



COMMONWEALTH OF PENNSYLVANIA

March 21, 2014

E-FILED

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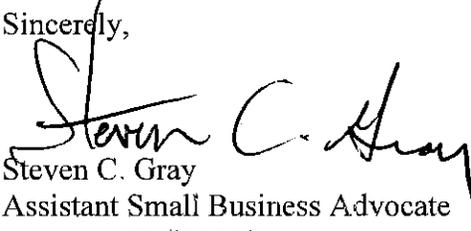
**Re: Petition of PPL Electric Utilities Corporation for Approval of a New Pilot
Time-of-Use Program
Docket No. P-2013-2389572**

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID #77538

Enclosures

cc: Parties of Record
Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of a New Pilot Time-of-Use : **Docket No. P-2013-2389572**
Program :

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-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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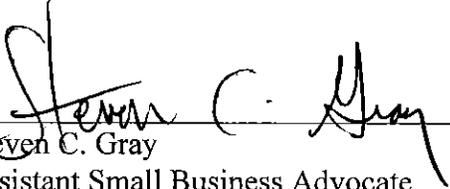
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Date: March 21, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities Corporation :
for Approval of a New Pilot Time-of-Use : Docket No. P-2013-2389572
Program :**

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: March 21, 2014

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I. Introduction

PPL Electric Utilities Corporation (“PPL” or the “Company”) filed a Petition for the Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 with the Pennsylvania Public Utility Commission (“Commission”) on May 1, 2012. PPL included a Pilot Time of Use (“TOU”) program with the Company’s petition. The Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention on June 4, 2012. The underlying case was docketed at Docket Number P-2012-2302074.

In its January 24, 2013 Order, the Commission did not approve the TOU program submitted by PPL, and directed the Company to enter into a collaborative with interested stakeholders, and to submit a new TOU rate proposal following that collaborative.

The collaborative commenced on February 22, 2013, and continued on into June, 2013.

On May 23, 2013, the Commission ordered PPL to submit a new Pilot TOU program by August 23, 2013.

On August 23, 2013, PPL filed an updated Pilot TOU program with the Commission.

On October 4, 2013, Administrative Law Judge (“ALJ”) Susan D. Colwell and ALJ Joel Cheskis issued a Prehearing Order.

On October 21, 2013, a prehearing conference was held before ALJ Colwell and ALJ Cheskis.

On October 25, 2013, ALJ Colwell and ALJ Cheskis issued a Scheduling Order.

On February 7, 2014, the OSBA served the Rebuttal Testimony of Robert D. Knecht.

On February 14, 2014, the OSBA served the Surrebuttal Testimony of Robert D. Knecht.

On February 26, 2014, an evidentiary hearing was held before ALJ Colwell and ALJ Cheskis.

The OSBA submits this Main Brief in accordance with the procedural schedule set forth in the ALJs' Scheduling Order.

II. Summary of Argument

PPL's current TOU rates for the Company's Small Commercial and Industrial ("Small C&I") customers continue to be excessively high, are not based on any relevant market prices, are not just and reasonable, and should be eliminated as soon as practicable.

The current excessive Small C&I TOU rates allow net metering customers to earn revenues for their excess generation at rates which substantially exceed market prices, at the expense of Small C&I default service customers. This situation is grossly inequitable and should be terminated. Unfortunately, under PPL's existing TOU tariff, the problem will likely only get worse. If more net metering Small C&I customers choose to take service under PPL's current TOU rates, the Small C&I default service customers will be forced to pay an increasing large bill for the net metering customers' windfall.

PPL's proposal for TOU rates will resolve the inequities inherent in the existing mechanism. First, under PPL's proposal, the existing TOU service will be terminated, and net metering customers will be either returned to fixed default service, or given the opportunity to participate in the new TOU program. Because the new TOU program would be offered through competitive electric generation suppliers ("EGSs"), the new TOU rates will be market-based. Moreover, even if a contingency plan is needed because no EGSs participate, the Company's proposal will link TOU rates to regular fixed default service rates, avoiding the worst problems in the existing mechanism. Second, Small C&I default service customers will no longer be obligated to pay above-market rates for excess generation from net metered customers.

In Rejoinder Testimony, PPL offered an alternative TOU program for net metering customers. Although the OSBA has had limited opportunity to address this alternative offering on the record, the OSBA does not object to its implementation.

II. Argument

A. PPL's Small C&I Time of Use Rates

The OSBA has been working to eliminate PPL's TOU rates for a number of years.

OSBA Witness Robert D. Knecht testified:

A long-standing objective of OSBA's is to terminate the existing TOU rates, which are not cost-based, and provide no benefit to customers who can shift load from on-peak to off-peak hours or who disproportionately use off-peak load.

OSBA Statement No. 1, at 4.

Mr. Knecht explained the problem, as follows:

Since the middle of 2011, the Company's on-peak TOU GSC-1 rate for Small C&I customers has been 15.389 cents per kWh, and the off-peak TOU GSC-1 rate has been 11.588 cents per kWh. In that time, the 'fixed' GSC-1 rate for Small C&I customers has never been above the 11.588 off-peak TOU rate, and is currently 8.441 cents per kWh. In effect, a Small C&I customer under TOU default service will pay a rate that is 37 percent higher for *off-peak* service than a regular TOU default service customer will pay for consumption at any time.

Id. (emphasis in original).

The OSBA is not the only entity that believes that this situation is absurd, to say nothing of being not just and not reasonable. As Mr. Knecht observed:

As early as August 2011, Chairman Powelson correctly described PPL Electric's TOU rates as a 'complete debacle,' but even this observation did not result in a resolution of the problem.

Id. (footnote omitted).

Unfortunately, these TOU rates have been in place since May 2011. Mr. Knecht provided the genesis of these misbegotten rates:

PPL Electric's current TOU charges for Small C&I were first established in Company filing dated May 20, 2011, using the Commission-approved calculation method for deriving and

reconciling the TOU rates. However, after that date, this calculation method produced nonsensical results. To avoid adopting nonsense rates, the TOU rates from the May 20, 2011 filing were frozen in place beginning with the Company's August 22, 2011 filing, and have remained frozen since.

OSBA Statement No. 1, at 4.

As Mr. Knecht observed, these TOU rates have been frozen since May 20, 2011. In the intervening years, PPL's TOU rates have always been priced higher than the Company's default service rates:

[T]hese frozen Small C&I TOU rates for both on- and off-peak periods have remained above, and for the most part far above, the regular fixed default service rate (even with PPL Electric's wildly erratic E-Factor reconciliation charges for Small C&I customers). In effect, PPL Electric has not had a reasonable Small C&I TOU rate mechanism for years.

Id., at 4-5.

Thus, the OSBA believes that the ALJs and the Commission will understand that the OSBA is almost agnostic regarding what TOU program the Company ultimately adopts. Almost any TOU program will be an improvement over the horrific TOU rates currently charged to PPL's Small C&I customers. Moreover, as Mr. Knecht indicated, the Company's checkered history with TOU rates has likely dampened any interest that Small C&I customers may have in taking such service from the Company. *Id.*, at 3.

In addition, while the OSBA recognizes that PPL has a legal obligation to offer TOU rates to its customers, the Company cannot and does not meet that obligation by offering rates that are not just and reasonable. Since PPL's existing TOU rates for Small C&I customers are not based on any coherent calculation of relevant costs and are hopelessly inconsistent with current market prices, the OSBA fully agrees with Mr. Knecht's conclusion during the hearing that PPL's TOU rates for Small C&I customers have not been just and reasonable "for quite

some time now.” Transcript, at 37, line 13. Because PPL is not currently compliant with the law, the OSBA does not believe that terminating the current Small C&I TOU rates will make it any less compliant. For that reason, the OSBA respectfully recommends that the Commission terminate the current Small C&I TOU rate at the earliest opportunity, namely on the date an order is entered in this proceeding.

B. Net Metering Customers Further Complicate the Issue

In his rebuttal testimony, Mr. Knecht summarized the situation with net metering customers, as follows:

Under the provisions of the Alternative Energy Portfolio Standards Act (‘AEPSA’), PPL Electric is required to apply ‘net metering’ billing to customers who operate renewable energy generating facilities. In general, this means that the Company’s energy billing determinants for distribution service are based on kWh consumed *net* of any self-generation during the billing period, including any carryovers from previous months within a particular year. Generation exported to the grid during some hours can be used to offset net consumption from the grid in other hours.

OSBA Statement No. 1, at 5 (emphasis in original).

Mr. Knecht testified as to how PPL pays the net metering customers when their generation exceeds their usage:

PPL Electric is obligated to purchase any excess generation above the customer’s consumption at the Company’s full default service price to compare (‘PTC’).

Id.

Mr. Knecht continued, as follows:

PPL Electric uses this net kWh generation purchased to offset the kWh PPL Electric purchases from its wholesale default service suppliers.

Id.

However, someone must pay for the net kWh generation purchased by PPL:

The costs incurred by PPL Electric for purchasing the net generation are charged to default service customers.

Id.

Of course, if a Small C&I net metering customer is on default service rates, the default service Small C&I customers will pay the normal default service prices for any excess generation from those customers. The problem arises when a Small C&I net metering customer is on PPL's TOU rates. As set forth above, those rates are far above the current default service rates. Regardless, PPL is obligated to purchase the Small C&I net metering customer's excess generation at those over-priced TOU rates, providing a windfall to that Small C&I net metering customer. Unfortunately, the Small C&I default service customers have to reimburse PPL for that net kWh generation purchase. Thus, those Small C&I default service customers are on the hook to pay for the net metering customer's windfall profits.¹

Dauphin County Industrial Development Authority ("DCIDA") is exactly such a Small C&I net metering customer that has elected to take PPL's TOU rates.² According to DCIDA witness August Memmi, a consultant informed DCIDA that it could take advantage of getting reimbursed for net generation at the much higher TOU rates. Transcript, at 41, lines 16-20. While the OSBA accepts DCIDA's right to take advantage of the current nonsensical Small C&I tariff charges, this right does not create a permanent entitlement for DCIDA to continue to earn above market prices for its excess generation.

¹ It must be noted that the problem associated with net metering customers could have been avoided or at least mitigated, but for the inability of the parties to reach an agreement during the collaborative process, and the extended procedural schedule afforded this proceeding. As Mr. Knecht indicated, as of May 2013, no Small C&I net metering customers were taking TOU service. OSBA Statement No. 1, at 6. Unfortunately, this tariff loophole has been allowed to exist for so long that the cat is indeed out of the bag. OSBA Statement No. 2, at 2.

² Curiously, DCIDA operates some 2000 kW of renewable generation, and is eligible to take service as a Small C&I customer. However, load customers are limited to a maximum demand of 500 kW to be eligible for Small C&I service. PPL was unable to explain just why this is. Transcript at 12, lines 7-12.

Consequently, PPL's Small C&I customers are truly paying a steep price for the Company's current TOU program. First, if they happen to be TOU customers, they are massively overpaying for their electric service. Second, if, alternatively, they happen to be fixed-rate default service customers, they are paying to provide net metering customers such as DCIDA with windfall profits because of the inflated TOU rates.

C. A Worst Case Scenario

PPL acknowledged that it current has four customer accounts that are Small C&I net metering customers that have selected the TOU rates. Transcript, at 12, lines 21-22. DCIDA is one of those four customers. *Id.*, at lines 23-24.

However, what if more Small C&I customers choose to take advantage of this "gaping tariff loophole." OSBA Statement No. 2, at 2. Mr. Knecht explored the ramifications of that scenario:

At May 2013, the annual Small C&I net generation purchased by PPL Electric was approximately 19 GWh. At current rates, PPL Electric will purchase net generation from Small C&I TOU customers at 12.90 cents per kWh, while purchasing net generation from Small C&I fixed customers at 9.571 cents per kWh, a subsidy of (at least) 3.3 cents per kWh. At the historical net generation levels of 19 GWh, that differential results in a subsidy to net generators from Small C&I default service customers of approximately \$625,000 per year. These subsidies will vary as a result of a number of factors, but they will generally increase as the overall level of net generation increases.

OSBA Statement No. 2, at 2.

To quote Chairman Powelson, this situation remains a debacle, with the potential of only getting worse.

The OSBA respectfully submits that the ALJs and the Commission must act quickly and decisively to both terminate PPL's current absurd TOU rates, and to eliminate the opportunity

for net metering customers to take advantage of the high TOU rates to reap a profit on the backs of the Small C&I default service customers.

D. PPL's Proposal Solves the Problems

In its filing in this proceeding, PPL proposes to adopt a different approach to providing TOU service:

As encouraged by the Commission in the January 24 Order, the Company will provide a TOU rate option to customers in its tariff, but will rely on the retail market and EGSs to provide actual TOU service to customers.

PPL August 23rd Petition, at 9.

Because the new TOU program will be offered through EGSs, the OSBA is confident that the rates will reflect market prices.³

Moreover, the Company proposes to terminate the flawed existing program.

Customers currently receiving service under PPL Electric's existing TOU rate option may move directly to the Pilot TOU program, if the customer chooses to participate. However, if a current TOU customer does not choose to participate in the Pilot TOU program and does not choose to participate in an EGS's TOU rate option, within a specified time frame, the customer will be returned to PPL Electric's fixed price default service.

(Petition at 15)

Thus, the Company's proposal will eliminate the above market TOU rates that some customers continue to pay, and return them to fixed rate default service, or allow them to choose what will almost certainly be much better options from the EGSs.

Moreover, even if no EGSs decide to participate in the program, PPL has proposed a contingency plan. Under the Company's proposal, TOU rates would be set "around" the fixed

³ The parties to this proceeding generally agree that the Company's proposal to use EGSs to meet the TOU obligation is reasonable. Witnesses for the Office of Consumer Advocate ("OCA") recommended that the EGS programs be encumbered with a variety of needless rules and obligations. As explained by Mr. Knecht, these rules will serve to reduce EGS flexibility and discourage EGSs from participating. OSBA Statement No. 1, at 7.

default service rates, with a percentage markup for on-peak periods and a percentage reduction for off-peak periods.⁴ Because the rates would be linked to the fixed default service rates, the Company's contingency plan would avoid the problems of the existing rates, namely the inability of the calculations to produce sensible results and the large differences between TOU and regular fixed default service rates. OSBA Statement No. 1, at 3-4. Thus this mechanism would also stop the bleeding from Small C&I customers currently on TOU service, since the rates would be consistent with the fixed default service rates.

With respect to the issue of net metering customers on TOU service, the Company's basic proposal is to allow net metering customers who wish to take TOU service to negotiate rates for excess generation with the EGSs who provide the TOU service. OSBA Statement No. 1, at 9. This would obviously fix the problem for the Small C&I default service customers, because they would no longer be obligated to purchase the excess generation at excessive rates. Moreover, even under the Company's contingency plan, the prices paid for excess generation at the TOU rates would be virtually identical to the prices paid under regular fixed rate default service. OSBA Statement No. 1, at 3. Thus, both the basic PPL proposal and the contingency proposal resolve the inequities of the current approach.

Regarding the service to net metering customers, DCIDA witness Mr. Memmi at least implied that PPL would not be meeting its legal obligations to offer TOU service to net metering customers, if it required them to negotiate with EGSs. PPL responded to that complaint by

⁴ Both OCA and the Sustainable Energy Fund ("SEF") oppose the Company's contingency plan, and offer their own alternative versions. The OSBA respectfully submits that either of these proposals will result in more complexity and more needless delay, thereby further extending the lifespan of the current nonsensical rates. OSBA Statement No. 1, at 7-8. Moreover, as OCA witness Mr. Hahn indicated, the OCA proposal applies only to the residential class, and is therefore irrelevant to Small C&I customers. OCA Statement No. 1-S, at 8. Further, as detailed by Mr. Knecht, the contingency plan offered by SEF witness Mr. Costlow is not clearly detailed and would require a long time to implement. OSBA Statement No. 1, at 7-8. The OSBA therefore concludes that the Company's proposal is substantially superior to the alternatives.

asserting that its proposal was consistent with its legal obligations.⁵ PPL Statement No. 2-RJ, at

2. However, PPL offered an alternative proposal to provide TOU rates to net metering customers. Specifically, PPL witness James M. Rouland offered the following proposal:

PPL Electric proposes that an alternative TOU option be offered to net metering customers, should they wish to participate in a TOU program but are unable to find a participating EGS that will offer them a TOU rate. To address this concern, the Company proposes to implement a special net metering TOU rate, which is available only to customer-generators who otherwise qualify for net metering under the Company's tariff and PUC regulations.

PPL Statement No. 2-RJ, at 2-3.

The Company's alternative TOU proposal for net metering customers would include the following features:

The TOU offering will be a summer-only program and have a summer on-peak period of 2 p.m. to 6 p.m., Monday through Friday, excluding PJM holidays during the summer (*i.e.*, June, July, and August). All other hours during the summer period will be defined as the off-peak hours.

The rate during the summer peak period will be the then current Price-to-Compare with an adder of 100%.

The rate during the summer non-peak period will be the then current Price-to-Compare with a discount of 13%.

During the non-summer months, the rate will be the then current Price-to-Compare.

The proposed separate TOU offering for net metering customers will end on May 31, 2015.

PPL Statement No. 2-RJ, at 3.

Because this proposal was offered in rejoinder testimony, the OSBA had no opportunity to address the proposal in expert testimony. Nevertheless, the OSBA does not oppose the

⁵ OSBA expects that PPL will address the legal issues in its Main Brief, and the OSBA will respond as necessary in its Reply Brief.

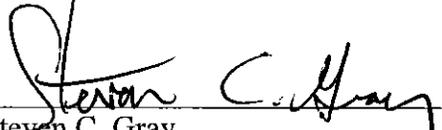
Company's alternative PPL TOU proposal for net metering customers. As Mr. Rouland describes it, the proposal is similar to the Company's contingency plan for TOU service, in that it involves rates that are specifically linked to the regular fixed default service rate, with a percentage premium for on-peak periods and a percentage discount for off-peak. Moreover, as Mr. Rouland indicated, the premium and discount rates are calculated to produce revenue neutrality. PPL Statement No. 2-RJ, at 6. Thus, the rates paid for excess generation under the Company's alternative TOU proposal will be essentially the same as rates paid under the regular fixed default service rate. As such, the Company's alternative resolves the problem of excessive payment for excess generation from net metering customers.

IV. Conclusion

Wherefore, the OSBA respectfully requests that the ALJs and the Commission:

- (a) Terminate the existing TOU program for PPL's Small C&I customers on the day that the Commission's Order is entered in this case;
- (b) Adopt PPL's proposed TOU program in its entirety; and
- (c) To the extent that the Commission deems it necessary to provide a specific TOU rate for net metering customers, adopt PPL's alternative proposal advanced in its rejoinder testimony.

Respectfully submitted,



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Dated: March 21, 2014

Proposed Findings of Fact

1) PPL's current TOU rates for the Company's Small Commercial and Industrial ("Small C&I") customers continue to be excessively high, are not based on any relevant market prices, are not based on any relevant cost calculations, and are not just and reasonable. OSBA Statement No. 1, at 4.

2) Since the middle of 2011, the Company's on-peak TOU GSC-1 rate for Small C&I customers has been 15.389 cents per kWh, and the off-peak TOU GSC-1 rate has been 11.588 cents per kWh. OSBA Statement No. 1, at 4.

3) The current excessive Small C&I TOU rates allow net metering customers to earn revenues for their excess generation at rates which substantially exceed market prices. OSBA Statement No. 1, at 9.

4) When a net metering customer is taking service under the current TOU rates, Small C&I default service customers are obligated to pay above market prices for that net metering customer's excess generation. OSBA Statement No. 1, at 10.

5) If more net metering customers choose to take service under PPL's current TOU rates, the Small C&I default service customers will be obligated to pay an increasingly larger bill for the net metering customers' excess generation.

Proposed Conclusions of Law

- 1) All rates charged by PPL must be just and reasonable. 66 Pa. C.S. § 1301.
- 2) Because PPL's current Small C&I TOU rate is not just and reasonable, PPL is not compliant with its legal obligations. Terminating the Small C&I TOU rate at the earliest opportunity will not make it any less compliant.
- 3) The ability of Small C&I net metering customers to earn above-market prices for their excess generation under the existing flawed TOU rates does not create a legal entitlement for the continuation of such discriminatory treatment.

Proposed Ordering Paragraphs

IT IS RECOMMENDED:

- 1) That PPL's existing TOU program for the Company's Small C&I customers shall be terminated on the day that the Commission's Order is entered in this proceeding.
- 2) That PPL's proposed TOU program for Small C&I customers shall be approved in its entirety.