**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held September 11, 2014 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Gladys M. Brown |  |
| Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program | P-2013-2389572 |
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| A case stemming from:  Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program for the Period June 1, 2013 through May 31, 2015 | (P-2012-2302074) |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Joint Petition for Partial Settlement (Partial Settlement), filed April 11, 2014, by PPL Electric Utilities Corporation (PPL or the Company), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Sustainable Energy Fund (SEF), and Direct Energy Services, LLC (Direct Energy) (collectively, the Joint Petitioners), in the above-captioned proceeding; (2) the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Susan D. Colwell and Joel H. Cheskis, issued May 9, 2014; (3) the Exceptions to the Recommended Decision filed by the Dauphin County Industrial Development Authority (DCIDA) on May 29, 2014; and (4) the Replies to Exceptions filed by PPL, OSBA, and FirstEnergy Solutions Corp. (FES) on June 9, 2014.

**I. History of the Proceeding**

On August 23, 2013, PPL filed a Petition for Approval of a New Pilot Time-of-Use Program (Petition), in compliance with the Commission’s Order in *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan*, Docket Nos. P-2012-2302074, *et al*. (Order entered May 23, 2013) (*May 2013 DSP II Order*).[[1]](#footnote-1) Under the proposed Pilot Time-of-Use Program (Pilot TOU Program) as set forth in the Petition, PPL will utilize electric generation suppliers (EGSs) to fulfill its obligation to offer a time-of-use (TOU) rate option to its default service customers as set forth in the applicable provisions of Act 129 of 2008 (Act 129). 66 Pa. C.S. § 2807(f)(5).

On September 6, 2013, SEF filed an Answer to the Petition, and on September 12, 2013, the OCA and CAUSE-PA each filed separate Answers to the Petition. On October 17, 2013, DCIDA filed a Petition to Intervene. The matter was assigned to the Office of Administrative Law Judge.

On February 26, 2014, an evidentiary hearing was held, and the Parties stated that they had reached a settlement in principle, resolving all issues except for an issue raised by DCIDA regarding TOU rates for net-metering customers. The hearing proceeded as planned, resulting in a transcript of sixty-two pages.

On March 21, 2014, Main Briefs addressing the contested issue were filed by PPL, OSBA, and DCIDA. On April 11, 2014, Reply Briefs were filed by PPL, OSBA, DCIDA, and FES. Also on April 11, 2014, the Joint Petitioners filed the Partial Settlement. Statements in Support of the Partial Settlement were filed by PPL, OSBA, OCA, SEF, Direct Energy, and CAUSE-PA. FES, PPL Industrial Customer Alliance (PPLICA) and Interstate Gas Supply, d/b/a IGS Energy (IGS Energy) filed letters indicating that they did not oppose the Partial Settlement. Only one Party, DCIDA, actively opposed the Partial Settlement.

On May 9, 2014, the Commission issued the Recommended Decision of ALJs Colwell and Cheskis, which approved the Partial Settlement without modification, and rejected the position of DCIDA. As noted, DCIDA filed Exceptions to the Recommended Decision on May 29, 2014. PPL, OSBA, and FES filed Replies to Exceptions on June 9, 2014.

**II. History of PPL’s TOU Rates**

On December 2, 2010, the Commission approved a TOU program filed by PPL, to become effective January 1, 2011. *PPL Electric Utilities Corporation Supplement No. 94 to Tariff Electric – Pa. P.U.C. No. 201 – Time-of-Use Rates*, Docket No. R-2010-2201138 (Order entered December 2, 2010). However, this program proved unworkable, and caused a number of serious problems, including a significant undercollection due to unexpected increases in spot market prices, significant customer enrollment when both on-peak and off-peak prices were below the fixed-price default service rate, and rapid and massive customer exits from the TOU program when on-peak and off-peak rates were above the fixed-price default service rate. Therefore, on August 22, 2011, as part of its Generation Supply Charge-1 (GSC-1) quarterly rate update filing, PPL requested that the Commission suspend the TOU rates that were to become effective on September 1, 2011, keep the then-current TOU rates in effect, and allow PPL to submit a revised TOU program. *Id*. By Order entered August 25, 2011, at Docket No. M-2011-2258733 (*August 2011 Order*), the Commission granted PPL’s request to maintain the currently-effective TOU rates, and directed PPL to submit, within thirty days, a plan proposing revisions to the pricing of the TOU rates in order to address the problems relating to the then-current program.

On September 26, 2011, PPL proposed a new TOU program in accordance with the Commission’s *August 2011 Order*. However, on August 30, 2012, the Commission rejected the TOU program as filed, and ordered that the existing TOU rates remain in effect until June 1, 2013, which coincided with the effective date of PPL’s then-pending Default Service Program for the period June 1, 2013 through May 31, 2015 (DSP II). *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 (Order entered August 30, 2012) (*August 2012 Order*).

On May 1, 2012, PPL filed a Petition for approval of its DSP II, which included a TOU proposal. On January 24, 2013, the Commission entered an Opinion and Order approving, with modifications, PPL’s DSP II. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Order entered January 24, 2013) (*January 2013 DSP II Order*). However, the Commission did not approve the TOU program submitted by PPL as part of its proposed DSP II, nor did it approve an alternative TOU proposal submitted by PPL in that proceeding. Instead, the Commission encouraged PPL to schedule a collaborative with interested stakeholders “in order to discuss and resolve any issues regarding the development and implementation of a TOU rate option that will allow the Company to meet its TOU rate requirement.” *January 2013 DSP II Order* at 116, 194. The Commission also encouraged PPL to consider implementing a competitive retail bid process in order to use EGSs to meet the Company’s TOU rate requirement. *Id*. Pursuant to the *January 2013 DSP II Order*, PPL initiated a collaborative and discussions with interested parties regarding potential TOU program alternatives.

On March 25, 2013, as part of a compliance filing regarding its DSP II, PPL requested authority to continue its currently-effective TOU rate option, including the frozen rates initially approved by the Commission in its *August 2011 Order*, and continued by the *August 2012 Order*, until the Commission approved a successor program. PPL requested this extension in order to permit the TOU collaborative process to continue, and to allow adequate time for the Commission to approve any subsequently-filed TOU rate proposal. In its *May 2013 DSP II Order*, the Commission granted PPL’s request and permitted the currently-effective TOU rate option to continue until the Commission approved a successor program. Accordingly, PPL’s current TOU program with frozen rates, including the applicable E-factor, has been extended, and remains in effect.

As noted above, PPL filed its Petition for approval of the proposed Pilot TOU Program on August 23, 2013. If approved, the Pilot TOU Program will replace the current TOU program.

**III. Discussion**

**A. Legal Standards**

**1. Burden of Proof**

As the petitioner or moving party, PPL has the burden of proof in this proceeding pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, PPL must show, by a preponderance of the evidence, that the relief sought is proper under the circumstances. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, PPL’s evidence must be more convincing, by even the smallest amount, than that presented by an opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by PPL of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of PPL shifts to the opposing party. If the evidence presented by the opposing party is of co-equal value or “weight,” the burden of proof has not been satisfied. PPL now has to provide some additional evidence to rebut that of the opposing party. *Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

**2. Legal Standards Applicable to TOU Service**

Section 2807(f)(5) of the Code provides that default service providers must submit one or more TOU rates and real-time price plans to the Commission in their default service plans:

By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to [*sic*] the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

66 Pa. C.S. § 2807(f)(5). Accordingly, PPL is required to offer a TOU rate option to its default service customers.

**3. Legal Standards Applicable to Net-Metering Service**

The Alternative Energy Portfolio Standards Act (AEPS Act) became effective on February 28, 2005, and established an alternative energy portfolio standard for Pennsylvania. 73 P.S. §§ 1648.1 *et seq*. Consistent with the requirements of the AEPS Act, the Commission adopted net-metering regulations in 2008. As applicable to this proceeding, Section 75.13 of the Commission’s net-metering Regulations provide as follows:

(a)  EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator’s side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis. EGSs may offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs.

(b)  An EDC shall file a tariff with the Commission that provides for net metering consistent with this chapter. An EDC shall file a tariff providing net metering protocols that enable EGSs to offer net metering to customer-generators taking service from EGSs. To the extent that an EGS offers net metering service, the EGS shall prepare information about net metering consistent with this chapter and provide that information with the disclosure information required in §  54.5 (relating to disclosure statement for residential and small business customers).

(c)  The EDC shall credit a customer-generator at the full retail rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator’s side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. If a customer generator supplies more electricity to the electric distribution system than the EDC delivers to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator’s usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours shall continue to accumulate until the end of the year. . . .

 (d)  At the end of each year, the EDC shall compensate the customer-generator for any excess kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the same year at the EDC’s price to compare.

 (e)  The credit or compensation terms for excess electricity produced by customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.

**B. PPL’s Pilot Time-of-Use Program**

**1. Joint Petition for Partial Settlement**

As noted, above, the Joint Petitioners submitted a Partial Settlement that resolves all issues among the Parties in this proceeding with regard to the proposed Pilot TOU Program, except for an issue raised by DCIDA regarding TOU rates for net-metering customers.[[2]](#footnote-2) The Joint Petitioners state that the Partial Settlement reflects a carefully balanced compromise of the interests of all the Joint Petitioners, and that the Joint Petitioners unanimously agree that the Partial Settlement is in the public interest. Partial Settlement at 4. The substantive terms of the Partial Settlement are set forth in Paragraphs 19 through 50 as follows:

**A. Pilot TOU Program Overview**

19. PPL Electric will provide a TOU rate option to customers in its tariff; however, it will utilize the retail market and EGSs to satisfy its statutory obligation to offer TOU service to its default service customers.[[3]](#footnote-3)

20. Retail EGSs that choose to participate in the Pilot TOU Program will offer TOU rate options and provide the TOU service to customers in PPL Electric's service territory.

**B. EGS RESPONSIBILITIES AND REQUIREMENTS**

21. EGSs interested in providing TOU service through the Pilot TOU Program must first qualify to participate. An interested EGS must be licensed as an EGS by the Commission with authority to provide service to Residential and/or Small Commercial and Industrial ("C&I") customers in PPL Electric's service territory. Participating EGSs must provide a TOU rate option to Residential and/or Small C&I customers, from the initiation of the Pilot TOU Program until May 31, 2015, which coincides with the end of the default service plan approved by the Commission in Docket No. P‑2012-2302074.

22. EGSs also must execute a binding participation form ("Participation Form") to participate in the Pilot TOU Program. This form can be submitted any time from the initiation of the program through February 28, 2015. The Participation Form is attached [to the Settlement Agreement] as Appendix A.

23. The Participation Form describes the Pilot TOU Program and an EGS's responsibilities under the program.

24. A participating EGS will define the term of the contract between the EGS and the TOU customer, provided that the term may not be less than three calendar months, which coincides with the changes to the Price-to-Compare ("PTC").[[4]](#footnote-4) However, it is up to the EGS to determine if it wants to alter its TOU offerings each quarter.

25. A participating EGS also will define the on- and off-peak rates that it will offer to customers. However, an EGS's off-peak/discounted pricing hours cannot include 2 p.m. to 6 p.m., Monday through Friday, excluding PJM holidays during the summer, *i.e.,* June, July, and August. The TOU rate options offered by the participating EGSs will consist of a rate that varies with time of use, but not as frequently as each hour, and includes off-peak and on-peak periods, with rates during off-peak periods being lower than rates during on-peak periods.

26. A participating EGS must create and maintain a webpage, which will be cross-referenced by PPL Electric on its TOU webpage that provides details about the available TOU rate options offered by EGSs for the current quarter and the rates currently available. The rate options posted on the EGS's webpage must be the same as reported to the Company in the quarterly reports, and the EGS must explicitly state that the rate option is being offered as part of the PPL Electric Pilot TOU Program.

27. Participating EGSs must provide PPL Electric with an initial report and quarterly reports thereafter describing the TOU rate options being offered and the pricing for on-and off-peak hours for the upcoming quarter. The Participation Form will require participating EGSs to report the TOU rates and other rate option details to the Company, and this information can be provided to the Commission upon request. The Participation Form also requires a participating EGS's quarterly reports to provide the number of customers that participate in the EGS's rate offerings under the program during the previous quarter. Furthermore, the Participation Form requires a participating EGS to provide, in the quarterly reports, its aggregate monthly on- and off-peak load information for customers participating in the Pilot TOU Program, per rate schedule.

28. EGSs must use the electronic data interchange ("EDI") process for data/information exchange and forward "bill ready" data to PPL Electric.

29. A participating EGS also may not charge an early termination penalty or fee to any customer that leaves the TOU rate option offered by the EGS as part of the Pilot TOU Program. Further, a participating EGS is required to notify all of its customers taking service under the Pilot TOU Program that it is no longer part of the program when it decides to opt out of the program.

30. EGSs are responsible for publicizing and marketing their participation in the Pilot TOU Program and the TOU rate options provided thereunder.

**C. CUSTOMER PARTICIPATION**

31. A customer's participation in the Pilot TOU Program is voluntary, and the customer selects the EGS rate option.

32. All Residential and Small C&I customers, except for customers in the Company's low-income customer assistance program ("CAP"),[[5]](#footnote-5) will be eligible to participate in the Pilot TOU Program for the term of the program. Customers do not need to be receiving fixed price default service from PPL Electric to participate in the Pilot TOU Program.[[6]](#footnote-6) The Pilot TOU Program and the EGS rate options offered thereunder will be available to PPL Electric's Residential and Small C&I default service customers, as well as any other Residential and Small C&I customers that choose to participate, subject to any terms of a customer's existing contract for service from an EGS. Customers, including net metering customers, who volunteer to participate in an EGS's rate option offered as part of the Pilot TOU Program will be treated as shopping customers, and all of the rules applicable to shopping customers apply. A customer may leave a participating EGS's rate option under the Pilot TOU Program subject to the Commission's switching rules.

33. PPL Electric will inform customers about the new Pilot TOU Program by including an article in "PPL Connect." This article will briefly summarize the program and instruct customers on how to obtain more information. The Company will not promote any specific TOU rate option offered by an EGS that is participating in the program.

34. PPL Electric will maintain a website that will provide links to each participating EGS's TOU rate offerings. Customers who call PPL Electric and indicate interest in a TOU rate will be directed to a PPL Electric-hosted website that will provide links to each participating EGS's TOU rate offerings. The website is anticipated to operate similarly to the Company's "choose your supplier rate." The Company also will provide additional information on its TOU website, including a frequently asked questions ("FAQ") section. However, PPL Electric will not provide any EGS-specific TOU rate information directly on its website.

35. If a customer interested in TOU service does not want to review the TOU information on PPL Electric's website, the Company will, at the customer's request, send a letter containing the information posted on the Company's website.

36. PPL Electric also will provide a detailed discussion regarding how customers can determine the effect of an EGS's TOU rate under the Pilot TOU Program on their monthly bills.

37. The Company will provide information on the Pilot TOU Program to its Customer Service Representatives.

38. PPL Electric will prepare a fact sheet with tips and ideas on how to shift load.

39. PPL Electric will provide interested parties the opportunity to review and comment on the above education efforts discussed in paragraphs 34, 36 and 38, above.

40. The Company will provide a quarterly status report on the Pilot TOU Program to the parties in this proceeding. It will provide an analysis of information received from EGSs' in their quarterly reports concerning the number of customers that participated in the EGSs' rate offerings during the previous quarter and each EGS's aggregate monthly on- and off-peak load information for customers participating in the Pilot TOU Program, per rate schedule, in the report submitted to the Commission under 66 Pa. C.S. § 2807(f)(5).

**D. EXISTING TOU CUSTOMER PARTICIPATION**

41. PPL Electric's currently effective TOU program will no longer be available to new applicants as of the effective date of the new tariff supplement implementing the new Pilot TOU Program.

42. Except for CAP customers currently receiving service under PPL Electric's existing TOU rate option, all other customers may move directly to the Pilot TOU Program, provided that the customer chooses to participate. If a current TOU customer does not choose to participate in the Pilot TOU Program or does not choose to purchase generation supply from an EGS, the customer will be returned to PPL Electric's fixed price default service within a specified time frame, discussed below. PPL Electric will also return CAP participants to default service.

43. PPL Electric will send a letter to existing TOU customers 45 days prior to the start of the Pilot TOU Program to notify them that the current TOU rate will terminate. The letter also will explain that if the customers do not choose to participate in the Pilot TOU Program or do not choose to purchase generation supply from an EGS, they will be transferred to PPL Electric's fixed price default service by a certain date. The letter also will contain information about the Pilot TOU Program and how to participate in the program if the customers are interested.

44. PPL Electric will maintain the current TOU rates in effect until each customer's first meter read date after the implementation of the Pilot TOU Program, at which time the customer will be returned to fixed price default service if the customer has not elected to receive service from an EGS.

**E. IMPLEMENTATION SCHEDULE**

45. The term of the Pilot TOU Program will run from the date the applicable tariff provisions become effective through May 31, 2015, which coincides with the end of the default service plan approved by the Commission in Docket No. P‑2012-2302074.

46. PPL Electric will make the Pilot TOU Program effective 90 days after the Commission issues a final order approving the Pilot TOU Program.

**F. TOU CONTINGENCY PLAN**

47. During the term of the Pilot TOU Program, PPL Electric will periodically ascertain that at least one EGS is providing a TOU rate option through execution of the Participation Form and regular EGS reports.

48. If no EGSs execute the Participation Form at the initiation of the Pilot TOU Program or if all participating EGSs opt out of the program or default on the program's requirements, PPL Electric will expeditiously seek approval of a new subsequent TOU proposal and request that the replacement plan be made effective within 60 days. If no EGS qualifies to participate in the Pilot TOU Program or it appears that any or all of the participating EGSs will choose to opt out of the program, PPL Electric will endeavor to work with an interested but non-qualifying EGS or the opting out EGSs to keep them in the program prior to engaging in the contingency plan described in paragraph 49, below.

49. PPL Electric's subsequent TOU proposal, as discussed in paragraph 48, will contain the following characteristics. First, the Company will solicit, through a request for proposal ("RFP") process, a single supplier to provide TOU service to customers. The program also will be a summer-only program (including the months of June, July and August), where the "on-peak" period will be from 2 p.m. to 6 p.m., Monday through Friday, excluding PJM holidays, and all other hours during this summer period will be defined as the off-peak hours. The RFP will determine the summer "on-peak" and "off-peak" rates. Moreover, the rate during the non-summer months will be the then current PTC. The Company also will propose that CAP customers be eligible to participate in this subsequent TOU proposal. Further, the TOU rates provided through the RFP will not be reconciled. PPL Electric also will be permitted to fully recover the costs of implementing the subsequent TOU proposal through the Generation Supply Charge. Finally, parties will have the right to challenge the subsequent TOU proposal.

**G. RECONCILIATION**

50. As instructed by the Commission, in the January 24 Order, as part of the revised default service plan, PPL Electric will continue using its current quarterly reconciliation methodology for its Rate Schedule GSC-1 rates. January 24 Order, p. 70. Moreover, the Company will implement the approved joint reconciliation permitted by the Commission's Order at Docket No. R-2011-2264771.

Partial Settlement at 4-11.

The Joint Petitioners state that the Partial Settlement is conditioned upon the Commission’s approval of the terms and conditions set forth therein without modification. If the Commission should disapprove the Partial Settlement or modify the terms and conditions therein, the Joint Petitioners assert that the Partial Settlement may be withdrawn by any of the Joint Petitioners upon written notice to the Commission and all active Parties within three business days following entry of the Commission’s Order, and in such event, shall be of no force and effect. *Id*. at 12-13. The Joint Petitioners further assert that, if the Commission disapproves the Partial Settlement or any of the Joint Petitioners elect to withdraw, the Joint Petitioners reserve their respective rights to fully litigate this case. *Id*. at 13.

**2. Net-Metering Issue**

**a. DCIDA’s Position**

As previously noted, DCIDA, a Small Commercial and Industrial (Small C&I) customer of PPL, actively opposed the Partial Settlement as discussed above. Specifically, DCIDA is concerned that, as a net-metering customer, it will no longer be able to choose TOU service if such service is provided by EGSs, as the Partial Settlement provides, because there is no requirement that EGSs offer net-metering. DCIDA contends that the law requires PPL to offer both net-metered service and TOU service, but that PPL’s proposal to utilize EGSs to provide TOU service will not allow PPL to comply with both requirements. DCIDA M.B. at 1.

DCIDA explained that it operates a solar energy farm in Dauphin County, Pennsylvania, with a generating capacity of slightly more than 2 MW. DCIDA stated that this solar facility can provide a source of power for the County’s emergency management systems in the case of a disaster, but that it also operates in parallel with the electric utility grid. DCIDA averred that it built the solar farm with the understanding that PPL would credit and compensate DCIDA for any excess power generated by the facility, in compliance with applicable law and PPL’s tariff. DCIDA stated that it believed that it could derive revenue from this system, allowing it to service any debt associated with the project, “and ultimately to facilitate DCIDA’s public mission of fostering community and economic development.” *Id*. at 2.

DCIDA stated that, since October 2011, it has taken net-metered service from PPL, and that in April 2013, it elected to take service under PPL’s TOU rate option as a net-metering customer, rather than taking service under a fixed-price default service rate. *Id*. at 3. DCIDA averred that, as a net-metering customer, it offsets its on-site power consumption from PPL with power generated by the solar facility, pursuant to the following provisions of PPL’s tariff:

1. The customer-generator will receive a credit for each kilowatt-hour received by the Company up to the total amount of electricity delivered to the Customer by the Company during the billing period at the full retail rate consistent with Commission regulations. If a customer-generator supplies more electricity to the Company than the Company delivers to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator’s usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours will continue to accumulate until the end of the PJM planning period ending May 31 of each year. On an annual basis consistent with the PJM planning period, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by Company to the customer-generator during the preceding year at the Company’s Rate Schedule Price To Compare consistent with Commission regulations. For eligible customer-generators with a TOU rate provision, a weighted average of the on-peak and off-peak hours will be used to derive the Company’s Price To Compare for that Rate Schedule. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
2. If the Company supplies more kilowatt-hours of electricity than the customer-generator facility feeds back to the Company’s system during the billing period, all charges of the appropriate rate schedule shall be applied to the net kilowatt-hours of electricity that the Company supplied. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.

*Id*. at 3-4 (citing PPL St. 2-R at 13-14; PPL Exh. JMR-5).

DCIDA noted that the current fixed GSC-1 rate for Small C&I customers was 8.441 cents per kWh, which would be the Price-to Compare (PTC) at which PPL would compensate, or “cash out,” DCIDA for any excess generation on May 31 of each year, if DCIDA were taking fixed-price service. However, DCIDA explained that, as a TOU customer, it is compensated at a PTC that PPL derives from a weighted average of the number of on-peak and off-peak hours in a given year. DCIDA M.B. at 4. According to DCIDA, this rate is approximately 13.736 cents/kWh. DCIDA M.B. at 5 (citing DCIDA Exh. 3; Tr. at 15). DCIDA asserted that PPL’s determination of the weighted average for the PTC does not account for the actual period of production, when the excess generation was actually delivered to PPL. *Id*. at 5.

DCIDA stated that the ability to recover costs and derive revenue for its public projects significantly incentivized its investment in the solar farm, and that it recognized that taking service under PPL’s TOU rate would increase its cash-out compensation. DCIDA averred that PPL also benefits from DCIDA’s power production, because PPL charges customers in DCIDA’s rate class on-peak prices that are higher than it pays DCIDA per kWh for the power it receives from the solar facility. Thus, DCIDA argued that, in the event it ever becomes necessary for PPL to buy power at spot market prices, PPL would be able to offset that cost using the cheaper power DCIDA generates. DCIDA also stated that, to the extent it generates power that services local demand, this is less costly to PPL and involves less loss of energy than would be involved in PPL transmitting power over long distances. *Id*. at 4-5.

As noted, DCIDA is opposed to the proposal that PPL rely on EGSs to provide its TOU service, because it believes it will no longer be able to take net-metered service with a TOU rate under such a proposal. DCIDA noted that the AEPS Act and Commission Regulations require EDCs to offer net-metered service to customer-generators, but that net-metering service is optional for EGSs. DCIDA also noted that Act 129 requires EDCs to offer TOU rates to all default service customers. *Id*. at 9-11. Accordingly, DCIDA contended that PPL must provide both net-metered service and a TOU rate to DCIDA, and cannot exclude DCIDA from receiving either service. Moreover, DCIDA asserted that, in its Order approving PPL’s initial TOU program, the Commission held that Section 2807(f)(5) of the Code prohibited PPL from excluding net-metering customers from its proposed TOU rate. *Id*. at 11 (citing *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order entered March 9, 2010) (*March 2010 TOU Order*) at 22). Thus, DCIDA argued that PPL’s proposed Pilot TOU Program must comply with both legal obligations with respect to DCIDA. *Id*. at 12.

DCIDA asserted that EGSs have no incentive to offer net-metered service, much less net-metered service with a TOU rate. Thus, DCIDA argued that PPL’s Pilot TOU Program will force it to pick either PPL’s net-metered service at the fixed price default service rate, or whatever TOU rate it may be able to negotiate with an EGS. *Id*. DCIDA contended that PPL must either provide TOU service to net-metering customers, or require contracting EGSs to offer net-metered service with its TOU rate offering. *Id*. at 15.

DCIDA also argued that PPL’s proposed Pilot TOU Program is not aligned with the intent of the AEPS Act to “encourage[ ] research development and deployment of alternative energy systems.” *Id*. at 16 (quoting *Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174 (Final Omitted Rulemaking Order entered July 2, 2008) (*July 2008 Final Omitted Rulemaking Order*) at 18). DCIDA averred that it invested significant funds and incurred $2.5 million in public debt in developing and deploying its solar project, and is justified in expecting a return on that investment that will allow it to perform its public functions. DCIDA asserted that PPL’s proposed Pilot TOU Program will deprive it of its “presently best-suited means to achieve its public goals,” which reduces the incentive and discourages continued investment in alternative energy systems by DCIDA and other, similarly-situated entities. DCIDA M.B. at 16.

DCIDA further asserted that, for similar reasons, it also opposes PPL’s proposed contingency plan, as set forth in the Partial Settlement. DCIDA argued that, under this plan, it would be paid less than its actual PTC for its excess generation because PPL’s weighted-average calculation of the cash-out amount does not account for the actual time that DCIDA delivers power to the grid. *Id*. at 17-18. DCIDA contended that this is contrary to the *July 2008 Final Omitted Rulemaking Order,* in which the Commission determined that compensation should be calculated using a “weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC.” *Id*. at 17 (quoting *July 2008 Final Omitted Rulemaking Order* at 20).

**b. PPL’s Position**

In response to DCIDA’s position, PPL pointed out that its current TOU rates, both on- and off-peak, are substantially higher than the current PTC for each applicable rate class. PPL M.B. at 10. Thus, PPL asserted that, as a net-metering customer, DCIDA currently receives compensation for excess generation at a rate that is substantially higher than the PTC for the otherwise applicable rate schedule. Specifically, PPL stated that the weighted-average TOU rate at which DCIDA is compensated is approximately 12.9 cents/kWh,[[7]](#footnote-7) which was over 2.5 cents higher than the March-May PTC of 10.391 cents per kWh for the otherwise applicable rate schedule. *Id*. at 14-16. As such, PPL averred that the excess revenue DCIDA receives at cash-out is in the range of $50,000 to $80,000 a year, amounting to a large subsidy from the other customers, which PPL alleged is inequitable. Furthermore, PPL contended that DCIDA has never consumed more electricity than it has produced, nor has it reduced usage during peak times since becoming a TOU customer. *Id.* at 18. PPL asserted that DCIDA has benefited from the continuation of the currently-frozen TOU rates, and that it is attempting to maintain the status quo in this regard. *Id*. at 17, 19.

PPL disputed DCIDA’s contention that it is required to offer both net-metering and TOU service to customer-generators. PPL argued that, under its Pilot TOU Program, all customers will have a net-metering option and a TOU option available to them, in compliance with 52 Pa. Code § 75.13(a) and 66 Pa. C.S. § 2807(f)(5), respectively. However, PPL contended that there is no requirement that it offer a TOU option to net-metering customers. *Id*. at 24-25; PPL R.B. at 4-5. PPL noted that the Commission has approved EDC TOU plans that do not permit net-metering customer participants, which supports the premise that net-metering and TOU service requirements can be viewed separately, according to PPL. *Id*. at 25 (citing *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order entered May 9, 2013) (*May 2013* *PECO Dynamic Pricing Plan Order*)).

With regard to DCIDA’s assertion that the *March 2010 TOU Order* prohibited PPL from excluding net-metering customers from its proposed TOU rate, PPL argued that this determination must be read in the context of the Commission’s recent encouragement of default service providers to use EGSs in the provision of TOU service. PPL contended that, by encouraging the use of EGSs, the Commission was aware of the requirements of 52 Pa. Code § 75.13, which provides that EDCs *shall* offer net-metering to customer-generators, but that EGSs *may* offer net-metering to customer-generators. Thus, PPL asserted that, while the *March 2010 TOU Order* required PPL to offer net-metering and TOU services, the use of an EGS changes how this requirement will be implemented. PPL R.B. at 5-7.

In addition, PPL argued that, even if there is a requirement that it must offer net-metering customers a TOU option, it has satisfied that requirement because net-metering customers who take TOU service from an EGS under the Pilot TOU Program will still be net-metering customers of PPL for *distribution* purposes. PPL explained that, under the Pilot TOU Program, while a net-metering customer would receive TOU generation services from an EGS (and any related cash-outs for excess generation, if applicable), the customer-generator would still be a net-metering customer for distribution purposes. Thus, PPL stated that the customer-generator’s bill may still be off-set by any distribution-related credits. PPL M.B. at 25-26; PPL R.B. at 8-9.

PPL also argued that requiring EGSs to offer net-metering in order to participate in the Pilot TOU Program, as DCIDA proposes, could create a barrier to participation. PPL stated that it wants EGSs to have the flexibility to design TOU rate options that they believe will work in the marketplace, and that DCIDA’s proposal will limit that flexibility, which may hinder EGS participation and possibly lead to the plan’s failure. PPL M.B. at 23-24. Nevertheless, PPL asserted that a net-metering TOU option *may* be offered by an EGS under the Pilot TOU Program. Accordingly, PPL opined that DCIDA’s concern that such an option would not be available under the Program is premature. *Id*. at 26; PPL R.B. at 13.

PPL also disputed DCIDA’s contention that the Pilot TOU Program conflicts with the policy embodied in the AEPS Act because it will deprive DCIDA of its means of achieving its goals with regard to the solar facility, and will be a disincentive to development. PPL stated that DCIDA became a net-metering customer of PPL in October 2011, receiving fixed-price service through the PTC. PPL noted that DCIDA did not begin to take service as a TOU customer until June 2013, when DCIDA expanded its facility. PPL M.B. at 19-20; PPL R.B. at 11. PPL averred that, according to DCIDA’s witness, the TOU rate was not material to DCIDA’s decision to expand its facility. PPL R.B. at 11 (citing Tr. at 42). Thus, PPL concluded that the fixed-price default service was sufficient to incentivize DCIDA to build and expand its solar facility, and the excessive compensation DCIDA receives under the current TOU rates “is clearly a windfall provided by other customers.” PPL R.B. at 11.

With regard to DCIDA’s criticism of the proposed contingency plan, PPL asserted that the on- and off-peak periods and rates proposed in the plan are reasonable and appropriate to incentivize customers to shift load from on-peak to off-peak periods. In addition, PPL contended that its Commission-approved cash-out methodology, with which DCIDA takes issue, is not properly before the Commission in this proceeding. PPL asserted that, if DCIDA has an issue with a currently effective tariff provision, it can file a complaint with the Commission. *Id*. at 16.[[8]](#footnote-8) Nevertheless, PPL argued that its cash-out methodology is consistent with 52 Pa. Code § 75.13(e), because it compensates customer-generators using (1) the weighted average of the on-peak and off-peak hours for the entire year; and (2) the PTC in effect at the time of the calculation. PPL stated that the Regulations do not specify which PTC should be used, and therefore, PPL uses the PTC in effect at the time of the calculation, rather than the PTC from earlier periods when the excess generation was actually created and entered into the system. *Id*. at 18.

Finally, in the event the Commission does not accept PPL’s position regarding its treatment of net-metering customers, PPL proposed an alternative net-metering TOU rate to be available only to customer-generators who otherwise qualify for net-metering under the Company’s tariff and the Commission’s Regulations. PPL’s alternative plan would have the following parameters:

* The TOU offering will be a summer-only program and have a summer on-peak period of 2 p.m. to 6 p.m., Monday through Friday, excluding PJM holidays during the summer (*i.e*., June, July and August). All other hours during the summer period will be defined as the off-peak hours.
* The rate during the summer peak period will be the then current PTC with an adder of 100%.
* The rate during the summer non-peak period will be the then current PTC with a discount of 13%.
* During the non-summer months, the rate will be the then current PTC.
* The proposed separate TOU offering for net metering customers will end on May 31, 2015.

PPL M.B. at 26-27; PPL St. 2-RJ at 3.

PPL asserted that its alternative proposal will ensure that a net-metering TOU rate is available to any net-metering customer, regardless of whether or not the customer is able to find an EGS participating in the Pilot TOU Program who is willing to offer net-metering service. PPL stated that the on-peak adder and off-peak discount will incentivize a customer to shift usage from on-peak hours to off-peak hours, and will result in revenue neutrality for those customers who do not shift their load. PPL noted that no party opposed its alternative proposal, and contended that it met its burden of proof with regard to the proposal, and that it has satisfied DCIDA’s concern that PPL offer a TOU rate that is available to net-metered customers. PPL M.B. at 27-28; PPL R.B. at 9-10.

**c. OSBA’s Position**

The OSBA expressed its dissatisfaction with PPL’s currently-effective TOU rates, noting that they have been in place since May 2011. OSBA M.B. at 4-5. The OSBA asserted that the current TOU rates “are not based on any coherent calculation of relevant costs and are hopelessly inconsistent with current market prices.” *Id*. at 5. The OSBA stated that, while it recognizes that Section 2807(f)(5) requires PPL to offer a TOU rate, PPL cannot meet that requirement by offering rates that are unjust and unreasonable. *Id*.; OSBA R.B. at 10. For these reasons, the OSBA recommended that the Commission terminate the current Small C&I TOU rate at the earliest opportunity, preferably on the date the Order is entered in this proceeding. OSBA M.B. at 6; OSBA R.B. at 11. The OSBA noted that, according to the Partial Settlement, the new TOU rates will not become effective until ninety days after the Commission issues a final order approving the Pilot TOU Program. However, the OSBA argued that terminating the existing TOU rates on the day the Order is entered will provide immediate relief from unjust and unreasonable rates for those Small C&I customers still taking TOU service under the current rates, and it will do no harm to those customers if they are required to wait ninety days until the new TOU Program is in place. OSBA R.B. at 11.

The OSBA also objected to DCIDA’s ability to take advantage of the above-market TOU prices as a net-metering customer. The OSBA contended that PPL’s obligation to purchase DCIDA’s excess generation at such prices provides a windfall to DCIDA, which must be paid for by other Small C&I customers. OSBA M.B. at 7-8; OSBA R.B. at 7. The OSBA opined that PPL’s proposed Pilot TOU Program will solve this issue, because it will ensure that TOU rates will reflect market prices. In addition, the OSBA argued that, even if no EGSs decide to participate in the Pilot TOU Program, PPL’s proposed contingency plan will still avoid the problems created by the current TOU rates, because the contingency plan rates will be linked to the fixed default service rates. OCA M.B. at 9-10. The OSBA also stated that it is not opposed to PPL’s proposed alternative TOU proposal for net-metered customers, because it is similar to the contingency plan for TOU service, and will produce revenue neutrality. *Id*. at 11-12.

**d. FES’s Position**

FES averred that the proposed Pilot TOU Program is simple, straightforward and reasonable, and should be adopted by the Commission. FES asserted that the Program should not be rejected or unnecessarily complicated to accommodate net-metering customers, such as DCIDA, who are benefitting financially under the current arrangement. FES R.B. at 3. FES opposed DCIDA’s recommendation that EGSs who participate in the Pilot TOU Program be required to offer net-metered service along with the TOU rates. FES argued that there is no legal basis to require EGSs to provide net-metering service. Moreover, FES noted that the Commission has already approved TOU programs in which EGSs are utilized to provide the TOU service, without the requirement that the EGSs provide net-metering to the EDCs’ customer-generators. *Id*. at 5 (citing the tariffs of Pennsylvania Power Company and West Penn Power Company; also citing *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order entered September 26, 2012) (*September 2012* *PECO Dynamic Pricing Plan Order*)). FES also contended that requiring EGSs to offer net-metering with their TOU service would discourage EGS participation. FES R.B. at 6.

FES concluded that PPL satisfied its burden of proof in this proceeding by demonstrating that the Pilot TOU Program satisfies all applicable legal requirements, and by demonstrating that the Program is in the public interest by promoting competitive retail markets within the Commonwealth. In contrast, FES asserted that DCIDA failed to satisfy its burden of production with respect to its proposal, and demonstrated only that such a proposal would be financially beneficial to a limited group of customers who are currently taking advantage of a pricing anomaly in PPL’s tariff. *Id*. at 7.

**3. ALJs’ Recommendation**

ALJs Colwell and Cheskis made thirty Findings of Fact and reached fourteen Conclusions of Law. R.D. at 4-8, 30-32. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In their Recommended Decision, the ALJs generally expressed their approval of the Partial Settlement, stating that it complies with the *January 2013 DSP II Order,* which found that PPL can use EGSs to satisfy its statutory obligation to offer TOU service to its default service customers. R.D. at 18.

With regard to the prohibition of CAP customers from participating in the Pilot TOU Program, the ALJs noted PPL’s observation, as set forth in its Statement in Support of the Partial Settlement, that the Commission expressed its preference that CAP customers be treated like any other customer in being permitted to choose an EGS. *Id*. at 19 (citing *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered January 24, 2014)).[[9]](#footnote-9) However, the ALJs found that the exclusion of CAP customers from the Pilot TOU Program was acceptable at this time, given the limited term of the Program. As the ALJs stated:

As the duration of this program is short, time is of the essence and any delay in its implementation would result in the continuation of the present TOU rates. Excluding a limited class of customers at this point may not be ideal but is not unreasonable because those customers should benefit from the additional lessons learned from this program before they are included in future TOU programs. The parties here have agreed to the exclusion, and it is a material term of the [Partial Settlement]. The exclusion here as part of a settlement does not set precedent nor does it exclude OnTrack customers from future TOU programs. It is simply a compromise position for this limited-term program.

R.D. at 19.

With regard to the proposed contingency plan, the ALJs pointed out that, because the plan involves a summer-only program, it will not likely be viable, given the existing timeframe involved for the implementation of the Pilot TOU Program. The ALJs reasoned that, since the Program is not proposed to become effective until ninety days after a final Order approving the Program is issued, the earliest possible effective date would be in October 2014. Since, at that point, the summer of 2014 will have passed, and since the Pilot TOU Program will end May 31, 2015, the summer-only TOU rate included in the contingency plan will never be put into effect. Nevertheless, the ALJs stated that “there is no point in carving it out of the [Partial Settlement] for two reasons: (1) it is harmless; and (2) the [Partial Settlement] must be approved in its totality in order to remain intact.” *Id*. at 20.

As for the net-metering issue raised by DCIDA, the ALJs stated that “[t]his case highlights that the policy objectives of rate reduction and renewable energy promotion may not always be compatible.” R.D. at 28. However, the ALJs asserted that it is clear that the legislature did not intend to create a system whereby one party realizes financial gain at the expense of other ratepayers when it required EDCs to offer a TOU or real-time price to its customers, since the default service statute requires that EDCs provide adequate and reasonable service by obtaining a prudent mix of contracts to obtain least cost results. *Id*. at 28-29 (citing 66 Pa. C.S. § 2807(e)(3.7)). Thus, the ALJs agreed with PPL and the OSBA that the Company should not be required to continue a TOU program in which both the on-peak and off-peak rates are set above the otherwise applicable PTC, and which result in DCIDA’s excess cash-out revenues being subsidized by other customers. R.D. at 29.

The ALJs found that the proposed Pilot TOU Program represents an honest effort to overcome the difficulties that have plagued PPL’s TOU program, and to offer a pricing option through the retail market that will give ratepayers an opportunity to save money while shifting load from on-peak to off-peak time periods. In addition, the ALJs found that the Pilot TOU Program contains the contingencies necessary to protect customers from the fall-out related to unforeseen circumstances, and uses the market to provide an opportunity for all participants to benefit. *Id*.

The ALJs also acknowledged that, under the Pilot TOU Program, DCIDA would still be able to benefit from being a net-metering customer for distribution purposes. *Id*. at 27-28. In addition, the ALJs agreed with PPL that DCIDA’s concern that no EGS would offer net-metering has not yet been realized since there has been no experience with EGS-related TOU plans in PPL’s service territory. The ALJs stated that “[t]his lack of knowledge is consistent with the very nature of a Pilot program, which is intended to explore the viability of a proposal.” *Id*. at 28. With regard to DCIDA’s assertion that the Pilot TOU Program conflicts with the policies of the AEPS Act and fails to provide incentives for alternative energy development, the ALJs responded that a net-metering customer may elect to receive fixed-price default service and receive payment for its excess generation. *Id*.

With regard to PPL’s proposed alternative TOU rate for net-metering customers, the ALJs noted that the alternative is a summer-only rate, similar to the rate included in the proposed contingency plan, which the ALJs have determined will not be workable during the limited period for which the Pilot TOU Program will be in effect, as noted above. Thus, the ALJs questioned why such an alternative plan was proposed in this proceeding. *Id*.

Finally, in addressing the OSBA’s proposal that the current TOU rates be terminated immediately upon the entry of a final Order in this proceeding, the ALJs stated that they share the OSBA’s concern regarding the high rates that Small C&I customers must pay under the current rates. However, the ALJs asserted that these customers must be given adequate time to evaluate and choose their next rate option. Moreover, the ALJs stated that the fact that these customers have not left the current TOU rate option when they have been free to do so at any time “is a mitigating factor to the urgency of this action.” *Id*. at 29. The ALJs concluded that the provision that the Pilot TOU Program will become effective ninety days after a final Order is entered in this proceeding is a substantive term of the agreement that should be adopted as is, in order to preserve the integrity of the agreement. *Id*.

For the reasons discussed above, the ALJs concluded that PPL has sustained its burden of proving that the proposed Pilot TOU Program, as set forth in the Partial Settlement, is just, reasonable, and in compliance with applicable law. In contrast, the ALJs found that DCIDA has not sustained its burden of proving that the Partial Settlement fails to satisfy any part of the applicable law. Accordingly, the ALJs recommended that the Partial Settlement be approved without modification. *Id*. at 30.

**4. Exceptions and Replies**

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**a. Compliance with Legal Obligations**

**i. DCIDA’s Exception No. 1**

In its first Exception, DCIDA contends that the ALJs erred in approving the Pilot TOU Program, because the Program fails to satisfy PPL’s legal obligation to provide a TOU rate option to DCIDA as a net-metered customer. DCIDA Exc. at 2. DCIDA asserts that the AEPS Act and applicable Commission Regulations mandate that PPL offer net-metered service to DCIDA as a customer-generator, and that DCIDA must receive full retail value from PPL for its excess power generation. DCIDA further asserts that Act 129 obligates PPL to offer TOU rates to DCIDA. *Id*. at 2-3. DCIDA argues that, “[b]ecause neither of these legal frameworks contains exceptions, both mandates apply to PPL and PPL must offer TOU rates to customers taking net-metered service, without exception or exclusions.” *Id*. at 3. In addition, DCIDA maintains that the Commission previously prohibited PPL from excluding net-metered customers from a proposed, optional TOU rate. *Id*. (citing the *March 2010 TOU Order*). DCIDA contends that, despite these legal requirements, the ALJs approved a program that prohibits DCIDA, as a net-metered customer, from being able to take service under a TOU rate, because EGSs are not required, and have no incentive, to offer net-metering service. DCIDA Exc. at 3.

DCIDA contends that the ALJs failed to address PPL’s proposal in the context of all applicable statutory and regulatory requirements, and made no comment regarding the Commission’s prior conclusion that PPL could not exclude net-metered customers from its TOU rate. DCIDA asserts that the only former Commission case law that the ALJs addressed related to instances in which the Commission suggested that EDCs use EGSs to provide TOU service. However, DCIDA states that the ALJs failed to address the fact that the issue of exclusion of net-metered customers was not addressed in those instances. DCIDA contends that the ALJs’ decision appears to be targeted more toward achieving the desired result of a “workable” TOU program, than a program that fully complies with all applicable law. *Id*. at 4. However, DCIDA asserts that legislative action, not Commission action, would be needed if compliance with the applicable legal principles is to be considered discretionary rather than mandatory. *Id*. at 5. In addition, DCIDA contends that “[t]he Commonwealth Court has reversed Commission decisions that ignored plain statutory language in favor of attempting to divine some legislative intent to justify the desired outcome of a case.” *Id*. (citing *Pennsylvania Power Company v. Public Utility Commission*, 932 A.2d 300, 308 (Pa. Cmwlth. 2006)). Accordingly, DCIDA concludes as follows:

By adopting the Partial Settlement, the R.D. moved PPL from a compliant TOU program under a Commission-approved tariff to a TOU program that conflicts with the plain language of applicable statutes, regulations, and at least one prior Commission decision by excluding DCIDA, a net-metered customer, from any TOU rate offering. More to the point, the R.D. took this action without any substantive effort at construing the above-stated rules in a manner that would justify its decision or at distinguishing its earlier case law forbidding PPL from excluding net-metered customers from a TOU rate. The R.D., therefore, is in error and the Commission should decline to adopt it.

DCIDA Exc. at 6.

**ii. PPL’s Reply**

In response, PPL reiterates its argument that, under its Pilot TOU Program, all customers will have a net-metering option and a TOU option available to them, in compliance with the applicable statutes and Commission Regulations, but that there is no requirement for EDCs to offer net-metering customers a TOU option. PPL R. Exc. at 5-6. PPL also notes that the Commission has already approved EDC TOU plans that do not permit net-metering customers to participate. *Id*. at 6 (citing *May 2013* *PECO Dynamic Pricing Plan Order*). In addition, PPL argues that, even if there is a requirement that it must offer net-metering customers a TOU option, PPL has satisfied that requirement because net-metering customers who take TOU service from an EGS under the Pilot TOU Program will still be net-metering customers of PPL for *distribution* purposes. PPL R. Exc. at 6; 8-9.

With regard to DCIDA’s contention that the *March 2010 TOU Order* prohibited PPL from excluding net-metering customers from its proposed TOU rate, PPL asserts that DCIDA fails to grasp that net-metering customers are not being excluded from the Pilot TOU Program. PPL states that it is, in fact, offering a TOU rate option to its net-metering customer, but it will be provided by an EGS, as it will be for all other eligible customers. *Id*. Moreover, PPL maintains that the Commission’s determination in the *March 2010 TOU Order* must be read in the context of the Commission’s more recent orders in which the Commission strongly encouraged EDCs to use EGSs to provide TOU service. *Id*. at 7 (citing *January 2013 DSP II Order; Joint Petition of Metropolitan Edison Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, *et al*. (Order entered February 15, 2013)). PPL asserts that the *January 2013 DSP II Order* is a more recent and broader interpretation of how a default service provider can satisfy its TOU requirements. PPL R. Exc. at 7. According to PPL, while the *March 2010 TOU Order* required the Company to offer net-metering and TOU services, the use of an EGS changes how this requirement will be implemented. *Id*. at 7‑8.

PPL also notes that, in approving a settlement regarding PECO’s TOU plan, the Commission found that PECO would offer TOU rates to all customers with smart meters, in compliance with 66 Pa. C.S. § 2807(f)(5), even though PECO expressly excluded CAP customers from the TOU plan. *Id*. at 8 (citing *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)). Thus, PPL concludes that the Commission’s interpretation of 66 Pa. C.S. § 2807(f)(5) in the *March 2010 TOU Order* should be viewed in light of its more recent approval of the settlement in PECO, which permits the possible exclusion of customers from a TOU program while maintaining compliance with the statute. PPL R. Exc. at 8; PPL R.B.at 8.

Finally, PPL argues that nothing in the AEPS Act mentions a TOU rate, and the Regulations only require the EDC to pay the “full retail rate” for excess generation. PPL R. Exc. at 9 (citing 52 Pa. Code § 75.13(c)). Thus, PPL contends that, even if DCIDA is correct that it is entitled to a TOU rate as a net-metered customer, it is only entitled to such a rate for its *consumption* of power, not for its *sale* of power. According to PPL, applying TOU rates to sales of power conflicts with the purpose of a TOU rate because it would encourage DCIDA to shift sales from off-peak hours to on-peak hours to receive higher sales revenues. Thus, PPL concludes that, even if DCIDA’s argument is correct on all counts, it should only receive a TOU rate for its consumption of power, and not for its sale of power to PPL. PPL R. Exc. at 9-10.

**iii. OSBA’s Reply**

The OSBA states that it takes no position with regard to DCIDA’s claim that PPL has an obligation to offer a TOU rate to net-metering customers beyond that described in the Company’s filing. However, the OSBA asserts that, if such an obligation exists, PPL certainly has no obligation to offer a TOU rate to net-metering customers that is not just and reasonable. The OSBA contends that the evidence and pleadings in this case illustrate that the TOU rate under which DCIDA currently receives service is not just and reasonable, and that this rate would continue under DCIDA’s proposal in this proceeding. OSBA R. Exc. at 4

With regard to PPL’s proposed alternative summer-only TOU rate for net-metered customers, the OSBA recognizes that the ALJs did not adopt this alternative, and that they correctly observed that, for all practical purposes, the rate would be inoperative because it would not likely be in effect during any summer months. However, the OSBA asserts that this alternative plan would comply with the letter of the law, as DCIDA demands. Moreover, the OSBA notes that DCIDA admitted that it has never consumed more electricity than it has produced, has never shifted load from on-peak to off-peak periods, and has a load that consists only of the ability to power emergency management operations, if needed. *Id*. at 6. Thus, the OSBA argues that, while the proposed summer-only TOU rate may not have any practical implications for load response, it will have implications for the weighted-average cash-out price, which is DCIDA’s real interest in this proceeding. *Id*. at 7. In addition, the OSBA observes that PPL recently filed a petition for a default service plan for the period of June 1, 2015, through May 31, 2017, which includes a TOU proposal. The OSBA submits that, if the Commission determines that DCIDA’s legal arguments are sound, it could order PPL to implement its alterative proposal. The OSBA concludes that, to the extent that the Commission determines that PPL must offer DCIDA a TOU rate option as a net-metered customer, the continuation of the current plan would include rates that are not just and reasonable, but adoption of the alternative proposal would be both reasonable and relevant to the issues raised by DCIDA in this proceeding. *Id*.

**b. Provision of Net-Metering by EGSs**

**i. DCIDA’s Exception No. 2**

In its second Exception, DCIDA asserts that the ALJs erred in adopting the Partial Settlement based on the conclusion that the issue of whether an EGS will offer TOU rates with net-metering is not ripe for determination. DCIDA Exc. at 6. DCIDA opines that the ALJs’ dismissal of its concern based on the fact that no EGS has yet refused to offer net-metered service “is akin to allowing hospitals to turn away patients because it is ‘not yet proven’ that the patient will be turned away by all other health care providers.” *Id*. at 7. DCIDA asserts that the record demonstrates that no EGS has declared its intent to offer net-metered service with a TOU rate, and that the ALJs failed to point to any evidence to the contrary. Moreover, DCIDA asserts that the Parties in this case evidently do not believe that an EGS would offer such a program, based on their opposition to including a requirement for them to do so on the grounds that it would bar EGS participation from the Pilot TOU Program. *Id*.

DCIDA argues that, from a policy viewpoint, the ALJs should have required PPL to include, as a condition for EGS participation in the Pilot TOU Program, a requirement that the EGS offer net-metered service with a TOU rate, regardless of the difficulty in garnering EGS participation in the Pilot. *Id*. at 7-8. In addition, DCIDA maintains that EGSs must offer net-metering in order for the proposed program to comply with the law. According to DCIDA, the conclusion that this issue is not ripe for determination was a significant factor in the ALJs’ failure to analyze or distinguish the applicable laws in any meaningful way. DCIDA asserts that this conclusion was in error, and that the Commission should refuse to adopt the Recommended Decision. *Id*. at 8.

**ii. PPL’s Reply**

In response, PPL asserts that no evidence in this case indicates that EGSs will not offer TOU rates to net-metering customers, and therefore, the ALJs were correct that the matter is not ripe for determination. In addition, PPL emphasizes that it is opposed to requiring EGSs to offer net-metering service with a TOU rate option, particularly net-metering that would include a weighted calculation for compensating a customer for excess generation based on above-market prices, as is the case under PPL’s current TOU rates. PPL maintains that such a requirement would hinder EGS participation in the Pilot TOU Program, which may result in the plan’s failure. PPL R. Exc. at 11-12.

**iii. FES’ Reply**

FES also opposes a requirement that EGSs offer net-metering with a TOU rate as a condition for participating in the Pilot TOU Program. FES notes, again, that the Commission has already approved TOU programs that do not include such a condition. FES R. Exc. at 2-3 (citing the tariffs of Pennsylvania Power Company and West Penn Power Company; also citing *September 2012* *PECO Dynamic Pricing Plan Order*). FES asserts that EGSs must be afforded the flexibility to design TOU rate options that will provide competitive and attractive pricing to customers. In addition, FES notes that DCIDA and other net-metering customers of PPL will continue to be net-metering customers for distribution purposes, and thus, will be able to offset their bills with distribution-related credits. FES R. Exc. at 3.

**c. DCIDA’s Burden of Proof**

**i. DCIDA’s Exception No. 3**

In its third Exception, DCIDA asserts that the ALJs erroneously sought to assign a burden of proof to DCIDA, based on the incorrect determination that DCIDA was proposing an adjustment or proffering a proposal of its own before the Commission. DCIDA contends that, by intervening in this proceeding, it was not offering a proposal of its own, but was protecting its interests as a net-metered customer, and pointing out to the Commission that PPL’s proposed Pilot TOU Program contravened applicable law. DCIDA Exc. at 8. In addition, DCIDA argues that, even if the burden of proof that the ALJs prescribe did apply, the evidence overwhelmingly shows that DCIDA has satisfied that burden. DCIDA contends that a proposed adjustment to PPL’s program that would make it legally compliant where it otherwise directly contravened the law must be deemed reasonable. Thus, DCIDA argues that, if it had the burden to rebut PPL’s *prima facie* case, it “did so handily by demonstrating that the Pilot does not meet statutory and regulatory requirements.” *Id*. at 9.

**ii. PPL’s Reply**

In response, PPL notes the ALJs’ observation of DCIDA’s argument that the Company must offer its own net-metered service with a TOU rate if no EGS wishes to offer it. PPL R. Exc. at 12-13 (citing R.D. at 27). PPL contends that such an argument constitutes a proposed change to the Company’s Pilot TOU Program as filed, and thus, the ALJs correctly found that DCIDA bore the burden of proof concerning that proposal. *Id*. at 13. PPL also disputes DCIDA’s assertion that, even if DCIDA bore the burden of proof, it met such a burden because its proposal would bring the Pilot TOU Program into compliance with the statutory and regulatory requirements. PPL maintains that its proposal fully complies with all statutory and regulatory requirements. Moreover, PPL notes that 66 Pa. C.S. § 2807(f)(5) requires default service providers to submit one or more TOU rates in which residential customers may elect to participate. PPL states that the statute does not use the words “net-metering customers,” but simply uses the word “customers,” which means consumers of power, according to PPL. Thus, PPL argues that, even if all customers are entitled to a TOU rate, they are entitled to that rate as buyers of power, not as sellers of power. PPL contends that nothing in 66 Pa. C.S. § 2807(f)(5) entitles customers to sell power to utilities at TOU rates. Therefore, PPL concludes that DCIDA failed to meet its burden of proof regarding its proposal. *Id*.

**iii. FES’ Reply**

FES disputes DCIDA’s contention that, because it did not frame its objections to the Pilot TOU Program in terms of an alternative proposal, it should not have been assigned a burden of proof. FES asserts that, once PPL established a satisfactory *prima facie case*—which the ALJs correctly found to be the case, according to FES—the burden shifted to DCIDA as a party challenging PPL’s proposal. FES states that DCIDA provided no legal support to contradict this conclusion, and in fact, acknowledges that EGSs have no legal obligation to offer net-metering service. Thus, FES asserts that DCIDA’s third Exception should be denied. FES R. Exc. at 3-4.

**d. Compliance with AEPS Act Policy**

**i. DCIDA’s Exception No. 4**

In its fourth Exception, DCIDA contends that the Recommended Decision is inconsistent with the policy embodied in the AEPS Act. DCIDA states that it elected to take part in the programs under PPL’s current tariff that are best suited to achieve its goals relating to the construction and operation of its solar project: *i.e*., obtaining a return on its $2.5 million investment of public debt and generating revenue to facilitate its public purpose. DCIDA Exc. at 9-10. DCIDA argues that, by approving the Partial Settlement, the ALJs removed its ability to accomplish this by forcing it to choose either a TOU rate with an EGS, or to remain a net-metered customer of PPL. According to DCIDA:

This reduces any incentive and discourages continued investment in alternative energy systems where potential investors, including DCIDA, will fear that PPL and the Commission will simply divest them of their ability to obtain the best return on their investment simply because a utility is dissatisfied with its own Commission-approved tariff structure. DCIDA and similarly situated entities will hesitate to invest in renewable resources where a utility can simply obliterate their expectation of a return on investment. To conform to the policy goals of the AEPS Act, the

Commission and PPL should be doing more to encourage the development of renewable energy products.[[10]](#footnote-10)

*Id*. at 10.

DCIDA questions what it views as the ALJs’ apparent justification for their decision—namely, their statement that “the policy objectives of rate reduction and renewable energy promotion may not always be compatible.” *Id*. (citing R.D. at 28). DCIDA opines that, whether or not these policy statements are compatible, a legislative change would be needed for PPL’s Pilot TOU Program to be deemed legally compliant. DCIDA Exc. at 10.

Finally, DCIDA contends that, to the extent the ALJs agreed with PPL’s appeal to alleged inequities regarding other ratepayers subsidizing DCIDA’s solar operation, such an agreement is unsound. According to DCIDA, the record in this case demonstrates that the impact of DCIDA’s excess generation on other ratepayers was minimal, and that PPL enjoyed the benefits of DCIDA’s delivery of locally-generated solar power during periods of peak demand. Moreover, DCIDA questions the premise that a rate may be deemed invalid merely because it benefits one group of ratepayers at the expense of another. DCIDA argues that, if this is the case, “then the Commonwealth’s entire tariff-based structure would crumble, as it is rife with subsidies, both overt and subtle.” *Id*. at 11.

**ii. PPL’s Reply**

In response, PPL asserts that the AEPS Act cannot be interpreted to require the continuation of an unreasonable and illogical subsidy paid for by other customers. PPL argues that, under DCIDA’s theory, any TOU rate for net-metering customers, no matter how high, would be justified because it might promote investment in solar power. PPL disputes DCIDA’s contention that the Pilot TOU Program will discourage such investment, and agrees with the ALJs that this argument fails because a net-metering customer may elect to receive fixed-price default service and receive payment for its excess generation. PPL R. Exc. at 14 (citing R.D. at 28). PPL asserts that DCIDA was incentivized to develop its solar facility based on PPL’s fixed-price default net-metering service, and that rate option will remain available under the Pilot TOU Program. Thus, PPL contends that DCIDA cannot now claim that the same fixed-price rate option will discourage continued investment in alternative energy systems. PPL R. Exc. at 14-15.

PPL also contends that DCIDA’s arguments “turn the purpose of the TOU rates on its head.” *Id*. at 15. PPL asserts that, while the underlying objective of a TOU rate is to encourage customers to shift electric usage from on-peak to off-peak periods, PPL’s TOU rates have not encouraged DCIDA to do so. Rather, PPL contends that its TOU rates have encouraged DCIDA to increase its on-peak generation in order to receive higher revenue from PPL, and a greater subsidy from other customers. PPL asserts that the sole reason DCIDA wants a TOU rate is so that it can receive excess revenue at cash-out in the range of $50,000 to $80,000 a year due to the differential between PPL’s current TOU rates and the otherwise applicable PTC. PPL R. Exc. at 15-16. PPL concludes that this is unreasonable and inconsistent with the purpose of the TOU rates. Accordingly, PPL states that the Recommended Decision does not conflict with the AEPS Act, and DCIDA’s Exception should be denied. *Id*. at 16.

Finally, with regard to DCIDA’s challenge to its current compensation scheme for net-metered TOU customers, PPL contends that DCIDA’s challenge is beyond the scope of this proceeding, as the Company’s Commission-approved method for determining the cash-out for net-metered customers is not at issue here.[[11]](#footnote-11) *Id*. at 17. Nevertheless, PPL reiterates its argument that its cash-out methodology is consistent with 52 Pa. Code § 75.13(d), because it compensates customer-generators using (1) the weighted average of the on-peak and off-peak hours for the entire year; and (2) the PTC in effect at the time of the calculation. *Id*. at 18. PPL avers that the Commission recently proposed to revise 52 Pa. Code § 75.13 to specifically mention that, when computing compensation, the default service provider shall use a weighted average of the PTC rate, with the weighting based on the rate in effect when the excess generation was actually delivered by the customer-generator. *Id*. at 19 (citing *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361, Annex A at 7 (Proposed Rulemaking Order entered February 20, 2014)). PPL contends that, by proposing to revise the current Regulations, the Commission is acknowledging that, prior to the effectiveness of the proposed Regulations, it is reasonable for an EDC to base its conclusions on the current Regulations, which state that an EDC need not compute compensation based on the rate in effect when the excess generation was actually delivered. PPL. R. Exc. at 19.

**iii. OSBA’s Reply**

The OSBA contends that there is no evidence that investment in the Commonwealth will be curtailed as a result of the Pilot TOU Program, and asserts that “DCIDA’s alarmist arguments are little more than hyperbole.” OSBA R. Exc. at 8. The OSBA argues that DCIDA planned its solar facility in 2009, completed its Phase I facility in October 2011, and elected to take PPL’s TOU rate in April 2013. *Id*. at 9 (citing DCIDA M.B. at 3). In addition, the OSBA notes that DCIDA’s witness stated that DCIDA would have built Phase II, which was completed in October 2013, regardless of the availability of a TOU rate from PPL. OSBA R. Exc. at 9 (citing Tr. at 42). According to the OSBA, DCIDA’s preference for PPL’s current TOU program based on its belief that it is best suited to the goals it wants to achieve is not evidence regarding the issue of whether any future tariff is just and reasonable. OSBA R. Exc. at 9.

With regard to DCIDA’s concern that the Commission’s approval of the Pilot TOU Program will divest investors of their ability to obtain the best return on their investment, the OSBA states that “DCIDA’s scaremongering tactics are not record evidence, are mere theatrics, and have done nothing to prove that the Commission will ‘obliterate’ investment in Pennsylvania as we now know it.” *Id*. The OSBA concludes that the record in this proceeding has established that DCIDA did not rely on the availability of a TOU rate from PPL when it decided to build its solar facility, and therefore, the Commission should disregard DCIDA’s claims that investors will flee the Commonwealth if the Pilot TOU Program is approved. *Id*.

**e. PPL’s Alternative TOU Proposal for Net-Metered Customers**

In addition to its response to DCIDA’s specific Exceptions, PPL also reiterates that it has offered an alternative TOU proposal for net-metered customers that addresses all of DCIDA’s concerns, as discussed above. PPL asserts that this alternative proposal would ensure that a net-metering/TOU rate is available to any net-metering customer for both sales and purchases of power, whether or not the customer is able to find an EGS participating in the Pilot TOU Program that is willing to offer net-metering service. PPL R. Exc. at 16.

**5. Disposition**

**a. Partial Settlement**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M‑00031768 (Order entered January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Upon our review of the Partial Settlement, we find it to be reasonable and in the public interest, and we will approve it. We commend PPL and the other Joint Petitioners for their willingness to explore the possibility of utilizing EGSs to allow the Company to meet its TOU rate requirement, and for their ability to work out a fair and reasonable compromise of the separate interests of each Party. We believe the Pilot TOU Program, as described in the Partial Settlement, will provide PPL’s customers with the option of choosing market-based TOU rates that are just and reasonable—an option that has been long overdue in PPL’s service territory. As the Partial Settlement states:

Relying on EGSs to provide TOU service will resolve various complicated issues that have plagued prior TOU efforts. These complicated issues, among other things, included the definition of on-peak and off-peak periods, whether different classes of customers should have different on-peak and off-peak periods, and how to encourage customers to participate in a voluntary program. The Pilot TOU Program is designed to resolve these issues by permitting EGSs to define the on-peak and off-peak periods and the available customer class options. EGSs also will be responsible for encouraging customers to participate in the voluntary program.

Partial Settlement at 12. Moreover, we find the Pilot TOU Program’s use of multiple EGSs rather than a single supplier to be a particularly attractive model for the provision of TOU service, and has the potential to provide customers with a variety of market-based options.

In addition, we believe the customer education efforts described in the Partial Settlement, including the provision of information on the Program through customer mailings, bill inserts, and the Company’s and EGSs’ websites, will adequately inform customers of their options under the new Pilot TOU Program. We also believe that the reporting requirements included in the Partial Settlement will provide the Company and this Commission with useful information regarding the Pilot TOU Program, including EGS rate offerings, customer participation, and aggregate monthly on- and off-peak load information for customers who participate in the Program.

With regard to the exclusion of CAP customers from participating in the Pilot TOU Program, we note that PPL had proposed to include CAP customers in the program as originally filed in the August 23, 2013, Petition. Petition at 14-15. However, both PPL and CAUSE-PA expressed concern regarding the high number of PPL’s OnTrack customers who are paying rates for generation from an EGS that are above PPL’s PTC. Accordingly, the Joint Petitioners agreed to exclude CAP customers from participation for the purpose of resolving issues with regard to the Pilot TOU Program. PPL Statement in Support at 9-10; CAUSE-PA Statement in Support at 2-3. In addition, as the ALJs and PPL pointed out, our January 24, 2014, Order regarding PECO’s proposed CAP Shopping Plan issued at Docket No. P-2012-2283641 was appealed to the Commonwealth Court, and the Court issued a stay of the Order while the appeal is pending. R.D. at 19 (citing 445 C.D. 2014); PPL Statement in Support at 11. Thus, PPL stated that it does not want to delay the implementation of the Pilot TOU Program while issues related to CAP customer participation in retail programs are addressed by the court. PPL Statement in Support at 11. For these reasons, we agree with the ALJs that the exclusion of CAP customers from the Pilot TOU Program at this time is not unreasonable, particularly in view of the fact that this will be a pilot program of limited duration. In addition, we believe the pilot nature of the program will allow the Company to gain valuable experience in the use of EGSs to provide TOU service, which can be useful in determining how best to proceed when contemplating the inclusion of CAP customers in future TOU programs that utilize EGSs.

With regard to the proposed contingency plan, we agree with the ALJs that this plan will not be viable, given the fact that it involves a summer-only program that will not likely become operative during the period over which the Pilot TOU Program will be in effect. However, we note that, according to the terms of the Partial Settlement, this subsequent proposal will not automatically go into effect upon the failure of any EGSs to participate in the Pilot TOU Program, but will first be submitted for Commission approval. Partial Settlement at 10, ¶ 48. Moreover, parties will have the right to challenge the subsequent proposal. Partial Settlement at 11, ¶ 49. Therefore, the Commission and interested parties will have an opportunity to examine any subsequent TOU proposal submitted as part of the contingency plan, and will be able to ascertain whether or not it is a reasonable and workable program, given the specific circumstances that prevail at that time. For these reasons we do not reject the contingency plan as set forth in the Partial Settlement.

Finally, with regard to the OSBA’s proposal that the current TOU rates be terminated immediately upon the entry of a final Order in this proceeding, we note that this proposal is not consistent with the Partial Settlement, to which the OSBA is a Party. Paragraph 41 of the Partial Settlement states that “PPL Electric's currently effective TOU program will no longer be available to new applicants as of the effective date of the new tariff supplement implementing the new Pilot TOU Program.” Partial Settlement at 9. However, Paragraph 46 of the Partial Settlement provides that the Pilot TOU Program will not become effective until ninety days after a final Order is issued approving the Program. *Id*. at 10. Therefore, according to the Partial Settlement, the current TOU rates will remain in effect until the new Pilot TOU Program becomes effective, which will not occur until ninety days after the Order is entered. As noted, the OSBA agreed to these provisions.

In addition, we agree with PPL that terminating the current TOU program without immediately implementing the successor Pilot TOU Program would result in PPL’s being out of compliance with 66 Pa. C.S. § 2807(f)(5), which requires a default service provider to offer TOU rates to all customers that have been provided with smart meter technology. PPL R.B. at 19-20. We also agree with PPL that “[t]he immediate termination of the current TOU rates would interrupt and complicate the transition process, and force customers without notice onto a rate the customers have not elected.” *Id*. at 19. Moreover, as the ALJs indicated, the TOU rates are optional, and any customer who believes that it is not in that customer’s best interest to continue taking service under the current rates are already free to exit the TOU program and take service under PPL’s fixed-price default service rates, or switch to an EGS. For these reasons, we do not believe it would be necessary or proper to require PPL to terminate the current TOU rates immediately upon entry of a final Order in this proceeding. Such a requirement would be contrary to the Code, would be inconsistent with the provisions of the Partial Settlement, and would complicate the transition process from the current TOU program to the new Pilot TOU Program.

For the reasons discussed above, we find the Partial Settlement to be reasonable and in the public interest, and we will approve it without modification.

**b. Net-Metering Issue**

Upon consideration of the evidence of record in this proceeding, as well as the Parties’ Exceptions and Replies, we find DCIDA’s position regarding the provision of TOU rates to net-metering customers to be without merit. The record indicates that, as a net-metering customer taking service under PPL’s current TOU rates, DCIDA has derived significant benefit from its ability to be compensated for excess generation at above-market rates, in contrast to net-metering customers who receive service under PPL’s fixed-price default service, and receive compensation at a lower PTC. While DCIDA is entitled to the higher level of compensation it receives under the provisions of PPL’s tariff and the current TOU rates, we do not believe it is reasonable for DCIDA, or any other customer, to receive the higher cash-out amount at the expense of other Small C&I customers, who must subsidize this benefit. Therefore, to the extent that DCIDA seeks to continue receiving TOU service at PPL’s current above-market rates, or seeks to have EGSs provide TOU service at such rates, we find such a position to be unreasonable and contrary to the public interest.

With regard to DCIDA’s contention that the Pilot TOU Program is not in compliance with the law and the Commission’s Regulations because it prevents net-metering customers from participating in the Program, we find this view to be mistaken. Nothing in the Partial Settlement or in the record in this proceeding indicates that PPL intends to bar net-metering customers from taking service under the Pilot TOU Program. PPL has made it clear that net-metering customers, including DCIDA, are free to participate in the Program and to receive TOU service from any participating EGS, in accordance with the rates, terms and conditions established by the EGS under the Program. As PPL points out, DCIDA would remain a net-metering customer for distribution purposes, and its bill would continue to be offset by any distribution-related credits. In addition, if an EGS chooses to provide net-metering service to DCIDA, DCIDA would be able to receive compensation for its end-of-year excess generation from that EGS, under the terms and conditions set forth in the service agreement between DCIDA and the EGS.

Moreover, we note that while the our regulations require EDCs to offer net metering to qualifying alternative energy systems, see 52 Pa. Code § 75.13, and that Act 129 requires EDCs to offer its approved TOU and real-time price plan to default service customers with a smart meter, see 66 Pa.C.S. § 2807(f)(5), there is no statutory or regulatory requirement that customers receive both net metering and TOU rates. Under our regulations, EDCs are to file a tariff with the Commission that provides for net metering consistent with AEPS Net Metering Regulations. See 52 Pa. Code § 75.13(b). Those approved tariff provisions establish the rates applicable to net metering customer-generators. As the ALJs note, net metering customers are able to receive fixed-price default service and receive the cash payments in accordance with PPL’s tariff. Or, the customer can decline net metering and take default service at the approved TOU rate. Both net metering and TOU rates are being offered to all qualifying customers, as required by the AEPS Act and Act 129.

As the ALJs point out, there are valid reasons to restrict the rate offerings available to net metering customers. One valid reason for restricting the rate offerings available to net metering customers, is when such rates become unjust and unreasonable. We recognize that the purpose of the AEPS Act is to provide incentives for the development of alternative energy systems. We, however, also recognize that such incentives must be reasonable as to their terms, applicability and magnitude. In this regard, we note that Section 2804(2) of the Code provides, *inter alia*, that retail customers be given “*reasonable* and fair opportunities to self-generate and interconnect.” 66 Pa. C.S. § 2804(2) (emphasis added). Accordingly, we agree with OSBA that the TOU rates must be just and reasonable, and that allowing net metering customers to receive excessive subsidies through TOU rates that are paid for by other TOU rate participants may amount to unjust and unreasonable intraclass rate subsidies.

In addition, it is apparent that DCIDA’s main interest in taking service under a TOU rate is to allow it to maximize its cash-out revenue as a net-metered customer by continually generating more electricity than it consumes, thus ensuring that it will be compensated for the excess generation at the higher TOU rate. However, we agree with PPL that the primary purpose of a TOU rate is to encourage customers to shift load from on-peak to off-peak periods. Thus, a TOU rate is primarily meant to affect a customer’s *consumption* of power, not a customer-generator’s *production* of power. As PPL points out, nothing in 66 Pa. C.S. § 2807(f)(5) entitles customers to *sell* power to a default service provider at TOU rates.

While we decline to require EDCs to offer TOU rates to net metering customer-generators, we will permit EDCs to offer TOU rates to net metering customer-generators, provided they are just and reasonable. In this particular case, DCIDA, as a net-metering customer-generator will still have a TOU rate available to it under the Pilot TOU Program, which it may utilize to lower its electric bills by shifting consumption to times of lower system usage, if it so chooses.

For the reasons discussed above, we find that, under the Pilot TOU Program, PPL will offer both a TOU rate option and net-metering to customer-generators, in compliance with 66 Pa. C.S. § 2807(f)(5) and 52 Pa. Code § 75.13(a), respectively. Accordingly, we will deny DCIDA’s Exception No. 1.

We also reject DCIDA’s contention that the Pilot TOU Program must include a requirement that EGSs who participate in the Program offer net-metering service to customer-generators who take TOU service from them. As DCIDA has already recognized, our Regulations allow, but do not require EGSs to offer net-metering to customer generators. 52 Pa. Code § 75.13(a). Thus, we do not believe it appropriate to require EGSs to offer net-metering as a condition for participating in the Program. We agree with PPL and FES that EGSs who participate in the Program should be permitted the flexibility to design TOU rate options that they believe will be attractive to customers in the competitive marketplace, which would include the freedom to decide whether or not they wish to offer net-metering to customer-generators who take TOU service from them. As for DCIDA’s concern that no EGS will choose to offer net-metering absent a requirement for it to do so, we agree with the ALJs that such a concern is premature. We find no evidence on the record that would cause us to conclude that no EGS would offer net-metering along with TOU rates, once the Pilot TOU Program is implemented. Accordingly, we will deny DCIDA’s Exception No. 2.

With regard to DCIDA’s contention that the ALJs incorrectly assigned it a burden of proof in this case, we find this contention to be in error. The ALJs stated that “DCIDA has not sustained its burden of proving that the [Partial Settlement] fails to satisfy any part of the applicable law.” R.D. at 30. However, we do not agree that the ALJs meant to assign the burden of proof to DCIDA as “the proponent of a rule or order,” pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). Rather, the ALJs stated as follows:

While the burden of proof remains with the public utility throughout the rate proceeding, the Commission has stated that where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc*., Docket No. R-00072711 (Commission Opinion and Order entered July 17, 2008). As stated in *Pa. Pub. Util. Comm'n* v. *Philadelphia Gas Works*, Docket No. R‑00061931 (Commission Opinion and Order entered September 28, 2007) at 12: “Section 315(a) of the Code, 66 Pa.C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or

the burden of persuasion shifts to the other parties to rebut the prima facie case.”

*Id*. at 15.

Accordingly, the ALJs asserted that “the Company has the burden of proving that its proposed TOU filing is just and reasonable, and any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.” *Id*. at 16. The ALJs correctly concluded that DCIDA, as a party contesting the proposed Pilot TOU Program and proffering an alternative proposal, failed to meet its burden in this regard. *Id*. at 30, 32. Thus, we agree that DCIDA failed to rebut PPL’s *prima facie* case in this proceeding, and that its alternative proposal—that EGSs be required to offer net-metering as a condition for participating in the Pilot TOU Program—is not reasonable. Therefore, we will deny DCIDA’s Exception No. 3.

As for DCIDA’s argument that the Pilot TOU Program is inconsistent with the policy of the AEPS Act to encourage the development and deployment of alternative energy systems, we find this argument to be without merit. There is nothing on the record in this proceeding to suggest that the Pilot TOU Program will discourage investment in alternative energy systems. Rather, the record reveals that DCIDA was incentivized to construct its solar facility by its ability to receive compensation for excess generation under PPL’s fixed-price default net-metering service, which will remain available under the Pilot TOU Program. Moreover, nothing in the AEPS Act or in the Commission’s Regulations at 52 Pa. Code § 75.13 requires that customer-generators be compensated for excess generation specifically at TOU rates. For these reasons we will deny DCIDA’s Exception No. 4.

With regard to PPL’s proposed alternative TOU rate option for net-metering customers, we note, as did the ALJs, that this plan involves a summer-only rate, similar to the rate included in the proposed contingency plan, which will not likely become operative during the period over which the Pilot TOU Program will be in effect. However, as the OSBA points out, the alternative plan would comply with the “letter of the law,” and would still have implications for the weighted-average cash-out price, which appears to be DCIDA’s main interest in this proceeding. Nevertheless, we see no need to establish a separate, additional TOU rate option for the sole purpose of providing an opportunity for net-metered customers to benefit from the cash-out revenue they may receive from it. As we stated above, we view the primary purpose of a TOU rate to be that of encouraging customers to shift load from on-peak to off-peak periods, rather than serving as a source of additional revenue for customer-generators. Therefore, since we have already determined that the Pilot TOU Program complies with 66 Pa. C.S. § 2807(f)(5), and does not run counter to 52 Pa. Code § 75.13(a), we do not find it necessary for PPL to implement the proposed alternative TOU rate option for net-metered customers. Accordingly, we decline to adopt it.

Finally, with regard to PPL’s methodology for calculating the PTC used to determine the cash-out amount for net-metered customers’ excess generation, we agree with PPL that this issue is beyond the scope of this proceeding. As described above, PPL’s annual cash-out compensation amount for net-metered customers who take service under the Company’s current TOU rate option is based upon an hourly weighting of on-peak and off-peak hours applied to the PTC at the time of cash-out. PPL Exh. JMR-5. This calculation does not take into account the actual time—whether on-peak or off-peak—that the net-metered customer generates power to the grid. PPL R.B. at 17-18; Tr. at 15-16; PPL Exh. JMR-5; DCIDA Exh. 3. DCIDA is concerned about the possibility that this calculation methodology will result in DCIDA being paid less than the PTC for excess generation. DCIDA M.B. at 17. However, we do not believe the record has been sufficiently developed to allow a complete analysis of this issue. Moreover, since we are approving the Pilot TOU Program, the question of how PPL should calculate the end-of-year cash-out amount for net-metered customers becomes moot, because net-metered customers will not be receiving generation supply from PPL under the Program, except in circumstances during which PPL may need to rely on its contingency plan. However, as we stated above, the Partial Settlement provides that PPL must submit a subsequent proposal for Commission approval under such circumstances, and interested parties will have the right to challenge the proposal at that time. Finally, to the extent that DCIDA is challenging PPL’s cash-out methodology in general, we agree with PPL that it is the Pilot TOU Program, not the Company’s net-metering tariff, which is before the Commission in this proceeding. For these reasons we decline to address DCIDA’s concerns at this time.[[12]](#footnote-12)

**IV. Conclusion**

Consistent with the foregoing discussion, we shall: (1) approve the Partial Settlement without modification; (2) deny the Exceptions of DCIDA; and (3) adopt the Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for Partial Settlement filed April 11, 2014, by PPL Electric Utilities Corporation, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Sustainable Energy Fund, and Direct Energy Services, LLC, is approved without modification.
2. That the Exceptions to the Recommended Decision of Administrative Law Judges Susan D. Colwell and Joel H. Cheskis filed by the Dauphin County Industrial Development Authority on May 29, 2014, are denied.
3. That the Recommended Decision of Administrative Law Judges Susan D. Colwell and Joel H. Cheskis, issued May 9, 2014, is adopted, consistent with this Opinion and Order.
4. That, no later than ninety (90) days following the entry of this Opinion and Order, PPL Electric Utilities Corporation shall begin to offer the Pilot TOU Program to customers, consistent with the terms of the Joint Petition for Partial Settlement.
5. That PPL Electric Utilities Corporation shall file a tariff to implement the Pilot Time-of-Use Program, consistent with the terms of the Joint Petition for Partial Settlement.
6. That PPL Electric Utilities Corporation shall provide a quarterly status report on the Pilot Time-of-Use Program to the Parties in this proceeding, and to the Parties and the presiding officer in PPL Electric Utilities Corporation’s default service proceeding at *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2417907.
7. That the alternative proposals offered by the Dauphin County Industrial Development Authority with regard to a time-of-use rate option for PPL Electric Utilities Corporation are rejected.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 11, 2014

ORDER ENTERED: September 11, 2014

1. PPL filed its Petition at Docket No. P-2012-2302074. However, the majority of the Parties to this proceeding agreed that a new docket number and caption specific to the Petition would be appropriate. Accordingly, the Commission’s Secretary’s Bureau established a new Docket No. of P-2013-2389572 for the case. All documents previously filed in this proceeding at Docket No. P-2012-2302074 have been incorporated by reference in the proceeding at the updated docket number and caption. R.D. at 3. [↑](#footnote-ref-1)
2. The net-metering issue will be fully addressed below. [↑](#footnote-ref-2)
3. Footnote 3 states: “PPL Electric will submit the applicable tariff pages in accordance with the Commission's final order in this proceeding.” [↑](#footnote-ref-3)
4. Footnote 4 states: “As discussed in Paragraph 46, the Pilot TOU Program will be effective 90 days after the Commission issues a final order approving the Pilot TOU Program. This effective date may not coincide with a change to the PTC, therefore, for the period between the effective date and the first PTC change following the effective date of the Pilot TOU Program the term of the contract between the EGS and the TOU customer may be less than three calendar months.” [↑](#footnote-ref-4)
5. Footnote 5 states: “Customers in the Company's CAP, known as "OnTrack," will be excluded from participation in the TOU Program which, as proposed, will end on May 31, 2015.” [↑](#footnote-ref-5)
6. Footnote 6 states: “Customers will not necessarily be required to return to default service to participate in the Pilot TOU Program. Customers participating in the Pilot TOU Program will initially begin service according to his or her bill cycle and the 11-day switching rule. In the event that there is a gap in service prior to the initiation of service under the Pilot TOU Program, a customer may receive default service from PPL Electric prior to being switched to a supplier pursuant to the Commission's switching rules.” [↑](#footnote-ref-6)
7. As noted above, DCIDA stated in its Main Brief that it is compensated at a weighted-average rate of approximately 13.736 cents/kWh. DCIDA M.B. 5. The 12.9 cents/kWh figure stated by PPL does not appear to include the Transmission Service Charge or the Pennsylvania State Tax Adjustment Surcharge. *See* DCIDA Exh. 3. [↑](#footnote-ref-7)
8. We note that DCIDA indicated that it is, in fact, considering pursuing a separate complaint with this Commission regarding PPL’s cash-out methodology, but asserted that the Commission should still consider the legal sufficiency of the methodology in this proceeding because it relates to the validity of the proposed contingency plan. DCIDA M.B. at 17, n. 2. [↑](#footnote-ref-8)
9. The ALJs noted that this Order is presently on appeal with the Commonwealth Court, and has been stayed. R.D. at 19 (citing 445 C.D. 2014). [↑](#footnote-ref-9)
10. DCIDA also notes its objection, as presented more fully in its Main Brief, to PPL’s present compensation scheme for annual cash-out of accrued excess generation, because it fails to take into account the time period in which excess power was actually generated and delivered to the grid, which in DCIDA’s case, is almost exclusively during peak daylight hours. DCIDA Exc. at 10, n. 4. [↑](#footnote-ref-10)
11. PPL states that the net-metering provisions of its tariff were most recently accepted by the Commission at Docket Nos. R-2012-2290597, *et al*., and filed on December 31, 2012, as part of a compliance filing. PPL R. Exc. at 17. [↑](#footnote-ref-11)
12. As noted above, DCIDA stated that it is considering pursuing a separate complaint with this Commission regarding PPL’s cash-out methodology. DCIDA M.B. at 17, n. 2. We also note that we have recently instituted a Proposed Rulemaking proceeding at *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L‑2014-2404361 (Proposed Rulemaking Order entered February 20, 2014), in which we, *inter alia*, proposed to revise and clarify our Regulations at 52 Pa. Code § 75.13 regarding the methodology for calculating compensation for customer-generators’ excess generation. [↑](#footnote-ref-12)