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May 4, 2012

**VIA E-MAIL AND FIRST CLASS MAIL**

Rosemary Chiavetta, Secretary  
Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

**RE: P-2011-22562365; Petition of PPL Electric Utilities Corporation for Approval  
to Implement a Reconciliation Rider for Default Service Supply**

Dear Secretary Chiavetta:

Enclosed please find the Reply to Exceptions of Wal-Mart Stores East, LP and Sam's East, Inc. for filing in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service, which indicates that a copy of this filing is being emailed today to the Office of Special Assistants.

Please do not hesitate to contact me if you have any questions regarding this filing.

Very truly yours,

Holly Rachel Smith

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of PPL Electric Utilities Corporation</b>	)	
<b>For Approval to Implement Reconciliation</b>	)	
<b>Rider for Default Service Supply Service</b>	)	<b>Docket No. P-2011-2256365</b>
	)	
	)	

**REPLY TO EXCEPTIONS OF  
WAL-MART STORES EAST, LP AND SAM'S EAST, INC.**

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DATED:      May 4, 2012

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities Corporation  
For Approval to Implement Reconciliation  
Rider for Default Service Supply Service**

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**Docket No. P-2011-2256365**

**REPLY TO EXCEPTIONS OF  
WAL-MART STORES EAST, LP AND SAM'S EAST, INC.**

As ordered in the Secretary Letter dated April 4, 2012, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart") submit its Reply to the exceptions filed by PPL Electric Utilities Corporation ("PPL")<sup>1</sup> requesting that this Commission overrule the ALJ's well-reasoned decision to reject PPL's proposed Competitive Transition Rider ("CTR") and impose the unfair charge on all of PPL's distribution customers.

**I. INTRODUCTION AND SUMMARY OF REPLY TO EXCEPTIONS**

In addition to potentially overruling the ALJ's well-reasoned decision to reject PPL's proposed CTR, the effect of PPL's exception request as it relates to the CTR would unfortunately result in a violation of the cost causation principles as set out below, as well as violate the letter and spirit of Pennsylvania law. As proposed, the mechanism would unfairly impose the costs of PPL's default service on customers that did not take PPL's default service during the proposed CTR reconciliation period.

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<sup>1</sup> See *Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011-2256365, *Exceptions of PPL Electric Utilities Corporation* (filed Apr. 24, 2012) (*hereinafter* "PPL Exceptions").

Under fundamental utility ratemaking principles, it is not appropriate to implement mechanisms that charge shopping customers for generation supply and transmission service costs incurred by the utility only to serve non-shopping customers.<sup>2</sup> The CTR as proposed would make shopping customers, who take generation supply and transmission service from competitive electric generation suppliers, pay, or receive a refund from, PPL for some part of PPL's generation supply costs. The CTR would unfairly apply to even those customers who had been receiving electric supply from a competitive supplier even before December 31, 2009,<sup>3</sup> and thus, could not have contributed at all to the causation of any unrecovered balance at the end of the proposed CTR period. This misaligns cost causation and cost responsibility and results in inequitable rates.<sup>4</sup>

Pennsylvania law embodies this same cost causation principle. Pa. Code §54.187 requires that a local distribution company recover default service costs from default service customers and the CTR squarely violates this provision. Moreover, 66 Pa. C.S.A. §2807(E)(4) prohibits EDCs from punishing distribution customers for shopping for competitive supply and by causing shopping customers to “pay twice” for generation and transmission costs, the CTR effectively punishes for shopping. For these reasons, the ALJ's reasoned decision to reject the CTR should not be overturned. As explained below, none of the reasons cited by PPL for modifying the Recommended Decision to impose the CTR justify such action on the part of this Commission.

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<sup>2</sup> See Walmart Statement No. 1 at p. 3, lines 8-11.

<sup>3</sup> *Id* at p. 6, lines 5-7.

<sup>4</sup> *Id* at p. 5, lines 11-15.

## II. REPLY TO EXCEPTIONS

### A. **THIS COMMISSION SHOULD NOT BE INDUCED TO VIOLATE COST CAUSATION PRINCIPLES AND PENNSYLVANIA LAW EVEN A *LITTLE* (PPL Exception No. 1)**

In the Recommended Decision, the ALJ concluded:

Unlike the RR, where there is a scrupulous effort to assign the over/under collection to the ratepayers using the corresponding electricity as default customers, this mechanism, as described, does not differentiate between default and shopping customers or make an attempt to align cost causation with the parties responsible for the costs. On its face, it appears to violate the statute and regulations requiring the cost of default service to be borne by the default service customers.<sup>5</sup>

The ALJ's reasoning is supported by substantial evidence admitted into the record in this proceeding:

The CTR would recover the costs of providing default service through a charge other than the PTC and would recover those costs from customers other than default service customers . . . Moreover, this type of recovery, from all customers, is akin to recovering those charges through the Distribution Rate, which is clearly prohibited under the Commission's Regulations. 52 Pa Code § 54.187(d).<sup>6</sup>

[The CTR mechanism] is unfair to shopping customers as it charges *all* distribution customers without any evidence that the shopping customers contributed to the over or under collection that exists on May 31, 2012. After all, the 2010 variances have already been collected from default service customers. Therefore it is impossible for customers who shopped in early 2010 to be responsible for the variances in May 31, 2012.<sup>7</sup>

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<sup>5</sup> See *Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011-2256365, *Recommended Decision of Susan D. Colwell, Administrative Law Judge* (rel. Apr. 4, 2012) (*hereinafter* "RD") at p. 42.

<sup>6</sup> *Id* at p. 41 (*citing* Reply Brief of Dominion Retail at p. 10 (filed in Docket No. P-2011-2256365 on Jan. 23, 2012)).

<sup>7</sup> *Id* at p. 38 (*citing* Main Brief of the Office of Small Business Administration ("OSBA") at p. 21 (filed in Docket No. P-2011-2256365 on Jan. 9, 2012) (*hereinafter* "OSBA Main Brief")).

The Commission should determine that from a general public policy perspective, it is not appropriate to implement mechanisms that charge shopping customers for generation supply and transmission service costs incurred by the utility only to serve non-shopping customers. The CTR would unfairly apply to even those customers who had been receiving electric supply from a competitive supplier even before December 31, 2009. These customers would not have contributed at all to any under collection being recovered through the CTR. Witness Chriss is concerned that the CTR as proposed would make shopping customers, who take generation supply and transmission service from competitive electric generation suppliers, pay, or receive a refund from, PPL for some part of PPL's generation supply costs. This misaligns cost causation and cost responsibility and results in inequitable rates.<sup>8</sup>

PPL asks this Commission to overrule the ALJ's decision to reject the CTR but the reasoning incorporated into PPL's exception request simply cannot overcome the ratemaking and legal defects inherent in the CTR proposal. That some shopping customers *may* have been default customers who contributed to what might be determined to be in the unquantifiable May 30, 2012 balance<sup>9</sup> (which based on the scant evidence in the record could be 0, negative or positive all with the same probability), simply cannot justify the application of a rider to collect default service costs from *all* shopping customers who do not cause PPL to incur generation and transmission costs. In fact, in its Exceptions, PPL corroborates the Walmart and OSBA position that there are shopping customers (and likely many)<sup>10</sup> who would not have contributed *at all* to

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<sup>8</sup> *Id* at p. 41 (citing Walmart Reply Brief at p. 4 (citations omitted) (filed in Docket No. P-2011-2256365 on Jan. 23, 2012) (hereinafter "Walmart Reply Brief")).

<sup>9</sup> See PPL Exceptions at p. 5.

<sup>10</sup> See Walmart Reply Brief at pp 4-5 (citations omitted):

it is not just a few but potentially many customers that may be assessed a CTR without having contributed at all to the over and under collections that occurred during the CTR period. Given there is an annual active reconciliation mechanism in place now for generation and transmission cost reconciliation, a portion of the CTR period's accumulated balance has been and will continue to be reconciled before an order issues in this case. As this has happened, there are more and more shopping customers who have not contributed at all to creating any remaining CTR balance (e.g., have not been billed for any default service that caused any remaining imbalance that may exist as

any remaining end-of-CTR-period balance by admitting there “may be individual customers who did not contribute to any of the net historic over and under collection balances.”<sup>11</sup> There simply is no grey area here – refunding or charging shopping customers for any unrecovered balance for generation and transmission costs for which they neither caused nor overpaid or underpaid is unlawful and inconsistent with proper ratemaking principles. The fact that there are some customers from each class that remain on default service<sup>12</sup> is not relevant to the issue of whether the CTR violates law or ratemaking principles. The ALJ correctly concluded that PPL did not follow the same or similar cost assignment procedures with its CTR proposal as it did with its RR proposal.

Moreover, PPL incorrectly argues that the ALJ focused her decision to reject the CTR on “individual customers.”<sup>13</sup> First, PPL has failed to provide any citation to the Recommended Decision where the ALJ purportedly based her decision to reject the CTR on “individual customers.” Moreover, PPL cannot and did not identify one iota of evidence in the record pertaining to individual customers, or their cost and usage patterns, to support its argument that the ALJ improperly based her decision to reject the CTR because no such evidence exists. Neither Walmart Witness Chriss nor any witness whose testimony in this proceeding was admitted introduced evidence concerning individual customer circumstances to urge rejection of

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of May 31, 2012). In fact, OSBA Witness Knecht testified: ‘Any under-collections that built up in 2010 before the large shopping migration occurred are no longer on the Company’s books and therefore will not be on the books at May 31, 2012.’

<sup>11</sup> PPL Exceptions at p. 13.

<sup>12</sup> See *id* at pp. 13-14 (PPL attempts to justify the CTR by arguing that if one customer from each class ever contributed to over or under recovery, it is ok to charge all shopping customers: “there are customers in each customer class that continue to take default service. Clearly, customers from each class contributed to the respective class net over and under collection balances at some point in time...”.)

<sup>13</sup> See *id* at p. 13 (PPL states: “the R.D.’s focus on *individual* customers is inconsistent with principles of class ratemaking” (*emphasis* added), yet PPL provides no reference to any portion of the R.D.’s decision to support that any portion of the ALJ’s decision regarding the CTR related at all to individual customers.)

the CTR.<sup>14</sup> Thus, the case law cited by PPL<sup>15</sup> is not only irrelevant but is also completely at odds with PPL's proposed RR design, which provides for rate adjustments related to the timing of individual customer's entry and exit onto PPL's default schedule.<sup>16</sup> PPL would like to enjoy the approval by the ALJ of its RR rate design, which provides for customer specific flexibility, but at the same time argues that the ALJ's decision to reject the CTR is improper because the ALJ allegedly factored individual customers, or their data or usage patterns, into her decision.

Finally, PPL's sudden attempt to re-characterize its proposed CTR as a commensurate to a "ready-to-serve" charge<sup>17</sup> flies in the face of its request in this proceeding to institute the CTR as a "*historic*" rider that would be used to reconcile over and under collections of default service related costs that accumulated from the time period between January 1, 2010 and June 1, 2012. Specifically, PPL is requesting this Commission at this exception stage to approve its CTR, filed and considered by the ALJ as a 66 Pa. C.S.A. § 1307(e) cost recovery rider, on grounds that it is similar to a 66 Pa. C.S.A. § 1305 standby or ready-to-serve charge. PPL's argument is counterintuitive as the costs proposed to be recovered under the CTR are transmission and

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<sup>14</sup> Walmart Reply Brief at 4.

<sup>15</sup> PPL Exceptions at p. 13 (PPL references Pa. C.S.A. § 1304 and *Philadelphia Suburban Trans. Co. v. Pa P.U.C.*, 281 A.2d 179 (Pa. Comwlth. 1971)).

<sup>16</sup> See Walmart Reply Brief at p. 4:

In fact, Witness Chriss, while not supporting the Reconciliation Rider ("RR") in his testimony, noted that the proposed RR is flexible in that it would not apply to shopping customers for the first 12 months after they switch to PPL generation supply and transmission service. See Walmart Statement No. 1 at p. 6 lines 17-22 (*citing* Direct Testimony of Joseph M. Kleha, page 20, line 14 to line 17, admitted into the record as PPL Statement No. 1). By including this as part of its proposal, PPL has incorporated in its proposed RR the same "individual customers costs and usage patterns" that it is saying are "not, never have been" included in utility rate designs. See PPL Main Brief at p. 8

<sup>17</sup> See PPL Exceptions at p. 12 ("PPL Electric, as a default service provider, is statutorily required to be ready, willing and able to provide default service to all customers at all times...*similar to ready to serve charges*, it is reasonable for these customers to pay a portion of these default service costs" (*emphasis added*)). The customers to whom PPL refers include the shopping customers who are not at all responsible for any unrecovered balance of generation and transmission supply costs at the proposed end-of-CTR period.

generation service are variable *supply* costs and standby or ready-to-serve charges, generally, are to facilitate the infrastructure necessary to serve when requested (e.g., are indeed *fixed costs*). More specifically, in Pennsylvania, such standby or ready-to-serve charges are generally restricted and as such could not be justified under a request for an automatic reconciliation rider, as was the case here.<sup>18</sup>

To the extent this Commission deems that the CTR would be lawful despite the evidence and legal briefings to the contrary, the CTR must ultimately be rejected on grounds that PPL failed to present sufficient evidence on the need for its proposal.

**B. PPL HAS FAILED TO MEET ITS BURDEN TO PROVE THE CTR IS NECESSARY (PPL Exception No. 2)**

The ALJ concluded:

There is no evidence to support the need for this [CTR] mechanism.<sup>19</sup>

Company must be able to prove that those costs are reasonable, and must be able to quantify costs as well. The Company has not done so here.<sup>20</sup>

OSBA's statement that the numbers we do know do not support the need, makes sense. Further, if we do not know the numbers, then we do not know when the under recovery occurred, and therefore, we do not know if it is fair and equitable to assess shopping customers for its recovery. The Company states there is no way to know what the number is. Similarly, there is no way to be sure the mechanism is necessary to aid in the Company's recovery.<sup>21</sup>

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<sup>18</sup> See 66 PA C.S.A. § 1305 provides (*emphasis added*): No public utility shall require the payment of rates in advance, or the making of minimum payments, ready to serve charges, or deposits to secure future payments of rates, *except as the commission, by regulation or order, may permit*.

<sup>19</sup> RD at p. 42.

<sup>20</sup> *Id* at p. 43.

<sup>21</sup> *Id*.

While PPL argues in its exceptions that the CTR *is needed because PPL has experienced significant over and under collections*,<sup>22</sup> PPL has made no effort to quantify its need. On the other hand, as the ALJ pointed out in the Recommended Decision, the Office of Small Business Advocate sponsored testimony demonstrating that the CTR is not needed:

as Mr. Knecht indicated in his Direct Testimony, the then-current reconciliation balances (in November 2011) showed only a relatively small net under-collection for the Small C&I Rate class group and net over-collections for the Residential and Large C&I rate class groups. By the time of the hearing, the Small C&I rate class group showed an over-collection. Thus, the available evidence does not support PPL's concerns about being unable to recover these balances through the RR. The CTR is simply not necessary.<sup>23</sup>

While new evidence is not permitted during this stage of the proceeding, in requesting an exception from the ALJ's recommendation to reject the CTR, PPL would seemingly have highlighted any quantifiable evidence in the record of its need for the CTR but it did not. Thus, PPL both bore, and failed to meet, its burden to prove by a greater weight of the evidence that its proposed CTR is just, reasonable, and in the public interest.<sup>24</sup> In other words, PPL failed to demonstrate a need for the proposed CTR.

### **III. CONCLUSION**

The Commission should reject the CTR. As proposed, the mechanism would unfairly impose the costs of PPL's default service on customers that do not take PPL's default service, in violation of ratemaking and cost causation principles. The CTR also violates the letter and spirit of Pennsylvania law which requires that a local distribution company recover default service

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<sup>22</sup> PPL Exceptions at p. 6.

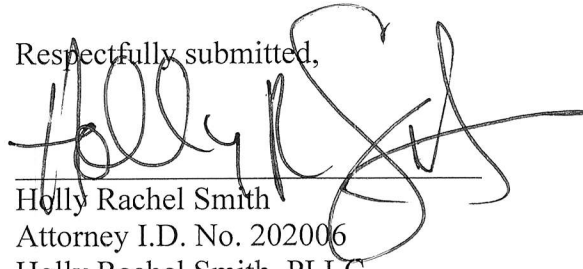
<sup>23</sup> RD at p. 38 (*citing* Main Brief of OSBA at p. 20 (*footnotes omitted*)).

<sup>24</sup> *See* Walmart Reply Brief at p. 3.

costs from default service customers and prohibits such companies from punishing its distribution customers for shopping for competitive supply. PPL has not met its burden in this case to prove that the CTR is needed, or just and reasonable. For all of these reasons, PPL's exception request that this Commission approve the CTR should be denied.

DATED: May 4, 2012

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy via electronic mail (when available) and by first-class postage prepaid mail, to all parties on this 4th day of May, 2012.

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