COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 10, 2012

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PPL Electric Utilities Corporation Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 201 – Time of Use Rates

Docket No. R-2011-2264771

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Exceptions** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6184.

Sincerely,

Richard A. Kanaskie
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #80409

Enclosure
RAK/edc

cc: Parties of Record
Hon. Susan D. Colwell
Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Pamela A. Witmer, Commissioner
Chief Counsel Pankiw, Law Bureau
Director Cheryl Walker Davis, OSA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

Richard A. Kanaskie
Deputy Chief Prosecutor
PA Attorney ID #80409

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: July 10, 2012

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

I. HISTORY OF THE PROCEEDING

On September 26, 2011, PPL Electric Utilities Corporation ("PPL" or "Company") filed Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 201 with the Pennsylvania Public Utility Commission ("Commission"). Supplement No. 110 contained the Company's proposal to implement a new Time of Use ("TOU") program for its residential class and its small commercial and industrial class. The proposed TOU program was designed to become effective with the customer's first billing cycle commencing after March 1, 2012.

The Bureau of Investigation and Enforcement ("I&E") filed its Notice of Appearance indicating its participation in this proceeding on October 12, 2011. Complaints against Supplement No. 110 were submitted by the Office of Small Business Advocate ("OSBA") and the Office of Consumer Advocate ("OCA"). Answers to these Complaints were filed by the Company. In addition to these Complaints, Petitions to Intervene were submitted by Dominion Retail Inc. d/b/a Dominion Energy Solutions ("Dominion"), the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") and Eric Joseph Epstein ("Mr. Epstein").

The filing was assigned to the Office of Administrative Law Judge ("OALJ") for the purpose of conducting Evidentiary Hearings and the preparation and issuance of a Recommended Decision. On November 28, 2011, a Notice of Prehearing Conference was issued establishing the Prehearing Conference date. The OALJ subsequently assigned Administrative Law Judge ("ALJ") Susan D. Colwell as the presiding officer.

A Prehearing Conference was held on December 9, 2011 at which time a procedural schedule was developed. The procedural schedule included filing dates for Testimony, Main Briefs and Reply Briefs as well as the date for an Evidentiary Hearing. The Prehearing Conference also resulted in the modification of the Commission's Discovery Rules. The procedural schedule and Discovery modifications were memorialized in the ALJ Scheduling Order that was issued on December 12, 2011. Also on December 12, 2011, PPL submitted the Direct Testimony of its expert witnesses.

The Evidentiary Hearing in this proceeding was conducted on February 22, 2012 and included the presentation of evidence and cross-examination of all witnesses. In anticipation of litigation, I&E had preliminarily identified and served the testimony of its expert witness. The I&E testimony submitted in this proceeding includes Direct Testimony and Surrebuttal Testimony identified as I&E Statement No. 1 and I&E Statement No. 1-SR respectively.[1] In addition, OCA, OSBA, Dominion, SEF and Eric Epstein offered testimony into the record. The Evidentiary Record developed in this proceeding also includes Cross-Examination exhibits that were offered and entered into the record at the February 22, 2012 Hearing.

Main Briefs were submitted by the parties on March 21, 2012. The Evidentiary Record in this proceeding closed with the subsequent receipt of Reply

---

1 Page 3 of the Recommended Decision mistakenly identifies only I&E Statement No. 1 on behalf of Scott Granger as having been accepted into the record. In addition, I&E has presented the Surrebuttal testimony of Mr. Granger identified as I&E Statement No. 1-SR. *See*, Transcript, pp. 119-121.

Briefs on April 11, 2012. The Recommended Decision of the presiding Administrative Law Judge was dated June 8, 2012 and was served on the parties via Secretarial Letter on June 20, 2012.

II. SUMMARY OF ARGUMENT

The Bureau of Investigation and Enforcement has no objection to the design elements of the Company's prospective Time of Use Plan as presented in this proceeding. I&E has investigated the Company's proposed cost recovery of the elements of its optional TOU plan and remains opposed to the ongoing request to recover an historical revenue deficiency; the continued reference to the TOU program as Default Service and the recovery of TOU costs from non-TOU participants. The Exceptions below are consistent with the arguments presented by I&E throughout this proceeding.

III. EXCEPTIONS

The ALJ's Finding of Fact Incorrectly Identifies The Time of Use Rate as a Separate Default Service Rate Option.

I&E Main Brief, pp. 6-9.
I&E Reply Brief, pp. 6-9
Recommended Decision, p. 5, Finding 10.

The ALJ erred in Finding of Fact No. 10 by the declaration that the "TOU rate option is a separate default service rate option for customers."[2] I&E has consistently argued that PPL has not provided substantial evidence to support the classification of its TOU program as default service. In fact, this very issue is

2 Recommended Decision, p. 5, Finding of Fact 10.

awaiting Commission disposition in another docket.[3] Pending Commission determination of this issue, any representation that the TOU program is default service is premature. As such, a contested issue cannot be considered a fact as presented in the Recommended Decision. I&E has presented substantial evidence in this proceeding demonstrating that the requirements associated with the Company's TOU program are more characteristic of a competitive offering than default service. PPL fulfills its default service obligation with its fixed rate default service offering as demonstrated in its Price to Compare while its TOU program is an option requiring customers to choose. A complete discussion of this issue has been presented in the I&E Direct and Surrebuttal testimonies as well as the I&E Main Brief and Reply Brief. As demonstrated and argued in these documents, the TOU program requires active election by its participants whereas the default service program offered to customers that take no action is its fixed rate plan. The differentiation between the fixed rate Default Service plan and the TOU plan is affirmed by the Company's own witness when he stated that customers must apply to PPL Electric to participate in the proposed TOU plan and "[c]ustomers who do not make an affirmative election will be transferred to the Company's fixed price default service option."[4] PPL's witness also added that the program is an optional program that customers are not required to participate in.[5] As I&E has presented

---

3 I&E has argued that PPL's proposed TOU program cannot be considered default service. Final Commission disposition is pending at *Petition of PPL Electric Utilities Corporation For Approval to Implement a Reconciliation Rider for Default Service Supply* at Docket No. P-2011-2256365.

4 PPL Electric Utilities Corporation Statement No. 1, p. 12.

5 PPL Electric Utilities Corporation Statement No. 2, p. 11.

in this proceeding, it is the characterization of an affirmative action that must be taken to participate in the Time of Use program that exemplifies the difference between the Company's fixed rate Default Service and this optional Time of Use service. I&E maintains that the proposed TOU program is an optional service that should not be classified as default service. Furthermore, necessary characteristics associated with default service, including the least cost procurement obligation, have not been demonstrated.

The ALJ characterization of the TOU program as a Default Service Rate is in error pending resolution of this issue by the Commission. Clearly, an issue contested in this proceeding cannot be considered a "fact."

The Recommendation That the Under Collection Resulting From the Company's Implementation of Its Time of Use Program Should Be Fully Recoverable Is Improper.

I&E Main Brief, pp. 9-13.
I&E Reply Brief, pp. 9-11.
Recommended Decision, p. 22.

The ALJ erred in her broad, sweeping recommendation that the Company should be permitted to recover the under-collection of revenues associated with the period of January 1, 2011 through May 31, 2011. Correctly identifying that the program was flawed,[6] the ALJ inexplicably recommends full recovery pending confirmation of the amount by the Commission's Bureau of Audits.[7] Such a recommendation is unsupported by the record and must be rejected.

---

6 Recommended Decision, p. 22.
7 Id.

The ALJ's flawed recommendation appears to be based solely on her belief that "the Company's actions were fully sanctioned by the Commission."[8] This "sanctioning" as presented by the ALJ is presumably based on the Commission's Order addressing the Company's proposed Time of Use Rates to become effective January 1, 2011.[9] The resulting ALJ interpretation results in a recommendation that allows for exoneration of the Company from any level of responsibility for the resulting failure to collect sufficient revenue in support of its program. I&E maintains that this interpretation is incorrect and cannot form the sole basis for allowing the unsupported under-collection from the period referenced above. As the Commission's Order identifies, "[t]he proposed filing does not include any specific rates for the initial DSP rate period."[10] Although the Commission acknowledged that "PPL proposes to establish the procedures...for TOU program rate-making"[11] this cannot be interpreted as the abrogation of the responsible design of the program. In fact, there is nothing in the Commission's Order to suggest that it was offering approval of a program that allowed for all participants to benefit as "free riders." As has been acknowledged in this proceeding, PPL's TOU program design for the time period under discussion allowed customers to choose the TOU program and save money without the need to shift usage.[12] Furthermore, the program was designed so that every customer entering the TOU

---

8 Id.

9 Docket No. R-2010-2201138, *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric – Pa. P.U.C. No. 201 – Time-of-Use Rates*, Order Adopted and Entered December 2, 2010.

10 Id. at page 5.

11 Id.

12 PPL Electric Utilities Corporation Statement No. 2, p. 11.

program during this time period could achieve savings without shifting usage.[13] The Company even acknowledged that it was possible that customers that took service under the TOU program during this time period could actually increase their usage and still save over the terms contained in the fixed price parameters of default service.[14] The Commission's Order approving PPL's plan made no reference to the "free rider" design of the program. I&E maintains that the ALJ erred in her suggestion that Commission approval of the plan allows for full recovery of revenue, whether the deficiency is prudent or not. This interpretation is not in the public interest and must be rejected. As has been presented by the Bureau of Investigation and Enforcement in its testimony, "Commission approval of a Company created rate methodology does not equate to a guaranteed revenue or guaranteed recovery. Commission approval simply means that the Company will have the opportunity to generate the desired revenue using the approved methodology."[15] In addition, "[i]t is ...the burden of the Company to propose and manage its price structure, commodity costs and other inherent risks to produce a successful program and the desired recovery of revenue."[16]

I&E maintains that the Company failed to properly design the necessary rates that would allow for the recovery of all reasonable costs associated with its program. The Company's flawed program must not be rewarded by allowing for the recovery of this prior period revenue deficiency.

---

13 Transcript, p. 47.
14 Transcript, p. 46.
15 I&E Statement No. 1, pp. 7-8.
16 Id., p. 8.

Time of Use Program Costs Must Only Be Recovered From Time of Use Participants.

I&E Main Brief, pp. 13-14.
I&E Reply Brief, pp. 5-6.
Recommended Decision, pp. 22-23.

The ALJ erred in the recommendation to require that the Company's deficiency in revenue should be recovered from ratepayers that did not receive the benefit of the program. Again, this recommendation exonerates the Company from the results of a flawed program and places the burden on innocent ratepayers. I&E maintains that this is not sound regulatory policy and should be denied. Widely accepted ratemaking principles call for the production of revenue from the ratepayers enjoying the benefits of the program offering.[17] The proposed resolution offered by the ALJ offers just the opposite. Under the ALJ recommendation, though these default service customers did not enjoy the benefits of a rate design that endorsed "free riders" they should contribute to the claimed revenue deficiency. This concept is clearly not in the public interest and must be rejected. To penalize ratepayers that do not, or did not participate in the optional TOU program in question is irresponsible and does not merit consideration.

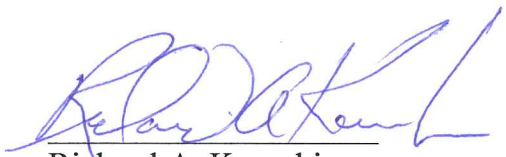
However, I&E maintains that this issue becomes moot upon the determination that the historic revenue deficiency should not be recovered.

17 I&E Statement No. 1, p. 5.

IV. CONCLUSION

For the reasons set forth herein, the Bureau of Investigation and Enforcement respectfully requests that the Commission grant the aforementioned Exceptions to the Recommended Decision of the Administrative Law Judge and recognize that Time of Use Programs are optional services offered by Electric Distribution Companies and are not Default Service as represented by the Price to Compare; the historical under recovery is based on a flawed program and should not be allowed to be recovered and; any Time of Use program costs should be borne by the beneficiaries of the program.

Respectfully submitted,



Richard A. Kanaskie
Deputy Chief Prosecutor
PA Attorney ID #80409

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated July 10, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PPL Electric Utilities Corporation Supplement No. 110 to Tariff Electric – Pa. P.U.C. No. 201 – Time of Use Rates	: : :	Docket No. R-2011-2264771

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated July 10, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

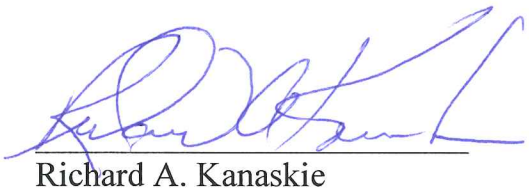
Aron J. Beatty, Esquire
Jennedy S. Johnson, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Eric Joseph Epstein, Esquire
4100 Hillsdale Road
Harrisburg, PA 17112

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 1102
Harrisburg, PA 17101

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111



Richard A. Kanaskie
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #80409