COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

December 28, 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 are the Reply Exceptions 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,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosures
cc: Honorable Davis A. Salapa
Office of Special Assistants
00120903.docx

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	:		

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: December 28, 2009

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes

I. INTRODUCTION

On December 8, 2009, Administrative Law Judge (ALJ) David A. Salapa issued his Recommended Decision (R.D.) regarding PPL Electric Utilities Corporation's (PPL or Company) proposed 2010 Time Of Use rates. In his R.D., ALJ Salapa rejected the Company's cost recovery mechanism to the extent that it allowed PPL to recover decreased revenues as a result of shifting demand. For the reasons detailed below, and for those detailed in its Main and Reply Briefs submitted in this docket, the OCA submits that the ALJ correctly concluded that the cost recovery mechanism proposed by PPL is not reasonable. PPL's proposed Time of Use (TOU) rate plan, to the extent it depends on the cost recovery mechanism for operation, should be rejected as filed.

On December 21, 2009, PPL filed Exceptions to the ALJ's decision. Chief among its Exceptions, the Company disagrees with the ALJ's R.D. to the extent it prohibits the Company from implementing its proposed cost recovery mechanism as filed. PPL Exc. at 5-15. The Company argues that the ALJ's decision would deny it recovery of its default service costs and would constitute an unconstitutional taking. PPL Exc. at 9-13. The OCA submits, however, that certain of PPL's arguments need not be reached under the OCA's proposal in this case. Importantly, it is ***not*** the OCA's position that PPL should go forward with the TOU rate and then be denied recovery of costs. Rather, it is the OCA's position in this case that PPL should not go forward with its TOU rate plan at all in 2010 because to do so would produce unjust and unreasonable rates that are not recoverable under the Public Utility Code. As set forth in the OCA's testimony and Briefs in this case, PPL's TOU rate plan is flawed in that PPL seeks to recover any "savings" created by some customers participating in the TOU rate plan by charging higher rates to other non-participating customers. The more customers that participate, the

higher the charges to non-participating customers. Non-participating customers will involuntarily be paying more than the already approved default service rate for the 2010 period under PPL's proposed plan.

The OCA supports the implementation of Time of Use (TOU) rates that bring savings to residential customers both individually, and as a whole. The Company's attempt to overlay its time of use rates on its full requirements contracting approach, however, does not lower the overall cost of supply to PPL's customers. Instead, PPL's proposal simply shifts cost on a dollar-for-dollar basis from one group of customers to another. PPL's proposal would allow some customers to "save" money by shifting power from peak to off-peak periods, and then PPL would recover those savings from other residential customers through the reconciliation mechanism. PPL's proposal does not meet the objectives of Act 129 to lower the overall cost of supply and, in the OCA's view, the time of use rates cannot effectively lower the overall cost of supply under the full requirements purchasing regime pursued by PPL for its 2010 supply. The best method to meet all of the objectives of Act 129, and to most effectively deliver the benefits of time based pricing to all customers, is through the use of a portfolio approach to purchasing that can properly incorporate the demand reduction from time based rates as a default service resource.

The OCA submits that rather than proceed with a flawed TOU rate plan, PPL's plan should be rejected as it does not adequately meet the goals or requirements of Act 129 and would result in unjust and unreasonable rates. PPL should seek to develop a TOU rate plan that brings benefits to individual customers and to customers as a whole.

II. REPLY EXCEPTIONS

Reply to PPL Exc. A: The ALJ Properly Found That The Company's TOU Proposal, As Filed, Is Unreasonable. (R.D. at 19-21, 34-35; OCA M.B. at 4-14; OCA R.B. 3-7)

1. Introduction.

The ALJ recommended that the Commission not approve PPL's proposal as filed because it fails to comply with 66 Pa. C.S. § 2807(f)(4)(ii). Section 2807(f)(4)(ii) prohibits an EDC from recovering any costs of the TOU program that are a result of lost or decreased revenues due to reduced or shifted demand as part of a reconcilable adjustment clause. R.D. at 19-20, 34. The OCA submits that the ALJ properly found that the Company is not entitled to recover the individual customer "savings" that result from the proposed filing from other customers through PPL's automatically reconciling Generation Service Charge (GSC). The OCA submits that the underlying purpose of TOU rates, as detailed in Act 129, is not achieved under the plan.

While PPL reads the ALJ's R.D. to suggest that it go forward with the TOU Plan and then be denied recovery of its lost revenues, it is the OCA's position that the TOU rate plan not go forward at all in 2010 because it would result in unjust and unreasonable rates. Under the OCA's position, many of PPL's arguments would be moot as it would incur no costs and would realize no lost or decreased revenues. The OCA will address PPL's Exceptions, however, as PPL's arguments are otherwise flawed.

2. The ALJ's Decision Properly Reconciles The Cost Recovery Provisions Of Act 129.

PPL argues that the ALJ erred in concluding that the Company was not entitled to recover lost revenues associated with its time of use rate option from its customers. PPL Exc. at 11-13. The gravamen of PPL's argument is that the lost revenues at issue here are default

service costs and under Section 2807(e)(3.9), PPL is entitled to full recovery of its default service costs. PPL Exc. at 5-8. As the ALJ properly recognized, however, the inquiry does not end with Section 2807(e)(3.9). There is another statutory section that must be considered, Section 2807(f)(4)(ii). The ALJ found that Section 2807(f)(4)(ii) places a limitation on what are reasonable default service costs that may be recovered. The ALJ identified this key provision of Act 129 relating to lost or decreased revenues from the implementation of time of use rates and stated:

> However, the statue at 66 Pa. C.S. §2807(f)(4)(ii) places a limitation on the recovery of costs by default service providers who are EDCs. The statute at 66 Pa. C.S. §2807(f)(4)(ii) states that in no event shall lost or decreased revenues by an EDC due to reduced consumption or shifting demand be considered a recoverable cost. The use of the word "shall" in the statute makes this requirement mandatory, not discretionary. The statute at 66 Pa. C.S. §2807(f)(4)(ii) mandates that in no event shall PPL or other EDCs that are default service providers treat lost or decreased revenues due to reduced consumption or shifting demand as a cost that they can recover.

R.D. at 20.

While the Company cites Section 2807(e)(3.9) of the Public Utility Code to challenge the ALJ's conclusion, the Company fails to recognize that its right to recovery under Section 2807(e)(3.9) is to the ***reasonable*** costs of default service. Section 2807(e)(3.9) states in full that:

> 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 ALJ properly recognized that every statute should be construed to give effect to all of its provisions. R.D. at 21, citing 1 Pa.C.S. §1921(a). To give meaning to all of the provisions and to reconcile Section 2807(e)(3.9) and Section 2807(f)(4)(ii), the ALJ concluded that:

> [I]t is reasonable for PPL to recover only its TOU costs under the GSC cost recovery mechanism that are not the result of lost or decreased revenues.

R.D. at 22. In other words, the ALJ concluded that since Section 2807(f)(4)(ii) specifically states that decreased or lost revenues are not recoverable, they are not a reasonable cost of default service.

PPL also argues that Section 2807(f)(4)(ii) only applies to lost or decreased distribution revenues or the inclusion of lost or decreased revenues in an automatically adjusting smart meter surcharge. PPL Exc. at 13. As the ALJ discusses, PPL's argument requires one to read additional language into Section 2807(f)(4)(ii) that is not there. R.D. at 21. The ALJ concludes that the General Assembly could have included language restricting the Section 2807(f)(4)(ii) but it did not. R.D. at 21-22.

The OCA submits that the ALJ's decision properly gives meaning to all sections of Act 129 and to the plain language of the Act. The Company would seek to create an exception to Section 2807(f)(4) based on Section 2807(e)(3.9). The ALJ correctly noted that Section 2807(f)(4) contains no exceptions, restrictions, or limitations. R.D. at 22. The ALJ concluded as follows:

> Had the General Assembly wished to restrict or limit the phrase "A recoverable cost" in 66 Pa. C.S. §2807(f)(4)(ii) it could have added language to do so as it did in 66 Pa. C.S. §2807(f)(4)(i). Since the General Assembly did not restrict or limit the language in 66 Pa.

> C.S. §2807(f)(4)(ii), I can only conclude that the language means a recoverable cost of any kind.

R.D. at 22.

The OCA submits that the ALJ correctly found that the Act clearly disfavors the automatic shifting of demand reduction costs among ratepayers. As such, the ALJ properly found that it would not be reasonable to recover lost and decreased revenues associated with the implementation of the time of use rates through the reconciliation mechanism proposed by the Company.

3. PPL's Full Requirements Approach Under Its Competitive Bridge Plan Does Not Allow For A Reasonable Implementation Of The Time Of Use Rates.

The OCA submits that the real cause of the conflict in this case with regard to cost recovery is not with the statutory provisions under Act 129. Rather, the conflict arises because of the methodology used by PPL to procure 2010 default power supply. Under PPL's plan, the Company has purchased full requirements, load following contracts so the benefit of the shift in usage from higher priced on-peak periods to lower priced off-peak periods goes entirely to the wholesale supplier, not to PPL or its customers.[1] OCA St. 1 at 12. It is this shift in usage to lower priced periods that produces the lower cost to the wholesale supplier, but also reduces the revenue collected by PPL to pay its wholesale suppliers.

As OCA witness Hahn explained, PPL faces this potential for lost revenue in 2010 because of PPL's procurement methodology for its 2010 default service load. Mr. Hahn testified:

> The Company purchases 100% of its default service power supplies from competitive generating companies or marketers, and simply passes these costs along to ratepayers via a reconcilable

[1] The time of use program is primarily directed toward getting customers to shift when they use electricity and not toward reducing overall energy usage. OCA St. 1 at 4-5. For example, a TOU rate may incentivize the customer to run their dishwasher in the off-peak period, but the customer will still run the dishwasher.

> charge. Therefore, it is important that the cost of procuring those supplies align very closely with the design of the retail rates. The power procured under the 2010 CBP is based upon fixed price, load following contracts whose fixed rates are not differentiated by season or time of day.

OCA St. 1 at 11. Based on PPL's 2010 purchases of full requirements, load following contracts only, PPL will incur the same total cost for providing default service with or without the TOU rate in place. As a result of the reliance on full requirements, load following contracts, the Company cannot reduce wholesale power costs through the shifting of usage from peak to off-peak periods.

The OCA submits that overlaying TOU rates on the full requirements, load following procurement approach will not capture the benefits of the TOU rates for all customers. In fact, in PPL's situation, where all of its supply has been acquired through full requirements load following contracts, overlaying the TOU rates onto default service will have no benefit at all for customers and will merely shift costs from one group of customers to another.[2] OCA witness Hahn noted that a different procurement method is capable of producing the cost savings expected from TOU rates and reflecting those benefits to all customers. Mr. Hahn explained:

> [I]f the Company had procured default service power supplies using a managed portfolio, such a shortfall would not exist. A managed portfolio is a prudent mix of long term contracts, shorter term peak and off-peak block purchases, and spot market purchases. Under this structure, the benefits of load shifting due to TOU rates would manifest themselves directly in lower purchased power costs, which would be passed on to ratepayers. With full requirements, load following, fixed price contracts, these benefits are not passed on to consumers.

---

[2] The Company argues in its Exceptions that the full requirements bidders should have known that a time of day rate was going to be implemented and thus the pricing of the contracts should reflect this fact. PPL Exc. at 14-15. As the record here shows, however, PPL conducted five of its six solicitations before the TOU rates were proposed, and four of the six solicitations preceded Act 129. OCA St. 1 at 5; OCA M.B. at 11; OCA R.B. at 3-5. As explained by PPL witness Krall, PPL examined over 300 options for on-peak and off-peak periods before making its proposal. PPL St. 1 at 10-12; Tr. at 90, 135. It is wholly unreasonable to assume that wholesale bidders somehow "anticipated" these TOU rates and adjusted their bids in some way.

OCA St. 1 at 13. The OCA has long supported the portfolio approach as the means to achieve adequate and reliable supply at the least cost for residential customers over the long term. A portfolio approach, particularly one that includes the purchase of spot market supplies, would provide the Company a reasonable opportunity to pass the benefits of the Time of Use rates required under Act 129 on to customers.

Here, however, PPL has already purchased full requirements supply and cannot pass any benefits from the TOU rates on to its customers. In fact, PPL seeks here to recover lost revenue from its customers so that it can meet its supply cost obligations. The OCA submits that at this point, it is simply unreasonable to attempt to overlay PPL's TOU rates onto its full requirements purchases if the outcome is to simply shift costs among customers.

4. PPL's Constitutional Arguments Are Inapposite.

At pages 9-11 of its Exceptions, PPL argues that the ALJ's decision would deny PPL recovery of its default service costs in violation of a multitude of Court precedents establishing that a public utility is entitled to recover necessary operating expenses reasonably incurred in its utility operations. PPL also argues that disallowance of its reasonable costs would prevent it from earning a fair rate of return and constitute an unlawful taking of property in violation of the Fifth and Fourteenth Amendments to the Constitution. PPL Exc. at 11. PPL's arguments are inapposite and without merit. Importantly, PPL's arguments go to the disallowance of costs that have been incurred. Here, no costs have been incurred or disallowed as the question here is whether the TOU rate plan should go forward at all. As discussed herein, the OCA submits that the TOU rate plan should be rejected in its entirety.

As an initial matter, there is no dispute that if default service costs are found to be reasonable, Section 2807(e)(3.9) provides the Company recovery of these reasonable costs. In

fact, the OCA does not dispute the Company's recovery of the default service costs under the Competitive Bridge Plan at the flat cents/kwh price that is being implemented for 2010. The TOU rate option, with its accompanying recovery of lost or decreased revenue from ratepayers, however, is not reasonable. It is the TOU rate option and it proposed lost revenue recovery that is unreasonable and must be rejected. If this program is rejected in its entirety for 2010 as unreasonable, the Company will incur no costs and no lost revenue.

Nevertheless, PPL argues that its default service rates are constitutionally protected and it must be permitted to recover its default service costs under constitutional principles as well as Court precedent.[3] PPL Exc. at 10. As discussed above, however, it is only reasonable costs that a utility is permitted to recover. While PPL's citations to Court decisions and the Constitution is instructive, all such cases have held that the right to recovery goes to costs that have been found to be reasonable. The ALJ has clearly concluded that PPL's proposal is not reasonable. As such, PPL's arguments regarding its right to recover such unreasonable costs cannot stand.[4]

---

[3] The OCA would note that the cases relied upon by PPL rest upon the fundamental underpinning of just and reasonable standard in establishing utility rates. To be constitutionally protected as PPL argues, the rates must be found to be just and reasonable. Just a month ago, the Commission ruled, partially in response to arguments forwarded by PPL, that the Commission no longer finds default service rates to be just and reasonable or Commission-approved. Petition of PPL Electric Utilities For Approval To Implement a Voluntary Purchase of Receivables Program, Docket No. P-2009-2129502, *slip op.* at 16 (Order entered November 19, 2009). The Commission concluded that an EDC developed rate is no different in character than an EGS developed rate. Id. The OCA submits that default service rates cannot be both constitutionally protected yet not within the constitutional standard of just and reasonable rates.

[4] PPL also argues that denying it lost revenue recovery would be an unlawful taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The OCA would note that as the United States Supreme Court held in Duquesne Light v. Barasch, 488 U.S. 299, 109 S. Ct. 609, 102 L.Ed.2nd 646 (1989), it is the total effect of the order that guides the inquiry. In this case, PPL has made no showing that the revenues lost as a result of the program would result in an unconstitutional taking. As discussed herein, however, the OCA submits that since the program is unreasonable, it should not go forward at this time, meaning that PPL will not incur any lost revenues at all.

PPL also argues that it purchased its power at wholesale market prices and raises the issue of pre-emption under the Supremacy Clause of the United States Constitution. PPL Exc. at 11, citing Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).[5] This argument is akin to saying that the Commission is precluded from making any disallowances of purchased gas costs by a natural gas distribution company under Section 1307(f) of the Public Utility Code since all natural gas supply is bought at wholesale market prices. The Courts have long held that the Supremacy Clause does not pre-empt the Pennsylvania Public Utility Commission's retail ratemaking authority. Kentucky West Virginia Gas Company v. Pennsylvania Public Utility Commission, 837 F.2d 600, 606-609 (3rd Cir. 1988).[6] As to electric rates, the Commonwealth Court of Pennsylvania, in a case that has become known for establishing the Pike County doctrine, also concluded that the Commission's consideration of whether it is reasonable for a utility to *incur* a cost at wholesale which is then passed through to retail customers is not federally preempted. Pike County Light and Power Company v. Pennsylvania Public Utility Commission, 465 A.2d 735 (Pa. Cmwlth. 1983).[7]

PPL's arguments, while unfounded, can be readily addressed in this case. As the OCA has set forth in its Briefs and in these Reply Exceptions, PPL's TOU rate plan should be rejected in its entirety. PPL's Competitive Bridge Plan under which it will operate in 2010 was

---

[5] In Louisiana Public Service Commission v. FCC, the United States Supreme Court held that federal legislation in the telecommunications industry did not bar states from establishing their own depreciation practices for intrastate ratemaking purposes. The Court's decision does not support the Company's position that federal pre-emption guarantees them recovery of lost revenues produced by their preferred TOU plan.

[6] In Kentucky West, the federal court made clear that the preemption doctrine would preclude the state commission from questioning or altering the underlying wholesale rate. Kentucky West, Id. at 609. The ALJ has not recommended any changes to the underlying wholesale rates with the full requirements suppliers.

[7] It is also important to note that there has been no proposal in this case to disallow PPL's default service rates as originally proposed for its default service customers. Default service customers were to pay a flat rate based on the wholesale supply purchased by PPL. Under PPL's proposal, default service customers are being asked to pay additional costs on top of that flat rate due to the attempt by PPL to layer its TOU rate plan onto the already approved default service plan.

approved under the prevailing market price standard before the passage of Act 129. For the reasons set forth herein, it is not reasonable to attempt to impose the Act 129 TOU rate option on this default service plan.

In the post-2010 default service plans, EDCs and the Commission will need to take into account all elements of Act 129. Under Act 129, where the standard for purchasing is adequate and reliable default service at the least cost over time and there are specific demand response, time of use, and energy efficiency requirements, the default service plan will need to be developed so that the benefits can be realized by all customers. PPL's Competitive Bridge Plan, developed under a different standard as a transition plan, and relying solely on full requirements contracts, cannot bring the benefits of Act 129 to its customers. PPL should incorporate the TOU rates as it moves forward with its default service plans under Act 129. Overlaying the TOU rates on the full requirements contracts that exist is simply unreasonable and inequitable to PPL's customers.

5. The Company's Rate Recovery Scheme Shifts Costs Among Residential Customers And Is Not Reasonable.

The ALJ rejected the Company's cost recovery mechanism because it would allow PPL to recover the savings associated with load shifting under the TOU plan to be recovered from ratepayers in future reconciliations. In reaching this decision, the ALJ stated, "I conclude that PPL's proposed TOU cost recovery is not reasonable and that the Commission should not approve it." R.D. at 19. The OCA agrees with the ALJ that the Company's proposed cost recovery mechanism is not reasonable.

In its Exceptions, PPL argues that the cost recovery mechanism is reasonable and should be approved. PPL Exc. at 8, 13-16. The Company argues that, "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 Exc. at 8. The OCA submits, however, that the Company's position is without merit. Under the Company's filing, residential customers as a whole will not save a single penny and all non-participating customers will be harmed by paying more under the Company's plan.

In passing Act 129, the General Assembly recognized the following objectives:

> The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

Act 2008-129, Declaration of Policy (1)(2008).

The purpose of Act 129 and its Time Of Use requirements is to lower costs. Under the Company's plan, however, PPL customers as a whole will continue to pay the same costs for default service as if there were no TOU rate option. As noted above, as participating TOU customers lower their total payments to PPL, PPL will be short of revenue to pay its wholesale suppliers. The Company has proposed to recover any potential shortfall in revenue from residential customers through the "E" factor of the GSC. PPL St. 2 at 4. As a result, residential customers who do not participate in the TOU program will be required to compensate the Company on a dollar-for-dollar basis for lost revenues due to residential customers shifting usage under the program. OCA witness Hahn testified as follows:

> Under the Company's proposed TOU rates, such a shortfall will be recovered from customers who do not choose TOU rates via the reconciliation process. This is an unwarranted transfer of costs between TOU and non-TOU customers. It is inappropriate to increase costs to non-TOU customers in order to make the Company whole for this shortfall. The Commission should reject

> the Company's request to include this shortfall in the reconciliation of its non-TOU GSC.

OCA St. 1 at 13. Company witness Kleha confirmed this result, noting that the annual reconciliation of the GSC may reflect an under recovery that will be included in the E factor of the GSC for the following year. PPL St. 2 at 5.

The Company also clarified at hearings that its TOU proposal would also result in participating customers paying for some of their own savings. Tr. at 164. Participating customers will also pay for 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.

The Company further argues that including the lost revenues as an increased default service cost to non-participating customers is a reasonable methodology because some customers have a more expensive load shape than others. PPL argues that the TOU program gives customers with the better load shape the opportunity to reduce costs. PPL Exc. at 13-14. PPL's argument has two fundamental flaws. First, there is no way to know that non-participating customers have more expensive load shapes than participating customers. All that is known is that non-participating customers did not volunteer for a new program. With the many new changes facing PPL customers, this is not unexpected. Second, charging non-participating customers more than the average rate approved by the Commission for default service on this theory imposes an involuntary time of day rate on non-participating customers for all practical purposes. Act 129 is clear that time of day rates are to be voluntary. 66 Pa.C.S. §2807(f)(5).

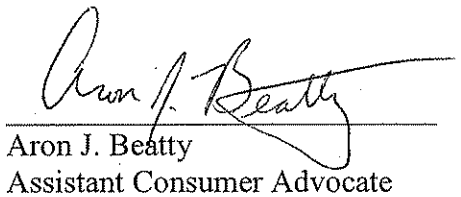
The OCA submits that PPL's TOU proposal is inherently unreasonable to all residential customers. PPL's proposal results in non-participating customers paying for the lost revenues that result from customers that shift usage under the program. The ALJ recognized that PPL's filing would result in the Company recovering the "savings" achieved by some residential customers from other residential customers. Indeed, as the Company acknowledged during the hearings, some of the savings would even be recovered from the participating customers themselves through the reconciliation process. The OCA submits that PPL's TOU rate plan is unreasonable and should be rejected.

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. ALJ Salapa recognized the flaws inherent in the Company's cost recovery proposal and properly found the proposal to be unreasonable.

The OCA supports the implementation of time of use rates that meet Act 129's goal of providing affordable and adequate electric service at the least cost over time. The current proposal, however, fails to meet these goals and must be rejected in its entirety.

Respectfully Submitted,



Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: December 28, 2009

00120947.docx

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, Reply Exceptions 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:

Dated this 28th day of December 2009.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Allison Curtin Kaster, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Paul E. Russell, Esquire
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101-1179
Counsel for: *PPL Electric Utilities Corporation*

David B. MacGregor, Esquire
Anthony Kanagy, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Counsel for: *PPL Electric Utilities Corporation*

Sharon E. Webb
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for: *Office of Small Business Advocate*

Kenneth L. Mickens, Esquire
Attorney for The Sustainable Energy Fund of Central Eastern Pennsylvania
316 Yorkshire Drive
Harrisburg, PA 17111
Counsel for: *The Sustainable Energy Fund of Central Eastern Pennsylvania*

Eric Joseph Epstein, *Pro Se*
4100 Hillsdale Road
Harrisburg, PA 17112

Craig A. Doll, Esquire
Attorney At Law
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036-0403
Counsel for: *Richards Energy Group, Inc*

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
Consultant for: *Office of Small Business Advocate*

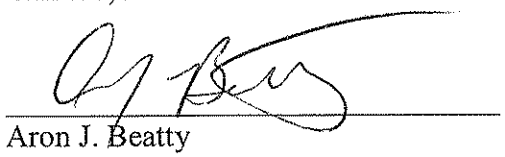
Divesh Gupta
Senior Counsel
Constellation Energy
111 Market Place, Suite 500
Baltimore, Maryland 21202
For: *Counsel to Intervenors Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.*

David I. Fein
Vice President, Energy Policy
Director of Retail Energy Policy
Constellation Energy
550 Washington St #300, St. 1100
Chicago, Illinois 60661
For: *Counsel to Intervenors Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.*

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie L. Tambolas, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
Counsel for: *Counsel to Intervenors*
Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc

SERVICE BY FIRST CLASS MAIL

Andrew Wyzykowski
P. O. Box 52
Clifford, PA 18413



Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

00116641.docx