

COMMONWEALTH OF PENNSYLVANIA



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May 4, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

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:

Enclosed please find the Office of Consumer Advocate's Reply Exceptions, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Aron J. Beatty'.

Aron J. Beatty  
Assistant Consumer Advocate  
PA Attorney I.D. # 86625

Enclosure

cc: Honorable Susan D. Colwell  
Office of Special Assistants  
155453

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY EXCEPTIONS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: May 4, 2012

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## **I. INTRODUCTION**

On April 4, 2012, Administrative Law Judge (ALJ) Susan Colwell's Recommended Decision (R.D.) was issued by the Commission. Exceptions were filed on April 24, 2012 by the Office of Consumer Advocate (OCA), PPL Electric Utilities (PPL), the Office of Small Business Advocate (OSBA), the Bureau of Investigation and Enforcement (BI&E), the Retail Energy Supply Association (RESA), and Dominion Retail, Inc. (Dominion Retail). The OCA's positions in this proceeding are fully addressed in its Main Brief, Reply Brief, and Exceptions. The OCA files these Reply Exceptions to certain Exceptions filed by RESA and Dominion Retail.

## **II. REPLY EXCEPTIONS**

### **A. REPLY TO RESA EXCEPTION 6 AND DOMINION RETAIL EXCEPTION 2: The ALJ Did Not Err In Recommending Approval Of PPL's Proposal To Reconcile Default Service Costs Using A 12-Month Procedure. (RD at 32-35, 50-53; OCA M.B. at 11-12; OCA R.B. at 7-9).**

In her R.D., the ALJ recommends that the Company modify its reconciliation provisions for customers currently taking service under GSC-1 to allow for annual (rather than quarterly) reconciliations of over and under collections. RD at 32-35, 50-53. This would bring the reconciliation procedure for the residential class in line with those used for the GSC-2 customers and the Company's Transmission Service Charge. OCA St. 1 at 12. The 12-month procedure will also result in added rate stability and will avoid the unnecessarily increased default service rates that are being produced by PPL's current reconciliation procedures. In making her decision, the ALJ notes that the Commission has considered moving toward semi-annual or annual reconciliation periods. R.D. at 52. The ALJ concluded that, "In order to ensure

a fair PTC, reconciliation should occur over a longer period of time than quarterly, which has been proven to contribute to inflated rates.” R.D. at 52.

In making this assessment, the ALJ stated:

The Commission not only fosters competitive markets, but it balances the needs of the consumers with utilities to ensure safe and reliable utility service at reasonable rates. *See* the Commission's Mission Statement. That balance is not limited to the consumers who shop. There are default service customers who do not or cannot shop, and there is simply no basis for charging them unfairly because of their circumstances. Default service prices must cover the cost of delivering default service but they must still comply with the statutory requirement that "every rate made, demanded, or received by any public utility . . . shall be just and reasonable . . . ." 66 Pa. C.S. § 1301. In other words, they may not be unfairly inflated to encourage customers to leave default service.

R.D. at 52-53.

The OCA submits that the ALJ correctly identified the existing problem of rate instability and unnecessarily inflated rates that are resulting from PPL's quarterly reconciliation procedures and recommended the correct solution. As explained in the OCA's Main Brief (pages 11-12) and Reply Brief (pages 7-9), the OCA strongly supports the proposed change to a 12-month reconciliation procedure for residential customers. The proposed change would bring the reconciliation treatment of residential under and over collections in line with the Company's treatment of GSC-2 customers and is consistent with PPL's procedures for the reconciliation of transmission costs. OCA St. 1 at 2. Currently, residential default service rates are fully reconciled over each quarterly period. By moving to a 12-month reconciliation procedure, PPL would recover costs on a timely basis while smoothing out unnecessary price swings and unnecessarily inflated rates.

RESA and Dominion Resources both oppose the ALJ's recommendation that GSC-1 (which includes residential service) costs be reconciled on a 12-month basis. Dominion Exc. at 10-14; RESA Exc. at 23-26. The arguments raised by RESA and Dominion against the 12-month reconciliation procedure are flawed and must be rejected. Both RESA and Dominion argue that the existing quarterly reconciliation is "current" and that a change to 12-month reconciliation would be inconsistent with Pennsylvania law. RESA Exc. at 24; Dominion Exc. at 10. These arguments are without merit and were properly rejected by the ALJ.

RESA and Dominion's arguments are premised on the legal requirement that each EDC has the right to recover costs on a full and current basis. See, RESA Exc. at 24. Under Section 2807(e)(3.9), it is the default service provider who "shall have the right to recover on a full and current basis" its default service costs. 66 Pa. C.S. §2807(e)(3.9). The ALJ correctly analyzed Section 2807(e)(3.9) and concluded that PPL's proposal to move to an annual reconciliation procedure was consistent with the "full and current recovery" of its default service costs. R.D. at 32. Indeed, in this instance, it is the DSP (PPL) itself that has requested the 12-month procedure.

RESA next argues that the 12-month procedure is inconsistent with the statutory parameter of Section 2807(e)(7) that references quarterly adjustments. RESA Exc. at 23. The ALJ further addressed the legal requirements regarding the frequency of default service rate changes found in Section 2807(e)(7) that RESA argues compels quarterly reconciliation. R.D. at 33; RESA Exc. at 23. Section 2807(e)(7) provides that residential and small business customer default service rates, "shall change no more frequently than on a quarterly basis." 66 Pa. C.S. §2807(e)(7). This provision states in full:

The default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

66 Pa. C.S. §2807(e)(7).

As the ALJ correctly concludes, the Act makes clear that residential and small business default service rates *can* be adjusted on a quarterly basis, *or on a less frequent basis than quarterly*. The ALJ stated:

Although RESA claims that this requires quarterly reconciliation, that interpretation is not supported by the plain language of the statute. “No more frequently than on a quarterly basis” is not the same as “must be evaluated on a quarterly basis.”

R.D. at 33.

Indeed, in the Commission’s recent Final Rulemaking Order modifying its existing default service regulations, the Commission proposed to modify its regulations to permit less frequent adjustments. Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) Slip op. at 25. As the ALJ correctly notes in her R.D. (at 52), the Commission recently recommended that Default Service Providers consider quarterly, semi-annual, and annual reconciliation mechanisms in their upcoming default service plans. Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) Slip op. at 54.

The ALJ’s recommendation to utilize a 12-month reconciliation procedure will not change the Company’s current practice of recovering costs through a quarterly changing

default service rate. The Company would continue to collect costs on a current basis – just as it reconciles and collects TSC and GSC-2 costs on a current basis under current practices. The 12-month reconciliation would, however, temper large swings resulting from unanticipated conditions and events. The Exceptions of RESA and Dominion in opposition to a 12 month reconciliation of GSC-1 are without merit and should be rejected. The ALJ’s well-reasoned decision on this issue should be adopted by the Commission.

**B. REPLY TO RESA EXCEPTION 4: The ALJ’s Recommendation That Both Default Service Customers And Switching Customers Bear A Portion Of The Historic TOU Undercollection Is Reasonable. (RD at 48; OCA M.B. at 6-8; OCA R.B. at 1-5).**

In the R.D., the ALJ recommended that PPL be permitted to recover costs associated with the historic undercollection from its Time of Use (TOU) program through the Reconciliation Rider (RR) which is charged to default service customers and to EGS customers for a period of time commensurate with their stay on default service. R.D. at 48. Under the ALJ’s R.D., customers subject to the RR would help pay for the TOU undercollection that was estimated at approximately \$2 million at the time of the hearings in this proceeding. PPL St. 1-R at 30. The ALJ recommended that the historic undercollection should be added to the RR for the rate classes that participate in the TOU program. R.D. at 48.

The OCA did not support the RR, but rather supported the Company’s proposed Competitive Transition Rider (CTR) for the collection of the historic TOU undercollection. As discussed in the OCA’s Exceptions in this proceeding, the CTR would collect the historic TOU undercollection from all PPL delivery customers in the affected classes. See, OCA Exc. at 3-5; OCA M.B. at 6-8; OCA R.B. at 1-5. Only 3,000 customers remain on TOU service. PPL Exc. at

10.<sup>1</sup> Recovery of the historic TOU undercollection from only these few remaining TOU customers is not feasible or reasonable.<sup>2</sup>

In its Exceptions, RESA argues that it would be unfair for shopping customers that are ineligible for the TOU rate to have to pay any portion of this undercollection. RESA Exc. at 18-19. RESA's assertion that PPL's TOU program was open only to default service customers, however, is incorrect. RESA Exc. at 18. PPL was, and remains, statutorily required to offer the TOU rate, "to all customers that have been provided with smart meter technology." 66 Pa. C.S. 2807(f)(5). RESA's assertion that the TOU rate is unavailable to shopping customers is simply wrong and should be rejected. Any PPL customer is free to sign up for TOU service and PPL is obligated to place the customer on TOU service.

RESA argues that the issue of TOU cost recovery was directly addressed in the context of PECO's Dynamic Pricing proceeding and that the Commission concluded that the costs of the program should only be recovered from default service customers. RESA Exc. at 18-19. The OCA submits, however, that the PECO case does not provide relevant guidance in this proceeding. In the PECO proceeding, the Commission addressed the allocation of costs related to PECO's proposed Dynamic Pricing Plan. Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan, Docket No. M-2009-2123944 (Order entered April 15, 2011) (PECO Order) slip op. at 17-21. While recognizing that there may be benefits to non-shopping customers from PECO's program, the Commission agreed with the ALJ in that proceeding that those benefits were speculative. PECO Order at 20. The

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<sup>1</sup> In its Exceptions, PPL updated the number of TOU customers as of March 31, 2012. PPL Exc. at 10. The OCA used the Company's figure of 3,900 remaining TOU customers in its Briefs and Exceptions. See, PPL St. 1-R at 30.

<sup>2</sup> As set forth in its Exceptions, Main Brief and Reply Brief, the OCA submits that in the unique circumstances of this TOU undercollection, the CTR remains a fair and equitable recovery mechanism for these costs. OCA Exc. at 3-5; OCA M.B. at 6-8; OCA R.B. at 1-6.

Commission found that customers participating in the proposed program would be default service customers, and as such, the costs of the program should be recovered from default service customers. PECO Order at 21.

In this proceeding, however, the Commission is being asked to address costs related to a *prior* undercollection – not how to recover prospective TOU costs. Those costs will be recovered pursuant to the Commission’s determination in the pending PPL TOU proceeding at Docket No. R-2011-2264771. At this time, there are roughly 3,000 TOU customers who are no more responsible for the historic undercollection than those who left the program. Because it is impractical and inequitable to ask the few remaining TOU customers to pay for this massive undercollection, the Commission is being asked to allocate these historic and extraordinary costs on a broader shared basis. The current situation regarding PPL’s historic TOU costs is factually distinct from the PECO proceeding.

The OCA submits that the collection of the historic TOU undercollection to all customers in the affected classes is reasonable under these unique circumstances. As OCA witness Dr. Pereira testified, given the substantial initial decline in default service load at PPL and the rapid decline in current TOU customers, the collection of the historic underrecovery over the entire distribution customer base is more consistent with the customer base that created these costs than recovery of these costs only from current TOU customers or only from remaining default service customers. OCA St. 1 at 9.

The OCA submits that RESA’s analysis of the ALJ’s R.D. on this issue is flawed. The OCA supports PPL recovering the historic TOU undercollection from all customers. Recovery from all customers is reasonable and consistent with cost causation. The ALJ’s recommendation that the historic TOU undercollection can be collected from all customers,

including non-default service customers, is reasonable given the facts in this case and should be adopted.

### III. CONCLUSION

For the reasons detailed in these Reply Exceptions and its Main and Reply Briefs, the OCA supports the adoption of the ALJ's recommendation that residential default service costs should be reconciled on a 12-month basis. In addition, the OCA supports the collection of the historic, extraordinary TOU undercollection from all customers. The OCA submits that the Exceptions of RESA and Dominion Retail on these issues should be denied and the ALJ's recommendations adopted.

Respectfully Submitted,



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May 4, 2012

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of May 2012.

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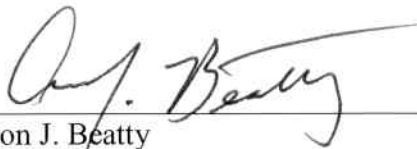
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