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April 24, 2012

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VIA HAND DELIVERY
Secretary Rosemary Chiavetta
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 Service Supply, Docket No. P-2011-2256365; **EXCEPTIONS OF DOMINION RETAIL, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Exceptions 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
Office of Special Assistants

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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EXCEPTIONS OF DOMINION RETAIL, INC. TO RECOMMENDED DECISION

NOW COMES, Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and hereby submits its Exceptions to the Recommended Decision ("RD") of Administrative Law Judge Susan D. Colwell ("ALJ") issued April 4, 2012, in the above captioned matter. The RD would approve PPL Electric Utilities' ("PPL") proposed Reconciliation Rider ("RR") and PPL's proposal to modify its reconciliation from its present quarterly basis to an annual basis. These recommendations would produce a result that is plainly contrary to the Pennsylvania Public Utility Commission's ("Commission") Regulations, are premised on an obvious misunderstanding of the facts, are otherwise contrary to law and sound public policy and, accordingly, must be reversed.

INTRODUCTION

On August 3, 2011 PPL filed a Petition seeking approval to implement an RR and to elongate PPL's quarterly reconciliation process to an annual reconciliation. Answers to that Petition were filed by a number of parties including Dominion Retail. Shortly thereafter, on

August 25, 2011, PPL filed an Amended Petition seeking approval for the same RR, but adding a request for a competitive transition rider ("CTR") as well. Answers to the Amended Petition were also filed by various parties, including DES. DES opposed the relief requested in the original Petition, and the Amended Petition, in their entirety.

PPL's proposed RR is a migration rider, and is quite similar to what has been employed in the natural gas industry, much to the detriment of competition. DES Main Brief "M.B.", p.21. PPL's RR proposal would allow PPL to continue to recover what it describes as the market based energy costs of default service through the Price to Compare ("PTC"), but would move recovery of the e-factor to a separate surcharge known as the RR. The e-factor is the reconciliation factor that recovers or refunds the prior period over or under-collection. The second major change would be to alter the groups of customers who are required to pay the RR. Currently, only customers actually receiving default service pay the costs of the service through a unified PTC that recovers all the costs of that service, including the e-factor. The RR would collect the costs of default service from customers for up to a full year – after they switch to a competitive supplier. PPL's proposal would, conversely, excuse customers from paying the RR when they switch from a competitive supplier to default service, for up to a full year. The RR thus creates an obvious temporary incentive to switch to default service from competitive supply in the form of what will appear to be a discount to customers, and will create a disincentive to switch from default service to competitive supply, because the addition of the RR to a competitive price will make the competitive price look less competitive. DES MB, pp. 17-18. It is true that PPL has now eliminated another requirement of its proposal – to charge new customers the RR – and that change removes one obvious illegal portion of its proposal, but that change does nothing to address the other illegal and anti-competitive aspects of the RR.

PPL also proposes to increase the period over which it reconciles the RR, and adjusts the e-factor, from the current quarterly reconciliation to an annual reconciliation process. In the midst of this litigation, however, PPL agreed to a rolling twelve month reconciliation that would be adjusted every quarter but that would calculate the recovery over twelve months rather than a single quarter. This likewise violates the Commission's regulations.

PPL also proposed to implement a competitive transition rider ("CTR") that would recover previously unrecovered balances for default service, from all customers, including customers who may have shopped as early as January 1, 2010 and thus never received default service under PPL's present reconciliation process. These alleged balances vary by rate class, and in some cases are positive and some negative. In some cases these balances, if indeed any remain, resulted from customers in certain rate classes switching almost "all at once". In others PPL simply miscalculated transmission charges, or in the case of the time of use rates ("TOU") created a rate schedule that was defective. DES MB, pp. 19-20. Under its proposal, PPL would be permitted to recover these balances from all customers and thus force certain shopping customers to subsidize default service for customers going forward. The RD correctly rejected the CTR proposal.

One of the more significant balances that PPL included in its CTR proposal, are the costs associated with its TOU rates that accumulated in the first five (5) months of 2011. PPL's TOU rates for that period were 27% below market – for both on- and off-peak periods – and thus created an incentive for approximately 23,000 customers to sign up for TOU rates, and then leave before the end of the five (5) month period, thus "sticking" the remaining TOU customers with a significant unpaid balance. PPL contends that it simply calculated the rate according to the Commission Order implementing its TOU program. DES offered testimony that PPL's

calculation was negligent. Both assertions appear to be at least partially correct. That is, if the required methodology was followed, as PPL claims, and it required a TOU structure where even the on-peak rate was less than market, then the requirements were defective. DES MB, p. 19. However, PPL should have sought an exception, in DES' view, rather than implement what it knew to be a defective rate structure.

DES submits that the Reconciliation Rider is obviously illegal, in that it does not comply with the Commission's regulations which require that all the costs of default service be recovered only from customers taking default service and also that they be recovered only through the PTC. DES also opposes the RR because it will harm competition. This is no idle assertion but rather is based upon its experience with the negative effects of such riders in the gas markets for the past last fifteen (15) plus years. Dominion Retail Statement No. 1, pp. 11:20-12:4. DES also opposed the implementation of the CTR because it too would force shopping customers to subsidize default service, particularly residential service, where the unrecovered balances were minimal, if not nonexistent, and where the only significant unrecovered balance was the result of PPL's failed TOU efforts in the first five (5) months of 2011. DES believes that it would be patently unfair to force all customers to subsidize the 23,000 customers who availed themselves of this short term discounted rate structure under the 2011 TOU Rates. Finally, DES opposed the modifications to the reconciliation, not only because the changes would be contrary to the regulations and the law, but because stretching the reconciliation further magnifies the fundamental defect of reconciliation in that it disassociates the rate charged to customers from the market prices that should underpin that rate.

RECOMMENDED DECISION

On April 4, 2012, Administrative Law Judge Susan D. Colwell issued her Recommended Decision, in which she recommends that the Commission approve PPL's RR, and allow PPL to reconcile its rates over a one year period as opposed to the currently required quarterly reconciliation. The RD would not approve the CTR and would not approve the inclusion of TOU rates within the CTR.

As discussed in the numbered Exceptions below, DES respectfully submits that the RD errs as a matter of law, in that the very mechanism of the RR violates at least two provisions of the Commission's regulations. The first violated provision requires that default service costs be recovered only through the price to compare and the second that requires that default service costs only be recovered from customers actually taking default service. DES also submits that the ALJ has erred as a matter of fact in that the "factual analysis" provided by the RD clearly misapprehends the impact of the RR on shopping decisions and mistakenly concludes that the company has carried its burden of proving that there would be no harm to customers or suppliers as a result of implementing either the RR, the extended reconciliation or both. DES also submits that the extension of the reconciliation period as proposed, even with the Company's revisions, will have the same negative effects as its original proposal, and remains contrary to the Commission's regulations on reconciliation.

Exception No. 1: The ALJ erred as a matter of law in recommending approval of the reconciliation rider which plainly violates Commission Regulations. (Proposed Conclusion of Law No. 11, RD p. 57).

The ALJ suggests in Proposed Conclusion of Law No. 11 that "the Commission's regulations contemplate a reconcilable automatic §1307(e) cost recovery surcharge that is not

required to be included in the price to compare." (RD, p.57). In support for this conclusion, the ALJ cites to 52 Pa. Code § 54.187(b) and (f). This conclusion is wrong, and must be reversed.

The Commission's Regulations at 52 Pa. Code § 54.187(a) states:

> The costs incurred for providing default service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based upon the average cost to acquire supply for each customer class.

52 Pa. Code § 54.187(b) requires:

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

52 Pa. Code § 54.187(d) provides:

> The PTC shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class. An EDC's default service costs may not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, may not be recovered through the distribution rate. The distribution rate shall be reduced to reflect costs reallocated to the default service rate.

And, 52 Pa. Code § 54.187(f) states:

> A DSP may use an automatic energy adjustment clause to recover reasonable non-alternative energy default service costs. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa. C.S. § 1307(d) and (e). A DSP may collect interest from retail customers on the recoveries of under collection 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%.

Finally, 52 Pa. Code § 54.187(h) requires:

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

alternative divisions of customers by maximum registered peak load to preserve existing customer classes

There also is a statutory requirement that costs be recovered on a "current basis", 66 Pa. C.S. § 2807(e)(3.9). What is absent from the statute and the relevant regulations is any authorization for a migration-type rider that would allow default service costs to be charged to non-default service customers. Moreover the regulations are consistent in requiring that the PTC be designed to recover all default service costs and that the PTC be charged only to default service customers. And while it is true that migration riders have been authorized in other contexts, there is no authorization, express or otherwise, for such a mechanism anywhere in *The Electricity Generation Customer Choice and Competition Act*, 66 Pa. C.S. §§ 2801, *et seq.*, or the Commission's Regulations governing default service quoted above in relevant part, 52 Pa. Code § 54.181, *et seq.* The fact that the regulations allow for reconciliation, and possibly allow for a distinct e-factor charge, does not change that conclusion. Nothing in the regulations suggests that the e-factor be recovered any way other than as part of the PTC.

The RD appears to rely, at least in part, upon PPL's argument that the Commission previously has approved migration riders in the absence of specific authorization. RD at 19. This argument is inaccurate. The two gas cases, *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, et al.*, Docket No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 at 20-22 (August 24, 1998); and *Pennsylvania Publ. Util. Comm'n v. The Equitable Gas Company,* Docket No. R–00963858, 1997 Pa. PUC LEXIS 92 (December 4, 1997), both were decided before choice was expressly authorized and there was no explicit statutory or regulatory scheme in place for there to be any conflict. Coupled with the fact that more recent Commission policy decisions in the natural gas market are plainly contrary to what PPL seeks

here is the fact that while the Commission may have approved those migration riders in a regulatory vacuum, there is no such vacuum with regard to default service rates for electricity. With regard to the more recent *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (June 2, 2009), that case was resolved through a settlement that requires certain precursors, including notice and further approval, before any migration rider can be effective and PECO so far has not sought final implementation.

In short, there is no basis to conclude that the regulations contemplate a separate e-factor charge, or that such charge be applied to non-default service customers, i.e., customers that switch away from default service, nor is there any basis to excuse customers from paying for those charges if they switch from competitive service to default service. The regulations are clear, default service customers, and only default service customers, pay for default service costs. The "cost" of default service must be fully recovered only from default service customers, and only through the default service rate. That is the way that the Commission applied its Regulations in approving PPL's current plan, and the current plans of *all other* EDCs. It simply is not possible to read the regulations as allowing an alternative interpretation. The addition of a reconciliation component, contrary to the ALJ's assumption, does not change that fact. PPL reconciles today and includes the e-factor in the PTC, which is how it was intended to be and should be.

Even if one were to suggest that the reconciliation adjustment could be excluded from the PTC for default service customers, such a conclusion, while not supported by the language or intent of the regulation, is contrary to the Commission's recently promulgated regulations in the

natural gas industry, that require the reconciliation adjustment to be included within the price to compare. 52 Pa. Code § 62.223(a)(1), and the policy underlying that change.

What clearly is not contemplated by the regulations is the suggestion that the RR or any charge for default service could be recovered from any customers other than present default service customers, and there simply is no contemplation whatsoever of the concept that customers taking competitive service should be required to pay default service charges for up to a year into the future. It is telling that while the RD concludes that the regulations contemplate a separate default service surcharge that is not required to be included in the price to compare (proposed finding of fact No. 11), the ALJ never explicitly expresses the conclusion that the Commission's regulations or the Statute even imply the ability of a utility to collect default service costs from a customer not presently taking default service. Indeed, no such conclusion is possible based upon any reasonable reading of the Commission's regulations.

This conclusion, that customers not taking default service cannot be held responsible for paying for default service costs, is applicable to both the RR and the CTR, and should have been applied to reject both. The ALJ's conclusion that the RR it is a reasonable mechanism, and its consequent approval, is without legal support, is contrary to the express requirements of the Commission's regulations and must be reversed.

Exception No. 2: The ALJ erred in concluding "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 costs to acquire default service." (RD, p. 32).

The conclusion quoted above, among all of the incorrect statements in the RD, perhaps best illustrates the RD's misunderstanding of the facts and the law. There is a fallacy that runs

through the RD that was perpetuated by PPL suggesting that under its proposal, market based energy costs will still be part of the PTC, and that cost resulting from reconciliation, are somehow different. This idea is wrong. The costs that result from "reconciliation" are default service costs. There may have been a delay in PPL's getting the bill from PJM for those charges via the settlement process, or a delay in PPL realizing that it still had more dollars to collect, but the underlying costs are still default service costs based upon market energy costs – the same costs that suppliers such as DES face, and the same costs that DES must recover from its customers, as Mr. Butler explained.[1] DES MB, pp. 13, 15-16. The suggestion that somehow these types of costs are transformed into something other than default service costs simply because they are recovered at a later date through reconciliation, reveals the ALJ's lack of understanding of the competitive reality of reconciliation and migration riders and why they harm markets.

As the record shows, DES MB, pp. 13-15, the basic notion of reconciliation is alien to customers, the idea that they are charged later for a bill they thought they already paid is a regulatory concept not within the experience of ordinary people. This point is recognized, if not completely on Page 30 of the RD where the ALJ states "A chart supplied by OSBA highlights how the quarterly reconciliation has a long-term negative effect on both the PTC and rates for the default service customers." What the RD fails to recognize is that reconciliation itself is the source of any perceived negative result. Reconciling quarterly simply keeps the cost recovery current with the underlying costs – which are costs of providing default service, and is what the Commission's Regulations require. 52 Pa. Code §§ 54.187(h), (i) 7 (j).

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[1] The one possible exception would be the interest charges that PPL collects when it undercharges customers or refunds in the rare case of an overcharge.

As Mr. Butler made clear, the cost structure of PPL's rates makes it apparent that any negative aspect of reconciliation is one of PPL's own making. DES MB, pp. 15-16. The ALJ even recognized that the "pro-ration" that occurred in early 2010 appears to have been largely responsible for the initial shortfalls. The ALJ then accepts the notion that an annual reconciliation would have eased the impact of the shortfall, without any supporting facts or analysis, and then goes on to suggest that there are not enough customers over which to spread the deficit. RD at 30.

This single paragraph appears to be the factual premise upon which the ALJ's acceptance of the RR is based. It appears to be a conflation of several concepts. First, historically PPL does appear to have experienced some revenue shortfalls on account of its pro-ration of revenues that it claims it was required to do and other accounting issues, although there is no evidence to prove whether PPL has since recovered those shortfalls under the approved reconciliation methodology. Second, the RD relies upon the unproved notion that spreading such an under-recovery over "the more common" 12 months rather than a quarter would have made a difference on PPL's ability to recover those balances, and then tries to link potential non-recovery to increased customer migration.

The pro-ration issue is an accounting issue, and Mr. Butler testified that PPL would be able to reasonably recover those balances from remaining customers. In fact, there were only two rates where Mr. Butler opined that it may be problematic for PPL to do so, the large commercial/industrial class, and the TOU rate. DES MB, p. 20. However there is no record evidence to support the idea that PPL was not actually able to recover or refund the balances. It cannot be forgotten that these are default service costs the collection of which was delayed.

Second, there is no evidence in the record to support the speculation that a 12 month recovery period would have eased any issue with PPL's recovery of these funds. In fact, if customers were migrating at higher rates, it is possible that it would have been more difficult for PPL to recover the money. Recall, that PPL's full requirements providers absorb all of the switching risk associated with default service, therefore, the vast majority of PPL's problem is in is inability to match revenue with costs in its accounting methodologies. DES MB, pp. 18-19.

The central fallacy here is the one not spoken and not proven; that altering the mix of customers from whom the default service costs are recovered will improve PPL's ability to timely recover those costs. The notion of matching costs to customers appears to drive this discussion but ignores the regulatory concept that the default service rate itself is to be the collection mechanism for all default service costs, so that the PTC is truly the competitive benchmark it is intended to be. There are costs of being able to move onto and off of default service, and the rate should reflect those costs. DES MB, p. 22. There simply is no regulatory requirement that EDCs extract the exact dollar cost of default service from each customer before customers can shop. Rather, the PTC is intended to recover those costs from customers actually taking the service.

To suggest that this accounting issue is a sufficient basis to allow PPL to damage the competitive market through a perverse set of incentives, would be to allow the tail to wag the dog. The un-refuted evidence shows that in the natural gas industry, migration riders are competition killers, and that when provided with a mechanism that provides an incentive to undercollect in the default service rate, and to recover instead in the reconciliation with interest, utilities will recover through the reconciliation mechanism. DES MB, p. 21. The RR provides an incentive to understate the PTC and recover those costs through the RR, which makes the PTC

look more attractive to customer, particularly when coupled with PPL's "no-RR for a year if you switch back" incentive. PPL's accounting shortcomings are not a sufficient basis to violate the regulatory requirement that default service customers pay for default service costs.

As a factual matter, PPL has failed to prove that there is a need to modify the means by which it recovers default service costs. That is, while it may be true that PPL may have outstanding unrecovered balances, some small portion of which may be related to switching that occurred at the outset of competition, PPL's own witness would not even speculate as to the level those balances may be presently, Transcript "TR", 54:6, which leads to the conclusion that there is no evidence that those balances still exist and that therefore the present methodology is insufficient. That is, there is no evidence in the record whatsoever, to support PPL's contention that an RR, or a change in its reconciliation process, is needed.

It may be true that PPL may choose to implement a transitional default service plan in response to recent competition initiatives, and such plans may cause significant numbers of customers to switch at a higher rate than the present "leveled off" shopping. However, there is no evidence that such a result would necessarily make it more difficult for PPL to reasonably recover its default service costs from the remaining default service customers. Moreover, those programs have not yet even been proposed, and any suggestion that it may happen in the future is pure speculation at this point. TR at 67:7.

The fact is, as Mr. Kleha admitted on the stand, a significant portion of any current unrecovered balances and any volatility in the PTC is caused, at least in major part, by PPL's inability to accurately develop a system to charge customers on a going forward basis. TR 63:13-23. That situation will not be addressed, i.e. the volatility in the PTC, by switching the recovery mechanism from the current method of only recovering from default service customers, to

recovery from shopping customers under PPL's proposed RR. Nor is there any evidence to suggest that PPL's proposed reconciliation mechanism will address that problem to any great extent either. That is, until PPL is able to figure out the accounting methodology for matching costs with revenue on a more timely basis, any of PPL's proposed fixes are mere band aids and mask the true underlying problem. DES MB, pp. 17-23. As discussed by Mr. Butler, the problem is PPL's inability to accurately compute its rates. In short, there is no basis on this record to conclude that modifying the collection methodology, i.e. the RR mechanism, will in any way address the underlying problem that is at the root of the volatility of the PTC which is PPL's inability to accurately compute those rates.

With regard to the extension of the reconciliation mechanism, there is no credible evidence in the record that rolling one year reconciliation mechanism will prove to be any more satisfactory at correcting PPL's inability to calculate its rates then under the current methodology.

CONCLUSION

The RD accepts without legal basis, PPL's assertion that a RR is permissible. The RD errs on this point. The regulations are clear that default service costs are to be recovered only from default service customers and the RR clearly runs afoul of this very basic requirement. Moreover, as a factual matter, there is no demonstration in the record of any positive linkage between the underlying causes of PPL's reconciliation problems, namely matching costs and revenues, and a change in the groups of customers who will be asked to pay those costs. That is, there is no evidence to suggest that imposing a reconciliation rider that will charge customers for default service costs, after they switch away from default service, will address PPL's underlying

inability to forecast its costs and set appropriate rates. The best PPL can hope for is to simply mask the problem (volatility in the e-factor) by increasing the pool of those it holds responsible for its accounting problems. The same is true for its proposed elongation of the reconciliation.

When one couples the lack of legal and factual basis for the RR and the reconciliation change, with the demonstrated competitive harm that they will cause, it is clear that PPL's Petition must be denied in its entirety. In these times when the Commission is trying to do what it can to promote competition, to allow the RR would surely cause significant damage what to date has been the most competitive market in Pennsylvania. The RR promotes an incentive for customers to leave competitive suppliers for illusory discounts and then to trap them in default service when the discount expires and the customer would be expected to pay a premium to switch away. The evidence from the natural gas industry, with its history of low migration rates tied to the migration rider, should be sufficient for the Commission to reject the RR here.

Wherefore, DES respectfully requests that the Commission grant these Exceptions, and reverse the RD in this matter in its entirety.

Respectfully submitted,

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Counsel for Dominion Retail, Inc.

Dated: April 24, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

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Dated this 24th day of April 2012

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