



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

ORIGINAL

March 21, 2012

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**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation
Docket No. R-2011-2264771**

Dear Secretary Chiavetta:

I am delivering for filing today the original plus nine copies of the Main Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Parties of Record

Robert D. Knecht

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
v.	:	
PPL ELECTRIC UTILITIES	:	Docket No. R-2011-2264771
CORPORATION	:	

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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I. PROCEDURAL AND FACTUAL BACKGROUND

PPL Electric Utilities Corporation (“PPL” or “Company”) filed Supplement No. 110 to PPL Electric Utilities Corporation’s Tariff Electric – Pa. P.U.C. No. 201 as its proposal to modify its time-of-use (“TOU”) plan. PPL made the filing on September 26, 2011.

The Office of Small Business Advocate (“OSBA”) filed a Complaint on October 18, 2011. In addition to the OSBA, a number of other parties also intervened in the proceeding, including the Office of Consumer Advocate (“OCA”), the Commission’s Bureau of Investigations and Enforcement (“I & E”), the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”), Dominion Retail, Inc. d/b/a Dominion Energy Solutions, and Eric Epstein (“Mr. Epstein”).

Act 129 of 2008 required an electric distribution company (“EDC”) with more than 100,000 customers to file time-of-use (“TOU”) and real-time pricing plans by January 1, 2010, or by the expiration of its generation rate caps, whichever is later.¹

PPL’s current TOU program was litigated and approved by the Commission on March 9, 2010.² The OSBA was an active participant in PPL’s 2009 TOU proceeding.

PPL’s current filing was referred to the Commission’s Office of Administrative Law Judge. Administrative Law Judge (“ALJ”) Susan J. Colwell was assigned to the case. A pre-hearing conference was held on December 9, 2011, at which a schedule was established for the proceeding. Evidentiary hearings were held in Harrisburg on February 22, 2012.

¹ See 66 Pa. C.S. §2807(f)(5).

² *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket Number R-2009-2122718, Order entered March 9, 2010.

The OSBA submits this main brief pursuant to the procedural schedule memorialized in ALJ Colwell's pre-hearing Order issued on December 12, 2011.

II. DESCRIPTION OF CURRENT TOU PLAN

PPL's current TOU program is an optional program for the residential and small commercial and industrial ("Small C&I") customer classes. TOU rates are currently calculated and supplied separately for the residential and Small C&I classes based on the Company's projected spot market default service purchase costs and other factors.³ PPL estimates costs for spot market purchases on a quarterly basis.⁴ The Company is currently permitted to reconcile all the differences between revenues earned and costs incurred except those associated with conservation or load shifts associated with customers who take TOU service.⁵ Because TOU service is supplied from spot market purchases, PPL Electric does not incur any net revenue losses associated with conservation or load shifts under current plan design.⁶

PPL's current TOU service is based on spot market costs and a separate reconciliation mechanism, TOU default service rates therefore can and have been set such that both on- and off-peak rates are above or below the flat default service rate.⁷ Due to a number of factors, PPL has amassed a significant under-collection variance of approximately \$1.9 million in the Residential TOU accounts, which it cannot reasonably collect from Residential TOU customers.⁸

³ See PPL's Statement of Reasons at 1.

⁴ See PPL's Statement of Reasons at 4.

⁵ OSBA Statement No. 1 at 4, *citing* Pennsylvania Public Utility Commission, Docket No. R-2009-2122718, Order entered March 9, 2010, at 17-18.

⁶ OSBA Statement No. 1 at 6.

⁷ See PPL's Statement of Reasons at 1.

⁸ PPL Statement No. 1 at 8.

There are a number of contributing factors to the Company's under-collection problem. Initially, by determining that PPL was not entitled to recover net revenue losses associated with load shifts, the Commission encouraged PPL to adopt a spot market-based approach to TOU supply which was subsequently approved by the Commission.⁹ PPL subsequently under-forecasted spot market prices for the first five months of 2011 when the TOU program went into effect, thereby contributing to relatively low TOU rates and contributing to a significant revenue under-recovery.¹⁰ However, no evidence was adduced in this proceeding that PPL Electric's forecasting was imprudent. Further complicating the initial period under-collection is the fact that PPL's accounting mechanism includes a timing mismatch between revenues billed and costs incurred also contributed to the initial period under-recovery.¹¹

The subsequent increase in TOU rates to recover this shortfall pushed TOU (both on and off-peak) rates above regular default service, causing TOU participation to drop sharply, leaving an unrecoverable variance for the residential class.¹²

III. DESCRIPTION OF PROPOSED TOU PLAN

A. Proposed changes

In an effort to remedy the factors that resulted in the substantial under-collection, the Company has proposed the following modifications to its current TOU plan:

⁹ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2201138, Order entered December 2, 2010, at 9.

¹⁰ See PPL's Statement of Reasons at 2.

¹¹ OSBA Statement No. 1 at 7, and OSBA Statement No. 2 at 4.

¹² See PPL's Statement of Reasons at 2.

- a. PPL will supply TOU rates out of the general default service supply pool instead of using only spot market supplies.¹³
- b. TOU on-peak and off-peak prices would be based on percentage differentials from regular “fixed” default service rates, rather than being based on forecasts of on-peak and off-peak spot market prices. PPL will set on-peak rates for each class as a percentage markup of the regular default service, and off-peak rates as a percentage reduction for regular default rates.¹⁴
- c. PPL will design the TOU percentage adjustments such that a typical customer will need to shift some of its load from on-peak to off-peak in order to reduce rates under TOU service (even with the correction to PPL’s analysis).¹⁵
- d. For reconciliation purposes, PPL will calculate TOU revenues using the regular default service rate, rather than the TOU rate.¹⁶ In effect, PPL will calculate the effect of load shifting by assuming that a customer’s load without TOU rates would be exactly at the breakeven point between regular and TOU default service.¹⁷
- e. PPL would combine TOU and regular default service reconciliation pools, either through the CTR mechanism proposed at Docket No. P-2011-2256365 or in the Company’s GSC-1 reconciliation mechanism.¹⁸

B. Problems with proposed changes

Unfortunately, the mechanism proposed by the Company does not correctly calculate net revenue losses associated with load shifts (nor is such a calculation possible). As Mr. Knecht noted in his direct testimony there are two reasons this mechanism will not work.

¹³ PPL Statement of Reasons at 7 and OSBA Statement No. 1 at 2.

¹⁴ PPL Statement of Reasons at 7 and OSBA Statement No. 1 at 2.

¹⁵ PPL Statement of Reasons at 7-8 and OSBA Statement No. 1 at 2.

¹⁶ PPL Statement of Reasons at 10 and OSBA Statement No. 1 at 2.

¹⁷ OSBA Statement No. 1 at 7-8.

¹⁸ PPL Statement of Reasons at 12 and OSBA Statement No. 1 at 14.

First, normal load patterns vary substantially from customer to customer, particularly for small and medium business customers. Even without TOU rates, some customers will consume relatively more electricity during off-peak periods than do other customers. Thus, to correctly measure load shifts related to TOU rates, it is necessary to evaluate the "but-for" loads for each individual customer. By assuming an arbitrary "but-for" load shape for every customer, PPL Electric's method will imply changes in customer load related to TOU rates that are, in fact, unrelated to TOU rates.

Second, the Company's approach is dependent on the break-even load shape (i.e., the percentage of load which is consumed in on-peak periods). Thus, the "but-for" scenario in the Company's approach is dependent on the rate parameters established by the Company, rather than on any actual evaluation of the customer's load.¹⁹

Additionally, the mechanism can result in revenue losses for PPL associated with customers who do not shift load (the so-called "free rider" problem). Some customers already have a load profile that will result in lower revenues under TOU rates than under fixed default service rates. Those customers can reduce their bills by switching to TOU service with no change in load.²⁰ At best, this means that PPL's solution will only be temporary, as it looks for another way to avoid these revenue losses. At worst, this will result in PPL requesting compensation for the risks it absorbs in meeting its obligations as the default service provider ("DSP").

In addition, PPL's proposal incorrectly uses different on-peak and off-peak periods for Residential and Small C&I rate classes. TOU differentials should reflect market price differentials, and both Residential and Small C&I participate in the same

¹⁹ OSBA Statement No. 1 at 8-9.

²⁰ OSBA Statement No. 1 at 9.

market. Therefore, there is no economic reason for establishing different on-peak and off-peak periods for regular residential, RTS residential and Small C&I TOU customers. As Mr. Knecht noted, variations in hourly energy prices in the wholesale market, as well as generation capacity costs, are based on overall market supply and demand conditions-they are not differentiated by rate class.²¹

The on-peak periods selected by PPL for both Residential and Small C&I TOU service are not consistent with market price patterns, either on a time-of-day basis or on a seasonal basis. Mr. Knecht provided a detailed analysis of locational marginal prices in Exhibit IEC-3 attached to his direct testimony. That analysis, combined with the recognition that generation capacity costs are related only to summer on-peak periods, generally indicates that TOU rates should be higher in the summer than in other seasons.²² The Company's failure to include capacity costs in the on-peak period results in an understatement of peak period costs, and makes TOU differentials much less effective in achieving load shifts.

C. OSBA Recommendations

First, OSBA does not object to combining the prior period variances for TOU and regular default service customers. While OSBA strongly supports recovering variances from the customers who caused those variances, this is not possible for TOU service, because the customers who caused the variance are no longer on TOU service. For the reasons detailed in the OSBA's briefs at Docket No. P-2011-

²¹ OSBA Statement No. 1 at 16-17.

²² OSBA Statement No 1 at 17.

2256365 the OSBA does not agree with the Company's proposal to recover these costs in the CTR mechanism. However, for this specific case, OSBA supports socializing the variances within the respective rate class default service groups.²³

Second, in light of all of the problems and confusion with the Company's TOU programs, OSBA does not support a temporary solution. However, PPL admits that its proposal represents only an interim plan. PPL has proposed that its updated TOU program be effective through May 31, 2013-or through the end of the Company's current POLR II plan. PPL states that it will file for Commission approval of a TOU plan to become effective after June 13, 2013, prior to the expiration of this TOU program (if approved) and the corresponding end to PPL's POLR II.²⁴ OSBA submits that this problem would be better addressed through a permanent rather than temporary fix. As the Chairman notes, PPL's TOU program has been a "complete debacle."²⁵ Implementing a temporary measure that has all of the flaws identified above will only serve to confuse customers further and should be avoided.

For Small C&I customers, a reasonable solution is to offer real time rates. RT rates better match market costs to rates, and are therefore a more effective rate mechanism. The OSBA notes that PPL could adopt this mechanism while continuing to procure the supply as part of its default service supplies. To the extent that PPL cannot implement RT rates at this time due to systems limitations, OSBA

²³ OSBA Statement No. 1 at 15.

²⁴ Statement of Reasons at 16.

²⁵ Statement of Robert F. Powelson, Docket No. M-2011-2258733, Public Meeting August 25, 2011.

recommends that the existing mechanism remain in place for Small C&I customers, adjusted only for the reconciliation issue.²⁶

In the alternative, OSBA recommends that TOU service be put out to bid to EGSs, subject to the defined on- and off-peak periods, limitations on enrollment and customer switching, and minimum on-peak price premiums detailed by Mr. Knecht.²⁷ The Commission has encouraged DSPs to “contemplate” this approach in their upcoming default service plans, and both West Penn Power and Penn Power have included such a proposal in their current default service filings.²⁸ To the extent that PPL cannot implement this approach for some time, due to logistics considerations or perceived legal problems that this load must be supplied by existing default service wholesale suppliers, OSBA recommends that the existing mechanism remain in place for Small C&I customers, adjusted only for the reconciliation issue.²⁹

The OSBA submits that both of its alternative proposals would result in far less customer confusion than the Company’s approach, and would resolve all of the problems associated with PPL’s proposal, including the revenue risk, the inconsistent on-peak period definitions, and the dubious costing methodology.

²⁶ See also, OSBA Statement No. 1 at 12.

²⁷ OSBA Statement No. 1 at 12-13 and 16-19.

²⁸ OSBA Statement No. 1 at 12.

²⁹ *Id.*

D. Is TOU default service?

I&E witness Scott Granger argues that TOU service is not default service, and that it is therefore inappropriate to recover TOU service variances from any customers other than TOU service customers.³⁰ PPL witness Mr. Kleha argued in his rebuttal testimony that default service is generation supply service provided by a default service provider (“DSP”) to customers who chose not to shop.³¹ However, there are a number of aspects to TOU service that distinguish it from default service. Customers cannot and do not take TOU service by default. PPL’s TOU service is an optional program to which customers must affirmatively opt in if they desire to participate. Act 129 implies that providing TOU service is related to an electric distribution company’s (“EDC”) obligation to adopt smart meters, rather than to providing default service.³² Further, the Commission has determined that, unlike default service, EDCs serving as DSPs are not entitled to full cost recovery for providing TOU service.³³ The Commission has determined that some EDCs serving as DSPs can meet their TOU obligations through TOU distribution rates, which, unlike default service, is not an electricity supply service.³⁴

Nevertheless, heretofore, the Commission has generally treated PPL TOU service as default service. To that end, Act 129 mandates that DSPs, not EDCs, offer

³⁰ I&E Statement No. 1 at 4 and 9.

³¹ PPL Statement No 1-R at 3.

³² 66 Pa. C.S. §2807(f)(5)

³³ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket Number R-2009-2122718, Order entered March 9, 2010, at 18.

³⁴ OSBA Statement No. 1 at 5.

TOU service.³⁵ Electricity supplied to customers of PPL's TOU service has heretofore come from default service purchases.³⁶ TOU service is provided under Rate Schedule GSC-1, which applies to regular and TOU default service customers.³⁷ Because PPL's TOU service has, to date, been generally treated as default service, the OSBA submits that PPL should be permitted to recover its prior variances from all default service customers, particularly since the customers who caused the variance are no longer on TOU service. And to the extent the Commission determines that TOU service is not necessarily default service, it should apply that finding to PPL's TOU program on a prospective basis.

³⁵ 66 Pa. C.S. 2807(f)(5)

³⁶ PPL Statement of Reasons at 3.

³⁷ PPL Electric Utilities Corporation, Tariff Electric -- Pa. P.U.C. No. 201 (Supplement No. 110)

IV. CONCLUSION

Because PPL's TOU service has, to date, been generally treated as default service, the OSBA submits that PPL should be permitted to recover its prior variances from all default service customers by rate class. To the extent the Commission determines that TOU service is not necessarily default service, it should apply it to PPL on a prospective basis.

Respectfully submitted,



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: **Docket No. R-2011-2264771**
v. :
PPL ELECTRIC UTILITIES CORPORATION :
:

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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