price option for large C&I customers is appropriate considering the one year transitional nature of its CBP. We find the arguments of PPL Electric and PPLICA compelling that Commission findings in Duquesne, and other interim POLR proceedings, would support the adoption of a fixed price option in PPL Electric's CBP. Accordingly, the Exceptions of RESA, *et al.* are denied.

4. Generation Rate Adjustment (GRA)

a. Positions of the Parties

Initially, it should be noted that the burden of proof on this issue is on FES and RESA, *et al.* PPL Electric withdrew its proposal regarding the GRA; the effect is that the Revised CBP is silent with respect to it, leaving PPL Electric's existing GRA Rider untouched by the proposal. Therefore, pursuant to 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.

Both FES and RESA, *et al.* have recommended that PPL Electric's current GRA charge be eliminated, because, in their opinion: (1) it creates a barrier to competition; (2) the reasons for implementing it no longer exist; and (3) it improperly shifts risk from wholesale suppliers to shopping customers. They both cited the Commission's rejection of certain shopping restrictions and a GRA charge proposed by Duquesne¹⁷. In addition, FES recommended that if the GRA is not eliminated, the 30-day period for large C&I customers to elect the optional fixed price service should be extended. (R.D. at 43).

As PPL Electric explained, the existing GRA continues to serve as an important protection against "seasonal gaming" and should be retained. (PPL Electric MB at 55). According to PPL Electric, short-term gaming creates uncertainty for POLR bidders, thereby increasing their bids. Any revenues collected from the GRA related to service in 2010 would be remitted to the wholesale suppliers, by applicable customer class, to compensate them for the cost of short-term POLR service. Additionally, PPL Electric stated that the GRA is not an impediment to shopping, as any customer who has

¹⁷ See *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071 (August 23, 2004); 2004 Pa. P.U.C. LEXIS 42 (*Duquesne POLR III*).

taken POLR service for a year or longer may shop and not be subject to the GRA. (R.D. at 43).

While it is correct that the Commission disapproved certain restrictions proposed by Duquesne in *Duquesne POLR III*, the shopping provisions that Duquesne proposed to impose were substantially more onerous than PPL Electric's currently effective GRA. (R.D. at 44).

PPL Electric's GRA and switching provisions are much different. First, there is no minimum stay requirement (or GRA) on residential customers.¹⁸ Second, PPL Electric's GRA does not have an annually-renewing minimum stay requirement for either small¹⁹ or large C&I 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. (R.D. at 44 – 45).

As previously stated, FES argued that PPL Electric's GRA should be eliminated because it is no longer necessary. FES explained that shopping risk should be placed on the party best able to manage it, which in this case is the wholesale supplier. "Potential POLR suppliers deal with market risks of all types on a daily basis. Those that manage risk better than others are rewarded with supply contracts, thus incenting

¹⁸ See 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).

¹⁹ *Duquesne's POLR III* had proposed that 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. This was rejected by the Commission. (R.D. at 44).

suppliers to create innovative risk management techniques and strategies that provide a cost edge over other potential suppliers.” (FES MB at 15; FES St. 1 at 9; R.D. at 46).

Finally, FES recommended that, if the GRA is retained, the 30-day period in which customers decide if they wish to take the fixed price option should be extended to allow adequate time for marketing activities.

b. ALJ Recommendation

The ALJ found that neither FES nor RESA, *et al.* established on the record that gaming will not occur, that the GRA is no longer necessary or that there are alternative measures that can be taken to protect against it. (R.D. at 43).

The ALJ found that PPL Electric’s GRA, unlike Duquesne’s mechanism, does not violate the anti-discrimination provisions of Section 2807(e)(4) of the Competition Act with respect to small C&I customers. New customers and existing customers are treated the same under PPL Electric’s GRA, because 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. (R.D. at 45).

The ALJ agreed with PPL Electric that FES has overstated this risk and presented insufficient reasoning to modify the PPL Electric’s existing GRA. The record indicates that only about 100 PPL Electric customers currently shop. 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 POLR service. The ALJ found this to be a reasonable restriction on gaming, as valid now as when the Commission approved the GRA in 2001. (R.D. at 46).

For the following reasons the ALJ found that this recommendation should be rejected. First, it was presented for the first time in FES' Main Brief, thus preventing other parties from addressing it. In addition, as PPL Electric notes, FES failed to establish that the existence of the current GRA presents a problem. As stated in the PPL Electric Reply Brief at 32, 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. (R.D. at 46).

In conclusion, the ALJ found that PPL Electric's existing GRA continues to serve as an important protection against "seasonal gaming" and should be retained. (R.D. at 47).

c. Exceptions

In its fourth Exception, RESA, *et al.* states that, aside from erroneously concluding that the parties opposing continuation of PPL Electric's existing GRA failed to establish "that gaming will not occur [or] that the GRA is no longer necessary," the ALJ erred in rejecting the fundamental legal problem with PPL Electric's GRA – it treats customers returning from shopping differently than new customers. The ALJ concluded: "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." (R.D. at 45). RESA, *et al.* avers that the ALJ's conclusion is wrong because it misses the point. RESA, *et al.* believes that any new customer is free to switch to an EGS without being subject to the GRA and without being

required to be on POLR service for twelve months, (RESA, *et al.* Exc. at 9) which is different treatment given to an existing customer *returning from shopping*, who is not free to switch to an EGS without being subject to the GRA until after being (or remaining) on POLR service for twelve months. RESA, *et al.* believes that this is clearly prohibited by Section 2703(e)(4) of the Electric Choice Act and the Commission's *Duquesne POLR III* decision. (RESA, *et al.* Exc. at 9 – 10).

In reply, PPL Electric states that the Exception of RESA, *et al.* should be denied by the Commission and provides support for the continuance of its GRA, as originally approved by the Commission. PPL Electric explains that its GRA provides protection from gaming by charging customers the difference between market prices and the fixed POLR prices if the customer leaves an EGS, returns to POLR service and then leaves POLR service again within a one-year term. (PPL Electric R.Exc. at 18). Additionally, PPL Electric states that it is only when a customer leaves POLR service, and then subsequently returns to POLR service for fewer than twelve months that the GRA is applicable. (PPL Electric R.Exc. at 19).

d. Disposition

Section 2807(e)(4) states:

If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

66 Pa. C.S. § 2807(e)(4).

PPL Electric's Supplement No. 2, Electric Pa. P.U.C. No. 201, Second Revised Page No. 6, Effective January 1, 1999, which addresses Rule 2 – Requirements for Service states in part B – Service Contracts (non-residential):

(2) Service is for an initial term of one year except as otherwise specifically provided.

Therefore, pursuant to PPL Electric's currently effective, Commission approved tariff, after a new non-residential applicant initiates service with PPL Electric, that new customer is obligated to remain a delivery service customer of PPL Electric for an initial term of one year, except as otherwise specifically provided within the customer's contract with PPL Electric.²⁰ If that non-residential customer subsequently switches to an alternate supplier for energy services and then returns to PPL Electric for energy services, that customer may be subject to the GRA²¹ if the customer subsequently decides to leave PPL Electric's energy services, pursuant to the terms of the GRA.

This is quite different from the *Duquesne* proposal for small C&I customers, which would have allowed the new applicant to switch from the electric distribution company (EDC) *at any time* during the initial one year term, unlike the restriction imposed upon a returning small commercial or industrial customer who, if upon returning to the EDC, would be subject an *annually renewing* twelve-month minimum stay requirement. These small C&I customers could opt out of the minimum stay requirement by paying the GRA. The *Duquesne* proposal was rejected by the Commission in its August 23, 2004 Order.

We believe that GRAs add complexity and unnecessary administrative costs to the process of facilitating consumer choice and, given the short term nature of the Plan which has been proposed by PPL Electric and switching flexibility provided to existing POLR customers, we find the currently effective GRA structure to be acceptable. However, consistent with the short term nature of the Plan, we believe that the GRA penalty should only be effective through the end of the fixed rates established in the Plan

²⁰ See, PPL Electric Tariff, Rule – 2 – Requirements for Service.

²¹ PPL Electric's GRA Rider does not apply to Residential Service, Residential Service Thermal Storage or Residential Service Time of Day rate schedules.

for the applicable default service rate schedules. It is our opinion that the current GRA structure will provide equivalent protections for wholesale POLR suppliers during the Plan's one year term.

Accordingly, based upon the discussion above, Section 2807(e)(4) of the Act, PPL Electric's tariff and our review of the record, we will deny the Exceptions of FES and RESA, et al., but shall alter PPL Electric's currently effective GRA, to require that the GRA charges expire at the end of the CBP period, thereby modifying the finding of the ALJ.

5. Reconciliation of the Generation Supply Charge

a. Positions of the Parties

A component of the Revised CBP is PPL Electric's proposed reconciliation of the Generation Supply Charge (GSC). Under PPL Electric's proposal, the GSC for 2010 will be based on the results of competitive market solicitations made in 2007, 2008 and 2009, plus administrative costs of conducting and implementing these solicitations. At the end of 2010, PPL Electric will compare revenues collected under the GSC with expenses incurred under the SMA and associated administrative costs, and any difference will be reflected as a surcharge or credit to 2011 POLR charges. As noted by PPL Electric, other than RESA, *et al.* and Dominion Retail, all parties to this proceeding either support or do not object to this proposal. (R.D. at 47).

As proposed by PPL Electric, the reconciliation mechanism would provide for the over-recovery or under-recovery associated with the differences between the company's estimated cost to acquire the generation supply and its actual costs. Additionally, the ALJ stated that, not only is reconciliation not prohibited by the statute, there are compelling reasons why it should be permitted in this proceeding. Without reconciliation, PPL Electric will not be assured full cost recovery, would be at risk of

under-recovery and would require a profit “adder” to compensate it for that risk. For example, without reconciliation, PPL Electric is at risk for under-recovery for supplier defaults, changes in administrative costs, for its Rate Schedule RTS rate design (in the event RTS sales are higher than projected in the GSC) and, potentially, for its Rate Schedule RS rate design under the stipulation with OCA. (R.D. at 48).

One of Dominion Retail’s concerns is that the limited reconciliation will inhibit the development of a competitive retail market by distorting the POLR price and making it difficult for customers to make accurate price comparisons: “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.” (R.D. at 49 – 50).

Another argument presented by Dominion Retail is that allowing PPL Electric to defer the costs associated with the risks of POLR service and then recover these costs through reconciliation means that customers will see an “artificially low POLR rate” and will give PPL Electric an unfair advantage over EGSs, who do not have this option. (R.D. at 50).

b. ALJ Recommendation

The ALJ found that Dominion Retail’s concern regarding development of the competitive market to be overstated, as there can be little doubt that this limited reconciliation proposal will not have a substantive effect on the development of retail competition. First, the reconciliation is only for a one-year period. In addition, the amount to be reconciled, will probably, in the words of Dominion’s own witness, “present minimal rate impact for customers in PPL Electric’s service territory” (R.D. at 50).

The ALJ also rejected Dominion Retail’s argument that the deferral of costs associated with risk will mean that customers will see an artificially low POLR rate. The ALJ supported rejection of this argument by stating that there is no record evidence to support any conclusion that an EGS will be put at any disadvantage whatsoever. Either it can adopt a reconciliation mechanism of its own, or it can market itself as having a competitive advantage if it does not have some type of reconciliation. (R.D. at 50).

It is important to remember that the service offered by an EGS is simply not the same as the POLR service that will be offered by PPL Electric. As stated in PPL Electric’s Reply Brief at 26: “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.” (R.D. at 51).

The ALJ concluded that PPL Electric’s proposal for a reconciliation of the GSC for the interim one-year period should be approved by the Commission. It is consistent with the Competition Act’s requirement that the supplier of POLR service fully recover all reasonable costs, permits PPL Electric to pass through only the costs of the POLR service provided, results in lower rates by permitting the company to avoid risk, and is not likely to impair the development of a fully competitive retail market in PPL Electric’s service territory. (R.D. at 51).

c. Exceptions

Dominion Retail and RESA, *et al.* filed Exceptions to ALJ’s allowance of PPL Electric’s proposed reconciliation mechanism. Dominion Retail asserts that the Act

does not authorize reconciliation for POLR service and that the rules of Statutory Construction operate to prohibit such a POLR mechanism. (Dominion Exc. at 8). Dominion also believes that reconciliation for POLR service harms competition and is otherwise bad policy. (Dominion Exc. at 10).

Dominion Retail asserts that the Competition Act provides for reconciliation of a certain type of costs, namely stranded costs, and does not provide for reconciliation of default service costs. Thus, according the rules of statutory construction and the principles developed there under the mention of a thing in one place in a statute implies the exclusion of that thing in other places.²² With the absence of the term ‘reconciliation’ in Section 2807(e)(3), makes it clear that the legislature intended the phrase ‘recover fully all reasonable costs’ means something other than reconciliation. (Dominion Exc. at 9).

The ALJ contended that one reason why reconciliation is a “good idea” is that it “will ensure that customers do not pay excessive POLR rates.” (R.D. at 48.). Dominion avers that if this statement is intended to suggest that customers will pay a “fair” price if reconciliation is permitted such a suggestion is ill-founded because of the potential for interest on any under-recovery of energy costs and because reconciliation will divorce customers from real-time price signals and allow the utilities rates to be non-reflective of the actual market at almost any point in time. (Dominion Exc. at 11).

Lastly, Dominion contends that it would be in violation of the Commission’s regulations, which require that the “agreed upon price and the disclosure statement shall reflect the marketed prices and the billed prices.” (52 Pa. Code § 54.5(a)). (Dominion Exc. at 12).

²² *Commonwealth v. Spotts*, 552 Pa. 499, 716 A.2d 580 (1998).

In its Exceptions, RESA, *et al.* asserts that the allowance of an EDC reconciliation mechanism regarding POLR cost recovery is a competitive advantage to the EDC by permitting inclusion and recovery of out-of-period costs. (RESA, *et al.* Exc. at 10).

In reply, the OCA states that the Act does not specifically prohibit reconciliation of any costs associated with POLR service or address the recovery mechanism of these costs. Rather, the Act provides that the EDC shall recover fully its reasonable costs of POLR service.²³ (OCA R.Exc. at 10).

PPL Electric, in its Reply Exceptions cite Section 2807(e)(3) of the Act which specifically states that the POLR provider “shall recover fully all reasonable costs.” 66 Pa. C.S. § 2807(e)(3). Additionally, PPL Electric contends that, without reconciliation, this statutory mandate is not met. (PPL Electric R.Exc. at 14).

PPL Electric argues that Dominion Retail’s assertion that a reconciliation of POLR costs is not provided for with specificity within Section 2807(e)(3) is countered by the fact that since reconciliation is the only method that ensures full recovery under Section 1307 of the Code, the Commission has the statutory authority to authorize reconciliation of the costs of POLR service. (PPL Electric R.Exc. at 14).

d. Disposition

Final POLR regulations have not yet been adopted, and there is no assurance when they will be in effect. Comments were submitted to the Commission on April 27, 2005, and Reply Comments on June 27, 2005. On November 18, 2005, the

²³ The Commission recently concluded in a Policy Statement that language in Section 2804(9) that allows an EDC to “fully recover” universal service costs permits a reconcilable mechanism. *Final Investigatory Order*, Docket M-00051923, *slip op.* at 15 (Order entered December 18, 2006).

Commission entered an order reopening the comment period as part of its implementation of the AEPS Act, with comments due by March 8, 2006, and Reply Comments on April 7, 2006. On February 8, 2007, the Commission approved publication of an advance notice of final rulemaking, along with an associated proposed policy statement, with comments due on or before March 2, 2007.

As PPL Electric notes in its Main Brief at 30-31, the deadline established by the Independent Regulatory Review Commission (IRRC) for adoption of the final rulemaking was extended to April 7, 2008, because it is statutorily mandated that, if final-form regulations are not adopted within two years of the close of the public comment period, the proposed regulations are deemed withdrawn. 1 Pa. Code § 307(a). Indeed, it is likely that the deadline will be extended to March 2009 by IRRC as the result of the Commission's action in allowing additional comments to be filed on or before March 2, 2007. While it is presumed that the final regulations will be adopted before then, it is not certain that the regulations will be in effect in sufficient time for PPL Electric to effectively develop an approved POLR program. (R.D. at 31).

In recommending approval of PPL Electric's reconciliation mechanism, the ALJ stated that PPL Electric's proposal is consistent with the Competition Act's requirement that the supplier of POLR service recover fully all reasonable costs, permits PPL Electric to pass through only the costs of the POLR service provided, results in lower rates by permitting the company to avoid risk, and is not likely to impair the development of a fully competitive retail market in PPL Electric's service territory.

At this point we shall clarify that the POLR cost elements subject to reconciliation have been enumerated in our proposed regulations at § 69.1808.²⁴ This listing is more detailed than the language used by PPL Electric throughout its direct and

²⁴ Proposed Policy Statement, Order entered February 9, 2007, Docket No. M-00072009.

rebuttal cases to describe POLR costs which may be incurred to serve its POLR customers. Additionally, POLR costs that may be legitimately related to and allocated to default service in PPL Electric's pending distribution base rate proceeding at Docket No. R - 00072155, may also be considered within the reconciliation of POLR costs.

We believe that reconciliation of POLR costs is the only way for PPL Electric to meet the statutory requirement regarding full recovery of all reasonable costs. Additionally, it is important to match current POLR costs with current POLR revenues. This matching concept will also ensure the timely collection or refund of any imbalances and will minimize the potential for future customers POLR to be subsidized by current POLR customers. In this regard we direct that PPL Electric implement a quarterly reconciliation mechanism, as envisioned by our Proposed Regulations. Accordingly, we shall deny the Exceptions of Dominion and RESA, *et al.*, as discussed above and adopt the ALJ's recommendation to allow the proposed reconciliation, modifying the reconciliation period from annually to quarterly, consistent with our Proposed Regulations.

6. SMA Default Provision

a. Positions of the Parties

Constellation has proposed that the Commission direct PPL Electric to revise the Supply Master Agreement (SMA) to include a two-way default provision, which would allow a termination payment to be "due to or due from the Non-Defaulting Party as appropriate." (Constellation MB at 4). The provision in the SMA proposed by PPL Electric provides that, "[i]n no event will a termination payment result in payment from the Non-defaulting Party to the Defaulting Party." (SMA § 12.3(a)(ii)).

Constellation stated that two-way default provisions are industry-standard and would encourage parties to uphold their obligations under the SMA. Constellation

argued that failure to include a two-way default provision would reduce supplier participation in the RFPs and lead to less competitive POLR prices. (Constellation MB at 9). Constellation opined a two-way default provision would prevent the situation where the non-defaulting party will not have to make any payments to a defaulting party, even if the non-defaulting party at the time of the termination owes money to the defaulting party for services already provided. (Constellation MB at 5). Constellation explained that PPL Electric under a one-way default provision may be in a position to benefit by “attempting to catch a supplier on a ‘technical default’ under the SMA at some point in time when the supplier has provided supply for a portion of a billing month, and could lose both the forward value of the contract and the payments for supply already delivered.” (Constellation MB at 5).

PPL Electric opposed Constellation’s proposed revision stating that, “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 agreements with PPL Electric to the ultimate detriment of its customers and the Commonwealth.” (PPL Electric RB at 32). PPL Electric argued that Constellation’s proposal is a blatant attempt to guarantee the full economic benefits of the SMA to a supplier who breaches its contract. (PPL Electric RB at 34). In response to Constellation’s concern about a defaulting supplier not being paid for services rendered prior to breach, PPL Electric suggested that the situation could be cured by the addition of the following to the last sentence of Article 12.3(a) of the SMA: “with the exception for any amount due, after set off, for services provided by the defaulting party prior to the Early Termination date.” (PPL RB at 36).

b. ALJ Recommendation

ALJ Chesnut rejected Constellation’s proposed revision to the SMA but accepted PPL’s proposed revision as a cure for Constellation’s concerns. ALJ Chesnut

found that, “[w]hile having a two-way default provision on the surface appears symmetrical, it provides just as much opportunity for suppliers to gain an advantage as Constellation contends exists for PPL Electric under the unilateral provision.” (R.D. at 52). The ALJ determined that given the nature of the service to be supplied, it is reasonable and appropriate for the SMA to contain a unilateral default provision, in order to provide sufficient deterrence to a supplier default. (R.D. at 53).

c. Exceptions

Constellation excepts to the ALJ’s approval of PPL Electric’s proposal POLR SMA arguing that: (1) it is inconsistent with prior Commission decisions approving SMAs with two-way default provisions, such as the *Penn Power* POLR proceeding; (2) any policy decision to utilize such a non-standard default provision is better left to the separate stakeholders proceeding established to develop standardized SMA and RFP documents; and (3) the ALJ’s decision is not supported by evidence of record. (Constellation Exc. at 2-14). Constellation contends that PPL Electric’s suggested change to account for payments for service provided prior to a default does not sufficiently address the needs that suppliers have for industry-standard two-way default provisions. (Constellation Exc. at 12). Constellation states that the industry-wide desire to include a two-way default provision in agreements is due, in part, to credit agencies’ views that such provisions are critical. (Constellation Exc. at 13; Tr. at 270). According to Constellation, “[w]ith two-way default provisions, with respect to PPL and a winning supplier, credit agencies will see that both PPL’s POLR supply requirements and the supplier’s forward load obligations, respectively, are more certain.” (Constellation Exc. at 13; Tr. at 271).

PPL Electric replies that Constellation seeks to have the Commission approve a two-way default provision, whereby a defaulting party can receive a payment for the future value of the contract without providing the contracted-for services. PPL

Electric rejects Constellation's assertion that a two-way default provision should be adopted because a two-way default provision was adopted in previous POLR proceedings, such as *Penn Power*. PPL Electric notes that the Commission indicated that its *Penn Power* decision is not controlling precedent. *Petition of Penn Power Company*, P-00052188 (Order entered April 28, 2006), 2006 Pa. PUC LEXIS 56, *13. PPL Electric rejects Constellation's assertion that a two-way default provision is the industry standard, arguing that contracts with one-way default provisions exist in the industry. (PPL Electric R.Exc. at 21; PPL Electric RB at 32-33). PPL Electric reiterates its argument that the only thing added by the two-way default provision is an assurance that suppliers can receive the future value of their contract even when they default. (PPL R.Exc. at 21). PPL notes that the stakeholder proposals developed in the Commission's stakeholder proceeding to develop standardized SMA-RFP rules will not be presented to the Commission until July 2007, and it is unknown when the stakeholder recommendations will be considered by the Commission. (PPL R.Exc. at 21). PPL Electric states that the first solicitations under the CBP are planned for the Spring of 2007 and cannot await the stakeholder process.

d. Disposition

Several additional revisions to the POLR SMA were agreed upon between PPL Electric and Constellation. These include:

- The addition of a new Paragraph 7.6, allowing for netting of mutual debts and payment obligations;
- The addition of further language to Article 10 – Limitation of Remedies, Liabilities and Damages, to adopt additional contract language related to liquidated damages;
- The addition of further language to Paragraph 11.1 – Force Majeure to adopt additional contract language further defining responsibilities in the event of a declaration of Force Majeure;
- The addition of Paragraph 14.7 – Accelerated Payments to incorporate additional contract language related to Seller's

rights to demand accelerated payments from Buyer (PPL Electric) in the event of a Buyer Downgrade Event;

- The expansion of Paragraph 16.5 – Confidentiality to incorporate additional contract language further defining each Party’s duties and rights related to the maintenance of confidential information.

(PPL Electric C.E. 5, Appendix 1 to Stipulation).

With regard to Constellation’s claim that the SMA at issue here must be revised to meet an industry-wide standard or that it must contain the same provisions as SMAs approved by this Commission in previous POLR proceedings, such as Penn Power’s, we disagree. Industry-wide POLR SMAs have yet to be approved by this Commission. We do not expect each SMA submitted for our approval to be identical, only that they should be reasonable and in the public interest. This Commission clearly indicated that the *Penn Power* decision was not to serve controlling precedent. *Petition of Penn Power Company* at *13. Moreover, there is no indication in the Commission’s order that any party focused upon, let alone challenged, the default payment provisions. Also, the *Penn Power* order does not indicate that the Commission considered whether a defaulting party should be entitled to profits related to future services not provided due to default. As such, the *Penn Power* decision is not controlling on this issue.

Section 12.3 of the PPL Electric SMA establishes the general rule that a non-defaulting party can set off any amounts it owes to the defaulting party when calculating damages for default. The treatment of the Termination Payment is a subset of this set off process. The SMA reflects an acceptable and commercially reasonable way to address contract defaults by allowing a non-defaulting party to set off or withhold amounts it owes to the defaulting party. This process recognizes that in most cases the damages to the aggrieved (non-defaulting) party are likely to exceed the amounts it may owe to the defaulting party, thereby justifying the set off/withhold right. Both parties to the contract know going into the transaction that, if they default, there is the possibility

that any funds owed to them can and will be held and used to offset any damages caused by their default; this is neither an unfair nor unreasonable result.

PPL Electric agrees with Constellation that, under PPL Electric's current SMA, a defaulting supplier could be at risk for not recovering payments for services provided before a breach occurs. PPL Electric's suggestion that the SMA be revised to provide that payment for service provided by the defaulting party prior to default will be made by the non-defaulting party adequately addresses this problem. Constellation's scenario of PPL Electric using the unilateral termination provision to advantage itself by "catching a supplier in a technical default," is addressed by the curative provisions contained in the SMA, thus allowing a technically defaulting supplier to cure its default under certain conditions. Based on the above discussion we will deny Constellation's Exceptions on this issue and approve the PPL Electric SMA as amended by the addition of the following to the last sentence of Article 12.3(a) of the SMA: "with the exception for any amount due, after set off, for services provided by the defaulting party prior to the Early Termination date."

F. Other Issues

1. Specific Hourly-Priced Formula

a. Positions of the Parties

PPLICA requested that the Commission direct PPL Electric to include a specific formula relating to the hourly-priced service that will be provided to large C&I customers that do not elect the fixed-price option. (PPLICA MB at 9-10). PPL Electric's position is that such a formula is unnecessary; because it will bid out this service to a wholesale supplier and will simply pass the costs to the customers.

b. ALJ's Recommendation

The ALJ concluded that the issue was resolved when PPL Electric agreed that it would work with Parties to develop appropriate tariff language to confirm the pricing of the real-time hourly service proposal. (R.D. at 53, Tr. at 132-134).

c. Disposition

No Party excepts to the ALJ's determination in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

2. Day-ahead Hourly Price Option

a. Position of the Parties

Next, PPLICA argued 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. (PPLICA MB at 10-11). PPL Electric objected to this proposal stating that this issue was not developed on the record. (PPL Electric RB at 38). PPL Electric noted that 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. (PPL Electric RB at 38). PPL Electric argued that 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. (PPL Electric RB at 38).

b. ALJ's Recommendation

The ALJ concluded that PPLICA's proposal was not developed on the record and should be rejected. (R.D. at 54).

c. Disposition

No Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

3. IS-P and IS-T Rates

a. Position of the Parties

PPLICA explained that industrial customers currently on Rate Schedules IS-P and IS-T pay generation rates that are lower than the system average due to the utility's ability to interrupt their supply during emergency situations. (PPLICA MB at 14). PPLICA explained that under PPL Electric's proposal, the POLR generation service for all large C&I customers (including the interruptible rate schedules IS-P and IS-T) in 2010 will be firm. (PPLICA MB at 13-15). Because these customers are likely to face greater than system average increases, PPLICA requested that the Commission require PPL Electric to continue Rates Schedules IS-P and IS-T for the purpose of billing distribution charges during the 2010 CBP. (PPLICA MB at 14). PPLICA suggested that the elimination of these rate schedules should be deferred to a distribution base rate proceeding after 2010. (PPLICA MB at 15). PPL Electric agreed that this proceeding is not intended to affect the distribution portion of any distribution rate schedule including rates IS-P and IS-T. PPL Electric concurred 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 RB at 39).

b. ALJ's Recommendation

The ALJ concluded that PPLICA's proposal was inappropriate and unnecessary. (R.D. at 54). The ALJ found that 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. (*Id.*).

c. Disposition

No Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

4. Effect of Final POLR Regulations

a. Position of Parties

Finally, PPLICA requested that the Commission rule that the 2010 CBP should be eligible for revision only if the changes can be accomplished within the time frame for POLR proceedings established under the final POLR regulations. (PPLICA MB at 15-16). PPL Electric responded that a lengthy lead time might not be necessary to comply with the new POLR regulations. PPL Electric stated that if the Commission defined the acquisition, pricing, and full cost recovery processes in sufficient detail, a substantial amount of time would not be needed to adjust the CBP to comply with the new regulations. (PPL Electric RB at 40-41).

b. ALJ's Recommendation

The ALJ determined that PPLICA's request was unnecessary. The ALJ concluded that the Commission would likely provide appropriate guidance to all utilities

regarding any interim plans related to the adoption of the final POLR regulations. (R.D. at 55).

c. Disposition

No Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

5. Constellation

a. Position of the Parties

Both PPL Electric and Constellation agree that Paragraph 2 of their Stipulation (PPL Cross-Ex. Exh. 5) should be amended to read:

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.

(Constellation RB at 12; PPL Electric RB at 37).

b. ALJ's Recommendation

The ALJ accepted the revision as reasonable and recommended approval of the amended Stipulation. ALJ Chesnut noted that the revised Stipulation should reflect the clarification made by PPL Electric witness Mr. Kleha in his oral rejoinder testimony concerning the TSC. (R.D. at 55).

c. Disposition

No Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

6. OSBA

a. Positions of the Parties

Among the rate shock mitigation measures listed in the original Petition for Approval of the CBP, PPL Electric has the option of conducting an "early phase-in" of the rate increases that may result. (Original Petition at 26, ¶53). The OSBA explained that it was opposed to an early phase-in, but offered a number of conditions that should be included if this option is implemented. (OSBA MB at 13; R.D. at 55).

In response, PPL Electric explained that this proposal is not contained in the Revised CBP and that, if such a proposal were to be made, it would be considered in another proceeding. (PPL Electric RB at 37-38; R.D at 55).

b. ALJ's Recommendation

The ALJ accepted PPL Electric's response to the OSBA without any further discussion on the issue. (R.D. at 55).

c. Disposition

No Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

7. Waivers

a. Positions of the Parties

PPL Electric requested three specific rulings with respect to the CBP solicitations. First, PPL Electric requested a waiver of the Commission's final POLR regulations, if those regulations become effective prior to 2011, to the extent necessary to honor any agreements for 2010 POLR supply previously entered into under the CBP. (PPL St. 1 at 13). PPL Electric asserted that this limited waiver is necessary to provide potential wholesale bidders in the various solicitations with the assurance that their contracts will be honored. In addition, absent such a provision, PPL Electric believes that potential bidders may conclude that the risk of bidding is too great, resulting in failed solicitations. On a prospective basis, PPL Electric has stated that it will comply with all POLR regulations that are effective prior to 2011. (PPL Electric St. 1 at 13; PPL Electric St. 1-R at 5, 19-20; R.D. at 56).

In its testimony, PPL Electric noted that it requested waivers from any new POLR regulations only to the extent that supplier solicitations have been undertaken prior to the effective date of such regulations. Consistent with this testimony, we shall require

PPL Electric to file, with the Commission and other parties to this proceeding, its compliance plan for its reconciliation plan and information on the length of such bids for remaining supply contracts and whether or not it proposes to incorporate some level of short term supply into its portfolio effective during 2010.

Second, PPL Electric requested that the Commission approve the POLR SMA as an affiliated interest agreement because its unregulated generation affiliates will be permitted to participate in the solicitations. If any of those affiliates is a successful bidder for one or more tranches of POLR supply, PPL Electric would need to enter into a POLR SMA with that affiliate. According to PPL Electric, it would be impractical to review the POLR SMA as an affiliated interest contract after the bidding results are announced because the solicitation structure assumes a short turnaround time for finalizing the contract and because the simplified structure of the process assumes that all bidders will be subject to the same standardized form of contract. (PPL Electric St. 1 at 9-10; R.D at 56).

Finally, the company requested that the Commission commit that it will neither order nor approve any wholesale or retail “opt out” customer aggregation plan for PPL Electric’s service territory during the 2007-2010 period. (PPL Electric St. 1 at 10). PPL Electric explained that these plans assign customers to an EGS and require customers to affirmatively “opt out” of the assignment to remain a POLR customer. In PPL Electric’s view, the problem with an “opt out” customer aggregation plan, in the context of an RFP solicitation proposal that places shopping risk on the wholesale bidders, is that many wholesale suppliers consider this type of aggregation to present an increase in financial risk that cannot effectively be hedged. The opt-out aggregation plan thus will increase the risk premium built into any bids and also may reduce the number of participants in the bid process. (PPL Electric St. 1 at 10; R.D. at 56).

b. ALJ's Recommendation

The ALJ concluded that these requests were reasonable and noted that they were unopposed. As such, she recommended that they be approved. (R.D. at 56).

c. Disposition

No party excepts to the ALJ's recommendation on this issue. We agree with the ALJ and believe PPL Electric's request for a waiver from any new Commission POLR regulations only to the extent solicitations have been undertaken prior to the effective date of such regulations is reasonable. PPL Electric explained that, if the CBP were approved and solicitations were undertaken in 2007 and 2008, this waiver would allow the contracts with wholesale suppliers made pursuant to those solicitations, and the resulting portion of the POLR prices resulting from those contracts, to not be voided by new POLR regulations that hypothetically become effective on January 1, 2009. PPL Electric stated that they would however, to the extent possible, obtain the remaining one-third of its POLR requirement pursuant to such new POLR regulations. (PPL Electric St. 1-R at 19-20).

Additionally, PPL Electric requested that the Commission approve the POLR SMA as an affiliated interest agreement. At Docket No. G-00010886, the Commission approved an affiliated interest agreement between PPL Electric and PPL EnergyPlus to supply 100% of PPL Electric's POLR generation supply obligation from 2002 through the end of 2009. As this SMA extends to the year 2010, and the RFP bidding timeline, we agree that approval of the SMA as an affiliated interest agreement for generation supply arrangements is in the public interest. Accordingly, we will approve that agreement as required by Section 2102(b) of the Code, 66 Pa. C.S. § 2102(b).

Finally, with regard to PPL Electric's request that the Commission commit that it will neither order nor approve any wholesale or retail "opt-out" customer aggregation plan during the period of the SMA, we agree that this type of aggregation plan diminishes the potential customer base and equates to a greater risk for potential suppliers. Therefore, it could result in fewer potential suppliers participating in the bid process. As such, we find the request to be reasonable.

8. Mr. Epstein

a. Positions of the Parties

In his Reply Brief, Mr. Epstein opined that he should be included in the series of meetings that PPL Electric agreed to conduct with the OCA and SEF to develop details and a timeline for PPL Electric's expenditure of the \$875,000 consumer education budget for its CBP. PPL Electric moved to strike Mr. Epstein's Reply Brief as it was the first time his position was noted.

b. ALJ's Recommendation

By Order dated January 29, 2007, the ALJ granted PPL Electric's motion. The ALJ indicated that Mr. Epstein's proposal was not contained in testimony or a main brief, thus depriving PPL Electric (or any other party) to respond to it. The ALJ further noted that the Reply Brief also contained improper material concerning settlement negotiations. (R.D. at 57).

The ALJ noted that in the event the Commission does consider Mr. Epstein's demand, she recommend that it be denied. The ALJ further explained that while PPL Electric, if it wishes, may include Mr. Epstein in any discussion it may conduct, it should not be ordered to do so. In the ALJ's opinion, Mr. Epstein intervened in this proceeding as

an individual, and as such, his concerns are more than adequately represented by both the OCA and SEF. (R.D. at 57).

c. Disposition

We believe that the ALJ acted properly granted the Motion to Strike Mr. Epstein's Reply Brief from the record. As such, we will not consider Mr. Epstein's requests. Further, no Party excepts to the ALJ's recommendation in regard to this issue. Finding the ALJ's recommendation to be reasonable, appropriate, and in accordance with the record evidence, it is adopted.

III. CONCLUSION

For the reasons discussed above, we will grant, in part, and deny, in part, the Exceptions of the Parties in this proceeding. We will adopt the Recommended Decision of Administrative Law Judge Marlane R. Chestnut as modified by and consistent with the foregoing Opinion and Order and grant the Petition of PPL Electric as modified by the numerous Stipulations and as further modified by this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Revised Competitive Bridge Plan presented by PPL Electric Utilities Corporation, as modified by the separate Stipulations between PPL Electric Utilities Corporation and Reliant Energy Inc., the Commission's Office of Trial Staff, the Office of Consumer Advocate, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Citizens for Pennsylvania's Future and the Sustainable Energy Fund of Central Eastern Pennsylvania, and as further modified by this Opinion and Order, is adopted and approved.

2. That PPL Electric Utilities Corporation shall file appropriate tariff supplements in accordance with the Plan approved in Paragraph 1, to be effective upon one day's notice.

3. That PPL Cross-Examination Exh. 2 (the Stipulation between Reliant Energy Inc. and PPL Electric Utilities Corporation) is adopted and approved.

4. That PPL Cross-Examination Exh. 3 (the Stipulation between the Office of Trial Staff and PPL Electric Utilities Corporation) is adopted and approved.

5. That PPL Cross-Examination Exh. 4 (the Stipulation between the Office of Consumer Advocate and PPL Electric Utilities Corporation) is adopted and approved.

6. That Amended PPL Cross-Examination Exh. 5 (the Stipulation between Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc and PPL Electric Utilities Corporation) is adopted and approved.

7. That PPL Cross-Examination Exh. 6 (the Stipulation between Citizens for Pennsylvania's Future and PPL Electric Utilities Corporation) is adopted and approved. PPL is directed to permit interested parties to participate in the discussions with regard to energy efficiency, conservation, or advanced metering infrastructure on its system pursuant to ¶4 and ¶5 of this Stipulation.

8. That PPL Cross-Examination Exh. 7 (the Stipulation between the Sustainable Energy Fund of Central Eastern Pennsylvania and PPL Electric Utilities Corporation) is adopted and approved. PPL is directed to permit interested parties to

participate in the discussions with regard to energy efficiency or conservation pursuant to ¶4 of this Stipulation.

9. That PPLICA Cross-Examination Exh. 1 (the Stipulation between PP&L Industrial Customer Alliance and Citizens for Pennsylvania's Future) is adopted and approved.

10. That, within forty-five (45) days of the entry date of this Opinion and Order, PPL Electric Utilities Corporation shall establish a collaborative involving all interested parties, including the Commission's Bureau of Consumer Services, to develop more detailed consumer education programs.

11. That PPL Electric Utilities Corporation is granted a waiver from the Commission's final POLR regulations, if those regulations become effective prior to 2011, to the extent necessary to honor any contracts for 2010 POLR supply previously entered into under the Revised Competitive Bridge Plan.

12. That the POLR Supply Master Agreement, as finally approved by the Commission, will be approved as an affiliated interest agreement pursuant to 66 Pa. C.S. § 2102(b).

13. That the Commission will neither order nor approve any wholesale or retail "opt-out" customer aggregation plan for PPL Electric Utilities Corporation's service territory between January 1, 2007, through December 31, 2010.

14. That, upon acceptance and approval by the Commission of the tariff supplement filed by PPL Electric Utilities Corporation consistent with this Opinion Order, this proceeding shall be marked closed.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 10, 2007

ORDER ENTERED: May 17, 2007

Attachment A

PPLICA Cross Examination Exh. 1	PPLICA / Citizens for Pennsylvania's Future, Stipulation
PPL Cross Examination Exh. 2	PPL Electric / Reliant Energy, Inc., Stipulation
PPL Cross Examination Exh. 3	PPL Electric / Office of Trial Staff, Stipulation
PPL Cross Examination Exh. 4	PPL Electric / Office of Consumer Advocate, Stipulation
PPL Cross Examination Exh. 5	PPL Electric / Constellation New Energy and Constellation Energy commodities Group, Inc., Stipulation
PPL Cross Examination Exh. 6	PPL Electric / Citizens for Pennsylvania's Future, Stipulation
PPL Cross Examination Exh. 7	PPL Electric / Sustainable Energy Fund of Central Pennsylvania, Stipulation