Barry A. Naum
Direct Dial (717) 795-2742
bnaum@spilmanlaw.com

September 17, 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 Its Default Service Plan for the Period June 1, 2021 through May 31, 2025; Docket No. P-2020-3019356

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Brief of the Industrial Energy Consumers of Pennsylvania in the above-referenced proceeding.

All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By
Derrick Price Williamson
Barry A. Naum

BAN/sds
Enclosures
c: Administrative Law Judge Elizabeth H. Barnes (Via E-mail)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

VIA E-MAIL

Gina L. Miller, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
ginmiller@pa.gov

Aron J. Beatty, Esquire
David T. Evrard, Esquire
Lauren R. Myers, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101
abeatty@paoca.org
devrard@paoca.org
lmyers@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
sgray@pa.gov

Kimberly A. Klock, Esquire
Michael J. Shafer, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mjshafer@pplweb.com

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Jessica R. Rogers, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
lberkstresser@postschell.com
jrogers@postschell.com

David B. MacGregor, Esquire
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com

Elizabeth R. Marx, Esquire
John Sweet, Esquire
Ria Pereira, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net

John F. Lushis, Jr., Esquire
Norris McLaughlin, P.A.
515 W. Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com

James H. Laskey, Esquire
Norris McLaughlin, P.A.
400 Crossing Blvd., 8th Floor
Bridgewater Township, NJ 08807
jlaskey@norris-law.com

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Gregory L. Peterson, Esquire
Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701-4907
gpeterson@phillipslytle.com

Kevin C. Blake, Esquire
Phillips Lytle, LLP
125 Main Street
Buffalo, NY 14203
kblake@phillipslytle.com

Thomas F. Puchner, Esquire
Phillips Lytle, LLP
30 South Pearl Street
Albany, NY 12207
tpuchner@phillipslytle.com

Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com

Pamela C. Polacek, Esquire
Adeolu A. Bakare, Esquire
Jo-Anne S. Thompson, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
ppolacek@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

Barry A. Naum

Dated: September 17, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

Derrick Price Williamson (Pa. I.D. No. 69274)
Barry A. Naum (Pa. I.D. No. 204869)
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2742
Fax: (717) 795-2743
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

On September 3, 2020, parties in this proceeding submitted Main Briefs, outlining their positions regarding the issues that remain for the Pennsylvania Public Utility Commission's ("PUC" or "Commission") consideration that were not resolved by the Joint Petition for Partial Settlement achieved between some of the active parties in the case. One issue reserved for continued litigation and deliberation is the question of whether the Commission should require PPL Electric Utilities Corporation ("PPL" or "Company") to modify its existing methodology for allocating on the retail level to its various load serving entities ("LSEs") and customers the Company's wholesale transmission obligations that it incurs on the PJM Interconnection, LLC ("PJM") system.

The Industrial Energy Consumers of Pennsylvania ("IECPA") and the PP&L Industrial Customer Alliance ("PPLICA") filed Main Briefs arguing that PPL should be required to modify its existing five coincident peak ("5 CP") methodology for calculating individual retail customer Network Service Peak Load ("NSPL") obligations and adopt a single coincident peak ("1 CP") allocation methodology on the grounds that this approach mirrors the methodology employed by PJM in assigning wholesale transmission cost obligations to PPL, and therefor reflects proper cost causation principles. Opposed to this request, PPL filed its Main Brief first arguing that the PUC lacks jurisdiction to approve IECPA's and PPLICA's request and then arguing on the merits that the Commission should reject the 1 CP methodology and affirm PPL's use of the 5 CP methodology.

IECPA submits that the bulk of the issues raised by PPL on the question of the merits of the 1 CP approach versus the 5 CP approach have already been addressed by both IECPA and PPLICA in their respective Main Briefs. Therefore, IECPA will not be responding to each and every argument presented by PPL, but respectfully offers this Reply Brief in order to address the

Company's procedural argument regarding the jurisdiction of the Commission to grant the relief requested by IECPA and PPLICA and to address some of the more objectionable aspects of the Company's arguments on the merits.

II. ARGUMENT

Contrary to PPL's argument, the PUC has full jurisdiction and authority to regulate the retail rate implications of PPL's 5 CP transmission cost allocation methodology that deviates from the 1 CP allocation approach employed by PJM to assign costs to PPL on the wholesale level. PPL's attempt to cite the Federal Energy Regulatory Commission's ("FERC") authority over wholesale transmission costs obfuscates the issue presented for the Commission's consideration and ignores the fact that PPL's 5 CP methodology results in unjust and unreasonable rates on the Pennsylvania retail level, which is a matter that the PUC has full jurisdiction and authority to regulate.

Furthermore, PPL's analysis and support of its 5 CP allocation methodology clearly represents an acknowledged discriminatory effort to hinder the efficient use of the Company's electric system by certain customers. PPL's defense of the 5 CP allocation neither proves that the Commission's continued approval of this approach is necessary nor succeeds in relieving the fundamental flaw of the methodology insofar as it does not reflect the best cost causation methodology and results in unjust and discriminatory rates. Accordingly, IECPA respectfully requests that the Commission require PPL to implement the 1 CP methodology advanced by IECPA and PPLICA.

A. The PUC Has Full Jurisdiction Over PPL's Methodology for Allocating Zone-Wide Transmission Costs to Retail Customers.

There is no question that the PUC has broad authority over charges included in retail rates.[1] PPL, however, argues that the Commission "has no jurisdiction over the request to require [PPL] to use a 1 CP methodology to calculate interstate transmission rates." PPL Main Brief ("M.B."), pp. 46-50. PPL mischaracterizes IECPA's request and the point at issue, which is not the level of a just and reasonable interstate transmission rate (which IECPA concedes FERC has jurisdiction over), but rather, the manner in which pass-through interstate transmission charges are divided and allocated between different retail customers. PPL fails to differentiate between FERC's jurisdiction over the level of the appropriate interstate (i.e., FERC-jurisdictional) transmission rate (not at issue here), versus the PUC's jurisdiction over the allocation of pass-through transmission charges between individual retail customers (at issue in this proceeding).

In support of its position that the PUC lacks jurisdiction to determine the appropriate coincident peak methodology at issue in this proceeding, PPL cites Hughes v. Talen Energy Marketing, LLC, 136 S. Ct. 1288, 1298 (2016), where the Supreme Court invalidated the State of Maryland's attempt to offer certain Maryland generators supplemental payments for capacity in addition to the payments that those generators would receive through PJM's capacity market. Hughes does not support PPL's argument. Id. at 46. In affirming the lower court's decision to strike down the Maryland program, the Supreme Court in Hughes addressed the interplay between federal and state jurisdiction contemplated in the Federal Power Act ("FPA") and explained that "States may regulate within their assigned domain even when their laws incidentally affect areas within FERC's domain" but that States may not go so far as to "intrude on FERC's authority over

[1] McCloskey v. Pa. Pub. Util. Comm'n, 225 A.3d 192, 202-03 (Pa. Commw. Ct. 2020) ("'The [Commission] has broad discretion in determining whether rates are reasonable"' and 'is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates.'") (citation omitted).

interstate wholesale rates." Hughes, 136 S. Ct. at 1290-91, 1298 (emphasis added). The Court further elaborated:

> The problem we have identified with Maryland's program mirrors the problems we identified in Mississippi Power & Light and Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 106 S. Ct. 2349, 90 L.Ed.2d 943 (1986). In each of those cases, a State determined that FERC had failed to ensure the reasonableness of a wholesale rate, and the State therefore **prevented a utility from recovering** – through retail rates – the full cost of wholesale purchases. See Mississippi Power & Light, 487 U.S., at 360–364, 108 S. Ct. 2428; Nantahala, 476 U.S., at 956–962, 106 S. Ct. 2349. This Court invalidated the States' attempts to second-guess the reasonableness of interstate wholesale rates. **"'Once FERC sets such a rate,'" we observed in Mississippi Power & Light, "'a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable**. . . . '"

Id. at 1298 (emphasis added).

Unlike the Maryland program discussed in Hughes, IECPA's request does not amount to an intrusion on FERC's authority over interstate transmission rates, because IECPA neither second-guesses PJM's FERC-approved methodology for calculating the transmission charges assessed to PPL, nor does IECPA urge the PUC to prevent PPL from recovering the full cost of its interstate transmission charges through retail rates. In Hughes, the State of Maryland attempted to create its own pricing system for retail power because it believed the results coming out of the FERC Jurisdictional wholesale power markets led to retail prices that were too high. IECPA takes issue with the method that PPL proposes to use to allocate pass-through transmission charges to and between individual retail customers. Where Maryland in Hughes tried to change the costs resulting from the PJM wholesale power market, IECPA is asking in this case that the Commission apply the same transmission cost allocation method on the retail level. The allocation of pass-through transmission charges between retail customers is entirely within the PUC's jurisdiction, and does not impact the level of a just and reasonable interstate transmission rate (i.e., the amount

of network service charges billed to PPL), nor does it interfere with PPL's ability to recover the full amount of those charges from retail customers.

PPL also wrongly relies on National Railroad Passenger Corp. v. PPL Electric Utilities Corp. and PJM Interconnection, LLC, 171 FERC ¶ 61,237 (2020) ("Amtrak Order") for the proposition that FERC has "exclusive" jurisdiction over the coincident peak methodology used to allocate charges between retail customers. PPL M.B., pp. 24, 46, 48. In the Amtrak Order, FERC rejected a complaint by Amtrak challenging "[Network Integration Transmission Service ("NITS")] charges assessed by PJM and passed through to Amtrak by [PPL]." Amtrak Order, ¶ 34. In deciding to reject the complaint, FERC determined that it had jurisdiction over the "PPL methodology for determining Network Service Peak Load Contributions," but specifically as it related to the calculation of the NITS rate charged by PJM to PPL as set forth in Section 34.1 of PJM's Open Access Transmission Tariff ("PJM Tariff").[2]

By way of background, PJM Tariff Section 34.1, in addition to PJM Manual 27 Section 5 (Network Integration Transmission Service Accounting), set forth the methodology for calculating the monthly demand charge assessed by PJM to NITS customers (including PPL), which methodology in turn relies on "the sum of the Network Customer's individual wholesale and retail customer Zone Network Loads (including losses) at the time of the annual peak of the Zone in which the load is located." PJM Tariff § 34.1 Neither Section 34.1 nor Manual 27 concern or affect the method by which the transmission charges assessed to the Network Customer (PPL), and which the Network Customer (PPL) passes through to retail choice suppliers and retail

[2] See Amtrak Order, ¶ 34 and n.70 (citing to PJM Tariff § 34.1 and stating "tariff provisions specifying methodology for utility's calculation of network service peak load contributions are jurisdictional") (citing Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc., 133 FERC ¶ 61,118, ¶¶ 6, 11 (2010)).

customers, are ultimately divided and allocated between individual choice suppliers and retail customers.[3]

Therefore, while FERC certainly does have jurisdiction over the subject matter of Amtrak's complaint related to NSPL calculations when used to calculate NITS charges, FERC's statement regarding its jurisdiction in the Amtrak Order does not mean that FERC has (or asserts) authority over the NSPL or coincident peak methodology used for allocating pass-through transmission charges to individual choice suppliers and retail customers. The Amtrak Order pertains specifically to the NITS rate charged by PJM to the Network Customer (PPL), not the charges flowed through and allocated by PPL between retail choice suppliers (LSEs other than PPL) or customers that are located in PPL's service territory. The authority over the coincident peak methodology to be used for allocating pass-through transmission charges to individual LSEs and retail customers still belongs to the PUC.

Moreover, even if FERC does have authority to reach in and decide how PPL should allocate its costs between the LSEs in PPL's service territory, that would not mean that such authority is "exclusive," as PPL alleges. FERC has not asserted jurisdiction over allocating transmission costs among LSEs and individual retail customers, and such process is not set forth in the PJM Tariff nor the PJM Manuals. See Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc., 133 FERC ¶ 61,118, ¶ 11 (2010) (explaining that "proposed tariff provisions do not address how LSEs bill retail customers for [certain] charges, and therefore do not affect the [State] Commission's ability to allocate such charges.") Therefore, even if FERC has authority to do so, it has not preempted the PUC's authority over the coincident peak

[3] It is arguably PPL's proposal that would deviate from the methodology decided by FERC, since PPL proposes a 5 CP methodology, whereas FERC has already approved a 1 CP methodology.

methodology to be used for allocating pass-through transmission charges to individual LSEs. See Hughes, 136 S. Ct. at 1290-91 ("States may regulate within their assigned domain even when their laws incidentally affect areas within FERC's domain") (emphasis added).

FERC's broader discussions in the Amtrak Order and in N. Star Steel Co., LLC further undermine PPL's argument that the PUC lacks jurisdiction to grant the relief sought by IECPA and PPLICA. See PPL M.B., pp. 49-50. FERC indicated in the Amtrak Order that "retail sales of electric energy" are "beyond the scope of [FERC's] jurisdiction." Amtrak Order, ¶ 35 (2020) (citing to its decision in N. Star Steel Co., LLC v. Ariz. Pub. Serv. Comm'n, et al., 120 FERC ¶ 61,146 (2007)). Moreover, in N. Star Steel Co., LLC, FERC explained that it has no jurisdiction over remedies involving retail charges:

> North Star's rehearing request mistakenly characterizes the Commission's determination in the July 7 Order as denying the complaint because a retail customer brought the complaint. Instead, the Commission denied North Star's complaint because the Commission determined that the retail refunds that North Star requested are beyond the scope of the Commission's jurisdiction. While North Star is correct that the FPA and the Commission's regulations permit North Star to bring a complaint under section 206 of the FPA challenging the justness and reasonableness of the Respondents' rates, that does not also mean that it is within the Commission's jurisdiction to order the remedy sought by North Star. The Commission's jurisdiction under sections 205 and 206 of the FPA is limited by section 201 of the FPA, which grants the Commission jurisdiction over "the sale of electric energy at wholesale in interstate commerce" and explicitly excludes "any other sale of electric energy." North Star admits it is a retail customer participating in a retail transaction. Therefore, any refund given directly to North Star would be a retail refund that is beyond the scope of the Commission's jurisdiction.
>
> As the Commission has previously stated, the issue of whether a wholesale buyer must pass through refunds "to retail customers is a matter for determination by the appropriate state authorities." Thus, the refunds that North Star requests are an issue for the appropriate state authority, rather than the Commission.

N. Star Steel Co., LLC, 120 FERC ¶ 61,146, ¶¶ 6-7 (citations omitted) (emphasis added). See also San Diego Gas & Elec. Co. Complainants v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power

Exchange, Respondents, 111 FERC ¶ 61,186, ¶ 30 (2005) ("The Commission will state unequivocally that the issue of whether [Pacific Gas & Electric ("PG&E")] and [California Department of Water Resources ("CDWR")] must pass through any refunds received as a result of the Dynegy Settlement to retail customers is a matter for determination by the appropriate state authorities.")

These FERC orders indicate that, while FERC retains authority over the level of a just and reasonable transmission or wholesale energy rate, the PUC (not FERC) has sole jurisdiction over the manner in which charges are flowed through and allocated to individual customers. PPL's own statements with respect to the PUC's broad authority serve to clarify and bolster this point:

> Where 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. . . .
>
> . . .
>
> . . . Where the Commission has jurisdiction, it is authorized with broad discretion to select an allocation methodology.

See PPL M.B., pp. 55, 57-58 (emphasis added) (citing See, e.g., McCloskey v. Pa. Pub. Util. Comm'n, 225 A.3d at 202-03; see also Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087, 1095 (Pa. Commw. Ct. 2015)). Furthermore, as PPLICA noted in its Main Brief, the PUC has already exercised its jurisdiction with respect to the retail rate question posed by PPLICA and IECPA through its recent investigation into PJM settlement reforms at Docket No. M-2019-3007101. PPLICA M.B., pp. 4-6; see also IECPA M.B., p. 1

Finally, PPL's argument that the PUC lacks jurisdiction over the rates charged by an electric generation supplier ("EGS") to retail customers via private contract is beside the point. EGS

contracts serve merely as a conduit through which PPL's transmission charges are passed through to certain of IECPA's and PPLICA's members (and other customers), and those contracts and/or their terms are not at issue here and play no part in determining the coincident peak methodology to be used by PPL. PPL states that "an EGS, acting as an LSE, is responsible for paying the NITS charge on a customer's behalf and 'must include in its [contract] pricing some accounting' for the charge." PPL M.B., p. 49 (citing EGS Parties' Statement No. 1, Direct Testimony of Christopher H. Kallaher, pp. 34-35) (emphasis added). However, the manner in which those NITS charges are allocated to each EGS is determined by the coincident peak methodology used by PPL, i.e., whether 5 CP or 1 CP.

Therefore, it is clear that IECPA's and PPLICA's members (and other retail customers) are affected by PPL's proposal to use a 5 CP methodology (even if those customers contract their power supply through an EGS), and that PPL's allocation methodology is the issue in this proceeding, not the EGS contracts through which the transmission charges are merely flowed through to customers. Individual customers and their EGSs are perfectly capable of negotiating the terms of their electric supply service. IECPA is not asking the Commission or PPL to regulate that process, but is asking the Commission to assure that PPL passes through its charges for electric service to retail choice suppliers, and ultimately individual customers, on a just and reasonable cost causation basis, the regulation of which is fully within the PUC's jurisdiction.

B. The PUC Should Require PPL to Modify its Current 5 CP Transmission Allocation Methodology to Reflect the 1 CP Approach Employed by PJM to Assess Transmission Obligations on PPL.

On the merits of the question whether PPL should modify its current transmission allocation methodology from a 5 CP approach to the 1 CP approach requested by IECPA and PPLICA, the Company employs in its Main Brief two primary misleading claims to denigrate the request of IECPA and PPLICA for a modification to the retail NSPL allocation, including the

repeated assertions that the Company's current methodology is "long standing" practice acknowledged by the Commission and other sources, as well as the false mantra that a certain subset of customers like IECPA and PPLICA members are looking to "avoid paying transmission costs" at the expense of other ratepayers. PPL M.B., pp. 62-64. In addition to obfuscating the issue at hand, neither of these arguments is sufficient justification to continue the practice of allocating unjust and discriminatory transmission costs on the retail level through a 5 CP methodology, particularly when the 1 CP methodology actually proves to be a more accurate, cost-based approach reflective of the manner in which PJM allocates that obligation to PPL.

1. PPL has failed to justify the continued use of the 5 CP methodology, particularly when employment of the 1 CP methodology would result in a more accurate cost-based retail allocation of PJM transmission costs.

In attempting to place the burden of proof for its retail transmission allocation methodology on IECPA and PPLICA, PPL in its Main Brief engages in a clever sleight of hand, citing Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket Nos. R-00061931, et al., 2007 Pa. PUC LEXIS 45 at *165-68, for the proposition that "a party challenging a previously approved provision bears the burden to demonstrate that the Commission's prior approval is no longer justified." PPL M.B., p. 51 (emphasis added). But PPL provides no evidence whatsoever that the Commission has approved the Company's 5 CP retail transmission allocation methodology. To that end, IECPA is not aware of any proceeding in which the Commission has specifically ruled on the merits of PPL's allocation. Indeed, in the recent investigation into default service and PJM settlement reforms at Docket No. M-2019-3007101, the Commission specifically deferred that determination to the present docket. See IECPA M.B., p. 1 (citing Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) ("PJM Investigation"), p. 4). Thus, contrary to the Company's assertion, PPL maintains the burden of demonstrating that its retail transmission allocation methodology is just

and reasonable. It has failed to do so, particularly in light of the cost causation justification for the 1 CP methodology.

In reality, PPL rests its justification for the continued use of the 5 CP allocation in large measure on the repeated recitation of the fact that this methodology is a "long standing" approach that PPL has employed for the past nine years.[4] See, e.g., PPL M.B., pp. 58, 62. The fact that PPL's 5 CP methodology is a "long standing practice" is not itself justification for it to continue. It is entirely irrelevant that PPL's methodology is "long standing" if it is also an unreasonable methodology that is not reflective of accurate cost causation principles. In this, IECPA agrees with PPL that the Commission, exercising its broad discretion, is able to change a long standing practice based upon evidence that it should do so. Id. at 55 (citing Application of Metropolitan Edison Co., Docket No. R-00974008 (Order dated June 30, 1998); and Pa. Pub. Util. Comm'n v. Pennsylvania Power & Light Co., 55 PUR 4th 185 (Order dated Aug. 19, 1983)). IECPA and PPLICA have provided that evidence in their respective Main Briefs.

Arguing that its 5 CP methodology is "fully consistent with cost causation principles," PPL cites Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1021 (Pa. Commw. Ct. 2006), and the "polestar" ratemaking principle of cost causation, as well as providing the adage that "because cost allocation requires a considerable amount of judgement . . . it is an art rather than a science." PPL M.B., p. 55 (citing Application of Metropolitan Edison Co., Docket No. R-00974008 (Order dated June 30, 1998); and Pa. Pub. Util. Comm'n v. Pennsylvania Power & Light Co., 55 PUR 4th 185 (Order dated Aug. 19, 1983)). But PPL's tacit reliance on this "polestar" principle is not consistent with the substance of its actual support for the 5 CP methodology.

[4] It also bears noting that PPL's assertion on page 58 of its Main Brief that the Company has employed the 5 CP methodology "without any expressed concern" is flatly wrong. Both IECPA and PPLICA raised this very issue in the Commission's PJM Investigation. IECPA M.B., p. 1.

PPL accurately states that there is no single correct method of cost allocation; but that does not mean that a utility should deviate from "polestar" cost causation principles when an accurate, direct cost allocation methodology exists, nor particularly when the utility's decision to do so results in rates that are unjust and discriminatory, as in this instance (and as discussed below) PPL's own position demonstrates is the case. The notion that cost allocation is "an art rather than a science" does not justify the imposition of retail rates that are so divorced from direct wholesale cost responsibility that the cost allocation "art" becomes abstract and the "polestar" loses all navigational meaning. As PPL indicated in this proceeding, the 5 CP approach requires a level of "granularity" to show alleged "cost implications of providing service to individual customers;" but that extra measure of granularity and abstraction is not necessary when a direct cost causation nexus already exists with the 1 CP methodology employed by PJM to assign those costs directly to PPL. See IECPA Statement No. 1-SR, Surrebuttal Testimony of David F. Ciarlone (hereinafter, "IECPA St. 1-SR"), pp. 5-6 (citing PPL Statement No. 5-R, Rebuttal Testimony of Gary M. Hartman, Jr. (hereinafter, "PPL St. 5-R"), p. 7). In fact, when PPL takes the five peaks and blends them into a single average, the point of having such precise granularity is lost.

In PPL's own words, "the demand allocator [PPL] selects should reflect that its transmission costs are caused by peak demands." PPL M.B., p. 56. But it is undisputed that PJM allocates the cost of the transmission system to PPL based on a single zonal coincident peak, not the five coincident peaks that PPL has selected. IECPA M.B., pp. 7-8. If, as PPL claims, the question of reliance on a 1 CP methodology or a 5 CP methodology is simply a choice of demand allocators,"[5] then IECPA and PPLICA have already demonstrated in detail why the 1 CP approach to allocating retail transmission costs, by mirroring the undisputed 1 CP methodology employed

[5] PPL M.B., p. 57.

by PJM to assign that transmission obligation on the wholesale level to PPL, provides a closer and more accurate nexus to actual cost causation than PPL's 5 CP methodology. See id. at 9-10, 16-18; see also PPLICA M.B., pp. 8-9.

PPL notes that "other methods" have developed for allocating transmission costs and avers that the Commission has previously considered methodologies that deviate from PJM's 1 CP allocation approach,[6] but certainly none of this supports the proposition that the Commission is either prohibited from requiring employment of the 1 CP methodology or bound to approve PPL's current 5 CP approach. While there may be some perceived shortfalls with the 1 CP methodology, as there are with any cost allocation methodology, the question that should be answered is whether the methodology, in assigning retail cost responsibilities to and among customers, reflects proper and accurate cost causation as assigned by the transmission operator (i.e., PJM) on the wholesale level. IECPA and PPLICA have demonstrated that the 1 CP allocation accomplishes this objective while the 5 CP methodology does not. Furthermore, IECPA has shown that the use of the 5 CP methodology results in obstacles to the competitive market in Pennsylvania and creates a competitive disadvantage for customers on the PPL system. IECPA M.B., pp. 16-18.

2. PPL misstates the impact of the proposed 1 CP alternative and indicates a clear intent to structure its system in a manner that results in unjust and discriminatory rates in violation of the Commission's regulations.

As it did during the evidentiary phase of this proceeding, PPL argues extensively in its Main Brief that adoption of the 1 CP methodology for the retail allocation of transmission costs will result in negative impacts on its system, including rate instability and uncertainty. See PPL M.B., pp. 58-62. This argument is tied closely to the Company's allegation that certain customers,

[6] See PPL M.B., pp. 52-53. Of note, PPL's presentation of support for the 5 CP allocation also references the adoption by FERC of revisions to wholesale tariff provisions related to the calculation of capacity peaks, questions that are not at issue in this case. IECPA is not challenging PPL's allocation of retail capacity costs on a 5 CP basis, which comports with PJM's assignment of these wholesale capacity obligations.

including IECPA members, are seeking an approach to the allocation of retail transmission costs that would discriminatorily benefit those customers at the expense of all others. See id. PPL's arguments both misstate the impact of the 1 CP methodology and indicate a direct intent of the Company to actually discriminate against such customers.

As an initial point, PPL's presentation of the potentially harmful impacts of the 1 CP methodology stands in direct contrast to the evidence that the Company presented in this case. Specifically, PPL's suggestion that the 1 CP allocation approach would create rate instability and "large swings" in individual customers' cost allocation stands in stark contrast to the Company's own admission that a "single customer's usage during a peak day has very little impact upon transmission costs." See IECPA M.B., p. 14 (citing PPL Statement No. 5-RJ, Rejoinder Testimony of Gary M. Hartman, Jr. (hereinafter, "PPL St. 5-RJ"), p. 5). More importantly, however, PPL's focus on the potential ability of certain customers to manage their peak transmission load contributions indicates a broader, and problematic, attempt to actively restrict those customers from doing so.

PPL clearly states that one of its objectives in employing the 5 CP methodology is to "prevent[] sophisticated entities from manipulating the process to avoid reasonable transmission cost responsibility." PPL M.B., p. 50. On its face, PPL's stated intent is offensive insofar as it implies, without any evidence to support the allegation, that the motives of such customers seeking to use the PPL system as efficiently as possible is a nefarious pursuit sought to abuse the system and cause harm to other customers. As IECPA has demonstrated in this case, nothing is further from the truth as it relates to IECPA's membership of large commercial and industrial customers.

More importantly, however, this statement by PPL is a clear indication of the Company's pursuit of a ratemaking methodology that is intended to actively discriminate against a certain

segment of its customers by forcing them to incur more of a system transmission obligation than they might otherwise incur if the Company employed a more reasonable, cost-based allocation methodology. This is a violation of PUC regulations.

Section 1304 of the Commission's regulations states in pertinent part:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304 (emphasis added). Although PPL suggests that its retail transmission cost allocation methodology is intended to avoid a discriminatory result, the actual evidence, and PPL's own arguments, demonstrate that the 5 CP methodology is specifically designed to be discriminatory in its treatment toward certain customers.

By requesting a 1 CP cost allocation approach, IECPA and PPLICA are seeking a more efficient way to reduce that peak demand by promoting load reductions, where appropriate and affordable to the customer implementing them, thus reducing the overall demand on the transmission system as a whole. When a customer reduces its load during a peak period, it does not cause costs to be incurred during that peak, which obviously then influences the amount of transmission planning (and subsequent costs) that must be conducted to support the system. IECPA M.B., pp. 13-14. It is irrational for PPL to want to actively hinder such efficiency; but that is precisely what PPL is doing, and it is doing so at the direct (and designed) expense of what the Company acknowledges to be PPL's largest and most sophisticated customers. Clearly, PPL wants these customers to bear a greater proportion of the retail transmission burden irrespective of whether those customers actually cause the costs to the system during the Company's single zonal transmission peak used by PJM to allocate costs to PPL on a wholesale basis. Id. at 14 (citing

IECPA St. 1-SR, p. 3). This is discriminatory on its face, in violation of Section 1304 of the Commission's regulations.

PPL states that these sophisticated customers "are changing their typical business operations to attempt to avoid future transmission costs," and concludes that these reductions are somehow "artificial." PPL M.B., pp. 61, 64. IECPA has certainly never disputed that some customers actively change their business operations to reduce peak load contribution and ultimately reduce their ongoing capacity and transmission costs; but more importantly, an effort to reduce electricity costs is not a nefarious goal for any ratepayer. Indeed, the 1 CP methodology that IECPA is seeking in this proceeding to encourage such cost reductions is also a methodology that will facilitate more efficient usage of the PPL transmission system. This is also obviously an accepted – and even promoted – practice within the Commonwealth, and is consistent with many goals of both the Commonwealth and the Commission. IECPA M.B., p. 15, 16-18 (citing Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Docket No. M-2018-3003269 (Implementation Order issued Apr. 25, 2019), p. 4; and 66 Pa. C.S. § 1330(a)(2)); see also PPLICA M.B., p. 10.

Furthermore, such peak reductions are not artificial in the least, but are genuine reductions in operational consumption of electricity. By changing business practice during peak periods, these customers provide a benefit not only for themselves through the avoidance of future costs, but they also provide a system-wide benefit by lowering the overall system peak load. IECPA M.B., pp. 15, 18. These reductions are not changes to "typical" business practice, as PPL repeatedly alleges[7]; rather, they are now "typical business practice" as a general rule. This is particularly true since the Supreme Court's ruling in FERC v. Electric Power Supply Ass'n., 136

[7] See PPL M.B., pp. 61, 64.

S. Ct. 760 (2016) ("EPSA"), where the Court affirmed FERC's Order 745 and found that the value of demand response reductions is equivalent to the value of load, thus balancing for customers the costs and benefits of load reductions, yielding a net positive result for them when they make these reduction decisions.[8] Customers who can make these reductions now typically consider participation in load reduction opportunities whenever they can, and the fact that large sophisticated customers capable of avoiding peaks do not actually avoid every peak is a function of the various competing business costs (outside of just the electricity expense) of doing so. See IECPA St. 1-SR, p. 5. Accordingly, such peak reductions are actual peak reductions, not "artificial" reductions; and these peak reduction decisions (and accompanying benefits) are not made by these customers without significant business risk and cost. See id.

PPL claims that IECPA's acknowledgment of these risks and costs is somehow proof that these customers are uniquely situated to take advantage of peak load reduction opportunities and thus to take advantage of other customers. PPL M.B., p. 61. This allegation is objectionable for two salient reasons. First, given that a peak load reduction results in overall system savings, it is perplexing why PPL would denigrate this activity and the motives of their most sophisticated customers in seeking to employ it. But second, perhaps most importantly and as noted above, the Commonwealth and the Commission have established express goals that encourage peak load reductions. In fact, the Commission has approved programs – even some implemented by PPL –

[8] Of note, if peak load reductions by certain customers constituted negative impacts for electric systems or market manipulation, as PPL seems to allege in this case, then the Supreme Court in EPSA would not have affirmed FERC's Order 745.

that encourage peak load reductions by more than just a handful of similarly situated customers.[9] Contrary to PPL's unsupported allegation that the 1 CP methodology is somehow discriminatory in favor of a small group of customers, it is the 5 CP allocation that actively, and intentionally, discriminates against any and all customers seeking to use the transmission system as efficiently as possible.

PPL again obfuscate the issue by suggesting that these customers are attempting to "avoid paying for transmission costs" and "effectively receive free transmission service," implying that there is some way for these customers to entirely avoid such costs. Id. at 43, 60. In addition to simply being untrue, as IECPA has explained,[10] this assertion is also fundamentally impracticable. At most, a large customer might curtail some portion of its load during that time (and thereby incur the cost of lost production, etc.), but no manufacturing or industrial customer is going to cease operating altogether and risk potential bankruptcy in the process. A customer reducing load during a peak period may be contributing less to the peak transmission load, and thereby incurring a proportionately less responsibility for those cost than it otherwise might if not for the load reduction, but that customer does not avoid, entirely, paying for transmission costs. IECPA M.B., p. 14. But again, even if PPL's assertion was true, the end result would be the same if the customer entirely eliminated its load obligation during PPL's identified 5 CPs. Id. at 15. PPL itself acknowledges that its 5 CP methodology does not insure that its intended result occurs (i.e.,

[9] On pages 63-64 of its Main Brief, PPL criticizes IECPA and PPLICA of not providing any evidence that the 1 CP methodology will produce "'the lowest reasonable price for the greatest number of customers'" and continues the allegation that the 1 CP allocation will only "benefit a few customers and harm the rest" (quoting Philadelphia Suburban Transportation Co. v. Pa. Pub. Util. Comm'n, 3 Pa. Cmwlth. Ct. 184, 196, 281 A.2d 179, 186 (1971)). As IECPA has noted, however, because of the number and variety of load reduction programs available to customers, the group of customers impacted by the retail transmission allocation methodology is not limited to just a few large customers or just a handful of uniquely situated customers, but to a more diverse collection of PPL customers. IECPA M.B., p. 12 n. 4.

[10] IECPA M.B., pp. 14-15.

hindering large customers from making efficiency reductions to their peak load in order to avoid alleged "volatility"). PPL M.B., p. 60.

PPL suggests that if IECPA and PPLICA members want to efficiently use the system, then they should seek to reduce usage during all of the various peaks on the PPL system. Speaking for IECPA, its members already attempt to do that to the extent feasible, in conjunction with Curtailment (or Conservation) Service Providers ("CSPs") and through participation in both PJM and electric distribution company ("EDC") administered load reduction programs. IECPA M.B., p. 12. The fact remains, however, that PPL's employment of a 5 CP methodology, by not matching cost allocation to the actual single zonal peak, makes the efficient management of customer peak transmission load unduly burdensome, and intentionally discriminatory toward these customers, in contravention of stated Commission regulations and both PUC and Commonwealth goals. Id. at 8, 16-17.

III. CONCLUSION

IECPA respectfully requests that the Commission issue an Order requiring PPL to change its transmission cost allocation methodology from the current 5 CP methodology to a 1 CP approach. This measure – unopposed by any other intervening party – will not only reflect correct ratemaking but it will also encourage a more efficient use of the transmission system and thereby make the competitive market in Pennsylvania more efficient and reliable to the benefit of all customers.

Respectfully submitted,

By _____

Derrick Price Williamson (Pa. I.D. No. 69274)
Barry A. Naum (Pa. I.D. No. 204869)
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2742
Fax: (717) 795-2743
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Counsel to the Industrial Energy Consumers of Pennsylvania

Dated: September 17, 2020