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Via Electronic Filing

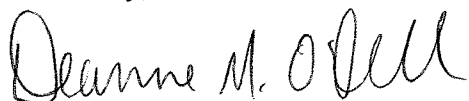
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 Reply 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,



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 Reply 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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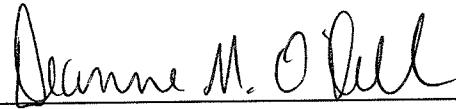
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A handwritten signature in black ink, reading "Deanne M. O'Dell". The signature is written in a cursive style and is positioned above a horizontal line.

Deanne M. O'Dell, Esq.

Dated: May 4, 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 :
:

**REPLY EXCEPTIONS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

The March 1, 2012 Recommended Decision (“RD”) of Administrative Law Judge Susan D. Colwell (“ALJ”) recommends that the Commission adopt the illegal Reconciliation Rider (“RR”) proposed by PPL Electric Utilities Corporation (“PPL”) while at the same time correctly recommending that the Commission reject the – just as illegal – Competition Transition Rider (“CTR”). Both mechanisms would impose the costs of default service reconciliation on customers who have elected to receive competitive generation supply from electric generation suppliers (“EGSS”). Such a result contravenes the Electricity Generation Customer Choice and Competition Act (“Competition Act”)¹ and the Commission’s regulations which require all the costs of default service to be recovered from default service customers.²

As explained in the Exceptions filed by the Retail Energy Supply Association (“RESA”),³ the RR cannot be implemented because it is illegal.⁴ The CTR, which is the exact same mechanism covering a historic time period, suffers from the same illegalities by requiring all customers (specifically shopping customers) to pay for the costs of default service.

¹ 66 Pa. C.S. § 2801, et. seq.

² 52 Pa. Code § 54.187(d).

³ 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.

⁴ 66 Pa. C.S. §§ 2807(e)(4)(prohibits treating new and returning customers differently); 2807(e)(3.9)(requires default service provider to recover on a full and current basis all reasonable costs associated with default service); (iii) 2804(3)(requires that charges for generation, transmission and distribution be fully unbundled). *See also* RESA Exception Numbers 1 and 3 at 5-8, 10-18.

Therefore, while the ALJ was correct in recommending rejection of the CTR,⁵ she erred in not reaching the same conclusion regarding the RR.

Despite this, PPL, the Office of Consumer Advocate (“OCA”), and the PP&L Industrial Customer Alliance (“PPLICA”) filed Exceptions recommending that the Commission adopt the CTR.⁶ As explained further below in section II, the CTR cannot be legally implemented and PPL’s attempts to overcome the illegality of the mechanism with fairness and reasonableness arguments are irrelevant and non-persuasive. Likewise, as explained in section III, the record does not support a finding that PPL is at serious risk of underrecovery through its current reconciliation mechanism because the reconciliation impact is likely to be a credit to customers and there continues to remain a significant number of customers on default service (including those participating in the TOU program and those not) to absorb the reconciliation impact.

For all of these reasons, RESA urges that the Commission reject the exceptions of PPL, OCA and PPLICA and adopt the ALJ’s recommendation to reject PPL’s unjustified, illegal and competitively detrimental CTR. Further, the Commission should grant RESA’s exceptions and reject the ALJ’s recommendation to implement the RR.

II. THE CTR, LIKE THE RR, ILLEGALLY IMPOSES DEFAULT SERVICE COSTS ON SHOPPING CUSTOMERS AND CANNOT BE IMPLEMENTED

PPL tries to appeal to “reasonableness” and “fairness” arguments in support of the CTR despite the legal requirement that default service costs be paid by default service customers. Specifically, PPL claims that “shopping customers contributed to the” reconciliation impacts to be recovered by the CTR; and, (2) shopping customers “are eligible for default service at any

⁵ RD at 42.

⁶ PPLICA’s support of the CTR is limited to the reconciliation of historical transmission-related expenses for the Large C&I Primary and Large C&I Transmission customers. PPLICA Exceptions at 5-9. PPLICA, however, does not support implementation of the CTR for generation-related expenses.

time;” therefore, “it is reasonable for these customers to pay for a portion of these default service costs.”⁷ These arguments are red herrings. The legal requirements are absolute and there are no “exceptions” to them based on PPL’s proffered fairness contribution argument or its claim that the CTR is reasonable due to the availability of default service.

The law requires that 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.⁸ It also requires that charges for generation, transmission and distribution be fully unbundled.⁹ 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.¹⁰ 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.¹¹ The bottom line of all these

⁷ PPL Exceptions at 12-14.

⁸ 66 Pa. C.S. § 2807(e)(3.9).

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

¹⁰ 52 Pa. Code § 54.187(a).

¹¹ 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.

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.¹²

The undisputable fact is that the CTR will not do this. Even though it is designed to refund or recover any remaining historic over or under collection balances related to PPL's provisioning of default service, the CTR will apply this default service cost to all customers on the effective date of the mechanism.¹³ All customers include those receiving default service and those receiving competitive generation supply from an EGS – some of whom may have not received generation service from PPL for two and a half years – on the effective date of the CTR. Because the CTR illegally imposes a default service cost on non-default service customers, it cannot be implemented and the ALJ was correct to deny the CTR on this basis.

PPL's argument that these statutory requirements can be ignored because current shopping customers may have contributed to the historic over/under collections related to default service is completely unsupported. PPL can cite to no law or precedent applicable to the electric industry to support the claim it makes in this regard.

Likewise, PPL's argument that its role as a default service provider (i.e. remaining "ready, willing and able to provide default service to all customers at all times") means that imposing default service costs on customers not taking default service is "reasonable,"¹⁴ lacks legal foundation. This position is nothing more than an effort to ignore the law which requires

¹² *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.)").

¹³ PPL Exceptions at 10-11.

¹⁴ PPL Exceptions at 12.

default service costs to be recovered by default service customers. This legal requirement exists even though the purpose of default service is clearly set forth in the statute. If the legislature had intended customers not receiving default service to, nonetheless, pay some costs of providing default service, then such requirement would have been included in the law. It is not there and PPL's lame effort to try to appeal to a "reasonableness" standard has no merit and must be summarily rejected.

III. EVEN IF IT COULD LEGALLY BE IMPLEMENTED, THE RECORD DOES NOT SUPPORT THE NEED FOR THE CTR

With no legal foundation upon which to support imposition of the CTR, parties supporting it turn to claims of need. PPL repeatedly states in its exceptions that "given the magnitude of the over and under collection balances and the small number of non-shopping customers, it may not be likely or reasonable to refund or recover all the historic over or under collection balances from such a very small number of customers in a timely manner."¹⁵ The assumption built into this claim that PPL will not recover the historic reconciliation impacts is not supported in the record because: (1) PPL is not facing a significant underrecovery from application of the historic reconciliation impact; and, (2) there are still substantial numbers of customers taking default service to whom the current reconciliation mechanism may be applied.

A. PPL's Current Reconciliation Mechanism To Recover The Historic Balances Will Not Expose PPL To A Risk Of Underrecovery

PPL often resorts to hyperbolic words and phrases to create a "doom and gloom" picture of its alleged future inability to fully recover the costs of the historic reconciliation that it claims need to be remedied by the CTR. Setting aside this colorful rhetoric, the evidence showed that PPL has a net over-recovery from both the residential and the large commercial and industrial

¹⁵ See, e.g., PPL Exceptions at 15 (emphasis added).

classes. As of September 30, 2011, the current over and (under) collection balances are as follows:¹⁶

	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

Thus, PPL does not appear to be facing a “significant risk of non-recovery” as the majority of the historic balances would be returned to customers in the form of a credit. While PPL does recognize in its exceptions that the remaining balances “may be small,” it laments that “it is impossible to predict with certainty what the over and under collection balances will be as of May 31, 2012.”¹⁷ Therefore, PPL is really asking the Commission to give it an illegal mechanism now “just in case.” This argument is unavailing. Predicting anything with certainty is impossible and reliance on such an argument could be used to justify just about anything. What is certain, however, is that the Commission must analyze PPL’s request here based on the facts developed in the record and the law. Further, it must not be forgotten that PPL already has a reconciliation mechanism in place which is positioned to ensure PPL receives appropriate cost recovery of the historical balances.¹⁸ PPL, as the party seeking a change, has not proven that its proposed changes to its current reconciliation mechanism are warranted (even if they were legal, which they are not). Therefore, the ALJ correctly rejected PPL’s proposed CTR.

¹⁶ Exhibit RJH-1 (PPL Revised Response to Dominion 1-2).

¹⁷ PPL Exceptions at 17.

¹⁸ RESA MB at 5-9.

B. There Is No Support For The Claim That There Are Not Enough Default Service Customers Available To Bear The Impact Of The Historic Reconciliation

Both PPL and OCA claim that there are too many customers shopping and, therefore, there are not enough default service customers available from which to recover the historic reconciliation costs.¹⁹ This assumption is not supported by the facts. While residential and large commercial customers are likely to receive a credit (mooting the point that there are not enough customers from which to recover costs), there are still a significant number of small commercial customers taking default service to ensure PPL appropriate cost recovery. According to the current switching statistics, the following numbers of customers continue to remain on PPL's default service:²⁰

	% 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 support for PPL's request to change the applicability of the reconciliation to apply to all customers even if PPL could legally implement the CTR which it cannot.

Related to this issue, OCA specifically expresses concerns about the ability of PPL to recover its historical costs associated with its TOU program from the customers remaining on the TOU program.²¹ According to OCA, there are not enough customers remaining on PPL's TOU

¹⁹ OCA Exceptions at 4.

²⁰ Switching statistics as of April 18, 2012. Updated information available at <http://www.papowerswitch.com/>.

²¹ OCA Exceptions at 4-5.

program and, therefore, allowing PPL to implement the CTR to recover these costs from all customers “is reasonable at this time under these unique circumstances.”²² This point, however, is irrelevant because the appropriate customer comparison should be default customers v. shopping customers not the subset of default customers on the TOU program vs. the subset of default customers not on the TOU program because only PPL’s default service customers are eligible to participate in PPL’s TOU program. As explained previously, the current number of default customers (whether they take TOU or not) is sufficient to absorb the costs of the TOU reconciliation. Further, as explained in RESA’s exception number 4, 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.²³

Therefore, concerns raised by PPL and OCA that there is “too much shopping” to warrant imposing default service costs on shopping customers through the CTR are not based in reality and support rejection of the CTR, even if it could be legally implemented (which it cannot).

²² OCA Exceptions at 4.

²³ RESA Exceptions at 18-20.

IV. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission deny the exceptions of those parties seeking to implement the CTR, grant RESA's exceptions and issue an order which denies PPL's petition in its entirety.

Respectfully submitted,



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