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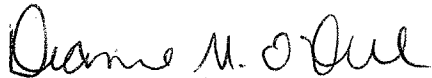
January 9, 2012

Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265Re: Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service, Docket No. P-2011-2256365

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed is the original of its Main Brief along with the electronic filing confirmation page with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosurecc: Hon. Susan Colwell., w/enc.
Cert. of Service, w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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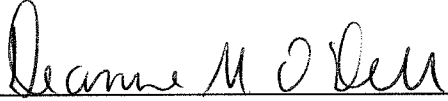
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Dated: January 9, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval to Implement a Reconciliation : Docket No. P-2011-2256365
Rider for Default Supply Service :
:

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I. INTRODUCTION

In its petition, PPL Electric Utilities Corporation (“PPL”) seeks to dramatically revise its currently effective reconciliation mechanism in ways that are inconsistent with the Electricity Generation Customer Choice and Competition Act (“Competition Act”)¹ and which, if implemented, could have a devastating impact on the development of the competitive retail electricity market in this service territory. The Retail Energy Supply Association (“RESA”),² which is a trade organization of a number of electricity generation suppliers (“EGSs”) who are currently providing competitive generation service in PPL’s service territory and desire to continue to do so, strongly opposes PPL’s proposals. As a fundamental matter, PPL has not met its burden of proving that there is any current need to change the existing reconciliation mechanism to either recover the cost of past reconciliations or to account for the costs of future reconciliations. But, even if consideration were given to PPL’s proposals although it should not, PPL’s proposed changes cannot be adopted because they violate the Competition Act – in several respects – are inconsistent with the Commission’s regulations, and will result in significant customer confusion which will stymie the development of a competitive retail electricity market. For all these reasons as explained further below, PPL’s petition should be denied.

¹ 66 Pa. C.S. § 2801, et. seq.

² RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

II. PROCEDURAL AND FACTUAL HISTORY

In this proceeding, PPL is proposing to make to significant changes to its current reconciliation process through the implementation of two distinct riders to cover two distinct time periods. The first change PPL is proposing is to apply the reconciliation charge/credit to all customers. The current mechanism applies the reconciliation adjustment only to default service customers and it is captured in PPL's Price-to-Compare ("PTC"). Thus, if PPL identifies an over or under recovery, this amount is calculated on a \$ per kWh basis and then factored into the calculation of the subsequent PTC. In this proceeding, however, PPL proposes to apply the reconciliation adjustment to both default service and shopping customers although it proposes different rules for the application of the reconciliation for each of the two riders.

The second change PPL is proposing to its current reconciliation mechanism is the time period over which the reconciliation adjustment would apply for residential and small commercial and industrial customers going forward. Currently, for the residential and small commercial and industrial customers, PPL recalculates the default service rates on a quarterly basis and performs a reconciliation of any over or under collection of its actual costs incurred to acquire generation supply. PPL's new proposal, however, is that for these classes, the reconciliation adjustment would be calculated and reconciled on an annual basis.

The two riders PPL is proposing to implement are intended to reconcile costs for two distinct time periods. The Competitive Transition Rider ("CTR") would reconcile the costs from January 1, 2010 through May 31, 2012. At that point, the CTR would cease to exist and the Reconciliation Rider ("RR") would reconcile costs effective June 1, 2012 going forward.

An evidentiary hearing was held on December 5, 2011 and, at that time, testimony from the following parties was admitted into the record: (1) the Office of Consumer Advocate

“OCA”); (2) the Office of Small Business Advocate (“OSBA”); (3) the Bureau of Investigation and Enforcement (“I&E”); (4) RESA; (5) Dominion Retail, Inc. (“Dominion”); (6) Richard Energy Group, Inc. (“REG”); and, (7) Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”). Main Briefs are due January 9, 2012 and reply briefs are due January 23, 2012.

III. ARGUMENT

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.³ It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁴ A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.⁵ Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.⁶ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁷

³ 66 Pa. C.S. § 332(a).

⁴ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. 1990).

⁵ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁶ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. 1993).

⁷ *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. 1984).

PPL has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposed reconciliation rider is lawful and reasonable. PPL has not met this burden and, therefore, its petition should be denied.

2. Standards Applicable to Default Service

Pursuant to the Competition Act, PPL provides default service to non-shopping customers. As the default service provider (“DSP”), the Competition Act permits PPL “the right to recover on a full and current basis. . . all reasonable costs incurred” in providing default service.⁸ The Commission’s regulations further require that all costs incurred from providing default service shall be recovered through a default service rate schedule.⁹

The Competition Act also requires PPL, as the DSP, to treat any shopping customer who chooses to return to default service “exactly as it would any new applicant for energy service.”¹⁰ Similarly, the Commission’s regulations prohibit DSPs from charging any fee to a retail customer for changing its generation service provider.¹¹

Additionally, the Competition Act mandates that customers have direct access to a competitive retail generation market.¹² This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating

⁸ 66 Pa. C.S. § 2807(e)(3.9).

⁹ 52 Pa. Code § 54.187(a).

¹⁰ 66 Pa. C.S. § 2807(e)(4).

¹¹ 52 Pa. Code § 54.189(e).

¹² 66 Pa. C.S. § 2802(3).

electricity.”¹³ Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.¹⁴

As discussed further below, PPL has failed to meet its burden of proving that the changes it is proposing to make to its existing reconciliation rider are necessary. Further, the proposed changes are not consistent with the Competition Act and the relevant regulations. Therefore, PPL’s petition should be denied.

B. The Record Does Not Support Any Need To Change PPL’s Existing Reconciliation Mechanism

Pursuant to Section 2807(e)(3.9), PPL has a statutory right to recover “on a full and current basis. . . all reasonable costs incurred” for providing default service.¹⁵ PPL already has a mechanism in place under its current default service plan, which was the product of a negotiated settlement among many stakeholders, to recover and reconcile default service related costs in accordance with this statutory right.¹⁶ In this proceeding, PPL seeks to change the current reconciliation mechanism and has the burden of proving why this change is necessary. While PPL repeatedly attempts to claim that parties opposing its petition are seeking to deny it of its statutory right to cost recovery, this advocacy is nothing more than a smoke and mirrors attempt to shift the focus away from the fact that PPL has not met its burden of proving that its current reconciliation mechanism needs to be changed. The core issue of this proceeding is not whether PPL has the right to collect under recoveries incurred related to its provision of default service;

¹³ 66 Pa. C.S. § 2802(5). *See Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Commw. 2002).

¹⁴ 66 Pa. C.S. § 2802(5).

¹⁵ 66 Pa. C.S. § 2807(e)(3.9).

¹⁶ PPL St. No. 1 at 10-11.

but rather, whether PPL has met its burden of proving that its proposed changes to the current mechanism are necessary, just and reasonable. As PPL has not done this, its petition should be denied.

PPL offers the following arguments to support its proposed CTR and RR proposals: (1) PPL has experienced significant over and under recoveries related to its generation (GSC-1 and GSC-2) rates, its transmission (TSC) rates and its time-of-use rates (TOU); (2) higher than anticipated migration levels have exacerbated the experienced over and under collections; and (3) current high levels of shopping in certain customer classes may jeopardize PPL's ability to recover on a going forward basis, any existing or future under collections.¹⁷ As explained further below, PPL has not presented substantial and compelling evidence to demonstrate that these concerns support revising its current reconciliation mechanism.

1. **The record does not show that PPL's current mechanism is insufficient to recover past balances**

PPL relies upon its experience with reconciliations since its generation rate caps expired to support its request for future changes to the current mechanism.¹⁸ However, the evidence shows that PPL currently has a net over-recovery from both the residential and the large commercial and industrial classes. As of September 30, 2011, the current over and (under) collection balances are as follows:¹⁹

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 12-17.

¹⁹ Exhibit RJH-1 (PPL Revised Response to Dominion 1-2).

	Transmission	Generation	Time of Use	Total
Residential (GSC-1)	(\$3,500,000)	\$7,400,000	(\$2,000,000)	\$1,900,000
Small C&I (GSC-1)	(\$4,700,000)	\$2,600,000	\$0.00	(\$2,100,000)
Large C&I (GSC-2)	\$6,400,000	(\$2,000,000)	n/a	\$4,400,000

While PPL is showing a net under collection for the small C&I class, it is not facing any immediate risk of not recovering these amounts because a significant number of customers in this class remain on default service. According to the current switching statistics, the following number of customers continue to remain on PPL's default service:²⁰

	% of customers taking PPL default service
Residential	58.70%
Commercial	50.30%
Industrial	31.20%

The fact that there are a significant number of residential and commercial customers still taking default service who are able to bear the reconciliation adjustment as they do currently undercuts PPL's argument to change the applicability of the reconciliation to apply to all customers. PPL has not presented any evidence to show that there is any significant future risk of non-recovery.

Although the vast majority of PPL's large commercial and industrial load is receiving generation service from a competitive supplier, the concerns PPL may have specific to this class should not be overlaid on the other classes. Because PPL is not facing any near term risk of

²⁰ Switching statistics as of October 22, 2011. Updated information available at <http://www.papowerswitch.com/>.

failing to recover its costs, the proposal to convert the reconciliation mechanism into a nonbypassable rider should be rejected.

In sum, PPL has not shown why the changes it is recommending to this current reconciliation mechanism in the form of the CTR rider are necessary. Rather, the record makes clear that PPL will fully recover all of its costs if the current mechanism continues to be applied as currently designed.

2. The record does not show a need for PPL's proposed changes to address future circumstances

Even if one were to conclude that PPL's proposals are a reasonable means of addressing the claimed problem (and RESA submits one should not conclude this), nothing in the record supports making an assumption that such events are likely to occur in the future. Even PPL acknowledged that "it is impossible to predict when future changes in the generation supply market prices. . . will occur . . . that will affect the default service customer base."²¹ As explained in the preceding section, even with the confluence of events described by PPL at the expiration of the rate caps, PPL's reconciliation mechanism will provide it full recovery as it is currently structured. Therefore, past experience does not justify PPL's request to change the current reconciliation mechanism on a going forward basis (through the RR).

PPL acknowledges that the Commission's current retail markets investigation is actively considering the most appropriate market design to satisfy the goals of the Competition Act and that some of the measures in that proceeding "could affect the design of the RR."²² In fact, the Commission recently issued a final order with specific directives given to each EDC regarding

²¹ PPL St. No. 1-R at 12.

²² *Id.* at 16-17.

future reconciliation mechanisms to be included in their next default service plans.²³

Notwithstanding this, PPL recommends that its proposals be adopted and conformed, as necessary, to any future Commission determinations. This reasoning, however, is flawed for a number of reasons.

First, as explained above, PPL has not justified the need for its proposals. Second, as explained below, even if one were to seriously consider PPL's proposal, it cannot be adopted because it violates the Competition Act and is inconsistent with the Commission's regulations. Finally, in the context of the Retail Markets Investigation, the Commission has already established a procedure wherein the reconciliation issues presented by this petition are to be addressed and has been working with all stakeholders to determine the optimal approach. PPL's petition here is nothing more than an attempt to shortcut this process presumably in an effort to ensure that its preferred outcome is more likely to prevail in the context of its upcoming default service filing. As nothing on the record supports adopted the changes to its reconciliation mechanism as proposed by PPL, the petition should be denied.

C. PPL's Proposed Changes To Its Reconciliation Mechanism Violate The Competition Act And Are Inconsistent With The Commission's Regulations

PPL's proposed changes to its current reconciliation mechanism violate the Competition Act and are inconsistent with the Commission's regulations. They violate the Competition Act because PPL's proposed changes mean that the recovery of past and future costs will not occur on a "full and current" basis as required by Section 2807(e)(3.9) and will stymie competitive

²³ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Final Order entered at Docket No. I-2011-2237952 on December 16, 2011 at 54-55.

market development.²⁴ Further, the proposed riders remove reconciliation costs from the default service riders and require all customers to bear these costs in contravention of the Competition Act as well as the Commission's regulations and policies which require all default service costs to be recovered through default service rates which are only paid by default service customers.²⁵ Third, PPL's proposals treat shopping customers differently from new customers in terms of application of the reconciliation mechanism in violation of Section 2807(e)(4) and can be viewed as an exit fee in violation of 52 Pa. Code § 54.189(e).²⁶ Finally, adoption of the revised reconciliation mechanism will lead to customer confusion which will further stymie the development of a competitive retail electricity market in contravention of the Competition Act to promote a fully functional and workable competitive market.

1. **PPL's proposed changes to its current reconciliation mechanism will not result in the recovery of costs on a full and current basis and will stymie competitive market development**

Under either the current or proposed reconciliation mechanism, PPL will recover its full costs. Currently, for the residential and small commercial and industrial customers, PPL recalculates – on a quarterly basis – its default service rates and performs a reconciliation of any over or under collection of its actual costs incurred to acquire generation supply.²⁷ Under its newly proposed RR, the reconciliation change or credit would be calculated and reconciled on an annual basis.²⁸ In evaluating PPL's proposed changes to its current reconciliation mechanism,

²⁴ 66 Pa. C.S. § 2807(e)(3.9).

²⁵ 52 Pa Code §§ 54.187(a); (d); and 69.1808(a).

²⁶ 66 Pa. C.S. § 2807(e)(4).

²⁷ PPL St. No. 1 at 10.

²⁸ *Id.* at 19.

the legal questions that need answered are: (1) whether recovery of reconciliation costs will be on a current basis going forward; and, (2) whether PPL's proposal will foster the development of a competitive retail electricity market. Because the answer to both of these questions is "no," PPL's petition must be denied.

If its proposal were adopted, PPL would no longer be recovering costs on a full and current basis as required by the Competition Act. The statutory parameter for "current" is quarterly reconciliation.²⁹ Under PPL's proposal, the PTC for residential and small commercial and industrial customers would be adjusted quarterly to reflect the expiration and renewal of underlying supply contracts and to reflect the re-calculation of future spot and block purchases.³⁰ But if PPL's actual incurred default service costs turn out to be different from these projections, such variances would only be accounted for in the annual reconciliation process and recovered through the RR rider separate and apart from the PTC.³¹ Because of the adjustments made to correct prior estimations, it is possible that the RR may increase (causing higher end-use customer bills) at a time when market prices are falling. Accordingly, the recovery of the cost of reconciliation is not occurring on a current basis as required by the Competition Act.

Instead, PPL's proposal will send inaccurate price signals to customers and may distort customer shopping decisions because the actual default service "cost" will not be passed on to consumers in a timely way under PPL's proposal as it will be amortized over a year. Customers will not be seeing the true cost of energy on a contemporaneous basis thus distorting their

²⁹ 66 Pa. C.S. § 2807(e)(7).

³⁰ RESA St. SR-1 at 7.

³¹ PPL St. No. 1-R at 32. According to PPL Witness Kleha, "PPL is not proposing to include over or under collection balances in the price to compare," and "the reconciliation period will not have any impact on the price to compare..."

perception of the market price of energy. Rather, the bottom-line amount paid by customers will be based, at least in part, on a year's worth of reconciliation data rather than the current price of energy.

The end result will be that adoption of PPL's proposal will stymie competitive retail market development. By making the reconciliation adjustment period longer than quarterly, PPL will be further divorcing the actual default service rates from the initial period where the over/under recovery occurred.³² Default rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop.³³ The Commission recognizes this by requiring that the all of the costs incurred for providing default service be recovered through a default service rate schedule.³⁴

In contravention of this, the proposed RR will create a distorted pricing structure that will stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately reflect market prices and costs.³⁵ Default service rates must be market-responsive and must reflect all of the relevant costs incurred by the EDC in providing default service.³⁶ Both of these factors are required so that competitive suppliers can compete on equal footing with the EDC's default service rates.³⁷ Without some rational relationship to the market, EGSs cannot price competing offers and may not enter that market. Similarly, if default rates do not fully reflect all of the costs of providing generation service (for

³² RESA St. 1 at 6.

³³ *Id.*

³⁴ 52 Pa. Code § 54.187(a).

³⁵ RESA St. 1, at 6.

³⁶ *Id.*

³⁷ *Id.*

example due to misallocated costs and cross-subsidization), then EGSs are at an unfair competitive disadvantage compared to the EDC's default service rate.³⁸

Simply put, if default service rates do not accurately track changes in market prices over time and include all the costs of providing default service, then the default service rate will become out-of-market.³⁹ This creates at best, intermittent opportunities for competitive suppliers to attract customers.⁴⁰ Such a market design is not sustainable and presents too much risk for retail suppliers to enter the market – a result which is in direct contravention of the purposes of the Competition Act and cannot be endorsed.⁴¹

2. **PPL's proposed changes require all customers to bear the costs of reconciliation of the default rate in violation of the Competition Act as well as the Commission's regulations and policies**

PPL's current reconciliation mechanism is applied only to default service customers. Through its petition, PPL proposes to require all customers including default service customers and shopping customers to bear the burden of the reconciliation adjustments whether it is the CTR or the RR that is being applied.⁴² Such a result is in violation of the Competition Act as well as the Commission's regulations and policies.

All costs associated with providing default service must be recognized and recovered in the default service rate which is paid by default service customers. The Competition Act

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 PPL St. No. 1 at 24-27 (describing the applicability of the CTR); PPL St. No. 1 at 20 (PPL describes that while the RR will apply to all customers, how much will be determined each time a customer's shopping status changes.)

expressly provides that all reasonable costs of providing default service in the post transition period shall be fully recovered by the DSP.⁴³ It also requires that charges for generation, transmission and distribution be fully unbundled.⁴⁴ Likewise, the Commission's default service regulations require the default service rate to include the sum of all generation and transmission related default service costs.⁴⁵ While the Competition Act expressly provides for the recovery of certain costs through nonbypassable charges on all customers, both non-shopping and shopping, there is no such express authorization for the recovery of default service costs through nonbypassable, distribution service type charges such as the riders proposed by PPL here.⁴⁶ This means that the costs of providing default service must be included in the rates paid by default service customers, and not shopping customers.⁴⁷

As the Commonwealth Court has observed, "distribution companies perform a default service referred to as 'provider of last resort' to retail customers who decline to shop for an

⁴³ 66 Pa. C.S. § 2807(e)(3.9).

⁴⁴ 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa.Cmwlth. 2006).

⁴⁵ 52 Pa. Code § 54.187(a).

⁴⁶ 66 Pa. C.S. § 2804(9) ("Universal service and energy conservation policies, activities and services . . . shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms. . . ") (emphasis added); 66 Pa. C.S. §§ 2808(a), 2812(a)(2)(iii) (competitive transition costs ("CTC") and intangible transition costs ("ITC")).

⁴⁷ *Popowsky v. Pa. P.U.C.*, 869 A.2d 1144 (Pa.Cmwlth. 2005), *appeals denied* 895 A.2d 552 (Pa. 2006) (PUC interpretation that 66 Pa. C.S. § 1307(g) authorizes wastewater utility to establish distribution system improvement charge violates maxim *expressio unius est exclusio alterius* (inclusion of a specific matter in a statute implies the exclusion of other matters.); *Susquehanna Area Regional Airport Authority v. Pa. P.U.C.*, 911 A.2d 612 (Pa.Cmwlth. 2006), *appeals denied* 923 A.2d 412 (Pa. 2007) (PUC's position that it has implicit power to review contract excluded from PUC review under 66 Pa. C.S. § 508 "does violence to principle *expressio unius est exclusio alterius* . . . (inclusion of a specific matter in a statute implies the exclusion of other matters.)").

electric generation supplier or who have returned to their distribution company.”⁴⁸ This default service is not provided to shopping customers and, therefore, all the costs of providing default service, including the financial risk of any distorted pricing mechanisms, should be included in the default service rate. If all the costs of providing default service are not included in the default service rate, the EDC as the DSP will be given an unfair competitive advantage to create an artificially subsidized lower default service rate with which EGSs will never be able to compete. Again, while some might support such a result (i.e. an artificial low default rate), the entire purpose of the Competition Act is to foster an environment wherein competition can flourish.

While the CTR and RR would be implemented as riders separate from the distribution rate, the same principles apply. The prohibition on recovering default service costs through the distribution rate is intended to ensure a level playing field for retail competition and to prevent the subsidization of default service by all ratepayers. These policies properly recognize that sound retail market design requires that default service related generation related costs be fully avoidable when a customer makes the decision to shop and take generation service from a competitive retail provider.⁴⁹

With regard to the recovery of the previously incurred TOU costs, this issue is particularly highlighted given the fact that only default service customers were even eligible to

⁴⁸ *Green Mountain Energy Co, v. Pa. P.U.C.*, 812 A.2d 740, 742 (Pa.Cmwlth. 2002) (emphasis added), *appeal denied* 833 A.2d 145 (Pa. 2003).

⁴⁹ RESA St. No. 1 at 7.

participate in the TOU program.⁵⁰ It is inappropriate to require shopping customers who are ineligible to receive the TOU service to pay for the historic undercollections resulting from the program. Moreover, while PPL attempts to be claiming that there are not enough customers currently taking TOU service to recover the cost, the correct pool of customers to be analyzed are all default service customers, not just those continuing to take the TOU offering.⁵¹

In sum, PPL's proposals would require all customers to bear the costs of providing default service, even those customers being served by a competitive supplier. This is in direct conflict with the purpose and goals of the Competition Act and the policies of this Commission which are intended to insure that customers received default service bear the costs of that service. Likewise, customers receiving competitive generation service are required to bear the costs of that service. PPL's proposal would completely undercut this by requiring shopping customers to bear default service costs and it cannot be adopted.

3. PPL's proposed changes to its reconciliation mechanism will not treat returning customers as new applicants for service as required by the Competition Act and can be viewed as an exit fee in violation of the Commission's regulations

The Competition Act requires PPL to treat any shopping customer who chooses to return to default service "exactly as it would any new applicant for energy service."⁵² But, PPL's reconciliation proposal does not do this. PPL will charge new customers the RR even though those customers are not likely to have been responsible for any over or under-collection.⁵³ In

⁵⁰ *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric Pa. P.U.C. No. 201 Time-of-Use*, Docket Number R-2010-2201138, Order entered December 2, 2010.

⁵¹ RESA St. No. 1-SR at 7-8.

⁵² 66 Pa. C.S. § 2807(e)(4).

⁵³ PPL St. No. 1 at 23.

contrast, a customer who has chosen to shop and then return to default service is exempt from the RR for a period of time equal to the number of consecutive months, not to exceed twelve, that the customer was shopping immediately prior to the switch.⁵⁴ By not treating returning customers as new applicants for service, PPL's proposal is in direct contravention of Section 2807(e)(4) of the Competition Act.

Further, for customers who leave default service, they are going to continue to bear the reconciliation adjustment for some period of time after they are receiving service from a new competitive supplier.⁵⁵ While not overtly charging a "exit fee," the imposition of the reconciliation on customers who have chosen to shop could be perceived as one contrary to the Competition Act and the Commission's regulations.⁵⁶ Although default service is supposed to be a backstop to the competitive market,⁵⁷ the reality in Pennsylvania today is that default service acts as a competitive offering relative to offers from EGSs. The designation of the EDC's default service rate as the "price to compare" reinforces this current reality as consumers are encouraged to use the default service rate as the benchmark by which to assess the prices offered by EGSs. Thus, to have a fair and level playing field in consideration of this reality, default

⁵⁴ *Id.* at 20.

⁵⁵ *Id.*

⁵⁶ *See* 66 Pa. C.S. § 2802(12); 52 Pa. Code § 54.189(e).

⁵⁷ 66 Pa. C.S. § 2807(e)(3.1) ("Following the expiration of an electric distribution company's obligation to provide electric generation service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.")

service needs to be treated and priced, to the maximum extent possible, as a competitive offering.⁵⁸

In deriving prices to be charged to customers in any competitive enterprise, one has to account for more than simply supply or input costs – as PPL is proposing to do here. Rather, one has to account for many other factors, including cash flow management, general overhead expenses, expectations about future market conditions, etc. In such a situation, if any one competitor failed to adequately reflect or account for certain costs in its price, then it would not have the opportunity to be made whole for this flawed pricing by charging the customers of its competitors.⁵⁹ This, however, is precisely what the RR and CTR would do for PPL.

EGS customers who have chosen to leave PPL’s default service would be forced to continue to pay PPL for the reconciliation impacts directly attributable to the generation service provided by PPL. PPL’s argument that the charge is designed to pay for prior period costs will ring quite hollow to those customers who are essentially being required to pay for generation service costs twice on the same bill.⁶⁰

As PPL’s RR is designed to treat shopping customers returning to default service differently than new customers taking default service, it is inconsistent with the Competition Act and must be rejected. As it also proposes to impose a fee on shopping customers that new customers do not face and which could be viewed as an “exit fee” in violation of the Commission’s regulations, the proposal must be rejected.

⁵⁸ RESA St. No. 1-SR at 3.

⁵⁹ *Id.*

⁶⁰ *Id.*

4. **PPL's proposed changes will lead to customer confusion which will further stymie the development of a competitive retail electricity market**

The Commission goal is to “ensure that a properly functioning and workable competitive retail electricity market exists in the state.”⁶¹ But, as discussed above both the CTR and the RR would create additional price distortions. The RR would also increase customer confusion,⁶² which is likely to stymie retail market development in PPL's service territory.⁶³ Thus, PPL's proposed changes to its current reconciliation mechanism should be rejected.

The reconciliation mechanism may distort customer shopping decisions. The potential confusion is highlighted by Mr. Kleha. He claims that “the RR should make the [PTC] easier for customers to understand” because it removes the reconciliation impact and the reconciliation will be itemized as a separate charge on their bills.⁶⁴ But, this over-simplification does not address how a customer is supposed to factor into his or her shopping decision the impact of the reconciliation charge in his (or her) shopping decisions.⁶⁵

Currently, a customer must make a simple comparison of the per kWh price offered by an EGS and the per kWh price of PPL's PTC. If the RR is approved, the customer would have to consider the period of time they were on default service, try to figure out whether the future

⁶¹ See *Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, PUC Docket No. I-2011-2237952, (Order entered April 29, 2011), p. 2.

⁶² RESA St. No. 1 at 10-11.

⁶³ RESA St. SR-1 at 4.

⁶⁴ PPL St. No. 1-R at 21-22.

⁶⁵ RESA St. SR-1 at 6.

reconciliation impact will be a charge or a credit and consider that full cost against the price offered by an EGS.⁶⁶

The lag in establishing and implementing price adjustments tends to mask the current market price of electricity, and will not be intuitive to customers. It takes a utility regulatory expert several pages of testimony to describe examples of how the RR would apply in different situations.⁶⁷ Few, if any customers, will have the time or desire to undertake such calculations.⁶⁸ So, the true costs will not be communicated immediately to customers. The lag in communicating such costs to customers will, at the very least, cause more confusion. Such confusion will be driven by the distorted pricing information being made available to them by way of the PTC and a separate itemized charge. Moreover, to the extent that the shopping customers are assessed a reconciliation charge, that charge is likely to be viewed as a penalty for shopping.⁶⁹

It is well documented that one of the major impediments to a fully competitive market is the confusion that people have about the costs and consequences of switching.⁷⁰ This proposal, if implemented, will only exacerbate that confusion. Such confusion is likely to stymie retail market development in PPL's service territory and undermine the Commission goal of ensuring a properly functioning and workable competitive retail electricity market and must be rejected.

⁶⁶ RESA St No. 1, 10-11; RESA St. SR-1, at 6.

⁶⁷ RESA St No. 1, at 11.

⁶⁸ RESA St. SR-1, at 6.

⁶⁹ *Id.*

⁷⁰ *Id.*

IV. CONCLUSION

RESA respectfully requests that the Administrative Law Judge issue a Recommended Decision which rejects PPL's petition because PPL has failed to meet its burden of proving that the proposed changes to its current reconciliation mechanism are necessary, reasonable and justified. Moreover, adoption of PPL's proposal is inconsistent with the Competition Act, the Commission's regulations and public policy. First, PPL's proposed changes to its current reconciliation mechanism will violate the Competition Act's requirement that recovery of default service costs occur on a "full and current" basis which will stymie competitive market development.⁷¹ Second, the proposed riders remove reconciliation costs from the default service riders and require all customers to bear these costs in contravention of the Competition Act as well as the Commission's regulations and policies which require all default service costs to be recovered through default service rates which are only paid by default service customers.⁷² Third, PPL's proposals treat shopping customers differently from new customers in terms of application of the reconciliation mechanism in violation of Section 2807(e)(4) and can be viewed as an exit fee in violation of 52 Pa. Code § 54.189(e).⁷³ Finally, adoption of the revised

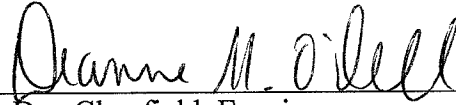
⁷¹ 66 Pa. C.S. § 2807(e)(3.9).

⁷² 52 Pa Code §§ 54.187(a); (d); and 69.1808(a).

⁷³ 66 Pa. C.S. § 2807(e)(4).

reconciliation mechanism will lead to customer confusion which will further stymie the development of a competitive retail electricity market in contravention of the Competition Act to promote a fully functional and workable competitive market.

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