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January 9, 2012

Ms. Rosemary Chiavetta, Secretary  
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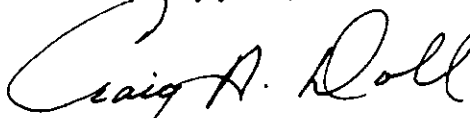
Re: Petition of PPL Electric Utilities for Approval to Implement a Reconciliation Rider for Default Service Supply  
Commission Docket No. P-2011-2256365

Dear Secretary Chiavetta:

Enclosed for filing is an original and nine (9) copies of the Main Brief of Richards Energy Group, Inc. in the above captioned proceeding. A copy of this Brief has been served upon those parties set forth in the accompanying Certificate of Service.

If you have any questions, please feel free to contact me. Thank you for your cooperation.

Very truly yours,

  
Craig A. Doll

Enclosure

cc: Per Certificate of Service  
F. Richards

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :  
for Approval to Implement a Reconciliation : P-2011-2256365  
Rider for Default Service :

**MAIN BRIEF  
OF  
RICHARDS ENERGY GROUP, INC.**

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Respectfully submitted,

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Dated: January 9, 2012

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## STATEMENT OF THE CASE

This proceeding was initiated by the filing of a Petition by PPL Electric Utilities Corporation (“PPL” or Petitioner”) on August 3, 2011, seeking approval from the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to eliminate the current Commission approved reconciliation method used to reflect any over or under collection of costs associated with the providing of default service to customers. In its place, PPL proposed to implement a Reconciliation Rider (“RR”) as a separate line item on a customer’s bill to reflect any over or under-collection incurred on and after June 1, 2012; removal of the amount of this item expressed in cents per kwh, previously included in the price to compare (“PTC”) from the price to compare; and impose this charge not only upon customers who remain on PPL provided default service, but also upon those customers who switched from default service to shopping after the date of the implementation of the rider. This rider would be imposed on switching customers who left default service to obtain their generation from an alternative supplier for a period equal to the number of consecutive months that customer spent on default service. The maximum number of months that this extra charge would be imposed upon shopping customers is 12.

On August 25, 2011, PPL filed an Amended Petition which proposed a Competitive Transition Rider (“CTR”) in addition to the RR that was contained in PPL’s original Petition. In contrast to the RR which would seek to recover any over or under collections occurring from May 31, 2012 forward from customers who switched to an alternative supply after the effective date of the RR, the CTR was designed to recover past default service over or under collections from all distribution customers whether they are default or shopping customers and regardless of when they switched from default service to an alternative generation supplier.

Answers to the Petition and/or Amended Petition were filed by the Office of Small Business Advocate (“OSBA”); Dominion Retail, Inc. (“DOMINION”); the Retail Energy Supply Association (RESA); and PPLICA. Intervention was sought and granted by the Office of Consumer Advocate (“OCA”); Richards Energy Group, Inc. (“REG”); and Wal-Mart Stores East, LP (“Wal-Mart”). A hearing in this matter was held December 5, 2011. Pursuant to a Scheduling Order issued by Your Honor, Main Briefs in this matter are due January 9, 2012. This Main Brief of Richards Energy Group, Inc. is filed in compliance with that Order.

## SUMMARY OF ARGUMENT

In order to grant the Petition to impose a charge upon customers, that charge must be just and reasonable and in conformity with not only the Public Utility Code, but the regulations of this Commission. While estimates of the magnitude of the charges contemplated have been presented, as of the date of the submission of this Main Brief the exact magnitude of the CTR is unknown and the magnitude of the RR is unknowable. Thus, PPL is proposing that Your Honor approve a concept rather than a finite rate. In order to demonstrate that its proposal is just and reasonable, PPL must prove, by a preponderance of the evidence that the relief requested is appropriate. Richards Energy Group, Inc. (“REG”) submits that PPL has not presented substantial evidence so as to meet its burden of proof.

At the heart of PPL’s proposal is the theory that it will not be able to recover costs which should rightfully be borne by default customers from those customer. Thus, PPL essentially proposes to treat costs incurred from January 1, 2010 through May 31, 2012 in a manner similar to distribution costs and recover those costs from all distribution customers. REG submits that PPL has failed to provide substantial probative evidence that this perceived scenario is anything more than speculation on its part. Further, PPL admits that the current 1307(e) reconciliation mechanism which has already been approved by the Commission is working as designed. PPL Statement 1-R, p. 13.

PPL also makes the claim that its proposal is no different than the migration riders in place for jurisdictional natural gas companies. What PPL fails to mention is that the Public Utility Code provides a specific legislative mandate requiring the recovery of over or under collections of natural gas costs from shopping (transportation) customers. This type of provision

is noticeable absent from the Electric Generation Customer Choice and Competition Act.

Commission regulations clearly require that all default service costs are to be recovered through the price to compare. REG submits that the PTC represents the amount, expressed in cents per kwh, that may be avoided by a customer when that customer chooses to shop for generation supply.

The PPL proposal is not in the public interest and penalizes those customers who took advantage of their statutory right to shop for generation. The imposition of the CTR and RR on shopping customers would have those customers subsidize default service customers and only serve to inhibit shopping. REG submits that Your Honor should not approve PPL's proposal.

## ARGUMENT

### Legal Background

The Public Utility Code places the burden of proof upon the proponent of a rule or order. 66 Pa. C.S. §332(h). In this proceeding, PPL, as Petitioner, is the proponent and thus bears the burden of proving by a preponderance of the evidence that the Petition should be granted by the Commission. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In reaching a decision involving the Petition, the findings of the Commission must be based upon that substantial evidence. *Mill v. Pennsylvania Public Utility Commission*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp v. Pennsylvania Public Utility Commission*, 623 A.2d 6 (Pa Cmwlth. 1993); 66 Pa. C.S. § 704. The term “substantial evidence” has been defined by the various Pennsylvania courts as being such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Department of Pubic Welfare*, 480 A.2d 382 (Pa. Cmwlth. 1984). REG submits that there is no substantial evidence to support the theory that absent a drastic change in the method of accounting, reconciliation, collection or refunding of over or under collections, PPL will not be able to recover its reasonable costs. In fact the scenario outlined by PPL is speculative at best.

No doubt exists that a default service provider is able to recover all reasonable costs to provide default service. 66 Pa. C.S. §2807(e)(3.9). Thus, the primary issue in this proceeding has not been whether the costs sought to be recovered by PPL are reasonable, but who must pay those costs.

## The Current Plan is Working and Complies with the Public Utility Code

PPL has failed to provide substantial evidence that the current PTC reconciliation process is not working as designed. The legal basis for both PPL's proposed riders is found in Section 2807(e)(3.9) of the Public Utility Code which grants a default service provider the right to recover, via an automatic adjustment clause, all reasonable costs incurred under that section of the Code and a Commission approved competitive procurement plan. 66 Pa. Code §2807(e)(3.9).<sup>1</sup> Within this statutory framework, the Commission has developed regulations outlining the method of recovery of those costs through a default service provider's implementation plan. 52 Pa. Code §§54.186 – 54.188.

As required by statute, the Commission reviewed and approved PPL's competitive procurement plan. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2013*, P-2008-2060309 (June 30, 2009). Pursuant to the terms of a settlement approved in that proceeding "costs, including costs under the various supplier contracts and reasonable costs incurred to procure and administer the DSP Plan for the Residentail and Small C&I customer classes will be recovered through the GSC-1".<sup>2</sup> Joint Petition for Settlement – DSP Plan, ¶ 46. A similar paragraph provides for the recovery of those costs from the Large C&I customer class, albeit under the GSC-2 rate. ¶ 49. Both the GSC-1 and GSC-2 were reconcilable. Having

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<sup>1</sup> Unaddressed is the unlikely possible scenario that PPL could be replaced as a default service provider. Should such an unlikely event occur the riders proposed herein would cease to generate revenue for PPL. Consequently, PPL would not be able to recover any over or under collections, nor as a "non default service provider", arguable be entitled to ever recover or be required to refund those costs.

<sup>2</sup> The GSC-1 rates are generation rates charged to customers being served as PPL's default service customers.

approved, within the context of a competitive procurement plan, a method for PPL to recover all reasonable costs associated with its default service, the Commission complied with its statutory duty by permitting PPL to impose a reconcilable mechanism to recover its reasonable costs relating to the procurement of generation supply for its default customers.<sup>3</sup> That plan, agreed to by PPL, required PPL to recover those costs from default service customers.

Through its Petition and Amended Petition, PPL seeks to alter one provision of that Settlement and recover costs from not only customers that are currently being provided default service by PPL, but by those customers who believed in the underlying concept and promise of competition as set forth in Chapter 28 of the Code and took advantage of their right to choose an alternative generation supplier. Thus, the issue presented in this proceeding is not whether PPL should be given an opportunity to recover its reasonable costs of providing default service as suggested by PPL, but from whom should those costs be recovered – customers who are currently being provided default services or from customers who have exercised their right to switch suppliers, many of which exercised that right two years ago.

The PPL proposal would further penalize a customer for switching from default service to services provided by an Electric Generation Supplier. As explained by PPL witness Kleha:

The CTR will be a temporary reconcilable non-bypassable Section 1307(e) cost recovery mechanism to refund or recoup historic over or under collection balances related to transmission service and generation supply service that were incurred prior to the effective date of the RR, or as of May 31, 2012.

PPL Statement No. 1, p. 24. As a result of this proposal, a customer, having made his choice to save money by switching generation suppliers, would be required to reimburse PPL out of its

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<sup>3</sup> The Commission reviewed this recovery mechanism again and on December 16, 2010 entered an order approving Supplement No. 97 to PPL's Tariff, which supplement changed the calculation and reconciliation period of the GSC-1, GSC-2, and TSC.

savings for having exercised that right. The rationale for the imposition of these riders was summarized by Mr. Kleha as follows:

Due to a variety of factors, including increased shopping levels and disparities between Time of Use rates and default service rates, PPL Electric, to date, has not been able to recover all of its default service costs in a full and timely fashion.

PPL Statement No. 1-R, p. 4. While this may explain certain causes of the overall under collection, PPL has not directly tied the incurring of these costs to those customers who were being served by default service as much as two years ago.

PPL argues that part of the problem it experienced was occasioned by a mismatch of costs incurred and revenues received in the month in which the customer switched. For example, if a customer switched on January 2, 2010, the costs associated with providing default service to that customer in December would not have been recovered until that customer was billed and paid for that bill sometime in January or February. While this may have occurred every month from January 1, 2010 to the present, the customer who switched on January 2, 2010 would, under PPL's proposal be required to pay for mismatches that were not caused by his switching, but by the subsequent exercising of the right to shop by default customers. Similarly, if a current shopping customer never took service under PPL's time of use rates, that customer, under PPL's proposal, would be required to pay the under collection for those customers that took advantage of that default service. Clearly such a situation creates subsidization by shopping customers.

PPL points to its perception that its proposed riders are no different than the migration riders imposed by jurisdictional natural gas companies. However, PPL overlooks one major legal difference. Pursuant to the provisions of Section 1307(f) of the Code (Recovery of natural gas costs), a specific legislative mandate in 1307(f) requires the Commission to permit the recovery of any over or under collection of natural gas costs from customers "transferring from sales to

transportation service.” 66 Pa. C.S. §1307(f)(6). No such legislative mandate applies to electric distribution companies.

The Commission’s regulations also clearly contemplate the recovery of the costs of providing default service from default service customers. No one to this proceeding has contested the fact that the costs sought to be recovered in either the CTR or RR are default service costs. 52 Pa Code §54.187 provides framework for cost recovery. Section 54.187 generally provides that all costs incurred for providing default service shall be recovered through a default service rate. 52 Pa. Code §54.187(a). Further, except for an automatic adjustment clause contemplated by subparagraph (f), all default service costs, including generation, transmission and other cost elements must be recovered through the price to compare (PTC). 52 Pa. Code §54.187(b), (d).<sup>4</sup> Thus, §54.187 contemplates two methods of recovery of all default service costs: (1) through a single all inclusive rate provided by §54.187(a) which, according to Commission policy at §69.1809(a) may be adjusted quarterly for residential customers and monthly for large business customers, or (2) through an automatic adjustment clause as provided in §54.187(f). 52 Pa. Code §69.1809(b) and (c) provide that the automatic adjustment clause may be utilized to “adjust the PTC on a more frequent basis and to reconcile costs and revenues.” The sole purpose of the automatic adjustment clause is to refine the operation of the PTC.<sup>5</sup> Equally important is the requirement that any reconciliation of default service costs must be accomplished within the context of the PTC adjustment proceeding. Since the PTC is part of the

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<sup>4</sup> The Commission’s policy statement set forth at 52 Pa. Code §69.1808, while not having the precise legal effect of a regulation, expands upon §54.187 by providing examples of specific costs to be included in the PTC.

<sup>5</sup> That the Commission’s regulations and policy statement must be read in tandem is consistent with the Commission’s discussion in its Final Rulemaking Order adopting the regulations. *See re Electric Distribution Companies*, L-00040169 (May 10, 2007), pages 26 to 34.

portion of a customer's bill that may be bypassed by shopping and is only applicable to current default service customers, REG submits that there is no legal support for the imposition of these costs on shopping customers.

#### PPL's Proposal is Not in the Public Interest

PPL appears to argue that it is in the public interest to recover balances "incurred while customers receive default service from PPL Electric" thereby preventing current default customers for paying or benefiting". PPL Statement No. 1, p.7. While such an argument sounds appealing if PPL were to recover an under collection or refund an over collection on an individual customer basis, such action would be nearly impossible to undertake and, in all probability, would cost more to administer than any under or over collection. Instead PPL proposes to collect any under collection regardless of whether that customer shopped on January 1, 2010 or May 1, 2011. Such a subsidization by the shopping customer is simply not in the public interest nor does it promote customer choice. As stated by REG Witness Richards:

Due to the efforts of the PUC to publicize the expiration of the rate caps and the reports of the magnitude of the anticipated increase in rates, most REAP<sup>6</sup> customers in the PPL service territory entered into contracts for service on January 1, 2010. Some even began taking power in late 2009. These customers were never served with the contracts entered into by PPL in 2010 which gave rise to the uncollectibles. These customers received no benefit from PPL securing power for them and should not be forced to pay costs associated with power they did not receive.

REG Statement 1, p. 4. This is equally true of the customers who did not participate in PPL's time of use rate option. To the extent that any under collection relates to the time of use program,

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<sup>6</sup> Richards Energy Affinity Program. REG Statement 1, p. 1

those customers who did not take advantage of those rates should not be forced to pay for any under collection attributable to that rate schedule.<sup>7</sup>

Mr. Richards' opinion is apparently shared by OSBA Witness Knecht . When asked whether he agreed with PPL's rationale for the CTR, he stated:

On its face this proposal [the CTR] must be viewed as distorting competition by imposing default service charges/credits on shopping customers without any clear showing that the shopping customers contributed to the over-or-under collections. For example, why should so many of the Small C&I customers who opted out of default service in early 2010 be subject to a default service reconciliation charge/credit based on the balance of a default service variance in May, 2012, two years after they left default service.

OSBA Statement 1, p. 10. While REG agrees with Mr. Knecht that PPL may be able to make a reasonable case that some of the shopping customers may have contributed to some of the over or under collections, PPL has failed to present any evidence, much less substantial evidence that it is appropriate to burden an entire class of customers – the shopping customer – with costs which they did not cause.

PPL asserts that unless the Commission approves both the CTR and RR, the PTC will increase, customers will shop, which in turn would increase the PTC in subsequent periods “calling into question PPL Electric’s ability to recover its costs incurred to provide default service on a timely basis”. PPL Statement 1, p. 6. While this scenario is indeed a possibility, it is equally possible that in the future the PTC will decrease due to over collections which would equally distort the PTC amount contained on a customer’s bill. It is also entirely possible that the PTC will reach a level that actually promotes the return of customers to PPL’s default service thereby expanding its customer base over which to spread any default service costs. While this

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<sup>7</sup> PPL’s Time of Use rates are the subject of a separate proceeding currently before the Commission.

suggests that any under or over collection should be removed from the PTC as suggested by PPL, such an action will violate the Commission's mandatory requirement that all costs incurred for providing default service shall be recovered through the PTC. 52 Pa. Code §54.187. PPL has presented no empirical evidence that its "death spiral" scenario is a probability. In fact, rather than customers leaving default service in droves, under the current Commission approved process whereby only default customers are paying default costs, and those costs are reflected in the existing PTC, Mr. Kleha conceded that shopping levels and the default service customer base has stabilized. PPL Statement 1-R, p. 12.<sup>8</sup>

The imposition of default service costs upon shopping customers forces shopping customers to subsidize default customers for costs incurred for the benefit of the default service customer. Such an action would not be in the public interest and is contrary to the promotion of competition espoused by this Commission since the passage of the Electric Generation Customer Choice and Competition Act. As opined by REG Witness Richards:

I find it unacceptable that in an environment where the Commission is promoting competition and energy conservation, PPL proposes to punish those customers who switched by charging them because they took advantage of their right to choose.

\* \* \*

Richards business caters to the business customer. To that end, Richards has put together several buying groups comprised of customers who shop for generation as a group. Our experience has been that client's primary motivation comes from saving money whether that is in the form of lighting retrofits or the purchase of electricity. PPL's proposal would have those customers return at least a portion of those savings. Depending upon the magnitude of the price increase, the shopping customer may have to give back all of their savings or even pay back more than they even saved. At

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<sup>8</sup> Mr. Kleha also acknowledged that PPL's 1307(e) cost recovery mechanism which includes the over or under collections at issue in this proceeding is working as designed. PPL Statement 1-R, p. 13.


that point, I would suspect that many customers would become disillusioned with shopping and return to default service if they cannot save money.

REG Statement 1, p. 2-3. The Commission should not retreat from its encouragement of shopping by penalizing those customers who took advantage of the opportunity to save money provided by shopping through the imposition of either the RR or the CTR. REG submits that PPL's proposal is not in the public interest.

Conclusion

Richards Energy Group, Inc. submits that as admitted by PPL, the existing reconciliation process is working as intended and should not be scrapped for a process that would impose default supply costs on shopping customers. Such an action is contrary to the Commission's regulations, is not supported by the Public Utility Code or the evidence in this proceeding, and presents a setback to the Commission's stated goal of promoting competition.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Main Brief of Richards Energy Group, Inc. upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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