



October 22, 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 Letter in Lieu of Reply Brief**

Dear Secretary Chiavetta:

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

Sincerely,

Kenneth L. Mickens, Esq.

I.D. #31255

Attorney for the Sustainable
Energy Fund

KLM/bls
Enclosures
Honorable Susan D. Colwell
Certificate of Service

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October 22, 2012

**Re: Pennsylvania Public Utility Commission
v.
PPL Electric Utilities Corporation
Docket No. P-2012-2302074
Default Service Program
Sustainable Energy Fund Letter in Lieu
Of Reply Brief (Time-of-Use Rates)**

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Dear Judge Colwell & Parties:

At p. 88 of its Main Brief, PPL Electric Utilities Corporation (“PPL Electric” or “the Company”) recognizes that its Time-of-Use (“TOU”) proposal in this proceeding “is the same, in all relevant aspects, as the TOU program rejected by the ALJ and the Commission in PPL Electric’s 2012 TOU proceeding.” As a result, PPL Electric has identified an alternative TOU proposal which is modeled after the “Easy TOU” proposal recommended by Sustainable Energy Fund (“SEF”) witness John M. Costlow. The alternative TOU proposal is for a summer only TOU program with two modifications to the Easy TOU proposed by Mr. Costlow.¹

Since it appears that this alternative TOU proposal provides the best opportunity for PPL Electric customers to enjoy true time of use rates in accordance with the requirements of Act 129, SEF recommends that it be adopted by the ALJ and Commission.² SEF views this proposal as transitional, with the opportunity for the Commission to observe the results and make determinations in the future concerning its efficacy and the viability of a winter TOU program.

For clarity of the record purposes, SEF feels compelled to briefly

¹ PPL Electric Main Brief, pp. 89-90. SEF witness Mr. Costlow’s Easy TOU is explained at SEF St. 1, pp. 14-15. There are two changes to the SEF proposal: (1) the on-peak period of June, July and August is from 3:00 pm to 6:00 pm, excluding week-ends and PJM holidays, is intended to target the highest peak periods during the summer months (See, SEF St. 1, p. 15; SEF St. 1-SR, p. 9); (2) TOU customers will be billed on their normal billing cycles and not on a calendar month basis. In this regard, SEF witness Mr. Costlow has testified that a modification of his period to from 3:00 pm to 6:00 pm is acceptable. SEF St. 1-SR, p. 9. In addition, SEF does not object to PPL Electric’s second modification to the SEF proposal.

² As recognized by PPL Electric, certain details would need to be worked out in order to finalize this alternative proposal. PPL Electric Main Brief, p. 90. Accordingly, SEF agrees that if this alternative TOU program is adopted, a collaborative should be convened so that the details of the Summer TOU can be fully identified and all implementation issues can be addressed. SEF recommends that the Commission order PPL Electric to convene such a collaborative in accordance with a time line.

respond to certain comments made by PPL Electric and other parties in their main briefs.

First, PPL Electric argues that SEF has failed to carry its burden in demonstrating how an Electric Generation Supplier (“EGS”) would assume the default service function and whether such an assumption is even allowed under Act 129.³ The Company is mistaken. In fact, SEF has demonstrated on the record in this proceeding that an EGS can assume the default service function.⁴ In this regard, an Electric Distribution Company (“EDC”) can petition the Commission to be relieved of its obligation to provide default service or an EGS can petition the Commission to be assigned the default service role or the Commission may propose that the EDC be relieved of its obligation.⁵ Despite the Company’s claims to the contrary, SEF has not argued that if an EGS assumed the default service provider function, it would surrender certain functions currently performed by PPL Electric.

Next, the Office of Consumer Advocate (“OCA”) argues in its Main Brief that it would be unnecessarily complex to have TOU rate customers switch back and forth between TOU rates and regular default service rates several times per year and , if anything, TOU rates should be offered year round. For these reasons, the OCA recommends that SEF’s TOU proposal not be approved.⁶ However, SEF witness Mr. Costlow has testified that the OCA’s concern about complexity is unwarranted since PPL Electric’s ratepayers already consider a plethora of service options. The addition of an Easy TOU would not significantly impact this process.⁷ In addition, the OCA’s concern about customers switching back and forth is unfounded because under Mr. Costlow’s proposal “TOU customers never leave TOU service unless they elect to; they simply receive service during non-TOU months at the Default Service rate. There is no switching back and forth of customers as stated by [OCA witness] Mr. Hahn.”⁸ Actually, it appears that the OCA is simply reluctant to depart from the flat rate pricing structure. However, TOU pricing based upon actual bids by EGSs will ensure actual “cost based” pricing and will also prevent the costly under collections that

³ PPL Electric Main Brief, pp. 84-88.

⁴ Under the Commission’s Regulations, a default service provider is defined as “[t]he incumbent EDC within a certificated service territory or a *Commission approved alternative supplier of electric generation service*. 52 Pa. Code § 54.182. (Emphasis added); SEF St. 1-SR, p. 3. Astonishingly, PPL Electric witness Renae G. Yeager, PPL Electric’s Ombudsman for electric supplier coordination (Tr. p. 140), has testified that she is not aware of whether an EGS can petition the Commission to become a Default Service Provider. Tr. p. 146.

⁵ 52 Pa. Code § 54.183 (b).

⁶ OCA Main Brief, p. 32.

⁷ SEF St. 1-SR, p. 10.

⁸ *Id.*

regularly occur under the existing flat rate pricing structure.⁹

Curiously, in its Main Brief at pp. 21-22, the Office of Small Business Advocate (“OSBA”) supports PPL Electric’s original TOU proposal for Small C&I customers despite having found significant weaknesses in the proposal.¹⁰ OSBA argues that it supports the Company’s proposal because it is not a popular or viable option and therefore will have little impact on either suppliers or customers,¹¹ presumably because of the weaknesses identified by OSBA. In response, SEF would simply note that the OSBA’s reasons for supporting PPL Electric’s TOU proposal actually strongly argue in support of the rejection of the proposal. Moreover, an ineffectual TOU tariff serves no useful purpose.

Finally, in response to the request from the ALJ, SEF has included its proposed Findings of Fact and Conclusions of Law.¹²

For the reasons stated above, SEF recommends that PPL Electric’s Alternative TOU Proposal be adopted by the ALJ and the Commission and that the Company’s original TOU proposal be rejected.

KLM/bls
Honorable Susan D. Colwell
Certificate of Service

Sincerely,



Kenneth L. Mickens, Esquire
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Energy Fund

⁹ SEF St.1-SR, p. 11.

¹⁰ OSBA St. 1, p. 10. For example, OSBA witness Robert D. Knecht states that the Company’s TOU proposal improperly sets forth different on-peak and off-peak periods for the Residential and Small C&I customer classes, when hourly market prices are the same for Residential and Small C&I customers. *Id.* On this point, Mr. Knecht and SEF witness Mr. Costlow agree. *See*, SEF St. 1, p. 17.

¹¹ OSBA Main Brief, p. 22.

¹² SEF Findings of Fact: PPL Electric has proposed an Alternative TOU Program based upon the SEF Easy TOU recommendation in this proceeding. PPL Electric Main Brief, pp. 88-91. SEF Conclusions of Law: (1) As the moving party, PPL Electric has the burden of proof in this proceeding. 66 Pa. C.S. § 315(a); 66 Pa. C.S. § 332(a).; (2) 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. *Pennsylvania Public Utility Commission v. Equitable Gas Company*, 57 Pa.P.U.C. 423, 444 (f.n. 37) (1983); (3) A party bearing the burden of proof must demonstrate by substantial evidence that the cause of action is proven. *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); (4) PPL Electric has failed to demonstrate that the originally proposed TOU rates are reasonable and will provide the consumption and demand reductions required under Act 129. 66 Pa. C.S. §2806.1(c)(1); 66 Pa. C.S. §2806.1(d)(1); (5) Under the Commission’s Regulations, a default service provider is defined as “[t]he incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.” 52 Pa. Code §54.182; (6) An EDC can petition the Commission to be relieved of its obligation to provide default service or the Commission may propose that the EDC be relieved of its default service obligation. 52 Pa Code §54.183 (b).

Docket No. P-2012-2302074

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Letter in Lieu of 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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