



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

May 4, 2012

Hand Delivery

Rosemary Chiavetta, Secretary
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 Supply Service
Docket No. P-2011-2256365**

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID #306921

Enclosures

cc: Parties of Record

Robert D. Knecht

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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I. INTRODUCTION

On August 3, 2011, PPL Electric Utilities, Inc. (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a petition seeking authorization to implement a Reconciliation Rider (“RR”) related to the transmission service and generation supply service that the Company provides to its default service customers. Pursuant to the RR, the Company would refund over-collections to, and recover under-collections from, customers who were default service customers when the over-collection or under-collection occurred.¹

The Office of Small Business Advocate (“OSBA”) filed an Answer to that petition on August 18, 2011. Answers were also filed by Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“Dominion”); the Retail Energy Supply Association (“RESA”); and the PP&L Industrial Customer Alliance (“PPLICA”). The Office of Consumer Advocate (“OCA”) filed a Notice of Intervention on August 23, 2011. The Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance on August 24, 2011. Richards Energy Group, Inc. (“REG”) filed a Petition to Intervene on August 29, 2011.

PPL subsequently filed the Amended Petition on August 25, 2011, which superseded and replaced the petition filed on August 3. The Amended Petition added a proposed Competitive Transition Rider (“CTR”) to the originally proposed RR. According to PPL’S Amended Petition, the proposed CTR would be a temporary, non-bypassable reconcilable rider that would refund, or recover, the balance of historical over-collections or under-collections in existence on the effective date of the RR to all distribution customers, shopping and non-shopping.

¹ PPL Amended Petition at 2.

Administrative Law Judge (“ALJ”) Susan J. Colwell was assigned to this proceeding. The Commission issued ALJ Colwell’s Prehearing Order on August 31, 2011. The Prehearing Order stated that the deadline for filing petitions for intervention and protests was September 14, 2011, and that prehearing memoranda were to be filed by September 30, 2011. The OSBA and Dominion timely filed answers to the Amended Petition on September 14, 2011. RESA filed a Petition to Intervene on September 14, 2011. PPLICCA filed an answer to the Amended Petition on September 19, 2011. On September 23, 2011, Wal-Mart Stores East, L.P. and Sam’s East, Inc. (“Walmart”) filed a Motion for Leave to Intervene Out-of-Time and Petition to Intervene.

A prehearing conference was held on October 5, 2011, at which the parties agreed to a procedural schedule and modified discovery terms. ALJ Colwell issued a Scheduling Order on October 5, 2011, reflecting the agreed-upon procedural schedule and modified discovery terms, and granting the unopposed petitions to intervene of RESA, PPLICCA, Dominion and Walmart.

The OSBA submitted OSBA Statement No. 1 (the Direct Testimony and Exhibits of Robert D. Knecht) on November 2, 2011; OSBA Statement No. 2 (the Rebuttal Testimony and Exhibits of Robert D. Knecht) on November 16, 2011; and OSBA Statement No. 3 (the Surrebuttal Testimony of Robert D. Knecht) on November 30, 2011.

PPL and Dominion submitted Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony. RESA, OCA, and I&E submitted Direct Testimony and Surrebuttal Testimony. Walmart and REG submitted Direct Testimony.

An evidentiary hearing was held on December 5, 2011, at which time OSBA Statement No. 1, OSBA Statement No. 2, and OSBA Statement No. 3 were entered into

the record, along with OSBA Hearing Exhibit No. 1. The aforementioned testimony submitted by the other parties was also offered and admitted into the record.

The OSBA submitted a Main Brief and Reply Brief in this proceeding on January 9, 2012 and January 23, 2012, respectively.

ALJ Colwell issued a Recommended Decision (“RD”) on May 4, 2012.

The OSBA filed Exceptions in response to the RD on April 24, 2012. Exceptions were also filed by PPL, PPLICA, I&E, OCA, Dominion, and RESA. The OSBA submits the following Reply Exceptions in response to certain of the Exceptions filed by PPL, OCA, Dominion, and RESA.

II. REPLY EXCEPTIONS

A. Competitive Transition Rider

- 1. Reply to PPL Exception No. 1: The CTR is a just and reasonable temporary, non-bypassable, reconcilable Section 1307(e) cost recovery mechanism to refund or recover any remaining net historic over and under collection balances incurred for transmission service and generation supply service prior to the effective date of the RR. (PPL Exceptions at 8-14)**

The CTR is anything but just and reasonable because it simply is not consistent with the basic ratemaking principle of cost causation.² The ALJ was correct in determining that the CTR, unlike the RR, “does not differentiate between default shopping customers or make an attempt to align cost causation with the parties responsible for the costs.”³ The CTR is patently unfair to customers who long ago chose

² *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (2006), appeal denied, 591 Pa. 676, 916 A.2d 1104 (2007).

³ RD at 42.

to shop and are not responsible for any prior period under-collections that will be on Company's books when the RR and CTR would go into effect, namely June 2012.⁴

PPL contends that current shopping customers contributed to the historic over/under collection that the CTR is designed to refund/recoup, but there is no clear evidence to support PPL's argument that *all* shopping customers will have caused the variance as of the effective date of the RR. The Company asserted that the historic over- and under-collection balances that the CTR is designed to address primarily arose when PPL transitioned to a competitive market after expiration of rate caps in January 2010.⁵ Consequently, PPL alleged that many of the current shopping customers contributed in part to the net historic over- and under-collections.⁶

However, the 2010 variances have already been collected from default service customers. For example, the large 2010 under-collection reported for the Small Commercial and Industrial (Small C&I) Fixed rate class has already been collected from default service customers. They paid significantly higher rates in summer 2011, but at the time of hearing for this proceeding that class had an over-collection. If on May 31, 2012 there still exists an over-collection, it would be unfair for the refund go to all distribution customers, shopping and non-shopping, instead of to the default service customers who contributed to the over-collection. Similarly, if there is an under-collection on May 31, 2012, it would be unfair to recover it from all distribution customers, many of whom chose to shop long ago.

⁴ OSBA Statement No. 1 at 10.

⁵ PPL Statement No. 1-R at 25.

⁶ *Id.*

PPL argues that the CTR is consistent with class ratemaking principles and seems to imply that these principles somehow “trump” principles of equity and cost causation.⁷ The Company cites to *Philadelphia Suburban Tran. Co. v. P.U.C.* for the proposition that rate structure must be based on economic facts and on an understanding of all facts and circumstances that affect rates and services.⁸ Considering the facts and circumstances of this case, where large historical under-collections have already been recovered from default service customers, the obvious cost causation and equity considerations that militate against the CTR should outweigh whatever other vaguely-defined and less important principles of class ratemaking upon which PPL relies in its exception.

2. Reply to PPL Exception No. 2: The CTR is needed to refund or recover any remaining net historic over and under collection balances incurred for transmission service and generation supply service prior to the effective date of the RR. (PPL Exceptions at 14-18)

The ALJ correctly determined that PPL has been unable to show that the CTR is a necessary cost recovery mechanism. As explained in the OSBA’s Main Brief at pp. 20-21, PPL’s concerns about the ability to recover/recoup historic variances are not supported. Any historical variance that exists at May 31, 2012 can be fairly and adequately recovered/recouped through the RR. The OSBA also observes that the ALJ’s RD in this proceeding does not exhaust PPL’s options with respect to the future recovery of large generation or transmission variances. In the extremely unlikely event that PPL amasses a reconciliation balance that it cannot recover (or reasonably refund) through the RR, it is free to submit a proposal for an alternative recovery mechanism. There is no

⁷ PPL Main Brief at 48.

⁸ *Philadelphia Suburban Tran. Co. v. P.U.C.*, 281 A.2d 179 (Pa. Cmwlth. 1971).

need to establish a rate mechanism that is inconsistent with cost causation and inequitable merely on the basis that PPL might possibly find itself facing an unrecoverable variance.

3. Reply to OCA Exception No. 1: The Commission should approve the Company's proposed Competitive Transition Rider. (OCA Exceptions at 3-5)

For all of the reasons stated above, this Exception should be denied.⁹

B. Reconciliation Rider

1. Reply to OCA Exception No. 2: The Commission should not approve the Company's proposed RR mechanism because it would add customer confusion and is not appropriate at this time. (OCA Exceptions at 5-6)

The OCA contends that the Application Provisions of the RR “pose significant educational challenges and could create customer confusion about the default service rate.”¹⁰ As the OSBA explained in its Main Brief, the tradeoff is between equity and simplicity.¹¹ Given that the current reconciliation mechanism is unfair and that substantial variances are likely to continue, the equity considerations outweigh the increased complexity of the RR. Although the RR may be more complicated than the existing reconciliation mechanisms, the PPL electric bill will still display a clear PTC which shows the price charged to default service customers for that period.¹² The PTC should also accurately reflect the cost to provide default service for that period without

⁹ See also OSBA Main Brief at 20-22; OSBA Reply Brief at 12-13.

¹⁰ OCA Exceptions at 5.

¹¹ OSBA Main Brief at 19.

¹² OSBA Statement No. 2 at 11.

being distorted by reconciliation charges or credits. Until such time as PPL adopts accounting and forecasting procedures that result in small variances, it is both reasonable and necessary to adopt a reconciliation mechanism that properly matches recovery (or refund) of the large variance with the specific customers who caused that variance. The RR achieves that objective, with the modest cost that complexity is increased.

2. **Reply to Dominion Exception No. 1: The ALJ erred as a matter of law in recommending approval of the reconciliation rider which plainly violated Commission Regulations. (Dominion Exceptions at 5-9)**

Reply to RESA 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). (RESA Exceptions at 10-18)

The ALJ concluded in the RD that “the Commission’s regulations contemplate a reconcilable automatic §1307(f) cost recovery surcharge that is not required to be included in the cost to compare.”¹³ Dominion and RESA contend that this conclusion is wrong and must be reversed, but they incorrectly interpret the Commission’s regulations.

Rather than violating those regulations, the RR appears to be specifically authorized. The plain language of Sections 54.187(b) and (f) contemplate the exclusion of reconciliation charges/refunds in the PTC. Section 54.187(b), read together with Section 54.187(f), clearly excepts from inclusion in the PTC, the reconciliation of a Section 1307(e) automatic energy adjustment clause. Sections 54.187(b) and (f) provide, in pertinent part, that:

¹³ RD at 57.

(b) *Except for rates available consistent with subsection (f), a default service customers 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.*

(f) A [Default Service Provider] may use an automatic energy adjustment clause to recover reasonable nonalternative energy default service costs...¹⁴

Moreover, as noted by the ALJ,¹⁵ the Commission has approved a similar mechanism for another EDC in *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (June 2, 2009). The fact that PECO's migration rider requires notice and PECO has not implemented it as of yet does not invalidate its approval by the Commission.

3. **Reply to Dominion 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." (Dominion Exceptions at 9-14)**

PPL's current tariff reconciles over-collections and under-collections within three separate charge mechanisms, the TSC, GSC-1, and GSC-2.¹⁶ Only customers who take default service at the time the reconciliation charges/credits are imposed are subject to PPL's existing reconciliation mechanisms.¹⁷ In effect, the Company's existing PTC includes charges or credits related to prior periods, and therefore does not accurately

¹⁴ 52. Pa. Code §54.197(b) (emphasis added).

¹⁵ RD at 19.

¹⁶ OSBA Statement No. 1 at 2.

¹⁷ *Id.*

reflect the cost of providing service in the period to which the PTC applies.¹⁸ The RR will allow the Company to also recover/refund variances from shopping customers who were default service customers when the variance occurred.¹⁹

The RR better aligns reconciliation charges/refunds with the customers who were default service customers when the over/under-collection was created.²⁰ Under the current reconciliation mechanism, ratepayers who choose to shop can avoid paying reconciliation charges for a shortfall that occurred while they were still default service customers. This leaves an unfair and large burden on the remaining default service customers, who were not able to (or chose not to) shop.²¹ This example has, in fact, already occurred. When faced with large reconciliation charges in 2011, PPL's non-residential customers continued their exodus from default service, which contributed to an extraordinarily large reconciliation charge on the remaining Small C&I default service customers in the summer of 2011.²²

Similarly, shopping customers can unfairly benefit from a default service over-collection by returning to default service and receiving a refund even though they did not contribute to the over-collection. The RR would mitigate the ability of ratepayers to take unfair advantage of the Company's reconciliation mechanisms.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 2, 4.

²⁰ *Id.* at 3-4; OSBA Statement No. 2 at 3.

²¹ OSBA Statement No. 2 at 3.

²² *Id.*

Both of these scenarios show how PPL's current reconciliation mechanisms distort the PTC and the competitive marketplace.²³ The proposed RR will remove reconciliation charges and/or refunds from the PTC, allowing it to accurately reflect the current costs of providing default service without the interference of historic reconciliation charges or refunds.

Dominion argues that *excluding* reconciliation charges/credits from the PTC hurts competition, however, it is *including* historic reconciliation charges/credits in the PTC that has, in fact, actually distorted competition, because the PTC has not accurately reflected the current period costs of providing default service.²⁴ The enormous distortion in the PTC resulting from reconciliation charges and credits is shown prominently in the record in OSBA Hearing Exhibit 1.

4. Reply to RESA 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 (RESA Exceptions at 5-8)

As the Commission Order cited by RESA acknowledges, Section 2807(e)(4) was enacted to prevent discriminatory treatment of shopping customers returning to default service in order to encourage development of the competitive marketplace.²⁵ The RR does not discriminate against shopping customers that choose to return to default service. Returning shopping customers will experience neither the benefit nor the burden from variances to which they did not contribute. New customers are treated exactly the same

²³ *Id.*

²⁴ OSBA Main Brief at 9-10.

²⁵ *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Order entered August 23, 2004.

way in that they also will experience neither the benefit nor the burden from variances to which they did not contribute. In fact, the RR, as described above, is more equitable than the existing mechanisms and in no way unfairly discriminates against customers who choose to shop.

5. Reply to RESA Exception No. 2: The ALJ erred in determining that there is a current and ongoing need for the RR. (RESA Exceptions at 8-10)

RESA argues that PPL's current reconciliation mechanisms will provide it with full cost recovery. As support for this contention, RESA points to the fact that PPL currently has a net over-recovery from the Residential and Large C&I classes. RESA further states that PPL has no immediate risk for not recovering the current under collection for the Small C&I class because a significant number of Small C&I customers remain on default service.

RESA's focus on PPL's future risk of non-recovery ignores two of the primary reasons for implementing the RR, namely cost causation and stable default service rates. Unlike PPL's current reconciliation mechanism, the RR aligns the recovery or recoupment of costs with the customers who contributed to them. Moreover, as outlined in the OSBA's Main Brief, PPL's inability to provide reasonably stable default service rates is likely to continue to occur in the future, unless and until PPL develops mechanisms to more accurately forecast default service electric supply costs.²⁶ While the OSBA fully supports efforts in this regard (and was in fact the only party to offer

²⁶ OSBA Main Brief at 12-15.

suggestions for improving that forecasting in this proceeding), the RR remains necessary to mitigate the effects of such variances.

C. Annual Reconciliation

1. **Reply to RESA Exception No. 6: ALJ erred in concluding that reconciliation on an annual basis was needed to ensure a “fair PTC.” (RESA Exceptions at 23-26)**

RESA claims that annual reconciliation will result in PPL no longer recovering costs on a full and current basis as required by the Competition Act because the statutory parameter for “current” is quarterly reconciliation.²⁷ As support for this contention, RESA cites to 66 Pa. C.S. §2807(e)(7), which provides, in relevant part:

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.²⁸

The plain language of §2807(e)(7) simply does not set a statutory parameter for quarterly reconciliation. It sets the standard for the maximum frequency with which rates can change, not how often reconciliation should be done.

This argument also fails to acknowledge that a Final Order issued by the Commission pursuant to its ongoing retail market investigation (“RMI Order”) shows that the Commission is in fact at least considering a shift away from quarterly reconciliation, recognizing that it may have contributed to the volatility of default service rates.²⁹ The Commission agreed in the RMI Order that longer reconciliation periods

²⁷ RESA Exceptions at 23.

²⁸ 66 Pa. C.S. §2807(e)(7) (emphasis added).

²⁹ *Investigation of Pennsylvania’s Retail Electricity market: Recommendations Regarding Upcoming Default Service Plans*, Docket no. I-2011-2237952, Slip Op. p. 54 (December 16, 2011).

may help to reduce rate instability caused by over/under-collections.³⁰ As described in the OSBA's Main Brief at pp. 6-7, rolling annual reconciliation will retain the rate stability advantages of spreading out recovery/refunds over 12 months. It should also alleviate concerns about recovery of default service costs on a full and current basis because it will have the additional advantage of more quickly incorporating variances into rates.³¹

Moreover, PPL's current Commission-approved reconciliation mechanisms already reconcile the GSC-2 and TSC on a fixed annual basis. The ALJ's recommendation merely changes reconciliation of the GSC-1 from a quarterly to an annual basis consistent with the GSC-2 and TSC.


³⁰ *Id.*

³¹ OSBA Main Brief at 6-7.

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission deny the foregoing Exceptions.

Respectfully submitted,


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Dated: May 4, 2012

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Exceptions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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