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April 24, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Exceptions along with the electronic filing confirmation page with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Susan Colwell, w/enc.
Cert. of Service w/enc.
Office of Special Assistants (CD only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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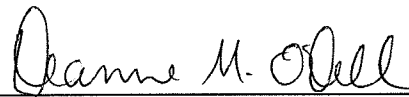
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Dated: April 24, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

Adopting the March 1, 2012 Recommended Decision (“RD”) of Administrative Law Judge Susan D. Colwell (“ALJ”) to impose default service reconciliation costs on shopping customers who have chosen competitive generation supply would be – as stated in the trade presses – a “stomach punch”¹ from a Commission which has been actively working toward implementing improvements “to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”² Of the eight total parties that intervened in this proceeding, only one – the Office of Small Business Advocate (“OSBA”) – supports the Reconciliation Rider (“RR”) proposed by PPL Electric Utilities Corporation (“PPL”) based on cost causation principles. All of the electric generation suppliers (“EGS”) oppose the RR and each of them presented significant testimony explaining why the RR is an illegal bad idea that will most assuredly harm the development of retail competition in the electricity market. Despite all of this, the ALJ incredulously states that “it is difficult to see how this mechanism can be harmful to competition,” that application of the RR should be “no more confusing than figuring out which EGS” to select, and that the EGSs and the Office of Consumer Advocate (“OCA”) only want to include the reconciliation impact in the Price-to-Compare (“PTC”) because – based on past trends – doing so will “artificially inflate” the PTC and encourage increased shopping.³

¹ “Stomach Punch: Recommended Decision to Subject Shopping Customers at PPL to Migration Rider,” Energy Choice Matters (April 5, 2012), which is available at: <http://www.energychoicematters.com/stories/20120405a.html>.

² *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 Order entered April 29, 2011 at 2, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 Order entered March 8, 2011 at 46.

³ RD at 31, 36.

Beyond lacking factual and/or legal support, these statements and the recommendation of the RD to adopt the RR completely disregard the Commission’s statutory obligations pursuant to the Electricity Generation Customer Choice and Competition Act (“Competition Act”)⁴ and everything the Commission has done and continues to do – particularly in the last year – to meet its statutory obligations. Thus, for the reasons set forth in these exceptions, the Retail Energy Supply Association (“RESA”)⁵ urges the Commission to act immediately and decisively to reject the RD and PPL’s petition so that it can get back to focusing on how to constructively achieve all the laudable pro-competition goals it has set regarding the competitive retail electricity market.

In fact, no other conclusion is legally supportable. As explained below in Exception Number 1, the RR cannot be implemented because it is illegal. The RR would be applied differently to new customers and shopping customers returning to default service despite the clear statutory requirement that new customers and returning customers be treated “exactly” the same.⁶ Although the ALJ correctly identified this issue as a “fatal flaw” in PPL’s original proposal to apply the RR to new customers, she did not consider how the “fatal flaw” remains despite PPL’s modification to exempt new customers from the RR. Just like PPL’s original proposal, PPL’s “revised” approach applies the RR to shopping customers returning to PPL depending on how long they shopped. For new customers, however, PPL now proposes to exempt them from applicability of the RR. Therefore, just like the original proposal, PPL will be

⁴ 66 Pa. C.S. § 2801, et. seq.

⁵ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁶ 66 Pa. C.S. § 2807(e)(4).

treating shopping customers differently than a person initiating service for the first time. While the clear illegality of PPL's proposed RR should have ended this case with a rejection of the petition,⁷ there are numerous other reasons why the ALJ erred in recommending approval of PPL's proposed RR.

As explained in Exception Number 2, even if the proposed RR were legally permissible (which it is not), the ALJ erred in concluding that PPL presented sufficient evidence to justify its implementation. In reality, PPL failed to present any evidence showing why the current bypassable mechanism is insufficient and why it would be insufficient in the future. As the Commission is specifically addressing reconciliation issues in the context of the Retail Markets Investigation with the input and suggestions from all interested stakeholders, adopting PPL's proposed RR here serves no useful purpose and threatens to unfairly prejudice that process.

As explained in Exception Number 3, requiring all customers (except new ones) to bear the impact of PPL's reconciliation violates the Competition Act as well as the Commission's regulations and policies which require all the costs of default service to be reflected in default service rates so that these costs are borne by default service customers. In the RD, the ALJ appears to advocate ignoring these statutory requirements based on: (1) her belief that PPL's proposed mechanism better addresses cost causation concerns; and, (2) the impact of the RR will improperly "benefit" competitors -- by increasing the PTC. These unfounded "beliefs" are not only misguided but cannot be permitted to circumvent the plain requirement that all identifiable costs associated with the provision of default service must be borne by default service customers.

⁷ The RD does correctly recommend rejection of PPL's proposed Competitive Transition Rider ("CTR") which would have provided a one-time, temporary, non-bypassable cost recovery mechanism for all balances which exist as of May 31, 2012. RD at 42-43. The CTR suffers from the same legal problems discussed herein with regard to the RR although the ALJ rejects it based on a lack of evidence to support the need for it.

As explained in Exception Number 4, the ALJ's decision to permit PPL to recover the costs of its Time-of-Use ("TOU") program from all customers through the RR must also be rejected as the Commission has already clearly determined that shopping customers may not be required to bear the costs of a TOU program that is available only to default service customers. The ALJ offers nothing to explain why a different result should be reached here.

As explained in Exception Number 5, the ALJ's attempt to support her recommendation to approve the RR by citing to the migration riders that exist for natural gas distribution companies ("NGDCs") and PECO Energy Company ("PECO") is ill-advised. NGDCs are governed by a different statutory scheme and PECO's reconciliation mechanism is fundamentally different from the one proposed by PPL. These references are neither relevant nor persuasive.

Finally, as explained in Exception Number 6, the ALJ's recommendation that the Commission adopt PPL's proposal to calculate and reconcile the reconciliation change or credit on an annual basis is unsupportable. While the ALJ states that there is no "legal bar" to the proposal and that this approach will protect default service customers from inflated default service rates, neither of these are accurate nor do they justify adopting the ALJ's recommendation.

For all of these reasons, RESA urges that the Commission's reject the ALJ's recommendation to adopt PPL's unjustified, illegal and competitively detrimental RR.

II. EXCEPTIONS

A. Exception No. 1: The ALJ Erred By Not Denying PPL's Proposed RR As Illegal Pursuant to 66 Pa. C.S. § 2807(e)(4) Because It Treats Returning Customers And New Customers Differently

PPL's proposal to apply the RR differently based on shopping status violates Section 2807(e)(4) of the Competition Act,⁸ and the ALJ erred in concluding otherwise. Section 2807(e)(4) explicitly requires PPL to treat any shopping customer who chooses to return to default service "exactly as it would any new applicant for energy service."⁹ This is an important protection that was included in the original statute in order to prevent the implementation of any switching or exit fees, minimum stay provisions or any other discriminatory device that only applied – or applied differently – to customers returning to default service after taking advantage of the competitive market. Despite this clear legal requirement, both PPL's original and revised proposals treat returning customers differently than new customers and, therefore, the ALJ's recommendation to adopt the RR must be rejected.

Initially, PPL proposed to: (1) apply the RR to all new customers; and, (2) apply it to returning default service customers depending on how long they received service from a competitive supplier.¹⁰ Subsequently, PPL revised this proposal and now wishes to: (1) fully exempt all new customers from the RR for twelve months; and, (2) apply the RR to customers returning to default service after shopping "based on the customer's status during the period immediately preceding the customer's status change."¹¹ Under either approach, new customers and returning customers are not being treated "exactly" the same. This is because the

⁸ RD at 31.

⁹ 66 Pa. C.S. § 2807(e)(4) (emphasis added).

¹⁰ PPL St. No. 1 at 20 and 23.

¹¹ PPL M.B. at 18.

applicability of the RR for returning customers in either scenario is uncertain because it is based on how long the returning customer has shopped. In contrast, the applicability or exemption of the RR to new customers is definite under both approaches. Because neither proposal applies the RR to returning customers exactly as it applies to new customers, PPL's RR violates the statute and cannot be implemented.

The Commission has already found that mechanisms which discriminate between new and returning customers violate Section 2807(e)(4).¹² In the context of its "POLR III" proceeding, Duquesne Light Company ("Duquesne") proposed to require customers returning to default service to stay with default service for one year before being allowed to move back into the competitive market. The proposed plan would have also permitted returning small commercial customers to pay a fee (called a "GRA") for the privilege of being able to freely switch to an alternative supplier at any time.¹³ In contrast, Duquesne's new customers would not have had any such restrictions as they would have been able to shop for a competitive supplier at any time and did not have to pay a fee for the privilege. In rejecting the proposal, the Commission concluded that it discriminated against returning customers because new customers did not have the same minimum stay requirements or exit fees and that "the end result may be to potentially chill the development of the competitive retail marketplace."¹⁴ Additionally, the Commission concluded that such discriminatory treatment: (1) "act[s] as barriers to the marketplace;" (2) will impose additional costs on customers due to the complexities involved with implementing discriminatory requirements; (3) will impose additional costs on the utility in

¹² *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Opinion and Order entered August 23, 2004 ("Duquesne POLR III Order").

¹³ *Id.* at 22-23.

¹⁴ *Id.* at 27.

terms of customer service costs; and, (4) will impose additional costs on the EGS in terms of administration costs.¹⁵

The proposal offered here by PPL, and accepted by the ALJ, suffers from the same legal and practical problems that the Commission identified in rejecting Duquesne's proposal. Here, new customers will be treated differently from returning customers in the applicability of the RR. While the ALJ did correctly note that this aspect of PPL's original proposal "would have been a fatal flaw," she incorrectly concluded that this "fatal flaw" was "removed as an issue" when PPL modified its treatment of new customers.¹⁶ The ALJ gives no further analysis about why or how PPL's revised proposal somehow converted the originally proposed illegal RR to a legal one. As explained above, the revised proposal suffers from the same exact "fatal flaw" as the initial proposal in that they both treat shopping customers returning to PPL differently than new customers in how or if the RR is applied. The fact that the initial proposal required new customers to be subject to the RR and the revised proposal exempts them is a meaningless change from the perspective of the statutory requirements because neither of these aligns "exactly" with how PPL proposes to treat returning customers. Ironically, the only purpose served by the change is to make PPL's default service even more attractive for new customers because they are not going to be subject to the RR while returning customers may be subject to the RR depending on their shopping status.

In conclusion, there is no record dispute that PPL's RR does not treat returning customers exactly as new customers in violation of § 2807(e)(4). The bottom line result of adopting the RD's recommendation to implement this mechanism will be to create a preference for default

¹⁵ *Id.*

¹⁶ RD at 31.

service and enact barriers to the marketplace. While there are other reasons why PPL’s RR should be rejected – both legal and practical as discussed in subsequent exceptions – rejection of the RR on this one basis alone is legally required.

B. Exception No. 2: The ALJ Erred In Determining That There Is A Current And On-Going Need For The RR (RD at 29- 31)

The ALJ concludes that PPL’s “experience with the transition from fully integrated electric company to distribution-only default service provider shows a need for the RR” and the “idea that this was a one-time problem, not likely to recur” is “pure speculation.”¹⁷ The ALJ is incorrect on both points.

First, even with the confluence of events described by PPL at the expiration of the rate caps, PPL’s reconciliation mechanism will provide it full recovery as it is currently structured. Specifically, the evidence shows that PPL currently has a net over-recovery from both the residential and the large commercial and industrial classes. As of September 30, 2011, the current over and (under) collection balances are as follows:¹⁸

	Transmission	Generation	Time of Use	Total
Residential (GSC-1)	(\$3,500,000)	\$7,400,000	(\$2,000,000)	\$1,900,000
Small C&I (GSC-1)	(\$4,700,000)	\$2,600,000	\$0.00	(\$2,100,000)
Large C&I (GSC-2)	\$6,400,000	(\$2,000,000)	n/a	\$4,400,000

While PPL is showing a net under collection for the small C&I class, it is not facing any immediate risk of not recovering these amounts because a significant number of customers in

¹⁷ RD at 29, 31.

¹⁸ Exhibit RJH-1 (PPL Revised Response to Dominion 1-2).

this class remain on default service. According to the current switching statistics, the following numbers of customers continue to remain on PPL's default service:¹⁹

	% of customers taking PPL default service
Residential	59.8%
Commercial	50.9%
Industrial	33.4%

The fact that there are a significant number of residential and commercial customers still taking default service who are able to bear the reconciliation adjustment as they do currently undercuts the ALJ's conclusion that PPL's experience justifies PPL's proposed RR. In sum, no evidence was presented to show that there is any significant future risk of non-recovery.

Although the vast majority of PPL's large commercial and industrial load is receiving generation service from a competitive supplier, the concerns PPL may have with respect to this class should not justify a competition-destroying clause applied to all other classes. Because PPL is not facing any near term risk of failing to recover its costs, the proposal to convert the reconciliation mechanism into a non-bypassable rider should be rejected.

Second, regarding the future need for the RR, even PPL acknowledged that "it is impossible to predict when future changes in the generation supply market prices. . . will occur . . . that will affect the default service customer base."²⁰ Despite the ALJ's contrary viewpoint, past experience does not justify PPL's request to change the current reconciliation mechanism on a going forward basis (through the RR). In addition, the ALJ characterizes the Commission's Retail Markets Investigation as a potential future justification for PPL's RR based on the possibility that more customers may choose to shop in the future. This, however, ignores the fact

¹⁹ Switching statistics as of April 18, 2012. Updated information available at <http://www.papowerswitch.com/>.

²⁰ PPL St. No. 1-R at 12.

that the Retail Markets Investigation process is an already established process wherein the reconciliation issues presented by this petition are to be addressed through collaboration with all stakeholders to determine the optimal approach.²¹ PPL's petition here is nothing more than an attempt to shortcut this process presumably in an effort to ensure that its preferred outcome is more likely to prevail in the context of its upcoming default service filing. As nothing on the record supports adopting the changes to its reconciliation mechanism as proposed by PPL and supported by the ALJ, the petition should be denied.

C. **Exception No. 3: The ALJ Erred In Recommending That The Reconciliation Impact Directly Attributable To The Costs Of Default Service Should Be Imposed On All Customers (Except New Ones) (RD 35-36)**

PPL's current reconciliation mechanism is applied only to default service customers. With its petition, PPL proposes to impose the reconciliation impact on all customers (except new ones). PPL does not propose to include the reconciliation impact in the PTC. The result of this is two-fold: (1) PPL is imposing a default service cost on all customers both shopping and non-shopping (except new ones); and, (2) PPL will be removing a cost to provide default service from the default service rate paid by default service customers. Based on what appears to be exclusive reliance on her interpretation of cost causation principles, the ALJ recommended that the Commission adopt PPL's proposal to require all customers (except new ones) to bear the impact of the default service reconciliation while, at the same time, expressing concerns about the fact that not all the costs of default service will be reflected in the default service rate as translated into the PTC.²² The ALJ's analysis is flawed for a number of reasons. First, the ALJ

²¹ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011 at 54-56.

²² RD at 30, 35-36.

never considers how PPL's proposed RR violates the requirements of the Competition Act and the Commission's regulations and policy. Second, the ALJ appears not to have seriously considered how or why implementation of PPL's RR will harm the competitive market. Finally, the ALJ inexplicably downplays how the proposed RR will cause unnecessary customer confusion. Each of these points is discussed further below.

1. The proposed RR illegally imposes a cost of providing default service onto all customers both shopping and non-shopping (except new ones)

The starting point for a proper analysis of PPL's proposed RR must be the requirements of the Competition Act. In this regard, the requirements are clear – all costs that can be associated with providing default service must be recognized and recovered in the default service rate which is paid by default service customers. The Competition Act expressly provides that all reasonable costs of providing default service in the post transition period shall be fully recovered by the default service provider.²³ It also requires that charges for generation, transmission and

²³

66 Pa. C.S. § 2807(e)(3.9). PPL's proposed reconciliation mechanisms should be distinguished from other instances where non-bypassable charges have been utilized. Funding universal service programs and energy conservation measures through non-bypassable charges, as specifically provided for statutorily, does not result in the same competitive harm that PPL's proposal would. First of all, these programs are public benefit programs that all customers can benefit from, if properly structured. While some universal service programs are limited to non-shopping customers, this is a matter of historical operational limitations, not a matter of preferred policy. Recovering costs of programs that all customers benefit from through non-bypassable charges does not present the same competitive harm as requiring all customers to bear the cost of default service related reconciliation. PPL's proposal should also be distinguished from some POR programs that have been approved where certain costs are funded through non-bypassable charges or embedded costs in base rates. In the case of POR in some EDC service territories, the Commission has found that it is appropriate to continue to collect uncollectible account expense through base rates. This results in an efficient use of the EDC's billing and collection system and helps place EGSs on equal footing with the EDCs in terms of bad debt expense. While ideally all bad debt expense should be removed from base rates, the continued non-bypassable treatment of these costs does not present the same competitive harm as does PPL's proposal because of the existence of the POR program. EGSs participating in the POR program avoid credit and collection costs which, in turn, benefits shopping customers. However, permitting default service related costs to be recovered from shopping customers through a non-bypassable reconciliation mechanism results in shopping customers essentially paying for generation service twice.

distribution be fully unbundled.²⁴ Consistent with these statutory requirements, the Commission's default service regulations require the default service rate to include the sum of all generation and transmission related default service costs.²⁵ While the Competition Act expressly provides for the recovery of certain costs through non-bypassable charges on all customers, there is no such express authorization for the recovery of default service costs through non-bypassable, distribution service type charges such as the riders proposed by PPL here.²⁶ The bottom line of all these requirements means that PPL is legally required to ensure that default service customers pay all the costs of related to the provisioning of default service.²⁷ With regard to the reconciliation solely attributable to default service which is the subject of this case, PPL currently satisfies these legal requirements by imposing the reconciliation only on default service customers. PPL's proposal to convert this bypassable charge to a non-bypassable charge to be paid by all customers (except new ones) completely changes the legality of the current mechanism to an illegal one. Since PPL's proposal to require all customers (except new ones) to absorb the impact of reconciliations related solely to default service is not legal it cannot be adopted despite the contrary recommendation of the RD.

²⁴ 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa.Cmwlth. 2006).

²⁵ 52 Pa. Code § 54.187(a).

²⁶ 66 Pa. C.S. § 2804(9) ("Universal service and energy conservation policies, activities and services . . . shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms. . . .") (emphasis added); 66 Pa. C.S. §§ 2808(a), 2812(a)(2)(iii) (competitive transition costs ("CTC") and intangible transition costs ("ITC")). Default service in Pennsylvania today is provided by EDCs who have not undergone full cost unbundling. Therefore, some costs – such as system-wide uncollectible costs – may be appropriately socialized. This case, however, is not about system-wide costs but rather about costs directly related to the provision of default service.

²⁷ *Popowsky v. Pa. P.U.C.*, 869 A.2d 1144 (Pa.Cmwlth. 2005), *appeals denied* 895 A.2d 552 (Pa. 2006) (PUC interpretation that 66 Pa. C.S. § 1307(g) authorizes wastewater utility to establish distribution system improvement charge violates maxim *expressio unius est exclusio alterius* (inclusion of a specific matter in a statute implies the exclusion of other matters.); *Susquehanna Area Regional Airport Authority v. Pa. P.U.C.*, 911 A.2d 612 (Pa.Cmwlth. 2006), *appeals denied* 923 A.2d 412 (Pa. 2007) (PUC's position that it has implicit power to review contract excluded from PUC review under 66 Pa. C.S. § 508 "does violence to principle *expressio unius est exclusio alterius* . . . (inclusion of a specific matter in a statute implies the exclusion of other matters.)").

2. The RR will stymie competitive market development

In addition to illegally imposing the burden of the default service reconciliation cost on shopping customers, the proposed change in applicability of the RR is illegal because it will harm the competitive market in spite of the ALJ's failure to "see" how this could be so.²⁸ As the Commonwealth Court has observed, "distribution companies perform a default service referred to as 'provider of last resort' to retail customers who decline to shop for an electric generation supplier or who have returned to their distribution company."²⁹ This default service is not provided to shopping customers and, therefore, all the costs of providing default service, including the financial risk of any distorted pricing mechanisms, should be included in the default service rate. If all the costs of providing default service are not included in the default service rate, then the default service rate will not reflect the true costs of providing default service which will hinder the ability of a truly competitive market to develop.

Having erroneously satisfied herself that the applicability of the RR to all customers is legal and not harmful to competition, the ALJ then engaged in an analysis about the inclusion of the reconciliation impact in the PTC (which would result in applicability of the reconciliation to only default service customers). In that analysis, the ALJ expressed "concern" about not including the reconciliation in the PTC although she ultimately recommends adopting PPL's proposal based on her conclusion that the reconciliation impacts since January 2012 "artificially inflated" the PTC and, therefore, the PTC was not "as accurate as possible."³⁰ In addition,

²⁸ RD at 31.

²⁹ *Green Mountain Energy Co. v. Pa. P.U.C.*, 812 A.2d 740, 742 (Pa.Cmwlth. 2002) (emphasis added), *appeal denied* 833 A.2d 145 (Pa. 2003).

³⁰ RD at 36. Despite this, however, the ALJ also recommends that the reconciliation should occur annually "in order to ensure a fair PTC." RD at 53. If the reconciliation is not included in the PTC as recommended by the ALJ, then the amount of time over which the reconciliation is applied has no effect on the PTC and,

according to the ALJ, removing the RR from the default service rate “makes sense” because new customers – who are forced to pay the default rate because they cannot choose an alternative supplier when initiating service – are exempt from the RR.³¹ In fact, the basis for this recommendation makes no sense.

While the ALJ appears to allay her own concerns based on the fact that PPL’s reconciliation impact would have increased the PTC since January 2010 (to arguably benefit competitors), this is a shortsighted view as the opposite result is just as likely and, in fact, is the entire reason why the statutory requirements are in place. In other words, an EDC that is not including all the costs to provide default service in its default service rate could be given an unfair competitive advantage to create an artificially subsidized lower default service rate with which EGSs will never be able to compete. This would be a good way to end any possibility of competitive suppliers entering its service territory. The requirement that default service costs be recovered through default service rates is intended to ensure a level playing field for retail competition and to prevent the subsidization of default service by all ratepayers. These policies properly recognize that sound retail market design requires that default service related generation related costs be fully avoidable when a customer makes the decision to shop and take generation service from a competitive retail provider.³² The ALJ’s apparent conclusion that as long as the impact of the RR “benefits” competitors it should be recovered from all customers (except new ones) is immaterial given the legal requirement that all the costs of providing default service must be recovered from default service customers.

therefore, does not ensure a “fair PTC.” Exception Number 6 at Section II.F addresses why the ALJ’s recommendation to adopt an annual reconciliation period should be rejected.

³¹ RD at 31.

³² RESA St. No. 1 at 7.

3. The RR will inject significant and unnecessary consumer confusion into the developing competitive market

The ALJ dismissed all concerns expressed about the consumer confusion that will undoubtedly occur if PPL's RR is implemented. She did this by: (1) pointing to the number of customers shopping and claiming that customers are smart enough to shop today and that PPL's proposal would be "no more confusing than figuring out which EGS will provide the best prices and contract terms;" and, (2) claiming that "the RR should make the PTC simpler and easier to understand because it will remove from the PTC all balances arising from reconciliation and will more accurately reflect the actual cost to acquire default service."³³ Both of these theories are unsupported and incorrect.

Customers shopping today based on the current market structure cannot serve as a barometer for how customers of the future will shop or understand their choices when the current structure is radically changed by the implementation of PPL's RR. Today, a customer must make a simple comparison of the per kWh price offered by an EGS and the per kWh price of PPL's PTC. If the RR is approved, the customer would have to consider the period of time they were on default service, try to figure out whether the future reconciliation impact will be a charge or a credit and consider that full cost against the price offered by an EGS.³⁴

The lag in establishing and implementing price adjustments tends to mask the current market price of electricity and will not be intuitive to customers. Notably, PPL's long-time utility regulatory expert needed to rely on several (single spaced) pages in his written testimony to describe examples of how the RR would apply in different situations.³⁵ Few, if any

³³ RD at 31-32.

³⁴ RESA St No. 1 at 10-11; RESA St. SR-1 at 6.

³⁵ RESA St No. 1 at 11.

customers, will have the time or desire to undertake such calculations.³⁶ The practical result will be that the true costs will not be communicated immediately to customers. The lag in communicating such costs to customers will, at the very least, cause more confusion. Such confusion will be driven by the distorted pricing information being made available to them by way of the PTC and a separate itemized charge.

Various studies and polling has shown that one of the major impediments to a fully competitive market is the confusion that people have about the costs and consequences of switching.³⁷ This proposal, if implemented, will only exacerbate that confusion – ironically at a time when the Commission is considering investing millions of dollars in educating consumers about choice.³⁸ Such confusion is likely to stymie retail market development in PPL’s service territory and undermine all of the Commission’s effort to ensure that a properly functioning and workably competitive retail electricity market exists in Pennsylvania.

Second, the ALJ’s view that the creation of a new and separate line item charge on a customer’s bill to assess the impact of the reconciliation will make the PTC simpler and easier to understand is flawed because the PTC – without the reconciliation impacts – will not more accurately reflect the actual costs to acquire default service supply. PPL is seeking to recover the costs of reconciliation on the theory that it is a cost incurred in providing default service pursuant

³⁶ RESA St. SR-1 at 6.

³⁷ *Id.* While efforts have been made to educate and encourage consumers to shop, the reality is that many do not for a number of reasons including: (1) lack of knowledge about retail choice; (2) concerns about reliability of service; (3) concerns about financially harming their EDC; and, (4) the misperception that switching suppliers will be difficult. *See* <http://www.puc.state.pa.us/electric/PDF/RetailMI/EnBanc111011-P-CE-CK.pdf> and <http://www.puc.state.pa.us/electric/PDF/RetailMI/EnBanc111011-P-CE-TG.pdf>

³⁸ *See Draft PA PUC Communications Staff Proposal for a Statewide Consumer Education Campaign on Electric Shopping/PAPowerSwitch.com With Input from Retail Markets Investigation Consumer Education Subgroup* dated March 13, 2012 available at http://www.puc.state.pa.us/electric/Retail_Markets_Investigation_Discussion_Documents.aspx

to Section 2807(e). As such, there can be no question that the costs – which drive the reconciliation and are then passed on to customers – are PPL’s costs of providing default service. By removing these costs from the PTC, then, PPL is removing a default service cost from the line item on the customer’s bill that is intended to reflect all the costs of providing default service. While the current reconciliation mechanism does involve a lag time between incurred charges and imposition of costs, by reflecting the reconciliation component in the PTC the current mechanism at least attempts to pass along all the costs of default service to the customer through this one line item charge. Because of this, customers today are encouraged to compare the EGS price offer to the PTC as a way to compare the two different prices they are being asked to pay for generation.³⁹ For the reasons previously explained, removing the reconciliation impact from the PTC will only complicate the ability of a customer to understand the true cost of default service to make informed shopping decisions.⁴⁰

Moreover, by directly tying the assessment of the reconciliation impact to a customer’s shopping status, the customer could clearly perceive it as an assessment of an illegal “fee” (when the reconciliation impact is a charge) related to his or her decision to shop.⁴¹ This is because a customer now receiving generation service from a competitive supplier would still be receiving a charge from PPL related to PPL’s default service that the customer previously received. Meanwhile, customers returning to default service after shopping will not have that fee assessed for some period of time while new customers will not have it assessed for a year.

³⁹ RESA St. No. 1 at 11.

⁴⁰ See RESA M.B. at 19-20 citing RESA St. No 1 at 10-11 and RESA St. No. SR-1 at 6.

⁴¹ 52 Pa. Code 54.189(e) (“A [default service provider] may not charge a fee to a retail customer for changing its generation service provider in a manner consistent with Commission regulations.”)

To claim, as the ALJ does, that PPL's RR should be "no more confusing" than current shopping decisions is illogical and unsupported by the record. On the contrary, the complications created by PPL's proposals from a consumer perspective and the varying applications of the costs of reconciliation dependent on shopping status result in a clear violation of the intent and spirit of Competition Act and the Commission's regulations and must be rejected.

D. Exception Number 4: ALJ Erred In Concluding That All Customers Should Be Required To Pay For The Costs Of The TOU Program Available Only To Default Service Customers (RD at 48)

The ALJ recommends permitting PPL to recover costs associated with its TOU programs (once the amount recoverable is determined in another pending proceeding) through the RR.⁴² The ALJ focuses on PPL's right to recovery of these costs but never offers support for her ultimate conclusion that PPL should be permitted to recover these costs from all customers through the RR. This recommendation should be rejected as the Commission has already determined that shopping customers cannot be required to bear the costs of a TOU program available only to default service customers. Moreover, from a practical standpoint, there are still a significant number of residential and small commercial and industrial customers who continue to remain on PPL's default service.

The specific question of whether shopping customers should be required to pay for the costs of a TOU program submitted pursuant to 66 Pa.C.S. § 2807(f)(5) was directly presented to the Commission in the context of PECO's dynamic pricing offerings. Like PPL's TOU program, PECO's dynamic pricing program was open only to default service customers and the

⁴² RD at 48.

Commission ultimately concluded that the costs of the program should only be recovered from default service customers and not from shopping customers.⁴³ The ALJ never discussed this Commission precedent nor did she offer any reason why she recommended deviating from it in this case. As the Commission has already squarely addressed and decided this issue, the RD's recommendation to permit PPL to recover TOU costs from shopping customers through the RR must be rejected.

Moreover, the following numbers of customers continue to remain on PPL's default service:⁴⁴

	% of customers taking PPL default service
Residential	59.8%
Commercial	50.9%
Industrial	33.4%

The ALJ never explained why the number of customers remaining on default service (as opposed to the number of customers remaining on the TOU program) is an insufficient number of customers to bear the cost of the reconciliation and, even PPL acknowledged that the number of customers choosing an alternative supplier has "stabilized."⁴⁵ There is no dispute that only default customers were permitted to participate in PPL's TOU plan.⁴⁶ Nor is there any dispute that the amount of customers currently taking default service is significantly larger than the amount of customers remaining on the TOU program.⁴⁷ Thus, for all these reasons, imposing the

⁴³ *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, Opinion and Order entered April 15, 2011 at 21.

⁴⁴ Switching statistics as of April 18, 2012. Updated information available at <http://www.papowerswitch.com/>.

⁴⁵ PPL St. No. 1-R at 12.

⁴⁶ *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric Pa. P.U.C. No. 201 Time-of-Use*, Docket Number R-2010-2201138, Order entered December 2, 2010.

⁴⁷ RESA St. No. SR-1 at 8.

costs of the TOU program on shopping customers is inconsistent with Commission precedent and unnecessary and the RD's recommendation on this issue should be rejected.

E. Exception Number 5: The ALJ Erred In Relying On Natural Gas Migration Riders And PECO's Reconciliation Mechanism (COL # 6)

In COL #6, the ALJ cited to migration riders used by NGDCs and the reconciliation mechanism in the electric tariff of PECO as support for her conclusion that the Commission has already found reconciliation mechanisms similar to PPL's proposed RR to be reasonable and appropriate.⁴⁸ This reasoning is flawed and must be rejected.

First, there is specific statutory authority permitting NGDCs to utilize migration riders that does not exist for electric distribution companies.⁴⁹ In addition, there is no specific statutory provision similar to § 2807(e)(4) that requires the NGDC to treat returning customers exactly the same as new applicants for service. Thus, the Commission's action to approve migration riders for NGDCs is not relevant for analyzing the legality of PPL's proposed RR under the Competition Act.

Second, and despite a footnote to the contrary, the ALJ relied upon PECO's default service reconciliation provision in its currently effective tariff as support for adoption of PPL's proposed RR.⁵⁰ However, the ALJ provided no explanation of how PECO's reconciliation provision works or why adoption of it in the context of the PECO default service proceeding should be relied upon as support for adopting PPL's petition. In fact, PECO's reconciliation provision is not analogous to PPL's proposal.

⁴⁸ RD at 56.

⁴⁹ 66 Pa. C.S. § 1307(f)(6).

⁵⁰ RD at 56, COL 6. The ALJ cites to PECO's rider as support for the appropriateness and reasonableness of PPL's RR even though she states in a footnote that her decision to recommend adoption of PPL's RR did not rest on this rider. RD at 19, n. 6.

Importantly, PECO's reconciliation provision, unlike PPL's proposal, is not to be "automatically" applied. The exact tariff language states:

RECONCILIATION

Applicability: This adjustment shall apply to all customers who received default service during the quarter the cost of which is being reconciled. Customers taking default service during the reconciliation period that leave default service prior to the assessment of the collection of the over/(under) adjustment shall still pay or receive credit for the over/(under) adjustment through the migration provision. **The Company shall notify the Commission and parties to the Default Service Settlement 15 days in advance of the quarterly or monthly filing if the Migration Provision will be implemented in the filing.**⁵¹

Consistent with the highlighted last sentence of the tariff language, PECO is required to notify the Commission and the parties fifteen days prior to exercising its option under the migration provision. At that time, any party would be free to seek further analysis of the impact of the migration rider on customers and the competitive market. This is in stark contrast to PPL's proposal which would automatically apply the migration provision on a going-forward basis with no established opportunity for parties – or the Commission – to address concerns prior to the damage being done.

Another key differentiating element between PECO's reconciliation provision and this case is that PECO's reconciliation provision was offered in the context of its default service proceeding which was ultimately settled.⁵² RESA is a signatory of that settlement. The reconciliation provision was just one aspect of a multi-dimensional proceeding and, while the settlement did not fully address every concern RESA raised with PECO's proposed default service plan, it represented a reasonable compromise of competing issues to justify RESA's

⁵¹ PECO Energy Company, Supplement No. 6 to Tariff Electric PA. P.U.C. No. 4, Second Revised Page No. 34 (emphasis added).

⁵² *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739, Opinion and Order entered June 2, 2009.

support. Further, by requiring PECO to notify the Commission and the parties before exercising the migration provision, RESA – and ultimately the Commission – maintain the ability to review the reasonableness of its application. This appears to have been an important element to at least Commissioner Cawley in approving the PECO default service settlement as he issued a separate statement specifically commenting:

I am disappointed that PECO has included this [migration] provision into its plan, because it is a reversion to past bad policy that we are only now getting around to correct on the natural gas side of the business. I therefore encourage the default service proceeding participants to avoid these types of retroactive billings to shopping customers for default service costs going forward.⁵³

In sum, the migration provisions of PECO's reconciliation mechanism have not been utilized and, before they are, PECO is required to give interested stakeholders and, more importantly, the Commission an opportunity to analyze whether or not the proposal should be implemented. This is in stark contrast to PPL's proposal here which will immediately apply the reconciliation impacts on all customers (except new ones) without regard for whether it is truly necessary and with no opportunity to review the factual circumstances of the market prior to implementation.

For these reasons, the RD's conclusion of law relying on the migration riders of NGDCs and PECO as support for the claim that the Commission has previously determined that reconciliation mechanisms similar to PPL's proposal have already been found reasonable and appropriate is not accurate and must be rejected.

⁵³ *Id.*, Statement of Chairman James H. Cawley dated April 16, 2009.

F. Exception No. 6: ALJ Erred In Concluding That Reconciliation On An Annual Basis Was Needed To Ensure A “Fair PTC” (RD at 53)

Under either the current or proposed reconciliation mechanism, PPL will recover its full costs. Currently, for the residential and small commercial and industrial customers, PPL recalculates – on a quarterly basis – its default service rates and performs a reconciliation of any over or under collection of its actual costs incurred to acquire generation supply.⁵⁴ Under its newly proposed RR, the reconciliation charge or credit would be calculated and reconciled on an annual basis and will be separated from the PTC.⁵⁵ In recommending that the Commission adopt PPL’s proposal to annually reconcile costs, the ALJ concludes that: (1) “there is no legal bar to it;” and, (2) doing so will “ensure a fair PTC” that does not include “unfairly inflated rates” to the detriment of default service customers who do not or cannot shop.⁵⁶ The ALJ is incorrect on both points and, therefore, her recommendation that the Commission adopt PPL’s proposal to implement an annual reconciliation should be rejected.

First, adopting PPL’s proposal will result in PPL no longer recovering costs on a full and current basis as required by the Competition Act. The statutory parameter for “current” is quarterly reconciliation.⁵⁷ Under PPL’s proposal, the PTC for residential and small commercial and industrial customers would be adjusted quarterly to reflect the expiration and renewal of underlying supply contracts and to reflect the re-calculation of future spot and block purchases.⁵⁸ But if PPL’s actual incurred default service costs turn out to be different from these projections, such variances would only be accounted for in the annual reconciliation process and recovered

⁵⁴ PPL St. No. 1 at 10.

⁵⁵ *Id.* at 19.

⁵⁶ RD at 52-53.

⁵⁷ 66 Pa. C.S. § 2807(e)(7).

⁵⁸ RESA St. SR-1 at 7.

through the RR rider separate and apart from the PTC.⁵⁹ Because of the adjustments made to correct prior estimations, it is possible that the RR may increase (causing higher end-use customer bills) at a time when market prices are falling. Accordingly, the recovery of the cost of reconciliation is not occurring on a current basis as required by the Competition Act.

Instead, PPL's proposal will send inaccurate price signals to customers and may distort customer shopping decisions because the actual default service "cost" will not be passed on to consumers in a timely way under PPL's proposal as it will be amortized over a year. Customers will not be seeing the true cost of energy on a contemporaneous basis thus distorting their perception of the market price of energy. Rather, the bottom-line amount paid by customers will be based, at least in part, on a year's worth of reconciliation data rather than the current price of energy.

The end result will be that adoption of PPL's proposal will stymie competitive retail market development. By making the reconciliation adjustment period longer than quarterly, PPL will be further divorcing the actual default service rates from the initial period where the over/under recovery occurred.⁶⁰ Default rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop.⁶¹ The Commission recognizes this by requiring that the all of the costs incurred for providing default service be recovered through a default service rate schedule.⁶²

⁵⁹ PPL St. No. 1-R at 32. According to PPL Witness Kleha, "PPL is not proposing to include over or under collection balances in the price to compare," and "the reconciliation period will not have any impact on the price to compare..."

⁶⁰ RESA St. 1 at 6.

⁶¹ *Id.*

⁶² 52 Pa. Code § 54.187(a).

In contravention of this, the proposed RR will create a distorted pricing structure that will stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately reflect market prices and costs.⁶³ Default service rates must be market-responsive and must reflect all of the relevant costs incurred by the EDC in providing default service.⁶⁴ Both of these factors are required so that competitive suppliers can compete on equal footing with the EDC's default service rates.⁶⁵ Without some rational relationship to the market, EGSs cannot price competing offers and may not enter that market. Similarly, if default rates do not fully reflect all of the costs of providing generation service (for example due to misallocated costs and cross-subsidization), then EGSs are at an unfair competitive disadvantage compared to the EDC's default service rate.⁶⁶

Simply put, if default service rates do not accurately track changes in market prices over time and include all the costs of providing default service, then the default service rate will become out-of-market.⁶⁷ This creates at best, intermittent opportunities for competitive suppliers to attract customers.⁶⁸ Such a market design is not sustainable and presents too much risk for retail suppliers to enter the market – a result which is in direct contravention of the purposes of the Competition Act and cannot be endorsed.⁶⁹

⁶³ RESA St. 1 at 6.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Second, the ALJ appears to believe that the impact of the RR will always “inflate” the PTC and such a result should not be permitted so as to “protect” default service customers.⁷⁰ However, as explained above in Exception Number 3 at Section II.C.2, reconciliation that is included in the PTC may increase or decrease the PTC. Thus, the ALJ made a flawed assumption upon which to justify her support of PPL’s proposal to annually reconcile costs.

In addition, the ALJ is recommending that the reconciliation be a charge separate from the PTC and borne by all customers (except new ones). Therefore, her conclusion that annual reconciliations somehow better protects default service customers is illogical when, as proposed, all customers (except new ones) will experience the same reconciliation impact. Thus, whether the reconciliation is done quarterly or annually is immaterial as it will have no more or less impact on default service customers v. shopping customers since it is not being paid through the PTC.

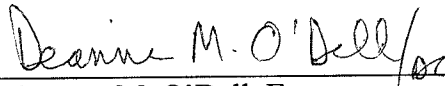
For all these reasons, the ALJ’s recommendation to adopt PPL’s proposal to calculate and reconcile on an annual basis should be rejected.

⁷⁰ RD at 52-53.

III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission grant these exceptions and issue a consistent decision which denies PPL's petition in its entirety.

Respectfully submitted,



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