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January 23, 2012

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: 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 Reply 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

Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: 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 Reply 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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Dated: January 23, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION

The purpose of the petition of PPL Electric Utilities Corporation ("PPL") is to require all distribution customers – regardless of whether they are taking generation service from PPL or an electricity generation supplier ("EGS") – to bear the costs of PPL's reconciliation of its default service program costs and the costs of its Time-of-Use ("TOU") program, a program which is only available to default service customers. The Retail Energy Supply Association ("RESA"),[1] recommends that PPL's petition be denied because it is inconsistent with Electricity Generation Customer Choice and Competition Act ("Competition Act")[2] and, if implemented, would have a negative impact on the development of the competitive retail electricity market in this service territory. While every other party opposes most or all of PPL's proposals for reasons that they have well-explained in their main briefs, a few issues have been raised in an attempt to support various pieces of PPL's proposals which will be addressed here.

PPL and the Office of Small Business Advocate ("OSBA") attempt to provide further support for PPL's proposed Reconciliation Rider ("RR") which would apply the costs of PPL's reconciliation of default service costs to all customers regardless of shopping status. PPL references the reconciliation provisions of the tariff of PECO Energy Company ("PECO") and, in further support of its petition, offers a "fix" recommended by OSBA to deal with new

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1 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.

2 66 Pa. C.S. § 2801, et. seq.

customers. Additionally, both PPL and OSBA claim that consumers and EGSs would benefit by removing the impacts of the reconciliation from the Price-to-Compare ("PTC").

As explained further below, the operation of PECO's reconciliation provision and the manner in which it was adopted support a rejection of PPL's petition. Further, exempting all new customers from the operation of the RR does not resolve the illegality of PPL's proposal. Finally, the removal of the reconciliation impact from the PTC will not make the pricing of the default rate easier for consumers to understand and will substantially undermine the ability of EGSs to provide useful price comparison information to consumers.

Regarding the recovery of TOU costs through the Competitive Transition Rider ("CTR"), PPL and the Office of Consumer Advocate ("OCA") continue to maintain that all customers should bear the costs and the Bureau of Investigation and Enforcement ("I&E") seeks a decision that the TOU program is not a "default service program" for which PPL may recover the costs. As explained further below, if the Commission chooses to permit PPL cost recovery for the TOU program, then it must be limited to the only class of customers who were eligible to participate in the program – default service customers. Any other result is unfair, anticompetitive and inconsistent with Commission precedent.

II. PPL'S PROPOSAL TO REQUIRE ALL DISTRIBUTION CUSTOMERS TO BEAR THE COSTS OF PPL'S RECONCILIATION OF ITS DEFAULT SERVICE PROGRAM COSTS MUST BE DENIED

A. The Structure Of PECO's Reconciliation Mechanism And The Circumstances By Which It Was Adopted Support Denial Of PPL's Petition

In its main brief, PPL cites to PECO's default service reconciliation provision in currently effective tariff as support for adoption of its petition.[3] While PPL asks that "official and judicial notice" of the PECO reconciliation provision be taken, PPL provides no explanation of how PECO's reconciliation provision works or why adoption of it in the context of the PECO default service proceeding should be relied upon as support for adopting PPL's petition. PPL fails to provide this analysis because PECO's reconciliation provision is not analogous to what PPL is proposing here and a closer review of the provision as well as the circumstances of its adoption make clear that PPL's petition should not be granted.

Importantly, PECO's reconciliation provision, unlike PPL's proposal, is not to be "automatically" applied. The exact tariff language states:

> RECONCILIATION
>
> Applicability: This adjustment shall apply to all customers who received default service during the quarter the cost of which is being reconciled. Customers taking default service during the reconciliation period that leave default service prior to the assessment of the collection of the over/(under) adjustment shall still pay or receive credit for the over/(under) adjustment through the migration provision. **The Company shall notify the Commission and parties to the Default Service Settlement 15 days in advance of the quarterly or monthly filing if the Migration Provision will be implemented in the filing.**[4]

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3 PPL M.B. at 16.

4 PECO Energy Company, Supplement No. 6 to Tariff Electric PA. P.U.C. No. 4, Second Revised Page No. 34 (emphasis added).

Consistent with the highlighted last sentence of the tariff language, PECO is required to notify the Commission and the parties fifteen days prior to exercising its option under the migration provision. At that time, any party would be free to seek further analysis of the impact of the migration rider on customers and the competitive market. This is in stark contrast to PPL's proposal which would automatically apply the migration provision on a going-forward basis with no established opportunity for parties – or the Commission – to address concerns prior to the damage being done.

Another key differentiating element between PECO's reconciliation provision and this case is that PECO's reconciliation provision was offered in the context of its default service proceeding which was ultimately settled.[5] RESA is a signatory of that settlement. The reconciliation provision was just one aspect of a multi-dimensional proceeding and, while the settlement did not fully address every concern RESA raised with PECO's proposed default service plan, it represented a reasonable compromise of competing issues to justify RESA's support. Further, by requiring PECO to notify the Commission and the parties before exercising the migration provision, RESA – and ultimately the Commission – maintained the ability to review the reasonableness of its application. This appears to have been an important element to at least Commissioner Cawley in approving the PECO default service settlement as he issued a separate statement specifically commenting:

> I am disappointed that PECO has included this [migration] provision into its plan, because it is a reversion to past bad policy that we are only now getting around to correct on the natural gas side of the business. I therefore encourage the default

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5 *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739, Opinion and Order entered June 2, 2009.

service proceeding participants to avoid these types of retroactive billings to shopping customers for default service costs going forward.[6]

In sum, the migration provisions of PECO's reconciliation mechanism have not been utilized and, before they are, PECO is required to give interested stakeholders and, more importantly, the Commission an opportunity to analyze whether or not the proposal should be implemented. PPL's proposal here is not analogous to PECO's reconciliation provision and, because it is not, reliance cannot be placed on the mere existence of the not yet implemented migration elements of PECO's reconciliation provision to support adoption of PPL's proposal. On the contrary, the structure of the PECO reconciliation mechanism and the circumstances by which it was adopted – including the concerns expressed by one Commissioner – counsel against adoption of PPL's petition.

B. Exempting New Customers From Application Of The RR For A Year Does Not Address 66 Pa. C.S. § 2807(e)(4)

PPL's initial proposal was to apply the RR to all new customers and to apply it to returning default service customers depending on how long they received service from a competitive supplier.[7] In response to the recommendation of OSBA, PPL now proposes to exempt all new customers from the RR for the first twelve months.[8] While this revised approach may address the "cost causation" concerns raised by OSBA,[9] it still violates the statutory

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6 *Id.*, Statement of Chairman James H. Cawley dated April 16, 2009.

7 PPL St. No. 1 at 20 and 23.

8 PPL M.B. at 20-21.

9 OSBA M.B. at 6.

requirement of Section 2807(e)(4) which requires that PPL treat any shopping customer who chooses to return to default service "exactly as it would any new applicant for energy service."[10]

PPL acknowledges that while new customers will be fully exempt from application of the RR for twelve months, application of the RR to customers returning to default service after shopping "will be based on the customer's status during the period immediately preceding the customer's status change."[11] In other words, shopping customers returning to default service may or may not be assessed the RR while new customers will always and definitively be exempt from it for a year. Thus, PPL's revised proposal will still treat returning customers different from new customers in violation of Section 2807(e)(4) and must be rejected.

C. Removing the Impact of Default Service Reconciliations From The Price To Compare Does Not Simplify A Customer's Shopping Experience Nor Does It Present Complete Pricing Information To the Customer

Both OSBA and PPL argue that the creation of a new and separate line item charge on a customer's bill to assess the impact of the reconciliation will benefit customers and EGSs. Key to this argument is their advocacy that the PTC will "more accurately reflect the actual costs to acquire default service supply" "without being distorted by reconciliation charges or credits."[12] This advocacy has no merit on its face. PPL is seeking to recover the costs of reconciliation on the theory that it is a cost incurred in providing default service pursuant to Section 2807(e). As such, there can be no question that the costs – which drive the reconciliation and are then passed

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10 66 Pa. C.S. § 2807(e)(4); *See also* RESA M.B. at 16-18.

11 PPL M.B. at 18.

12 PPL M.B. at 37; OSBA M.B. at 19.

on to customers – are PPL's costs of providing default service. By removing these costs from the PTC, then, PPL is removing a default service cost from the line item on the customer's bill that is intended to reflect all the costs of providing default service. While the current reconciliation mechanism does involve a lag time between incurred charges and imposition of costs, by reflecting the reconciliation component in the PTC the current mechanism at least attempts to pass along all the costs of default service to the customer through this one line item charge. Because of this, customers today are encouraged to compare the EGS price offer to the PTC as a way to compare the two different prices they are being asked to pay for generation.[13]

Removing the reconciliation impact from the PTC will only complicate the ability of a customer to understand the true cost of default service to make informed shopping decisions.[14] This is because PPL's proposal will require customers to consider whether and for what period of time they will be subject to the reconciliation adjustment after they make a shopping decision (or a decision to return to default service) and whether the reconciliation adjustment is a charge or a credit.[15] PPL's proposal is analogous to "hidden fees" that are assessed on a consumer in addition to the cost of the product or service they are purchasing.

Moreover, by directly tying the assessment of the reconciliation impact to a customer's shopping status, the customer could clearly perceive it as an assessment of an illegal "fee" (when the reconciliation impact is a charge) related to his or her decision to shop.[16] This is because a customer now receiving generation service from a competitive supplier would still be receiving a

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13 RESA St. No. 1 at 11.

14 *See* RESA M.B. at 19-20 citing RESA St..No 1 at 10-11 and RESA St. No. SR-1 at 6.

15 RESA St. No. 1 at 11.

16 52 Pa. Code 54.189(e) ("A DSP may not charge a fee to a retail customer for changing its generation service provider in a manner consistent with Commission regulations.")

charge from PPL related to PPL's default service that the customer previously received. Meanwhile, customers returning to default service after shopping will not have that fee assessed for some period of time while new customers will not have it assessed for a year.

OSBA's claim that creating this complexity for the default service customer can benefit EGSs by giving them the opportunity to market a "simple" product ignores the fact that any customer won by the EGS will be subject to the same unknown and unknowable line item charge for the reconciliation of PPL's default service costs.[17] PPL's proposal here hamstrings the ability of an EGS to accurately inform his or her potential customer about the price differences between the two products or to accurately inform the customer what his or her true "bottom line" out-of-pocket payment for generation services will be in the future. As RESA witness Hudson testified, the claim that the "charge being assessed by PPL 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."[18]

To claim, as PPL and OSBA do, that the end result of applying the RR somehow benefits either consumers or EGSs is illogical and unsupported by the record. Moreover, the complications created by PPL's proposals from a consumer perspective and the varying applications of the costs of reconciliation dependent on shopping status result in a clear violation of the intent and spirit of Competition Act and the Commission's regulations and must be rejected.

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17 OSBA M.B. at 19.

18 RESA St. No. SR-1 at 4.

III. ANY RECOVERY OF PPL's RECOVERY OF HISTORIC TOU COSTS MUST BE LIMITED TO DEFAULT SERVICE CUSTOMERS

RESA does not support PPL's proposal to recover the costs incurred from its TOU program through the Competitive Transition Rider ("CTR") which would require all customers – both default and shopping – to pay for these costs.[19] I&E argues that PPL is not entitled to recover the costs of the TOU program through its proposed reconciliation mechanism based on the theory that the TOU program is not a default service program. According to I&E, "choosing TOU rates is no different than choosing an alternative supplier."[20] PPL argues that the TOU program is a "default service option" and, therefore, it is entitled to recover these costs.[21]

RESA agrees with I&E that TOU programs should not be marketed or characterized as a type of "backstop" generation service in the same way true "default service" is defined. According to the Competition Act, default service is the obligation to provide electric generation supply service – pursuant to a Commission-approved competitive procurement plan – to: (1) a customer who contracts for electric generation supply service and the chosen electric generation supplier does not provide the service; or, (2) a customer who does not choose an alternative electric generation supplier.[22] A TOU plan is an optional alternative generation service that customers may elect for its energy conservation benefits. It is not a "last resort" generation service offering like default service. While Section 2807(f)(5) requires a default service provider

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19 RESA M.B. at 15.16.

20 I&E M.B. at 9

21 PPL M.B. at 54.

22 Default service is the obligation to provide electric generation supply service pursuant to a commission-approved competitive procurement plan to a customer who contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or a customer who does not choose an alternative electric generation supplier. 66 Pa. C.S. § 2807(e)(3.1).

to submit TOU rate and real time pricing plans with the Commission, it does not specify that the electric distribution company ("EDC") must be the provider of these pricing options or that the energy supply for these options must come from the same source as the EDC's standard default service. Requiring the EDC to provide other generation products, such as TOU rates, rather than relying on the competitive market for these "non" last resort offerings further entrenches the EDC in the role as a generation services provider which may create barriers to competitors and could lead to unintended anticompetitive pricing that can complicate the EDC's cost recovery and reconciliation process as is the situation in this case. In recognition of these concerns, the Commission has recommended that EDCs "contemplate contracting with an EGS in order to satisfy their TOU requirement" in their upcoming default service plans.[23]

Nonetheless, the Commission has already recognized the right to cost recovery for TOU programs which are offered as an "element" of default service under 66 Pa.C.S. § 2807(f)(5).[24] PPL's TOU program was similarly offered as an "element" of its default service program and approved by the Commission as such. Therefore, the most relevant question in this case is who should be required to pay.

PPL proposes that all customers – whether they are receiving generation service from PPL or an EGS – should be required to pay the TOU costs because "very few customers continue to take service under the TOU program" and "it is likely that many of the former default service

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23 *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans* Docket No. I-2011-2237952, Final Order entered December 16, 2011 at 47.

24 PPL M.B. at 52 citing *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, Opinion and Order entered April 15, 2011 at 19.

TOU customers now are taking service from a competitive supplier."[25] OCA supports recovery of these costs from all distribution customers "given the rapid decline in default service load at PPL."[26] Each of these viewpoints is flawed because they ignore the fact that the Commission has already decided this issue and the fact that a significant number of residential and small commercial and industrial customers continue to remain on PPL's default service.

The specific question of whether shopping customers should be required to pay for the costs of a TOU program submitted pursuant to 66 Pa.C.S. § 2807(f)(5) was directly presented to the Commission in the context of PECO's dynamic pricing offerings. Like PPL's TOU program, PECO's dynamic pricing program was open only to default service customers and the Commission ultimately concluded that the costs of the program should only be recovered from default service customers and not from shopping customers.[27] Moreover, as set forth in RESA witness Hudson's testimony, the following number of customers continue to remain on PPL's default service:[28]

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

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25 PPL M.B. at 54 (emphasis added).

26 OCA M.B. at 8.

27 *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, Opinion and Order entered April 15, 2011 at 21.

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

PPL has presented no evidence to show that the number of customers remaining on default service (as opposed to the number of customers remaining on the TOU program) is an insufficient number of customers to bear the cost of the reconciliation. On the contrary, PPL even acknowledged that the number of customers choosing an alternative supplier has "stabilized."[29] There is no dispute that only default customers were permitted to participate in PPL's TOU plan.[30] Nor is there any dispute that the amount of customers currently taking default service is significantly larger than the amount of customers remaining on the TOU program.[31] Thus, for all the reasons explained by RESA and others, imposing the costs of the TOU program on shopping customers is unfair, inconsistent with the Public Utility Code and must be rejected.

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29 PPL St. No. 1-R at 12.

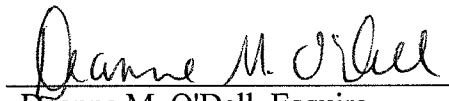
30 *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric Pa. P.U.C. No. 201 Time-of-Use*, Docket Number R-2010-2201138, Order entered December 2, 2010.

31 RESA St. No. SR-1 at 8.

IV. CONCLUSION

RESA respectfully requests that the Administrative Law Judge issue a Recommended Decision which denies PPL's petition.

Respectfully submitted,



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