**COMMONWEALTH OF PENNSYLVANIA**

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

January 23, 2012

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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:

Enclosed please find the Office of Consumer Advocate's Reply Brief, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosure
cc: Honorable Susan D. Colwell
149431

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
# OFFICE OF CONSUMER ADVOCATE

---


Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152


Dated: January 23, 2012

TABLE OF CONTENTS

## I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Briefs of PPL Electric Utilities (PPL or the Company), the Commission's Bureau of Investigation and Enforcement (BI&E), the Office of Small Business Advocate (OSBA), PP&L Industrial Customer Alliance (PPLICA), Dominion Retail, Inc. (Dominion), the Retail Energy Supply Association (RESA), Richards Energy Group, Inc. (Richards), and Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart).

The OCA's Main Brief addressed the riders proposed by PPL and its position on the issues, and thus the OCA will respond only to those matters raised by the parties that were not previously addressed or that require clarification. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

As stated in its Main Brief, the OCA submits that the Company's proposed Competitive Transition Rider (CTR) provides a reasonable avenue for the timely recovery of the identified historic costs under the unique facts of this case and should be approved. The OCA, however, does not support the Company's Reconciliation Rider (RR) as proposed. The OCA submits that the Application Provisions of the RR which require both shopping and non-shopping customers to pay the RR based on their time on default service are confusing and unnecessary at this time.

## II. REPLY ARGUMENT

### A. The CTR Is A Reasonable Mechanism To Handle Historic Costs And Is Appropriate On A One Time Basis.

#### 1. Introduction

In its Main Brief, the OCA supported the Company's proposed CTR mechanism. See, OCA M.B. at 6-8. The OCA submits that the CTR provides a reasonable

method for the recovery of historic costs that are associated with the transition from the rate caps to default service beginning in 2010 and those associated with the Time of Use (TOU) program that has encountered difficulties in design and customer retention. The CTR provides an equitable solution to dealing with these issues on a one-time basis and should be approved. See, 66 Pa. C.S. §2807(f)(5).

2. Recovery of TOU Costs In CTR

While the OCA supports the implementation of the CTR to recover TOU costs that cannot reasonably be collected from remaining TOU customers, the OCA does not agree with one of the Company's arguments in support of its requested relief. In its Main Brief, the Company argues that the TOU costs it has incurred are "default service" costs. PPL M.B. at 50-54. The Company refers to ratepayers that affirmatively select the voluntary TOU rate option as "default service TOU customers." See, PPL M.B. at 43. As a result, the Company argues that it is entitled to recovery of those costs pursuant to Section 1307(e) of the Public Utility Code. PPL M.B. at 51. While the OCA fully supports the recovery of the TOU costs through the CTR, the OCA respectfully disagrees with this aspect of the Company's argument in support of its claim.

> The term Default Service Provider was defined in Act 129 of 2008 as follows:
>
> An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:
>
> (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or
>
> (2) do not choose an alternative electric generation supplier.

66 Pa. C.S. §2803. There is no question that PPL is the Default Service Provider that provides reconcilable, quarterly adjusting default service to customers that meet the above two criteria.

The terms of default service are set forth in great detail in Section 2807(e) of the Public Utility Code, including the default service provider's "right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 ... all reasonable costs incurred under this section and a commission-approved competitive procurement plan." 66 Pa. C.S. §2807(e)(3.9).

In the same Act in which it set forth the detailed requirements for default service under Section 2807(e), the General Assembly established a separate set of requirements for "smart meter technology and time of use rates" in Section 2807(f). 66 Pa. C.S. §2807(f). As part of this section, the General Assembly assigned an additional task to default service providers to "submit to the commission one or more proposed time-of-use rates and real-time price plan." 66 Pa. C.S. §2807(f)(5). While this duty was assigned to the default service provider, the OCA submits that it is not a default service – *i.e.* the type of service that is received by customers who make no affirmative choice of an alternative supplier. On the contrary, under Section 2807(f)(5), residential and small business customers must "elect to participate in time-of-use rates or real-time pricing." Id.

Under Section 2807(f)(5), each Default Service Provider is assigned the task of submitting a time of use rate offering that customers can voluntarily select. The TOU rate is not "default service," but is an offering that each Default Service Provider must make. [1]

Despite the OCA's disagreement with one of the Company's arguments in support of its claim, the OCA submits that the Company's request for recovery of the TOU cost

[1] The Bureau of Investigation and Enforcement (BI&E) argued in its Main Brief that the TOU costs are not default service costs, and therefore recovery of the TOU under collection through the CTR would not be appropriate. BI&E M. B. at 9. The OCA agrees with BI&E's assessment that TOU rates are optional, voluntary rates that are paid by customers who make an affirmative selection and is not default service. BI&E M.B. at 7. The OCA, however, reaches a different conclusion on the recovery of the historic TOU costs for the reasons set forth herein and in the OCA's Main Brief at 6-8.

under collection through the proposed CTR is just and reasonable. The Company has an obligation under Act 129, as a DSP with smart meters in place in its service territory, to offer customers a TOU rate by filing a plan that included a time of use rate option. The Company filed such a plan and the Commission approved it. The Company administered its Commission-approved TOU program, consistent with its tariff. The current under collection of costs resulted from operation within that tariff.

In addition, the Company had in place a Commission-approved mechanism to continue to collect the under collection from the remaining residential TOU customers. The Company made a filing under the existing approved tariff and voluntarily asked for a suspension of existing rates in order to protect the existing TOU customers from experiencing an unreasonable rate shock on September 1, 2011. The Commission issued an Order suspending the rates on August 25, 2011. The Company has complied with the Commission's suspension order and filed a revised TOU program going forward in the fall of 2012. Given the actions of the Company to date, the OCA submits that the collection of the historic TOU costs through the CTR resulting from the TOU offering is just and reasonable.

3. The Recovery Of Costs Through The CTR Is Consistent With Cost Causation Principles.

In their Main Briefs, OSBA, Dominion, RESA, Richards, and WalMart all argue in opposition to the CTR mechanism. OSBA M.B. at 20-22; Dominion M.B. at 9-12, 16-17; RESA M.B. at 6-8, 13-16: Richards Energy M.B. at 6-12; Wal-Mart M.B. at 4-7. The OCA disagrees with these parties' arguments in opposition to the CTR, but notes that one of the prime arguments warrants a direct response. Several of the parties argue that the CTR is inconsistent with cost causation principles in that recovery of any CTR costs from shopping customers would

be unreasonable. RESA M.B. at 15-16; Dominion Energy M.B. at 10; Richards Energy M.B. at 10-11; Wal-Mart M.B. at 4-6. The OCA submits that this argument is not accurate in the context of the CTR mechanism designed to address historic costs on a one-time basis and as such should be rejected.

The OCA submits that the CTR is reasonable at this time under these unique circumstances. As Dr. Pereira testified, given the rapid initial decline in default service load at PPL, the collection of the CTR historic over and under collections over the entire distribution customer base is more consistent with the customer base that created these costs than recovery of these costs only from current remaining default service customers. OCA St. 1 at 9.

This is particularly true for the TOU portion of the CTR rate. Only 3,900 customers remain on TOU service. PPL St. 1-R at 30. The current TOU under collection is nearly two million dollars. PPL St. 1-R at 30. Recovery of this amount from only the remaining TOU customers would result in catastrophic rate increases. The CTR provides a reasonable resolution of this one-time TOU under collection issue. For residential customers, the CTR addresses the difficult issue of how to collect the TOU under collection. As the OCA argued in its Main Brief, the CTR would provide a mechanism to recover these costs from all customers.

It is critical to note that the vast majority of residential customers did not take service under the voluntary TOU offering. Among non-TOU customers, neither shopping nor default service customers were responsible for the under collection. RESA argues that it would be unfair for shopping customers that are ineligible for the TOU rate to have to pay the under collection. RESA M.B. at 15-16. As discussed above in this Reply Brief, PPL was statutorily required to offer the TOU rate "to all customers that have been provided with smart meter technology." 66 Pa. C.S. 2807(f)(5). RESA's assertion that the TOU rate is unavailable to

shopping customers is simply wrong and should be rejected. The OCA submits that the Company's proposal handles an unfortunate situation in the most equitable manner possible, spreading the TOU under collection among all customers. The OCA submits that the costs associated with the CTR are limited, one-time, unique in nature, and that the use of the CTR across all residential customers is appropriate for these circumstances.

B. The RR Will Create Customer Confusion And Is Not Needed At This Time.

As discussed in its Main Brief, in contrast to the one-time CTR, the OCA does not support the ongoing prospective Reconciliation Rider (RR). See, OCA M.B. at 8-11. The OCA submits that the proposed Application Provisions result in the RR serving as a "migration rider" and being applied to both shopping and non-shopping customers for varying periods of time. The Application Provisions pose significant challenges and could create customer confusion about the default service rate in the future. Amended Petition, Exhibit A (page 2 of 3). Under the PPL proposal, the RR would be applied to some, but not all, default service customers, and some, but not all, shopping customers. The RR would be applied based on the number of months that a customer had received default service.

In their Main Briefs, PPL and OSBA argue that the RR is needed to ensure that default service costs are borne by those responsible for those costs. PPL M.B. at 10-16; OSBA M.B. at 9-10. While both parties acknowledge that the RR brings added complexity to the billing process, they argue that the benefits, and "equity," of the RR outweigh concerns about customer confusion and complexity. PPL M.B. at 18-21, 44; OSBA M.B. at 19.

In response to those arguments, the OCA submits that the "equity" of the RR is overstated as it relates to residential customers. While the Company argues that the RR "attempts to align transmission service and generation supply costs with the customers that

caused such costs to be incurred," (PPL M.B. at 42) it is not accurate on a customer by customer basis. Over and under collections are not calculated on an individual customer basis. Indeed, customers who move out of the service territory are not asked to pay undercollections and are not provided refunds from prior periods.

The OCA detailed its opposition to the RR in its Main Brief, noting that the RR would result in considerable consumer education challenges in an attempt to solve a problem that no longer exits. See, OCA M.B. at 8-11. As OCA witness Pereira summarized, the benefits of the RR do not outweigh the harms that will result:

> As laudable as this goal may seem, implementation of a RR at the current time is not necessary and would otherwise introduce needless complexity to the default service mechanism that is working reasonably well in terms of providing necessary price signals to support an effective shopping experience and providing a reasonably priced service for those customers who do not choose to shop.

OCA St. 1 at 11. The OCA submits that the added "equity" that the RR may provide does not warrant the confusion that will result for residential customers.

C. The Company Should Reconcile GSC-1 Revenues On An Annual Basis, As Is Currently the Practice For TSC and GSC-2.

Dominion Resources and RESA both argue against the Company's proposal to reconcile GSC-1 costs on a 12 month basis. Dominion M.B. at 11; RESA M.B. at 10-13. As explained in the OCA's Main Brief (pages 11-12), the OCA strongly supports the proposed change to a 12 month reconciliation procedure for GSC-1. The proposed change would bring the reconciliation treatment of residential under and over collections in line with the Company's treatment of GSC-2 customers and is consistent with the reconciliation of transmission costs. OCA St. 1 at 12. Currently, GSC-1 is reconciled over each quarterly period. With recovery of the under/over collections under the proposed modification to 12 months, there would still be

quarterly adjustments to reflect changes in generation costs. The collection would remain timely, but the calculation would be made based on 12 months consistent with the larger classes to smooth recovery of costs and prevent unnecessary swings in prices.[2]

The arguments raised by RESA and Dominion against the Company's proposal are flawed and must be rejected. Both RESA and Dominion argue that the existing quarterly reconciliation is "current" and that a change to 12 month reconciliation would be inconsistent with Pennsylvania law. RESA M.B. at 11-13; Dominion M.B. at 11. This argument is without merit.

The argument is overly broad and misinterprets the law and must be rejected. RESA and Dominion's arguments are premised on the legal requirement that each EDC has the right to recover costs on a full and current basis. Under Section 2807(e)(3.9), it is the default service provider who "shall have the right to recover on a full and current basis" its default service costs. 66 Pa. C.S. §2807(e)(3.9). The OCA submits that it is the default service provider who has the "right" to "full and current recovery" of its default service costs, as long as its rates for residential and small business customers "shall change no more frequently than on a quarterly basis." 66 Pa. C.S. §2807(7). That PPL itself has proposed the modification is, in and of itself, evidence that the "full and current recovery" provisions of Section 2807(e)(3.9) are met in this proceeding.

To support its argument, RESA states that "the statutory parameter for "current" is quarterly reconciliation" as dictated by Section 2807(e)(7). RESA M.B. at 11.

---

[2] In its Main Brief, PPL submits that the 12 month reconciliation "rolling average" methodology proposed by the OSBA would be acceptable. PPL M.B. at 17. While this was not specified in the Company's original proposal, the OCA would also support the use of a "rolling average" methodology to help smooth out the reconciliation over a 12-month period.

Section 2807(e)(7), however, addresses how default service rates must be set. This provision states in full:

> The default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

66 Pa. C.S. §2807(e)(7).

As noted above and as the language of the Act makes clear, residential and small business default service rates can be adjusted on a quarterly basis, ***or a less frequent basis***. Indeed, in the Commission's recent Final Rulemaking Order modifying its existing default service regulations, the Commission modified its regulations to permit less frequent adjustments. Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) Slip op. at 25.[3]

The Company's proposed shift to a 12 month reconciliation procedure would not change the Company's current practice of recovering costs through a quarterly changing default service rate. The Company would continue to collect costs on a current basis – just as it reconciles and collects TSC and GSC-2 costs on a current basis under current practices. The arguments of RESA and Dominion in opposition to a 12 month reconciliation of GSC-1 are without merit and should be rejected.

---

[3] In its ongoing Retail Markets Investigation at Docket No. I-2011-2237952, the Commission recommended that Default Service Providers consider quarterly, semi-annual, and annual reconciliation mechanisms in their upcoming default service plans. Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) Slip op. at 54.

## III. CONCLUSION

For the reasons detailed in the OCA's Main and Reply Briefs, the OCA supports the adoption of the Competitive Transition Rider and the adoption of the Company's proposal to modify the reconciliation provisions under GSC-1 to permit reconciliation on an annual basis rather than on a quarterly basis. The parties' arguments in opposition to the CTR and annual reconciliation should be rejected. In addition, the OCA does not support the adoption of the Reconciliation Rider as proposed and the arguments in support of the RR should be denied.

Respectfully Submitted,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: January 23, 2012

00152102.docx

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23th day of January 2012.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Richard A. Kanaskie, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Paul E. Russell
Associate General Counsel
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18106
Counsel for: *PPL Electric Utilities Corporation*

David B. MacGregor, Esquire
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Counsel for: *PPL Electric Utilities Corporation*

Anthony D. Kanagy, Esquire
Christopher T. Wright, Esquire
Post & Schell, P.C.
12th Floor
17 North Second Street
Harrisburg, PA 17101-1601
Counsel for: *PPL Electric Utilities Corporation*

Elizabeth Rose Triscari
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for: *Office of Small Business Advocate*

Pamela Polacek, Esquire
Adeolu A. Bakare, Esquire
McNees, Wallace & Nurick
P. O. Box 1166
100 Pine Street
Harrisburg, PA 171 01·1166
Counsel for: *PP&L Industrial Customer Alliance*

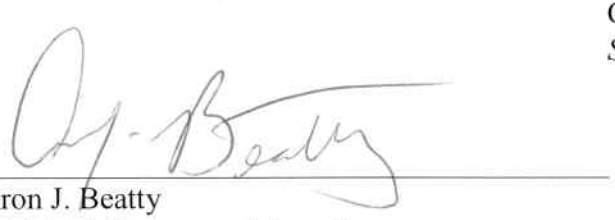
Todd Stewart, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
100 North Tenth Street
Harrisburg, PA, 17105
Counsel for: *Dominion Retail, Inc.*

Frank Richards
Richards Energy Group, Inc.
781 S. Chiques Road
Manheim, PA 17545
For: *Richards Energy Group, Inc.*

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
8th Floor
213 Market Street
P.O. Box 1248
Harrisburg, PA 17101
Counsel for: *Retail Energy Supply Association*

Craig Doll, Esquire
Attorney At Law
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036-0403
Counsel for: *Richards Energy Group, Inc.*

Holly Rachel Smith, Esquire
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, VA 20115
Counsel for: *Wal-Mart Stores East, LP and Sam's East, Inc.*



Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

00147915.docx