



April 11, 2012

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**Re: Pennsylvania Public Utility Commission  
V.  
PPL Electric Utilities Corporation  
Time-of-Use Rates  
Docket No. R-2011-2264771**

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Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Reply Brief of the Sustainable Energy Fund for filing in the above-cited proceeding. Copies have also been provided as indicated on the Certificate of Service.

Respectfully submitted,  
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KLM/bls

cc: Honorable Susan D. Colwell, Administrative Law Judge  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
v. : **Docket No. R-2011-2264771**  
**PPL Electric Utilities Corporation** :  
**Time-of-Use Rates** :

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**REPLY BRIEF  
OF THE  
SUSTAINABLE ENERGY FUND**

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## **Table of Contents**

I.	BACKGROUND AND HISTORY OF THE PROCEEDING.....	1
II.	SUMMARY OF ARGUMENT.....	4
III.	ARGUMENT .....	6
A.	Burden of Proof.....	6
1.	PPL Electric has Failed to Meet its Burden of Proof Concerning the Reasonableness of the Proposed TOU Rates.....	6
2.	PPL Electric Has Failed To Provide The Specific Consumption Data Ordered By The Commission In The 2010 TOU Order.....	8
IV.	CONCLUSION.....	13

## Cases

<i>Application of Pennsylvania Power &amp; Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.</i> , Docket No. R-00973954, Final Order (entered August 13, 1998).	2
<i>Berner v. Pennsylvania Public Utility Commission</i> , 382 Pa. 622, 631, 116 A.2d 738, 744 (1955) .....	6
<i>Burleson v. Pennsylvania Public Utility Commission</i> , 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983) .....	6
<i>Dutchland Tours, Inc., v. Pennsylvania Public Utility Commission</i> , 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975), as quoted in <i>Norfolk &amp; Western Railway Company v. Pennsylvania Public Utility Commission</i> , 489 Pa. 109, 128 (1980) .....	6
<i>Joint Petition for Full Settlement of PP&amp;L, Inc.'s Restructuring Plan and Related Court Proceedings</i> , filed August 12, 1998 at Docket No. R-00973954 .....	2
<i>Pennsylvania Public Utility Commission v. Equitable Gas Company</i> , 57 Pa. P.U.C. 423, 444 (fn 37) (1983).	6

## Statutes

66 Pa. C.S. § 1301 .....	6
66 Pa. C.S. § 315(a) .....	4
66 Pa. C.S. § 332(a) .....	4
66 Pa. C.S. §§2801-2812 .....	1
66 Pa. C.S. §2807(f)(5) .....	1
66 Pa. C.S. §315(a) .....	6
66 Pa. C.S. §332(a) .....	6

## I. BACKGROUND AND HISTORY OF THE PROCEEDING

On September 26, 2011, PPL Electric Utilities Corporation (“PPL Electric” or “the Company”)<sup>1</sup> filed with the Pennsylvania Public Utility Commission (“Commission”) Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 201 – Time-of-Use Rates. In this filing, PPL Electric proposes to implement a new Time-of-Use (“TOU”) program for its residential and small commercial and industrial customer classes to become effective for service beginning with the participating customer’s first bill cycle commencing after March 1, 2012. A Time-of-Use rate program must be offered by certain default service providers under Act 129 of 2008.<sup>2</sup>

In its Statement of Reasons for the filing, PPL Electric states that “[g]iven the high TOU rates and price differential between the fixed price default service rates and the TOU rates, the Company requested that the [Commission] suspend the [current] TOU rates for investigation, and also

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<sup>1</sup> PPL Electric engages in the transmission and distribution of electricity to retail customers in eastern and central Pennsylvania. The Company also supplies electricity to retail customers. As of December 31, 2008, the Company provided electric service to approximately 1.4 million customers in 29 counties in eastern and central Pennsylvania.

<sup>2</sup> 66 Pa. C.S. §§2801-2812. Act 129 amended the Public Utility Code and changed the landscape for electricity default service by imposing a new legal standard – least cost procurement over time – which utilities must meet in the procurement of generation supply for default customers. Moreover, under Act 129, the electric default service provider must offer TOU rates and real time pricing to all residential or commercial customers that have been provided with smart meter technology. In addition, the default service provider “shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.” 66 Pa. C.S. §2807(f)(5).

proposed the submission of a revised TOU program within 30 days to address the TOU pricing issues. By Order entered August 25, 2011, the Commission suspended the Company's TOU rates contained in the August 22, 2011 filing and ordered the Company to maintain its current TOU rates for up to a six-month period. The Commission also directed PPL Electric to submit a plan proposing a revision to the pricing issues in the future."<sup>3</sup>

On October 27, 2011, the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") filed a Petition to Intervene in this proceeding. SEF is a Pennsylvania corporation established at the conclusion of PPL Electric's Restructuring proceeding<sup>4</sup> and pursuant to the terms of the Joint Settlement<sup>5</sup> filed in that proceeding. SEF's mission is to promote and invest in energy efficiency, renewable energy and energy education in order to provide opportunities and benefits for PPL Electric ratepayers. SEF has been certified as a Conservation Service Provider ("CSP").

At Public Meeting on November 10, 2011, the Commission suspended PPL Electric's TOU filing until September 1, 2012 and ordered that an investigation

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<sup>3</sup> PPL Electric Statement of Reasons, p. 2.

<sup>4</sup> *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket No. R-00973954, Final Order (entered August 13, 1998).

<sup>5</sup> *Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings*, filed August 12, 1998 at Docket No. R-00973954.

be held to determine the reasonableness of the filing.<sup>6</sup> The matter was assigned to Administrative Law Judge Susan D. Colwell. A Prehearing Conference was held in Harrisburg on December 9, 2011 at which time SEF's Petition to Intervene was approved and a litigation schedule was set. An evidentiary hearing was held in Harrisburg on February 22, 2012, where SEF Statement Numbers 1, 1-R and 1-SR were admitted to the record.

On March 21, 2012, SEF filed its Main Brief<sup>7</sup> in this proceeding, setting forth the evidence and law in support of its recommendations concerning PPL Electric's TOU proposal. This Reply Brief is supplemental to the SEF Main Brief and is limited to matters previously addressed by SEF which require additional discussion as a result of statements made by other parties in their Main Briefs or matters raised by other parties for the first time in their Main Briefs.

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<sup>6</sup> PPL Electric TOU Suspension Order, p. 3.

<sup>7</sup> Main Briefs were also filed by PPL Electric, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Eric Joseph Epstein, Dominion Retail, Inc. and the Commission's Bureau of Investigation & Enforcement ("I & E").

## II. SUMMARY OF ARGUMENT

As discussed in the SEF Main Brief, PPL Electric, as the moving party, has the burden of proving the reasonableness of the TOU rates proposed in this proceeding.<sup>8</sup> Since PPL Electric has proposed the TOU rates in this proceeding, it must demonstrate, by substantial evidence, that such rates are reasonable and will deliver the demand and consumption reductions required under Act 129. The Company's Main Brief does not provide any additional, relevant evidence on this issue.

The Company has failed to meet its burden of proof concerning the reasonableness of the proposed TOU rates largely because it has failed to analyze the demand and consumption TOU program data that it has been collecting since 2002. Specifically, the Company has failed to gather and/or analyze the data the Commission ordered it to provide in this TOU filing or properly demonstrate how its proposed TOU rates will deliver the demand and consumption reductions required by Act 129. In its Main Brief, PPL Electric provides a list of items that purportedly satisfy the Commission's demand. However, SEF will demonstrate in this Reply Brief that the items listed by the Company are unresponsive to the Commission's demand. Moreover, instead of supporting the Company's request

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<sup>8</sup> 66 Pa. C.S. § 315(a); 66 Pa. C.S. § 332(a).

for approval of the proposed TOU rates, PPL Electric's Main Brief confirms the SEF position that the TOU program should be assigned to a third party. Consequently, the SEF recommendations discussed in the SEF Main Brief should be adopted by the Administrative Law Judge and the Commission.

### III. ARGUMENT

#### A. Burden of Proof

##### 1. PPL Electric has Failed to Meet its Burden of Proof Concerning the Reasonableness of the Proposed TOU Rates.

As discussed in the SEF Main Brief, the Public Utility Code at 66 Pa. C.S. §315(a) and 66 Pa. C.S. §332(a) and related case law, clearly indicate that PPL Electric has the burden of proof in this proceeding and that such burden is met only by the proffer of substantial evidence.<sup>9</sup> In addition, the Public Utility Code requires that the proposed TOU rates be “just and reasonable.”<sup>10</sup>

In its Main Brief, PPL Electric acknowledges that it has the burden of proof as to its proposed TOU rates.<sup>11</sup> However, the Company also argues that a party proposing an issue not included in a public utility’s proposal bears the burden of proof as to its proposal.<sup>12</sup> In this regard, SEF has proposed that PPL Electric bid out its TOU program to a third party. SEF asserts that it has met any applicable burden concerning its proposal by demonstrating on the record in this proceeding

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<sup>9</sup> SEF Main Brief, pp. 7-8; *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983); *Dutchland Tours, Inc., v. Pennsylvania Public Utility Commission*, 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975), as quoted in *Norfolk & Western Railway Company v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 128 (1980); *Berner v. Pennsylvania Public Utility Commission*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955); *Pennsylvania Public Utility Commission v. Equitable Gas Company*, 57 Pa. P.U.C. 423, 444 (fn 37) (1983).

<sup>10</sup> 66 Pa. C.S. § 1301.

<sup>11</sup> PPL Electric Main Brief, p. 5.

<sup>12</sup> *Id.*

that the Company has failed to show that its TOU proposal satisfies the requirements of Act 129.<sup>13</sup> Under these circumstances, it is sufficient that SEF has demonstrated on the record in this proceeding that the bidding out of TOU service is a viable option for the provision of such service.

Moreover, the Commission has encouraged Default Service Providers to contemplate the “bidding out” of TOU service in future default service plans<sup>14</sup> and OSBA witness Robert D. Knecht has testified that both West Penn Power and Penn Power have included such a proposal in their current default service filings.<sup>15</sup>

PPL Electric has further argued that SEF’s proposal to bid out TOU service cannot be achieved under its existing supply contracts and that insufficient time exists to bid out the TOU program in connection with this proceeding.<sup>16</sup> However, SEF believes that given the tortured history of the Company’s attempts to provide TOU service, it should be required to bid out the service as soon as practicable under the requirements of its supply contracts. In this regard, the Company’s claim that a separate proceeding would be required in order to effectuate an RFP

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<sup>13</sup> See, SEF Main Brief, pp. 6-12.

<sup>14</sup> In fact, PPL Electric has indicated that it is contemplating bidding out TOU service as part of its next default service filing. PPL Electric Main Brief, p. 10. Given its TOU program history, SEF believes that the Company should be ordered to bid out the TOU program.

<sup>15</sup> See, OSBA St. 1, p. 12.

<sup>16</sup> PPL Electric Main Brief, pp. 30-31.

for TOU service<sup>17</sup> does not mean that a hearing would be necessary. The Company could file a proposal with the Commission and the Commission could receive written comments on the proposal from any interested parties.

## 2. PPL Electric Has Failed To Provide The Specific Consumption Data Ordered By The Commission In The 2010 TOU Order.

In response to the Commission's 2010 Order, the Company first argues that it "has provided an analysis of 2010 TOU program data and will submit an analysis for 2011."<sup>18</sup> The Company also alleges that it has provided data concerning the number of re-enrolled TOU customers for each class.<sup>19</sup> However, the record indicates that PPL Electric has not provided the *actual* on-peak and off-peak usage data that the Commission ordered be provided in this proceeding.<sup>20</sup> For example, the 2010 program data that the Company identifies is actually an *estimated* analysis of 2009 TOU pilot data (including summer average and non-summer on-peak and off-peak usage)<sup>21</sup> that the Commission found lacking in the 2010 TOU Order.<sup>22</sup> Further, as discussed earlier in this document,

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<sup>17</sup> See, PPL Electric Main Brief, p. 31.

<sup>18</sup> PPL Electric Main Brief, p. 32.

<sup>19</sup> *Id.*

<sup>20</sup> See, 2010 TOU Order, p. 28.

<sup>21</sup> See, PPL Electric Main Brief, p. 33.

<sup>22</sup> 2010 TOU Order, pp. 35-37.

PPL Electric's promise to file the desired data in June of 2012 does nothing to advance the record in this proceeding. Moreover, PPL Electric's reference to the number of re-enrolled TOU customers is not responsive to the Commission's demand for data.

The Company further states that it "provided parties with a detailed *evaluation of its 2010 TOU program through July 2010, including the number of participating customers by rate schedule, an estimate of the load shifted from on-peak to off-peak periods by participating customers, actual TRC benefits versus projected TRC benefits, the Company's most recent load study, hourly peak load data and actual consumption data.* This information was provided to SEF in discovery in this proceeding."<sup>23</sup>

However, as indicated, the load shift data the Company provided was *estimated*, not *actual* data and the TRC benefits data was rendered useless since PPL Electric admitted that such data was no longer valid.<sup>24</sup> Also, the recent load study, hourly peak load data and actual consumption data that the Company refers to is actually *aggregated* data and such data is not separated based upon

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<sup>23</sup> PPL Electric Main Brief, p. 33. (Emphasis added).

<sup>24</sup> SEF Statement No. 1, p. 4; SEF Exhibit 1, Schedule 1.

TOU and non-TOU customers.<sup>25</sup> Moreover, the 2010 analysis only included a few summer months which the Company stated would not be available from PJM until October 2010 and the Company further stated that the effect of capacity obligations on TOU program participation would not be available from PJM until December 2010.<sup>26</sup> Thus, PPL Electric's own statements indicate that this data was available from PJM and could have been provided in this proceeding.

In response to SEF's claim that Act 129 requires the Company to submit annual reports regarding the impact on peak energy demand, energy consumption and wholesale prices, PPL Electric argues that SEF is incorrect because it has supplied hourly load data for TOU customers as far back as January 1, 2010, for all customers back to January 1, 2001 and has provided hourly LMP data for the PPL Zone back to 1998.<sup>27</sup> However, if this is true, why has the

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<sup>25</sup> Tr. p. 131.

<sup>26</sup> Supplement 94, Item 2 states "because peak demand is determined on the basis of five coincident summer peaks and because PJM does not make such data available until October of each year, PPL electric cannot determine the impact of customer participation on peak demand." Moreover, Supplement 94, Item 4 states "[g]iven the small number of participants and the abnormally warm weather, the Company does not believe that this data can be used to discern whether participants reduced their overall energy consumption or not." In addition, Supplement 94, Item 5 (2) states "[h]owever, because capacity obligations reflect demands coincident with the five system peaks during the prior year, the effects of program participation will not be known until December [2010]."

<sup>27</sup> PPL Electric Main Brief, p. 33. The Company also states that it has provided support for the on-peak, off-peak discount, listed the number of TOU customers and a normalized load profile by rate schedule. However, these items are irrelevant to the issue of the impact of TOU rates on peak energy demand, energy consumption and wholesale prices, as required by Act 129.

Company not provided the analysis of 2009 and 2010 TOU data for its impact on peak energy demand, energy consumption and wholesale prices?

Finally, PPL Electric argues that although SEF has argued that PPL Electric did not provide hourly TOU consumption data, SEF witness Mr. Costlow admitted under cross examination that he did not request this data from PPL Electric.<sup>28</sup> The Company's reference to SEF witness Mr. Costlow's testimony is correct. However, the record indicates that this interrogatory question was asked by Pro Se party Eric Epstein. In fact, Epstein I-4 (d) requests the hourly individual meter data that SEF witness Mr. Costlow has stated has not been provided by the Company. A review of the response by the Company indicates that the data was not provided by PPL Electric.<sup>29</sup>

Consequently, the record in this proceeding indicates that PPL Electric has failed to satisfy the requirements of Act 129 because it has not provided evidence as to how its proposed TOU service will impact peak energy demand, consumption and wholesale prices. In addition, the Company has failed to provide the consumption data that the Commission specifically ordered it to provide in this proceeding. As a result, PPL Electric has failed to meet its burden

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<sup>28</sup> PPL Electric Main Brief, p. 34.

<sup>29</sup> See, Epstein Cross Examination Ex. 1, I-4 (d).

of proof under applicable law. Accordingly, the proposed TOU program should be rejected. Instead, as proposed by SEF, PPL Electric should be ordered to bid out its TOU service and such service should be proposed as soon as practicable, but in no circumstance later than the filing date for its default service plan in 2013.

IV. CONCLUSION

For the reasons set forth herein, SEF respectfully requests that the Administrative Law Judge and the Commission reject PPL Electric's proposed TOU program and require the Company to file a new TOU proposal that is consistent with the recommendations made by SEF in its Main Brief.<sup>30</sup>

Respectfully submitted,



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<sup>30</sup> See, SEF Main Brief, p. 12.

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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Sustainable Energy Fund Reply Brief 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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