

*Please reply to Harrisburg Office

March 21, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time
of Use Program P-2013-2389572

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief of DCIDA for the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Very Truly Yours,

SALZMANN HUGHES, P.C.



Scott T. Wyland

STW/smk
Enclosures

cc: Certificate of Service

Concentrating in Environmental, Land Use, Municipal, Real Estate, Corporate, Estate Planning and Administration, and General Civil Litigation

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CERTIFICATE OF SERVICE
(Docket No. P-2013-2389572)

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated this 21st day of March, 2014



Scott T. Wyland

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
For Approval of a New Pilot Tim-of Use : P-2013-2389572
Program :

**MAIN BRIEF OF THE
DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**

I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or “PPL”) petitions the Pennsylvania Public Utility Commission (“Commission”) for approval of a new Pilot Time-of-Use (“TOU”) Program (the “Pilot Program” or “Pilot”). Under the Pilot, PPL, an electric distribution company (“EDC”), will discontinue its current TOU rate option and will rely on retail electric generation suppliers (“EGS”) to provide a TOU rate option to customers. The Dauphin County Industrial Development Authority (“DCIDA”) operates a solar generation facility that is a net-metered PPL Electric customer with a TOU rate. DCIDA intervened in this proceeding to contest PPL’s petition and now files this brief opposing the Pilot.

The law requires PPL to offer both net-metered service and a TOU rate to DCIDA. This requirement is mandatory and the Commission has previously held that PPL may not exclude net-metered users from its TOU rate option. PPL’s Pilot proposes precisely that. PPL seeks to divest itself of its obligation to offer TOU service and to have that service provided to customers through EGSs. While PPL is required to offer TOU service to net-metered customer-generators, EGSs have no legal obligation to provide net-metered service. Accordingly, the Pilot forces DCIDA to choose between net-metered service with PPL at the fixed-price default service rate or to follow the TOU rate to an EGS that does not offer net-metering. This scheme fails to satisfy PPL’s legal obligations related to offering net-metered service with TOU rates. PPL cannot ignore the law’s mandate because it is easier, more convenient, or more economically favorable to use a non-compliant proposed framework.

II. STATEMENT OF THE CASE

A. DCIDA’s Solar Project

In 2009, DCIDA began the planning and development process to construct a solar energy farm (the “Solar Project” or “Solar Facility”) in Dauphin County, Pennsylvania. *See* DCIDA Stat. No. 1, pp. 3-4. DCIDA built the Solar Facility in two phases. In October 2011, it completed and began operating Phase I, which had approximately one megawatt (“MW”) of generating capacity. It completed and began operating Phase II in October 2013. Phase II added approximately one MW of generating capacity to the facility, which now has slightly more than two MW of generating capacity. *See* DCIDA Stat. No. 1, p. 3-4; N.T. 39-40.

In building the Solar Facility, DCIDA sought to advance green energy generation and to position Dauphin County as a leader in the investment in and growth of alternative energy generation sources in the Commonwealth. *See* DCIDA Stat. No. 1, p. 4. DCIDA intended that the Solar Project would offer a power source for the County’s emergency management systems in the case of a disaster. The Solar Facility is, therefore, capable of connecting to the County’s mobile emergency management unit. *See* DCIDA Stat. No. 1, p. 5; N.T. 40-41.

Additionally, the Solar Facility operates in parallel with the electric utility grid. DCIDA recognized that the Solar Project, thereby, offered it a unique source of revenue. *See* DCIDA Stat. No. 1, pp. 3, 5, 6; N.T. 39-40. DCIDA understood that PPL would credit and compensate it for the Solar Farm’s excess generation in compliance with applicable law and PPL’s tariff. DCIDA believed that it could derive revenue from this system, allowing it to service any debt associated with the project and ultimately to facilitate DCIDA’s public mission of fostering community and economic development. *See* DCIDA Stat. No. 1, pp. 5, 6. DCIDA invested \$8.5 million in the Solar Project, incurring approximately \$2.5 million in debt in the process. *See* DCIDA Stat. No. 1, p. 4. DCIDA anticipates a ten to eleven year payoff period for the debt. *See* DCIDA Stat. No. 1, p. 8.

B. DCIDA's Current Terms of Service With PPL

Since October 2011, DCIDA has taken net-metered service from PPL. *See* DCIDA Stat. No. 1, p. 3; PPL Stat. No. 2-R, p. 18; N.T. 41. In April 2013, DCIDA elected to take PPL's TOU rate option as a net-metered customer, rather than net-metering with a fixed-price default service rate. PPL Stat. No. 2-R, p. 19; N.T. 41. As a net-metered customer, DCIDA offsets its on-site power consumption from PPL with the kilowatt-hours (kWh) of power that the Solar Facility generates, pursuant to PPL's tariff. *See* DCIDA Stat. No. 1, p. 3.

The Company's current net-metering tariff provides:

1. The customer-generator will receive a credit for each kilowatt-hour received by the Company up to the total amount of electricity delivered to the Customer by the Company during the billing period at the full retail rate consistent with Commission regulations. If a customer generator supplies more electricity to the Company than the Company delivers to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator's usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours will continue to accumulate until the end of the PJM planning period ending May 31 of each year. On an annual basis consistent with the PJM planning period, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by Company to the customer-generator during the preceding year at the Company's Rate Schedule Price To Compare consistent with Commission regulations. For eligible customer-generators with a TOU rate provision, a weighted average of the on-peak and off-peak hours will be used to derive the Company's Price To Compare for that Rate Schedule. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
2. If the Company supplies more kilowatt-hours of electricity than the customer-generator facility feeds back to the Company's system during the billing period, all charges of the appropriate rate schedule shall be applied to the net kilowatt-hours of electricity that the Company supplied. The customer-generator

is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.

PPL Electric Stat. No. 2-R, pp. 13-14; Exhibit JMR-5. DCIDA, therefore, receives credit from PPL for each kWh of power that it delivers to PPL, up to the total electricity PPL supplied during a billing period. *See* DCIDA Stat. No. 1, pp. 3, 6; PPL Electric Stat. No. 2-R, p. 14; N.T. 41.

PPL carries any excess generation forward and credits DCIDA's usage in subsequent billing periods. Excess kWh of power continue to accrue until May 31 each year, at which time PPL "cashes out" DCIDA for accumulated excess generation in the prior year at PPL's then current rate schedule Price-to-Compare. *See* DCIDA Stat. No. 1, p. 3, 6.¹ Currently, the fixed GSC-1 rate for Small Commercial and Industrial ("Small C&I") customers is 8.441 cents per kWh. *See* OSBA Stat. No. 1, p. 4. This would be the Price-to-Compare for cash-out purposes if DCIDA were a net-metered customer taking fixed-price default service.

DCIDA, however, is a net-metered customer that elected PPL's TOU rate. Under PPL's present TOU rate option for Small C&I customers, PPL charges DCIDA different rates for electricity consumed during on-peak and off-peak hours, as determined in PPL's Commission-approved tariff. *See* DCIDA Stat. No. 1, p. 3. Electing this rate affects PPL's calculation of the Price-to-Compare for the annual cash-out of excess generation. For customers who take PPL's TOU rate, at issue here, PPL derives the Price-to-Compare from a weighted average of the number of on-peak and off-peak hours in a given year. *See* PPL Stat. No. 2-R, p. 14.

PPL illustrated its weighted average adjustment as shown on DCIDA Exhibit 3 (DCIDA Interrogatories Set I, Q. 4). PPL determined that 35% of the hours in the year are on-peak and 65% are off. Applying this weighting factor to the current on-peak rate of 15.389 cts/kWh and current off-peak rate of 11.588 cts/kWh, PPL calculates the Price-to-Compare for net-metered

¹ PPL has, to date, paid DCIDA in excess of \$150,000 in compensation for excess kWh of power. *See* DCIDA Stat. No. 1, p. 7. For those payments, DCIDA was primarily a net-metered user with a fixed-price default service rate.

TOU customers at approximately 13.736 cts/kWh. *See* DCIDA Exhibit 3; N.T. 15. James Rouland, PPL's expert witness explained, "a rate isn't necessarily applied, meaning that if a facility would generate 90 percent of its excess generation in on-peak hours it would get something like 15 cents, that isn't applied in this case." N.T. 16. This means that determination of the weighted average for the Price-to-Compare does not account for the actual period of production when excess generation was delivered to PPL or, as Robert Knecht, expert witness for the Office of Small Business Advocate ("OSBA") observed, this cash-out framework does not have a TOU component. N.T. 29.

The ability to recover costs and derive revenue for its public projects significantly incentivized DCIDA's investment in the Solar Project. *See* DCIDA Stat. No. 1, p. 5. Additionally, DCIDA recognized that it was entitled to take PPL's TOU rate and would increase its amount of cash-out compensation. DCIDA responded as any other logical consumer would and elected to take the TOU rate. N.T. 25. The ability to take this rate was an opportunity in line with the general purpose and goals of the Solar Project. In short, DCIDA chose to be a net-metered user with a TOU rate because it is the means best suited to achieve DCIDA's goals with the Solar Project.

While DCIDA benefits from the sale of its excess generation, as explained above, PPL also realizes benefits from DCIDA's power production. PPL charges customers in DCIDA's rate class on-peak prices that are higher than it pays DCIDA per kWh for the power it receives from the Solar Facility. N.T. 28-29. DCIDA's supply provides a backup to PPL's system and in the event it ever became necessary for PPL to buy power at spot market prices, PPL would be able to offset that cost using the cheaper power DCIDA generates. N.T. 27. Finally, to the extent

DCIDA's generates power that services local demand, this is less costly to PPL and involves less loss of energy than would be involved in PPL transmitting power over long distances. N.T. 35.

C. PPL's Proposed Pilot Time-of-Use Program

On August 22, 2013, PPL filed the instant Petition for Approval of a New Pilot Time-of-Use Program for Residential and Small C&I customers. In relevant part, PPL seeks Commission approval of its Pilot Program, in which PPL proposes to rely on the retail market and EGSs to provide TOU service. PPL Petition at 9. In short PPL proposes to no longer offer the TOU rate itself, but intends to try to shift that service to participating EGSs.

EGSs must elect to participate in the program and PPL has offered a contingency plan if no EGS elects to participate. PPL Petition at 9-10. The success of the Pilot, therefore, is based in significant part on EGS's willingness to participate. To be eligible to participate, an EGS must, *inter alia*, provide a TOU rate option to Residential and/or Small C&I customers from the initiation of the Pilot through to May 31, 2015. PPL Petition at 10. The participating EGS will define its contract terms, subject to certain restrictions, with its TOU customers. PPL Petition at 10-11. The EGS will define the on- and off-peak hours and rates for TOU customers. PPL Petition at 10-11. PPL's Petition proposes no eligibility criteria requiring an EGS to offer net-metering service together with a TOU rate and PPL will not allow incumbent net-metered customers to remain on their current TOU rate with PPL.

Customers, for their part, must also volunteer to participate and will pick whichever EGS option the customer desires. PPL Petition at 12. PPL will treat customers, including net-metered customers, who volunteer to participate in an EGS's rate option under the Pilot TOU program as shopping customers and the rules applicable to shopping customers apply to them. PPL Petition at 13. This means that the customer's TOU rate, on-peak and off-peak hours, and credit or

compensation terms for excess power will be governed by the terms of a contract between the EGS and the customer. PPL Statement 2-R, p. 15 (citing Supplement No. 125 to Electric Pa. P.U.C. No. 201, Second Revised Page 19L.4A); PPL Petition at 13. If a current customer, including a net-metered customer, with a TOU rate declines to elect an EGS offering, the customer will revert to PPL's fixed price default service. PPL Petition at 15; PPL Stat. No. 2-R, p. 15.

If no EGS elects to participate, PPL's contingency plan goes into effect. The contingency plan involves PPL maintaining a TOU rate offering, but on different terms than the present rate. For Small C&I Customers, the on-peak rate applies during the hours of 7 a.m. through 7 p.m., Monday through Friday, excluding weekends and PJM holidays. PPL Petition at 17-18; PPL Stat. No. 2, p. 4. The on-peak rate will be determined by a fifteen percent adder to the then current PPL fixed-price GSC-1 rates. PPL Petition at 17-18; PPL Stat. No. 2, p. 5. The off-peak rate will be calculated by applying an eight percent discount to the then current GSC-1 rate. PPL Stat. No. 2, p. 5.

PPL justifies the Pilot proposal on the grounds that it is in the public interest and will resolve the various issues historically plaguing prior efforts at establishing a viable TOU rate (e.g., under-collections). DCIDA petitioned to intervene in this matter on October 17, 2013, to oppose PPL's Petition. The Commission granted intervention at a hearing on October 21, 2013. The parties submitted written testimony and an evidentiary hearing was held on February 26, 2014, before Administrative Law Judges Susan Colwell and Joel Cheskis.

III. SUMMARY OF THE ARGUMENT

PPL must offer both net-metered service and a TOU rate to DCIDA pursuant to statutory and regulatory mandates, and consistent with the Commission's own prior holding that PPL may

not exclude net-metered users from its TOU rate option. PPL's Pilot proposes to satisfy its TOU offering requirement by having TOU service provided through EGSs. While PPL is legally required to offer TOU rates to net-metered customer-generators, EGSs have no obligation or incentive to provide net-metered service. Accordingly, under the Pilot, DCIDA must choose either net-metered service with PPL at the fixed-price default service rate or a TOU rate from an EGS that does not offer net-metering. Consequently, the Pilot fails to satisfy PPL's legal duties related to providing net-metered service with TOU rates.

Additionally, the Pilot proposal contravenes the principles embodied in the AEPS Act, i.e., to encourage the development and deployment of alternative energy resources. PPL seeks to lower the rates that it pays to DCIDA for DCIDA's excess generation after DCIDA has incurred \$2.5 million in public debt in developing its Solar Facility in reliance on the Commonwealth's incentives to encourage the project. The Pilot would take away the means best suited to achieving DCIDA's goals of paying off its debt in the most expeditious manner and deriving revenue to fund its public projects.

Finally, the methodology that PPL uses to determine the Price-to-Compare for TOU customers during the annual cash-out period is suspect in light of the Commission's own prior statements about the required level of compensation. PPL applies a weighting factor to on-peak and off-peak rates that does not consider the time in which DCIDA actually generates and delivers its power to the grid. This compensation structure has no real TOU component and seems to contravene the principles of the AEPS Act and the Commission's regulations. It may even result in a recovery lower than the Price-to-Compare under PPL's proposed contingency plan if the Pilot fails.

Accordingly, DCIDA respectfully submits that the Commission should reject PPL's Pilot and contingency plan, to the extent that the program conflicts with the plain language and intent of the applicable laws and regulations.

IV. ARGUMENT

A. PPL Electric has a legal obligation to provide a TOU rate option to DCIDA, a net-metered PPL customer.

PPL, as an EDC, has a legal obligation to offer a TOU rate option to its net-metered customers including DCIDA. Under PPL's proposed Pilot Program, however, DCIDA will no longer be able to take net-metered service with a TOU rate. The Commission, therefore, should deny PPL's Petition to the extent it conflicts with applicable law and contravenes the Commonwealth's general policies.

i. Net-Metering

The Alternative Energy Portfolio Standards Act ("AEPS Act"), 73 P.S. §§ 1648.1 – 1648.8, and the Commission's regulations, require EDCs to offer net-metered service to customer-generators. *See* 73 P.S. § 1648.5. "Customer-generators" are operators of net-metered distributed generation systems that operate in parallel with the electric utility grid. *See* 73 P.S. § 1648.2. Under the AEPS Act, "Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." 73 P.S. § 1648.5. The statute tasks the Commission with developing "technical and net metering interconnection rules for customer-generators intending to operate renewable onsite generators in parallel with the electric utility grid" *Id.*

According to Commission regulations issued under the AEPS Act, EDCs must offer net-metered service to customer-generators, while EGSs may offer such service. In relevant part, the regulations state:

EDCs *shall* offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter EGSs *may* offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs.

52 Pa.Code § 75.13(a) (emphasis added). EDCs are obliged to file a tariff providing for net-metering, but the tariff also shall include net-metering protocols enabling EGSs to offer net-metering to customer-generators that choose to take service from an EGS. *See* 52 Pa.Code § 75.13(b).

EDCs must credit a customer-generator at the full retail rate for the kWh of power produced on the customer-generator's side of the meter up to the total amount of electricity used by that customer during the billing period. Excess kWh accumulate until the end of the year. 52 Pa.Code § 75.13(c). Annually, the EDC must compensate the customer-generator for the accumulated excess generation at the EDC's Price-to-Compare. *See* 52 Pa.Code § 75.13(d). An EGS that offers net metering will define the credit or compensation terms for excess generation in its service contract with the customer-generator. *See* 52 Pa.Code § 75.13(e). As a customer-generator operating in parallel with the utility grid, DCIDA is entitled to net-metered service with PPL.

ii. Time-of-Use Rates

EDCs must also offer TOU rates and net-metered customers must be able to elect the TOU rate. Act 129 of 2008 required, *inter alia*, adoption of smart meter technology and TOU rates. Under Act 129, EDCs were required to offer TOU rates to default service customers. The statute provides:

By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates

and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider *shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology* under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. 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) (emphasis added). Accordingly, PPL must offer a TOU rate option to its customers.

iii. PPL's Obligation to Offer Net-Metered Service With a TOU Rate

Based upon the above-stated principles, PPL, as an EDC, must provide net-metered service and must provide a TOU rate. The statutory and regulatory language makes no exceptions. These are mandatory requirements and PPL cannot exclude DCIDA from either service. The Commission itself has read these legal frameworks together and arrived at the same conclusion.

In *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order Entered March 9, 2010), the Commission's Opinion and Order approving PPL's initial TOU program, the Commission held that Section 2807(f)(5) prohibited PPL from excluding net-metering customers from its proposed, optional TOU rate. PPL maintained that it would be inconsistent to charge net-metering customers TOU rates and that the provisions of PPL's net-metering tariff "simply [did] not conform to the TOU rate concept." *PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 at 21. The Commission held that it was contrary to Section 2807(f)(5), quoted above, for PPL to exclude net-metering customers because the legislature's use of the term "shall" and the lack of any exceptions to the provision's requirement made it "mandatory, not discretionary." *Id.* at 22.

Here, PPL must likewise comply with both legal obligations with respect to DCIDA. When it comes to PPL proposing a new TOU rate option, PPL must proffer a Pilot that remains in accordance with these mandates.

- B. PPL's Pilot Program fails to comply with its legal obligation to provide both net-metered service and a TOU rate to DCIDA.

PPL is not offering a legally viable program. While PPL contends that the Pilot is its means of complying with its obligation to provide a TOU rate, the Pilot conflicts with applicable law by divesting DCIDA, a net-metered PPL customer, of its TOU rate. Under the Pilot, PPL will maintain net-metered service, but only at the fixed-price default service rate, not the TOU rate. If DCIDA desires to continue with a TOU rate, it must elect to take service from an EGS. PPL Petition at 12-13. As noted above, whereas EDCs must offer net-metered service, EGSs have no similar legal obligation nor is there any incentive for them to do so.

It is telling that PPL did not propose and expressly refused to support including any eligibility criteria for EGS in the Pilot that would require the EGS to offer net-metering together with a TOU rate. *See generally* PPL Petition. Indeed, PPL agreed with testimony from the Sustainable Energy Fund and concluded that “requiring EGSs to provide net metering in order to participate in the Pilot . . . could create a barrier to participation that would jeopardize the program.” PPL Stat. No. 2-R, p. 16. PPL’s reasoning proves DCIDA’s point. EGSs have no incentive to offer net-metered service, much less providing net-metered service with the TOU rate.

The Pilot, therefore, forces DCIDA to pick either PPL’s net-metered service at the fixed price default service rate or whatever TOU rate it can negotiate with an EGS. The Pilot does not ensure that PPL or a participating EGS would purchase DCIDA’s excess generation if DCIDA wanted to keep a TOU rate. Moreover, even if an EGS did offer net-metering, which is doubtful,

DCIDA would have to negotiate the compensation rate with the EGS. This “pick one or the other” scenario is not what the law requires. Effectively, PPL is once again trying to exclude DCIDA, a net-metered customer, from a TOU rate. The Commission has already held that PPL may not do that and the applicable statutes and regulations do not allow it under their plain terms.

PPL seems to appeal to the Commission on the basis of convenience or ease in developing a TOU program, suggesting that its economic difficulties in framing a TOU program that it prefers is a valid basis for releasing it from its legal obligation to provide net-metered service and TOU rates, together. To the extent PPL wants relief from the relevant statutory constraints, its remedy lies with the General Assembly, not the Commission. Legislative action would be needed to change the applicable statutory provisions from mandates to discretionary options.

Additionally, despite PPL’s contention to the contrary, PPL benefits from DCIDA’s project because it can sell power to other ratepayers at a higher rate than the one under which it compensates DCIDA. Moreover, there are benefits to PPL’s system where DCIDA provides back-up and services local load demand. N.T. 27-29, 35. Similarly, OSBA bemoans the lot of its small business constituents, arguing that they suffer increased rates because PPL must compensate DCIDA for excess generation. *See* OSBA Stat. No. 1, p. 6; N.T. 31-32. OSBA’s expert, however, could not point to any study or calculation quantifying the impact on small business’s bills, acknowledging the effect of DCIDA’s compensation on a business’s monthly rate to be “tiny, if even measurable.” N.T. 32-34. Like PPL, OSBA’s complaints are better targeted to legislative change.

Finally, PPL contends that the Commission has concluded that PPL may use an EGS to satisfy its TOU rate requirement. PPL relies on the Commission's January 24, 2013 Order in *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074, asserting that the Commission explained that Act 129 does not prohibit an EDC from using an EGS to satisfy the TOU requirement. Despite another party's urging in that case, PPL took the position that it could not lawfully bid out its TOU rate to EGS, i.e., making a TOU rate available to the EDC's customer without the EDC itself offering the rate. Accordingly, it filed a TOU rate, which did not include using EGSs to supply TOU service. The Commission rejected the as-filed TOU proposal on other grounds.

After rejecting PPL's as-filed plan, the Commission commented upon the other party's proposal and suggested that it did not believe that Act 129 prohibited a default service provider from using EGSs to satisfy its TOU requirement. See January 24 Order, at 115. The Commission encouraged PPL to give further consideration to this proposal, which PPL now seems to suggest was the impetus for the Pilot's structure. In making that statement, the Commission relied on its order in *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011) (*December 16 Upcoming DSP Order*), where it had recommended, but not mandated, that EDCs "contemplate contracting with an EGS in order to satisfy their TOU requirement." Likewise, the Commission also referred to a prior order in a PECO proceeding, noting that PECO was on its way to successfully integrating the EGS model. See *id.* (citing *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered September 26, 2012)).

None of the Commission's prior commentary regarding EDCs using EGS to satisfy the TOU rate obligation addressed the impact on net-metered customers or how an EDC might fall out of compliance with the law by bidding out the TOU rate obligation. The Commission did not state, expressly or impliedly, that EDCs could contract with EGSs for the provision of TOU while sacrificing statutorily mandated net-metered service customers who presently take and want to continue receiving the TOU rate. Conversely, the Commission squarely dealt with that question in *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order Entered March 9, 2010), discussed above, and concluded that TOU rates must be available to net-metered customers.

Additionally, DCIDA respectfully submits that the conclusion that an EDC can simply contract out the TOU rate to an EGS without regard to satisfying all of its legal obligations with respect to all ratepayers contravenes the plain language of the governing statutes and regulations. Specifically, if the legislature meant for net-metering and TOU rates to be discretionary, it would have crafted the statutes accordingly. Similarly, the Commission's own regulations and at least one Commission decision correctly recognize the mandatory nature of the requirements. The Commission should not encourage or permit PPL to use an EGS to satisfy its TOU obligation unless PPL retains incumbent net-metered TOU ratepayers under its current rate provisions or requires that EGSs offer net-metering with their TOU rates as an eligibility condition for the Pilot. If EDCs will be allowed to contract out TOU service to EGSs, the EDC must somehow provide the TOU service to net-metered customers, either by itself maintaining such a program or requiring the contracting EGS to offer net-metered service with the TOU rate offering.

Presently, PPL's Commission-approved tariff provides DCIDA net-metered service with a TOU rate option. Indeed, the tariff contemplates net-metered customers taking part in a TOU

rate by specifically addressing the calculation to determine PPL's Price-to-Compare for cashing out such customers. DCIDA currently participates in both, but will no longer be able to do so if the Commission grants PPL's Petition. PPL's proposal, therefore, conflicts with the plain language of the applicable statutes and regulations, and the Commission has already interpreted those requirements to prohibit PPL from excluding a net-metered customer from a TOU rate. Without some legislative change, the Commission should strictly construe the law's plain mandates and deny PPL's Petition.

C. PPL's Pilot TOU Program conflicts with the policy embodied in the Alternative Energy Portfolio Standards Act.

PPL's Pilot is also not aligned with the intent of the AEPS Act and the general policies of the Commonwealth. The "clear intent" of the AEPS Act is to "encourage[] research, development and deployment of alternative energy systems." Implementation of Act 35 of 2007; Net Metering an Interconnection, L-00050174, Final Omitted Rulemaking Order, at p. 18. In amending 52 Pa.Code § 75.13 of the regulations to conform to certain amendments to the AEPS Act, the Commission noted that customer-generators, like DCIDA, must receive annual compensation for their excess generation in a manner that facilitates that purpose. DCIDA invested significant funds and incurred \$2.5 million in public debt in developing and deploying the Solar Project and is justified in expecting a return on that investment that will enable it to better perform its public functions.

PPL's Pilot deprives DCIDA of its presently best-suited means to achieve its public goals, i.e., being a net-metered customer with a TOU rate. This reduces the incentive and discourages continued investment in alternative energy systems. DCIDA and similarly situated entities will hesitate to invest in renewable resources where a utility can simply obliterate their expectation of a return on investment. Here, DCIDA will be left to negotiate with an EGS if it

wants a TOU rate. EGSs are not obligated to offer net-metering and may set the TOU rate in any way they desire. Accordingly, to keep a TOU rate, DCIDA may have to accept a TOU rate that constitutes a disincentive to growth, rather than an encouragement to the development and deployment of renewable resources. PPL should be doing less to discourage growth and more to encourage it.

DCIDA opposes the contingency plan in PPL's Petition for similar reasons. While it would appear to comply with the law by offering net-metered service with a TOU rate, it is possible, as OSBA's expert observed, that because of the manner in which PPL determines the cash-out Price-to-Compare for TOU customers, DCIDA would be paid less than the Price-to-Compare for its excess generation. OSBA Stat. No. 1, p. 10. Not only is this a nonsensical result, but it raises the question of whether PPL's current means of calculating the Price-to-Compare for cash out is valid.²

In its Final Omitted Rulemaking amending the relevant provisions of the net-metering regulations, the Commission recognized that an EDC's retail generation and transmission rates fluctuate during a given year and that the compensation should be calculated by using a "weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC." Implementation of Act 35 of 2007; Net Metering an Interconnection, L-00050174, Final Omitted Rulemaking Order, at p. 20. Moreover, "[i]f the . . . rate designs incorporate time of use rates, the weighted average rates should reflect *the rates in effect during the time that the customer-generator delivered its generation to the EDC.*" *Id.* at p. 21 (emphasis added).

² DCIDA is considering pursuing a complaint against PPL to ensure that DCIDA has not been and will not be under-compensated for its excess power generation because of PPL's methodology for calculating the cash-out price. Nevertheless, the Commission should still consider the legal sufficiency of PPL's calculation framework in this proceeding because it relates to the validity of PPL's proposed contingency plan.

As shown on DCIDA Exhibit 3 and as PPL's witness Mr. Rouland discussed at hearing, PPL's compensation to DCIDA does not account for the actual time that DCIDA, as a solar facility, delivers power to the grid. Solar Facilities, by their very nature, generate and deliver almost all of their power to the grid during peak daylight hours. PPL's weighted-average calculation does not account for that fact. Rather it is a weighted average based simply on the number of on-peak and off-peak hours in a given year. This does not equate to the "rates in effect during the time that [DCIDA] deliver[s] its generation" to PPL. Accordingly, PPL's present compensation scheme is suspect with respect to the purpose of the AEPS Act and the Commission's regulations, which would be undermined by PPL's contingency plan.

V. CONCLUSION

Under the Pilot, DCIDA cannot remain a net-metered customer with a TOU rate. If DCIDA would desire to keep a TOU rate it must negotiate the terms of a TOU rate contract with an EGS, an entity without a legal obligation, or any incentive to provide net-metered service. The law is clear; PPL as an EDC has a legal obligation to provide its net-metered customers with a TOU rate. PPL's Pilot specifically contravenes that principle. PPL cannot ignore the law's mandate because it is more convenient or economically favorable to use a non-compliant framework. Moreover, the Pilot contravenes the clear intent of the AEPS Act. DCIDA, therefore, respectfully requests that the Commission issue a decision recommending that the Commission deny PPL's Petition for approval of the Pilot program.

Respectfully Submitted,

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