

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

Public Meeting held June 18, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman; Dissenting, Statement
Kim Pizzingrilli
Wayne E. Gardner
Robert F. Powelson

Petition of PPL Utilities	:	
Corporation for Approval of a Default	:	
Service Program and Procurement	:	P-2008-2060309
Plan for the Period January 1, 2011	:	
Through May 31, 2014	:	

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell, issued on April 16, 2009, which recommends the adoption of a Joint Petition for Settlement in the above-captioned proceeding. Also before the Commission for consideration and disposition are the Exceptions of Constellation New Energy, Inc., and Constellation Energy Commodities Group, Inc. (collectively, Constellation), the Pennsylvania State University (Penn State), and

the National Railroad Passenger Corporation (Amtrak). Replies to Exceptions were filed by PPL Utilities Corporation (PPL) and by Amtrak.

History of the Proceeding

On August 28, 2008, PPL filed a Petition with the Commission seeking approval of a default service program and procurement plan (DSP) for the period January 1, 2011, through May 31, 2014.¹ The purpose of the plan is to establish the terms and conditions under which PPL will acquire and supply default service, including competitive procurement of Provider of Last Resort (POLR) supply and related alternative energy credits; rate design; an explanation of Regional Transmission Organization (RTO) compliance and consistency; and a contingency plan.

Following publication of Notice of the Petition in the *Pennsylvania Bulletin*, 38 Pa. B. 5009, Petitions to Intervene were filed by the following: Citizens for Pennsylvania's Future (PennFuture); Consolidated Edison Solutions (Con Ed Solutions); Constellation; Direct Energy Services, LLC (Direct Energy); Eric Joseph Epstein; PPL EnergyPlus; PP&L Industrial Customer Alliance (PPLICA); Penn State; Reliant Energy, Inc. (Reliant); Retail Energy Supply Association (RESA); Richards Energy Group; and the Sustainable Energy Fund (SEF). In addition, the Commission's Office of Trial Staff (OTS) filed an Answer to the Petition; the Office of Consumer Advocate (OCA) filed an Answer and Notice of Intervention and Public Statement; and the Office of Small Business

¹ Note that the original DSP was filed prior to the effective date of Act 129 and PPL modified the plan in order to ensure compliance following the enactment. A thorough and detailed description of the original plan and the modifications made to it pursuant to Act 129 appear in the PPL Statement in Support of Joint Petition for Settlement, attached as Appendix B to the Joint Petition for Settlement

Advocate (OSBA) filed a Notice of Appearance, Public Statement, and Notice of Intervention and Protest.

On December 22, 2008, Amtrak filed a Petition for Leave to Intervene Out-Of-Time. In the Petition, Amtrak states that Amtrak takes service from PPL under a tariff that applies only to Amtrak, Rate Schedule LPEP and seeks intervention for the purpose of ensuring that PPL will be able to provide default service for Amtrak's purposes under reasonable terms and conditions. The Petition was unopposed and was granted by Order dated January 16, 2009.

On February 11 and 12, 2009, hearings were held as scheduled in Harrisburg, Pennsylvania. Thereafter, the Parties reached a settlement in principle of all but two issues subsequent to the conclusion of hearings but prior to submission of Main and Reply Briefs.

On March 11, 2009, a Joint Petition for Settlement (Joint Petition or Settlement) was submitted, along with statements in support, by PPL, OTS, OCA, OSBA, RESA and Direct Energy, SEF, PPLICCA, Constellation, Reliant, Richards Energy Group, Mr. Epstein and PPL EnergyPlus. Letters of non-opposition were filed by Consolidated Edison Solutions, Penn State and Amtrak.

Main and Reply Briefs were filed by the parties affected by the remaining two issues: PPL, Amtrak and Constellation.

On April 16, 2009, the ALJ issued a Recommended Decision adopting the Joint Petition for Settlement without modification.

On May 11, 2009, Exceptions to the Recommended Decision were filed by Amtrak, Penn State and Constellation.

On May 22, 2009, Replies to Exceptions were filed by Amtrak and PPL.

Statements in Support of the Settlement were filed by OTS, OCA, RESA and Direct Energy, PPLICA, Reliant, Richards Energy Group, Inc., Eric Epstein, and PPL Energy Plus. Statements or letters of non-opposition were filed by Consolidated Edison Solutions and Amtrak. Penn State filed a letter taking “no position” with respect to the Settlement.

Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The ALJ provides a detailed analysis of the public interest considerations of the proposed Settlement in the Recommended Decision. R.D. at 10-14. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The ALJ found the proposed Settlement to be in the public interest based on the fact that the proposed Settlement meets the statutory requirements of the Public Utility Code at 66 Pa. C.S. § 2807(e) relative to the obligation of an electric distribution company to provide electric generation service to customers as a default service provider. R.D. at 5-8, 21. The ALJ specifically found that the DSP provides for competitive procurement of power, that it maintains a prudent mix of purchase methods designed to ensure adequate and reliable service with the

least cost to customers over time. R.D. at 10. The ALJ found that the proposed Settlement satisfies the requirements of the Alternative Energy Portfolio Standards Act (AEPS Act). R.D. at 17. The Settlement also phases out Rate RTS beginning on January 1, 2010, with the remaining differential eliminated January 1, 2012. This will allow the development of PPL's pilot time-of-use program as an option for ratepayers. R.D. at 17. The proposed Settlement establishes that if PPL does not file a rate case with an effective date of January 1, 2011, it will file a stand-alone Purchase of Receivables Program by July 1, 2010. R.D. at 18. PPL has agreed to a one-time filing in the first half of 2010 to update customer information release preferences as part of its Customer Education plan. R.D. at 18. The ALJ points out that the proposed Settlement also provides that PPL agrees to convene a customer referral collaborative to discuss a Residential and Small Commercial and Industrial direct mail referral program. The results will be considered in the next default service planning proceeding. R.D. at 19. Similarly, the ALJ found that a proposed Aggregation Program Collaborative to be convened to discuss a residential aggregation program, the results of which would be considered in the development of PPL's next default service provider case, is in the public interest. R.D. at 19.

Terms of the Settlement

While the full particulars of the Settlement are set forth in the Joint Petition for Settlement attached to this Opinion and Order, the following is a summary of a number the essential points considered in reaching our decision in this case.

The Settlement is based on an agreement by the Parties that the PPL DSP Plan, as revised, should be approved with modifications as agreed to by the Parties. Settlement at 4. Two issues were, however, reserved for litigation:

(1) default service for Amtrak and (2) whether certain default provisions, as proposed by Constellation, should be incorporated into the SMAs. However, the Parties maintain that decisions on these reserved issues will not alter the Settlement among the Parties on any other matters in the case. Settlement at 4, ¶14.

The Parties agree generally that PPL's DSP Plan, as revised, should be approved as filed with the modifications set forth therein. Settlement at 4, ¶16. The Settlement is structured around three separate procurement groups: Residential, Small Commercial & Industrial (Small C&I) and Large Commercial & Industrial (Large C&I), and provides a complete procurement plan by procurement group. Settlement at 4, ¶16, fn. 3.

The Parties agree that the term of the DSP Plan will be from January 1, 2011 through May 31, 2013, and that the DSP Plan's Request for Proposals (RFP) procurement process will be administered by an independent third party manager, NERA Economic Consulting. Settlement at 5, ¶¶17-18. PPL and interested parties will develop specific reporting mechanisms regarding the results of the procurement processes being employed for the procurement groups, with appropriate confidentiality provisions. Settlement at 13, ¶44.

Procurement for the Residential Group is set forth in the Settlement in summary form as follows: PPL will revise its residential procurement to include 200 MW of one-year blocks of power; 100 MW of five-year blocks of power; and 50 MW of ten-year unit entitlement procurement. All blocks will include energy, transmission (other than Network Integration Transmission Service), transmission losses, congestion management costs, and such other services or products that are required to supply the block service delivered to the PPL Zone. Capacity and ancillary services will be separately purchased from

PJM. Alternative Energy Portfolio Standards (AEPS) credits associated with the blocks will be acquired, to the extent necessary, through a separate RFP procurement to occur at the same time as the procurement of the associated block of energy. Recovery of the separately acquired capacity, ancillary services and AEPS credits, including procurement costs, will be reflected in default services rates. The procurement of one-year blocks will be for 50 MW in each quarterly solicitation.² The details of the ten-year unit entitlement RFP will be deferred to a collaborative and filed separately for Commission approval.³ PPL will impose an aggregate load cap on individual wholesale suppliers of 70%. In addition, the 85% cap on individual procurement will be eliminated for the five and ten-year blocks. Settlement at 6-7, ¶23.

Procurement for the Small Commercial and Industrial Group is set forth in the Settlement in summary form as follows: PPL will eliminate all long-term supply for this class; PPL will impose an aggregate load cap on individual wholesale suppliers of 65%. Settlement at 10, ¶33. PPL will procure 90% of the required Small C&I Customer Class POLR supply under a series of fixed price, load-following supply contracts inclusive of energy, capacity, transmission (other than Network Integration Transmission Service), ancillary services, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply default service to PPL's retail customers, including AEPS credits. The load following supply will be obtained through a series of quarterly solicitations beginning in July 2009. Settlement at 10, ¶35.

² The contract term lengths and procurement schedule are set forth in the RFP Rules (PPL Exhibits 2 and 5) and Appendix R, which shows graphically the procurement for the Residential Customer Class.

³ As part of the collaborative process to develop the unit entitlement RFP, the Parties agree that among the issues to be considered are whether a renewable product should be procured and whether the RFP should request firm service.

PPL will obtain 10% of its default service supply for the Small C&I Customer Class from the PJM spot market beginning in 2011 and continuing for the remainder of the DSP Plan. To obtain the 10% spot market component of its default supply, PPL will issue a single annual solicitation, wherein the Company will request competitive offers from suppliers to provide default service spot market supply. The first solicitation, for the January – May 31, 2011 period, will take place in October 2010. Subsequent solicitations will be conducted in April of each year. This spot-market service supply will include energy, capacity, transmission (other than Network Integration Transmission Service), ancillary services, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply default service to PPL's retail customers, including AEPS credits. Competitive suppliers will make offers in response to the solicitation, and the successful suppliers' charges will be included in the calculation of generation supply charges. Settlement at 11, ¶39.

Procurement for the Large Commercial and Industrial Group is set forth in the Settlement in summary form as follows: PPL's hourly default service proposal will be accepted as filed. PPL will convene a separate collaborative with interested parties to develop and file an optional monthly or quarterly load-following service for Large C&I customers. As part of the collaborative, the parties will in good faith consider, among other things, designs for the monthly or quarterly option that avoid any impediments to or restrictions on switching and that achieve resulting rates for Large C&I customers that are reasonable, while ensuring that PPL will recover, on a full and current basis, the reasonable cost incurred to provide the product. PPL will consider input from interested parties, but will file a proposal that is acceptable to PPL. Such filing will be made with the Commission on or before June 1, 2009. The parties have agreed that the only

issue to be resolved in that proceeding will be the provision of optional monthly or quarterly default service to Large C&I customers. Settlement at 11-12, ¶¶40.

PPL will provide POLR service on a real-time hourly basis through the PJM spot market. PPL will issue a single annual solicitation, wherein the Company will request competitive offers from suppliers to provide default service spot market supply. The first solicitation, for the January – May 31, 2011 period, will take place in October 2010. Subsequent solicitations will be conducted in April of each year. This spot-market service supply will include energy, capacity, transmission (other than Network Integration Transmission Service), ancillary services, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply default service to PPL's retail customers, including AEPS credits. Competitive suppliers will make offers in response to the solicitation, and the successful suppliers' charges will be included in the calculation of generation supply charges. Settlement at 12, ¶¶42.

With respect to Rate Design, PPL will charge flat POLR rates (*i.e.*, a single charge per kilowatt hour) calculated separately for the Residential and Small C&I Customer Classes under the GSC-1 rate. PPL will adopt a further phase-in plan for Rate Schedule RTS, with any lost revenue to be recovered from Rate Schedule RS customers. Specifically, one-half of the existing rate differential will be eliminated as of January 1, 2011, and the remaining differential will be eliminated as of January 1, 2012. Settlement at 13, ¶¶45-47. Customers in the Large C&I Customer Class will pay the following three charges for default service under the GSC-2: an energy charge per kwh based on the real-time hourly spot-market price and the customer's actual hourly energy use; a capacity charge per kw based on the PJM Reliability Pricing Model (RPM) price for capacity and the customer's fixed peak load capacity value; an energy charge per kwh to recover all supplier charges and PPL Electric's cost of administration, both

prospective costs and an amortization of pre-2011 costs over the term of the DSP Plan. Settlement at 13-14, ¶¶48-49.

PPL will procure AEPS credits to meet its obligation under the AEPS Act as a component of its load following and spot-market default service supply contracts. The seller shall provide its proportional share of AEPS credits to fulfill PPL Electric's AEPS obligation, in accordance with the terms of the Default and Spot Market Supply Master Agreements (SMAs). Additionally, the SMAs require the seller to complete its transfer of AEPS credits into PPL's Generation Attribute Tracking System account(s) in the amount necessary to fulfill the seller's AEPS obligation, pursuant to the schedule set forth in the SMAs. AEPS credits associated with the block purchases under the Residential Customer class procurement shall be acquired, to the extent necessary, through a separate RFP procurement to occur at the same time as the procurement of the associated blocks of energy. As noted in the Settlement, the form of RFP Rules and Default Service, Spot and Block SMAs, revised consistent with the Settlement and the Commission's resolution of the reserved issues, will be included in a subsequent compliance filing in the above captioned proceeding. Settlement at 114-15, ¶52.

The Parties agree that the DSP Plan is consistent with the requirements regarding generation, sale and transmission of electricity within PJM Interconnection, LLC (PJM), the Regional Transmission Organization (RTO) within which PPL provides service. The DSP Plan aligns procurement with PJM's Planning Year (June through May), and the SMAs and RFP Rules require compliance with PJM requirements. Settlement at 15, ¶53.

With respect to Contingency Plans if POLR load is not being served either because that load has not been awarded to a wholesale supplier or because a wholesale supplier has defaulted and no other supplier has agreed to serve the load

under the “step up” provisions in the SMAs, then PPL will initially supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets, including, but not limited to, the PJM energy, capacity, and ancillary services markets, any other service required by PJM to serve such unserved load, and any AEPS requirements, and will recover all the costs of such purchases from default service customers in the retail rates charged for the service for which the purchases are made; further within 10 business days of it being determined by PPL that the load is unserved, PPL will file alternative procurement options with the Commission to provide supply for the unserved load. PPL will request that the Commission consider and resolve PPL’s filing on an expedited basis. Any alternative option that the Commission approves will expressly provide that all of the costs incurred by PPL to provide supply for the unserved load will be recovered in retail rates in the same manner as all other default service charges. Until the Commission approves an alternative means of filling the load, PPL will supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets. These Contingency Plans will apply in the event there is unmet block supply for the Residential Customer class, with the exception that PPL will obtain short-term, three-month block supply until an alternative proposal is approved. Settlement at 15-16, ¶54.

With respect to Demand Side Management and Time of Use Rates, the Parties have agreed that the DSP Plan under the Settlement does not include demand side response and demand side management rates. PPL has committed to have available a year-round Time of Use program for all customers effective January 1, 2010, subject to Commission approval. PPL will file for approval of Time of Use rates in mid-2009. Settlement at 16, ¶¶55-56.

Other aspects of the Settlement considered in view of the requirements of the law and sound public policy include: a “Green Weekend” proposal with a related public input hearing; a revised voluntary purchase of receivables (POR) plan as part of PPL’s next distribution rate case and the “unbundling” of uncollectible accounts expense or alternatives in the event that PPL does not file a distribution rate case with an effective date of on or before January 1, 2011; continued funding to SEF for the Solar Scholars program through 2009 at the amount agreed to in PPL Electric’s last base rate proceeding with the consideration of other SEF proposals in this proceeding as part of its comprehensive conservation filing under Act No. 129; the agreement that PPL will convene a collaborative to discuss a residential and small commercial and industrial direct mail referral program and a residential customer aggregation program, after which PPL will consider the results of the collaborative in developing the plan design for its next default service plan proceeding; consideration by PPL of a senior citizen rate proposal in its universal service filing that will be made in 2010 for the three year period 2011 – 2014 with a related public input hearing as well as consideration by PPL of a special outreach to senior citizens to inform them of both the rate stabilization and rate mitigation plans, through an appropriate senior citizen agency and/or a stakeholder collaborative modeled on the collaborative processes used in PPL’s Rate Stabilization Plan and time of use filings; and PPL’s agreement that it will update its customer Release of Information (ROI) database through a one-time mailing (either bill insert or post card) to customers in the first half of 2010 to update customer information release preferences as part of its customer education plan, consistent with 52 Pa. Code § 54.8. Settlement at 16-19, ¶¶57-65.

Outstanding Issues

Although the proposed Settlement is unopposed, there are a number of outstanding issues unique to a number of the Parties that those Parties briefed and which are addressed in the Recommended Decision. Exceptions and Reply Exceptions were filed with respect to the ALJ's Recommended Decision resolving those limited issues.

The ALJ made ninety-nine Findings of Fact and reached ten Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

We note that any issue or Exception, which we do not specifically address herein, 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. *Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001), also *see*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In addition to the foregoing, 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). The term “preponderance of the evidence” means that one party

has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The “Amtrak Issue”

At issue are the unique default service needs of Amtrak and whether PPL has a statutory responsibility to provide 25 Hertz service to Amtrak after December 31, 2009. The factual background of the issue is set forth in the Recommended Decision. Amtrak and its predecessor have received service at 25 Hertz frequency since the Safe Harbor water generation facility was built. Safe Harbor owns and operates a hydroelectric facility located on the Susquehanna River in Conestoga, Pennsylvania. R.D. at 23, Finding of Fact No. 11. From the 1930s to the present, Amtrak and prior railroads have been the only purchasers of 25 Hertz, single-phase power generated by Safe Harbor. R.D. at 23, Finding of Fact No. 15. PPL Electric presently delivers 25 Hertz traction power only under Rate Schedule LPEP; Amtrak is the only ratepayer receiving service under this Rate Schedule. R.D. at 24, Finding of Fact No. 22. Delivery to Amtrak is accomplished only at the Conestoga Substation. R.D. at 25, Finding of Fact No. 23. The line used to transmit this electricity is the only power line feeding into the Conestoga Substation. R.D. at 25, Finding of Fact No. 24.

Because PPL and Amtrak each own a portion of the Substation, PPL can provide service directly to Amtrak at the connection point without utilizing the

utility's sub-transmission system. The Conestoga Substation receives 25 Hertz power directly from the Safe Harbor generating station without utilizing PPL's sub-transmission system. R.D. at 25, Finding of Fact No. 29. The 25 Hertz service to Amtrak is nonstandard under the definition, it is clear that PPL is moving towards eliminating it. R.D. at 40.

Citing 66 Pa. C.S. § 2807(b), PPL contends that there exists no statutory reason for Amtrak to expect PPL Electric to continue to provide 25 Hertz service after the expiration of Rate Schedule LPEP at the end of 2009. While PPL states that it can provide service at 60 Hertz, there is no point of connection in PPL's service territory which can convert 60 Hertz to 25 Hertz – the Conestoga Substation does not have either a converter or a connection to the 60 Hertz grid -- so actual service is not possible at 60 Hertz at this time. R.D. at 40.

While not unsympathetic to Amtrak's dilemma, The ALJ states in her Recommended Decision:

Amtrak is asking the Commission to direct PPL Electric to acquire 25 Hertz service from Safe Harbor as long as there is a customer who needs it (Amtrak is the only PPL Electric customer using 25 Hertz service), when PPL Electric – the entity over which the Commission exercises jurisdiction -- has no ownership interest in Safe Harbor (PPL Holtwood, an affiliate, owns one-third of Safe Harbor, and 1/3 of the energy output of Safe Harbor belongs to PPL EnergyPlus, also an affiliate, under a contract which runs until 2030), and the Commission's jurisdiction over Safe Harbor itself is not clear. R.D. at 41.

The ALJ concludes her well-reasoned and thorough analysis with the following assessment and recommendation:

While Amtrak makes many excellent points in its presentation and briefs, there is simply no legal basis for granting Amtrak's requests in this proceeding. The relevant law was not written with nonstandard service in mind, and it makes no provision for it. Should PPL Electric be able to procure 25 Hertz service for Amtrak, PPL Electric must be permitted to charge Amtrak the actual cost of the contract. There is no bargaining power here, and there is a single source of the product. [fn. omitted] It is not reasonable to expect PPL Electric to enforce cost-based prices when it has no leverage.

Therefore, it is recommended that the Commission find that: (1) PPL Electric has an obligation to provide standard default service to Amtrak should it be necessary and should Amtrak have the proper facilities in place to accept it; (2) PPL Electric be required to issue an RFP for 25 Hertz service if Amtrak has not entered into a contract for service and requests default service at 25 Hertz; and (3) that PPL Electric may not include a requirement that bids for the Large C&I customer tranches must also include the provision of 25 Hertz service.

R.D. at 44-45, Conclusions of Law Nos. 8-10.

Amtrak filed Exceptions to the ALJ's Decision, and PPL filed Reply Exceptions. We will consider Amtrak's Exceptions and the Replies thereto *seriatim*:

Exception No. 1 – The Recommended Decision erroneously holds that under Act 129, PPL is not required to provide usable default electric service to all of its customers.

In this Exception, which is at the heart of Amtrak’s argument in this case, Amtrak contends that PPL is statutorily obligated to provide 25 Hertz electric service to Amtrak. We do not agree. Section 2807 of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. Ch. 28 § 2807(e), establishes that an electric distribution company’s (EDC) obligation after the expiration of the applicable rate caps is limited to acquiring electric generation supplies. EDCs have no obligation to produce or generate electric power to meet POLR obligations. An EDC’s obligation is to enter into the electric generation market and to purchase generation supplies. If 25 Hertz power is not available in the market, then PPL will not be able to acquire it. We agree with PPL that, as a default service supplier, PPL’s obligation to Amtrak is to receive 25 Hertz power, provided by others.⁴ PPL has no obligation to produce 25 Hertz power. Amtrak’s Exception is denied.

Exception No. 2 – Insofar as the Recommended Decision purports to authorize PPL to abandon or discontinue its service without obtaining a certificate of public convenience, the decision is inconsistent with the Code.

While it is correct that the ALJ in her Recommended Decision used the term “abandonment” at one point in her discussion of this issue,⁵ that was a misstatement. PPL is not abandoning 25 Hertz service. “Abandonment necessarily implies the voluntary or intentional act of the party having the facility, right or power to relinquish it.”⁶ In this sense, we agree with PPL that “A

⁴ PPL Reply Exc. at 5.

⁵ R.D. at 42.

⁶ *Emerald Coal and Coke Co. v. Equitable Gas Co.*, 378 Pa. 591, 597, 107 A.2d 374, 378 (1954)

termination of 25 Hz service by PPL EU [Electric Utilities], caused by a cessation by PPL EnergyPlus of sales of 25 Hz power to PPL EU, clearly would not constitute an abandonment of service to Amtrak by PPL EU because the cessation of service would be caused by PPL EnergyPlus' conduct which is beyond PPL EU's control." PPL Reply Exc. at 12. Amtrak's Exception is denied.

Exception No. 3 – The Recommended Decision mistakenly holds that Rule 4(A)(1), a tariff provision unilaterally inserted by PPL, nullifies the utility's statutory obligation to provide default service.

If Amtrak's Exception implies that PPL was able to surreptitiously change its tariff without proper notice, then this indicates a lack of understanding on Amtrak's part as to how tariff filings are accomplished. No utility "unilaterally" inserts a tariff provision. The Code at Section 1302 states: "Every public utility shall keep copies of such tariffs open to public inspection under such rules and regulations as the commission may prescribe. One copy of any rate filing shall be made available, at a convenient location and for a reasonable length of time within each of the utilities' service areas, for inspection and study by customers, upon request to the utility."⁷ Amtrak has presented no evidence that PPL Electric Tariff Rule 4 was made without proper notice and an opportunity for comment. If Amtrak's contention is that PPL is improperly invoking this tariff provision, we disagree. As the ALJ stated:

Since there is no 60 Hertz line leading from a PPL Electric transmission line to Conestoga Substation, service at the higher frequency is not possible unless and until facilities are constructed. PPL Electric Tariff Rule 4 specifies the terms of the service extension.

This means that, as of December 31, 2009, Amtrak may be without the power generated at 25 Hertz by the

⁷ 66 Pa. C.S. § 1302.

Safe Harbor facility. The only entity over which the Commission has significant jurisdiction here is PPL Electric – and PPL Electric has no right to the product after that date.

R.D. at 43.

Amtrak’s Exception is denied.

Exception No. 4 – The Recommended Decision incorrectly implies that the 1995 Service Agreement nullifies the utility’s statutory obligation to provide default service.

The basis for this Exception by Amtrak is as follows: “The Recommended Decision does not discuss the Service Agreement at length, but the utility’s theories relating to this Agreement appear to have influenced the Judge’s findings.”⁸ This statement by Amtrak reveals just how tenuous the Exception is. The Exception is, in fact, a “straw man.” While conceding that the Recommended Decision is not based on a discussion of the 1995 Service Agreement, Amtrak attempts to make it appear that the Judge did, in fact, base her reasoning, if not on that Service Agreement, then on PPL’s arguments related to the Service Agreement. This construct is far too conjectural to support an Exception to the Recommended Decision.

Even if we accept Amtrak’s construct, the Exception is without merit. As PPL explains:

The [1995] Service Agreement between Amtrak and PPL EU also provides that PPL EU’s service obligation is limited to selling to Amtrak the amount of 25 Hz power that Safe Harbor makes available to PPL

⁸ Amtrak Exc. No. 4 at 22 (emphasis added).

EU at the Conestoga Substation. PPL EU Ex. DRS-2, ¶ 6. It states:

“Company is not obligated to supply energy in excess of that available from the supply facilities as they existed on the effective date hereof. Also, Company is not obligated to supply energy in excess of that which is available to Company at Conestoga Substation at any given time. Electrical supply restrictions can result from outages of supply facilities or from low river flow conditions.”

PPL Reply Exc. at 8.

This is the essential point made by the ALJ and which Amtrak misses in its Exceptions: PPL does not own generation. PPL Electric cannot provide service to Amtrak at 25 Hertz if there is no 25 Hertz power for sale. The Commission cannot require a utility to perform an action that is not possible. Amtrak’s Exception is denied.

Exception No. 5 - The Recommended Decision mistakenly holds that 66 Pa. C.S. § 2807(b) relieves PPL of the obligation to provide usable default service.

This is a mischaracterization of the Recommended Decision in which the ALJ cites, but does not necessarily accept as determinative, PPL’s argument with respect to 66 Pa. C.S. § 2807(b). R.D. at 40. It is PPL that argues that Section 2807(b) does not require PPL to provide non-standard service. However, we agree with the ALJ when she states:

While Amtrak makes many excellent points in its presentation and briefs, there is simply no legal basis for granting Amtrak’s requests in this proceeding. The relevant law was not written with nonstandard service in mind, and it makes no provision for it. Should PPL Electric be able to procure 25 Hertz service for Amtrak, PPL Electric must be permitted to charge

Amtrak the actual cost of the contract. There is no bargaining power here, and there is a single source of the product. [fn omitted] It is not reasonable to expect PPL Electric to enforce cost-based prices when it has no leverage.

R.D. at 44-45.

Amtrak's Exception is denied.

Exception No. 6 – The Recommended Decision misreads specific provisions of rate schedule LPEP as indicating the entire rate schedule will terminate on January 1, 2010.

Amtrak mischaracterizes the Recommended Decision with respect to Rate Schedule LPEP. The ALJ did not say that “the entire rate schedule will terminate on January 1, 2010.” The ALJ's findings are as follows:

Amtrak takes service from PPL under a tariff that applies only to Amtrak, Rate Schedule LPEP, and Amtrak is the only ratepayer receiving service from PPL under this schedule. R.D. at 2-3, 21, 24 Findings of Fact Nos. 1-2, 22. Presently, PPL EnergyPlus sells all of this 25 Hertz power to PPL Electric, which uses this power to supply Amtrak under Rate Schedule LPEP. The contract between PPL EnergyPlus and PPL Electric will expire in December 2009.

R.D. at 33, Finding of Fact No. 78 (emphasis added).

Amtrak's Exception is denied.

Exception No. 7 – Contrary to the Findings in the Recommended Decision, the Commission has ample authority to require that PPL use its best efforts to obtain an agreement from Safe harbor assuring continued production of 25 Hertz power.

Despite the apparently simple request embodied in this Exception, what Amtrak is asking the Commission to do is to “set aside this portion of the Recommended Decision,” without ever indicating, precisely, just what part of the Recommended Decision Amtrak is referring to.⁹ We infer that Amtrak is referring to the following portions of the Recommended Decision:

Amtrak is asking the Commission to direct PPL Electric to acquire 25 Hertz service from Safe Harbor as long as there is a customer who needs it (Amtrak is the only PPL Electric customer using 25 Hertz service), when PPL Electric – the entity over which the Commission exercises jurisdiction -- has no ownership interest in Safe Harbor (PPL Holtwood, an affiliate, owns one-third of Safe Harbor, and 1/3 of the energy output of Safe Harbor belongs to PPL EnergyPlus, also an affiliate, under a contract which runs until 2030), and the Commission’s jurisdiction over Safe Harbor itself is not clear.

R.D. at 41.

PPL Electric cannot provide service to Amtrak at 25 Hertz if there is none for sale, and the Commission cannot require a utility to perform an action that is not possible. In other words, *carving out a special Amtrak exception to the default service statute would be unreasonable since PPL Electric does not own the generation.*

R.D. at 43 (emphasis in the original).

⁹ Amtrak Exc. No. 7 at 37.

We decline to do as Amtrak requests because we find that the ALJ has accurately characterized Amtrak's request, and she has correctly determined that PPL as a Default Service Provider is not required to provide Amtrak with 25 Hertz service if none is for sale. In this respect, we also agree with PPL that Amtrak's first recourse is not to PPL's "best efforts" to provide 25 Hertz service; rather:

It would be far more appropriate for Amtrak to negotiate and enter into a contract with PPL EnergyPlus for 25 Hz power. Amtrak is in a better position than PPL EU to negotiate a 25 Hz power purchase agreement for Amtrak's benefit because Amtrak best knows its needs and future plans. Amtrak knows far better than PPL EU whether a 25 Hz power purchase agreement should be for one year, three years, 10 years or some other term. Further, if PPL EU were to enter into a contract with PPL EnergyPlus for 25 Hz power, the cost of that nonstandard service would be flowed through directly to Amtrak. It is appropriate for Amtrak to negotiate the price for 25 Hz power that Amtrak will pay.

In this regard, it should be noted that, as Amtrak recognizes, PPL EU is not in any special position to influence the actions of PPL EnergyPlus. Amtrak acknowledges that PPL EU cannot force PPL EnergyPlus to enter into a contract to sell 25 Hz power to PPL EU. Amtrak Exc., pp. 30-31. PPL EnergyPlus is in the non-regulated portion of the PPL corporate system. PPL EU has no ownership interest or other control over PPL EnergyPlus.

Reply Exc. PPL at 13.

Amtrak's Exception is denied.

Exception No. 8. - The Recommended Decision mistakenly adopts a procurement approach that does not ensure a competitive market price for 25 Hertz power.

This Exception is a serious misreading of the Commission’s authority with respect to competitive energy markets. It is not the Commission’s role, nor is it within the Commission’s authority, to “ensure” competitive market prices. Those prices are determined in the market, which is primarily the PJM wholesale power market over which this Commission has no jurisdiction. We agree with the ALJ in her findings that there is no robust competitive market for 25 Hertz power, that Amtrak is the only user of 25 Hertz power within the PJM market, and that Safe Harbor is the only direct generator of 25 Hertz power. There is no vibrant PJM spot market for 25 Hertz power. R.D. at 34-35, Findings of Fact Nos. 86, 87. The Commission cannot create a competitive market for a product as unique as 25 Hertz power. Amtrak’s Exception is denied.

Exception No. 9 – The Recommended Decision incorrectly interprets PPL’s Bridge Plan, which should not be at issue in this proceeding.

In this Exception, Amtrak contends that in her Recommended Decision, the ALJ briefly discussed PPL’s “Competitive Bridge Plan,” or “CBP,”¹⁰ in an historical context. R.D. at 8. Amtrak also questions Footnote 14 of the Recommended Decision, as “true in part, but could be misleading.” Amtrak Exc. at 37.

Footnote 14 of the Recommended Decision states:

Amtrak did not participate in PPL Electric’s Competitive Bridge Plan proceeding, which governs the purchase of electricity for 2010. Amtrak was

¹⁰ *Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Docket No. P-00062227 (Order entered May 17, 2007).

included in the Large C&I Class, and the CBP does not contain a separate provision for service at 25 Hertz.

We suspect that it is the statement that precedes the footnote that really troubles Amtrak:

While the entire electric industry was being restructured, Amtrak was literally “asleep at the switch.”

R.D. at 43.

The issue presently before the Commission relative to the 25 Hertz service Amtrak currently receives was not, directly, the subject of earlier restructuring proceedings, nor do we endorse the ALJ’s characterization of Amtrak as “asleep at the switch.” We are now at the point of resolving issues relative to PPL’s provision of Default Service, and while we do not point to Amtrak’s participation or non-participation in earlier cases as determinative, here, Amtrak has failed to persuade us that PPL has a statutory responsibility to provide 25 Hertz service as part of its DSP. Amtrak’s Exception is denied.

In sum, we agree with the ALJ’s resolution of the “Amtrak issue”:

While Amtrak makes many excellent points in its presentation and briefs, there is simply no legal basis for granting Amtrak’s requests in this proceeding. The relevant law was not written with nonstandard service in mind, and it makes no provision for it. Should PPL Electric be able to procure 25 Hertz service for Amtrak, PPL Electric must be permitted to charge Amtrak the actual cost of the contract. There is no bargaining power here, and there is a single source of the product [fn Omitted]. It is not reasonable to expect PPL Electric to enforce cost-based prices when it has no leverage.

Therefore, it is recommended that the Commission find that: (1) PPL Electric has an obligation to provide standard default service to Amtrak should it be necessary and should Amtrak have the proper facilities in place to accept it; (2) PPL Electric be required to issue an RFP for 25 Hertz service if Amtrak has not entered into a contract for service and requests default service at 25 Hertz; and (3) that PPL Electric may not include a requirement that bids for the Large C&I customer tranches must also include the provision of 25 Hertz service.

R.D. at 44-45.

Constellation's Specific Default Provision

Constellation filed Exceptions to the ALJ's Decision in a document that is not in strict compliance with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides in pertinent part that:

(b) An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision.

Thus, it has been necessary to paraphrase and number the Exceptions to facilitate our consideration and disposition thereof. Both PPL and Amtrak filed Replies to Constellation's Exceptions. We shall consider Constellation's Exceptions and the replies thereto, *seriatim*.

Before turning to Constellation's specific Exceptions, it may be helpful to clarify that the issue before us is limited to a concern specific to Constellation; that is, the inclusion of a "Full Two-Way Payment Clause," in the PPL Supply Master Agreements or "SMAs." In sum, what is at issue is the

amount to be paid to a defaulting electric supplier. PPL argues in favor of “One-Way Payment,” which means that a Termination Payment may only be paid to the non-defaulting party, with the exception of a payment to the defaulting party of the amounts due for services provided prior to the default, and that there is no payment for expected future income. Constellation’s “Full Two-Way Payment” would result in the buyer paying the defaulting supplier’s expected “forward income.” R.D. at 47, citing PPL Main Brief at 9.

The ALJ correctly holds that PPL has the burden of proving that the modified DSP, including the SMA with the “One-Way Payment” meets the legal standard set forth in 66 Pa. C.S. § 2807(e)(3.7), and states that, “Even if the Commission believes that the SMA could be improved in some way, it is bound to approve the Modified DSP, including the SMA, if it meets the standard.” R.D. at 46, fn 16. We agree with the ALJ that 66 Pa. C.S. § 2807(e)(3.7)(i) requires that the default service provider’s plan include prudent steps necessary to negotiate favorable generation supply contracts, but the SMA, as submitted by PPL, does not meet this standard. In fact, neither Party, below, clearly established which position was most consistent with our least cost objectives. On one side, it is theoretically possible that a default service supplier could default on its supply obligation. However, default is more likely to occur when a contract is below market (in which case a default service supplier would owe money) and the “Two-Way Payment” does not come into play. If, however, the less likely event occurs of a contract default by a default service supplier when the contract is “in the money,” consumers could theoretically benefit if wholesale market electricity prices remained below the contract price for the duration of the contract.

We must weigh this theoretical event against the impact of not adopting what we believe is an industry standard, or at least the standard within the PJM RTO, with the potential effect of discouraging either less bidding or less

aggressive bidding by default service suppliers. With regard to an industry standard, Constellation testified that First Energy (through its Penn Power Company affiliate), Allegheny Power (through its West Penn Power affiliate), and PECO Energy Company have all adopted this industry standard two-way termination provision. Furthermore, Constellation testified that all five states in PJM currently holding RFPs for full requirements contracts include “Full Two-Way Payment” provisions, referring to Pennsylvania, Maryland, Delaware, New Jersey, and the District of Columbia. Constellation Exc. at 15.

PPL argues that the Commission has already ruled on this issue in its approval of PPL’s Competitive Bridge Plan. R.D. at 47. On the contrary, the Commission clearly established in the Default Service Policy Statement that standardized SMA’s will be incorporated on a going forward basis.¹¹ Secondly, PPL argues a defaulting supplier would obtain a “financial windfall,” and that higher costs would be imposed on customers. R.D. at 46. On the contrary, consumers will be no worse off, since the collateral provided by the default service supplier will ensure that consumers will be kept whole by the original agreement in the unlikely event of default. PPL also argues that safe and reliable service must be maintained. R.D. at 46. While we do not question that fundamental proposition, it is highly unlikely that the default of one default service supplier would have a significant impact on the operational reliability of an RTO that maintains grid reliability. Finally, “Two-Way” termination provisions do not provide an incentive for default. Any defaulting supplier would be placing at risk its entire credibility as a future default service supplier in Pennsylvania. Given residual costs of such a default, the penalties and costs of such a decision by a default service provider would be, to say the least, ill advised.

¹¹ 52 Pa. Code 69.1807(1).

In summary, PPL fails to clearly demonstrate why departure from a contract provision that is an industry standard is consistent with our least cost standard. Since default service suppliers must meet very strict collateral requirements to ensure performance under the SMA's, the unlikely event of default, specifically when a contract is "in the money," must be severely discounted. On the other hand, competitive bidding has been a very successful tool in minimizing supply costs to consumers. Contract provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers. Given the Default Service Policy Statement's preference for standardized SMAs, "Two-Way" termination provisions should be adopted in this proceeding. We stress, however, that this determination is not dispositive of future consideration of this contract issue should more compelling evidence be presented, or if this provision becomes less pervasive regionally so as not to be considered as an industry standard.

With respect to Constellations specific Exceptions, we make the following dispositions:

Exception No. 1 – The ALJ's Recommended Decision errs in not adopting two-way termination provisions for PPL's SMAs.

This general Exception is granted in part consistent with our foregoing discussion that approves the "Full Two-Way Payment" as preferable because it is the industry standard in the PJM RTO. This Exception also contains several subparts that will be addressed, below.

Exception No. 2 – The ALJ’s Recommended Decision to include in the SMA PPL’s One-Way termination language is inconsistent with established Commonwealth contract law.

Constellation relies on the case of *Lancellotti v. Thomas*, 491 A.2d 117 (Pa. Super. 1985) and Restatement (Second) of Contracts (1979) (“Restatement”) Section 374 - Restitution in Favor of Party in Breach. However, Constellation’s reliance, particularly on *Lancellotti*, is too selective and is, in any event, subsumed by our acceptance of the “Full Two-Way Payment” clause as the industry standard within the PJM RTO. Constellation’s Exception is denied.

Exception No. 3 – The ALJ’s Recommended Decision to include in the SMA PPL’s One-Way termination language is incorrect as a matter of law based on new standards under Act 129.

Constellation argues that, in order to prove that a DSP meets the requirements of Act 129, a DSP must include prudent steps necessary to obtain “least cost generation supply contracts,” and an SMA must be structured so as to encourage greater competition. Constellation Exc. at 9. We agree. Furthermore, Constellation testified that all five states in PJM currently holding RFPs for full requirements contracts include two-way termination provisions, referring to Pennsylvania, Maryland, Delaware, New Jersey, and the District of Columbia. PPL, on the other hand, was only able to cite Connecticut and perhaps New Hampshire to support its position. Constellation’s Exception is granted.

Exception No. 4 – The ALJ fails to address other important evidence and concerns raised by Constellation with respect to the Default Service Provisions in the SMA.

This general Exception contains several subparts that will be addressed, below. Given our decision with respect to those subparts, this Exception is granted in part and denied in part.

Exception No. 5 - The ALJ errs in concluding that “inclusion of [two-way termination provisions] would require revisions to the SMAs to include greater detail surrounding the rights of the non-defaulting party.”

Constellation contends that the “Two-Way Payment” clause is an industry standard and disagrees with the Recommended Decision’s somewhat summary dismissal of the relevancy of this contention, because: “[T]he ALJ fails to include any explanation, relying only on a citation to the PPL Main Brief and testimony, and failing to address Constellation’s specific evidence in the record to the contrary.” As stated, above, we agree with Constellation that many of the larger EDCs in Pennsylvania have adopted this standard, and Constellation’s Exception is granted.

Exception No. 6 – The ALJ errs in stating that the “preference of credit rating agencies is not relevant,” to the provision of Default Service.

Constellation contends that, by not considering the contractual preferences of credit rating agencies, the ALJ has erred and the result will be a risk of decreased competition with respect to PPL’s RFPs. We find Constellation’s arguments on this score to be speculative. Further, we agree, in part, with the ALJ in her comment that:

The preference of credit rating agencies is not relevant here. The concern of the Commission is the continuous and uninterrupted default service to customers, not the credit ratings of the suppliers.

R.D. at 50.

Constellation’s Exception is denied.

Exception No. 7 – The ALJ errs in incorrectly implying that two-way termination provisions would be counter to the Commission’s concern in providing “continuous and uninterrupted default service to customers.”

The ALJ’s statement is not only a commentary on the “Two-Way Payment” clause but is also an attempt to focus the Parties on the broader objective of the DSP. As the ALJ states, a DSP plan must be consistent with the requirements of the Code at 66 Pa. C.S. § 2807(e) to be deemed “in the public interest.” R.D. at 7. Pursuant to 66 Pa. C.S. § 2807(e)(3.7)(i), the Commission recognizes that a “Two-Way Default” clause may be included in an SMA, but the provision of “continuous and uninterrupted default service to customers,” is the broader goal of the Commission. Constellation’s exception is, therefore, granted in part and denied in part.

Exception No. 8 – The ALJ errs in finding that Constellation is “not convincing” in its argument that the Financial Netting Improvements Act of 2006 (“FNI Act”) renders one-way default provisions unenforceable against financial institutions and their affiliates.

This Exception repeats Constellation’s ongoing dissatisfaction that the Recommended Decision did not address, point-by-point, every contention raised by Constellation in this case. Constellation does not cite to, nor are we aware of, any procedural regulations in support of this proposition. We believe that the ALJ’s pronouncements with respect to Constellation’s arguments are not inappropriate in that the ALJ clearly considered both Constellation’s arguments and PPL’s rejoinders.

This Exception repeats what is, in fact, one of Constellation’s main points of contention: “[O]ne way termination provisions can only serve to discourage (rather than encourage) competition in PPL Electric’s Default Service RFPs . . .” contrary to the goals of Act 129 and to the ultimate detriment of PPL

Electric’s customers. Constellation Exc. at 20. While the Commission agrees that there may be a subset of financial institutions and suppliers of the same mind as Constellation that the lack of the “Two-Way Payment,” clause is a disincentive, this point must be considered against the overall context of the promotion of competitive markets. We have already agreed that most of the larger EDCs in Pennsylvania have adopted the “Two-Way Payment” Standard and that given the Default Service Policy Statement’s preference for standardized SMAs, adoption of the Full Two-Way Payment provision should be adopted in this proceeding. Therefore, Constellation’s Exception is granted in part and denied in part.

Exception No. 9 – The ALJ’s Recommended Decision errs in discussing Amtrak’s arguments in a separate and distinct proceeding in making findings in the current proceeding regarding the provision of default service by PPL.

In this Exception, Constellation argues that the ALJ, in addressing Amtrak’s issues, erred in referencing issues in the *Safe Harbor* case.¹² Constellation asks that we make clear that *Safe Harbor* is a separate and distinct proceeding, and that the parties to the *Safe Harbor* case are not bound by the Findings of Fact in the present proceeding. Constellation Exc. at 21.

We are uncertain as to how the ALJ could have written a comprehensive Recommended Decision without referencing the *Safe Harbor* case. Given that the PPL DSP case now before us provided ample notice and an opportunity to be heard by all parties with an interest that might be affected by this case, we find Constellation’s request in this Exception unsupported.

¹² *Application of Safe Harbor Water Power Corporation Pursuant to Section 1102(a)(2) of the Pennsylvania Public Utility Code Authorizing Safe Harbor Water Power Corporation to Abandon Public Service Authorized by a Certificate of Public Convenience*, Docket No. A-2008-2078319.

We agree with Amtrak that it was appropriate for the ALJ to refer to the pending abandonment proceeding and to describe its procedural status.

Amtrak reply Exc. at 4. We also agree that:

[T]he Administrative Law Judge never purported to decide any of the issues raised in the [Safe Harbor] abandonment proceeding. Nor did the Judge prohibit Amtrak, Safe Harbor, or the Constellation entities from raising additional issues in that proceeding, as appropriate. Consequently, this portion of the Recommended Decision did not harm the Constellation entities in any way, *and these entities have not identified any error that requires correction by this Commission.*

Amtrak Reply Exc. at 2 (emphasis added).

As Amtrak notes, the “Constellation entities” have not challenged any of the Findings of Fact related to Amtrak in the Recommended Decision nor has Constellation shown any reason why Section 316 of the Code, 66 Pa. C.S. § 316, relative to the “Effect of commission action,” and the doctrine of collateral estoppel should not apply here. Constellation’s Exception is denied.

Constellation concludes its Exceptions by asking that we overturn the ALJ’s Recommended Decision that “the pro forma Supply Master Agreements are approved as consistent with applicable law without the “Full Two-Way Payment Clause,” and that we clarify that, despite the Recommended Decision, the *Safe Harbor* case is a separate and distinct proceeding, and that the parties to the *Safe Harbor* case are not bound by the Findings of Fact in the present proceeding. Constellation Exc. at 21. Having considered Constellation’s Exceptions and PPL’s Replies thereto, we agree that the pro forma Supply Master Agreements are consistent with applicable law with the “Full Two-Way Payment Clause,” but we

decline to state that the parties to the *Safe Harbor* case are not bound by the Findings of Fact in the present proceeding.

Penn State's Exception

Penn State filed a single Exception to the ALJ's Recommended Decision: "Penn State excepts to the statement expressed on page 4 of the Recommended Decision that a letter of non-opposition was filed by Penn State." Penn State Exc at 2. Penn State goes on to reiterate that its letter of March 10, 2009, was a letter of "no position," with respect to the Settlement. Penn State offers no explanation with respect to why its letter of March 10, 2009, should not be characterized as non-opposition, and we are concerned that Penn State's Exception has been calculated to in some way preserve Penn State's opportunity to object to the Settlement, prospectively. That opportunity has now passed, and Penn State's Exception is granted solely to the extent of accurately reflecting the content of Penn State's letter of March 10, 2009.

Conclusion

Based upon our review of the record in this proceeding, the supporting statements of the Parties, the Recommended Decision of the ALJ, and the Exceptions and Reply Exceptions thereto we find that the Joint Petition for Settlement, the Settlement itself, and the rates, terms and conditions contained in the Settlement Agreement are just, reasonable and within the public interest and are in accord with the rules and regulations of the Commission and with the provisions of the Pennsylvania Public Utility Code, specifically but not limited to Act 129 Of 2008 amending 66 Pa. C.S. § 2807(e), but that the pro forma Supply Master Agreements are approved as consistent with applicable law and the

prevailing industry standard with the “Full Two-Way Payment Clause”;

THEREFORE,

IT IS ORDERED:

1. That the Recommended Decision of Administrative Law Judge Susan D. Colwell recommending approval of the Joint Petition for Settlement is adopted to the extent consistent with this Opinion and Order.
2. That the Exceptions to the Recommended Decision filed by the National Railroad Passenger Corporation (Amtrak) are denied.
3. That the Exceptions to the Recommended Decision filed by Constellation New Energy, Inc., and Constellation Energy Commodities Group, Inc., are granted in part and denied in part consistent with this Opinion and Order.
4. That the Exception to the Recommended Decision filed by the Pennsylvania State University is granted consistent with this Opinion and Order.
5. That PPL Electric Utilities Corporation is directed to complete a compliance filing in the form of a tariff and tariff supplement in substantially the same form as those attached to the Joint Petition for Settlement to become effective on one day’s notice after entry of the Commission’s final order. Revised Supply Master Agreements consistent with the terms of this Opinion and Order shall be filed as a part of that compliance filing.
6. That PPL Electric Utilities Corporation shall include a revised Purchase of Receivables Program as part of its next base rate case, or if PPL

Electric Utilities Corporation does not file a base rate case with an effective date of January 1, 2011, PPL Electric Utilities Corporation shall file a revised Purchase of Receivables Program on or before July 1, 2010.

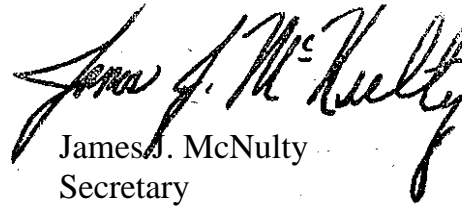
7. That PPL Electric Utilities Corporation make a one-time filing in the first half of 2010 to update customer information release preferences as part of its Customer Education plan.

8. That PPL Electric Utilities Corporation agree to convene a customer referral collaborative to discuss a Residential and Small Commercial and Industrial direct mail referral program, the results to be considered in the next default service planning proceeding.

9. That PPL Electric Utilities Corporation convene a proposed Aggregation Program Collaborative to discuss a residential aggregation program, the results of which will be considered in the development of PPL's next default service provider case.

10. That PPL Electric Utilities Corporation timely implement all other proposals, programs and filings required in the Settlement, consistent with that agreement and with this Opinion and Order.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 18, 2009

ORDER ENTERED: **June 30, 2009**