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**PUBLIC SERVICE
COMMISSION**

September 22, 2010

Docket Clerk
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

In the Matter of: AN INVESTIGATION OF NATURAL GAS RETAIL
COMPETITION PROGRAMS, Case No. 2010-0146

Dear Docket Clerk:

Enclosed please find for filing the original and eleven (11) copies of the *Rebuttal
Testimony of Nancy Brockway, Filed on Behalf of AARP.*

All parties of record have been served.

Thanks in advance for your assistance in filing these!

Cordially,

Tom FitzGerald
Director
Counsel for ARRP

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**AN INVESTIGATION OF NATURAL GAS
RETAIL COMPETITION PROGRAMS**

)
)
) **CASE NO. 2010-00146**
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SEP 22 2010

**PUBLIC SERVICE
COMMISSION**

**REBUTTAL TESTIMONY OF NANCY BROCKWAY
SEPTEMBER 22, 2010**

Filed on Behalf of AARP

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

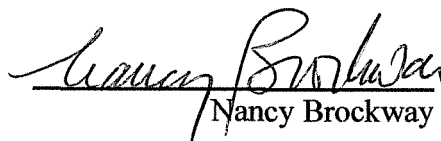
In the Matter of:

AN INVESTIGATION OF NATURAL GAS
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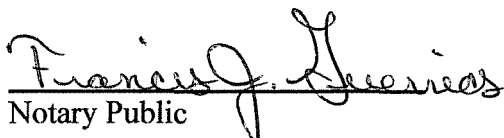
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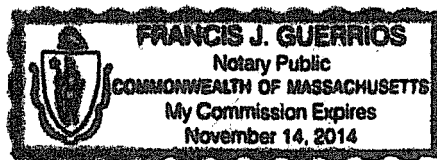
AFFIDAVIT

I hereby affirm that the foregoing document titled Rebuttal Testimony of Nancy Brockway to information requests in the Matter of An Investigation of Natural Gas Retail Competition Programs, Case No. 2010-00146, is true and accurate to the best of my information and belief.


Nancy Brockway

Subscribed and sworn to before me, a notary public in the State of MA
by Nancy Brockway, this 20th day of September, 2010.


Notary Public



My commission expires Nov. 14, 2014

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

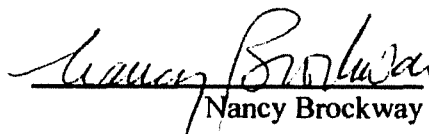
In the Matter of:

AN INVESTIGATION OF NATURAL GAS
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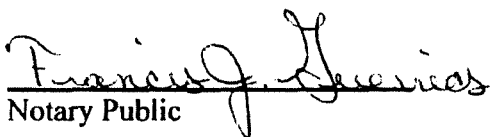
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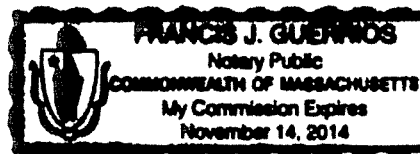
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Nancy Brockway

Subscribed and sworn to before me, a notary public in the State of MA
by Nancy Brockway, this 20th day of September, 2010.


Notary Public



My commission expires Nov. 14, 2014

1
2 **Q. Are you the same Nancy Brockway who previously filed testimony in this docket on**
3 **behalf of AARP?**

4
5 A. Yes.

6 **Q. What is the purpose of your rebuttal testimony?**

7
8 A. In my rebuttal testimony, I will respond to a number of assertions made by other parties,
9 particularly those who propose that Kentucky utilities be required to open their systems
10 to residential customer supply deregulation. I will also respond to the proposal of the
11 local distribution companies (LDCs) that they be able to introduce natural gas supply
12 deregulation for residential customers on their initiative.

13 **Q. In this docket, what parties have filed testimony in favor of requiring LDCs to**
14 **introduce residential gas supply deregulation?**

15
16 A. In support of residential gas supply deregulation Interstate Gas Supply, Inc., Southstar
17 Energy Services LLC & Vectren Retail, LLC (together the RGS) filed the testimony of
18 Gregory Collins, and the Retail Energy Supply Association filed the testimony of Theresa
19 Ringenbach. The testimonies of the other proponents of supply deregulation (Stand
20 Energy) are primarily addressed to the small commercial, institutional and industrial
21 markets. All other parties who have filed testimony have opposed mandatory residential
22 supply deregulation.

23 **Q. Please summarize the arguments made by the proponents of residential gas supply**
24 **deregulation in Kentucky.**

25
26 A. The RGS and RESA make similar arguments on key issues. The core purpose and
27 benefit of supply deregulation is to provide consumers with a choice of supplier. Collins
28 Direct at 1; Ringenbach Direct at 5. In addition, RESA claims that residential supply
29 deregulation will bring Kentucky the benefits of increased customer attention to energy

1 usage, new businesses and tax receipts, and elimination of Commission obligations that
2 are presumably found by industry to be difficult or are otherwise disfavored.

3 Ringenbach, pp. 4-7. RESA further claims that moving the commodity function away
4 from the utility will allow the LDC to focus on managing its distribution assets, which
5 should improve safety and streamline infrastructure costs. *Id.* at 6. The RGS' witness
6 states that a properly structured competitive market "provides benefits to all consumers
7 through enhanced price transparency, timelier price signals, and greater consumer
8 information." Collins at 7.

9 **Q. What are the key regulatory or legislative policies the marketers seek in order to**
10 **have the market they desire, starting with the RGS?**

11
12 A. From the perspective of the RGS' witness, Kentucky should restructure bundled natural
13 gas products to ensure that assets or services paid for by a customer are credited to the
14 customer, whether or not the customer has elected to receive supply from a marketer,
15 Collins p. 5; capacity and storage assets should follow choice customers to the marketer,
16 *Id.* at 8; utilities should render a consolidated bill for both utility distribution services and
17 the supplier's commodity charge (with termination for non-payment of supplier charges),
18 *Id.* at 10-11; the Commission should establish criteria for supplier certification on the
19 basis of financial, operational, managerial and technical capacities, *Id.* at 12; and should
20 promulgate reasonable standards with respect to customer interaction, enrollment and
21 contracting (including requirements for solicitations, contract disclosures, renewal
22 procedures) *Id.* at 13.

23 **Q. What key regulatory or legislative policies does RESA seek in order to have the**
24 **market they desire?**
25

1 A. According to Ms. Ringenbach, RESA seeks a residential natural gas structure in
2 Kentucky in which the Commission ensures competitively neutral practices, a strong
3 consumer protection policy, clear residential marketing rules, affiliate conduct rules, and
4 rules for supplier access to systems, storage and transportation. RESA also seeks
5 enforcement of these rules. Ringenbach at 7. RESA argues that "it is imperative that the
6 Commission create an office or staff for the competitive community." *Id.* at 8. RESA
7 further seeks Commission participation in education of consumers to understand their
8 competitive options and promote competition. *Id.* at 10. RESA seeks rulings on utility
9 assets that "ensure that customers who are with a supplier do not subsidize utility
10 customers and vice versa." *Id.* at 11. She states that this must include provisions that
11 require shopping customers retain access to the utility billing and distribution systems
12 they have paid for, that suppliers are not charged higher fees for storage than utility
13 customers, and that capacity moves with the customer "to ensure all suppliers have the
14 capacity necessary to serve any customer." *Id.* at 11. Further, supplier of last resort
15 (SOLR) responsibilities should be moved to a market-based model. *Id.* at 12.
16 Commissions should review and approve suppliers that serve residential customers in
17 Kentucky. *Id.* at 15. With respect to customer billing and collection specifically, RESA
18 seeks so-called "POR" --- mandatory purchase by utilities of supplier receivables, with
19 consolidated billing, uncollectible supplier expenses collected from distribution
20 customers via a rider, and termination for unpaid supplier charges. *Id.* at 15-16, 18-19.

21 **Q. Are the recommendations of the RGS and RESA similar?**

22

23 A. Yes. With the exception of a few details, the RGS and RESA are in agreement regarding
24 what they hope the Commission will do to enable them to sell natural gas to residential

1 customers in Kentucky. As can be seen from the responses of Mr. Collins to Staff DR
2 No. 001, the RGS also want the Commission to establish rules that produce competitively
3 neutral practices, a strong consumer protection policy, clear residential marketing rules,
4 affiliate conduct rules, and rules for supplier access to systems, storage and
5 transportation. Response of Greg Collins to Staff DR No. 001, pp. 1, 3, 4, 8-9. They also
6 want the Commission to see that these rules are followed. *Id.*, at 1. While not
7 specifically referencing a division or office within the Commission to oversee markets,
8 the RGS envision staff plays an active role in market oversight, "provides a day-to-day
9 contact point in responding to customer inquiries, assisting with various entities with
10 issues, (consumer v. supplier, consumer v. utility, supplier v. utility, utility v. supplier or
11 some combination)..." and on occasion act as a participant/mediator..." *Id.* at 1. The
12 RGS further seek Commission oversight to ensure a level playing field. *Id.* They state
13 that this must include provisions that require shopping customers retain access to the
14 utility billing and distribution systems they have paid for, that suppliers are not charged
15 higher fees for storage than utility customers, and that capacity moves with the customer
16 to ensure all suppliers have the capacity necessary to serve any customer. *Id.* at 3-4, 8, 9.
17 Further, they suggest that supplier of last resort (SOLR) responsibilities should be moved
18 to a market-based model. *Id.* at 2. Commissions should review and approve suppliers
19 that serve residential customers in Kentucky. *Id.* at 4-5. With respect to customer
20 billing and collection specifically, the RGS seek so-called "POR" --- mandatory purchase
21 by utilities of supplier receivables, with consolidated billing, uncollectible supplier
22 expenses collected from distribution customers via a rider, and termination for unpaid
23 supplier charges. *Id.* at 6-8.

1 **Q. How would you characterize the industry rules sought by the marketers?**

2
3 A. The industry rules sought by the marketers would free suppliers from most important
4 aspects of regulation (price, financing approval, obligation to serve, and others). It would
5 use the State and the regulated utilities, however, to create an environment in which
6 suppliers could operate to their best advantage.

7 **Q. Please give an example of this lopsided use of regulation in the suppliers' proposals.**

8
9 A. Through mandatory purchase-of-receivables, the marketers seek to use the threat of
10 disconnection of regulated services to enforce payment for their unregulated sales.
11 However, they wish to retain control over which customers they accept, and the pricing,
12 terms and conditions of their service. They acknowledge that requiring LDC purchase of
13 supplier receivables "fosters a competitive environment not otherwise evidenced in
14 markets without POR," and that mandatory utility purchase of receivables "allows
15 competitive suppliers to enter the market with significantly lower initial costs...." Collins
16 Direct at 9, 11. They further seek to use the utility's customer base to bear their
17 uncollectibles risk, by asking for a distribution rate rider to cover supply uncollectibles.
18 In other words, that marketers will not come to Kentucky unless their "market" is made
19 possible with the resources and powers of the regulated monopoly distribution
20 companies, including the threat to customers of losing service altogether.

21 **Q. Are other competitive markets sustained by threatening their customers with**
22 **disconnection of an essential service?**

23
24 A. No. Other competitive markets do not operate this way. If customers do not like a
25 product or service, they are free to not purchase it, without penalty. For example, if you
26 dispute your Lowes or Home Depot bill, they cannot shut down your electric service.

1 Gas suppliers do not have a viable product, without State control over their customers'
2 options.

3 **Q. Please provide other examples of marketer requests for action by the State to**
4 **support their businesses.**

5
6 A. The industry witnesses ask for customer protections that are balanced "between consumer
7 protection and competitive dynamics, [to] provide a basic guidance [note - not regulation]
8 to suppliers without impeding the evolution of an effectively competitive market." *Id.*, at
9 13. The purpose of those customer protections they seek appears to be to ensure public
10 confidence in the competitive marketers. The marketers ask the public to subsidize their
11 marketing efforts by providing pro-competition consumer education. They also ask for
12 the Commission to dedicate resources to fostering competition.

13 **Q. Are there other instances in which the marketers seek to take advantage of the**
14 **existing utility industry in Kentucky?**

15
16 A. Yes. As I discuss below, marketers wish to require all residential customers to bear the
17 costs of transitioning to a new market that in my estimation will benefit only a very few.

18 **Q. RESA points to the Pennsylvania model as one to be emulated in Kentucky. For**
19 **example, she cites the switch of PPL electric customers to marketers after a long**
20 **and collaborative education effort. Does the PPL experience show the value of**
21 **Commission participation in education and outreach?**

22
23 A. Not at all. The Commission had to provide community forums and answer customer
24 questions because the end of electric industry restructuring rate caps after 2009 meant
25 that PPL electricity prices were going to increase by almost 30%. The Commission was
26 trying to be responsive to public concerns about the coming sharp rate increases.
27 Marketers in the PPL service area could enlist such collaboration because consumers
28 were demanding answers. Attached to my testimony is a two-page bill insert sent to all

1 PPL electric customers before the expiration of the rate caps by the utility and the
2 Commission, trying to offer some options in the face of the extremely large price
3 increases to come. Also, wholesale electricity prices had dropped since PPL's bids for
4 default supplies for 2010, enabling competitors to offer a discount in that year as an
5 artifact of the timing of events, but one that appeared to be the result of retail
6 competition.

7 **Q. You say the proponents of supply deregulation claim that "purchase of receivables"**
8 **is necessary because, among other things, departing customers should continue to**
9 **receive the benefit of the systems they pay for through base rates. Is this argument**
10 **correct?**

11
12 A. No. The proponents' argument implies that if a customer no longer takes supply from the
13 LDC and if the supplier handles the credit, complaint and collection functions relating to
14 the supply, then the LDC's costs for these functions will drop, but departing customers
15 will be forced to contribute to covering such costs as if they were at the same level. In
16 fact, LDCs will have to perform much the same credit, complaint and collection functions
17 related to the customer's base rate purchase of gas delivery, even if the customer's supply
18 transaction moves to an unregulated supplier. See, e.g. Collins Response to Staff DR No.
19 001, p. 10. It would be fair to continue to allocate these costs to and recover these costs
20 from the cost causer, in this case the customer who purchases only base rate services
21 from the LDC. The exact amount of such costs and their proper allocation would be
22 determined in a base rate case. In addition, the LDCs will likely have incremental
23 complaint and customer relations costs relating to those natural gas customers who take
24 supply from an unregulated supplier, even if that supplier handles the supply-related
25 billing and collection functions for the supply part of the cost of service. POR is not

1 justified on the grounds that not allowing it would force customers to pay for services
2 they do not receive.

3 **Q. In your direct testimony you suggested that mandatory capacity allocation could be**
4 **necessary to avoid stranded costs. Does that remain your view?**

5
6 A. No. When I wrote my direct testimony, I was basing my understanding of stranded costs
7 in gas supply deregulation on my experiences in New England. When I was a
8 commissioner in New Hampshire, for example, the marketers asked us *not* to force
9 customers to take their allocated capacity with them. They perceived capacity allocation
10 as a burden on competition. For their part, the LDCs and consumer advocates favored
11 mandatory capacity allocation because it would require departing customers and
12 marketers to pay for (relatively costly) capacity. In New England at the time, if a
13 departing customer did not take his share of capacity with him, he would leave the
14 stranded cost of the capacity for the LDC or the remaining customers to pay. In
15 Kentucky today, marketers want capacity and storage assets to follow a customer to a
16 marketer upon shopping. Existing capacity rights are evidently not the stranded cost
17 burden they were in New England.

18 **Q. How does RESA propose to handle stranded costs and transition costs?**
19

20 A. Ms. Ringenbach testifies that the amount and what constitute transition or stranded costs
21 "are items so specific they are best handled in an individual utility proceeding...."
22 Ringenbach Direct at 17-18. Where such costs are identified, RESA notes that
23 traditionally "these costs have been funded on both the electric and gas sides ... through
24 riders or through sales of assets that are no longer needed." While observing that in some
25 cases, suppliers have paid a portion of transition costs, RESA argues that "since all

1 customers have access to systems after transition, many stranded costs are generally
2 funded by customers through sales of assets." *Id.* at 18. Ms. Ringenbach also argues that
3 storage and capacity must "remain available to suppliers and not sold off." *Id.*

4 **Q. Do the RGS agree with RESA's approach to stranded costs and transition costs?**

5
6 A. Yes, although the the RGS do not anticipate a sale of unneeded assets as part of stranded
7 cost recovery. Collins Response to Staff DR No. 001, at 5-6.

8 **Q. Do you agree with the approach to stranded costs and transition costs taken by**
9 **deregulation proponents?**

10
11 A. No. There was a time when a regulator anticipated that residential customers would
12 benefit from retail choice, and that many such customers would voluntarily switch to a
13 non-utility supplier. With such a forecast in mind, there was some rationale for requiring
14 all customers to pay stranded costs and transition costs. The history of choice for small
15 consumers in the gas industry does not support such assumptions about how many
16 consumers will decide that a non-utility supplier is a better option for them. The
17 percentage of customers "choosing" is quite small, and is only substantial in states where
18 the utility exits the supply business. In other words, the vast majority of residential
19 consumers do not switch suppliers unless they are effectively forced to do so. In such a
20 case, one cannot reasonably argue that all customers will benefit from the deregulation of
21 supply. Requiring residential customers to pay for the establishment of a deregulated
22 supply "market" would be a gift to the suppliers, and of no benefit to the customers.

23
24 **Q. How would marketers determine if the Kentucky approach were successful?**
25

1 A. RESA evidently defines success and failure by the percentage of residential gas
2 customers who take service from an unregulated supplier. Ringenbach at 8. Similarly,
3 Collins points out that enrollment in customer choice programs reached a new high in
4 2009, serving 15% of the 35 million gas customers with access to choice. Collins at p. 1.
5 He later states that "a greater variety of suppliers...enhances competition and thus
6 provides increased value to consumers through more robust competition." *Id.* at 10.

7 **Q. Mr. Collins points to the enrollment of 5.1 million households in customer choice**
8 **programs seemingly as an indicator of the value of customer choice to Americans.**
9 **Do you agree that 5.1 million households shows that a large portion of Americans**
10 **are choosing competitive natural gas suppliers?**

11
12 A. No. As Mr. Collins' testimony shows, the 5.1 million households now enrolled in a
13 choice program represents only 15% of those households eligible for customer choice
14 programs. This number also represents only about 8% of households using natural gas in
15 the United States.

16 **Q. How would you define a successful program of supply deregulation?**

17
18 A. Success for customers means safe and secure supply to the home of natural gas at the
19 lowest reasonable price, with protections from unfair and unreasonable barriers to access
20 to and loss of service.

21 **Q. How does your definition of success differ from that of unregulated gas suppliers?**

22
23 A. The marketers look at the issue from the perspective of the marketers; the consumers look
24 at the issue from the perspective of consumers.

25 **Q. Is it possible to create a successful program of residential natural gas supply**
26 **deregulation?**

27
28 A. It is virtually impossible to create a successful program of residential natural gas supply
29 deregulation. Providing residential customers with safe and secure supply to the home of

1 natural gas at the lowest reasonable price, with protections from unfair and unreasonable
2 barriers to access to and loss of service requires a well-organized natural gas industry,
3 with competition at the appropriate levels and a local distribution company with the
4 obligation to serve. The natural gas marketers cannot succeed without making use of the
5 powers and infrastructure of the utility, and pushing risks and costs onto the utility and
6 the consumers. Supply competition for gas cannot be achieved in a way that benefits
7 customers.

8 **Q. The proponents of supply deregulation argue that gas cost adjustment clauses result**
9 **in rates that are out of synchronicity with market prices, and that regulated utilities**
10 **do not offer sufficient pricing options. See e.g. Collins Response to Staff DR 001, p.**
11 **2. Are these criticisms of pricing under regulation valid, and do they constitute**
12 **reasons to deregulate the supply function?**

13
14 A. No. There are slight variations from quarter to quarter and year to year between GCA
15 pricing and market prices, but gas pricing under regulation at the retail level is essentially
16 a pass-through of wholesale market costs. The proponents of deregulation do not
17 demonstrate that deregulated suppliers consistently offer lower prices than available
18 through the LDC. [Mr. Collins states in response to Staff DR No. 001, p. 2, that the
19 competitive auction process in Ohio for pricing commodity "has consistently resulted in
20 prices significantly lower than the GCR alternative it replaced." He provides no evidence
21 for this assertion. In response to AARP DR No. 004, Mr. Collins supported a similar
22 assertion with one piece of testimony repeating standard neo-classical microeconomic
23 theory, and the example of two Ohio auctions (in 2006 and 2008) for supply at the lowest
24 adder to NYMEX prices for one utility. This material does not prove Mr. Collins'
25 assertion. Also, pricing options favored by customers can be considered and adopted
26 under regulation, providing they satisfy the principles of a sound rate design.

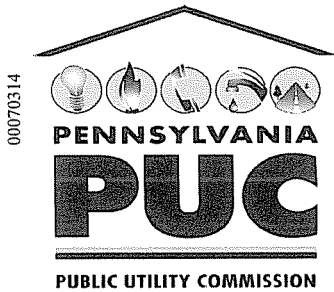
1 **Q. The LDCs want the right to propose that their service areas be opened to**
2 **unregulated natural gas suppliers. Is this a good idea?**

3
4 A. No. As discussed in my direct testimony Kentucky should not go further down the path
5 towards trying to create a market for natural gas supplies. Consumers who have tried to
6 save money by switching to a non-utility supplier in the Columbia Gas Choice pilot have
7 lost money. There is no proof that customers have saved money overall from supply
8 choice in other states. As I state above, there is no proof that purchased gas adjustments
9 drive the volatility in gas supply prices, nor proof that they distort the essential market
10 price. Rate design options like those offered by marketers can be provided to customers
11 if that is in the public interest. Gas commodity competition for residential customers has
12 not proven itself to be worth the transition costs.

13 **Q. Does this conclude your testimony?**

14
15 A. Yes.

December 2009



Dear Customer,

Important changes will affect your electric bill in 2010. After more than a decade of capped rates for the generation portion of your bill, the rate cap will expire on Dec. 31, 2009. When this occurs, we expect you will have new opportunities to shop for generation supply. You may be able to shop for electricity supply at prices lower than PPL Electric Utilities' default service rate. PPL Electric Utilities and the Pennsylvania Public Utility Commission (PUC) want to share information that will help you make the best decisions for your home and budget, including decisions about buying electricity supply from alternative suppliers.

As part of the transition to electric choice, Pennsylvania capped the prices utilities could charge for default service. Default service is electricity that PPL Electric Utilities buys for you if you did not choose your own supplier. When the rate cap expires, you should expect to pay more for the generation portion of your bill. During the years that PPL Electric Utilities' rates have been under a cap, prices for electricity have increased. Today's capped prices for the company's default service are based on electricity prices in 1996, when the state passed the Electricity Generation Choice and Competition Act.

Because the rate cap will soon end, PPL Electric Utilities has sought bids to buy power for its customers who do not choose their own suppliers. The company awarded contracts to the lowest bidders and will pass their prices through to you – without profit – if you choose to receive your electric generation supply from PPL Electric Utilities. Based on the prices in those contracts, the company is estimating that the bill for an average residential customer who does not shop will increase about 29.7 percent next year. The company estimates monthly bills will increase on average about 18.4 percent for small businesses and 36.1 percent for mid-size businesses. Actual price increases can vary depending on actual customer usage levels. If you are currently receiving service as a Residential Thermal Storage (RTS) customer, then you will likely experience higher price increases.

Because prices have been capped at 1996 levels, few suppliers have been making offers to customers in Pennsylvania; however, this is expected to change when rate caps expire. Rather than pay prices for energy that PPL Electric Utilities purchased for its customers, you may be able to shop for a better deal. If you choose a competitive electricity supplier, you will pay your supplier's generation charge, which may be lower.

You may even begin to receive offers from other electric generation suppliers before the end of the year.



PPL Electric Utilities

If you choose an alternative generation supplier, you will continue to be a PPL Electric Utilities customer. PPL Electric Utilities will still deliver your electricity and bill you. The company will not treat you differently if you buy your power from a competitive electric supplier. In fact, PPL Electric Utilities encourages you to consider your options for electricity supply. All customers will continue to receive reliable service as they shop in the electric generation supply market. PPL Electric Utilities will continue to read the meter, provide storm restoration and emergency response.

More information is available to help you make the best choice when it comes to shopping for generation supply. We encourage you to use these resources. Be sure to fully understand the terms of the agreement between you and the supplier, or even another third party, as well as the need for a state license to perform such services. In general, if a company provides power, accepts payment or handles the billing function, it must be licensed by the PUC. The Commission urges customers to be very cautious when paying a supplier or PPL through a third party.

You can visit the Consumer Education section of the PUC's Web site at <http://www.puc.state.pa.us/general/consumereducation.aspx> or call 1-800-692-7380 for more information. You also can contact PPL Electric Utilities at www.pplelectric.com or 1-800-342-5775 (1-800-DIAL-PPL) or the state's Office of Consumer Advocate online at www.oca.state.pa.us or by phone at 1-800-684-6560.

Sincerely,

Pennsylvania Public Utility Commission
& PPL Electric Utilities

CERTIFICATE OF SERVICE

I certify that an original and eleven (11) copies of the Rebuttal Testimony of Nancy Brockway on Behalf of AARP were filed with the Docket Clerk, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 and that a true and accurate copy of the foregoing was mailed via first class U.S. Mail, postage prepaid, this 22nd day of September, 2010, to the following:

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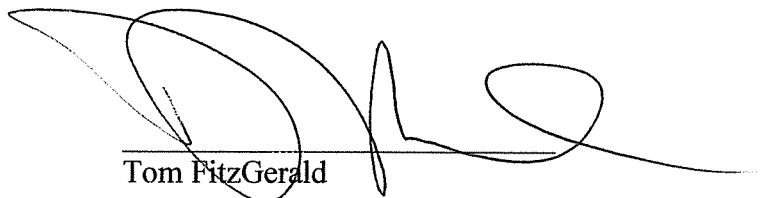
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