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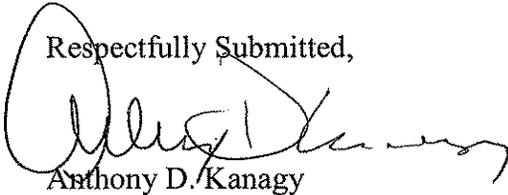
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**RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket Nos. R-2009-2122718, C-2009-2128394 and C-2009-2136098**

Dear Secretary McNulty:

Enclosed please find the Exceptions of PPL Electric Utilities Corporation to the Recommended Decision of Administrative Law Judge David A. Salapa for the above-referenced proceeding. Copies will also be provided as indicated on the Certificate of Service.

Respectfully Submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

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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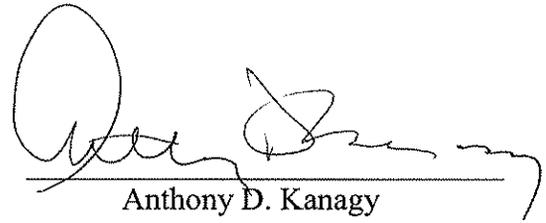
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA**

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I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) respectfully submits these Exceptions to the Recommended Decision of Administrative Law Judge David A. Salapa (“ALJ”) issued on December 10, 2009 (“Recommended Decision” or “R.D.”). This proceeding concerns 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 on-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 on-peak periods.

PPL Electric’s TOU filing fulfills the Company’s obligation under Act 129 of 2008, P.L. 1592 (“Act 129”) to submit a TOU filing by January 1, 2010. 66 Pa. C.S. § 2807(f)(5). The TOU filing also fulfills several commitments that the Company made to file a TOU program for 2010 in prior proceedings, including its Competitive Bridge Plan (“CBP”) proceeding at Docket No. P-00062227, its recent default service proceeding at Docket No. P-2008-2060309 and its 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 available and qualifying peak demand reductions obtained as a result of implementing this TOU program toward meeting its statutory obligations to reduce peak demand under Act 129.

Although PPL Electric supports certain determinations made by the ALJ in the Recommended Decision, as explained below the Company requests that the Commission revise the Recommended Decision and approve PPL Electric’s proposed TOU cost recovery

methodology as appropriate and reasonable and find that PPL Electric is not required to allow customers to participate in both: (1) the TOU program, and (2) the OnTrack program, Renewable Energy Rider or Net Metering Rider.

II. EXCEPTIONS

PPL Electric respectfully submits the following exceptions to the recommendations of the ALJ:

1. The ALJ erroneously recommended that PPL Electric should not be permitted to fully recover its actual default service generation supply costs. R.D., p. 19.

2. The ALJ erred in determining that PPL Electric must allow customers to participate in both: (1) the TOU program, and (2) the OnTrack program, Renewable Energy Rider or Net Metering Rider. R.D., p. 27.

3. PPL Electric excepts to the ALJ's decision requiring PPL Electric to provide the information requested by the Office of Trial Staff ("OTS") in the Company's next TOU filing to the extent that the information is not reasonably available. R.D., p. 34.

III. SUMMARY OF EXCEPTIONS

PPL Electric is required to offer a default service TOU option for customers under Act 129. Act 129 also provides that PPL Electric can fully recover its default service costs, including its TOU default service costs.

PPL Electric recovers its default service costs through its Generation Supply Charge (“GSC”) that has been approved by the Commission. The GSC includes all of the Company’s default service costs and default service revenue. The Company’s default service costs are its actual costs of obtaining generation supply in the competitive market and administrative costs associated with that procurement. The Company’s default service revenues are all revenues that the Company receives from providing default service, i.e., revenues received from applying Commission-approved default service rates, including revenues from its proposed TOU rates. All the Company is requesting to do in this proceeding is to include all of its default service revenues and costs in the GSC.

It is undisputed in this proceeding that PPL Electric is entitled, as a matter of law, to recover all of its reasonable costs of providing default service. The Commission has previously approved a specific rate mechanism, the GSC, for PPL Electric to recover all of its default service costs, including reconciliation of over and under-collection. It also is undisputed that TOU service is a default service option. Therefore, it is clear that PPL Electric must be allowed to include all TOU costs and revenues in the calculation of the GSC. Importantly, the Company already has procured all of its default supplies for 2010 pursuant to a Commission-approved procurement process and, therefore, must obtain default supplies for TOU customers from that process and must include the TOU program costs and revenues in the GSC in order to recover its related default service costs.

The ALJ has recommended that PPL Electric not be permitted to include lost or decreased revenues due to reduced energy consumption or shifting demand from the TOU program in its GSC. It is undisputed and indeed the Recommended Decision concedes that this decision will prevent PPL Electric from fully recovering its actual generation supply costs. The lack of recovery violates Section 2807(e)(3.9) of the Public Utility Code and violates the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 10 of the Pennsylvania Constitution. Moreover, PPL Electric has acquired its default supplies at wholesale market prices. Therefore, the Commission is pre-empted under the Supremacy Clause of the United States Constitution from denying PPL Electric full recovery of its wholesale power costs without a finding that they were imprudently incurred. For these reasons, the ALJ's decision to disallow PPL Electric full recovery of its default service costs cannot be accepted.

In this filing, PPL Electric also proposes to not allow customers to choose both: (1) the TOU option, and (2) the OnTrack program, Renewable Energy Rider or Net Metering Rider. PPL Electric has proposed to not allow customers to choose both options because these programs have different policy objectives or have different generation pricing methodologies than the TOU program. The ALJ disagrees with the Company's proposal in this regard based upon his interpretation of Section 2807(f)(5) of Act 129, which provides that default service providers 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). PPL Electric believes that its proposal to not allow OnTrack program, Renewable Energy Rider or Net Metering Rider customers to choose both the TOU program and these optional programs complies with Section 2807(f)(5) because all of these customers have the option of choosing the TOU program, but they just cannot choose both.

In addition, the Company accepts the ALJ's decision to require the Company to provide the information requested by the OTS in the Company's next TOU filing, with the clarification that the Company will provide this information to the extent that it is reasonably available.

IV. ARGUMENT

A. THE ALJ'S DECISION WOULD UNLAWFULLY DENY PPL ELECTRIC FULL RECOVERY OF ITS DEFAULT SERVICE COSTS.

1. Introduction.

As explained in more detail below, PPL Electric is required to offer the TOU program to customers as a default service option. PPL Electric already has procured all of its 2010 default service supplies for customers pursuant to a Commission-approved procurement process. Therefore, PPL Electric proposes to include TOU program costs and recoveries in its default service GSC. The Commission approved the Company's GSC in the CBP proceeding, along with the Company's default service procurement plans for 2010. *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"). Because PPL Electric already has procured all of its default supplies for 2010, the Company must be able to include the TOU program default service costs and recoveries in the GSC, or it will not be able to fully recover its default service TOU program costs.

The Recommended Decision concludes that the Commission should not allow PPL Electric to recover lost or decreased revenues associated with customers shifting usage to off-peak periods under the TOU program. R.D., p. 22. This decision effectively would disallow PPL Electric from recovering its default service under recoveries associated with the TOU program through the GSC and, therefore, would prevent PPL Electric from fully recovering its default service costs. RD, p. 22. In reaching his decision, the ALJ relied on 66 Pa. C.S. §

2807(f)(4) which provides that an EDC may not recover lost or decreased revenues as a result of reduced consumption or shifting demand. PPL Electric believes that the ALJ's interpretation of Section 2807(f)(4) fails to properly consider that PPL Electric is entitled, as a matter of law, to fully recover its default service costs under Section 2807(f)(3.9). The Recommended Decision's interpretation of the statute, if approved, would prevent PPL Electric from recovering reasonable wholesale purchased power costs in violation of the Supremacy Clause of the U. S. Constitution and would result in an unlawful taking of property under the Fifth and Fourteenth Amendments of the United States Constitution.

2. PPL Electric Already Has Procured All Of Its 2010 Default Service Supplies For Customers.

PPL Electric has procured all of its 2010 default service generation supplies for customers pursuant to a Commission-approved competitive procurement plan. On August 2, 2006, PPL Electric filed a Petition for Approval of a Competitive Bridge Plan with the Commission to procure its 2010 default service supplies for customers. The Commission approved the Company's CBP proposal, with certain modifications, by Order entered May 17, 2007. Under the CBP, PPL Electric issued six competitive Requests for Proposals ("RFPs"), two per year in 2007, 2008, and 2009, for full requirements contracts to meet the annual 2010 default service requirements of its residential and small C&I customers. The results of these solicitations have all been approved by the Commission. Therefore, 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.

As explained herein, the Company is required to offer the TOU program as a default service option under Act 129. Because the Company already has procured all of its 2010 default

service supplies for customers through the CBP process, the Company must obtain default service supplies for TOU customers through that process.

PPL Electric notes that it procured all of its default service supplies for 2010 under the “prevailing market price” standard that was established under the Electricity Generation Customer Choice and Competition Act. 66 Pa.C.S. § 2801. Act 129 changed this standard to a “least cost over time” standard. 66 Pa. C.S. § 2807(e)(3.4). However, the Company notes that Act 129 specifically provides that:

A default service plan approved by the commission prior to the effective date of this section shall remain in effect through its approved term.

66 Pa.C.S. § 2807(e)(6). Therefore, the Company’s procurement methodology is not subject to challenge in this proceeding.

3. The TOU Program Is A Default Service Program.

Section 2807 of the Public Utility Code sets forth the duties of electric distribution companies (“EDCs”) with respect to offering default generation service to customers. 66 Pa. C.S. § 2807. PPL Electric is required to offer a TOU program as a default service option to its customers as part of the Company’s obligation as a default service provider. 66 Pa. C.S. § 2807(f)(5). This conclusion of law was not disputed by any party in this proceeding, and, in fact, the Recommended Decision specifically recognizes that the TOU program is a default service option. RD, p. 20

Because the TOU program is a default service option, PPL Electric proposes to establish a TOU rate option as part of the GSC currently included in its tariff. PPL Electric St. 2, p. 3. The proposed TOU rate option will provide charges for capacity and energy that reflect seasonality and time-of-use. PPL Electric St. 2, p. 3. Upon election by the customer, these seasonal and time-varying capacity and energy rates will replace, for billing purposes, the

standard GSC that will become effective following the end of the generation rate caps on December 31, 2009. PPL Electric St. 2, pp. 3-4. In addition, PPL Electric proposes to include costs and associated revenue recoveries under the TOU rate option in the GSC reconciliation process. PPL Electric, St. 2, p. 4.

All else being equal, if participating customers shift usage from on-peak to off-peak periods, they will save money under the TOU rate option. PPL Electric's default service revenue recoveries will be reduced and that shortfall will be reflected in the GSC. PPL Electric, St. 2, p. 4. In addition, if the customers save money by shifting use to off-peak periods, PPL Electric's costs of purchasing default service supply should not change because PPL Electric does not purchase its default service supplies on a TOU basis. PPL Electric, St. 2, pp. 4-5. The prices that the Company pays its suppliers are not time-differentiated, but rather are the same every hour of the day and every month of the year. PPL Electric, St. 2, p. 5. Therefore, under these circumstances, annual reconciliation of the GSC will reflect an under recovery that will be included in the E factor of the GSC for the following year. PPL Electric St. 2, p. 5. The converse also is true. If customers participating in a TOU rate option fail to reduce or shift their use, they may end up paying more money. PPL Electric St. 2, p. 5. All else being equal, that additional revenue will be reflected as an over recovery in the annual GSC reconciliation and it will be reflected as a credit in the E factor of the GSC for the following year. PPL Electric St. 2, p. 5.¹

¹ This situation occurs because of the procurement program approved by the Commission. The procurement program could be revised prospectively to change how suppliers are paid, i.e., they could be paid what the Company collects, including TOU revenue. In that way, any shortfall (or additional revenue) could be absorbed or received by the supplier rather than default service customers. This could of course affect bids for future default service supplies, and can only be done prospectively as part of a future default service plan.

4. PPL Electric Is Entitled To Full Recovery Of Its Default Service Costs.

Both the Competition Act and Act 129 provide that PPL Electric is entitled to full recovery of its default service costs. As stated above, PPL Electric's default service plan and cost recovery proposal for 2010 were approved under the Competition Act's prevailing market price standard. The Competition Act provides as follows with regard to cost recovery:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and *shall recovery fully all reasonable costs.*

Electricity Generation Customer Choice and Competition Act, P.L. 802, No. 138. (Emphasis supplied)

Act 129 also provides for full recovery of default service costs. Section 2807(e)(3.9) of Act 129 provides as follows:

The default service provider *shall have a 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 [Section 2807] and a commission-approved competitive procurement plan.

(Emphasis supplied)

Therefore, under both the Competition Act and Act 129, PPL Electric is entitled to full recovery of its default service costs.²

An EDC's right to fully recover all default service costs was confirmed by the Commonwealth Court in *Pennsylvania Power Co. v. Pa. P.U.C.*, 932 A.2d 300 (Pa. Cmwlth.

² PPL Electric recognizes that the statute provides for full recovery of all reasonable costs. As explained above, PPL Electric is proposing to recover its actual wholesale supply costs and administrative costs, and there has been no finding that these costs are unreasonable. Moreover, as explained in the *Penn Power* case below, PPL Electric is entitled to full recovery of its default service costs, not just significant recovery.

2007) (“*Penn Power*”). In the *Penn Power* case, Penn Power appealed a Commission decision which denied Penn Power’s request to implement a reconciliation mechanism to recover its default service costs. In its decision, the Commission stated that, if Penn Power experienced a significant under recovery of costs, it could petition the Commission for recovery of prudently incurred costs. *Penn Power* at 306. The Commonwealth Court rejected the Commission’s decision to not allow Penn Power full recovery of default service costs, stating as follows:

We agree with Commissioner Fitzpatrick that the language used by the PUC majority is less than clear, and that the statutory language is quite explicit in mandating full recovery, not just “significant” recovery.

*Id.*³

This decision is consistent with the multitude of Court precedent establishing that, a public utility is entitled to recover necessary operating expenses reasonably incurred in its utility operations. *See e.g., City of Pittsburgh v. Pa. Public Util. Com.*, 400 A.2d 672, 674 (Pa. Cmwlth. 1979); *Cohen v. Pa. Public Util. Com.*, 468 A.2d 1143, 1145 (Pa. Cmwlth. 1983); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Barasch v. Pa. Public Util. Com.*, 507 Pa. 561, 568, 493 A.2d 653, 656 (1985); *Western Pennsylvania Water Company v. Pa. Public Util. Com.*, 422 A.2d 906, 908 (Pa. Cmwlth. 1980); *Kirkwood Partnership v. Pa. Public Utility Com.*, 576 A.2d 1167, 1170-71 (1990) (a public utility is entitled to recover those operating expenses reasonably necessary to provide service to customers). This principle is long-standing, unquestioned and fundamental to the concept of utility rate regulation. It is clear that when regulated utilities are required to offer service to customers, they are entitled to a reasonable opportunity to recover their costs for providing that

³ PPL Electric recognizes that this decision was interpreting that language of the Competition Act which provides that an EDC shall recovery fully all reasonable costs. However, this decision applies to Act 129 as well because Act 129 even more explicitly provides for “full and current” recovery of default service costs.

service. *Pa. P.U.C. v. Pennsylvania Gas and Water Co. – Water Division*, 492 Pa. 326, 424 A.2d 1213 (1980), *cert. denied*, 454 U.S. 824 (1981).

Moreover, PPL Electric purchased its power at wholesale market prices. The Commission is pre-empted under the Supremacy Clause of the United States Constitution from disallowing PPL Electric from recovering these costs, absent a finding that they were imprudently incurred. *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986).⁴

The ALJ's recommendations are contrary to the above-cited precedent because PPL Electric would not be permitted to fully recover costs incurred related to the procurement of default service supply under the Commission-approved CBP and pursuant to the requirements of Section 2807. In the Recommended Decision, the ALJ stated that the limited size and duration of the TOU program should result in a "relatively small loss or decrease in revenue in 2010" for PPL Electric. R.D., p. 22. The fact that the loss in revenue may be small is irrelevant. Under Act 129 and the *Penn Power* decision, PPL Electric is entitled to full recovery of its default service costs.

5. Section 2807(f)(4) Cannot Be Read To Preclude Recovery Of Actual Default Service Generation Supply Costs.

The ALJ based his decision to deny PPL Electric full recovery of TOU program costs upon his interpretation of Section 2807(f)(4)(ii). Section 2807(f)(4) provides as follows:

(4) 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:

⁴ Disallowance of reasonable costs also prevents the Company from earning a fair rate of return on its property devoted to public service and constitutes an unlawful taking of property in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 10 of the Pennsylvania Constitution. *See Pa. P.U.C. v. Pennsylvania Gas and Water Co. – Water Division*, 492 Pa. 326, 334, 424 A.2d 1213, 1218 (1980), *quoting Armstrong v. U.S.*, 364 U.S. 40, 49 (1960).

(i) A cost of smart meter technology recoverable under a reconcilable automatic adjustment clause under section 1307(b), except that decreased revenues and reduced energy consumption may be reflected in the revenue and sales data used to calculate rates in a distribution rate base rate proceeding filed under section 1308 (relating to voluntary changes in rates).

(ii) A recoverable cost.

According to the ALJ, PPL Electric will experience decreased revenues under its TOU program associated with customers that shift demand to off-peak periods. Therefore, the ALJ states that Section 2807(f)(4)(ii) precludes PPL Electric from recovering these decreased revenues. R.D., p. 21. PPL Electric respectfully disagrees with the ALJ's interpretation of Section 2807(f)(4)(ii) because, as explained above, it cannot be interpreted to deny PPL Electric full recovery of its actual default service generation supply costs.

The ALJ correctly recognizes that the rules of statutory construction at 1 Pa. C.S. § 1921(a) require that every statute be construed to give effect to all its provisions. RD, p. 21. However, the ALJ's interpretation of Section 2807(f)(4)(ii) does not give effect to Section 2807(e)(3.9) because it denies PPL Electric full recovery of its default service generation supply costs. Therefore the ALJ's decision violates Section 1921(a) of the rules of statutory construction.

In addition, Section 1922 of the rules of statutory construction provide that when presuming legislative intent, the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth. 1 Pa. C.S. § 1922(3). The ALJ's recommendation denies PPL Electric's ability to recover default service expenses incurred under the Commission-approved CBP and, as such, constitute a taking under the Fifth and Fourteenth Amendments and Article 1, Section 10 of the Pennsylvania Constitution. See *Pennsylvania Electric Co. v. Pa.*

P.U.C., 509 Pa. 324, 328, 502 A.2d 130, 133 (1985); *Pa. P.U.C. v. Pennsylvania Gas and Water Co. – Water Division*, 492 Pa. 326, 334, 424 A.2d 1213, 1218 (1980).

A reasonable interpretation of Section 2807(f)(4) when read in *pari materia* with Section 2807(e)(3.9) is that Section 2807(f)(4) precludes recovery of lost or decreases revenues due to reduced electricity consumption or shifting energy demand through a smart meter surcharge or through distribution rates, except to reflect them in sales and revenue data in calculating rates in a base rate proceeding. PPL Electric is not proposing to recover lost or decreases revenues due to reduced electricity consumption or shifting energy demand through its smart meter surcharge. In addition, PPL Electric is not proposing to recover lost or decreases revenues due to reduced electricity consumption or shifting energy demand through its current distribution rates. Rather, PPL Electric is proposing to recover its actual generation-related default service supply costs through its generation rates recovery mechanism. When Section 2807(f)(4) is read in conjunction with Section 2807(e)(3.9), Section 2807(f)(4) cannot be read to preclude recovery of actual default service generation supply costs. This interpretation is also reasonable because PPL Electric earns no profit on default service including TOU default service. PPL Electric only recovers its costs on a dollar-for-dollar basis. The Company earns a profit on distribution rates. Therefore, the concern under the statute is that EDCs will replace lost profits from TOU rates by increasing distribution rates. PPL Electric is not proposing to recover any lost profits from the TOU program in this filing.

6. PPL Electric's Proposal To Recover TOU Default Service Costs Through The GSC Is Reasonable.

As explained above, PPL Electric already has procured all of its 2010 default service supplies for customers through a Commission-approved procurement process. Therefore, PPL Electric must include the TOU program costs and recoveries with its other default service costs

or PPL Electric would not be able to recover its TOU program default service costs. However, even if this was not the only way that PPL Electric could recover its TOU program costs, this would be a reasonable methodology for recovering TOU costs.

As a practical matter, all customers have different load shapes. Tr. 84; PPL Electric M.B. p. 15. If a customer uses more energy in on-peak periods, that customer has a more expensive load shape. Conversely, if a customer uses less energy in on-peak periods, that customer has a less expensive load shape. The TOU program will give customers that have better load shapes the opportunity to receive the economic benefits of their usage pattern. This incentive of reduced customer costs is the point behind encouraging TOU rates (*i.e.*, those customers that avail themselves of the TOU option, and use power off-peak, receive a cost reduction, as compared to those customers that chose not to participate in the TOU program).

This is fair to non-participating customers because all customers will benefit from TOU rates over time. PPL Electric St. 2, p. 5. Shifting energy use from on-peak periods to off-peak periods ultimately will reduce the cost of peak energy. PPL Electric St. 2, p. 5. This reduced cost of energy should be reflected in a lower default service rates for all non-shopping customers, including customers who are not participating in the TOU rate option, in subsequent default service proceedings because customer load shapes will reflect lower usage during on-peak periods. PPL Electric St. 2, p. 5. Moreover, all customers will have the option of participating in the TOU rate option and, thereby, benefiting from lower cost of electricity immediately.

In addition, 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. In the CBP Order, the Commission specifically recognized that the Company would

offer a year-round TOU program in 2010 with no participation limits. On pages 12-13 of the CBP Order, the Commission states as follows:

Although the principal purpose of the CBP is to acquire POLR supply for 2010, PPL Electric incorporated several other related components into its CBP. One component is a proposal to enhance several experimental Demand Side Management (DSM) programs. The Demand Side Response Rider – Residential provides customers with a rate incentive to shift load from on-peak to off-peak periods in the summer months. The company proposed to double the limit on participation in 2008 and 2009, and remove participation limits in 2010. The company also proposed to expand the program to a year-round program in 2010, with pricing revised to more fully reflect competitive market prices. (PPL Electric St. 1 at 18-19).

It is clear from the CBP Order itself that wholesale bidders were aware that the Company intended to offer a year-round TOU program in 2010, with no participation limits and with pricing that reflected competitive market prices. Therefore, all default service customers have benefited from this TOU program to the extent suppliers have factored it into their bids.

In addition, 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. 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. Public Util. Com.*, 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).

For the reasons stated above, the Commission should allow PPL Electric to reconcile all of its TOU program default service costs and recoveries through the GSC.

B. THE RECOMMENDED DECISION ERRED IN DETERMINING THAT PPL ELECTRIC MUST ALLOW CUSTOMERS TO PARTICIPATE IN BOTH: (1) THE TOU PROGRAM, AND (2) THE ONTRACK PROGRAM, RENEWABLE ENERGY RIDER OR NET METERING RIDER.

In the RD, the ALJ recommended that the Commission deny the Company's request to not allow customer to participate in both: (1) the TOU program, and (2) the OnTrack program, Renewable Energy Rider or Net Metering Rider. R.D., p. 27. The ALJ based his decision on Section 2807(f)(5) of Act 129 which provides as follows:

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).

66 Pa. C.S. § 2807(f)(5).

PPL Electric respectfully disagrees with the ALJ's interpretation of Section 2807(f)(5). As an initial matter, under PPL Electric's proposed program, *all residential and small C&I customers of PPL Electric with smart meter technology can choose to participate in Company's proposed TOU program.* PPL Electric R.B., p. 12. PPL Electric St., 1, p. 16. However, if the customer chooses to participate in the Company's OnTrack program, that customer will not be eligible to participate in both the TOU program and OnTrack program. Additionally, customers whose generation is netted against their monthly use under either the Renewable Energy Rider or

the Net Metering Rider would not be eligible to participate in both the TOU program and the Renewable Energy Rider or the Net Metering Rider.

PPL Electric believes that the eligibility requirements for these programs are reasonable because of the policy goals of each individual program and because of the incompatibility of the TOU program with the other programs. The Company believes that it is reasonable to provide customers with rate options that are exclusive in situations where the two options either have different objectives or have inconsistent pricing methodologies. PPL Electric R.B., p. 12.

First, regarding the Company's OnTrack program, OnTrack customers pay substantially reduced bills based on their ability to pay. The objective of the OnTrack program is to allow low-income customers to receive electric service and to pay for service based upon their income. PPL Electric R.B., p. 12; PPL Electric Tariff Pa. P.U.C. No. 201, Page No. 43, Appendix A. Other residential customers are required to pay for the difference between what OnTrack customers are able to pay and the actual costs of providing service to these customers. PPL Electric R.B., p. 12. Therefore, the Company believes that it is inconsistent with the objectives of the OnTrack program to allow OnTrack customers to pay less than what they are able to afford when other customers are paying more so that OnTrack customers can receive service. PPL Electric R.B., p. 12.

The Company also 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 on-peak periods. PPL Electric M.B., p. 20; PPL Electric R.B., p. 12. As explained herein, not all customers that sign up for the TOU program will receive lower rates. If a customer shifts usage into peak periods, the customer will experience higher rates. The Company does not believe that it should put OnTrack customers in a position where they could pay higher rates.

Second, the Net Metering Rider and Renewable Energy Rider have generation pricing methodologies that are inconsistent with generation pricing under the TOU program. These customers' bills are based on the net of their monthly generation versus their monthly usage. These customers may generate electricity during off-peak periods and use energy in peak periods, or vice-versa. However, their generation and usage is not tracked by each hour but is based on their monthly average generation and usage. PPL Electric Tariff Pa. P.U.C. No. 201, Pages 19L, 19L.2. Therefore, it would be inconsistent to charge these customers daily on-peak and off-peak rates when their bills are based on monthly average usage. PPL Electric R.B., p. 12.

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). This type of metering arrangement is not compatible with providing hourly TOU rates because the Company does not have information on gross energy deliveries on an hourly basis. Tr. 94. In addition, Net Metering 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 also would be inconsistent to charge Net Metering customers daily on-peak and off-peak rates when these Riders allow customers to carry their balances forward on an average monthly price or average yearly price basis, and use these balances to offset generation that they buy in subsequent months. PPL Electric R.B., p. 13.

It is reasonable to give customers the option of participating in the TOU program and to also provide other rate options that exclude participation in multiple programs, such as the OnTrack program, Net Metering Rider and Renewable Energy Rider. It is particularly

appropriate where these programs, as discussed above, have different policy objectives or have different generation pricing methodologies than the TOU program. PPL Electric R.B., p. 13. The Company notes that this is consistent with its Rate Mitigation Plan and Rate Stabilization Plan which do not allow OnTrack customers to participate due to policy concerns. *See Petition of PPL Electric Utilities Corporation for Approval of a Rate Stabilization Plan*, Docket No. P-2008-2021776, Order entered August 7, 2008, p. 13; *Petition of PPL Electric Utilities Corporation for Approval of a Rate Mitigation Plan*, Docket No. P-2009-2091280, Order approving Settlement entered August 13, 2009, Settlement ¶ 20.

C. PPL ELECTRIC AGREES TO PROVIDE THE INFORMATION REQUESTED BY THE OTS IN THE COMPANY'S NEXT TOU FILING TO THE EXTENT IT IS REASONABLY AVAILABLE.

At the request of OTS, the ALJ held that PPL Electric's filing for its 2011 TOU program should include the following additional information:

1. The number of participating customers by rate schedule;
2. The total reduction in peak demand by rate schedule;
3. The kW shifted from on-peak to off-peak for participating customers, by customer class;
4. The reduction in energy usage, if any;
5. The impact on capacity costs;
6. Actual program costs versus estimated program costs;
7. Actual TRC benefits versus projected TRC benefits;
8. The most recent load study;
9. Hourly peak load data for the period June 1, 2008 through the latest available date for 2010 at the time of the filing;
10. Actual consumption for the period June 1, 2009 through May 31, 2010;
11. All supporting documents, including the historic locational marginal prices used in its analysis;
12. The hourly usage profile for each customer class.

R.D., p. 33-34.

In this proceeding, the Company recommended that the Commission allow the Act 129 stakeholder process to define the data that is to be collected under Act 129 programs. PPL

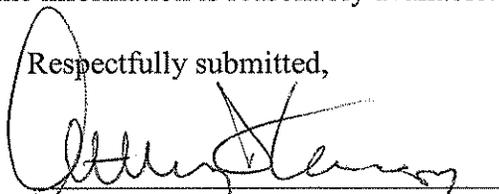
Electric RB, p. 17. However, as a point of compromise, the Company is willing to provide this data in its TOU filing for 2011 to the extent that it is reasonably available.

V. CONCLUSION

Wherefore, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Recommended Decision of Administrative Law Judge David A. Salapa, issued on December 10, 2009, be modified as discussed above, and that the Commission issue an order that:

1. Approves PPL Electric's proposed TOU cost recovery methodology as appropriate and reasonable.
2. Finds that PPL Electric is not required to allow customers to participate in both: (1) the TOU program, and (2) the OnTrack program, Renewable Energy Rider or Net Metering Rider..
3. Clarifies that PPL Electric will provide the information requested by the OTS in the Company's next TOU filing to the extent that the information is reasonably available.

Respectfully submitted,



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