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VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Use of Fixed Price Labels for Products With A Pass-Through Clause
Docket No. M-2013-2362961

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of PPL EnergyPlus, LLC to Tentative Order in the above-referenced proceeding.

Respectfully submitted,

Andrew S. Tubbs

AST/jl
Enclosures

cc: Patricia Wiedt, Law Bureau (*Via E-Mail*)
Daniel J. Mumford, Bureau of Consumer Services (*Via E-Mail*)

promoting a healthy and robust competitive retail market, protecting customers in the Commonwealth and establishing a competitive retail market that sustainably provides the best outcomes for those customers. PPL EnergyPlus largely agrees with and supports the proposals outlined in the Tentative Order, with certain limited modifications as explained below.

PPL EnergyPlus supports the Commission Staff's (Staff) conclusions that using the fixed price label on a product with pass-through provisions is misleading and can cause customer confusion. Such a practice diminishes a customer's ability to conduct an accurate "apples-to-apples" product comparison and may lead to dissatisfaction if regulatory changes and related pass through charges result in unexpected price increases. However, if properly labeled and differentiated, products with pass-through provisions occupy a valid place in the competitive retail market. Our comments offer suggested improvements on how to implement that product differentiation in a customer-focused manner without disrupting contracts already in place. PPL EnergyPlus also suggests that significant differences between residential and small commercial (mass market) customers and large commercial and industrial customers require different product labeling requirements. PPL EnergyPlus would like to caution the Commission that while accurate, well-defined product labels are beneficial to the market; care should be taken to avoid creating restrictions or disincentives to creating new and innovative product offerings. Finally, we offer some thoughts on how the treatment of many of the charges that are subject to pass through provisions might be changed to further alleviate customer confusion and create market efficiencies.

II. Appropriate Use of the Fixed Price Label to Avoid Customer Confusion

Similar to the position taken by Staff in the Tentative Order, PPL EnergyPlus does not believe that a retail product that allows increases in existing charges levied by a regulatory or administrative agency¹ to be passed on to the customer can accurately be labeled as a fixed price product. Using the fixed price label for such a product is misleading and may cause confusion with mass market customers. Mass market customers can fairly be expected to assume a “fixed price product” is not one that comes with a lengthy list of probable situations where the price is not fixed at all. Rather, these customers are best served by product labeling and contract terms that are precise, straightforward, transparent, and that use as much plain language as possible.

Using the fixed price label on products that maintain prices in the face of a regulatory change as well as products that modify prices in the face of that very same regulatory change is contrary to those ideals. Using the same label for both types of products also eliminates true “apples-to-apples” product comparisons. Further, it deprives the customer of the ability to properly value the variance in price risk between the two offerings. For these reasons, PPL EnergyPlus has used the term “fixed price” to offer truly fixed price products to residential and small commercial customers.

PPL EnergyPlus shares Staff’s concerns that customer confusion born of imprecise product definitions and misleading product labels could lead to customer dissatisfaction. As in any market, the competitive retail market for energy can only enjoy long-term success and viability if customers are satisfied with the value derived from the offerings in the market. Mislabeled or inaccurately labeled products that might

¹ Including but not limited to the Federal Energy Regulatory Commission (FERC), the Regional Transmission Organization (RTO), the PUC, or other administrative agencies of jurisdiction.

result in unexpected price increases and false promises of “price security” or “protection from future price increases” undermine customer confidence in the marketplace. For these reasons, PPL EnergyPlus agrees with the Staff’s Proposal to change the definition of fixed price to one that clearly remains the same and is not subject to adjustment.

However, PPL EnergyPlus suggests that the length of time that the offer must remain fixed should equal the term of the offer. In other words, if the offer is for a one year fixed price, the price must remain fixed for at least 12 billing cycles. But if the offer is for a three month fixed price, the price must remain fixed for at least 3 billing cycles. The problem with the Commission’s proposed language is that the contract could be written for a one year fixed price and advertised as such, but could have a term which permitted flow through of pass through charges after only three billing periods. This disconnect could lead to the very harm the Commission is trying to prevent. PPL EnergyPlus is concerned that the proposed language could be used by EGSs to justify “bait and switch” offers, as long as the “bait” period is three months or longer.

For these reasons, PPL EnergyPlus proposes that the Commission change its proposed language as follows:

Fixed Price: ~~A fixed electricity rate~~ **AN ALL-INCLUSIVE rate PRICE THAT** will remain the same, for a set period of time **EQUAL TO THE PERIOD OF TIME SET FORTH IN THE OFFER.**

PPL EnergyPlus believes that this provides an adequate fixed price term to offer both differentiations from a variable priced product as well as a reasonable customer expectation of price certainty for the length of the offer. Commensurate with the change in the definition of fixed price products, it is important that per kWh prices and monthly

estimates (e.g. at 500/1000/2000 kWh usage) represent all costs, including any monthly fees, associated with the product.

PPL EnergyPlus believes that the change in the definition of fixed price, as modified above, in combination with its following suggestions, will work to alleviate customer confusion, improve product comparisons and valuations, and contribute to the long-term viability of a robust, well-structured competitive retail market.

III. Properly Defined Pass-Through Products Should be Allowed

The inaccuracy associated with using the fixed price label for a retail product with pass-through provisions does not, however, invalidate the pass-through product itself. If labeled correctly and effectively differentiated from products that actually set all inclusive prices for a fixed period of time, products with pass-through provisions have a legitimate place in a competitive retail market. In Pennsylvania, EGSs are responsible for certain non-commodity, administrative charges that can change under certain circumstances. These non-market based charges (NMBs) include, but are not limited to, Network Integrated Transmission Service (NITS), Regional Transmission Expansion Program (RTEP), and Reliability Must Run (RMR). While the NMBs and other administrative charges can change under certain circumstances, it is nearly impossible for an EGS to predict the magnitude, frequency, or timing of those changes.

For an EGS trying to price retail contracts, this uncertainty poses a legitimate risk that increases in direct correlation with the length of the contract. That is to say, the longer the contract, the more probable it is that one of the NMBs will change within the term of the contract. To protect itself from that risk, the EGS can either include a risk premium (i.e. higher price) in a fixed price contract or use pass-through provisions to

permit the customer to pay for such NMBs. As previously stated, PPL EnergyPlus does not believe that both types of products should use the same label, but does support the establishment of a new label to allow both products to be offered in a differentiated manner. PPL EnergyPlus supports the Staff proposal to create a class of products and label for products that fix the commodity portion of the product price but also includes pass-through provisions for NMB and other administrative charges.

However, PPL EnergyPlus has significant concern over the term used to label the pass-through product. Ideally, the label will be straightforward, accurate, and customer friendly. The label should not be cumbersome or awkward so as to disadvantage the product based on the label itself. We suggest that the Commission modify its proposal slightly. Instead, PPL EnergyPlus suggests that the new product be defined and labeled as "Partially Fixed Price." We feel that the term is accurate given that the commodity portion of price is fixed while using the "Partially" modifier signals differentiation to the Fixed Price product. Further, we believe that adoption of the Staff proposal on placement of the pass-through clause and definitions as follows will enhance the product transparency and differentiation necessary to avoid customer confusion:

This definition would be coupled with Commission guidance making clear that the "pass-through clause" must accompany the pricing information in the disclosure statement – in the same section and/or paragraph. This is intended to prevent the potential customer from overlooking the "pass-through clause" or having the clause buried in a following page or in fine print. To assist consumers in understanding these clauses, suppliers should, in the "definitions" section of the disclosure, define any terms or acronyms used in the "pass-through clause."

It is important to reiterate that the priorities associated with the effort to differentiate fixed and partially fixed products should be transparency, customer clarity,

customer satisfaction, and accurate product valuation and comparison. The definitions, labels, processes, and contract language associated with each product should be focused on providing the customer with viable product alternatives that provide clarity on exactly how the customer will be charged for the consumption of electricity. Establishing this new product type, labeled and structured in an accurate and customer-friendly way is the best way to meet these priorities.

For these reasons, PPL Energy Plus proposes to modify as follows the label of the Staff's proposed definition in the Tentative Order:

Partially Fixed Price: AN ALL-INCLUSIVE PRICE SUBJECT TO CHANGE BASED ON VARIOUS FACTORS AS SPECIFICALLY DESCRIBED IN A "PASS-THROUGH CLAUSE" IN THE SUPPLIER'S DISCLOSURE STATEMENT.

IV. Process for Implementing the New Product Type

The process for redefining Fixed Price and implementing Partially Fixed Price products is as important as establishing viable labels and product structures. Given the priority of these efforts in reducing customer confusion, implementation should be conducted in a way that does not create disruptions in the marketplace. Specifically, the changes contemplated in this proceeding should be implemented on a prospective basis only. That is to say, all contracts executed prior to final resolution of this proceeding should be exempt from the changes promulgated here. This exemption should not, however, apply to renewals of those existing contracts.

PPL EnergyPlus does not believe that there is much to be gained from calling into question existing customer contracts, many of which will have been in place for nearly a year, or longer to modify the existing language. While the new product

definitions and structures are important improvements to the marketplace as a whole, we do not want to diminish their value by making the process complicated, confusing, and disruptive to our existing customers.

V. Applicability to Mass Market Customers Only

The large commercial and industrial market has already developed a robust set of terms used to broadly describe different pricing structures, and this action by the Commission should NOT affect the use of terms for these more sophisticated customers. Unfortunately, by its terms 52 Code Section 54.3 applies to all customers, including large commercial and industrial customers. See 52 Pa. Code Section 54.1(b). The Commission should expressly note in the dictionary that these new definitions are only required for use with small commercial and residential customers, and are not required for use with large commercial and industrial customers. By way of example, PPL EnergyPlus notes that terms like “Fixed Price”, “Fixed Price Energy Only”, “Fully Indexed Product”, “Block and Index Product”, and “PJM Subaccount Product” are widely used in the industrial and commercial space and all these terms have varying provisions about pass through charges, bandwidth limitations (how much energy can be consumed at a price) and change of law or regulation provisions, all of which can make these sophisticated products less than “truly fixed.” In this large commercial and industrial space, application of the new terms is inappropriate.

Moreover, application of these new terms is not required as these customers are quite sophisticated and do not require the same type of detailed consumer protections as required in the small commercial and industrial space. These customers also are often advised by lawyers and/or energy consultants familiar with sophisticated contract

terms and conditions that share the risks of changes in price, usage and pass through charges.

Also, unlike the mass market customer segments where contract terms are almost exclusively standardized, contracts for these larger customers are frequently customized to the individual profile and needs of the customer. To that end, the larger customers often directly negotiate the various components, terms, and conditions of their retail contract. The customization and variability that results from this approach to pricing and contracting represents a primary value driver for customers in the competitive market but also renders standardized labeling much more difficult. As such, it simply is not appropriate to overlay the standardized labels necessary to avoid mass market customer confusion onto the highly customized and variable large customer contracts.

Thus, PPL EnergyPlus recommends that, in addition to the modified definitions themselves, the PUC must add language before such definitions stating that: "The following two definitions apply only to use with small commercial and residential customers and are not required to be used with large commercial and industrial customers."

VI. Do Not Restrict Other Product Types

With the modifications suggested above, PPL EnergyPlus supports the accurate definition of and differentiation between Fixed and Partially Fixed Price products as proposed by Staff in the Tentative Order. However, PPL EnergyPlus suggests that any modifications that are ultimately made to the product definitions should be done in a careful manner that does not preclude or restrict new product creation or innovation.

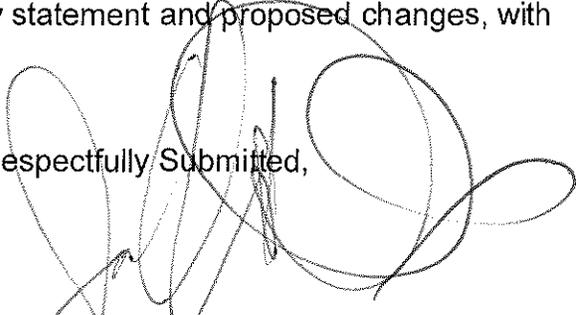
One significant challenge to standardizing product definitions is that while they may work well for existing product types, they may not work as well for product types not yet contemplated. In addition, it can be exceedingly difficult to create product standards that provide necessary clarity and transparency for those existing products while maintaining flexibility for what may be developed in the future.

Given this paradox, PPL EnergyPlus suggests that the PUC focus on defining the Fixed and Partially Fixed standards for the current marketplace, use best efforts to prevent those labels and definitions from being overly restrictive to new product creation, and be aware that these same standards may need to be revisited in the future to account for new, innovative, and creative products spawned by customer need and the competitive marketplace.

VII. Conclusion

For all these reasons, PPL EnergyPlus recommends adoption of the Pennsylvania Public Utility Commission's policy statement and proposed changes, with the modifications suggested above.

Respectfully Submitted,



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