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File #: 2507/140056

November 18, 2009

James J. McNulty  
Secretary  
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**RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation**  
**Docket Nos. R-2009-2122718, C-2009-2128394 and C-2009-2136098**

Dear Secretary McNulty:

Enclosed please find the Main Brief of PPL Electric Utilities Corporation for the above-referenced proceeding. Copies will also be provided as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Anthony D. Kanagy', is written over a circular stamp or seal. The signature is fluid and cursive.

Anthony D. Kanagy

ADK/skr

cc: Certificate of Service  
Honorable David A. Salapa

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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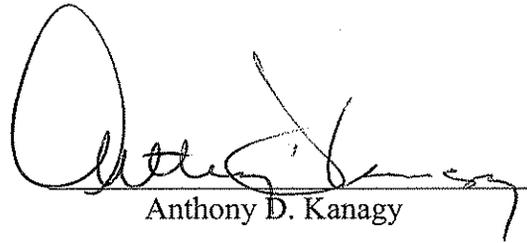
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
Office of Consumer Advocate	:	
	:	Docket Nos. R-2009-2122718
Office of Small Business Advocate	:	C-2009-2128394
	:	C-2009-2136098
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	

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## **I. INTRODUCTION**

On July 31, 2009, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed Supplement No. 71 to the Company’s Tariff Electric – Pa. P.U.C. No. 201 (“Supplement No. 71”). In Supplement No. 71, the Company proposes to implement an optional year-round Time-of-Use (“TOU”) program for residential and small commercial and industrial (“C&I”) customers. The TOU program is designed to encourage default service customers to shift their electricity usage from peak to off-peak periods to reduce the demand on generation resources by offering lower default service rates in off-peak periods and higher default service rates in peak periods.

This TOU filing fulfills the Company’s obligation under Act 129 of 2008, P.L. 1592 (“Act 129”) to submit a TOU filing to the Commission by January 1, 2010. 66 Pa. C.S. § 2807(f)(5). This TOU filing also fulfills several commitments that the Company made to file a TOU program for 2010 in prior proceedings, including the Company’s Competitive Bridge Plan (“CBP”) proceeding at Docket No. P-00062227, the Company’s recent default service proceeding at Docket No. P-2008-2060309 and the Company’s Energy Efficiency and Conservation (“EE&C”) plan proceeding at Docket No. M-2009-2093216. In addition, pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) Order approving PPL Electric’s EE&C plan, the Company will include any peak demand reductions obtained as a result of implementing this TOU program toward meeting its statutory obligations to reduce peak demand under Act 129.

As explained below, the TOU filing is based on the Company’s substantial experience in offering TOU-based rates to its customers since the 1980s. The TOU filing is in the public interest and should be approved.

## II. BACKGROUND AND PROCEDURAL HISTORY

PPL Electric provides electric distribution, transmission and default generation services to approximately 1.4 million customers in a certificated service territory that spans approximately 10,000 square miles in all or portions of 29 counties in eastern and central Pennsylvania. PPL Electric is a “public utility and “electric distribution company” (“EDC”) as those terms are defined under the Public Utility Code, 66 Pa. Code §§ 102 and 2803.

PPL Electric has offered TOU-based rates to its customers since the 1980s. These programs included off-peak thermal storage for residential customers; off-peak water heating and off-peak space heating for both residential and small C&I customers; discounts to both small and large C&I customers for controlling the time of their peak demand; and interruptible and price response services for large C&I customers.

Following restructuring, the Company has implemented TOU programs that are more consistent with deregulated energy markets. In 2001, the Company established an hourly-pricing program for large C&I customers. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00016402, Order entered May 24, 2001. This optional program, patterned after the Company’s existing experimental price response program, allowed large C&I customers to designate a portion of their usage for hourly pricing. This program expires at the end of 2009.

In 2002, the Company established a pilot summertime Demand Side Response (“DSR”) program for residential customers. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00027175, Order entered April 11, 2002. This pilot program, which expires on December 31, 2009, was available for up to 600 residential customers with a monthly energy use of 1,000 kWh or greater in each of the months of June through September during the year prior to participation. During the months of October through May,

participants purchased generation at the Company's standard rates, but during the summer months, they purchased generation at higher prices during peak periods and lower prices during off-peak periods.

In 2008, the Company established an experimental year-round DSR rate for residential customers. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2008-2062920, Order entered December 4, 2008. The year-round DSR program was designed to build upon the Company's summertime DSR program by offering a year-round TOU alternative for customers.<sup>1</sup> Under the year-round DSR program, separate peak and off-peak rates were established for two seasons – the summer season (June through September) and the non-summer season (October through May). This program currently has over 800 participants, and has provided PPL Electric with valuable information and experience that has been useful in developing the TOU program proposed in this proceeding.

On August 2, 2006, PPL Electric filed a Petition for Approval of a Competitive Bridge Plan with the Commission. Under the CBP, the Company requested Commission approval of a plan to acquire default supply for customers in 2010, as a bridge between the expiration of the Company's generation rate cap on December 31, 2009, and the expiration of several other EDCs' generation rate caps on December 31, 2010. In the CBP proceeding, the Company also proposed to remove participation limits on its TOU program in 2010 and to make the program available year-round. The Commission approved the Company's CBP proposal, with certain modifications, by Order entered May 17, 2007. *See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan*, Docket No. P-00062227, Order entered May 17, 2007 ("CBP Order"). In the CBP Order, the Commission specifically recognized that

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<sup>1</sup> This program expires on December 31, 2009.

the Company proposed to expand its TOU program to make it a year-round program in 2010 and to remove participation limits. (CBP Order, p. 13).

In PPL Electric's most recent base rate proceeding at Docket No. R-00072155, the parties agreed to a settlement which provided for the Company to convene a TOU collaborative to discuss and review TOU options and develop TOU rate filing parameters. (Settlement ¶ 26(b)).<sup>2</sup> Pursuant to the terms of this settlement, PPL Electric conducted TOU collaborative meetings on January 17, March 12, and May 14, 2008. All parties to the base rate proceeding were invited to these meetings. Active participants included the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Eric Epstein, Richards Energy Group ("Richards"), Reliant Energy ("Reliant") and Constellation Energy.

At these meetings, the collaborative participants discussed: (1) the effectiveness of existing programs, (2) technology issues, (3) target audiences, (4) advertising methods, (5) program benefits and costs, (6) new program parameters, and (7) other issues. These collaborative meetings provided PPL Electric with valuable input that has been considered in developing this filing.

On August 28, 2008, PPL Electric filed a Petition requesting Commission approval of the Company's plans to procure default supplies for customers for the period of January 1, 2011 through May 31, 2014 ("POLR II Proceeding"). This period subsequently was modified to end on May 31, 2013. In the POLR II Proceeding, the Company reached a settlement of all but two issues with the other parties. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2013*, Docket No. P-2008-2060309. In the settlement, PPL Electric agreed to file a year-round TOU program for all customers by mid-2009, to become effective on January 1, 2010,

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<sup>2</sup> The Settlement was approved by the Commission in its Order entered on December 6, 2007.

subject to Commission approval. (Settlement ¶ 56). As part of the settlement, PPL Electric also agreed to consider a “Green Weekend” proposal offered by Mr. Epstein which would, in part, offer lower electric rates to certain faith-based and non-profit organizations on the weekends. The Commission approved the POLR II settlement by Order entered June 30, 2009.

On October 15, 2008, the Pennsylvania General Assembly enacted Act No. 129. Act 129 requires EDCs to implement multiple programs to promote energy efficiency and conservation by electric customers. Act 129 required EDCs to file EE&C plans with the Commission by July 1, 2009. Act 129 also required EDCs to file one or more TOU rates and real-time price plans with the Commission by January 1, 2010.

PPL Electric filed its EE&C plan with the Commission on July 1, 2009 at Docket No. M-2009-2093216. In its EE&C plan, the Company included an overview of its proposed TOU program. The Company stated that it would make a separate TOU filing by July 31, 2009. The Company also noted that the TOU program would be similar to the pilot TOU programs that the Company had offered since 2007. In the EE&C filing, the Company set forth a benefit-cost analysis for the TOU program based upon the Total Resource Cost Test (“TRC Test”). By Order entered October 26, 2009, the Commission approved the Company’s EE&C plan with certain modifications. *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216 (“EE&C Order”). In the EE&C Order, the Commission approved the Company’s TRC Test methodology, and its application to each of the Company’s programs, including the Company’s TOU program. (EE&C Order, p. 43).

Pursuant to its obligations under Act 129, its commitment in the CBP proceeding, and the Settlement of the POLR II proceeding, the Company filed its proposed TOU program on July 31, 2009.

OTS, OCA and OSBA filed Notices of Appearances in the proceeding. The OCA and OSBA also filed Complaints against the filing. In addition, Mr. Eric Epstein, the Sustainable Energy Fund (“SEF”), Richards and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively “Constellation”) filed Petitions to Intervene.

At the Public Meeting held on October 8, 2009, the Commission approved a Motion of Commissioner Kim Pizzingrilli, which provided that the Commission must issue a Final Order on the merits of the proceeding by no later than January 31, 2010, pursuant to 66 Pa. C.S. § 2807(f)(5). The contents of Commissioner Pizzingrilli’s Motion were incorporated into a Commission Order entered on October 20, 2008. In that Order, the Commission also suspended Supplement No. 71 by operation of law until January 31, 2010, unless otherwise directed by order of the Commission.

On October 9, 2009, Administrative Law Judge David A. Salapa (the “ALJ”) issued a Prehearing Conference Order scheduling an initial prehearing conference for October 16, 2009 and directing parties to file prehearing memoranda. Pursuant to the ALJ’s Order, the parties filed prehearing memoranda on October 14, 2009.

The initial prehearing conference was held on October 16, 2009. At the prehearing conference, the ALJ granted the petitions to intervene that had been filed in the proceeding. The ALJ also established a procedural schedule for the proceeding. Following the prehearing conference, the ALJ issued Prehearing Conference Order No. 2 which formally granted the

petitions to intervene, established the service list and set forth the procedural schedule, various rules for the proceeding and the briefing requirements.

Also on October 16, 2009, the Company filed its Direct Testimony. On October 30, 2009, OTS, OCA, SEF and Mr. Epstein filed Direct Testimony. On November 5, 2009, the Company and SEF filed Rebuttal Testimony outlines. A public input hearing also was held on November 5, 2009.

An evidentiary hearing was held on November 9, 2009. At the hearing, the Direct Testimony of the parties was admitted into the record. In addition, the Company and SEF submitted oral Rebuttal Testimony and certain witnesses were cross-examined.

Pursuant to the procedural schedule adopted by the ALJ, the Company hereby submits its Main Brief in this proceeding. In addition, pursuant to Prehearing Order No. 2 issued on October 19, 2009, Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs are provided in Appendix A hereto.

### **III. SUMMARY OF ARGUMENT**

PPL Electric has offered TOU-based rates to its customers since the 1980s. These programs included peak and off-peak rates to residential customers for thermal storage heating, peak and off-peak rates to residential and small C&I customers for water heating and space heating, discounts to small and large C&I customers for controlling peak demand and interruptible service to large C&I customers.

The Company has continued to offer TOU-based rates to customers since restructuring. In 2001, the Company offered an hourly pricing program for large C&I customers. In 2002, the Company offered a pilot TOU program for residential customers whereby participants were offered peak and off-peak rates in the summer months. Additionally, in 2008, the Company offered a year-round pilot TOU program to residential customers.

This TOU filing is based on the Company's substantial experience in offering TOU-based rates to customers. In this filing, the Company has established peak and off-peak default service rates for residential and small C&I customers that are based on the results of the Company's competitive procurements of default supplies for its customers for 2010. The TOU program has different rates and peak and off-peak times for the summer period of June through September and for the non-summer period of October through May. The Company thoroughly examined historic locational marginal prices and its customers' load shapes in developing the TOU rates and time periods. The Company also considered input that it has received from participants in the Company's pilot TOU programs and from participants in multiple TOU collaborative meetings in developing this TOU program. The TOU program was carefully designed, is well-reasoned and should be approved.

In this proceeding, various parties have argued that the Company should either conduct a separate procurement for TOU customers or should have procured default supplies through a

different procurement methodology. These arguments completely ignore the fact that the Company already has procured **all** of its default supplies for all of its default service customers for 2010 through a competitive procurement process that was approved by the Commission. In addition, the parties who argue that the Company should conduct a separate procurement for TOU customers ignore the fact that there will not be enough TOU customers in 2010 to conduct a separate procurement. For these reasons, these arguments cannot be accepted.

Likewise, certain parties argue that the Company's proposal to recover its default service TOU costs through the default service Generation Supply Charge ("GSC") is unfair because non-TOU participants will pay for under-recoveries of costs attributed to savings experienced by TOU customers. This argument should be rejected for several reasons. First, CBP supply bidders were aware that the Company was offering a year-round TOU program in 2010 with no participation limits and were able to reflect the TOU program in their bids. Therefore, it is appropriate to include TOU costs and recoveries in the GSC because the bids should reflect a lower cost as a result of the TOU program. Second, all customers within a particular class have different load shapes – some of these load shapes are more expensive to serve and others are less expensive to serve. The TOU program will give customers that have less expensive load shapes the opportunity to experience savings for their less expensive load shapes. Conversely, by recovering any under-recoveries associated with the TOU program through the GSC, customers with more expensive load shapes will be required to pay more. This is a reasonable result and does not constitute unlawful or unreasonable rates.

Moreover, by law, the Company must be permitted to recover its costs for providing a default service TOU option to its customers. The Company is required to provide a TOU option under Section 2807(f) of the Public Utility Code. 66 Pa. C.S. § 2807(f). Section 2807(e)(3.9)

specifically provides that EDCs are entitled to recover their costs for providing service under Section 2807 on a full and current basis. 66 Pa. C.S. § 2807(e)(3.9). The parties who have argued that the Company should not be permitted to recover its costs through the GSC have not proposed an alternative methodology that would allow the Company to recover its costs.

Certain parties also argue that the Company should not exclude OnTrack, Net Metering and Renewable Energy Rider customers from the TOU program. As explained in this proceeding, the Company appropriately excluded these customers. OnTrack customers pay substantially reduced bills based on their ability to pay and will not see savings as a result of shifting usage. Moreover, OnTrack customers should not be put in a position where they could enroll in the TOU program and experience higher costs due to increased usage in peak periods. The Company also notes that it has very few Net Metering and Renewable Energy Rider customers, and the billing methodology for these customers is inconsistent with peak and off-peak billing under the TOU program. In addition, street lighting customers have no meters and are unable to shift usage from peak to off-peak periods.

The Company has provided substantial evidence in this proceeding to support its TOU proposal. In addition to its testimony, the Company has provided a White Paper summarizing its prior TOU pilot programs, has provided hourly data for participants since 2005 and has provided load shape analysis data. The TOU program will give participants the opportunity to shift load from peak periods to off-peak periods and save money by doing so. The TOU program also will reduce the Company's peak demand. The Company's TOU filing is in the public interest and should be approved.

#### **IV. ARGUMENT**

##### **A. THE COMPANY'S PROPOSED TOU PROGRAM IS REASONABLE AND SHOULD BE APPROVED AS FILED.**

The Company's TOU program was designed by the Company based upon its substantial experience in offering its customers TOU-based rates since 2002. As explained by Mr. Krall, the Company developed peak and off-peak periods for two separate seasons – one for the traditional summer months of June through September and the second consisting of all other “non-summer” months of October through May. (PPL Electric St. No. 1, p. 8). For each season, the Company developed peak and off-peak periods based upon:

- historic locational marginal prices,
- summer and non-summer load shapes, and
- customer usage patterns.

(PPL Electric St. No. 1, pp. 10-13). The Company also balanced the following objectives in designing the peak and off-peak periods:

- providing customers with a large enough differential between peak prices and off-peak prices that they are incented to shift load,
- providing customers with appropriate time periods that will not discourage participation, and
- providing customers with time periods that include enough usage to support meaningful savings.

(PPL Electric St. No. 1, p. 13).

As explained by Mr. Krall, the TOU program was further designed so that customers using the average amount of electricity at average times for the class would be billed approximately the same whether the customer chooses standard default service or the TOU default service option. (PPL Electric St. No. 1, p. 14). However, if the customer chooses the default service TOU option and shifts usage from peak periods to off-peak periods, the customer

will pay less than the standard default service rate. Conversely, if the customer shifts usage into the peak period, the customer will experience higher electric bills. (PPL Electric St. No. 1, p. 14).

The Company's TOU program was carefully designed and well-reasoned, will reduce peak demand and will help PPL Electric meet its demand reduction objectives under Act 129. For these reasons and the reasons explained herein, the Company's plan should be approved as filed.

**B. THE COMPANY CANNOT CONDUCT A DIFFERENT PROCUREMENT METHODOLOGY IN 2010.**

**1. The Company Already Has Procured All Of Its Default Supply For All Of Its Default Service Customers In 2010.**

The Company filed this TOU program for 2010, and will file for approval of a TOU program for 2011 in mid-2010. As explained in this proceeding, the Company already has procured all of its default supplies for all of its default service customers in 2010 pursuant to a competitive procurement process approved by the Commission in the CBP proceeding. (Tr. 81; CBP Order, p. 69). Under the CBP process, the Company acquired default supplies for 2010 through six separate competitive procurements. The results of all of these procurements have been approved by the Commission. (Tr. 81).

**2. It Would Not Be Prudent To Create A Separate Rate Class For TOU Customers.**

In this proceeding both SEF and Mr. Epstein argue that the Company should create a separate rate class for TOU customers. (SEF St. No. 1, p. 4; Epstein St. No. 1, p. 11). This is not possible because the Company already has procured all of its default supply for all of its default service customers. If the Company were required to create a separate TOU rate class in 2010, it

would have to procure default supplies for these customers twice. (Tr. 82). This would not be reasonable or prudent.

In addition, as a practical matter, the Company cannot create a separate rate class for TOU customers in 2010 because there will not be sufficient customer participation in the TOU program in 2010 to allow the Company to create a separate rate class. (Tr. 78-80). As explained by Mr. Krall, historically the Company has had approximately 1,200 customers participate in its TOU-based pilot programs. In addition, the Company projects approximately 16,000 participants by the end of 2010 for this TOU program. (Tr. 79). Based upon these numbers, the Company estimates that a 2010 tranche for TOU customers would amount to about 3 MW as an average over the year. (Tr. 79). As a point of reference, the tranches under the CBP proceeding are approximately 50 MW. Because of the relatively small amount of electricity required for TOU customers combined with customers' ability to migrate in or out of the TOU rate at will, there would be a large risk premium associated with providing service to the TOU group. (Tr. 80). For these reasons, it is not practical to create a separate rate class for TOU customers in 2010.

**3. Acquiring Default Supplies Through A Managed Portfolio Approach Is Inconsistent With The CBP Procurement Process.**

In this proceeding, OCA witness Mr. Hahn states that if the Company had procured default supplies using a managed portfolio approach, TOU savings could be passed through to customers. (OCA St. No. 1, p. 13). This is a moot point. As explained above, the Company already has procured default supplies for 2010 through a Commission-approved procurement process. (Tr. 81). In addition, in the CBP proceeding, the OCA entered into a Stipulation with PPL Electric supporting the full-requirements procurement process. CBP Order, Attachment A. Therefore, the OCA's argument in this proceeding that the Company should have procured

default supplies using a managed portfolio process is inconsistent with the Stipulation that the OCA signed in the CBP proceeding.

Moreover, contrary to OCA's assumption, there is no guarantee that default supply costs would be lower under a managed portfolio approach. (Tr. 83). Under a managed portfolio approach, customers bear the risks of changes in price, amount of load and load shape. (Tr. 83). Under a full-requirements approach, suppliers take those risks. Under its procurement methodology, the Company chose to have suppliers take the risk. This is a reasonable approach, and it was approved by the Commission. It is inappropriate to second guess that decision in this proceeding.

**C. THE COMPANY'S COST RECOVERY METHODOLOGY IS APPROPRIATE.**

**1. The TOU Program Is A Default Service Program.**

In this proceeding, the Company proposes to offer the TOU program as a default service option to default service customers. As explained by Mr. Kleha, if a default service customer elects the TOU option, the TOU rates will replace the standard default service rates set forth in the Company's Generation Supply Charge ("GSC"). (PPL Electric St. No. 2, p. 4). In addition, costs and associated revenue recoveries under the TOU rate option will be included in the GSC reconciliation process.

The Company believes that this is a reasonable approach for recovering the Company's costs of providing TOU rates to default service customers. The TOU program is a default service option, and the Company's obligation to provide a TOU program to customers is part of its obligation as a default service provider. 66 Pa. C.S. § 2807(f)(5). Therefore, it is reasonable for the Company to include the TOU program, including costs and recoveries, under its default service cost recovery mechanism. The Company further notes that TOU programs are required

by Section 2807 of the Code, the same section that requires EDCs to provide default service to customers.

**2. The TOU Program Does Not Improperly Shift Costs To Non-Participants**

In testimony in this proceeding, OCA witness Mr. Hahn and SEF witness Mr. Costlow argue that the TOU program will improperly shift costs to non-participants. (OCA St. No. 1, p. 13; SEF St. No. 1, p. 4). These arguments ignore several critical facts and should not be accepted.

First, as explained above, the Company proposed to expand its TOU program to all of its default service customers for 2010 in the CBP proceeding. Wholesale supply bidders were aware of this TOU program and could reflect it in their bids. (Tr. 84). Therefore, all default service customers have benefited from this TOU program to the extent suppliers have factored it into their bids. In addition, customers will benefit in future default supply solicitations if the class load shape reflects lower peak usage.

Second, as explained by Mr. Krall, customers within each class have different load shapes. (Tr. 84). Some customers use more energy in peak periods when the price is high and some customers use less energy in these periods. Historically, however, standard default service rates have not reflected differences in customer load shapes within a class. Therefore, customers that use less energy in the peak periods have been subsidizing customers that use more energy in peak periods. (Tr. 85). The TOU program gives customers that have a better load shape, and use less energy at the peak times, the opportunity to receive the economic benefits of their usage pattern. Likewise, customers that have load shapes that reflect the use of more energy in peak periods will pay more for their energy, consistent with how energy is priced in the wholesale market. Therefore, under the TOU program, non-participants will not be subsidizing TOU

participants. Rather, both participants and non-participants will pay energy prices that better reflect the price of their actual load shape.

Third, as explained by Mr. Kleha, TOU program costs will be allocated to the residential and small C&I classes respectively, and the residential customers will not cross-subsidize small C&I customers or vice versa. In designing rates for customers, there are many instances where costs are allocated to an entire class, even though all of the customers do not participate in a specific program or do not receive benefits from that program.<sup>3</sup> For example, low-income customer program costs are allocated to the entire residential class even though not all residential customers participate in the low-income customer program or receive the benefits of such programs. In addition, in *Met-Ed Users Group and Penelec Industrial Customer Alliance v. Pa. P.U.C.*, 960 A.2d 189, 202 (Pa. Cmwlth. 2008), the Commonwealth Court stated as follows with regard to this issue:

In *Lloyd*, this court considered an argument that the Sustainable Energy Fund (SEF) programs should not be funded through electric distribution rates because the SEF programs benefit electric generation, not electric distribution, service. This court commented that the Competition Act "only provides that it be funded by 'non-bypassable rates' without any requirement that it be by a rate that is directly benefited by the program." *Id.* at 1027. ***Thus, under Lloyd, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs.***

(Emphasis supplied; footnote omitted.) Citing *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007).

Fourth, as explained by Mr. Krall, the Company anticipates that it will have approximately 16,000 participants in the TOU program by the end of December 2010. (Tr. 115). The expected cost increase for non-TOU participating customers will be so minimal that it will

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<sup>3</sup> As noted above, non-participants have received benefits from the TOU program in the form of lower default supply bids.

not even show up in the mathematical rounding calculation. (Tr. 115). This demonstrates that the parties' concerns regarding potential cost shifting clearly are overstated.

**3. The TOU Program Will Not Unjustly Increase Suppliers' Profits.**

In testimony, Mr. Hahn and Mr. Costlow also argue that the TOU program will unjustly increase wholesale suppliers' profits. (OCA St. No. 1, p. 12; SEF St. No. 1, p. 8). This is incorrect. As explained above, in the CBP proceeding, PPL Electric clearly stated that it was expanding its TOU program into a year-round program available to all default service customers in 2010. (Tr. 81). In addition, the Company did not exclude TOU customers from the solicitation process. Therefore, when wholesale suppliers bid to provide default supply to the Company, they were aware that the Company would have a TOU program that was available to all default service customers in 2010 and that this TOU program could reduce peak demand. (Tr. 81). Therefore, it would be unfair to remove TOU customers from the Company's default supply procurements because wholesale suppliers anticipated serving a load shape that included a TOU program. Removing these customers would cause the Company's load shape to be more expensive to serve because there would be a higher percentage of load that would need to be served at peak periods. This would certainly be unfair to wholesale suppliers who were on notice that the Company's 2010 default service load would include a TOU option for customers.

**4. Demand Reduction Credits Should Be Reflected In The ACR.**

In this proceeding, the Company proposes to reflect any credits from selling demand reductions through the TOU program in its Act 129 Compliance Rider ("ACR"). In testimony, SEF argues that revenues from sales of demand reductions should be credited to the GSC rather than the Company's ACR. (SEF St. No. 1, p. 8).

The Company believes that its proposal to credit demand reduction credits to the ACR is reasonable and should be approved. As explained by Mr. Kleha, the TOU program is required

by Act 129 and was included in the Company's EE&C plan. (Tr. 161-62). Moreover, the Company intends to spend approximately \$4.0 million dollars to market the TOU program through Conservation Service Providers under the EE&C plan. (PPL Electric Exhibit No. 2). These costs will be recovered under the ACR. (Tr. 161). Therefore, it is reasonable and appropriate to reflect demand reduction credits in the ACR to reduce the marketing costs for the TOU program.

**D. THE TOU PROGRAM DESIGN IS REASONABLE AND SHOULD BE APPROVED.**

**1. The Company's Proposed Peak And Off-Peak Periods Are Reasonable And Should Be Approved.**

In this proceeding, the Company proposed a peak period of 5:00 p.m. to 7:00 p.m. for the non-summer months. (PPL Electric Exhibit JMK-1). In testimony, Mr. Hahn argued that this peak period was too small to have a meaningful impact on reducing peak loads. (OCA St. No. 1, pp. 9-10). Therefore, Mr. Hahn proposed that the Company consider a longer peak period, have a morning and evening peak period, or use three different seasons – summer, winter and shoulder periods.

As Mr. Krall explained in rebuttal testimony, the non-summer peak period should not be modified. (Tr. 89). The Company had to balance multiple concerns in developing its peak and off-peak periods. One of the primary criteria was customer acceptance of the peak periods. When the Company has solicited information regarding TOU program designs from customers, they have indicated that the period around dinnertime is a very sensitive period and that they were opposed to a peak period of 5:00 p.m. to 8:00 p.m. (Tr. 89). Therefore, the Company proposes a peak period of 5:00 p.m. to 7:00 p.m. to increase customer participation.

The Company also solicited input from collaborative participants regarding morning and evening peak periods. (Tr. 90). Collaborative participants indicated, and the Company agrees,

that this would present additional complexity that may decrease participation. Likewise, creating three seasons also would add additional complexity to the program. The Company does not believe that it is appropriate to add these levels of complexity to the TOU program at this time.

In testimony, Mr. Hahn also questions whether residential thermal storage (“RTS”) customers will be able to change their usage patterns to fit the new peak periods. (OCA St. No. 1, p. 10). As explained by Mr. Krall, the Company has examined this issue with its customers and has determined that the new, substantially shorter peak periods will benefit RTS customers. (Tr. 98).

**2. The Company Appropriately Excluded OnTrack, Net Metering, Renewable Energy Rider and Street Lighting Customers From The TOU Program.**

In this proceeding, the Company proposed to exclude OnTrack, Net Metering, Renewable Energy Rider and Street Lighting customers from the TOU program. (PPL Electric St. No. 1, p. 16). In testimony, SEF has argued that these customers should be allowed to participate in the TOU program. (SEF St. No. 1, p. 6). For the reasons explained below, SEF’s argument should not be accepted.

As explained by Mr. Krall, OnTrack customers receive substantially reduced bills that are based on these customers’ ability to pay. (PPL Electric St. No. 1, p. 16). Their bills will not change based upon their consumption patterns. Therefore, it is not appropriate to include them in the TOU program. Moreover, the Company does not believe that it would be appropriate for OnTrack customers to enroll in the TOU program and potentially receive higher bills resulting from increased usage in peak periods.

The Company also believes that it is appropriate to exclude Net Metering and Renewable Energy Rider customers from the TOU program. As explained by Mr. Krall, under the Commission’s regulations implementing the Alternative Energy Portfolio Standards Act, the

Company is required to offer Net Metering customers a single bidirectional meter. 52 Pa. Code § 75.14(a). These customers' bills are based on their monthly net generation. In addition, these customers are able to carry forward excess generation from one month to the next month, for up to a 12-month period before cashing out the value of that generation. (Tr. 94). Therefore, it would be inconsistent to charge these customers daily peak and off-peak rates when they can carry generation forward on an average monthly price or average yearly price basis, and use it to offset generation that they buy in subsequent months.

There are several other factors that the Commission should consider with respect to Net Metering and Renewable Energy Rider customers. For one, these customers could enter into a buy-all/sell-all arrangement which would allow them to enroll in the TOU program. (Tr. 94). In addition, these customers represent a very small number of customers on the Company's system. As shown on SEF Exhibit 1, Schedule 1, out of 1,222,741 residential customer accounts, the Company has 332 Net Metering and Renewable Energy Rider customers. This is a very minute percentage of customers. Because of the metering constraints described above, it is reasonable to exclude these customers from the TOU program.

With regard to street lighting customers, these customers do not have meters. (Tr. 95). In addition, street lights are controlled automatically by sensors, and not by the actions of the customers. (PPL Electric St. No. 1, p. 16). Therefore, street lighting customers cannot shift load from peak to off-peak periods. For these reasons, it is reasonable to exclude them from the TOU program.

### **3. The TOU Program Is Cost Effective**

In testimony, SEF witness Mr. Costlow argues that the TOU program is not cost-effective. (SEF St. No. 1, p. 8). He also includes a schedule which purports to show that PPL

Electric will experience “Total Savings” of approximately \$1.5 million with TOU program costs of approximately \$4.0 million. Mr. Costlow’s analysis should be completely disregarded.

As Mr. Krall explained in his rebuttal testimony, the Company provided a benefit-cost analysis for the TOU program in its EE&C plan and this benefit-cost analysis was approved by the Commission. (Tr. 97). The benefit-cost analysis approved by the Commission is based on the TRC Test which is the methodology that Act 129 requires EDCs to employ and demonstrates a benefit to cost ratio of 3.56 for the residential sector – or in other words the benefits of the TOU program outweigh the costs by 3.56 times. See PPL Electric Exhibit No. 2. In addition, Mr. Krall explained that Mr. Costlow excluded multiple benefits from his analysis, including the primary benefit of the program – demand reduction credits for reducing peak demand. (Tr. 98). On cross-examination, Mr. Costlow agreed that Mr. Krall was correct (Tr. 180):

Q. On page 8 of your testimony, you state that PPL proposes to spend approximately \$4 million to advertise this time of use program but the program will only save ratepayers \$1.5 million?

A. That’s correct.

Q. Have you included credits for demand reductions in your analysis?

A. No, I have not.

And later with regard to his benefit-cost analysis, Mr. Costlow further stated as follows (Tr. 182):

Q. Is your analysis here consistent with what’s been approved by the Commission?

A. No, it’s not.

It is clear that Mr. Costlow’s benefit-cost analysis is fundamentally flawed, is not consistent with the Commission’s TRC Test and should be rejected.

**4. The Company Has Provided Substantial Data To Support Its Claims In This Proceeding.**

In testimony, Mr. Epstein argues that the Company has not provided enough historical data to support its claims in this proceeding. (Epstein St. No. 1, p. 6). Mr. Epstein's argument should not be accepted.

The Company has provided substantial data regarding its prior TOU programs to parties in this proceeding. As explained by Mr. Krall, the Company provided a White Paper summary of its prior TOU programs to parties in response to one of Mr. Epstein's interrogatory questions, and this White Paper has been admitted into the record in this proceeding as PPL Exhibit No. 3. This analysis describes the Company's experience with its pilot programs, including how many customers have participated, how many saved money under the pilot programs, how much they saved, how many customers did not save money and estimates of peak usage reductions. In addition, in this proceeding, the Company provided spreadsheets that included hourly data for all participants for the pilot summertime program for 2005 – 2008 and hourly data for the year-round pilot participants from December 2008 through July 2009. (Tr. 102, 105). The Company also provided an analysis of data from a control group of similarly situated customers that was used to establish the load shape of customers that were not in the program. (Tr. 102). Mr. Epstein's claims that the Company has not provided sufficient historic data are unfounded.

On page 9 of his testimony, Mr. Costlow argues that the Company has not provided evidence that its TOU program will reduce demand. Mr. Costlow is incorrect. In this proceeding, the Company has provided substantial evidence that its TOU program will reduce demand. In discovery in this proceeding, the Company provided evidence regarding the reduction in peak demands of customers that participated in the Company's pilot TOU programs.

(See PPL Electric Exhibit No. 3). The Company's proposed TOU program is based upon its prior programs, and like those programs, will reduce peak demand.

In addition, issues regarding demand reduction from the TOU program were addressed in the Company's EE&C plan, and the Commission accepted the Company's demand reduction estimates in that proceeding.

**5. The TOU Program Addresses Mr. Epstein's "Green Weekend" Proposal.**

In the Settlement of the Company's POLR II proceeding, the Company agreed to consider a "Green Weekend" proposal offered by Mr. Epstein which would provide reduced weekend rates to faith-based institutions, Community Based Organizations ("CBOs") and qualifying non-profit organizations. (See PPL Electric St. No. 1, pp. 7-8, Epstein St. No. 1, p. 9). As the Company explained in its testimony, the Company considered Mr. Epstein's proposal, and the TOU program will allow participation by all faith-based organizations, CBOs and non-profit organizations that take default service under the residential and small C&I rate schedules (that are not OnTrack, Net Metering or Renewable Energy Rider customers). (Tr. 106). The Company notes that under the TOU program, all week-ends are off-peak periods where participating customers receive lower rates. (PPL Electric Exhibit JMK-1).

In testimony, Mr. Epstein states that the Company did not adequately consider his proposal. The Company adequately considered his proposal. As explained by Mr. Krall, the Company had several meetings with Mr. Epstein to discuss his proposal. In addition, at the hearing, Mr. Epstein admitted that he was not concerned about the design of the peak and off-peak periods under his "Green Weekend" proposal. (Tr. 140). Moreover, Mr. Epstein fails to acknowledge that all faith-based organizations, CBOs and non-profit organizations served under the residential and small C&I classes (with the few exclusions discussed above) qualify for the

TOU program. In addition, in this proceeding, Mr. Epstein has not identified any faith-based organizations, CBOs or non-profit organizations that will not qualify for the TOU program. As a result, Mr. Epstein's contentions that the Company failed to consider his "Green Weekend" proposal should not be accepted.

**6. The TOU Program Will Not Create Unfair Competition Between PPL Electric and EGSs.**

On pages 9-10 of his testimony, Mr. Costlow argues that the TOU program will create unfair competition between PPL Electric and EGSs. This argument should not be accepted. As explained above, the Company is required to file a TOU program under Act 129. Under the TOU program, the Company is simply establishing peak and off-peak default service rates based on the Company's default service solicitations.

EGSs are free to compete with the Company's TOU program and offer their own TOU programs. As explained by Mr. Krall, the Company makes the hourly data that would be necessary to bill a TOU rate available to EGSs, through Commission-approved electronic data interchange transactions. (Tr. 104). The Company also provides EGSs with historical data that EGSs could use to design a TOU rate to specific groups of customers. (Tr. 105). Therefore, EGSs can target the needs of specific customer groups and offer tailored products.

The TOU rate will not create unfair competition between PPL Electric and EGSs.

**E. THE COMPANY'S EDUCATION AND MARKETING PLANS ARE REASONABLE AND SHOULD BE APPROVED.**

In his testimony, Mr. Hahn states that the Company should develop its TOU education materials in collaboration with OCA and interested parties on an expedited basis. (OCA St. No. 1, p. 14). As explained by Mr. Krall in his rebuttal testimony, this is unnecessary. The materials the Company proposes to use to notify, educate, and enroll participants are simply an extension of those that already have been used in the Company's prior TOU pilots since 2002. (Tr. 107).

Those materials have been reviewed by the demand side response working group. (Tr. 107). In addition, the Company reviewed those materials with parties through a collaborative process arising out of the CBP proceeding. (Tr. 107). Therefore, these materials already have been reviewed by multiple parties.

In addition, Mr. Epstein criticizes the Company for spending \$100,000 to notify, educate and enroll customers in the TOU program, in addition to the marketing budget under the EE&C plan. (Epstein St. No. 1, p. 8). Mr. Epstein's argument should not be accepted. As explained by Mr. Krall, it is important for the Company to notify, educate and enroll customers in the TOU program, otherwise the program will not have any participants and will not produce any benefits. (Tr. 108). In addition, the \$100,000 that the Company intends to spend to notify, educate and enroll customers is separate from the EE&C budget which relates to a mass-marketing effort. Moreover, this \$100,000 was part of the Company's Commission-approved Consumer Education Plan. (Tr. 108). The \$100,000 that the Company proposes to spend to notify and enroll customers in the TOU program in this proceeding is necessary, reasonable and should be approved.

**F. THE OTS' REQUESTS FOR DATA SHOULD BE ADDRESSED IN THE ACT 129 EE&C VERIFICATION PROCEEDINGS.**

In testimony in this proceeding, OTS requests that the Company provide certain information regarding the Company's TOU program in its next TOU filing. (OTS St. No. 1, p. 8). As explained by Mr. Krall in his rebuttal testimony, Act 129 has substantial measurement and verification requirements that are in the process of being defined. (Tr. 110). Therefore, the Company recommends that the Commission allow this Act 129 process to define the data that must be evaluated and provided to parties.

V. CONCLUSION

The Company's proposed TOU program is based upon its substantial prior experience in offering TOU-based rates to its customers. The TOU program will give customers the opportunity to shift usage to off-peak periods and save money by shifting usage. In addition, the TOU program will reduce the Company's peak demand. This TOU program is in the public interest, and PPL Electric Utilities Corporation requests that the TOU program be approved as filed.

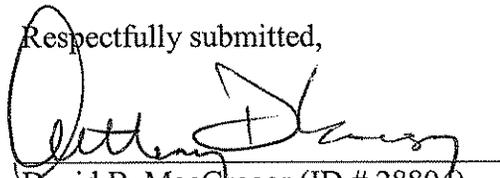
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# Appendix A

## APPENDIX A

### I. PROPOSED FINDINGS OF FACT

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) proposes the following findings of fact:

1. PPL Electric furnishes electric distribution, transmission and default generation services to approximately 1.4 million customers in a service area that includes approximately 10,000 square miles covering all or portions of twenty-nine counties in eastern and central Pennsylvania. (PPL Electric Exhibit No. 1).

2. On July 31, 2009, PPL Electric filed Supplement No. 71 to the Company’s Tariff Electric – Pa. P.U.C. No. 201 (“Supplement No. 71”). (PPL Electric Exhibit No. 1).

3. In Supplement No. 71, the Company proposes to implement an optional year-round Time of Use (“TOU”) program for residential and small commercial and industrial (“C&I”) customers. (PPL Electric Exhibit JMK-1).

4. PPL Electric has substantial experience in offering TOU-based rates to customers and has offered TOU-based rates to its customers since the 1980s. (PPL Electric St. No. 1, p. 5).

5. The Company’s prior TOU-based programs included off-peak thermal storage for residential customers; off-peak water heating and off-peak space heating for both residential and small C&I customers; discounts to both small and large C&I customers for controlling the time of their peak demand; and interruptible and price response services for large C&I customers. (PPL Electric Statement No. 1, pp. 5-6).

6. PPL Electric conducted multiple collaborative meetings with various parties who provided substantial input in the development of the proposed TOU program. (PPL Electric Statement No. 1, pp. 6-8).

7. In this proceeding, the Company provided substantial historical data regarding its prior TOU programs. (Tr. 101-103).

8. The Company provided an analysis that described the Company's experience with its pilot programs, including how many customers have participated, how many saved money under the pilot programs, how much they saved, how many customers did not save money and estimates of peak usage reductions. (Tr. 102).

9. The Company provided spreadsheets that included hourly data for all participants for the summertime pilot program for 2005 – 2008 and hourly data for the year-round pilot participants from December 2008 through July 2009. (Tr. 102, 105).

10. The Company also provided an analysis of data from a control group of similarly situated customers that was used to establish the load shape of customers that were not in the program. (Tr. 102).

11. The Company provided evidence regarding the reduction in peak demands of customers that participated in the Company's pilot TOU programs. (PPL Electric Exhibit No. 3).

12. PPL Electric developed on-peak and off-peak periods for two separate seasons – one for the traditional summer months of June through September and the second consisting of all other “non-summer” months of October through May. (PPL Electric St. No. 1, p. 8).

13. For each season, the Company developed on-peak and off-peak periods based upon: (a) historic locational marginal prices; (b) summer and non-summer load shapes, and (c) customer usage patterns. (PPL Electric St. No. 1, pp. 10-13).

14. The Company balanced the following objectives in designing the on-peak and off-peak periods: (a) providing customers with a large enough differential between on-peak prices and off-peak prices that they are incented to shift load, (b) providing customers with appropriate

time periods that will not discourage participation, and (c) providing customers with time periods that include enough usage to support meaningful savings. (PPL Electric St. No. 1, p. 13).

15. The proposed TOU rates will provide pricing that encourages customers to shift electricity usage from peak periods, when wholesale electricity demands and prices are higher, to off-peak periods, when demands and prices are lower. (PPL Electric St. No. 1, p. 4).

16. The shifting of use from peak to off-peak periods will reduce peak demands on generation resources, contribute to reducing wholesale electricity prices during the hours of highest demand, and provide customers with an opportunity to reduce their monthly electric bills. (PPL Electric St. No. 1, p. 4).

17. If a customer with an average usage pattern chooses the TOU option and shifts usage from peak periods to off-peak periods, the customer will pay less than the standard default service rate. (PPL Electric St. No. 1, p. 14).

18. If a customer with an average usage pattern shifts usage into the peak period, the customer will experience higher electric bills. (PPL Electric St. No. 1, p. 14).

19. PPL Electric's residential thermal storage ("RTS") customers will benefit from the proposed TOU program because the TOU program incorporates substantially shorter peak periods than these customers have experienced under prior programs. (Tr. 98).

20. The TOU program will allow all faith-based institutions, Community Based Organizations ("CBOs"), and qualifying non-profit organizations that take default service under the residential and small C&I rate schedules (that are not OnTrack, Net Metering or Renewable Energy Rider customers) to participate in the program. (PPL Electric St. No. 1, pp. 7-8).

21. OnTrack customers pay substantially reduced bills based on their ability to pay. (PPL Electric St. No. 1, p. 16).

22. If OnTrack customers were permitted to enroll in the TOU program, they could experience higher costs due to increased usage in peak periods. (PPL Electric St. No. 1, p. 16).

23. The Company has very few Net Metering and Renewable Energy Rider customers, and the billing methodology for these customers is inconsistent with peak and off-peak billing under the TOU program. (PPL Electric St. No. 1, pp. 16-17; Tr. 94).

24. PPL Electric's street lighting customers have no meters and are unable to shift usage from peak to off-peak periods. (PPL Electric St. No. 1, p. 16; Tr. 95).

25. PPL Electric already has procured all of its default supplies for all of its customers in 2010 pursuant to a competitive solicitation procurement process approved by the Commission in the CBP Order. (PPL Electric Statement No. 1, p. 14; Tr. 81).

26. The results of all of these procurements have been approved by the Commission. (Tr. 81).

27. CBP bidders were aware that the Company was offering a year-round TOU program in 2010 with no participation limits. (Tr. 84).

28. CBP bidders were able to reflect the TOU program in their bids. (Tr. 84).

29. If the Company were required to create a separate TOU rate class in 2010, it would have to procure default supplies for these customers twice. (Tr. 82).

30. The Company cannot create a separate rate class for TOU customers in 2010 because there will not be sufficient customer participation in the TOU program in 2010 to allow the Company to create a separate rate class. (Tr. 78-80).

31. A tranche for TOU customers for 2010 would amount to about 3 MW as an average over the year compared to the average residential tranche of 50 MW. (Tr. 79).

32. There would be a large risk premium associated with providing separate service to the TOU group. (Tr. 80).

33. There is no guarantee that default supply costs would be lower under a managed portfolio approach. (Tr. 83).

34. Under a managed portfolio approach, customers bear the risks of changes in price, amount of load and load shape. (Tr. 83).

35. Under a full-requirements approach, suppliers bear the risks of changes in price, amount of load and load shape. (Tr. 83).

36. Customers within a particular class have different load shapes – some of these load shapes are more expensive to serve and others are less expensive to serve. (Tr. 84).

37. The TOU program will give customers that have less expensive load shapes the opportunity to experience savings for their less expensive load shapes. (Tr. 85).

38. Upon election by the customer, the TOU rates will replace, for billing purposes, the standard Generation Supply Charge (“GSC”) that will become effective following the end of the generation rate caps on December 31, 2009. (PPL Electric St. No. 2, p. 4).

39. Residential and small C&I customers who choose the TOU rate option will pay non-generation supply charges identical to the charges paid by residential and small C&I customers who elect standard default service, as those charges may change from time-to-time. (PPL Electric St. No. 2, p. 4).

40. The costs and associated revenue recoveries under the TOU rate option will be included in the GSC reconciliation process. (PPL Electric St. No. 2, p. 4).

41. The TOU rates will be adjusted to reflect the “E” factor of the GSC for the applicable rate class and to reflect the applicable Gross Receipts Tax. (PPL Electric St. No. 2, p. 4).

42. None of the parties opposing recovery of TOU costs through the GSC proposed an alternative methodology that would allow the Company to recover its costs. (Tr. 160).

43. TOU program costs will be allocated to the residential and small C&I classes respectively, and the residential customers will not cross-subsidize small C&I customers or vice versa. (Tr. 161).

44. The Company anticipates that it will have approximately 16,000 participants in the TOU program by the end of December 2010. (Tr. 115).

45. The expected cost increase for non-TOU participating customers for 16,000 participants will be so minimal that it will not even show up in the mathematical rounding calculation. (Tr. 115).

46. The Company intends to spend approximately \$4.0 million dollars to market the TOU program through Conservation Service Providers under the EE&C plan. (PPL Electric Exhibit No. 2).

47. PPL Electric proposes to reflect any credits from selling demand reductions through the TOU program in its Act 129 Compliance Rider (“ACR”) for its EE&C program costs. (Tr. 161).

48. The Company provided a benefit-cost analysis for the TOU program in the EE&C proceeding, and this benefit-cost analysis was approved by the Commission. (Tr. 97).

49. The benefit-cost analysis approved by the Commission is based on the Total Resource Cost Test (“TRC Test”) and demonstrates a benefit to cost ratio of 3.56. (PPL Electric Exhibit No. 2).

50. The benefit-cost analysis proposed by SEF fails to account for demand reduction credits for reducing peak demand and is not consistent with the Commission’s TRC Test. (Tr. 98, 180, 182).

51. EGSs are free to compete with the Company’s TOU program and offer their own TOU programs. (Tr. 102).

52. The Company makes the hourly data that would be necessary to bill a TOU rate available to EGSs, through Commission-approved electronic data interchange transactions. (Tr. 104).

53. The Company provides EGSs with historical data that EGSs could use to design a TOU rate to specific groups of customers. (Tr. 105).

54. PPL Electric will provide customer notice and education at the time the Commission acts on this proposal, prior to initial implementation and during its term, consistent with the Company’s implementation of its EE&C Plan at Docket No. M-2009-2093216 and with its Commission-approved Consumer Education Program at Docket No. M-2008-2032279. (PPL Electric St. No. 1, p. 18).

55. The materials the Company proposes to use to notify, educate, and enroll participants are an extension of those already used in the Company’s prior TOU pilots since 2002. (Tr. 107).

56. Those materials have been reviewed by the demand side response working group, as well as with the parties, through a collaborative process arising out of the CBP proceeding. (Tr. 107).

## II. PROPOSED CONCLUSIONS OF LAW

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) proposes the following conclusions of law:

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 501, et seq.
2. PPL Electric bears the burden of proving that it is entitled to the relief it seeks in this proceeding. 66 Pa. C.S. § 332(a).
3. The degree of proof required to establish a case before the Public Utility Commission is by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).
4. The Company’s TOU program is required by Act 129 of 2008, P.L. 1592, 66 Pa. C.S. § 2807(f)(5).
5. EDCs are entitled to recover their costs for providing service under Section 2807 on a full and current basis. 66 Pa. C.S. § 2807(e)(3.9).
6. PPL Electric’s request to recover its default service TOU costs through the default service Generation Supply Charge is just and reasonable.
7. PPL Electric’s request to exclude OnTrack, Net-Metering and Renewable Energy Rider, and street-lighting customers from the TOU program is appropriate.
8. PPL Electric’s TOU program will not create unfair competition between PPL Electric and EGSs.
9. The Company’s TOU education and marketing plans are reasonable.
10. PPL Electric has met its burden to demonstrate by a preponderance of the evidence that Supplement No. 71 to the Company’s Tariff Electric – Pa. P.U.C. No. 201, proposing to implement an optional year-round Time of Use (“TOU”) program for residential

and small commercial and industrial (“C&I”) customers, is just, reasonable, lawful, and in the public interest.

### **III. PROPOSED ORDERING PARAGRAPHS**

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) proposes the following ordering paragraphs:

1. The request of PPL Electric Utilities Corporation to implement Supplement No. 71 to the Company’s Tariff Electric – Pa. P.U.C. No. 201, filed July 31, 2009, is granted.

2. Supplement No. 71 to the Company’s Tariff Electric – Pa. P.U.C. No. 201 shall become effective on one day’s notice.

3. The Complaint of the Office of Consumer Advocate, docketed at Docket No. C-2009-2128394, is dismissed.

4. The Complaint of the Office of Small Business Advocate, docketed at Docket No. C-2009-2136098, is dismissed.

5. The Commission’s Secretary shall mark Docket No. R-2009-2122718 as closed.