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January 23, 2012

VIA HAND DELIVERY

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Harrisburg, PA 17120

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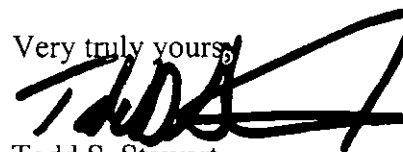
RE: Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Service Supply, Docket No. P-2011-2256365; **REPLY BRIEF OF DOMINION RETAIL, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Reply Brief of Dominion Retail, Inc. in the above-captioned docket. Copies of this Direct Testimony 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: Honorable Administrative Law Judge Susan D. Colwell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**REPLY BRIEF
OF
DOMINION RETAIL, INC.**

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Dated: January 23, 2012

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I. Introduction and Counter Statement of the Case.

PPL Electric Utilities Corporation (“PPL” or “the Company”) has proposed to implement two riders in this case, a Reconciliation Rider (“RR”) and a Competitive Transition Rider (“CTR”). The former (RR) is intended to replace its existing reconciliation process for default service costs that recovers those costs from default service customers, as required by the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 54.187, and to instead recover default service costs from shopping customers as well - through a surcharge, as opposed to including recovery within default service rates. The latter (CTR) is intended to recover default service rate balances that may exist as of the end of May 2012, from all customers. This proposal is similarly contrary to the regulations cited above, and likewise suffers from an acute lack of need, as there are only two rates schedules which *might* have balances as of that May 31, 2012, and PPL’s witness could not confirm the potential level of those balances. It is not clear therefore, that PPL needs a mechanism to recover what may be phantom balances.

PPL contends that it has experienced some over or under collected balances, and that these substantiate its need for the CTR. Mr. Butler stated quite clearly, however, only two of the rate schedules were even close to having significant balances when compared to revenues and that they were quite capably recovered through PPL’s existing reconciliation process. Dominion Retail Statement No. 1 “DR St. No. 1”, 5:2-14. Mr. Butler noted that PPL appears to be proposing secondary and tertiary mechanisms without good evidence that its existing processes, if managed properly, would not adequately fulfill the need. DR St. No. 1 4:5-12. At bottom, it is true that PPL may have had some over or under-recoveries, but there is no agreement as to the

cause or the relative magnitude of these balances, nor as to the actual impact. DR St. No. 1, 7:5-9:15.

PPL also has proposed that it be permitted to elongate its reconciliation process to recover balances over a year instead of the approved quarterly reconciliation it employs today. Again, PPL offers no convincing evidence to overcome the testimony that longer term reconciliation makes rates less market relevant and tend to distort, not help, customer shopping decisions. In light of the extreme lack of need for any change, it is difficult to understand why PPL would include yet another customer harming aspect to its proposal, and it should accordingly be rejected.

II. Summary of the Reply Argument.

PPL argues, in support of its RR & CTR proposals, that it is authorized to recover its reasonably incurred costs of default service through a reconciled *surcharge mechanism*, charged to customers who are not receiving default service. PPL's argument is only partially correct. That is, the Public Utility Code, 66 Pa. C.S. § 2807(e)(3.9) does permit PPL recover prudently incurred default service costs through a Section 1307 reconciliation. Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") has not suggested otherwise. However, the second essential step of PPL's argument, that it is authorized to recover default service costs through a surcharge charged to non-default service customers, is not correct. Such a surcharge is expressly contrary to the Commission's regulations. 52 Pa. Code § 54.187. In light of the clear provisions of these regulations that default service costs must be recovered through the PTC, and that the PTC can be charged only to default service customers, PPL's request must fail.

When one considers that PPL has failed to carry its burden of proving that its proposals will not harm competition, and that it likewise has failed to overcome the overwhelming

evidence that proves that if PPL's request were granted it would harm customers and harm competitors alike, it becomes obvious that PPL's proposal is illegal, anti-customer and anticompetitive and it must be rejected.

It is telling that as a major theme of its main brief, PPL has resorted to accusing the other parties of failing to propose an alternative plan that addresses PPL's apparent problem of accurately forecasting its default service costs and setting its rates accordingly. While this suggestion is a misstatement of the law, it also ignores the factual record of this case. DR St. No 1, 3:16-18. The opposing parties in this case, and it must not be forgotten that every other party to this case opposes some or all of the relief requested, have no obligation to suggest any alternative. The entire burden is on PPL to propose a solution and then to prove that its solution is in the public interest. 66 Pa. C.S. § 332(a); 66 Pa. C.S. § 315(a). The fact that another party may not suggest an alternative does not change the fact that PPL's proposal has been proven to NOT be in the public interest, and must therefore be rejected.

Moreover, and contrary to PPL's incorrect assertion, DES' witness did testify that PPL's current methodology was more than sufficient if PPL could simply manage the calculations and forecasting. DR St. No. 1, 4:19-21. This is especially true in light of PPL's witness' admission that shopping levels, which PPL has contended are the source of the forecast/calculation difficulties, seem to be stabilizing and that there is not a foreseeable change to those levels. TR 67:7-13. In short, PPL has neither advanced a plan that is in the public interest, nor carried its burden of proving a need for the proposal, let alone that it will benefit anyone other than PPL.

For all of these reasons and those discussed below and in DES' Main Brief, PPL's Amended Petition must be denied, in its entirety, and with prejudice.

III. Reply Argument

A. **Contrary to PPL's Argument, the RR and CTR are not authorized by Statute, are contrary to the Commission's Regulations, and have been proven to be Anti-Competitive.**

1. **Migration Riders are not authorized by statute.**

Beginning on page 15 of its Main Brief, PPL launches its claim that the RR and CTR are permissible even without statutory authorization. It begins with a reference to the natural gas markets, where the Commission previously approved migration riders without statutory authorization. *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, et al.*, Docket No. R-00973928C00001, 1998 Pa. PUC LEXIS 199 (August 24, 1998). The statute has since been changed, 66 Pa. C.S. § 1307(f)(6), and still applies only to natural gas markets. Accordingly, the *Peoples* case now stands for the proposition that the Commission once supported migration riders in the natural gas industry as a matter of policy.

With the benefit of the passage of time, however, it is obvious that the Commission's historic policy choice was a bad choice. The significant evidence introduced by Mr. Butler proves that migration riders and the failure to recover all default service costs in the price to compare, in the natural gas industry, since that time, have been largely responsible for low shopping levels in that industry, and have caused customers to be subjected to consistent underpricing that not only causes customers to pay six (6) percent interest on significant under-recoveries; it also distorts price comparisons for customers seeking to shop for natural gas, by hiding up to 10% of the cost of gas in a charge other than the price to compare. DR St. No 1, 11:20-12:4. The Commission appears to also have recognized the negative aspects of migration riders and has promulgated regulations that will remedy at least part of the problem by requiring

that e-factor be recovered as part of the price to compare, and asking natural gas utilities to reduce the length of time over which the recover migration rider charges. *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)).

If one looks to the natural gas industry as a source of precedent for migration riders, one cannot ignore the fact that migration riders are expressly authorized by statute for that industry, and that such riders have been abused, in result if not by actual intent, by natural gas distribution companies to the detriment of customers and competitors and that the Commission is seeking to remedy at least one of the significant negative features of such riders - that they collect natural gas charges apart from the price to compare. DR St. No. 1, 11:20-12:4. A migration rider is not the panacea PPL portrays it to be, it is more like Pandora's box, where the solution will be worse than the "problem". In short, PPL's reliance on case law from the natural gas industry provides no support for its contention that the Commission could impose such a rider here, even without authorization.

2. PPL's proposed RR and CTR are Contrary to the Commission's Regulations.

PPL's Main Brief ignores completely very real fact that these types of charges, RR & CTR, are contrary to the Commission's regulations. The RR would collect default service costs from customers who are not receiving default service and would likewise excuse default service customers for paying for the true cost of that service. These two elements run counter to the requirements of 52 Pa. Code § 54.187, which requires that all default service costs be recovered in the PTC and that the PTC be charged only to default service customers.

It may be true that PECO was able to extract the right to file a migration rider through a settlement, but it also is true that it has not yet filed to impose such a rider, and that the parties retain the right to challenge that filing when made. *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket P-2008-2062739 (June 2, 2009). It also is true the RR and CTR are not authorized by statute, a concept never addressed by the Commission in its order.

3. PPL's RR and CTR are anti-customer and anticompetitive.

PPL's RR would allow PPL to lure shopping customers back to default service with default service rates that appear to be lower than they would otherwise, largely because PPL would excuse the returning customers from paying the RR upon return, and then trap the customers by imposing the RR charge if the customer sought to return to shopping when the temporary "bait" is eliminated. By not charging returning customers the full cost of default service, PPL causes those costs to be borne by others - those that choose to shop. This perverse incentive creates winners and losers where today there are none; customer who shop pay suppliers for energy while they receive that energy from the supplier, and those that do not shop, pay PPL for the energy they use while on default service - the way customers expect to pay for every other service. In this case, the winners, temporarily at least, are the returning customers, and losers are customers who choose to shop. DR St. No. 1, 3:21-4:5.

PPL has proposed is to change the present dynamic, that customers clearly understand, without a good reason as to why the changed dynamic is necessary to address PPL's inability to properly forecast default service costs and the resulting rates. PPL can't explain, because there is no logical explanation other than that PPL wants to have less shopping, causing PPL's claims of competitive neutrality to ring hollow. Likewise, Mr. Kleha's unsupported claim that customers

are confused by the current scheme is clearly contradicted by the very real fact that large numbers of PPL's customers have shopped and apparently were not confused. In short, PPL offers no hard evidence to support any of its claims, and that lack of proof is very apparent. Unsupported speculation about what customers do or do not understand, when contradicted by evidence of the customer's actual behavior, simply cannot win the day.

At bottom, and as more fully discussed in DES' Main Brief, PPL's proposals are not authorized by statute, are contrary to the express requirements of the Commission's Regulations and would constitute anti-competitive and anti-customer policy. Accordingly, they must be rejected.

B. Contrary to PPL's Argument, it has the singular obligation to prove that its proposal is in the public interest.

Beginning on page 28 of its Brief, PPL criticizes the other parties for failing to "present an alternative plan that permits full cost recovery". This statement is factually false and an incorrect statement of the law. PPL bears the burden of proof, without question. 66 Pa. C.S. §§ 315(a) & 332(a). PPL's proposal is provably false, because other alternatives were presented. More insidious, however, is the insinuation that the other parties bear any responsibility whatsoever to provide an alternative to PPL's plan, when at least from DES's perspective, there is no agreement that PPL's situation is a problem in the first place. That is, DES has made it clear that PPL's proposal is a bad solution in search of a problem. DR St. No. 1, 3:21-23.

Mr. Butler stated that the main reason for PPL's problems is its own inability to forecast and compute the appropriate rates. DR St. No. 1, 3:31-6:6. Mr. Butler states that if PPL were to fix its problems and its computation of the default service rates on a going forward basis, then in his view the existing mechanisms would adequately and reasonably allow PPL to recover its

default service cost and would not harm competition. *Id.* Moreover, it is clear that the burden is on PPL to prove that its plan is reasonable, not for the other parties to present alternative plans that PPL might deem to be worthy. 66 Pa. C.S. §§ 315(a) & 332(a). It appears that PPL is arguing that its proposal is “the best idea that we could come up with, and if the other parties can’t come up with anything better, the Commission should adopt our plan since we think we have a problem that must be fixed.” PPL makes this argument despite the fact that its plan is fatally flawed, and despite the fact it has failed utterly to support any positive outcome - any benefit to any constituency other than PPL of course - if its plan were to be approved.

As Mr. Butler has suggested, perhaps PPL should go back to the drawing board and try to solve its problems with its current process rather than seeking to impose processes that will harm others. DR St. No. 1, 4:19-21. It should not be overlooked that Mr. Butler and others did indeed present proposals to address PPL’s concerns, with Mr. Butler, in particular, making it clear that the best solution was for PPL to fix its process, not to impose additional measures that will harm customers and competitors alike. DR St. No. 1, 3:16-18.

In what appears to be a further attempt at misdirection, PPL contends that the arguments raised by other parties, including DES, that PPL’s proposals are “anticompetitive” or will not adequately promote retail competition are flawed. PPL suggests that the suppliers only look at only retail competition and fail to consider default service rate volatility and PPL’s need to ensure that it recovers its default service costs. Not only does PPL’s argument put the cart before the horse by suggesting that suppliers are somehow incorrect to say that what PPL has proposed is not in the public interest because it will harm competition and customers, but it again criticizes other parties for not coming up with a plan that addresses PPL’s concerns - which for DES are not valid concerns at all. DR St. No. 1, 3:16-18. To the contrary, DES’ proposal to address

PPL's concerns would permit PPL to fully recover its costs, but it would put the responsibility on PPL to improve its calculation and forecasting of the rates in the first instance. DR St. No. 1, 5:16-6:6. As Mr. Butler said time and again, the over/under collections are due largely to PPL's inability to accurately forecast the cost and develop the rates under its current process.

Because PPL cannot refute the fact that its proposal is anticompetitive and anti-consumer, it focuses on its desire to improve its income at the expense of competition, apparently contending that its right to recovery trumps all other concerns, even if its recovery problems are the result of its own failure. PPL has offered no rationale to support its criticism that suppliers and others "fail to provide any comparative analysis or constructive alternatives". The fact is, they don't have to. PPL must prove its case, the fact that the other parties proved that PPL's proposal is not in the public interest, makes it even clearer that PPL's plan must be rejected.

C. DES has shown that PPL's forecasts and rate setting are flawed.

Mr. Butler made it clear that PPL's process for forecasting and setting rates is flawed. DR St. No. 1, 5:16-6:6. While it may be true that NERA does play a role in the process, Mr. Butler's observations address the results of that process and are independent of the actors who perform it. DR St. No. 1, 11:8-23. As Mr. Butler pointed out, if he were to develop his retail rates as PPL does, he would soon be out of business, yet PPL, through its reconciliation process, seeks further insulation from its lack of rigor. TR 142:18-143:10. This also applies to PPL's argument (Main Brief pg. 35) where it suggests that excluding the RR and CTR from the price to compare will make it more accurate. This bald statement is contrary to the facts and contrary to the Commission's current policy in the natural gas market, and the requirements of its regulations, that all costs of default service be recovered in the price to compare. *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)). Hiding a substantial portion of the costs of default supply in various Riders does not help customers to accurately compare default service rates and competitive offers, it merely hides the ball. DR St. No. 1, 12:1-4. PPL has presented absolutely no evidence to suggest that the present inclusion of the e-factor in the price to compare has hindered shopping in the electricity market. In fact the converse is true, the comparison of shopping statistics as between electricity and natural gas makes it clear that the hidden e-factor there must have some negative impact. All of this ignores the fact that the root of this problem is PPLs forecasts and ratemaking - not shopping, not customers, not the market.

D. PPL's proposal is neither balanced nor competitively neutral.

Beginning at page 38 of its Main Brief, PPL suggests that DES's evidence regarding migration riders is speculative and conclusory. The simple reason for this attack is likely to be that PPL has no plausible response. Mr. Butler has been involved in the natural gas industry for many years and has experienced the negative impacts of migration riders first hand, as he discussed in his testimony. DR St. No. 1, 11:20-12:4. His views are based upon experience, and are accurate. The fact that PPL makes its conclusory attack and then moves on to accuse DES of not making any alternative proposals simply highlights the palpable lack of substance in PPL's position that its riders are not anti-competitive.

PPL then makes an attempt to argue that promoting competition is not the only goal of the *Electricity Generation Customer Choice and Competition Act*, 66 Pa. C.S. § 2801, et seq, and that rate stability is at least an equivalent countervailing goal. This approach is a *non-sequitur*, the two concepts are not mutually exclusive as PPL suggests. While it is true that the proposed

RR and CR would harm customers and harm competition, and are not in the public interest, that does not mean that there is no result that allows PPL full recovery that can pass the public interest standard. Mr. Butler believes the current approach does just that. TR 142:18-143-2. However, repeatedly stating that it has a right to recover its costs no matter who else suffers, does not advance the argument. Simply stated, PPL's right to recovery comes with the legal requirements of the Commission's regulation and the overall requirements of the Public Utility Code that every rate be just and reasonable and that rates not be unduly discriminatory. 66 Pa. C.S. §§ 1301, 1304. PPL's failure even to acknowledge the existence of these requirements that is perhaps the reason for its difficulty. DES has proposed a reasonable solution and it should be adopted.

E. The OSBA's Argument, regarding Mr. Butler's evidence, is not credible.

On page 16 of its Main Brief, the Office of Small Business Advocate attacks Mr. Butler's evidence that Natural Gas Distribution Companies ("NGDC") have consistently underpriced natural gas service to customers at the expense of competition. As the basis for this attack, OSBA relies on the testimony of Mr. Knecht, who admitted on the stand that he had not reviewed any historic data, and had rather looked only at the current PGC data for a few other NGDCs. TR 137:10-138:16. This cursory review, by Mr. Knecht's own admission, is not comparable to the historic review undertaken by Mr. Butler, and cannot reasonably challenge Mr. Butler's conclusions. TR 137:10-138:16. Accordingly, OSBA's conclusion that Mr. Butler's evidence is not "strong" is not credible and should be disregarded.

IV. Conclusion

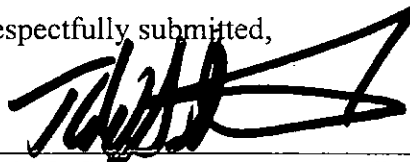
For all of the reasons presented here, and in its Main Brief and its Testimony, DES submits that PPL's proposal must be DENIED.¹ There simply is no basis in law or fact to do otherwise. PPL's arguments are not supported with facts, but rather with bald speculation, which is at times internally inconsistent, and are contrary to law. Submitting an obviously anti-competitive, anti-customer proposal, seeking to implement mechanisms that have been shown in other markets to harm competitive markets, and suggesting that that the Commission should adopt it even with its obvious flaws, because the other parties have not presented anything better, is legally incorrect and reflects an obvious lack of respect for the forum and the parties. PPL's "we want what we want" approach cannot be rewarded in light of its obviously deficient case.

DES has presented clear evidence that migration riders are market killers. It has presented evidence that recovering default costs outside of the price to compare is a market killer. It has shown clearly and convincingly that the "volatility" about which PPL complains is manageable within PPL's existing process, and is largely the result of PPL's own lack of sound process. PPL does not answer these arguments, it attacks the messenger. The fact is that PPL's proposals are deeply flawed and must be rejected. PPL's proposal would create new winners and new losers, would upend the competitive balance, for no good reason, and are *not* needed.

¹ The fact that DES has not addressed a particular argument in PPL's Main Brief, or the Main Brief of others is not intended to suggest that DES agrees with any position therein.

WHEREFORE, DES respectfully requests that PPL's Petition be DENIED in its entirety.

Respectfully submitted,



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Dated: January 23, 2012

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CERTIFICATE OF SERVICE

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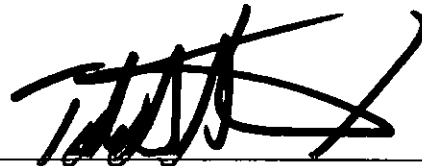
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