Hawke
McKeon &
Sniscak LLP
ATTORNEYS AT LAW
100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

January 9, 2012

Via Electronic Filing and Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities for Approval To Implement a Reconciliation Rider for Default Supply Service; Docket No. P-2011-2256365
MAIN BRIEF OF DOMINION RETAIL, INC.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Main Brief of Dominion Retail, Inc. d/b/a Dominion Energy Solutions in the above-captioned docket. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel for Dominion Retail, Inc.

TSS/alh
Enclosures
cc: The Honorable Administrative Law Judge Susan D. Colwell (via hand delivery)

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC AND FIRST CLASS MAIL

Aron J. Beatty, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
tmccloskey@paoca.org

Elizabeth Rose Triscari, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
sgray@state.pa.us

Richard A. Kanaskie, Esquire
PA PUC Bureau of
Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105
rkanaskie@state.pa.us

Brian Knipe, Esquire
Buchanan Ingersol & Rooney, PC
17 North 2nd Street
Harrisburg, PA 17101-2121
Brian.Knipe@bipc.com

Pamela C. Polacek, Esquire
Adeolu A. Bakare, Esquire
McNees, Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
ppolacek@mwn.com
abakare@mwn.com

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com

Divesh Gupta, Esquire
Constellation NewEnergy Inc.
Candler Bldg., 7th Floor
111 Market Place
Baltimore, MD 21202
Divesh.gupta@constellation.com

Craig A. Doll, Esquire
P.O. Box 403
25 West Second Street
Hummelstown, PA 17036
Cdoll76342@aol.com

Thomas T. Niesen, Esquire
Charles E. Thomas, III, Esquire
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
tniesen@thomaslonglaw.com

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17108-1248
dclearfield@eckertseamans.com
dodell@eckertseamans.com

Frank Richards
Richards Energy Group
781 S. Chiques Road
Manheim, PA 17545-9135
frichards@richardsenergy.com

Paul E. Russell, Esquire
Jesse A. Dillon, Esquire
PPL EnergyPlus LLC
Two North Ninth Street
Allentown, PA 18101-1179
perussell@pplweb.com
jadillon@pplweb.com

Michelle M. Skjoldal, Esquire
Pepper Hamilton LLP
100 Market Street, Suite 200
P.O. Box 1181
Harrisburg, PA 17108
mskjoldalm@pepperlaw.com

Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@steveslee.com

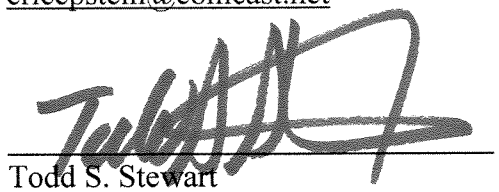
David B. MacGregor, Esquire
Post & Schell, PC
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103
dmacgregor@postschell.com

Anthony D. Kanagy, Esquire
Christopher T. Wright, Esquire
Post & Schell PC
12th Floor, 17 North Second Street
Harrisburg, PA 17101
akanagy@postshell.com
cwright@postshell.com

Craig R. Burgraff, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17101
crburgraff@hmslegal.com

Holly Rachel Smith, Esquire
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com

Eric J. Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
ericepstein@comcast.net



Todd S. Stewart

Dated this 9th day of January 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

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

MAIN BRIEF
OF DOMINION RETAIL, INC

Todd S. Stewart
PA Attorney I.D. #75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: tsstewart@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for Dominion Retail, Inc.

Dated: January 9, 2012

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I. INTRODUCTION AND STATEMENT OF THE CASE

On August 3, 2011, PPL Electric Utilities Corporation ("PPL") filed its Petition seeking approval of a Reconciliation Rider ("RR"). The RR is intended to recover, on a going forward basis, any mismatches between the default service rate billed to customers, also known as the PTC, and the costs that are incurred to provide that service, through the reconciliation of those costs against the revenues produced by the rates. The major difference between PPL's proposed RR and the current methodology by which it reconciles these differences, is that as part of this proposal it seeks to change the reconciliation period from quarterly to annual and it seeks to alter the groups of customers from whom it will collect the charges.

PPL presently recovers the reconciliation factor in its PTC for each rate class and charges those rates only to customers taking default service. PPL has proposed to modify its current methodology so that customers who "shop" or take service from a competitive supplier would be required to pay the RR for up to a year after they shop, or switch away from default service. The modifications would also excuse a customer from paying the RR for up to a full year if they shopped and then returned to default service from PPL. Under its proposal, however, PPL would continue to charge new default service customers the reconciliation charge, and would not collect the RR charges from customers who leave PPL's service entirely. (PPL Petition).

On August 25, 2011, PPL modified its Petition to add a Competitive Transition Rider ("CTR") proposal to the mix. The CTR is intended to recover, on a semi-backward-looking basis, charges that PPL has not recovered, and will not likely recover, before June 1, 2012. The purported justification for this rider is PPL's claim that it has incurred costs in a number of rate classes, for which recovery is doubtful. Most notable among these "doubtful" accounts is the

Residential Time of Use ("TOU") rate and default service for the Large Commercial/Industrial rate class, where most of the load has shopped.

Significantly, however, PPL seeks to recover any balances that may exist in any of its reconciliation accounts for its GSC-1, GSC-2 and TSC reconciliation accounts as of June 1, 2012 - from all customers. (PPL Amended Petition). As incredible as it may seem, however, PPL has not yet quantified the dollars which it seeks to recover through the CTR. In fact, PPL has been adamant that it cannot accurately estimate those costs for which it now seeks recovery and that it will not be able to do so until after June 1, 2012. Transcript "TR" 81:11-21. Finally, PPL asked to modify the reconciliation process to elongate the process to a once-per-year reconciliation rather than the current once-per-quarter process.

Dominion Retail, Inc., d/b/a Dominion Energy Solutions ("DES") believes that PPL's proposed changes that: 1) implement the RR; 2) change the reconciliation period for the RR from quarterly to annual; and 3) implement the CTR, expressly violate the Pennsylvania Public Utility Code ("Code"), 66 Pa CS §§ 2807(3.9) & (7), and 66 Pa. C.S. § 1304, and the Commission's Regulations for default service at 52 Pa. Code § 54.181, *et seq.*. Moreover, implementation of such changes would cause irreparable and lasting harm to the competitive market by shifting the cost of default service to shopping customers – who are no longer default service customers – and by excusing customers who return to default service from paying for the true cost of that service. This a rather obvious attempt to have shopping customers subsidize default service customers in violation of 66 Pa. C.S. § 1304. Both of these pricing anomalies would create incentives for customers either to never consider competitive offers in the first place, or to leave competitive service and return to default service. Dominion Retail Statement No. 1 "DR. St. No. 1", 2:2-5. It is telling that PPL's proposed RR is very similar to the Migration Riders in

Pennsylvania's natural gas choice industry which have effectively dampened competition in that market even though it has been open to competition for longer than the electric markets. DR. St. No. 1, 11:20-23.

By requiring that all customers pay the CTR, PPL would shift the costs of default service to customers who are no longer default service customers. Not only does this violate the requirement that default service rates that should be paid only by default service customers, it also violates the rate discrimination provision of the Code, 66 Pa. C.S. § 1304, by creating an unreasonable preference for default service customers in the form of an illegal subsidy. Again, the CTR will cause customers who choose to shop to subsidize default service for customers who remain on default service.

Finally, PPL seeks to elongate the reconciliation period from the current quarterly reconciliation methodology to an annual method. This elongation will further attenuate the market relevance of the rates designed to recover default service costs. That is, under PPL's proposed methodology, customers will pay the reconciliation portion of default service costs a full year after those costs were incurred. What this means is that as the costs of default service accumulate over the course of a year, customers will not be able to realize the true market costs of the energy that they have used until well after the fact. This makes it more difficult for Electric Generation Suppliers ("EGS") such as DES to price their products competitively in comparison to default service rates because the default service rate will not include all of the costs of default service. DR St. No. 1, 5:16-6:6.

DES obviously opposes the implementation of PPL's three proposals in this case as being contrary to law, as discussed more fully below, and asks the Commission to reject all of PPL's requests in this case.

II. PROCEDURAL HISTORY

On August 3, 2011, PPL filed its *Petition for Approval to Implement a Reconciliation Rider for the Default Supply Service* ("PPL Petition"). An Answer to the PPL Petition was filed by DES on August 12, 2011. Then on August 25, 2011 PPL filed its *Amended Petition for Approval to Implement a Reconciliation Rider and Competitive Transition Rider for Default Supply Service* ("Amended Petition"). DES filed an Answer on September 15, 2011. By Notice dated August 29, 2011, this matter was set for Prehearing Conference to be held on October 5, 2011 and the matter was assigned to Presiding Administrative Law Judge Susan D. Colwell for adjudication ("ALJ Colwell").

Direct, Rebuttal and Surrebuttal testimony was served between the parties and on ALJ Colwell, in compliance with the Scheduling Ordered that was issued on October 5, 2012.

A one-day hearing was held on December 5, 2011, at which witnesses were cross-examined on their pre-filed Direct, Rebuttal, and Surrebuttal Testimony. Mr. Thomas J. Butler testified on behalf of DES.

The Scheduling Order in this case required that Main Briefs be submitted on or before January 9, 2012 and Reply Briefs on or before January 23, 2012. This Main Brief is submitted in compliance with that requirement.

III. SUMMARY OF THE ARGUMENT

PPL has proposed two Riders, RR and CTP that violate the Code, and the Commission's regulations, which will harm customers and the competitive market, and are thus not in the public interest. Moreover, there is no demonstrated need for any of the proposals. The entirety of PPL's Amended Petition must therefore be DENIED, both as a matter of law, and as an exercise of sound public policy.

The Code makes it clear that there can be no unreasonable discrimination in rates as between similarly situated customers. 66 Pa. C.S. § 1304. The Commission's regulations for default service embody that principle by requiring that only default service customers pay the rates to recover the costs for default service. 52 Pa. Code § 54.187. Both Rider RR and CTR violate this requirement in the plainest sense. RR requires customers who shop to pay the RR once they are no longer default service customers, and also excuses default service customers from paying the RR if they return from shopping. The CTR violates this requirement by requiring all customers (shopping and non-shopping) to pay costs associated with default service that they did not receive. There simply is no statutory authority for such requirements that otherwise plainly violate the regulations and Section 1304. This proposal is contrary to the migration rider in the natural gas market that is expressly required by statute, 66 Pa. C.S. § 1307(f)(6), and for which there is no analogue for EDCs. Without such an express authorization, there is no hope that the RR or CTR can comply with the regulations or the Code. Accordingly, they must be rejected as a matter of law.

The RR in particular, and to a certain degree the CTR, are severely anticompetitive and provide PPL with the ability and incentive to manipulate the market to harm competition. The record contains clear and convincing evidence of these flaws which has not been rebutted by PPL other than to say they feel the Riders are competitively neutral. The experience in the natural gas market, coupled with PPL's apparent inability to properly formulate default service rates so as to not cause dramatic swings in the rates from quarter to quarter for some rate classes, provides ample justification for DES' fears that customers may be artificially moved into default service and then trapped there by the application of the migration rider if they choose to leave. These provisions also change the well-established rules that customers have lived with for

several years, thus creating the likelihood of customer confusion and disillusion with the choice program and leading to an even further deterioration of shopping activity. DR St. No. 1, 11:8-23. All of these factors make it patent that PPL's proposal is not in the public interest, and PPL has failed to carry its burden of proving that they are.

Finally, and perhaps most striking, is the fact that PPL has simply failed to establish that there is a need for any of the changes it proposes. It has proposed RR because there might be a change in law or regulations that might cause lots of customers to shop; it proposed the CTR to recover balances that may or may not exist in May of this year. It has proposed the elongation of the reconciliation process, when it has failed to establish that it can or will fix its e-factor problem, and contrary to the evidence that elongated reconciliation is damaging to markets. In short, PPL has failed to carry its burden of proving that its proposals are in the public interest, and they must accordingly be denied.

IV. LEGAL STANDARDS

A. Burden Of Proof

As the proponent of a rule or order, PPL bears the burden of proving that its proposed modifications to its existing default service plan are in the public's best interest, 66 Pa. CS § 332(a), and that these proposals satisfy the Commission's Default Service Regulations. 52 Pa. Code § 54.181, *et seq.*

The term "burden of proof" means a duty to establish a fact by preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

In this matter PPL has failed to carry its burden of proving that its proposals comply with applicable law, that there is any need for the changes it has proposed and it has failed utterly to prove that its proposals are in the public interest. Accordingly, its proposals must be denied.

B. Statutes And Regulations Governing Default Service

In 2008, the Pennsylvania General Assembly passed Act 129 which modified in significant ways the obligation to serve for Electric Distribution Companies ("EDC") in Pennsylvania. 66 Pa. C.S. § 2807. Of particular importance for purposes of this proceeding, the Act 129 modifications gave a default service provider "the right to recover on a full and current basis, pursuant to a *reconcilable automatic adjustment clause* under § 1307 (relating to sliding scale of rates; adjustments) all reasonable costs incurred under this section and a Commission-approved competitive procurement plan." 66 Pa. C.S. § 2807(3.9) (*emphasis supplied*). Importantly, however, Act 129 did not change the immediately following section which states that "if a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service." 66 Pa. C.S. § 2807(e)(4).

The Commission promulgated regulations to implement the default service provisions of the Electricity Generation Customer Choice and Competition Act ("Choice Act"), 66 Pa. C.S. § 2801 *et seq.*, generally and in particular the default service plan provisions of Section 2807. (*See,* 52 Pa. Code § 54.181 *et seq.*) The Commission has implemented regulations setting forth the requirements for recovery of the reasonable costs of default service. 52 Pa. Code § 54.187. The regulation contains several provisions that are relevant to the instant proceeding. In particular, 52 Pa. Code § 54.187 (a) provides that "the costs incurred for providing default

service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP *during the period default service is provided to customers. . .* ". The regulations also provide that "except for rates available consistent with subsection (f), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed a separate line item on a customer's monthly bill." 52 Pa. Code § 54.187(b). The regulations require that default service rates be adjusted on a quarterly basis, 52 Pa. Code § 54.187(h), and require that the PTC be designed to recover all default service costs, including generation transmission of other default service cost elements incurred in serving the average member of a customer class. 52 Pa. Code § 54.187(d).

Read together, these regulations require that all the costs incurred by the default service provider for providing default service, are to be recovered through a "default service rate schedule" which is to be identified as the PTC, and that the PTC is to be designed to recover those costs during the period service is provided to the customers.

What this means is that PPL's proposals to carve-out certain default service costs in separate riders, to be recovered from customers other than default service customers, runs afoul of the Commission's regulations. Moreover, by creating a rate scheme that unreasonably benefits one group of customers – default service customers – by forcing shopping customers to subsidize that service to the detriment of shopping customers, PPL has violated Section 1304 of the Code. 66 Pa. C.S. § 1304; *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591, Pa. 675, 916 A.2d 1104 (unreasonable inter-class rate subsidies violate Section 1304).

While the statutory and regulatory requirements are clear that PPL is entitled to recovery of the costs of providing default service on a full and current basis, those regulations are also clear that PPL may only recover those costs through the Price to Compare and only from default service

customers. Neither the statute nor the regulations provide for the migration rider style RR proposed by PPL in this case. In fact, such a proposal obviously and clearly runs afoul of the letter of the existing regulations. The same is true for the CTR.

V. ARGUMENT

A. PPL's Proposed CTR, RR, And Change To The Reconciliation Frequency Are Contrary To The PUC Regulations, Are Not In The Public Interest, And Should Be Rejected.

The Commission's regulations are clear that all costs of providing default service are to be recovered through a default service rate which is to be identified as the PTC and that the PTC is the only place where default service rates may be recovered from customers. 52 Pa. Code § 54.187. PPL has proposed a rate mechanism that will remove the reconciliation over / under charge from the PTC (in the form of the RR) where it is now recovered solely from default service customers, and instead recover that component of default service costs from customers who switch to competitive suppliers for up to one full year after those customers shop. PPL also proposes to collect this charge from new customers when they sign up for service or move within PPL's service territory. New customers in PPL's service territory are required to start on default service, but under PPL's proposal would be charged Rider RR which recovers costs the customers could not have caused. DR St. No. 1, 12:5-11. While this provision is obviously unfair to customers, it also violates the statutory requirement that new customers and returning customers be treated in the same manner. 66 Pa. C.S. § 2807(e)(4). This is so because in PPL's proposal, customers who return to default service would not be charged the RR charge for up to one full year after they return, while new customers are charged to recover costs they did not cause.

The entire scheme proposed by PPL violates the very clear requirement of the Commission's regulations that only default service customers pay default service costs through a

single rate - the PTC. PPL may argue that the RR is not a "rate" but a "rider" but the difference is semantic only. That is, to suggest that charging s customer what could be a substantial portion of the cost of providing default service through a "rider" instead of through the PTC is acceptable because it is labeled as a "rider," as opposed to being a rate would be silly. The regulations are clear, "all" costs of default service - which includes the reconciliation of costs not recovered in one period so that they can be recovered later - must be recovered in the PTC, no exceptions. 52 Pa. Code § 54.187.

It is true that in the current formulation of natural gas market regulatory scheme, the *e-factor* reconciliation mechanism is charged outside of the PTC. However, there is an express statutory mandate for the migration rider for Natural Gas Distribution Companies, 66 Pa. C.S. § 1307(f)(6), and there is no corresponding requirement for EDCs. Moreover, the Commission has recently promulgated regulations to remedy this situation so that in the future the over/under reconciliation factor for natural gas costs will be included within the PTC. *Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*; Docket No. L-2008-2069114 (Revised Final Rulemaking Order entered June 23, 2011, slip op. at 56, proposed 52 Pa. Code § 62.223(A)(1)). Accordingly, any suggestion that the RR complies with the regulations because it is a Rider, or because it is a reconciliation, must be dismissed.

The proposed CTR suffers from the same legal flaws as the RR. Namely, it would recover the costs of providing default service through a charge other than the PTC and would recover those costs from customers other than default service customers. This mechanism also clearly violates several portions of 52 Pa. Code § 54.187, as discussed above. Moreover, this type of recovery, from all customers, is akin to recovering those charges through the Distribution Rate, which is clearly prohibited under the Commission's regulations. 52 Pa Code § 54.187(d).

Again, the Commission's regulations set forth a relatively simple schematic. Default service costs are to be recovered only through the PTC, which is charged only to default service customers.

PPL has sought to upend this balance and to recover default service costs from customers not taking default service - in the case of the RR, from customers who leave default service to go to a competitive supplier - which is not only anticompetitive but also clearly illegal; and in the case of the CTR--from all customers in a rate class regardless of whether they shop - which also is illegal. Finally, the proposed adjustment to the reconciliation period from a quarterly reconciliation to an annual one violates 52 Pa. Code § 54.187(a)'s requirement that costs be recovered in a timely fashion. It is difficult to conceive of a definition of "current" recovery of costs that allows those costs to be recovered more than a year after they are incurred. The disassociation caused by elongated recovery divorces the market influence from the rate and causes customer confusion when customers are presented with offers from competitive marketers that are based upon current market conditions. DR St. No. 1, 12:1-4. This confusion harms the competitive market by making supplier prices look higher, in most cases, than default service rates. Mr. Butler described this phenomenon as it relates to the Natural Gas Markets in depth in direct testimony and the harms are well documented in that arena. DR St. No. 1, 12:1-4; 14:11-15:2. Mr. Butler explains the policy decision behind the Commission's regulations to require that the default service costs be recovered during the period which service is rendered - to make prices market relevant. DR St. No. 1, 12:11-24.

While the regulations may not require quarterly reconciliation, 52 Pa. Code § 54.187(h), does require the quarterly adjustment of default service rates, and the inclusion of the over/under

reconciliation within the PTC. It is clear that the only currently approved methodology is quarterly reconciliation, and PPL offers no good reason to modify that approach.

In short, PPL's proposed modifications should be rejected.

B. PPL's Proposed RR Is Anti-Competitive.

The mechanics of PPL's proposed RR and CTR will harm competition. Mr. Butler's testimony makes this fact abundantly clear. DR St. No. 1, 12:5-11. The RR creates an incentive for customers that currently are shopping to leave the competitive market and return to default service as a way of avoiding the Reconciliation Rider charge – which essentially provides the returning customer with discounted service as compared to other default service customers. This is true, because PPL has proposed not to charge shopping customers the RR for up to one year if they return to default service. Likewise, PPL has proposed to increase the costs to customers who decide to leave default service and choose a competitive supplier – because it will charge customers the RR for up to a full year after customers leave default service. Mr. Butler believes that in customers' minds, the RR will constitute a new charge for shopping. DR St. No. 1, 12:5-11.

Both of these attributes harm the competitive market and will create new winners and losers in the competitive equation. These changes are also likely to cause mass confusion among customers and the accompanying disillusion, for having changed the rules in the middle of the game. DR St. No. 1, 13:15-14:8. These harmful effects run counter to PPL's stated purpose for this rider which is to allow the company the ability to recover its costs even if it were to experience a large switching event in the future. *Id.* Mr. Kleha's testimony at the hearing that shopping has leveled off and absent a large shopping event, migration levels seems to have become fairly stable, clearly rebuts any suggestion that there is a present need for such a change

in light of the well documented harmful impacts that will result if the migration rider-like RR is authorized. TR 67:7-13.

With this in mind, it appears that PPL's intent is to harm the current competitive balance and to drive additional customers back to default service. DR St. No 1, 8:11-23. In light of these facts, Mr. Kleha's claims of competitive neutrality - which clearly were rebutted by Mr. Butler - cannot be entertained seriously. As discussed at length by Mr. Butler in his testimony, having a RR mechanism structured as PPL has done, will create the perverse incentives as discussed above, and will hide certain portions of the actual costs of providing default service from customers. DR St. No. 1, 14:11-15:2. There are costs associated with providing default service that include the cost of being ready to serve customers who switch back and forth. For a customer who shops and then returns to default service for whatever reason, going from the competitive market back to default service imposes a "cost" to the default service provider in the nature of a call option. In PPL's case, the cost of that "call" is born by the wholesale default service supplier, not by PPL. Nonetheless, it remains a cost of providing default service which must be included in the bids of these default service suppliers. DR St. No. 1-SR, 6:9-17.

Under PPL's proposed structure, however, customers who return to default service would be excused from paying the cost of that call because they would be excused from paying the RR for up to a year after they return. Not only is this disparity illegal, because it does not recover default service costs from default service customers, but it also is anti-competitive because it promotes a pricing discrepancy that further reduces the cost of default service in the eyes of customers who may think about returning from a competitive offer to default service. This rate also discriminates against shopping customers in violation of Section 1304. But PPL's scheme is also a bait-and-switch opportunity, because the RR-free period is not permanent and PPL will

eventually begin to charge the RR to those customers. It is at that point that customers may consider going back to the competitive market; but that is when the real "gotcha" moment arrives – PPL will charge those customers the RR for up to a year after they switch back to the competitive market.

This scheme creates the perfect storm of anti-competitive behavior. In a sense, what PPL has created is the perfect customer trap – lure them in then trap them indefinitely until they give up. DR. St. No. 1, 12:11-24.

Mr. Butler's testimony about his experience in the Natural Gas Markets provides an excellent, if not sad, example of how Migration Riders are competition killers. The shopping statistics bear this out. It is obvious that the proposals made by PPL in this case will cause competitive harm and should be rejected.

C. PPL's Proposed RR Creates The Potential For PPL To Harm The Competitive Market

As discussed immediately above, PPL's proposed RR is inherently anti-competitive. That is, the mere existence of an RR will have the effect of dampening competition and will likely shift the competitive balance so that significant numbers of customers return to default service – and stay there. A further complication however, is the fact that these proposals create the potential for even more customers to be lured into moving in to what will be the default service trap.

DES is not suggesting that PPL has ever intentionally manipulated the numbers that feed into the "automatic" formulas that Mr. Kleha discussed on the stand, TR 61:18-24, but that testimony causes DES great concern because it appears that PPL's process may lack the vigor that should be applied to such processes. It is apparent from the testimony of Mr. Kleha and others, that PPL has been having significant difficulty in the reconciliation process and that some

of the volatility in the PTC has been the result of large over or undercollections due to bad forecasting. TR 50:10-16. With the competitive harms that can result from a single bad forecast that could send tens or hundreds of thousands of customers back to default service, only to have them be stuck there, DES' concerns are well founded. DR St. No. 1, 12:11-24. Mr. Kleha's testimony, for example, that the now infamous TOU rates for January 2011, through May 2011, were impacted by oil prices spiking in February of that year (Tr. at 63:18) is directly contradicted by Mr. Butler's testimony that he informed PPL immediately, in January, that the rates were way out of line. DR St. No. 1, 8:5-22. PPL knew or should have known that the rates where wrong and should not have issued the tariffs. This lack of vigor in the process going forward could have devastating consequences for the market if PPL's "trap" proposal were implemented. One can only imagine the harm that would result if PPL were to take an active interest in moving customers back to default service. DR St. No. 1, 14:23-15:9.

In light of Mr. Kleha's effort to explain the fact that PPL does very little, other than straight mathematical calculations, in the creation of the default service rates, and his admission that PPL has had difficulty in managing default service rates in a way that does not create large swings between over and under collection balances, it matters not whether it is acting intentionally or negligently to the detriment of the competitive marketplace, or even if all of this is outside of PPL's control. Proposing to implement a mechanism that translates into a perverse incentive for customers to switch to default service and remain there based upon the default service rates at a single point in time, coupled with PPL's apparently weak grip on the mechanics of the default service rate mechanism, is a recipe for disaster.

As described by Mr. Butler on the stand, PPL needs to do a better job of forecasting its default service costs and translating those forecasts into rates that do not over or under collect to

a significant degree. TR 147:8-14. To give them a tool that has the potential to seriously harm the competitive market by error or intent, and to ignore PPL's present track record of default service rates, would be irresponsible.

D. There is No Need for the Proposed CTR and RR.

It seems incredible that PPL has proposed a CTR mechanism, which it characterizes as a backwards looking recovery mechanism that would recover default service costs from all customers, on the premise that it may not be able to recover those costs; when in fact it has presented no real data into the record to support that there will be even a single dollar of cost to be recovered that cannot be reasonably recovered through the normal default service rate mechanisms. Mr. Butler's direct testimony, DR St. No. 1, 7:5-9:15, and his testimony under cross-examination on the stand bear that out. TR 54:6-9.

Likewise, Mr. Kleha admitted on the stand that there is no present need for RR, that shopping levels have stabilized and that unless there is a big change, there will be no large migration and thus no need for the rider. TR 66:23-67:13. It is of serious concern to DES that with an apparent lack of justification, PPL would propose two mechanisms that will cause so much harm to competitors and customers. With the CTR, customers who left default service over two years ago would be forced to pay costs of default service that could accrue until June of 2012!

If PPL had proposed such changes in the context of a DSP filing where it was proposing multiple competitive enhancements that could reasonably be expected to produce significant upsurges in shopping, PPL may have been able to claim that there was a possibility of non-recovery of default service costs. But that clearly is not the case here. Rather, PPL has sought to

make mid-stream changes to its default service plan, that witness Butler thinks would otherwise work fine if PPL did a better job of forecasting. TR 142: 12-14. Moreover, PPL agreed to the current methodology, including the designation of customers who would pay for the reconciliation as part of its most recent default service 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*, Docket No. P-2008-2060309 (Final Order entered June 30, 2009). There simply is no reasonable basis on this record to support any modification to the current methodology—not to start charging shopping customers for the costs of default service when they are not receiving default service, and not to change the quarterly reconciliation method that PPL agreed to.

Simply put, there is no basis in law or in fact to support any of the changes proposed by PPL. Even if one were not to believe that PPL's proposal will cause customer confusion and consternation, that it will harm the marketer and suppliers, or violate the clear requirements of the law; PPL's proposal is a bad solution in search of a problem and should be rejected.

VI. PROPOSED FINDINGS OF FACT

1. Mr. Butler testified that "any imbalances in default service charge revenues can be resolved through the normal reconciliation process in very short order." DR St. No. 1, 3:16-18.

2. Mr. Butler is concerned that "PPL has singled out Choice customers as one of the targets for application of these riders." DR St. No. 1, 3:21-23.

3. Mr. Butler is concerned that a migration rider recovery mechanism "would be imposed in a way that would incentivize shopping customers to return to default service, and worst of all, would erect a barrier to shopping in the first place." DR St. No. 1, 4:2-5.

4. Mr. Butler believes that normal imbalances should be collected through the primary collection process. DR St. No. 1, 4:5-9.

5. "The problem with PPL's plan is that it gives PPL the ability to recover its over or under-estimations - to essentially hold it harmless for bad pricing estimates - when those over or under-estimations can have devastating effects on the choice markets." DR St. No. 1, 4:13-15.

6. Mr. Butler's primary recommendation is that "instead of proposing a mechanism that would essentially reward PPL for bad forecasting, we should be discussing a mechanism that will cause PPL to be more accurate in its price estimates." DR St. No. 1, 4:19-21.

7. Mr. Butler is concerned that PPL has not provided any basis for its CTR and that "PPL seems to be crying wolf when there is no wolf," meaning that there is no problem that needs to be remedied by the CTR. DR St. No. 1, 5:2-14.

8. Mr. Butler testified that PPL knows all of the prices that will go into its default service rates ahead of time, that those prices are fixed, and that all of the components that go into creating a default service rate are also known ahead of time. Accordingly, Mr. Butler believes that PPL should be able to reasonably forecast its default service rates because the process is fairly straight-forward and because the wholesale suppliers take the switching risk – which means if load disappears or is added during a particular period, it is the wholesale default service suppliers who pick up the difference. DR St. No. 1, 5:16-6:6.

9. Mr. Kleha seemed to confirm this same view of the process in his Rejoinder Testimony. TR 33:4-34. These statements clearly contradict Mr. Kleha's later assertion that global energy prices were to blame for the vast majority of PPL's inability to manage its reconciliation process. TR at 63, 13-23.

10. Residential and small commercial switching has been relatively measured and consistent over time. DR St. No. 1, 6:9-10; TR 67:7-13.

11. Competitive suppliers compete against the price to compare and, therefore, the accuracy of the price to compare is quite important. If it is not exact or accurate, the ramifications for customers can be disastrous. DR St. No. 1, 6:13-16.

12. If a competitive supplier misprices its electricity product, it cannot go back and bill customers after the fact. Therefore it has to either "eat" underpricing or, if it overprices, it will not be able to compete in the market and it will lose customers. DR St. No. 1, 6:19-7:2.

13. PPL currently has overcollected in the residential class by approximately $3.9 million, which is 0.65% of PPL's annual revenue from the residential class and which Mr. Butler believes can be easily recovered in the ordinary reconciliation process. DR St. No. 1, 7:5-15.

14. PPL's TOU rate class currently is undercollected by approximately $2 million, which is approximately 40% of PPL's annual revenue for this rate designation. DR St. No. 1, 7:17-20. However, PPL's TOU debacle, in Mr. Butler's view, was either negligently or intentionally incurred and, therefore, PPL should not be permitted to recover this balance. Mr. Butler communicated to PPL the vast discrepancy between actual market prices and PPL's TOU rates immediately upon PPL's release of those rates in the beginning of January 2011, and Mr. Butler's communication noted that PPL's rates were approximately 27% (or $22.00/MWH) under the market prices. PPL did nothing to correct the problem. DR St. No. 1, 8:5-22.

15. Mr. Butler believes that a situation similar to the TOU rate issue can occur under PPL's proposal, which would be completely unfair and create the "same road blocks that have hampered gas choice for many years." DR St. No. 1, 14:23-15:2. Mr. Butler believes that this will allow PPL to get its money for its over and under-collection and provide a way to underprice the PTC, which hampers the competitive market. DR St. No. 1, 15:5-9.

16. Mr. Kleha contends that "global energy prices" could change in some dramatic way between now and May of 2012, which could create a need for the proposed CTR, even though he admitted under cross-examination that the variables that are part of the default service rates are already known quantities when the rates are set. DR St. No. 1-SR, 5:6-17; TR 66:23-67-6.

17. PPL bears no price or volumetric risk with regard to default service. DR St. No. 1-SR, 6:12-17.

18. Mr. Butler believes that PPL's estimation of its TOU rates for the period January 2011-May 2011 was negligent. DR St. No. 1-SR, 7:1-8.

19. The small commercial class undercollection, as of the date of Mr. Butler's testimony, was $2.1 million, which is approximately 1.6% of the annual revenue for this class, which is *de minimis* and does not provide justification for any special rider. DR St. No. 1, 9:2-7.

20. The large commercial/industrial class currently is approximately $4.4 million over-collected. This overcollection is approximately 133% of annual revenue, which is abnormal and could possibly provide justification for a one-time special refund to customers. DR St. No. 1, 9:10-15.

21. Through the CTR filing, PPL has asked to manage imbalances related to default service revenues outside of the current quarterly reconciliation process as a secondary or non-bypassable rate that all customers would pay. Mr. Butler believes that PPL does not need this special capability or privilege and "should be allowed to file in the future if special circumstances occur causing shortfalls in default revenues." Mr. Butler believes that it is "highly unlikely that PPL will be placed in a situation where it cannot manage default service revenues for the current

customer base." Mr. Butler does not believe it is necessary to set up special riders for events that are not likely to occur. DR St. No. 1, 10:18-23.

22. Mr. Butler does not believe there is any need for Rider RR, because PPL has a fairly clear transparency into the prices in the forward time periods; meaning that PPL knows the value of all the components that go into its default service rate for the time period during which those rate will be effective, and because the wholesale suppliers have agreed to take the volumetric risk for customers switching during that time period. Accordingly, he is troubled by the request to implement Rider RR because he believes it takes a "direct shot at trying to impact choice," and to "scare the remaining customers from going into choice." DR St. No. 1, 11:8-23.

23. Mr. Butler believes that what PPL has proposed in the RR is akin to migration riders that are prevalent in the natural gas market and which have "hampered gas choice in the extreme." *DR St. NO. 1,* 11:20-23.

24. As Mr. Butler discusses, natural gas utilities have a history of "undercollecting and underpricing their gas costs – with the additional incentive of making additional interest revenues." Mr. Butler believes that this helps make natural gas utilities look good to their customers by offering flattened out prices, but that these riders have hampered gas choice because it makes the utilities' prices consistently look better than those for the competitive suppliers. This is so because a portion of the actual cost of product is being hidden in the reconciliation which is not collected as part of the price to compare. DR St. No. 1, 12:1-4.

25. Mr. Butler believes that, since PPL cannot in fact charge each customer an individualized rate, there will always be subsidies as between customers who go onto and leave default service. Mr. Butler cites the example of PPL's proposal to charge new customers Rider RR, even though those customers could not have been responsible for any over or under-collection,

while at the same time, allowing customers who return to default service to be excused from paying that Rider for up to a full year. Under this scenario, Mr. Butler believes that PPL has decided that shopping customers are to be the losers and that the default service customers are to be the winners, which hurts the suppliers in the competitive market. At the same time, PPL has offered no rationale for changing the current methodology which allows for the transition of customers between default service and competitive supply service without a migration rider charge. DR St. No. 1, 12:5-11.

26. Mr. Butler is concerned that PPL's proposed RR has a potential to insulate PPL from the negative consequences of its bad behavior. That is, he believes that the RR will provide PPL with yet another vehicle to recover it revenues on a going-forward basis and to hold it harmless from bad forecasts. He also is concerned by the fact that the RR will inject more volatility into the pricing of electricity to customers and has the potential to move customers back into default service more readily than they would without the RR. DR St. No. 1, 12:11-24.

27. Mr. Butler believes that these Riders are not fair, contrary to PPL's claim, but rather are unfair to customers and suppliers because they allow PPL to benefit by not correctly pricing its product and that they excuse PPL's inability to control its forecasting and calculation processes which Mr. Butler believes should be relatively straight-forward. DR St. No. 1, 13:15-14:8

28. Mr. Butler feels that the RR and CTR are not fair to customers because new customers would be forced to pay the CTR and RR Riders right away when they have no choice but to start their electric service as a default service customer and yet they could have had no responsibility in incurring costs for the RR or the CTR. DR St. No. 1, 13:15-14:8.

29. Mr. Butler explains in detail the incentive for gas utilities to undercollect their gas costs because the interest rate that they earn on undercollections is higher than their working

capital costs, which means that they have a financial incentive to undercollect. Mr. Butler detailed and documented the fact that at least two gas companies have persistently and consistently undercollected by approximately 10% over the last several years. DR St. No. 1, 14:11-15:2; Dominion Retail's Response to PPL Set 1, No. 7 to Dominion Retail, attached as part of OSBA Statement. No. 2.

30. Mr. Kleha states that the conversion of default service contract prices into rates is "fairly simple." TR at 34:6. Mr. Kleha admits that "PPL doesn't do anything to this data before it goes into [rates] it's automatic, almost." TR 61:18-24.

31. Mr. Kleha admits that the company has been experiencing "pretty substantial swings in the e-factor from quarter to quarter." TR 50:10-16.

32. PPL has not made a forecast of the balances it would expect to recover as part of the CTR as of May 31, 2012. TR 54:6-9.

33. Mr. Kleha believes that shopping has leveled off for now and that there is no reason – absent some sort of change in law or regulation – that would cause shopping to change dramatically. TR 67:7-13.

34. Despite the fact that Mr. Knecht, on behalf of the OSBA, testified that Mr. Butler's analysis of NGDCs understating their gas cost rates was not evident in other NGDC service territories with which he was more familiar, Mr. Knecht admits that he did not perform any review of those other NGDC's rates, except looking at their presently effective rates, before reaching that conclusion. TR 37:10-25-38:13.

VII. PROPOSED CONCLUSIONS OF LAW

1. PPL's proposed RR violates the requirements of 52 Pa. Code § 54.187 because it would recover default service costs outside of the PTC, and would recover those costs from non-default service customers.

2. PPL's proposed CTR violates the requirements of 52 Pa. Code § 54.187 because it would recover default service costs outside of the PTC, and would recover those costs from non-default service customers.

3. PPL's RR and CTR are not in the public interest because they will harm the competitive markets by creating artificial incentives for customers to move between default service and competitive supply.

4. PPL's proposed RR and CTR will cause customer confusion and harm and are not in the public interest.

5. PPL has failed to carry its burden of proving that the proposed RR and CTR are necessary and in the public interest.

6. PPL has not established facts that support changing its reconciliation process to a one year reconciliation and to eliminate the current quarterly reconciliation, and therefore has failed to carry its burden of proof.

7. PPL's proposed RR and CTR will create unreasonable subsidization of default service by shopping customers and this violates 66 Pa. C.S. § 1304.

VIII. PROPOSED ORDERING PARAGRAPHS

1. The request to implement Riders RR and CTR, are denied without prejudice.

2. PPL's request to modify its default service plan to allow for annual versus quarterly reconciliation is denied without prejudice.

3. Any other relief request in PPL's Amended Petition is DENIED.

IX. CONCLUSION

There can be no doubt that PPL's proposed RR and CTR violate the Commission's Regulations at 52 Pa. Code § 54.187. Moreover, the request to change the reconciliation period violates the spirit if not the letter of the those requirements. None of these proposed changes are in the public interest and all have been shown to be harmful to competition. PPL has failed dramatically to overcome the evidence in support of the anti-competitive nature of the Riders. It is telling of the lack of need that PPL can't even quantify the amount that it would expect to recover under the CTR nor can it rebut contentions that the amounts will be negligible at best. In

light of the record, and the fact that PPL admits that there is no present need for either rider, the only prudent course is to deny the relief. There simply is no basis, in law or in fact, to allow PPL to implement these changes at this juncture.

WHEREFORE, Dominion Retail, Inc., respectfully requests that PPL's Amended Petition be DENIED in its entirety.

Respectfully submitted,

Todd S. Stewart, PA Attorney I.D. #75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: tsstewart@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for Dominion Retail, Inc.

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