



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

January 23, 2012

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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:

I am delivering for filing today the original plus nine copies of the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: Parties of Record
Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PPL ELECTRIC :
UTILITIES CORPORATION FOR :
APPROVAL TO IMPELEMENT A : Docket No. P-2011-2256365
RECONCILIATION RIDER FOR :
DEFAULT SUPPLY SERVICE :**

**REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: January 23, 2012

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I. INTRODUCTION

On August 25, 2011, PPL Electric Utilities, Inc. (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (the “Commission”) the Amended Petition at Docket No. P-2011-2256365, which sought authorization to implement a Reconciliation Rider (“RR”) and Competitive Transition Rider (“CTR”) related to the transmission service and generation supply service that the Company provides to its default service customers.¹ Pursuant to the RR, the Company would refund over-collections to, and recover under-collections from, customers who were default service customers when the over-collection or under-collection occurred.² The proposed CTR would be a temporary, non-bypassable reconcilable rider that would refund, or recover, the balance of historic over-collections or under-collections in existence on the effective date of the RR from all distribution customers, shopping and non-shopping.

Under the provisions of its default service plan, PPL is permitted (and required) to reconcile variances between revenues earned and costs incurred in providing default service.³ PPL’s current tariffs achieve this reconciliation within three tariff charge provisions: a transmission service charge (“TSC”) and two generation supply charges. Generation Supply Charge-1 (“GSC-1”) applies to residential and small commercial and industrial (“Small C&I”) default service customers and Generation Supply Charge-2 (“GSC-2”) applies to large commercial and industrial (“Large C&I”) default service customers. The TSC and GSC-2 are

¹ The Amended Petition superseded and replaced PPL’s initial petition filed on August 3, 2011, and added the proposed CTR to the originally proposed RR.

² PPL Amended Petition at 2.

³ PPL Amended Petition at 6-7.

currently reconciled annually on a PJM Planning Year basis, whereas the GSC-1 is reconciled quarterly.⁴

The Amended Petition seeks to revise the reconciliation provisions of the GSC-1, GSC-2, and TSC, as well as the Merchant Function Charge Rider (“MFC”), so that default service reconciliation is instead consolidated in the RR and reconciled on an annual basis.⁵ In addition, the RR would include a “migration rider,” which would require customers who switched from default service to alternative supply to continue to be subject to the RR for up to twelve months, and which would similarly exempt customers who return to default service from the RR for up to twelve months.⁶

Notices of Intervention were filed by the Office of Small Business Advocate (“OSBA”), the Office of Consumer Advocate (“OCA”), the Retail Energy Supply Association (“RESA”), Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”), Richards Energy Group, Inc. (“REG”), and Wal-Mart Stores East, L.P. and Sam’s East, Inc. (“Walmart”). Answers were filed by the OSBA, PP&L Industrial Customer Alliance (“PPLICA”), RESA, and Dominion. The Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance.

A prehearing conference was held on October 5, 2011 before Administrative Law Judge (“ALJ”) Susan D. Colwell, at which the parties agreed to a procedural schedule and modified discovery terms. ALJ Colwell issued a Scheduling Order on October 5, 2011, reflecting the agreed-upon procedural schedule and modified discovery terms, and granting the unopposed petitions to intervene of RESA, PPLICA, Dominion, and Walmart.

⁴ *Id.* at 7-8.

⁵ *Id.* at 13.

⁶ *Id.* at 14.

The OSBA submitted OSBA Statement No. 1 (the Direct Testimony and Exhibits of Robert D. Knecht) on November 2, 2011; OSBA Statement No. 2 (the Rebuttal Testimony and Exhibits of Robert D. Knecht) on November 16, 2011; and OSBA Statement No. 3 (the Surrebuttal Testimony of Robert D. Knecht) on November 30, 2011.

PPL and Dominion submitted Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony. RESA, OCA, and I&E submitted Direct Testimony and Surrebuttal Testimony. Walmart and REG submitted Direct Testimony.

An evidentiary hearing was held on December 5, 2011, at which time OSBA Statement No. 1, OSBA Statement No. 2, and OSBA Statement No. 3 were entered into the record, along with OSBA Hearing Exhibit No. 1. The aforementioned testimony submitted by the other parties was also offered and admitted into the record.⁷

The parties filed Main Briefs on January 9, 2011. The OSBA submits this Reply Brief in accordance with the procedural schedule.

⁷ The testimony of REG witnesses Jeffrey Good and Terry Lee was not offered or admitted into the record.

II. SUMMARY OF REPLY ARGUMENT

- The Time of Use (“TOU”) issues that have been raised are not properly determined in this proceeding as they are the subject of the currently pending proceeding at Docket No. R-2011-2264771, commenced on September 26, 2011 (“TOU Proceeding”).
- Excluding reconciliation charges/credits from the Price to Compare (“PTC”) is consistent with the Public Utility Code and the Commission’s Regulations and does not distort the PTC.
- PPL’s adoption of the OSBA’s recommendation regarding new customers moots any argument that the RR is in violation of 66 Pa.C.S. §2807(e)(4) requiring that new default service customers and customers returning to default service be treated in the same manner.
- The proposed Reconciliation Rider is equitable, will reduce rate instability, and is competitively neutral. It should be approved by the ALJ and the Commission.
- The proposed Competitive Transition Rider is unnecessary and inequitable. It should be rejected by the ALJ and the Commission.

III. REPLY ARGUMENT

A. Time of Use Issues

I&E raised certain legal issues with respect to PPL's TOU rates in its testimony and Main Brief. Specifically, I&E argued that PPL has failed to meet its burden of proof in establishing the reasonableness of its claim for recovery of the TOU rate shortfall.⁸ I&E does not consider costs associated with PPL's TOU program to be default service costs, and therefore argues that they should not be recoverable in the RR. Even if the costs are deemed to be default service costs, I&E argues that PPL should not be able to recover them because they were not reasonably incurred.

The legal question of whether or not costs associated with PPL's TOU program are reasonable default service costs is not properly before the Commission in this proceeding. It is among the issues in the ongoing TOU Proceeding. Not all parties to the TOU Proceeding are parties to the instant proceeding and could be prejudiced by any decisions made regarding PPL's TOU program. Therefore, the ALJ and the Commission should abstain from making any determination in this proceeding as to whether PPL's TOU Program should be recognized as a default service program or whether the TOU undercollections were reasonably incurred.

Similarly, the question of whether TOU rates should be reconciled together with Fixed rates is not properly before the Commission in this proceeding. PPL has proposed in the TOU Proceeding to reconcile TOU rates together with the respective fixed rate service and refund/recover the combined balance from all default service customers in each respective customer class.⁹

⁸ I&E Main Brief at 5.

⁹ OSBA Statement No. 1 at 2, referencing attached OSBA I-8.

In its initial review of the Company's filing, it was unclear to the OSBA whether PPL intended to reconcile TOU rates together with fixed rates if the RR and CTR were approved by the Commission. In the tariff riders attached as Appendix A and F to the Amended Petition, PPL stated that the RR and CTR would be computed separately for three rate classes, Residential Fixed *and TOU*, Small C&I Fixed *and TOU*, and Large C&I. These tariff provisions seemed to indicate that PPL did intend to reconcile TOU rates together with fixed rates in this proceeding.

In apparent contrast, Appendix C, regarding the GSC-1, stated that "Reconciliation of the GSC-1 for Fixed Price Service and the on/off-peak TOU Program will be conducted separately, on an annual basis, for each of the two Customer Classes." The language in Appendix C appears to be inconsistent with Appendix A and Appendix F.

In an attempt to clarify, the OSBA served PPL with discovery referencing the proposed Reconciliation Rider tariff provision and asking whether the reconciliation amounts for TOU service would be reconciled separately or together with their respective fixed rate services.¹⁰ PPL responded that "Reconciliation of the TOU option under the GSC-1 will follow the procedure approved by the Commission in its review of PPL Electric's new TOU program filed on September 26, 2011."¹¹ PPL's response also indicated that its proposal in the TOU Proceeding was to "reconcile the TOU option together with the Fixed Price Service of the GSC-1."¹² In reliance on PPL's response that reconciliation of the TOU option would follow any determination made by the Commission *in the TOU Proceeding*, the OSBA did not take a

¹⁰ OSBA I-8(a), attached to OSBA Statement No. 1.

¹¹ *Id.*

¹² *Id.*

position or submit testimony on the issue in this proceeding. Thus, the merits of that proposal are appropriately decided in the TOU Proceeding and not in the instant proceeding.¹³

B. Exclusion of Reconciliation Charges/Credits in the Price To Compare

Certain opponents of the RR and CTR argue that reconciliation charges/refunds must be included in the Price To Compare (“PTC”) pursuant to the Commission’s regulations, specifically 52 Pa. Code §54.187.¹⁴ The OSBA disagrees and adopts the argument made by PPL in its Main Brief that the plain language of Sections 54.187(b) and (f) contemplate the exclusion of reconciliation charges/refunds in the PTC.¹⁵

Dominion mischaracterizes or at least misinterprets the regulations. Dominion argues that the Commission’s regulations are “clear” that reconciliation costs must be recovered in the PTC with “no exceptions.”¹⁶ However, Section 54.187(b), read together with Section 54.187(f), clearly *excepts from inclusion in the PTC, the reconciliation of a Section 1307(e) automatic energy adjustment clause.* Sections 54.187(b) and (f) provide, in pertinent part, that:

(b) *Except for rates available consistent with subsection (f), a default service customers shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer’s monthly bill.*

(f) A [Default Service Provider] may use an automatic energy adjustment clause to recover reasonable nonalternative energy default service costs...¹⁷

¹³ The OSBA does not intend to oppose PPL’s proposal in the TOU Proceeding to reconcile the TOU option together with the Fixed Price Service of the GSC-1 to recover the historic TOU undercollection.

¹⁴ Dominion Main Brief at 9; RESA Main Brief at 9-10.

¹⁵ PPL, Main Brief at 31-32.

¹⁶ Dominion Main Brief at 10.

¹⁷ 52. Pa. Code §54.197(b) (emphasis added).

Dominion also claims that “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.*”¹⁸

Dominion is correct that Section 54.187(h) requires that default service rates be adjusted on a quarterly basis, but nowhere does it require the inclusion of reconciliation charges/refunds in the PTC. Section 54.187(h) provides, as follows:

(h) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

Notably, in its Main Brief, I&E vacated the argument made in testimony that over/under-collections must be included in the PTC.¹⁹ I&E recognized that:

As the Company’s proposed mechanism substantially shares the characteristics of ‘migration riders’ that have been approved and implemented in other industries, I&E vacates its arguments as to the necessity of inclusion of these costs in the Price To Compare in this proceeding.²⁰

Opponents of the RR also argue that *excluding* reconciliation charges/credits from the PTC will cause price distortion and customer confusion. However, it is *including* historic reconciliation charges/credits in the PTC that has, in fact, actually distorted competition, because the PTC has not accurately reflected the current period costs of

¹⁸ Dominion Brief at 11-12 (emphasis added).

¹⁹ I&E Main Brief at 6.

²⁰ *Id.*

providing default service.²¹ The enormous distortion in the PTC resulting from reconciliation charges and credits is shown prominently in OSBA Hearing Exhibit 1.

C. New Default Service Customers

Opponents of the RR also argue that it violates the statutory requirement that new customers and customers returning to default service be treated in the same manner.²² 66 Pa.C.S. §2807(e)(4), provides in pertinent part, as follows:

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.²³

OSBA witness Mr. Knecht agrees with this argument and in testimony recommended that new default service customers not be subject to the RR for their first twelve months, because they were not taking default service when any over/under-collection occurred. PPL indicated at the evidentiary hearing that it had adopted the OSBA’s recommendation and confirmed that in its Main Brief.²⁴ If the RR is approved by the Commission with this revision, the RR will consistently treat new customers and returning default service customers, thus mooting the argument that is in violation of Section 2807(e)(4).

D. Rolling Annual Reconciliation

PPL’s initial RR proposal sought to combine reconciliation of the GSC-1, GSC-2 and TSC on a fixed annual basis. Opponents of the RR have argued that annual reconciliation is inconsistent with 66 Pa.C.S. 2807(e)(3.9), which gives default service providers the “right to

²¹ OSBA Main Brief at 9-10.

²² 66 Pa.C.S. §2807(e)(4).

²³ *Id.*

²⁴ PPL Main Brief at 20.

recover on a full and current basis” the costs of providing default service.²⁵ Dominion, for example, claims that “It is clear that the only currently approved methodology is quarterly reconciliation...”²⁶ This argument is simply wrong. It fails to acknowledge that PPL’s current Commission-approved reconciliation mechanisms reconcile the GSC-2 and TSC on a fixed annual basis. PPL’s proposal only seeks to change reconciliation of the GSC-1 from a quarterly to an annual basis consistent with the GSC-2 and TSC.

This argument also fails to acknowledge that a Final Order issued by the Commission pursuant to its ongoing retail market investigation (“RMI Order”) shows that the Commission is in fact at least considering a shift away from quarterly reconciliation, recognizing that it may have contributed to the volatility of default service rates.²⁷ The Commission agreed in the RMI Order that longer reconciliation periods may help to reduce rate instability caused by over/under-collections.²⁸

Moreover, PPL indicated at the evidentiary hearing and in its Main Brief that it has adopted the OSBA’s recommendation to reconcile on a rolling annual basis as opposed to a fixed annual basis.²⁹ As described in the OSBA’s Main Brief at pp. 6-7, rolling annual reconciliation will retain the rate stability advantages of spreading out recovery/refunds over 12 months. It should also alleviate concerns about recovery of default service costs on a full and current basis

²⁵ 66 Pa.C.S. §2807(e)(3.9).

²⁶ Dominion Main Brief at 12.

²⁷ *Investigation of Pennsylvania’s Retail Electricity market: Recommendations Regarding Upcoming Default Service Plans*, Docket no. I-2011-2237952, Slip Op. p. 54 (December 16, 2011).

²⁸ *Id.*

²⁹ Hearing transcript at 31-32, PPL Main Brief at 17.

because it will have the additional advantage of more quickly incorporating variances into rates.³⁰

E. PPL Reconciliation Issues Are Unresolved and Ongoing

As outlined in the OSBA's Main Brief, PPL's inability to provide reasonably stable default service rates is likely to continue to occur in the future.³¹ Parties have acknowledged the effect of PPL's proration accounting method, which creates a mismatch between billed revenues and incurred costs.³² However, they have failed to see that this is an ongoing problem, not a one-time occurrence in January 2010. Moreover, no party has addressed the substantial variances that are unrelated to the accounting problem, including the fact that PPL has reported per-kWh revenues that varied materially from month-to-month, despite the fact that a per-kWh GSC rate was in place. This means that the revenues reported are not consistent with the rates PPL was required to charge and presumably did charge. Until the underlying causes of such variances are addressed, it is more likely than not that PPL will continue to experience material differences between reported revenues and costs. The RR is necessary to mitigate the effects of such variances.

F. Reconciliation Rider Is Equitable, Will Reduce Rate Instability, and Is Competitively Neutral

PPL's proposed RR should be implemented because it is equitable, will reduce rate instability, and is competitively neutral. The RR is consistent with the basic ratemaking principle of cost causation.³³ As explained in the OSBA's Main Brief at pp. 9-10, it better aligns reconciliation charges/refunds with the customers who were default service customers when the

³⁰ OSBA Main Brief at 6-7.

³¹ OSBA Main Brief at 12-15.

³² *E.g.*, PPLICA Main Brief at 6-7.

³³ *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (2006), appeal denied, 591 Pa. 676, 916 A.2d 1104 (2007).

over/under-collection was created. The RR minimizes the ability of default service customers to avoid reconciliation charges incurred while they were on default service by choosing to shop. Similarly, it keeps shopping customers from unfairly benefiting from an over-collection to which they did not contribute by returning to default service.

The RR will also reduce the rate instability that PPL's default service customers have been subjected to since the expiration of rate caps. As more fully explained in the OSBA's Main Brief at pp. 10-15, the RR will reduce rate volatility by amortizing over 12 months PPL's reported variances between default service costs and revenues.

In response to opponents of the RR that argue it is anti-competitive, the OSBA asks that the ALJ and Commission refer to its Main Brief at pp. 15-19.

G. Competitive Transition Rider Is Unnecessary and Inequitable

PPL's proposed CTR should be rejected because it is unnecessary and contrary to the basic ratemaking principle of cost causation.³⁴ As explained in the OSBA's Main Brief at pp. 20-21, PPL's concerns about the ability to recover its costs are not supported. Currently all rate classes, with the exception of the TOU option, have an over-collection.

Moreover, the CTR is simply not consistent with the basic ratemaking principle of cost causation. There is no clear evidence to support PPL's argument that *all* shopping customers will have caused the variance as of May 31, 2012. For example, the large 2010 under-collection reported for the Small C&I Fixed rate class has already been collected from default service customers. They paid significantly higher rates in summer 2011 and now that class has an over-collection. If on May 31, 2012 there still exists an over-collection, it would be unfair for the refund go to all distribution customers, shopping and non-shopping, instead of to the default service customers who contributed to the over-collection. Similarly, if there is an under-

³⁴ *Lloyd*, 1021 A.2d 1010.

collection on May 31, 2012, it would be unfair to recover it from all distribution customers, many of whom chose to shop long ago.

PPL argues that the CTR is consistent with class ratemaking principles and seems to imply that these principles somehow “trump” principles of equity and cost causation.³⁵ The Company cites to *Philadelphia Suburban Tran. Co. v. P.U.C.* for the proposition that rate structure must be based on economic facts and on an understanding of all facts and circumstances that affect rates and services.³⁶ Considering the facts and circumstances of this case, where large historic under-collections have already been recovered from default service customers and the CTR is simply unnecessary, equity considerations should outweigh principles of class ratemaking.

³⁵ PPL Main Brief at 48.

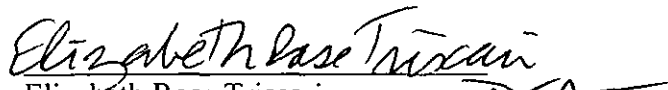
³⁶ *Philadelphia Suburban Tran. Co. v. P.U.C.*, 281 A.2d 179 (Pa. Cmwlth. 1971).

IV. CONCLUSION

For the reasons outlined above, the OSBA respectfully requests that the ALJ and the Commission:

- (1) Approve PPL's request to implement the Reconciliation Rider, as modified by the OSBA; and
- (2) Reject PPL's request to implement the Competitive Transition Rider.

Respectfully submitted,


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Dated: January 23, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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