

COMMONWEALTH OF PENNSYLVANIA



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November 24, 2009

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission  
Office of Consumer Advocate  
Office of Small Business Advocate  
v.  
PPL Electric Utilities Corporation  
Docket No. R-2009-2122718  
C-2009-2128394  
C-2009-2136098

Dear Secretary McNulty,

Enclosed for filing is the Reply Brief of the Office of Consumer Advocate, in the above referenced proceeding.

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

Respectfully Submitted,

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

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Enclosures

cc: Honorable Davis A. Salapa  
Dennis Buckley, Office of Special Assistants (Via E-mail Only)  
Thomas Maher, Office of Special Assistants (Via E-mail Only)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket No.	R-2009-2122718
Office of Consumer Advocate	:		C-2009-2128394
Office of Small Business Advocate	:		C-2009-2136098
	:		
v.	:		
	:		
PPL Electric Utilities Corporation	:		

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REPLY BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: November 24, 2009

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. REPLY ARGUMENT ..... 3

    A. Introduction ..... 3

    B. The Company’s Claim That Wholesale Supply Bidders Reduced The  
    Cost Of 2010 Supply In Anticipation Of An Unidentified TOU Program  
    Is Unsupported..... 3

    C. The Company’s Argument That The Intra-Class Cost Shifting That Will  
    Result Through Implementation Of Its TOU Filing Is Reasonable Must  
    Be Rejected..... 5

    D. The Company Has Not Demonstrated That Its Proposed Rate Mechanism  
    Is Reasonable..... 6

III. CONCLUSION ..... 8

## I. INTRODUCTION

The Office of Consumer Advocate is filing this Reply Brief in response to certain arguments advanced by PPL Electric Utilities Corporation (PPL or Company) in its Main Brief in this proceeding. The OCA submits that the Company's filing misses the mark, and nothing contained in the Briefs of any of the other parties in this proceeding alters the OCA's position.

The OCA supports the implementation of voluntary Time of Use (TOU) rates. If properly designed and properly a part of the default service procurement methodology, TOU rates can help reduce the wholesale cost of power that is ultimately paid by ratepayers. In this case, however, PPL has proposed a residential TOU program that will not be beneficial to the Company or to residential customers as a whole. Rather, the Company's TOU proposal will simply shift costs on a dollar for dollar basis from one group of customers to another. If the proposed rate design "succeeds" in getting some customer to shift usage from on-peak to off-peak periods, it will create a revenue shortfall to the Company that is needed to pay its wholesale suppliers. PPL intends to make up this revenue shortfall by charging other residential customers higher rates. PPL finds itself with this revenue shortfall because PPL will be required to pay the same amount to its full requirements wholesale suppliers in 2010 whether its customers consume power at on-peak or off-peak hours of the day. PPL will experience the same costs from its wholesale full requirements suppliers, while collecting less revenue from customers who are "saving" by shifting their usage to the off-peak period. The wholesale supplier, though, will receive the benefit of serving the lower cost load – a benefit that will not be flowed through to PPL or its customers.

To make up for this revenue shortfall, residential customers who do not participate in the TOU program will be required to compensate PPL for the lost revenues

associated with TOU program load shifting. PPL has proposed that these lost revenues be made up by increasing the rates to its other customers through the reconciliation mechanism, or “E” factor, for its default service supply charges.

The OCA submits that the rate methodology contained in the Company’s filing is not reasonable. TOU rates should be designed to reduce the overall cost of power procured to serve customers, not merely to shift the cost of power from one customer to another within each customer class. The OCA submits that the Commission must reject the Company’s TOU rate proposal as filed.

## II. REPLY ARGUMENT

### A. Introduction.

In its filing, PPL proposed a rate mechanism that would allow it to recover the “savings” realized by residential customers participating in the TOU program by increasing rates to non-participating residential customers on a dollar for dollar basis. The Company argues that its proposed rate mechanism is reasonable for three primary reasons. First, the Company argues that the 2010 full requirements, load following providers somehow were aware that a TOU program would be implemented for 2010, and as such incorporated and reflected the benefits of a TOU program in their bids. Second, the Company argues that it is reasonable for customers with more attractive load shapes to pay less for power than customers with less attractive load shapes. Third, the Company argues that the parties opposing its rate mechanism have not provided an alternative that would allow it to recover its costs. The OCA submits that the Company’s reasons do not adequately address the fundamental flaw in its proposed rate recovery mechanism. The OCA responds to each argument below.

### B. The Company’s Claim That Wholesale Supply Bidders Reduced The Cost Of 2010 Supply In Anticipation Of An Unidentified TOU Program Is Unsupported.

In its Main Brief, PPL argues that ratepayers in 2010 will enjoy the benefits of its current filing through lower rates than would otherwise have existed absent the filing of the proposal. PPL M.B. at 9, 15-17. The Company argues that wholesale bidders of load following, full requirements contracts for 2010 already adjusted their bids lower to account for the improved load shape that a TOU program could provide. PPL M.B. at 15, 17. The Company makes the argument even though there were no TOU rates proposed when five of the six wholesale bids were conducted, and four of the six bids were conducted before Act 129 was even

enacted. The assumption of such foresight on the part of wholesale suppliers cannot withstand scrutiny.

Under the Competitive Bridge Plan (CBP), which authorized PPL to obtain the power needed to serve customers in 2010, the Company procured power at six different points in time, starting in July 2007. The following chart, presented by OCA witness Richard S. Hahn, demonstrates the dates and prices of the power procured under the CBP:

A total of six solicitations have been conducted, each for one sixth of the 2010 default service power supply requirement. The Company has relied upon fixed price, load following contracts in order to fulfill its 2010 default service obligations. The following table shows the results of those solicitations, and the dates on which commitments were made.

<b>RESULTS OF CBP PROCUREMENTS</b>								
\$/MWH	1	2	3	4	5	6	AVG	AVG 1ST FIVE
	7/23/07	10/1/07	3/24/08	9/29/08	3/30/09	10/5/09		
RESIDENTIAL	101.77	105.08	108.80	112.51	86.74	82.00	99.48	102.98
SMALL C&I	105.11	105.75	108.76	111.94	87.59	83.99	100.52	103.83

OCA St. 1 at 5.

As shown above, a total of four out of the six bids were conducted prior to the passage of Act 129. PPL secured five-sixths (83%) of its power for 2010 through bids offered prior to the development and filing of the Company's TOU proposal. As explained by Company witness Krall, PPL examined over 300 options for on-peak and off-peak periods starting in the Spring of 2009, well after most of the 2010 default energy supply was procured. PPL St. 1 at 10-12; Tr. at 90, 135.

The OCA submits that it is wholly unreasonable to assume that wholesale bidders somehow reduced their bids in anticipation of an unknown program submitted by PPL pursuant

to a yet-to-be passed law. The Company's assumption of such foresight should be given no weight. There is no evidence of record that the prices received from suppliers were lower due to an unknown future filing.

C. The Company's Argument That The Intra-Class Cost Shifting That Will Result Through Implementation Of Its TOU Filing Is Reasonable Must Be Rejected.

The Company argues that it is reasonable for customers with less favorable load shapes to pay higher default service rates than those customers with more favorable load shapes. PPL M.B. at 9, 15-16. The Company argues that, "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." PPL M.B. at 9. The OCA submits that the Company's reasoning is flawed in this case.

While the Company's theoretical construct may appear reasonable, its practical implications in this case, where load following wholesale supply has already been procured, cannot be carried out in a fair and reasonable manner. Here, to the extent customers participate and shift load, the entire benefit will accrue to the wholesale suppliers that will be providing less power to those customers at peak, high cost periods. OCA witness Hahn explained that, under the Company's procurement methodology, the full requirements suppliers will enjoy increased profits as more load shifts from peak to off-peak periods:

Under the Company's proposal, any reductions in peak loads due to TOU rates will result in reduced costs to the full requirements suppliers who provide default service power supplies. Yet, the revenues these full requirements suppliers receive from PPL will not change because the total amount of KWH consumed is unchanged due to TOU rates, and these supplies are provided at fixed rates that do not vary by season. Thus, the proposed TOU rates will increase the profits of the competitive suppliers providing default service power supplies. None of the benefits of

the TOU rate program flows through to PPL or to PPL ratepayers on an aggregate basis.

OCA St. 1 at 12-13. While individual customers may “save” or reduce their total bill, these “savings” are ultimately paid for by the Residential class. It is worth noting that participating customers will also pay for a portion of the “savings” through future GSC reconciliations since participating customers pay the GSC reconciliation. Taken to its logical end, if all customers participate in the TOU program, those same customers will be asked to pay for those savings in future rates and their payments, in the end, will be exactly the same as if there was no program. See, Tr. at 164.

In addition, the OCA submits that the current filing is not the appropriate venue to re-allocate the costs of 2010 supply among residential customers. The DSP rates have already been established and overlaying a TOU rate on top of these established rates as designed by PPL will unreasonably shift costs through this extremely expedited proceeding.<sup>1</sup>

D. The Company Has Not Demonstrated That Its Proposed Rate Mechanism Is Reasonable.

The Company argues that under the Public Utility Code, it is entitled to recover the costs of the TOU program on a full and current basis. PPL M.B. at 10, 14-15. In addition, the Company argues that the other parties have not proposed an alternative methodology that would allow it to recover its costs. PPL M.B. at 10.

The Company cites Section 2807(e)(3.9) of the Public Utility Code regarding the recovery of TOU costs. However, Section 2807(e)(3.9) states in full that:

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<sup>1</sup> The Company notes in its Main Brief that it anticipates only 16,000 customers will participate in the program in 2010. PPL M.B. at 16. As a result, the Company argues that the OCA’s concern regarding cost shifting is “overstated.” PPL M.B. at 17. The OCA submits that the reasonableness of the rates produced under the proposed plan should not depend upon how little it succeeds. This is not a limited pilot program, but is open to all PPL customers. As OCA witness Hahn demonstrated, a 10% shifting of KWh for the RS class will result in an \$8.1 million shortfall. OCA St. 1 at 12. The Company should work toward developing a TOU program designed to achieve real savings that benefit all customers for its next default service period.

The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

66 Pa. C.S. § 2807(e)(3.9)(Emphasis added). Section 2807(e) provides only for the recovery of reasonable costs, not any cost.

The Company fails to recognize, however, that Section 2807(f) also must be addressed. Section 2807(f)(4) requires that lost revenues resulting from reduced energy consumption or shifting energy demand not be considered a recoverable cost. Section 2807(f)(4) states:

In no event shall lost or decreased revenues by an electric distribution company due to reduced electricity consumption or shifting energy demand be considered any of the following:

\*\*\*

(ii) A recoverable cost.

66 Pa. C.S. § 2807(f)(4). Those lost revenues may only be reflected prospectively in revenue as part of a base rate proceeding. 66 Pa. C.S. §2807(f)(4)(i). The OCA submits that the Act clearly disfavors the automatic shifting of demand reduction costs among ratepayers.<sup>2</sup>

As the OCA noted in its Main Brief, it is necessary to reconcile these two statutory provisions. See, OCA M.B. at 4-6. The OCA agrees with the Company that they are entitled by law to recover reasonable costs of the default service program. It is not as clear, though, whether these lost revenues are a recoverable cost under 2807(f). The OCA submits, however, that because the rate methodology proposed in this case is not reasonable, the Commission should reject the Company's TOU proposal in this case.

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<sup>2</sup> Under cross-examination, Company witness Kleha confirmed that the Company considers the savings enjoyed by participating customers to be a cost of the proposed TOU program. Tr. at 165.

### III. CONCLUSION

The OCA submits that PPL's proposed Time of Use rate program does not adequately reflect the goals of Act 129 and the requirements of the Public Utility Code. The current filing does not result in any reduced cost of supply or overall cost savings either to PPL or to its customers as a whole. Rather, it simply shifts costs from one group of customers to another so that PPL is not short of revenue. For the reasons detailed in the OCA's Main and Reply Briefs, the current proposal fails to meet the goals of Act 129 and must be rejected.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	Docket No.	R-2009-2122718
Office of Consumer Advocate	:		C-2009-2128394
Office of Small Business Advocate	:		C-2009-2136098
	:		
v.	:		
	:		
PPL Electric Utilities Corporation	:		

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

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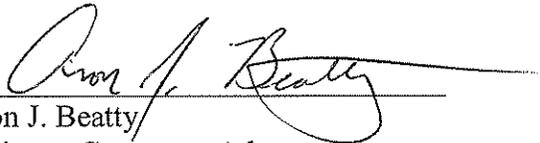
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