



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF SMALL BUSINESS ADVOCATE

April 24, 2012

**HAND DELIVERY**

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 (9) copies of the Exceptions, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties.

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: Cheryl Walker Davis  
Office of Special Assistants

Robert D. Knecht

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: April 24, 2012

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## **I. INTRODUCTION**

On August 3, 2011, PPL Electric Utilities, Inc. (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a petition seeking authorization to implement a Reconciliation Rider (“RR”) related to the transmission service and generation supply service that the Company provides to its default service customers. 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.<sup>1</sup>

The Office of Small Business Advocate (“OSBA”) filed an Answer to that petition on August 18, 2011. Answers were also filed by Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”); the Retail Energy Supply Association (“RESA”); and the PP&L Industrial Customer Alliance (“PPLICA”). The Office of Consumer Advocate (“OCA”) filed a Notice of Intervention on August 23, 2011. The Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance on August 24, 2011. Richards Energy Group, Inc. (“REG”) filed a Petition to Intervene on August 29, 2011.

PPL subsequently filed the Amended Petition on August 25, 2011, which superseded and replaced the petition filed on August 3. The Amended Petition added a proposed Competitive Transition Rider (“CTR”) to the originally proposed RR. According to PPL’S Amended Petition, 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 to all distribution customers, shopping and non-shopping.

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<sup>1</sup> PPL Amended Petition at 2.

Administrative Law Judge (“ALJ”) Susan J. Colwell was assigned to this proceeding. The Commission issued ALJ Colwell’s Prehearing Order on August 31, 2011. The Prehearing Order stated that the deadline for filing petitions for intervention and protests was September 14, 2011, and that prehearing memoranda were to be filed by September 30, 2011. The OSBA and Dominion timely filed answers to the Amended Petition on September 14, 2011. RESA filed a Petition to Intervene on September 14, 2011. PPLICA filed an answer to the Amended Petition on September 19, 2011. On September 23, 2011, Wal-Mart Stores East, L.P. and Sam’s East, Inc. (“Walmart”) filed a Motion for Leave to Intervene Out-of-Time and Petition to Intervene.

A prehearing conference was held on October 5, 2011, 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.

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.

The OSBA submitted a Main Brief and Reply Brief in this proceeding on January 9, 2012 and January 23, 2012, respectively.

ALJ Colwell issued a Recommended Decision (“RD”) on May 4, 2012.

The OSBA submits these exceptions in response to the RD.

## II. EXCEPTIONS

**Exception No. 1: The ALJ erred by not finding that the interest rates proposed by PPL on under- and over-collections (6% and 8%, respectively) should be reduced to more closely align with capital market conditions. (RD, at 54)**

The ALJ concluded that the interest rates proposed by PPL on over- and under-collections are consistent with the Commission’s regulations. The regulations provide, in pertinent part:

A DSP [default service provider] may collect interest from retail customers on the recoveries of undercollection of default service costs at the legal rate of interest. Refunds to customers for over recoveries shall be made with interest, at the legal rate of interest plus 2%.<sup>2</sup>

Given that the legal rate of interest is 6%, this means that the regulations provide for applying an interest rate of 6% on under-collections and 8% on over-collections.

The ALJ stated, “Without evidence of wrongdoing on the part of the Company in figuring the [interest] rates [on over- and under-collections], there is no support for

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<sup>2</sup> 52 Pa. Code §54.187(f).

applying any interest rate other than that already required by the Commission's regulations." RD at 54. In effect, the ALJ concluded that the only circumstances that would justify a departure from Commission regulations are those in which the Company was guilty of some wrongful action. The OSBA respectfully disagrees. The ALJ did acknowledge, however, "that the Commission itself may justifiably reach another conclusion." RD at 54. The OSBA agrees. To the extent that Commission regulations can distort incentives, create a potential windfall for DSPs, and distort competition, the OSBA submits that waivers to those regulations should reasonably be granted.

The OSBA's concern is that the Commission's regulations allow PPL to collect interest on under-collections at a rate of 6%, which exceeds both the earnings rate that PPL can achieve on short-term investments and the Company's short-term cost of capital.<sup>3</sup> This interest rate creates an economic incentive for PPL to under-collect rather than to over-collect costs.<sup>4</sup> Moreover, to the extent that a migration rider is in place, this incentive to under-collect could also create a competitive disadvantage for electricity generation suppliers ("EGSs"), because PPL could set default service prices on the lower end of the expected range of costs, with the confidence that it would be able to recover those costs in the future in the Reconciliation Rider without any fear of customers shopping and avoiding reconciliation charges.<sup>5</sup>

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<sup>3</sup> OSBA Statement No. 1 at 8-9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Further exacerbating the problem is that the Commission's regulations provide that refunds for over-collections be made with interest at 8%. With a punitive rate of 8% for over-collections, PPL would have an even greater incentive to under-forecast costs.<sup>6</sup>

To avoid creating such an incentive, the OSBA argued in this proceeding that the interest rate should be indexed to capital market conditions, rather than a fixed rate like the legal rate of interest.<sup>7</sup> The OSBA recommended that PPL set the interest credit it earns on its under-collections to an amount that approximates the Company's earnings on short-term deposits, and set the interest rate that it pays on over-collections at something approximating the short-term cost of capital.<sup>8</sup> Specifically, the OSBA suggested that the interest rate paid on over-collections be based on a published bank prime lending rate, and the interest earned by PPL on under-collections be set at 200 basis points below the prime bank lending rate.<sup>9</sup>

It is understandable that the ALJ would be reticent to make a finding that directly contradicts the Commission's regulations. The RD did note, however, that "Presently, there is little opportunity to recoup 6% from conventional financial institutions" and that the legal interest rate "is a regulatory windfall for EDCs."

The RD went on to conclude that although there is "an opportunity for abuse" by EDCs, "the regulatory environment should provide oversight for the ratemaking process, and all of the statutory advocates are encouraged to watch all of the EDCs carefully to ensure due diligence." Rather than charge the statutory advocates with further oversight,

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<sup>6</sup> OSBA Statement No. 3 at 5.

<sup>7</sup> OSBA Statement No. 1 at 9.

<sup>8</sup> *Id.*

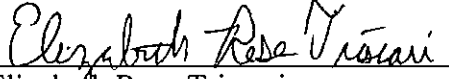
<sup>9</sup> *Id.*

it would be more efficient to simply remove the incentive by aligning interest rates with capital market conditions.

### **III. CONCLUSION**

Wherefore, the OSBA respectfully requests that the Commission waive the interest rate requirements of Section 54.187(f) and adopt interest rates in accordance with the OSBA's recommendations.

Respectfully submitted,

  
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Dated: April 24, 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 Exceptions, 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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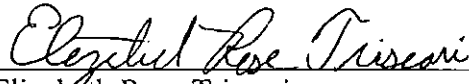
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