



October 5, 2012

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Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission
v.
PPL Electric Utilities Corporation
Docket No. P-2012-2302074
Default Service Program
Sustainable Energy Fund Main Brief

Dear Secretary Chiavetta:

Enclosed please find a signed original of the Sustainable Energy Fund's Main Brief for filing in the above-referenced proceeding. Parties have been served in accordance with the attached Certificate of Service.

Sincerely,
Kenneth L. Mickens
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I.D. #31255
Attorney for the Sustainable
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KLM/bls
Enclosures
Honorable Susan D. Colwell
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission**

:

v.

:

Docket No. P-2012-2302074

**PPL Electric Utilities
Corporation Default Service
Program**

:

:

**MAIN BRIEF
OF THE
SUSTAINABLE ENERGY FUND**

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Dated: October 5, 2012

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INTRODUCTION

A. Summary and Statement of Position

On May 1, 2012 PPL Electric Utilities Corporation (“PPL Electric” or “the Company”)¹ filed with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Program and Procurement Plan² (“Petition”), its second Default Service Program and Procurement Plan (“DSP II Program”) to establish the terms and conditions under which PPL Electric will acquire and supply Default Service or provider of last resort service (“Default Service”) from June 1, 2013 through May 31, 2015 (the “DSP II Program Period”).

B. Background Information and Procedural History

The DSP II Program consists of a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits during the DSP II Program Period; an implementation plan; a proposed rate design, including a Time-of-Use (“TOU”) rate for Default Service during the DSP II Program

¹ 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.

² Pursuant to 66 Pa. C.S. § 2807(e)(3.6), the Default Service provider is required to file a plan for competitive procurement with the Commission and obtain Commission approval of the plan based upon the standards identified at Sections 2807(3.1), (3.2), (3.3) and (3.4). Section 2807 also provides that the Commission shall hold hearings as necessary on the proposed plan and if the Commission fails to issue a final order on the plan within nine (9) months of the date the plan is filed, the plan shall be deemed to be approved and the Default Service provider may implement the plan as filed.

Period; an explanation of Regional Transmission Organization compliance and consistency; and, a contingency plan for the DSP II Program.³ A Time-of-Use rate program must be offered by certain default service providers under Act 129 of 2008.⁴

On May 31, 2012, 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 proceeding⁵ and pursuant to the terms of the Joint Settlement⁶ 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”).

On May 19, 2012, notice of PPL Electric’s Petition was published in the *Pennsylvania Bulletin*, 42 Pa.B. 2871, along with a notice of the Prehearing

³ PPL Electric Petition, p. 1.

⁴ 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).

⁵ *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).

⁶ *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.

Conference scheduled for June 6, 2012. The matter was assigned to Administrative Law Judge Susan D. Colwell (“ALJ”). A Prehearing Conference was held in Harrisburg on June 6, 2012, in accordance with the notice. At that time SEF’s Petition to Intervene was approved and a litigation schedule was set. *Evidentiary hearings were held in Harrisburg on September 10-11, 2012.*

II. SUMMARY OF ARGUMENT

As the moving party, PPL Electric has the burden of proving the reasonableness of the TOU rates proposed in this proceeding.⁷ 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 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. Most importantly, the Company has failed to gather or analyze the data the Commission specifically ordered it to provide in a previous TOU filing or properly demonstrate how its proposed TOU rates will deliver the demand and consumption

⁷ 66 Pa. C.S. § 315(a); 66 Pa. C.S. § 332(a).

reductions required by Act 129. This result leads to the inevitable conclusion that its burden of proof has not been met. Moreover, SEF has demonstrated that the current TOU proposal includes critical errors which render PPL Electric's proposed on-peak and off-peak periods inappropriate.

The record in this proceeding indicates that PPL Electric has failed to properly analyze its historical TOU programs, failed to properly analyze the proposed TOU program and failed to provide critical data that the Commission specifically ordered it to provide in a previous TOU filing.

Consequently, SEF asserts, for the reasons discussed herein, that the Commission should dispense with the repeated attempts to coerce the Company into complying with Act 129. The record in this proceeding indicates that despite repeated attempts, PPL Electric is either unable or unwillingly to propose a TOU program that complies with the requirements of Act 129. As a direct result of its ineptitude, PPL Electric has saddled its default service customers with a \$1.9 million undercollection⁸, has proposed the same flawed TOU program (in this proceeding) which was criticized by the Commission in a previous proceeding, does not comply with the requirements of Act 129 and is unlikely to attract customers. Accordingly, PPL Electric's proposed TOU plan should be rejected.

⁸ The residential undercollection relating to PPL Electric's 2011 TOU filing is \$1.9 million, while the small C&I undercollection is approximately \$8,000. *See, Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 (entered August 30, 2012) ("2012 TOU Order"), Order at p.5 (f.n. 1)

Instead, the ALJ and the Commission should adopt the SEF TOU proposal in this proceeding, which would allow for compliance with the requirements of Act 129 and effectively prevent the accumulation of TOU undercollections in the future. Specifically, the ALJ and the Commission should order the Company to assign the TOU program to a third party operator pursuant to an RFP approved by the Commission after input is gathered from stakeholders. In addition, the Commission should dispose of the issue concerning the Green Power program in the manner discussed herein.

III. ARGUMENT

A. Legal Standards

1. *Burden of Proof*

(a). PPL Electric has the Burden of Proving the Reasonableness of the Proposed TOU Rates.

The Public Utility Code at 66 Pa. C.S. §315(a) and 66 Pa. C.S. §332(a) clearly indicate that PPL Electric has the burden of proof in this proceeding. When a party bears the burden of proof, in addition to establishing a prima facie case, the party must also establish that “the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail,

precluding all reasonable inferences to the contrary.”⁹ Substantial evidence has been defined as “that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”¹⁰

Moreover, the courts have held that the burden of proof does not shift to the party challenging a utility’s proposal.¹¹ Thus, while the burden of going forward may shift, the burden of finally and convincingly establishing the reasonableness and legality of its TOU proposal always remains with PPL Electric. The intervening parties have no such burden. In this regard, the Commission has stated “[t]here is no presumption of reasonableness which attaches to a utility’s claim, at least none which survives the raising of credible issues regarding a utility’s claims. A utility’s burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility’s claims.”¹²

Consequently, since PPL Electric has proposed the TOU rates at issue in this proceeding, it must demonstrate, by substantial evidence, that such rates are reasonable and will deliver the demand and consumption reductions required under

⁹ *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983); *Lower Frederick Township v. Pennsylvania Public Utility Commission*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

¹⁰ *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).

¹¹ *Berner v. Pennsylvania Public Utility Commission*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955).

¹² *Pennsylvania Public Utility Commission v. Equitable Gas Company*, 57 Pa. P.U.C. 423, 444 (fn. 37) (1983).

Act 129.¹³ As discussed below, PPL Electric has failed to meet its burden in this proceeding.

2. Standards Applicable To Default Service (N/A)

B. The Proposed Default Service Program

2. e. The Green Power Program

PPL Electric states in its Petition that it has offered a Green Power program since August 11, 2009. The program has provided residential and commercial customers the option of purchasing Green Power for an additional monthly fee of \$2.50 per block of power.¹⁴ PPL Electric has offered three reasons for the proposed elimination of the Green Power program: (1) participation by only 150 customers; (2) PPL Electric believes the program should be offered by competitive market participants, not a default service provider; and, (3) PPL Electric's contract with Community Energy, Inc. will expire on May 31, 2013.¹⁵

¹³ SEF acknowledges that the burden of proving that the Company should implement something other than its own proposal is on the party proposing something else. The Complainant has the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This may be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 A.2d 654, 602 A2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

¹⁴ PPL Electric Petition, p. 31.

¹⁵ PPL Electric St. 4, p. 34.

SEF witness John M. Costlow¹⁶ has testified that the Green Power program provides significant benefits to its ratepayers at a relatively low price in comparison to the alternatives currently available for green power and should be continued.¹⁷ However, upon further review, SEF submits that since PPL Electric plans to allow the Green Power program to expire on May 31, 2013, it should agree to do the following. Prior to the May 31, 2013 expiration date, the Company will send a letter to each participating Green Power customer, advising them that the Green Power program will be ending and that green power rate options may be available from Electric Generation Suppliers (“EGSs”). At the election of EGSs and at the sole expense of electing EGSs, the Company will send a second letter to participating Green Power customers containing offers of EGSs for green products. SEF believes that this offer of compromise will ensure that Green Power program participants are given timely notice of the end of the program and are apprised of available options, provided that EGSs are sufficiently interested in their business.

¹⁶ Since October 27, 2008, Mr. Costlow has been the Director of Technical Services for SEF. In this capacity, he is responsible for managing the ongoing operations of the corporation, including the design, development and implementation of programs that invest in and promote energy conservation, energy efficiency and renewable energy. Mr. Costlow possesses a Bachelor of Science Degree in Organizational Management from Palm Beach Atlantic University and is a graduate of the Naval Nuclear Power School, where his focus was upon electronic monitoring and controls and nuclear reactor operations. Mr. Costlow is also certified by the Association of Energy Engineers in Carbon Reduction Management and is a Journeyman Certified Electronics Technician. Mr. Costlow has sponsored SEF Statements 1, and 1-SR in this proceeding.

¹⁷ SEF St. 1, p. 5.

3. Time of Use Rate Option

a. Design

(1). PPL Electric's Proposed Time-of-Use Rates Do Not Satisfy The Requirements of Act 129.

(a) PPL Electric's TOU Program Must Be Designed To Reduce Consumption and Peak Energy Demand And Impact Wholesale Market Prices.

The Pennsylvania legislature has indicated that Act 129 is “designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.”¹⁸ The Pennsylvania legislature also states that “[t]he 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.”¹⁹ In order to effectuate this design, Act 129 specifically provides that default service providers must offer TOU rates and real time pricing to customers who have been provided with smart meters. Most importantly, Act 129 further provides that the “default service provider shall submit an annual report to the price programs and the

¹⁸ 66 Pa. C.S. §2806(2).

¹⁹ 66 Pa. C.S. §2806(1) (Emphasis added).

efficacy of the programs in affecting *energy demand and consumption and the effect on wholesale market prices.*”²⁰

However, despite this clear statement by the Pennsylvania legislature, PPL Electric, as in its TOU case filed in 2011²¹, has continued (in this TOU filing) in its failing to exercise a “good faith”²² effort to design and administer TOU programs to effectuate the intent of Act 129 to provide the least cost of electricity over time for an EDC’s captive customers. In this filing²³, as in previous TOU filings, PPL Electric has: (1) failed to analyze the cost effectiveness of the TOU program; (2) failed to analyze energy demand reductions, if any; (3) failed to analyze energy

²⁰ 66 Pa. C.S. §2807(f)(5) (Emphasis added).

²¹ See, 2012 TOU Order at p. 18.

²² In this regard, SEF witness Mr. Costlow has stated “PPL Electric led the deployment of automated metering and data collection in the Commonwealth; it can and has accumulated the data needed for this analysis. The Commission previously determined that PPL Electric did not sufficiently study its Time of Use program. [See, *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (entered March 9, 2010) (“2011 TOU Order”), Order at p. 37] The Commission provided a list of expected information, portions of which were not included in this filing. PPL Electric clearly has the capability to collect the information and analyze the efficacy of the Time of Use program. If after attempting to collect and analyze the data, PPL Electric determined it lacked the capacity to analyze the data, it could have sought assistance from a competent third party. Consequently, I believe that PPL Electric has not made a “good faith” effort to create and administer an effective Time of Use rate and effectuate the intent of Act 129.” SEF St. 1, p. 23.

²³ PPL Electric has proposed a time of use rate based on the GSC-1 default service rate with an adder for on peak periods and a discount for off-peak periods. The Company proposes a year round on-peak period from noon to 7:00 pm for Residential customers and a year round on-peak period from 7:00 am to 7:00 pm for Small C&I customers, Monday through Friday except holidays. Instead of having energy generation suppliers bid on the price for on-peak and off-peak rates, the Company has proposed using the ratio of the historic (3 years) load weighted average hourly on or off-peak PJM PPL Zonal energy prices to the historic load weighted average hourly PJM PPL Zonal energy prices to determine the adder to and discount for on-peak and off-peak rates respectively. In addition, default service will be required to provide TOU supply as part of the default service supply. PPL Electric Petition , p.28. In response, SEF witness Mr. Costlow has testified that “[t]he program as proposed by PPL Electric will provide customers with a false understanding of the seasonal and time of day energy cost differentials for electricity. Informing Small C&I energy users that the energy rates “on-peak” are from 7 a.m. to 7 p.m. every day except weekends and holidays all year long is unreasonable because it does not reflect reality.” SEF St. 1, p. 19. In fact, the record in this proceeding reflects the fact that the majority of economic peak during the summer is from 1:00 pm to 6:00 pm. See, SEF St. 1, pp. 10-14.

consumption reductions, if any; and, (4) committed a critical error in the design of “on-peak” periods.²⁴

After first committing to providing an assessment of the 2009 through 2012 TOU programs during the February 22, 2012 TOU hearing²⁵, PPL Electric finally did file a Time of Use Annual Report (required under Act 129) with the Commission on or about July 18, 2012. However, SEF witness Mr. Costlow has testified that the Report indicates that for the years 2009, 2010 and 2011, the average residential customer experienced only a \$0.18 reduction in their monthly energy cost.²⁶ Also, “when comparing the “on-peak” portion from 2010 to 2011, the “on-peak” portion increased 2.94%. In addition, when compared to all RS customers, TOU customers only decreased “on-peak” consumption by 0.35%.”²⁷ Moreover, PPL Electric admits that “one area not analyzed in this study was the impact on overall consumption.”²⁸ However, *consumption* is one of the key areas the Annual Report was supposed to analyze under the requirements of 66 Pa.C.S § 2807(f)(5).

In fact, this is not the first time that PPL Electric has proposed a TOU program that is inconsistent with the requirements of Act 129. The Commission’s

²⁴ SEF St. 1, p. 22.

²⁵ See, SEF Cross Examination Ex. 4 (PPL Electric Response to SEF Set I, D.R. Woodruff).

²⁶ See, SEF S. 1-SR, p. 8.

²⁷ *Id.*

²⁸ See, PPL Electric Ex. DRW 4, p. 3.

Order in PPL Electric's 2009 Time of Use filing clearly states that PPL Electric should have analyzed net usage, demand reduction and reductions to Peak Load Contribution.²⁹ In addition, the Commission instructed PPL Electric to include (in future filings) the reduction in energy use, actual TRC benefits versus projected TRC benefits and total reduction in peak demand by rate schedule³⁰ among other items.³¹ This data is critical to determining whether the requirements of Act 129 concerning the reductions in peak demand and consumption, have been met. SEF witness Mr. Costlow has testified that, with the exception of the limited data supplied in the Annual Report (previously discussed), PPL Electric has failed to provide the same information in this proceeding.³²

Consequently, SEF witness Mr. Costlow has testified that PPL Electric's proposed TOU program should not be approved.³³ In this regard, Mr. Costlow states "[w]ith "on-peak" and "off-peak" prices fixed by PPL Electric, suppliers being compensated based on the amount PPL Electric bills TOU customers and

²⁹ 2011 TOU Order at p. 37.

³⁰ In fact, the Commission specifically ordered PPL Electric to provide certain of this data in the 2011 TOU filing. The Commission states "we shall direct PPL to provide, *within the context of its next TOU filing*, the following information as it pertains to currently enrolled (as of December 31, 2009) Rate RS and Rate RTS TOU customers: (1) the average summer and non-summer months' on-peak usage and off-peak usage; (2) an estimate of how this on-peak/off-peak usage relationship would change using the proposed on-peak and off-peak parameters; (3) an estimate of the impact upon an average summer and non-summer bill for Rate RS and Rate RTS customer; and (4) actual data for 2010 showing the number of newly enrolled customers for each rate class and the number of re-enrolled customers for each class." 2011 TOU Order at p. 28. Despite the Commission's direction, the data was not provided by PPL Electric in its 2011 TOU filing.

³¹ 2011 TOU Order at pp. 40-41.

³² SEF St. 1, p. 23.

³³ SEF St. 1, p. 22.

default service providers being required to provide TOU service as part of its default service obligation, the proposed rate is neither transparent nor reflective of current market conditions. In addition, by not separating the TOU rate from the standard default service rate, the potential exists for the risk of providing TOU's share to be borne by non-TOU customers."³⁴ Further, the Commission has recently questioned whether PPL Electric's TOU should be designed based upon the fixed price default service rate.³⁵ In fact, SEF witness Mr. Costlow has testified that basing TOU pricing on the Default Service rate defeats the purpose of TOU rates.³⁶

(2) PPL Electric's Proposed TOU Program Is Flawed And Should Be Rejected.

Mr. Costlow has observed that PPL Electric has committed two critical errors in the design of TOU rates that result in rates that are unjust and

³⁴ SEF St. 1, p. 16.

³⁵ In *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 (entered August 30, 2012), the Commission states "[w]ith regard to PPL's position that any reasonable TOU plan must be designed around the applicable fixed price default service rate, we are not persuaded by the record in this proceeding that PPL's TOU rates should be a derivation of the DSP rate." Order at p. 18. As discussed above, similar record support is lacking in the instant proceeding. In fact, PPL Electric witness David R. Woodruff has testified that the Company's proposals in the 2011 TOU filing (Order entered August 30, 2012) and the instant TOU filing are identical. Tr. pp. 194-195.

³⁶ He states that the "purpose of Time of Use rates is to pass current market pricing signals to customers. Procurements of default service occur over time in order to minimize the volatility of rates; in essence, detaching customers from market based pricing signals. Consequently, basing or linking the Time of Use rate to the default service rate is contrary to the goal of providing transparent time varying pricing. *PPL Electric's previous TOU program accumulated significant under recoveries and failed not because ratepayers left the program when rates exceeded default service rates, but because PPL Electric established "on-peak" and "off-peak" pricing and then provided service through fixed price default service and spot market purchases. The program failed because PPL Electric created artificial "on-peak" and "off-peak" prices. If PPL Electric would have bid out the TOU service pricing, the program would not have experienced the under recovery as there would have been no need to reconcile post consumption energy costs.*" SEF St. 1, p. 21. (Emphasis added).

unreasonable. These critical errors include: (1) the creation of “on-peak” periods³⁷ that do not send appropriate market based pricing signals to ratepayers; and, (2) the creation of artificial “on-peak” and “off-peak” periods that rely on historical data and may not reflect current market conditions.³⁸ First, although wholesale prices change throughout the day due to changes in energy demand,³⁹ PPL Electric offers a Default Service product in which the price is the same for each hour of the day. Under the Company’s current procurement procedure, the price only changes quarterly based on a portfolio of short and long term supply agreements. Second, SEF witness Mr. Costlow has demonstrated that the Company’s reliance upon historical data in developing its “on-peak” and “off-peak” periods is flawed because the historical data is not reflective of the current market.⁴⁰

In addition, the record reflects the fact that PPL Electric has made three critical errors in developing its “on-peak” period: (1) it has proposed separate “on-peak” periods for commercial and residential customers;⁴¹ (2) it has proposed “on-

³⁷ The proposed “on-peak” periods without regard to seasonal variation in energy demand are especially questionable because PPL Electric has offered different seasonal “on-peak” periods in connection with previous TOU programs. See, SEF Appendix B, SEF Cross Examination Ex. 1 (SEF Set I-6).

³⁸ SEF St. 1, p. 17.

³⁹ See, SEF St. 1, p. 13.

⁴⁰ SEF St. 1-SR, p.7.

⁴¹ In fact, SEF witness Mr. Costlow has demonstrated that the “grid” experience does not show evidence of different economic peaks for different classes of customers. To the contrary, the evidence indicates that customers experience the same economic peaks. See, SEF St. 1, p. 14.

peak” periods that do not differentiate for seasonal energy demand changes;⁴² and, (3) it has proposed “on-peak” periods that do not correspond to the RTO’s true economic peaks.⁴³

(3) SEF Witness Mr. Costlow’s TOU Proposal Is Well Reasoned.

Instead of the severely flawed TOU peak periods proposed by the Company, SEF witness Mr. Costlow recommends that PPL Electric establish two (2) different TOU rates; an Easy TOU rate and a more traditional TOU rate. The Easy TOU rate is designed to be both simple to implement and targeted at the highest peaks without compromising the sending of accurate pricing signals to customers. The other TOU rate is a more traditional TOU rate that is designed to account for changing seasonal demand and price profiles.⁴⁴ Mr. Costlow describes the Easy TOU proposal as follows:

The Easy TOU program is available to both Residential and Small C&I ratepayers. The rate is available from June 1 through August 30. The “on-peak” periods are from 3:30 p.m. to 6:30 p.m. Monday through Friday excluding holidays. The program is simple and targets the very highest peak periods during the summer. The “on-peak” and “off-peak” rates will be fixed for the period from June 1 through August 31 and posted on PPL Electric’s Electric Choice Webpage at the same time the June 1 to Aug 31 Price to Compare is posted. During the remainder of the year from

⁴² However, SEF witness Mr. Costlow has demonstrated that seasonal demand variations are significant and must be considered for purposes of developing the “on-peak” and “off-peak” periods. See, SEF St. 1, pp. 7-12.

⁴³ Actually, the periods proposed by PPL Electric are inconsistent with the RTO’s true economic peaks. See, SEF St. 1, p. 13.

⁴⁴ SEF St. 1, p. 14.

September 1 through May 31, Easy TOU customers receive the same rates as the standard Default Service customers.⁴⁵

SEF witness Mr. Costlow describes the traditional TOU as follows:

The [traditional] Time of Use rate is available to both Residential and Small C&I ratepayers. The rate is available in the winter from December 1 through February 28 and in the summer from June 1 through August 31. The winter “on-peak” hours are 6:00 a.m. to 9:00 p.m. and 5:00 p.m. to 8:00 p.m., while the summer “on-peak” hours are from 12 Noon to 7:00 p.m. Monday through Friday excluding holidays. During the Shoulder months of March, April, May, September and November, Time of Use ratepayers receive the same rates as standard Default Service customers.⁴⁶

TOU rates will be a fixed price for each period and are to be solicited at the same time as the six (6) month fixed price solicitations. However, the winning supplier will be the bidder that provides an “on-peak” and “off-peak” price that provides the greatest benefit for participants that shift load from “on-peak” to “off-peak” periods.⁴⁷ In addition to more accurately reflecting the intent of Act 129 by encouraging least cost procurement, a bidding process will avoid the possibility of TOU undercollections because under Mr. Costlow’s bidding proposal “the supplier absorbs the risk and associated cost or benefit from actual prices that vary from its projections used in formulating its bid.”⁴⁸

⁴⁵ SEF St. 1, p. 15.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ SEF St. 1, p. 16.

b. Procurement

(2). PPL Electric Should Be Ordered To Assign The TOU Program To A Third Party.

After measured consideration of the issue, SEF witness Mr. Costlow has testified that the Commission should order PPL Electric to hire, through an RFP approved by the Commission, a third party EGS (Conservation Service Provider or Wholesale Default Service Provider), to work with stakeholders to create a TOU program that will benefit ratepayers by providing the least cost service to ratepayers over time.⁴⁹

Under SEF witness Mr. Costlow's bid proposal "TOU rates will be a fixed price for each period and are to be solicited at the same time as the 6 month fixed price solicitations. The winning supplier will be the bidder that provides an "on-peak" and "off-peak" price that provides the greatest benefit⁵⁰ for participants that shift load from "on-peak" to "off-peak" periods."⁵¹ Mr. Costlow has testified that his proposal that TOU service be bid out to a Third Party EGS is more reasonable

⁴⁹ SEF St. 1, p. 15. Input from stakeholders could be accomplished by allowing the stakeholders to comment upon a Third Party RFP TOU proposal by PPL Electric. Alternatively, the Commission could order PPL Electric to convene (by a date certain) a collaborative (including the stakeholders) to determine the details of a Third Party RFP. In fact, PPL Electric has inquired as to whether SEF would participate in such a collaborative. Tr. pp. 283-284.

⁵⁰ Mr. Costlow has further testified that the "greatest benefit" equates to the "greatest economic benefit" and is determined by looking at a hypothetical customer shifting load from "on-peak" to "off-peak". The bidder providing the "greatest economic benefit" would be the bidder who, after examining their "on-peak" and "off-peak" rates, provides the "least cost bill overall" for the customer. Tr. pp. 279-280. As discussed above, such a scenario would be consistent with the requirements of Act 129.

⁵¹ SEF St. 1, p. 15.

than the Company's proposal because "by passing the "on-peak" and "off-peak" rate directly from the winning supplier to the customer, the supplier absorbs the risk and associated cost or benefit from actual prices that vary from its projections used in formulating its bid."⁵²

Moreover, "[s]ince "on-peak" and "off-peak" prices are passed directly from the TOU service provider [under SEF witness Mr. Costlow's TOU proposal], there is no post consumption reconciliation. The winning supplier assumes the risks and benefits of being able to predict market prices and program participation."⁵³ In short, the Commission can ensure that there will not be future undercollections of TOU rates by adopting SEF witness Mr. Costlow's TOU proposal.

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⁵² SEF St. 1, p. 16.

⁵³ SEF St. 1, p. 24.

IV. CONCLUSION

For the reasons set forth herein, SEF respectfully requests that the ALJ 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 this Main Brief. In addition, SEF requests that the Green Power program be addressed in the manner discussed above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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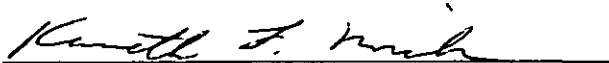
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