

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTION  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: April 24, 2012

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## I. INTRODUCTION

On August 3, 2011, PPL Electric Utilities Corporation (“PPL” or “Company”) filed a petition with the Pennsylvania Public Utility Commission (“Commission”) seeking approval to implement a cost recovery mechanism related to transmission service and generation supply service. Entitled *Petition for Approval to Implement a Reconciliation Rider and Competitive Transition Rider for Default Supply Service*, this petition sought to establish a Reconciliation Rider as its mechanism to refund over-collections or recover under-collections from customers who were default service customers at the time of the over or under-collection. On August 25, 2011, PPL filed its *Amended Petition for Approval to Implement a Reconciliation Rider and Competitive Transition Rider for Default Supply Service* (“Amended Petition”). The Amended Petition added a Competitive Transition Rider (“CTR”) as a temporary non-bypassable rider that would serve as the mechanism to refund, or recover, over-collections or under-collections in existence on the effective date of the proposed Reconciliation Rider (“RR”).

Consistent with its duty to represent the public interest in matters before the Commission that have an impact on rates, the Bureau of Investigation and Enforcement (“I&E”) filed its Notice of Appearance indicating its participation in this proceeding on August 25, 2011. The Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement and Answer on August 18, 2011. On August 23, 2011, the Office of Consumer Advocate (“OCA”) submitted its Notice of Intervention and Public Statement. In addition, Dominion

Retail (“Dominion”), the Retail Energy Suppliers Association (“RESA”), the PPL Industrial Customer Alliance (“PPLICA”) filed Answers to the original or Amended Petition while Richards Energy Group (“Richards”) and Wal-Mart Stores East, L.P. and Sam’s East, Inc. (collectively “Wal-Mart”) filed Petitions to Intervene.

The filing was assigned to the Office of Administrative Law Judge (“OALJ”) for the purpose of conducting Evidentiary Hearings and the preparation and issuance of a Recommended Decision. The OALJ subsequently assigned Administrative Law Judge (“ALJ”) Susan D. Colwell as the presiding officer.

On October 3, 2011, PPL submitted the Direct Testimony of its expert witness. A Prehearing Conference was held on October 5, 2011, at which time a procedural schedule was developed. The procedural schedule included filing dates for Testimony, Main Briefs and Reply Briefs as well as dates for an Evidentiary Hearing. The Prehearing Conference also resulted in the modification of the Commission’s Discovery Rules.

The Evidentiary Hearing in this proceeding was conducted on December 6, 2011 and included the presentation of evidence and cross-examination of witnesses. In anticipation of litigation, I&E had preliminarily identified and served the testimony of its expert witness. The I&E testimony submitted in this proceeding includes Direct Testimony and Surrebuttal Testimony identified as I&E Statement Number 1 and I&E Statement Number 1-SR respectively. In addition, OCA, OSBA, Dominion, Richards, RESA, Wal-Mart and the Company all offered testimony into

the record. This proceeding also includes Cross-Examination exhibits that were offered and entered into the record at the December 6, 2011 Hearing.

Main Briefs were submitted on January 9, 2012 by I&E, the Company, OSBA, OCA, Dominion, RESA, PPLICA, Richards and Wal-Mart. Reply Briefs were submitted by interested parties on January 23, 2012. As presented in its Main and Reply Briefs, 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.<sup>1</sup> Furthermore, satisfaction of the burden of proof in proceedings brought before the Commission requires the presentation of substantial evidence. Substantial evidence has been defined as "...that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup> I&E opines that this burden has not been met.

The Recommended Decision of Administrative Law Judge Susan D. Colwell was issued on April 4, 2012. I&E hereby files this timely Exception to certain findings and recommendations of the presiding Administrative Law Judge.

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1 66 Pa. C.S.A. § 1301.

2 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).

## II. EXCEPTION

### **The Determination That the Time Of Use Option Available For Selection by PPL Electric Utilities Corporation's Customers is Default Service is Not In The Public Interest and Must Be Rejected.**

OTS Main Brief, pp. 7-10.

OTS Reply Brief, pp. 4-7.

Recommended Decision, pp. 44-47.

The characterization of PPL's optional Time of Use Program as Default Service is contrary to the public interest and must be rejected. Acceptance of the premise that a default service customer can choose an alternative program, yet still be considered a default service customer is contrary to the long recognized characteristics of a utilities obligation to serve. Accepted definitions of default include a level of inaction by a party. The Recommended Decision in this proceeding serves to inappropriately narrow the regulatory definition of being provided default service as being based solely on the lack of the selection of an alternative supplier. This narrow interpretation overlooks the fundamental nature of customer control of their electric service. It is only through an affirmative action that PPL's Time of Use Program may be utilized. Simply returning to PPL for service for whatever reason does not make a customer a Time of Use customer. As the record evidence supports, inaction on behalf of a returning customer results in service through the Company's Default Service obligation. I&E maintains that the fixed rate option as presented in the Company's published Price to Compare satisfies this obligation and represents the Default Service provision as provided

for in the Public Utility code. The differentiation between default service and alternative service is illustrated in the record by the following exchange excerpted from the transcript during the I&E cross-examination of PPL witness Joseph M. Kleha. During cross-examination, PPL witness Kleha clarified the resulting distinction based on action versus inaction in the following comments:

Q. If a customer reverts to default service, you just mentioned that they must choose time of use if they care to be served under that program; is that correct?

A. Well, it's an optional activity. You can either be a fixed price default service customer as residential or you could be a time of use default service customer as residential.

Q. But I believe we've established that customers reverting to PPL for default service are served under the fixed rate option; is that correct?

A. Most customers are, those who did not choose to be time of use customers.

Q. So phrased another way, if I do nothing and I come back to PPL, I'm on the fixed rate?

A. You will be asked whether you want to be on the fixed rate or the time of use rate.

Q. Okay. Again, if I do nothing, what am I served under?

A. Well, you would be served at default service if you didn't answer the question.

Q. And that default service would be - -

A. That would be fixed price.<sup>3</sup>

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3 Transcript, p. 42.

I&E cautions that the distinction between the definition of a default service provider and default service must be fully understood. PPL is clearly a default service provider. Furthermore, I&E does not dispute that PPL fulfills this statutory obligation. However, mere status as a default service provider does not mean that any, and all, service alternatives are default service. Alternative programs do not meet the classic definition of default service and should not be recognized in the same manner. In the instant proceeding, PPL's Time of Use program fits the definition of an alternative service better than it does that of default service.

The presiding Administrative Law Judge's reliance on the PECO proceeding<sup>4</sup> is unwarranted as that proceeding is readily distinguishable. As argued in the I&E Reply Brief, the cited proceeding addressed the issue of whether shopping customers should absorb any of the costs to implement PECO's Dynamic Pricing Plan. In this particular proceeding, the issue centers on PPL's ongoing program and its characterization within the Company's tariff. Recovery concerns in this proceeding do not include the startup costs experienced by every Electric Distribution Company that was mandated to offer this service through Act 129. We are now reviewing the efficacy of an established alternative price plan. The issue of whether any of the costs of the alternative program should be assigned to shopping customers was not the focus of the I&E investigation. As

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<sup>4</sup> *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, Order Entered April 15, 2011.

such, no opinion was offered in this proceeding. 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.<sup>5</sup> 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.

I&E maintains that the presiding Administrative Law Judge's determination that the similarities between PPL's default service offering and its optional Time of Use program outweighs the differences<sup>6</sup> is not supported by substantial evidence. Furthermore, the statement that PPL "is required to implement the TOU program as part of the default service program"<sup>7</sup> ignores the distinction between default service providers and default service. In order to accept the premise that an alternative based on an affirmative choice by a customer can be considered the same type of service as that based on no action by a customer it must be assumed that every offering by a default service provider is default service. I&E maintains that the Public Utility Code does not explicitly support that premise. Although the

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5 I&E Reply Brief, pp. 5-6.

6 Recommended Decision, p. 47.

7 Id.

Public Utility Code mandates that default service providers shall offer Time of Use rates, it is noteworthy that this provision was not included in the revised obligation to serve section.<sup>8</sup> The fact that PPL offered an alternative option in accordance with the Public Utility Code does not mean that this option is default service. As stated throughout this proceeding, the Time of Use program offered by PPL requires an affirmative choice by customers. This choice is no different than using an alternative supplier. As the evidence in this proceeding has demonstrated, over 22,000 customers made the choice to enter the Time of Use program offered by PPL.<sup>9</sup> Approximately 19,000 customers subsequently made the choice to exit the program. I&E maintains that these characteristics are more representative of alternatives available to customers and the classification of the Time of Use program as default service is in error.

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8        *See*, 66 Pa. C.S.A. §§ 2807(e), 2807(f).

9        *See*, I&E Main Brief, p. 11, citing PPL Statement No. 1-R and the Transcript.

### III. CONCLUSION

For the reasons set forth herein, the Bureau of Investigation and Enforcement respectfully requests that the Commission grant the aforementioned Exception to the Recommended Decision of the Administrative Law Judge and recognize that Time of Use Programs are optional services offered by Electric Distribution Companies and are not Default Service as represented by the Price to Compare.

Respectfully submitted,



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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exception** dated April 24, 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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