COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

January 23, 2012

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PPL for Approval to Implement
Reconciliation Rider for Default Supply Service

Docket No. P-2011-2256365

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Bureau of Investigation and Enforcement's (I&E) **Reply Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6184.

Sincerely,

Richard A. Kanaskie
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #80409

Enclosure
RAK/edc

cc: Parties of Record
Hon. Susan D. Colwell

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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 BUREAU OF
INVESTIGATION AND ENFORCEMENT

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I. INTRODUCTION

The Procedural History of this proceeding has been adequately presented in the Main Brief of the Bureau of Investigation and Enforcement ("I&E) and does not need to be repeated in any detail in this Reply Brief. In the alternative, I&E offers a brief summary of the procedural status of this proceeding. On August 3, 2011, PPL Electric Utilities Corporation ("PPL" or "Company") filed its initial petition with the Pennsylvania Public Utility Commission ("Commission") seeking approval to implement a Reconciliation Rider and Competitive Transition Rider. Subsequently, on August 25, 2011, the Company filed its *Amended Petition for Approval to Implement a Reconciliation Rider and Competitive Transition Rider for Default Supply Service*.

I&E filed its Notice of Appearance on August 25, 2011. In addition, the Office of Small Business Advocate ("OSBA"), the Office of Consumer Advocate ("OCA"), Dominion Retail ("Dominion"), the Retail Energy Suppliers Association ("RESA"), the PPL Industrial Customer Alliance ("PPLICA"), Richards Energy Group ("Richards") and Wal-Mart Stores East, L.P. and Sam's East, Inc. (collectively "Wal-Mart") all participated in this proceeding either through complaints or interventions.

Interested parties served initial and responsive testimonies in accordance with the procedural schedule established in this proceeding at the Prehearing Conference. The establishment of evidence in this proceeding culminated with the Evidentiary Hearing ("Hearing") that was conducted on December 5, 2011. The Hearing

included the presentation of previously served written testimony and exhibits by the participating parties.[1] In addition to the presentation of evidence, the cross-examination of witnesses, including the presentation of cross-examination exhibits, was conducted at the Hearing. As of this date, 172 pages of transcript have been developed.

Main Briefs were submitted on January 9, 2012 by I&E, the Company, OSBA, OCA, Dominion, RESA, PPLICA, Richards and Wal-Mart. In further support of the issues raised in its testimony and Main Brief, I&E offers the following arguments.

As the Company's proposal impacts its rates, I&E maintains that the Company has the burden of proving the reasonableness of each and every element of its claim as provided for under the Public Utility Code.[2] Furthermore, satisfaction of the burden of proof in proceedings brought before the Commission requires the presentation of substantial evidence. As has been presented earlier, substantial evidence has been defined as "...that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion."[3]

In the instant proceeding, we are reminded that the Commission and the Courts have clearly held that the burden of proof does not shift to the party

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1 All parties listed above with the exception of PPLICA submitted written testimony in this proceeding. Although PPLICA did not present its own witness, it was an active participant in the cross-examination of witnesses, thereby establishing a public representation of its position in this proceeding.

2 66 Pa. C.S.A. § 1301.

3 I&E Main Brief, p. 4, citing *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975), as quoted in *Norfolk & Western Railway Co. v. Pennsylvania Public Utility Commission.*, 489 Pa. 109, 128 (1980).

challenging a proposed action. The Commission has ruled on this issue in its statement that "[a] utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.[4] In other words, the Bureau of Investigation and Enforcement does not need to prove that the Company's TOU program is not a default service program. Nor must I&E prove that PPL failed to properly design the rates associated with this offering, resulting in the failure to generate sufficient revenue to support this program through rates from only the beneficiaries of the plan, i.e., the TOU participants.

II. SUMMARY OF ARGUMENT

The Bureau of Investigation and Enforcement is limiting its ongoing participation in this proceeding to addressing PPL's failure to provide substantial evidence to support the characterization of its TOU program as a Default Service program and the Company's proposed Competitive Transition Rider ("CTR") that is designed to recover an under-collection that resulted from an improperly designed plan.

I&E acknowledges that Electric Distribution Companies such as PPL are required to offer Time of Use Plans.[5] However, I&E maintains that the Company's Fixed Rate Option, as presented in its tariff and illustrated in the published Price to Compare, is the only default service offered by PPL. As has

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4 I&E Main Brief, p. 4, citing *Pennsylvania Public Utility Commission v. Equitable Gas Co.*, 57 Pa. P.U.C. 423, 444 (fn. 37) (1983).

5 66 Pa. C.S.A. § 2807(f).

been demonstrated, the TOU program is merely an alternative to default service that a customer must actively choose if they wish to be provided service under this rate plan. Alternatively, I&E maintains that even if there was an affirmative finding that a utility such as PPL Electric Utilities Corporation could have two default programs; there is little evidence to support that the design of the program properly addressed the revenue needs to provide the service without burdening non-participating ratepayers.

Any arguments not associated with the issues presented above have not been pursued in the I&E Main Brief and will not be the subject of argument in this Reply Brief. At this time, I&E offers no position on the positions presented by the parties on the remaining issues.

III. ARGUMENT

The Company has failed to provide substantial evidence in satisfaction of its burden of proving that how its TOU program satisfies the characteristics of default service and, therefore, should be included in the proposed recovery mechanism. Relying on the language from a PECO proceeding from April of 2011, the Company still ignores the necessary characteristics of a default service designation. The evidence in this proceeding affirms the fact that the TOU program requires active election by the participants whereas the default service program is handled differently. Default service is provided to customers that do not select an alternative supplier or rate schedule as well as customers that return to PPL for the supply of generation. The circumstances behind a return to default

service may include the alternative supplier's decision to no longer provide service to the customer or, the customer's own decision to return to PPL. The circumstances behind the return to default service are irrelevant. What is important is that default service is assigned to customers that take no action upon returning to service with PPL. With PPL, default service is provided at a fixed rate as identified in tits Price to Compare. The allegation that because the legislature required default service providers to "offer the time-of-use rates...to all customers that have been provided with smart meter technology..."[6] therefore, TOU should be characterized as a default service program is insufficient. The relevant statute section continues with the acknowledgement that "[r]esidential or commercial customers may elect to participate in time-of-use rates...."[7] I&E maintains that the requirement of an election in the form of an affirmative choice does not allow for the existing program to be considered a default service program.

The Company's citation to the PECO proceeding is distinguishable as the issue addressed whether shopping customers should absorb any of the costs to implement PECO's Dynamic Pricing Plan. In this particular proceeding, the issue centers on an ongoing program and its characterization within the Company's tariff. Recovery concerns do not include the startup costs experienced by every Electric Distribution Company that was mandated to offer this service through Act

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6 66 Pa. C.S.A. § 2807(f)(5).

7 Id.

129. We are now reviewing the efficacy of an established alternative price plan. I&E has not offered a position as to the recovery of costs being assigned to shopping customers. Rather, I&E has focused only on the ramifications of classifying an alternative program as a default service program when PPL already has a default service program with its rates reflected in its Price to Compare. I&E maintains that it is not in the public interest to identify more than one service as being default service. This recommendation is counterintuitive and distorts the operation of the true default service offering. PPL's obligation to serve requires it to obtain generation service for its customers that do not choose an alternative service. The customer choice involved with selecting the TOU program is no different than the choice involved in selecting a different supplier. As presented in the I&E Main Brief, PPL's witness has clarified the difference between the default customers and customers that have chosen the TOU service.[8] As was demonstrated, an affirmative election must be made. Absent this choice, customers revert to the Company's default service and are served under its fixed price as presented in the Price to Compare.

The substantial evidence in the record supports the premise that the TOU program should not be recognized as a default service program and, therefore, any under or over-collections should not be included in the Company's proposed recovery mechanism. As the CTR is solely for an historical under-collection, its

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8 I&E Main Brief, pp. 7-9.

implementation should be denied. The evidence shows that default service customers made an active choice to be served under an alternative program. This choice differentiates the program from default service. As the Company has failed to meet the evidentiary standard in support of the characterization of the TOU program as default service, any revenue discrepancies are at the risk of the Company and/or customer.

I&E maintains that the design of rates necessary to produce sufficient revenue from the participating TOU customers is solely the responsibility of the Company. The repeated claims that the default service plan was previously approved do not demonstrate that all costs therein are reasonable, or that the rates designed by the Company were designed to generate the appropriate level of revenue to provide the service to the customers that made the affirmative choice. As has been demonstrated in the Bureau of Investigation and Enforcement's testimony and Main Brief, "[c]ommission approval of a rate methodology does not equate to a guaranteed recovery or guaranteed revenue. Commission approval simply means that the Company will have the opportunity to generate revenue and recover costs using the approved methodology."[9] Furthermore, I&E added, "[i]t is …the burden of the Company to propose and manage its price structure, commodity costs and other inherent risks to produce a successful program and the desired recovery of revenue…."[10] Clearly, the Company's designed rates for its

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9 I&E Main Brief, p. 12, I&E Statement No. 1-SR, p. 7.

10 Id.

TOU plan failed to provide adequate revenue as demonstrated by the resulting under-collection. I&E maintains that the resulting revenue shortfall is based on the flaws from PPL's design of the TOU program for the period January 1, 2011 to May 31, 2011 and should not be considered reasonable costs.

The record evidence in this proceeding shows that "approximately 23,000 customers took service under the program during the period January 1, 2011 through May 31, 2011."[11] During this time, the design of the Company's TOU program included a peak component and an off-peak pricing component where the "peak service was less than the company's fixed rate service under its price to compare."[12] I&E maintains that the Company has not provided substantial evidence to demonstrate how PPL priced its TOU program so that it would generate sufficient revenue to handle the response to the advantageous pricing of its January 1, 2011 through May 31, 2011 program. The mix of generation supply is not the sole measure of prudent management. It is then necessary to establish the appropriate retail pricing structure to generate sufficient revenue. I&E offers that the resulting revenue shortfall should not be considered a reasonable outcome wherein the recovery of under-collected funds would be allowed.

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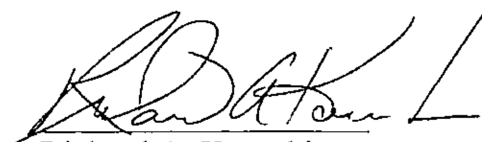
11 I&E Main Brief, p. 11, PPL Statement No. 1-R, pp. 29-30, See also, Transcript, p. 43. By way of further explanation, prior to the inauguration of the pricing reflected during this period, the maximum number of Time of Use customers was less than 450. Upon the expiration of this pricing, TOU customers dropped from 23,000 to approximately 3700.

12 I&E Main Brief, p. 11, Transcript, p. 45 (I&E cross-examination of PPL witness Kleha).

IV. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully submits that the Company has not supported all elements of its Petition. There is not sufficient evidence to support the representation that the Time of Use Program is a Default Service Program. Therefore, it should not be a component of the proposed Reconciliation Rider. In addition, the under-collection recovery contemplated in the Competitive Transition Rider is premised on the failure to establish rate structure to generate the appropriate level of revenue to support this program. As a result, the claimed costs are nothing more than a revenue deficiency within the control of the Company. Therefore, the Competitive Transition Rider should be rejected as it serves only for the attempted recovery of the historical under-collection that has not been demonstrated to be reasonable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated January 23, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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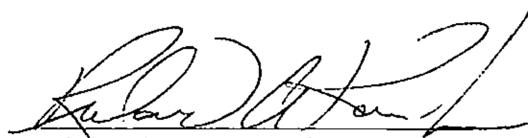

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