PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

PPL Electric Utilities Corporation
Retail Markets

Public Meeting August 6, 2009
2104271-LAW*
Docket No. M-2009-2104271

DISSENTING STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

I respectfully dissent from the majority's decision to adopt this Final Opinion and Order, which consists of a series of directives to PPL Electric Utilities Corporation (PPL) to implement substantive requirements in eight areas that have been identified by the Commission as necessary to promote the goals of Chapter 28 and to ensure an orderly transition to a competitive market.

The concerns that I expressed regarding both the procedure and substance of the Commission's directives when the Commission issued the Tentative Order on May 14, 2009, have been confirmed by the comments that have been filed by many of the parties. First, the requirements that the Commission is promulgating are not ministerial in nature and will not be limited to PPL. Rather, they are substantive requirements that subsequently will be imposed in some form on all EDCs. *See* Order at 2-3 (these directives are a "template", the "starting point" for developing operating directives for other companies). In my view these are regulatory requirements that should have been fully vetted through a proposed rulemaking proceeding. As PPL points out in its comments, there is no evidentiary record to support the various directives, and the new regulatory requirements imposed on PPL should have been developed through a formal rulemaking process. PPL Comments at 2.

This proceeding was initiated on the Commission's own motion, without any formal request from an outside stakeholder or party. No one filed a petition with us alleging serious impediments to customer shopping in PPL's service territory. No hearings were held and no comments were solicited before the directives were developed and proposed in the Commission's Tentative Order. The Final Order refers to the Commission's experience in dealing with these issues in one form or another since the Commonwealth began to move toward competition for electric supply as the basis for these directives. Final Order at 3. However, any concerns arising from this experience more appropriately should have served as the basis for a proposed rulemaking, or a directed request to the Commission's Retail Markets Working Group (RMWG). The fact that the Commission has experience in this and many other areas does not justify departure from established procedures and principles of due process.

The comments filed by many parties in response to the Tentative Order relate to several common concerns: the Commission's Tentative Order bypasses the RMWG that was established to consider the same issues in a more deliberate fashion with input from

all of the parties; the directives contained in the Tentative Order should have been the subject of either a formal rulemaking or the RMWG stakeholder process; the Commission's Tentative Order disturbs some of the key provisions of the settlement of PPL's default service plan that the Commission just approved on June 30, 2009, and the Commission's Tentative Order establishes requirements of dubious benefit without any consideration of the costs of implementing the directives. I agree with these comments. This proceeding reflects a certain recklessness in a rush to accommodate electric generation suppliers (EGSs) without regard to the interests of electric distribution companies (EDCs) and their default service customers.

Second, I do not believe that it is appropriate to *mandate* that PPL establish a purchase of receivables (POR) program by January 1, *2010*. To date, the Commission has encouraged EDCs and NGDCs to establish POR programs, but has not mandated them. In PPL's case, the Commission approved the joint petition for settlement of PPL's default service plan at Docket No. P-2008-2060309 by an Order issued on June 30, 2009. Under this settlement approved just a little over a month ago, PPL agreed to file a revised *voluntary* POR plan no later than July 1, 2010, with an effective date of January 1, *2011*. Today's Order changes this portion of the settlement.[1] I agree with PPL's comment that the new directives are in conflict with the settlement, and that it is not appropriate to disturb the terms of the settlement through the issuance of a Tentative Order. PPL Comments at 20. I also agree with the concerns raised by many parties regarding the shifting of costs to default service customers and the lack of an incentive for EGSs to screen customers for credit worthiness under a POR program with "little or no" discount. I believe that FirstEnergy Solutions' suggested alternative, the unbundling of a portion of uncollectible expense from the distribution charge and incorporating that amount in the retail generation price for default service, should have been fully explored. FirstEnergy Solutions Comments at 6.

Third, I continue to have grave reservations regarding the requirement that PPL release customer information to EGSs unless a customer affirmatively acts to restrict access to their information. Historically, the Commission's policy has been to discourage or prohibit "negative check offs" in recognition of the fact that they unnecessarily burden customers and often are overlooked.[2] The Final Order seems to go even further than the Tentative Order. It apparently requires EDCs to release customer information to an EGS upon receipt of the EGS' *oral* assurance that the customer has consented to the release, even if the customer previously has provided a *written* form to the EDC restricting the release. Final Order at 11. It is likely that this aspect of the Order will result in slamming and unauthorized release of confidential information. On the commercial side,

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[1] It should be noted that the settlement was signed by the Retail Energy Supply Association and several EGSs.

[2] Ironically, PPL recently proposed a pre-payment plan that would have included an opt-out provision. This particular provision engendered a large amount of controversy, and eventually PPL agreed to a settlement under which customers who wanted to participate had to affirmatively opt-in to the program. *Petition of PPL Electric Utilities Corporation for Approval of a Rate Stabilization Plan*, Docket No. P-2008-2021776 (August 7, 2008).

I also am concerned that electric consumption data that the customer may consider to be confidential business information may find itself in the hands of a competitor.

In addition to these three areas of concerns, there are other issues that I believe are being wrongly decided, for example the requirement that PPL establish both bill-ready and rate-ready billing systems. For these reasons I strongly dissent from the majority's decision today.

8-6-09
DATE

Tyrone J. Christy
TYRONE J. CHRISTY, VICE CHAIRMAN