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October 26, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025
Docket No. P-2020-3019356**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission are the Joint Exceptions of the PP&L Industrial Customer Alliance ("PPLICA") and Industrial Energy Consumers of Pennsylvania ("IECPA") to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes issued in the above-captioned proceeding.

As shown by the attached Certificate of Service and per the Commission's March 20, 2020, Emergency Order, all parties to this proceeding are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy of this pleading upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to the PP&L Industrial Customer Alliance

c: Administrative Law Judge Elizabeth H. Barnes (via E-mail)
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Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 26th day of October, 2020, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of a Default :
Service Program and Procurement : Docket No. P-2020-3019356
Plan for the Period June 1, 2021 :
Through May 31, 2025 :

**JOINT EXCEPTIONS OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE
AND INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

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Dated: October 26, 2020

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I. INTRODUCTION

On March 25, 2020, PPL Electric Utilities Corporation ("PPL" or "Company"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition requesting approval of its fifth Default Service Program and Procurement Plan ("DSP V") for the period June 1, 2021, through May 31, 2025. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Mar. 25, 2020) ("Petition"). On May 7, 2020, the PP&L Industrial Customer Alliance ("PPLICA")¹ filed a Petition to Intervene and Answer to the Company's Petition. The Industrial Energy Consumers of Pennsylvania ("IECPA") also filed a Petition to Intervene on May 13, 2020.² A Prehearing Conference was held on May 15, 2020, before Administrative Law Judge ("ALJ") Elizabeth H. Barnes.

ALJ Barnes presided over a hearing on August 13, 2020, where parties submitted testimony and exhibits into the record by way of stipulation and verification, including PPLICA Statement No. 1, PPLICA Statement No. 1-R, PPLICA Statement No. 1-SR, IECPA Statement No. 1, and IECPA Statement No. 1-SR.

On September 3, 2020, PPLICA and IECPA filed Main Briefs and received Main Briefs from the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), PPL, Starion Energy PA, Inc.'s ("Starion"), Inspire Energy Holdings, LLC ("Inspire"), Electric Generation Supplier ("EGS") Parties, Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively, "StateWise").

¹ PPLICA's compilation is listed on Appendix A accompanying PPLICA's Petition to Intervene filed in this matter on May 7, 2020.

² IECPA's compilation is listed on Appendix A accompanying IECPA's Petition to Intervene filed in this matter on May 8, 2020.

On September 17, 2020, PPL, the Bureau of Investigation and Enforcement ("I&E"), OCA, OSBA, CAUSE-PA, the Sustainable Energy Fund ("SEF"), the EGS Parties, and Calpine Retail Holdings, LLC ("Calpine") ("Signatory Parties") filed a Joint Petition for Approval of Partial Settlement ("Partial Settlement"), along with Statements in Support of the Petition. The Partial Settlement resolves all but three of the issues and concerns raised by the parties in the instant proceeding. The Partial Settlement was not contested by any party; however, PPLICA and IECPA filed Reply Briefs regarding the unresolved matter of PPL's calculation of customers Network Service Peak Loads ("NSPL" or "NITS tag").

On October 13, 2020, the ALJ entered a Recommended Decision ("R.D.") in this proceeding.

Pursuant to the Secretarial Letter issued in this proceeding, PPLICA and IECPA hereby submit this Joint Exception to address the ALJ's finding that the PUC lacks concurrent jurisdiction with the Federal Energy Regulatory Commission ("FERC") to regulate the continuing use of the 5 Coincident Peak ("CP") method for calculating individual customers' NSPLs and to respectfully request that the Commission issue an Order granting the substantive relief sought by PPLICA and IECPA. Specifically, for the reasons set forth in both the PPLICA and IECPA Main Briefs and Reply Briefs and further discussed below, the Commission should reject the ALJ's finding that the Commission lacks jurisdiction to consider the proposal to modify PPL's use of a 5 CP allocation for calculating customers' NSPLs and direct PPL to use the 1 CP methodology to determine individual customers' NSPLs.

II. EXCEPTION

A. **PPLICA and IECPA Request that the Commission Reject the ALJ's Incorrect Assertion that the PUC Lacks Jurisdiction Over PPL's NSPL Calculation (Recommended Decision at 37-39).**

As noted above, PPLICA and IECPA provided substantial evidence affirming that PPL failed to carry its burden of proof that continued use of the 5 CP to calculate the customer's NSPLs complies with cost causation principles. Accordingly, PPLICA and IECPA proposed that the Commission modify PPL's DSP V to require use of a 1 CP to assign customers' NSPLs. However, in the R.D., the presiding ALJ denied the relief requested by PPLICA and IECPA solely on grounds that the PUC lacks jurisdiction to regulate PPL's calculation of customers' NSPLs. R.D. at 38. As demonstrated below, the ALJ erred in dismissing this matter on jurisdictional grounds. PPLICA and IECPA respectfully except to the ALJ's finding and request that the Commission exercise its jurisdiction to modify PPL's calculation of customers' NSPL to use a 1 CP.

On January 23, 2020, the Commission issued a Secretarial Letter directing the largest jurisdictional electric distribution companies ("EDCs") to confirm their methods for allocating wholesale capacity and transmission costs to individual retail customers for review by the Commission. *Re: Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Secretarial Letter, Docket No. M-2019-3007101 (Jan. 23, 2020) ("Closing Investigation Letter"). PPLICA Main Brief at 4-6, IECPA Reply Brief at 8. This followed the Commission's investigation of how EDCs in Pennsylvania allocate wholesale electric costs to *individual customers*, following a Motion from Commissioner Andrew G. Place. *Re: Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Motion of Commissioner Andrew G. Place, Docket No. M-2019-3007101 (Jan. 17, 2019) (Emphasis added). *Id.*; *see also Re: Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms* (Order issued Jan. 17, 2019). The Commission has already exercised jurisdiction over this issue, and this

exercise of jurisdiction is entirely consistent with the Commission's authority to regulate default service rates and competitive retail markets under Act 129.

Although the Commission at that time did not require the adoption of NSPL calculations reflecting the 1 CP allocation used by PJM Interconnection, LLC ("PJM") to assign transmission costs to the Load Serving Entities ("LSE") as PPL's allocation methodology in its Closing Investigation Letter, the Commission directed the seven largest EDCs to explain their methodologies for allocating capacity and transmission costs to individual customers as part of their next DSP filings. PPLICA Main Brief at 5. The Commission intended to rely on the information provided by each EDC to determine "whether making the use of capacity and transmission tags more uniform across the state (at least among the large EDCs) would be beneficial and in the public interest." *Id.* at 5. This exercise of jurisdiction further underscores the Commission's obligation to regulate default service rates and competitive retail markets under Act 129.

The ALJ incorrectly agrees with PPL that the Commission is preempted from exercising jurisdiction over PPL's NSPL calculation because FERC recently held it has jurisdiction over the methodology used to determine NSPL contributions for PPL's customers. R.D. at 37 (*citing National Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection LLC*, FERC Order Docket No. EL18-78-000, 171 FERC ¶ 61,237 (2020) ("Amtrak Order")) The ALJ reasoned that because FERC has jurisdiction over both "the NITS charges assessed by PJM... as well as the related PPL methodology for determining Network Service Peak Load Contributions", the Commission's jurisdiction is preempted. *Id.*

Critically, the ALJ's analysis omits consideration of concurrent jurisdiction between FERC and the PUC. The ALJ failed to note that FERC did not substantively address, review, or approve

PPL's NSPL calculation in the Amtrak Order. Rather, it recognized its jurisdiction over PPL's NSPL calculation to confirm that PPL's declining to file its NSPL calculation as an Attachment M-2 to the PJM tariff is not a violation of the Federal Power Act. Amtrak Order, ¶ 62,763 (citing *PJM Interconnection L.L.C.*, 155 FERC ¶ 61,163, at P 15 n. 19 (2016) ("*Duke Ohio Order*"). See also PPLICA Reply Brief at 5-6.

In addition, the ALJ erroneously concluded that FERC has exclusive jurisdiction over these NSPL methodologies because footnote 40 in *PJM Interconnection, L.L.C. and Va. Elec. and Power Co.*, 172 FERC ¶ 61,054 (2020) ("2020 Order"), states that "[a]s such, the proposed tariff provisions specify methodologies that are inputs to Commission jurisdictional charges assessed by PJM to [Load Serving Entities] who are customers in PJM." R.D. at 38 (citing *Commonwealth Edison Co.*, 133 FERC ¶ 61,118, 61,596 (2010) ("*ComEd Order*"). Unfortunately, the repeated citation of this excerpt fails to capture the overall finding from the ComEd Order. Ironically, the very case relied upon by PPL and the R.D. supports the Commission's exercise of jurisdiction over PPL's NSPL calculation. The following presents the same quote cited in the R.D. but within the critical context of the full paragraph:

As ComEd points out, the proposed tariff provisions specify how ComEd will calculate the Obligation Peak Load that it reports to PJM, and that PJM uses the Obligation Peak Load to calculate the Locational Reliability Charge issued by PJM to LSEs utilizing the RPM to satisfy their capacity obligations. As such, the proposed tariff provisions specify methodologies that are inputs to Commission-jurisdictional charges assessed by PJM to LSEs, who are customers of PJM. In contrast to the assertion of the Illinois Commission, *the proposed tariff provisions do not address how LSEs bill retail customers for such charges, and therefore do not affect the Illinois Commission's ability to allocate such charges.*

Commonwealth Edison Co., 133 F.E.R.C. ¶ 61,118, 61,596 (Nov. 2, 2010) (Emphasis added).

Consistent with the arguments advanced by PPLICA and IECPA, FERC has confirmed that its process for calculating capacity or transmission charges assessed to LSEs does not restrict state

public utility commissions from regulating the appropriate allocation of such charges to retail customers. The Commission reserves full authority to regulate the allocation of NITS charges to PPL's retail customers.

FERC's later decision in the 2020 Order similarly fails to support the R.D.'s finding on jurisdiction. FERC reviewed proposed changes to the Attachment M-2 to the Open Access Transmission Tariff filed by Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") with FERC, including the proposal to implement a 12-CP methodology for calculating customers' NSPLs. PPL has not filed its NSPL methodology with FERC as an Attachment M-2. PPLICA Reply Brief at 12. Accordingly, FERC's exercise of jurisdiction over an NSPL calculation methodology previously filed as an Attachment M-2 does not foreclose the PUC from exercising jurisdiction over PPL's NSPL calculation methodology in this proceeding. Further, it is notable that the 2020 Order provides no indication that the applicable state commission in that case, the Virginia State Corporation Commission Division of Public Utility Regulation, attempted to exercise jurisdiction over Dominion's NSPL calculation. As a result, the contention that FERC's exercise of jurisdiction in that docket wholly preempts state commissions from regulating the NSPL calculations used to allocate costs from LSEs to individual customers must fail.

FERC very recently indicated that jurisdiction over NSPL methodologies should be addressed on a case-by-case basis. On October 15, 2020, FERC rendered an opinion on the request of the complainant in the Amtrak Order to clarify "whether or not the calculation and application of Network Service Peak Load falls within the Commission's exclusive jurisdiction." *National Railroad Passenger Corp. v. PPL Electric Utilities Corporation and PJM Interconnection L.L.C.*, 173 FERC ¶ 61,043 at ¶ 25 (Oct. 15, 2020) ("Amtrak Order on Reconsideration"). FERC deemed

the requested clarification to be "unnecessary to the result reached in this case," thereby signaling that its acknowledgment of jurisdiction over PPL's NSPL methodology was never intended as a finding of *exclusive* jurisdiction. *See id.*

As referenced above and detailed in IECPA's Reply Brief, FERC retains authority over the level of a just and reasonable transmission or wholesale energy rate, but the PUC reserves sole jurisdiction over the allocation of these costs to individual customers. IECPA Reply Brief at 8. Indeed, despite its opposition to the proposed 1 CP allocation, PPL has previously recognized the Commission's discretion over transmission costs in stating that "[w]here it has jurisdiction, the Commission has wide discretion on technical issues, particularly complex financial determinations and weighing and interpreting statistical and economic evidence, *such as the appropriate methodology for allocating zone wide transmission costs to individual customers[.]*" *Id.* at 8. (Emphasis added).

As any FERC authority over PPL's NSPL methodology cannot be exclusive with regard to retail customers, the PUC should exercise jurisdiction over PPL's NSPL methodology to ensure retail customers pay just and reasonable rates. The Commission has established cost of service as the "polestar" for just and reasonable ratemaking in Pennsylvania. *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006). The record in this docket confirms that PPL's 5 CP allocator conflicts with cost causation because PJM calculates the NITS charges assessed to LSEs using a 1 CP and PPL then assigns such costs to customers using a 5 CP. PPLICCA Main Brief at 7; IECPA Main Brief at 6. The Commission is not bereft of authority to enforce its commitment to just and reasonable retail rates for Pennsylvania consumers and should exercise its broad discretion in this case to: (1) address the substantive record showing PPL failed to meet its burden of proving that calculating customers' NSPLs can be reconciled with cost causation when PJM uses a 1 CP to set

the NITS charges assessed upon LSEs; and (2) direct PPL to modify its DSP V to use the 1 CP to calculate customers' NSPLs.

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance and the Industrial Energy Consumers of Pennsylvania respectfully request that the Pennsylvania Public Utility Commission grant this Joint Exception and modify PPL's DSP V consistent with the recommendations advanced therein and detailed in their Main and Reply Briefs.

Respectfully submitted,

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