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March 21, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility 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 - Docket No. P-2013-2389572**

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief of PPL Electric Utilities Corporation for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Matthew J. Agen

MJA/jl
Enclosures

cc: Honorable Susan D. Colwell
Honorable Joel H. Cheskis
Certificate of Service

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

I hereby certify that a true and correct copy of the foregoing 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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Matthew J. Agen

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGES SUSAN D. COLWELL & JOEL CHESKIS

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I. INTRODUCTION

A. SUMMARY AND STATEMENT OF POSITION

This proceeding concerns the Petition filed by PPL Electric Utilities Corporation (“PPL Electric” or “Company”) for the approval of a new Pilot Time-of-Use (“TOU”) Program which will replace the current TOU rates. The parties in this proceeding have reached a partial settlement in principle that resolves all issues in this proceeding, except for certain issues concerning net metering, and this brief addresses the net metering arguments raised by Dauphin County Industrial Development Authority (“DCIDA”). Under the proposed Pilot TOU Program, a net metering customer-generator may choose to participate in the Pilot TOU Program and receive TOU service from an electric generation supplier (“EGS”). The participating customer-generator would be a net metering customer of PPL Electric for distribution purposes; however, the generation component of the service (and any related cash out) would be provided by an EGS. If the customer-generator does not want to participate in the Pilot TOU Program, that net metering customer-generator may elect to receive fixed-price default service.

DCIDA has made several proposals in this proceeding, all of which should be rejected. Initially, DCIDA requested that the existing “frozen” TOU remain in place. The existing TOU rates were only a stopgap measure and must be changed. These rates were implemented on a temporary basis until a new TOU program could be put into place. There is no basis in law or fact to continue the current TOU rates, and DCIDA has offered no reasoned basis for doing so. Alternatively, DCIDA requests that either: (1) EGSs participating in the Pilot TOU Program be required to offer net metering service; or (2) PPL Electric should be required to provide a TOU rate option for net metering customers.

Regarding option (1), as explained below, requiring EGSs to offer a net metering option could be a barrier to EGS participation in the Pilot TOU Program and discourage participation; therefore, it should not be adopted.

Regarding option (2), PPL Electric does offer a TOU option for net metering customers. Net metering customers who sign up for the Pilot TOU program will continue to receive net metering service from PPL Electric for their distribution service. With respect to generation service, they will be treated as shopping customers and, in accordance with Pennsylvania Public Utility Commission (“Commission”) regulations, will be able to negotiate net metering for generation service with their EGS to the extent available. This fully complies with all applicable statutory and regulatory requirements and is fully consistent with existing Commission regulations for shopping customers.

Alternatively, if the Administrative Law Judges (“ALJs”) and the Commission do not believe that PPL Electric’s proposal is sufficient, PPL Electric presented an alternative proposal in its rejoinder testimony that provides a TOU option for generation cash out by net metering customers. No party, including DCIDA, has objected to or proposed any modification to PPL Electric’s alternative proposal, which would fully satisfy DCIDA’s option (2).

B. BACKGROUND INFORMATION AND PROCEDURAL HISTORY

On August 23, 2013, PPL Electric filed a Petition requesting Commission approval of a new Pilot TOU Program, which will replace the currently effective TOU rates. PPL Electric filed its Petition pursuant to 52 Pa. Code § 5.41 and in compliance with the Commission’s Order in *Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket Nos. P-2012-2302074, *et al.* (Order Entered May 23, 2013) (“May 23 Order”), which required the Company to file a new TOU rate proposal on or before August 23, 2013.

Previously, on May 1, 2012, PPL Electric submitted a TOU proposal as part of its Default Service Program and Procurement Plan for the period June 1, 2013 through May 31, 2015 (“DSP 2013-2015”). In its January 24, 2013 Order, in the DSP 2013-2015 proceeding, the Commission approved, with modification, PPL Electric’s default service plan. *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2302074 (Order Entered January 24, 2013) (“January 24 Order”). Regarding TOU rate issues, the Commission did not approve PPL Electric’s as-filed TOU plan or an alternative proposal presented during the DSP 2013-2015 proceeding. In the January 24 Order, the Commission stated that PPL Electric should schedule a collaborative with interested stakeholders to discuss and resolve any issues regarding the development and implementation of a TOU rate option. Pursuant to the January 24 Order, PPL Electric initiated a collaborative and discussions with the parties regarding potential TOU program alternatives.

On March 25, 2013, as part of a compliance filing, PPL Electric requested authority to continue its currently effective TOU rate option until the Commission approves a successor program. The Commission’s May 23 Order approved PPL Electric’s request.

On August 23, 2013, PPL Electric filed its Petition for approval of a new Pilot TOU Program (“August 23, 2013 Petition”). Under the terms of the proposed Pilot TOU Program, the Company would provide a TOU rate option to customers in its tariff, but would rely on the retail market and EGSs to provide TOU service to customers. Retail EGSs that would choose to participate in the Pilot TOU Program would offer TOU rate options and provide the TOU service to customers in PPL Electric’s service territory. PPL Electric’s proposal would become part of the Company’s retail tariff once approved by the Commission. The Company filed a form of

tariff on September 9, 2013, at Docket No. P-2012-2302074, which incorporated the as-filed Pilot TOU Program.

On September 6, 2013, the Sustainable Energy Fund (“SEF”) filed an Answer to the August 23, 2013 Petition. On September 12, 2013, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed an Answer to the August 23, 2013 Petition. On September 12, 2013, the Office of Consumer Advocate (“OCA”) filed an Answer to the August 23, 2013 Petition. The ALJs issued a Prehearing Conference Order on October 4, 2013, scheduling a prehearing conference for this proceeding for October 21, 2013.

On October 17, 2013, DCIDA filed a petition to intervene. Prehearing conference memoranda were submitted by PPL Electric, CAUSE-PA, Direct Energy Services, LLC, DCIDA, FirstEnergy Solutions Corp., Interstate Gas Supply (d/b/a IGS Energy), PPL Industrial Customer Alliance, SEF, OCA, and the Office of Small Business Advocate (“OSBA”). On October 21, 2013, the Initial Prehearing Conference was held. On October 25, 2013, the ALJs issued a Scheduling Order. The parties filed direct, rebuttal, surrebuttal, and rejoinder testimony, as applicable, in accordance with the established litigation schedule.

At the hearing held on February 26, 2014, in this proceeding, the PPL Electric advised the ALJs of a partial settlement in principle that resolves all issues in this proceeding, except for the net metering issue raised by DCIDA.

A separate petition requesting approval of the partial settlement will be submitted, and issues related to the settlement are not addressed in this brief. This brief addresses the net metering issue raised by DCIDA in this proceeding.

II. ARGUMENT

A. LEGAL STANDARDS

1. Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), PPL Electric has the burden of proof in this proceeding:

Except as may be otherwise provided in Section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

It is to be emphasized, however, that the burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). If the Applicants and opposing parties present evidence that is found to be of precisely equal weight, then the Applicants will not have carried their burden of proof. Otherwise, the side that presented evidence found to be more persuasive, even by the slightest amount, will prevail. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). However, a party that offers a proposal not included in the Applicant's filing bears the burden of proof for such proposal. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-00061931, 2007 Pa. P.U.C. LEXIS 45 at *165-68 (Sept. 28, 2007); *Pa. P.U.C. v. Metro. Edison Co.*, Docket No. R-00061366, 2007 Pa. P.U.C. LEXIS 5 at *111-12 (Jan. 11, 2007). As the proponent of a Commission order with respect to its proposals, such party bears the burden of proof as to proposals not included in the filing.

As explained below, the Company has fully met its burden of proof, and its position on the issues presented in this proceeding should be adopted. Moreover, as discussed in detail

below, DCIDA has not satisfied its burden as to the requested modification to the Company's proposal.

2. Standards Applicable to Default TOU Service

Section 2807(f)(5) of the Public Utility Code provides that default service providers must submit one or more TOU rate or real-time price plans to the Commission in their default service plans. 66 Pa. C.S. § 2807(f)(5). Accordingly, PPL Electric is required to offer a TOU rate option to its default service customers. January 24 Order, p. 92. PPL Electric submitted the August 23, 2013 Petition and the proposed Pilot TOU Program, described therein, to satisfy the aforementioned requirements and will make TOU rates available, on a voluntary basis, to Residential and Small Commercial and Industrial ("C&I") customers.

The Commission, in the January 24 Order, encouraged PPL Electric to give further consideration to a retail bid process to meet its TOU rate requirement. January 24 Order, p. 115. The Commission explained that reliance on EGSs to provide TOU service is not prohibited by Act 129¹ and a default service provider can utilize EGSs to satisfy its TOU rate requirement. January 24 Order, p. 115.² Moreover, as the ALJ explained in the November 9, 2012 Recommended Decision (pp. 88-89) issued in the DSP 2013-2015 proceeding at Docket No. P-2012-2302074, the existence of TOU plans offered by EGSs would be a way for the industry to support the goals of the legislature by shifting load from on-peak times. Based on this guidance,

¹ Act 129 of 2008, Oct. 15, P.L. 1592, No. 129 ("Act 129"), codified in Chapter 28 of the Public Utility Code, 66 Pa. C.S. Ch. 28.

² See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, *et al.*, p. 6 (Order Entered February 15, 2013) (permitting West Penn Power Company and Pennsylvania Power Company, as default service providers, to offer a TOU rate option to their customers, but permitting reliance on EGSs to provide the default TOU service to customers); *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order Entered May 9, 2013) (the most recent order approving revisions to PECO's TOU plan whereby an EGS provides TOU service to customers).

PPL Electric proposes to utilize the retail market and EGSs to satisfy its statutory obligation to offer TOU service to its default service customers.

3. Standards Applicable to Net Metering Service

Act 213 became effective on February 28, 2005, and established the Alternative Energy Portfolio Standards Act (“AEPS Act”) in Pennsylvania, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa. C.S. § 2814. Consistent with the requirements of the AEPS Act, the Commission adopted net metering regulations in 2008. 52 Pa. Code §§ 75.11, *et seq.* Pertinent to this proceeding, the Commission’s net metering regulations provide as follows:

(a) EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis...

(b) An EDC shall file a tariff with the Commission that provides for net metering consistent with this chapter....

(c) The EDC shall credit a customer-generator at the full retail rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator’s side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. If a customer generator supplies more electricity to the electric distribution system than the EDC 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 shall continue to accumulate until the end of the year....

(d) At the end of each year, the EDC shall compensate the customer-generator for any excess kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the same year at the EDC’s price to compare.

52 Pa. Code § 75.13.

As required by the Commission's net metering regulations, Pennsylvania EDCs, including PPL Electric, adopted net metering tariff provisions.³ Generally, under these Commission-approved net metering tariff provisions, the kilowatt-hours generated by the customer are credited against the kilowatt-hours of usage. Each month, the customer is given full retail value for the generation, transmission and distribution charges for each kilowatt-hour and any applicable riders. Any excess, unused net credits are carried forward to subsequent billing periods and applied to offset future usage at the customer-generator's account. The balance of any unused net credits that remain at the end of the PJM Planning Period (May 31 of each year) is paid to the customer at the applicable Price-to-Compare.

B. THE CURRENT TOU RATES

The currently effective TOU rates have been in effect since 2011. On September 23, 2010, PPL Electric proposed a TOU program for 2011. This program was approved by the Commission.⁴ However, this program proved unworkable and caused a number of serious problems, including a significant undercollection due to unexpected increases in spot market prices, significant customer enrollment when both on-peak and off-peak prices were below the fixed-price default service rate, and rapid and massive customer exits from the TOU program when on-peak and off-peak rates were above the fixed-price default service rate. Therefore, in August 2011, PPL Electric requested that the Commission suspend the TOU rates that were to become effective on September 1, 2011, keep the then-current TOU rates in effect, and allow PPL Electric to submit a revised TOU program. By order entered August 25, 2011, at Docket

³ The relevant metering provisions of PPL Electric's Tariff are discussed below in Section II.B.

⁴ *PPL Elec. Utils. Corp. Supplement No. 94 to Tariff Elec. – Pa. P.U.C. No. 201-Time of Use Rates*, Docket No. R-2010-2201138 (Order entered December 2, 2010).

No. M-2011-2258733, the Commission granted the Company's request⁵ and directed the Company to submit a new TOU program.

In accordance with the Commission's Order, on September 26, 2011, the Company proposed a new 2012 TOU program. On June 20, 2012, ALJ Colwell issued her Recommended Decision in the 2012 TOU proceeding, rejecting the Company's TOU proposal.⁶ On August 30, 2012, the Commission affirmed the Recommended Decision's rejection of PPL Electric's 2012 TOU Program. *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771, *et al.*, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012).

As discussed above, on May 1, 2012, PPL Electric submitted a TOU proposal as part of its DSP 2013-2015 proceeding; however, in its January 24, 2013 Order, the Commission did not approve PPL Electric's as-filed TOU plan or an alternative proposal presented during the proceeding.

On March 25, 2013, as part of a compliance filing, PPL Electric requested authority to continue its currently effective TOU rate option, including the frozen rates initially approved by the Commission in Docket No. M-2011-2258733 (Order Entered August 25, 2011) and carried forward in Docket No. R-2011-2264771 (Order Entered August 30, 2012), until the Commission approves a successor program. The Company requested this extension to permit the TOU collaborative to continue its ongoing process and to permit adequate time for the Commission to approve any subsequently filed TOU rate option proposal. The Commission's May 23 Order approved PPL Electric's request and permitted the then in effect TOU rate option to continue until the Commission approves a successor program. Therefore, PPL Electric's current TOU

⁵ The rates maintained as part of Docket No. M-2011-2258733 are the same rates in effect today.

⁶ *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 at pp. 20, 25, 2012 Pa. P.U.C. LEXIS 1007 (Recommended Decision June 20, 2012).

program with frozen rates, including the applicable E-factor, has been extended and remains in effect. Once approved, the Pilot TOU Program will replace the current TOU program.

The current TOU rates (on- and off-peak) are substantially higher than the current PTC for each applicable rate class. PPL Electric St. 2-R at 14:34-35. As illustrated in Exhibit No. RGY-2, the current TOU rates are as follows:

| <u>Rate Schedule RS</u> | <u>Non-Summer Peak Hours</u> <u>(5:00 PM to 7:00 PM)</u> <u>10/01/13- 5/31/14</u> | <u>Summer Peak Hours</u> <u>(1:00 PM to 6:00 PM)</u> <u>6/01/13- 9/30/13</u> |
|--|---|--|
| On-Peak Hours | 11.651 cts per kWh | 11.651 cts per kWh |
| Off Peak Hours | 9.928 cts per kWh | 9.928 cts per kWh |
| | | |
| <u>Rate Schedule</u> <u>RTS (R)</u> | <u>Non-Summer Peak Hours</u> <u>(5:00 PM to 9:00 PM)</u> <u>10/01/13- 5/31/14</u> | <u>Summer Peak Hours</u> <u>(1:00 PM to 6:00 PM)</u> <u>6/01/13- 9/30/13</u> |
| On-Peak Hours | 11.651 cts per kWh | 11.651 cts per kWh |
| Off Peak Hours | 9.928 cts per kWh | 9.928 cts per kWh |
| | | |
| <u>Rate Schedules</u> <u>GS-1, GS-3 (< 500 kW), GH-</u> <u>2 (R), and IS-1(R)</u> | <u>Non-Summer Peak Hours</u> <u>(7:00 AM to 7:00 PM)</u> <u>10/01/13- 5/31/14</u> | <u>Summer Peak Hours</u> <u>(7:00 AM to 7:00 PM)</u> <u>6/01/13- 9/30/13</u> |
| On-Peak Hours | 15.389 cts per kWh | 15.389 cts per kWh |
| Off Peak Hours | 11.588 cts per kWh | 11.588 cts per kWh |

In contrast the current PTC rates are as follow:⁷

| <u>Rate Schedules</u> | <u>Price to Compare</u> <u>March 1, 2014 to May 31, 2014</u> <u>cts per kWh</u> |
|--|---|
| Rate Schedule RS | 8.754 |
| RTS (R) | 8.754 |
| GS-1, GS-3 (< 500 kW), GH-2 (R), and IS-1(R) | 10.391 |

⁷ PPL Electric requests that the ALJs and Commission to take administrative notice of the current PTC rates. 52 Pa. Code § 5.408.

C. THE PILOT TOU PROGRAM

As encouraged by the Commission in the January 24 Order, the Company proposes to provide a TOU rate option to customers in its tariff, but will rely on the retail market and EGSs to provide TOU service to customers. *See* January 24 Order, p. 115. Retail EGSs that choose to participate in the TOU Program will offer TOU rate options and provide the TOU service to customers in PPL Electric's service territory. PPL Electric's proposed TOU Program is subject to Commission approval and will be part of the Company's retail tariff. As such, the new Pilot TOU Program will become effective and available to customers when the Commission has approved the Company's new Pilot TOU Program and the applicable tariff provisions become effective.

As proposed and under the settlement, the Pilot TOU Program and the EGS rate options offered thereunder will be available to PPL Electric's Residential and Small C&I default service customers, as well as any other Residential and Small C&I customers that choose to participate, except for customers in the Company's low-income customer assistance program ("CAP"), subject to any terms of a customer's existing contract for service from an EGS. Customers, including net metering customers, who volunteer to participate in an EGS's rate option offered as part of the Pilot TOU Program will be treated as shopping customers, and all of the rules applicable to shopping customers will apply. PPL Electric St. 1, p. 11.

D. NET METERING

As proposed in the August 23, 2013 Petition, a net metering customer-generator may choose to participate in the Pilot TOU Program and receive TOU service from an EGS. PPL Electric St. 1 at 11:17-19; PPL Electric St. 2-R at 15:6-15. In this instance the customer-generator would be a net metering customer of PPL Electric for distribution purposes; however, the generation component of the service (and any related cash out) would be provided by an

EGS. Additionally, a net metering customer-generator may elect to receive fixed-price default service from PPL Electric and would receive cash out payments from PPL Electric in accordance with its tariff. PPL Electric St. 2-R at 15:19-20; Exhibit No. JMR-6. Under these options PPL Electric will offer net metering to customers that qualify for such services under its tariff and the regulations (52 Pa. Code § 75.13(a)) and will offer TOU service as required by 66 Pa. C.S. § 2807(f)(5). For the reasons set forth below, the Company believes that its proposal is reasonable and complies with all applicable statutory and regulatory requirements. Alternatively, if the ALJs and the Commission conclude that PPL Electric is not fully compliant with the applicable regulatory requirements, PPL Electric has proposed an alternative TOU option for net metering customers, discussed in Section II.F.8., below.

1. PPL Electric's current net metering program

PPL Electric's current net metering program is contained in PPL Electric's Tariff, NET METERING FOR RENEWABLE CUSTOMER-GENERATORS, Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.2 to Second Revised Page 19L.4A. Exhibit No. JMR-5; *see* 52 Pa. Code § 75.13(b). Regarding billing and as applicable to non-shopping customer-generators in conjunction with service under Rate Schedules RS, GS-1, GS-3, or LP-4, the Tariff provides, in part, that:

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.

Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.4). As applicable to shopping net metering customers, the tariff provides as follows:

1. Customer-generators may take net metering services from EGSs that offer such services.
2. If a net-metering customer takes service from an EGS, the Company will credit the customer for the distribution charge for each kilowatt hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of kilowatt-hours delivered to the customer by the Company during the billing period. If a customer-generator supplies more electricity to the electric distribution system than the EDC 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 Company's distribution rates. Any excess kilowatt hours at the end of the PJM planning period will not carry over to the next year for distribution purposes. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
3. If the Company delivers 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 applicable rate schedule shall be applied to the net kilowatt-hours of electricity that the Company delivered. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
4. Pursuant to Commission regulations, the credit or compensation terms for excess electricity produced by customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.

5. If a customer-generator switches electricity suppliers, the Company shall treat the end of the service period as if it were the end of the year.

Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Second Revised Page 19L.4A).

As the Tariff states, for non-shopping customers, the Company compensates the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by the Company at the Company's price-to-compare ("PTC") consistent with Commission regulations. PPL Electric St. 2-R at 14:27-28. For eligible customer-generators who also have selected PPL Electric's current TOU rate option, a weighted average of the on-peak and off-peak hours is used to derive the Company's PTC for the applicable Rate Schedule. PPL Electric St. 2-R at 14:30-32. In contrast, for shopping customers, the Company credits the customer for the distribution charge up to the total amount of kilowatt-hours delivered to the customer by the Company during the billing period.

As explained above, the current TOU rates (on- and off-peak) are substantially higher than the current PTC for each applicable rate class. PPL Electric St. 2-R at 14:34-35. Therefore, customer-generators that have elected TOU service receive compensation, which is derived using the weighted average of the on-peak and off-peak hours, at a level substantially *above* the current PTC for the applicable rate class. PPL Electric St. 2-R at 14:35 – 15:3. For example, for the Small C&I customer class, as seen above in Section B, the on-peak hours run from 7 a.m. to 7 p.m., Monday-Friday, excluding holidays; additionally, the on-peak rate is 15.389 c/kWh and the off-peak rate is 11.588 c/kWh. When the rates are weighted by the number of on- and off-peak hours to create a single rate, the result is a weighted TOU rate of approximately 12.9 c/kWh.

Comparatively, the March-May 2014 PTC rate was 10.391, resulting in a difference of over 2.5 c/kWh awarded to Small C&I net metering customers on the TOU rate.

2. The net metering TOU options proposed by PPL Electric in this proceeding

Under the proposed primary Pilot TOU Program, PPL Electric will treat net metering customer-generators that choose to participate in PPL Electric's proposed Pilot TOU Program as shopping customers. PPL Electric St. 1 at 11:17-19; PPL Electric St. 2-R at 15:6-15. In the situation where a net metering customer chooses to participate in PPL Electric's proposed Pilot TOU Program and receives service from an EGS, PPL Electric will apply the appropriate Net Metering for Renewable Customer-Generators provisions of the current Tariff. PPL Electric St. 2-R at 15:6-7. In this instance, the customer-generator would be a net metering customer of PPL Electric for distribution purposes; however, the generation component of the service would be provided by an EGS. Any generation related cash out or compensation for excess generation would be subject to the terms and conditions set forth in the agreement between the EGS and the customer taking service from the EGS. Consistent with the regulations, the tariff provides that "the credit or compensation terms for excess electricity produced by the customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS." Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Second Revised Page 19L.4A). Therefore, if a PPL Electric net metering customer-generator chooses to participate in the Pilot TOU Program, the specifics of its excess generation compensation are dependent upon the contract between the customer and the participating EGS. PPL Electric St. 2-R at 15:13-15. Moreover, the other tariff provisions applicable to shopping net metering customers also would apply.

In the event that a net-metering customer does not choose to participate in the above TOU option, the customer-generator may choose to receive fixed-price default service from PPL Electric and would receive cash out payments from PPL Electric, in accordance with its tariff, based on the PTC. *See* PPL Electric St. 2-R at 15:19.

E. SUMMARY OF DCIDA'S POSITION REGARDING THE PILOT TOU PROGRAM AND NET METERING.

DCIDA operates a solar farm that receives net metering service from PPL Electric, and DCIDA is currently a TOU customer. DCIDA St. 1 at 3:5. DCIDA also maintains an onsite facility at the solar farm that contains computers and systems enabling DCIDA to power the operations of Dauphin County's emergency management functions. Exhibit No. JMR-10. According to DCIDA, the facility does consume electricity, but DCIDA could not quantify the facility's maximum power consumption. *See* Exhibit No. JMR-10.

DCIDA, as a current TOU net metering customer that receives compensation based on the current TOU rates that are well above the PTC, opposes the Pilot TOU program as proposed by the Company. DCIDA St. 1 at 2:21-23, 3:6-12. As seen in the example in Section II.D.1. above, DCIDA's facility received a compensation rate of approximately 12.9 c/kWh, versus the in effect PTC of 10.391 c/kWh; a delta of over 2.5 c/kWh. In direct testimony, DCIDA states that the Pilot TOU Program should be revised so that EGSs are not eligible to participate unless they offer net metering to customers that includes credit and compensation rates for excess kWh of power that the customer generates, which are equal to or better than the rates PPL Electric presently offers. DCIDA St. 1 at 9:1-4. DCIDA also asserts that participating EGSs must permit customers to elect to take net metering service together with a TOU rate option and must offer a weighted calculation for compensating a customer that so elects. DCIDA St. 1 at 9:4-6. In the absence of an EGS adopting the current PPL Electric TOU net metering compensation structure,

according to DCIDA, PPL Electric should be required to maintain its current “TOU/net-metering arrangement with DCIDA.” DCIDA St. 1 at 9:6-8.

In surrebuttal testimony, DCIDA markedly changed its position, asserting that PPL Electric has an obligation to provide customers with both net-metered service and a TOU rate. DCIDA St. 2 at 2:11-12. Due to this requirement, DCIDA asserts that EGSs must be required to offer net-metered service with a TOU rate under the Pilot TOU Program or PPL Electric must maintain net-metered service with a TOU rate for DCIDA and similar customer-generators. DCIDA St. 2 at 2:13-15. In short, DCIDA is seeking to maintain the status quo and maintain the current TOU rates.

As discussed in detail below, DCIDA’s recommendations should be rejected.

F. THE RECOMMENDATIONS OF DCIDA SHOULD BE REJECTED

1. A further continuation of the existing TOU rates would be unreasonable.

Based on the testimony submitted, DCIDA’s initial proposal in direct testimony (subsequently withdrawn in surrebuttal testimony) is a continuation of the existing TOU rate. DCIDA seeks to maintain the current status quo, of “above market” prices, which is a unique situation directly resulting from the current TOU rates (on- and off-peak) being higher than the PTC. PPL Electric St. 2-R at 17:19-21. DCIDA requests that the current rates be maintained in one of two ways, either by requiring EGSs to match the current rates or by having PPL Electric continue the rates. *See* DCIDA St. 1 at 9:1-4; DCIDA St. 2 at 2:13-15. PPL Electric, OSBA, and SEF all oppose a continuation of the current TOU rates for customer-generators. *See* SEF St. 1 at 7:16; OSBA St. 1 at p. 5:9-12; Tr. 37:11-13 (OSBA Witness Knecht explaining that the current rates are not just and reasonable and have not been so for some time).

PPL Electric should not be required to maintain its current TOU rates for net metering customer-generators. PPL Electric St. 2-R at 18:9. The Commission itself has acknowledged that the current TOU rates need to change and it expressly ordered PPL Electric to conclude the collaborative and file a new TOU rate proposal in August of 2013. May 23 Order at p. 5. Freezing the current TOU rates was temporary, and the Company was directed to develop a new proposal, which it has presented in this proceeding. There was never any expectation that these old frozen rates would be permanent. On the contrary, it was always assumed that they would change as soon as a new program was approved.

Moreover, the fact that the current TOU rates (on- and off-peak) are higher than the PTC creates a situation where DCIDA receives a large subsidy from the other customers, which is unfair and inequitable. PPL Electric St. 2-R at 18:10-13. The excess revenue that DCIDA realizes (at cash out) due to the differential between the PTC and the current TOU rates is in the range of \$50,000 to \$80,000 a year. Tr. 33:15-21. This differential results in DCIDA receiving a large subsidy from the other customers because the result of the cash out is ultimately born by other Small C&I customers. OSBA St. 1 at 9:6-7. PPL Electric agrees with OSBA that it “would be inappropriate and inequitable for the Commission to require Small C&I default service customers to continue to pay for energy from DCIDA at above-market prices.” OSBA St. 1 at 10:8-11. Generally, in the net metering context, a customer-generator uses its generation to offset its electric consumption and to pay only the net amount. In the case of DCIDA, the excess cash out is also influenced by the fact that DCIDA has never net consumed electricity in any billing cycle, *i.e.*, it has never consumed more electricity that it has produced, nor has DCIDA reduced usage during peak times since becoming a TOU customer. PPL Electric St. 2-R at 19:3-5, 19:12-14; Exhibit No. JMR-7; Exhibit No. JMR-8. The only time that DCIDA could

net consume power is if the emergency facility was put into operations and mobile vehicles were relocated to the site. Tr. 40:24 – 41:5; Exhibit Nos. JMR-9 and JMR-10. DCIDA has benefitted from the continuation of the frozen TOU rates and the fact that the Commission has not accepted various proposals offered by PPL Electric and others. In this proceeding, the Company is attempting to rectify this situation going forward by implementing a TOU program consistent with the Commission’s recommendations.

To support its erroneous argument that the current TOU rates must be maintained, DCIDA explains that if the TOU program is changed, it will not realize the full benefit of its investment. DCIDA St. 1 at 8:11-12. DCIDA supports this argument by describing the expenditures it undertook to install the solar facility and connect it to the Company’s system, the financing of the solar farm, and the related debt obligation. DCIDA St. 1 at 4:6-14, 7:6-8. The facts of this proceeding, however, undermine any argument that DCIDA relied on the current TOU rates when planning the solar facility and constructing it. Therefore, while a change in the current status quo of “above market” TOU prices may affect the credit/cash out that DCIDA might receive, it never relied on the current TOU rate levels for facility planning purposes. Thus, no basis exists for the position that DCIDA will not realize the full benefit of its investment. *See* DCIDA St. 1 at 8:11-12.

2. DCIDA did not rely on the current TOU rate when planning its facility nor are the rates required to service its debt

DCIDA initiated service as a PPL Electric net metering customer in October 2011. PPL Electric St. 2-R at 18:19-20. At the time DCIDA became a PPL Electric net metering customer, it was receiving fixed-price service through the PTC. PPL Electric St. 2-R at 18:20-21. The DCIDA net metering site began taking service as a TOU customer in June 2013. PPL Electric St. 2-RJ at 4:23. This also coincided with an expansion at the DCIDA facility. On cross-

examination, DCIDA explained that a second phase of the solar facility was brought on-line in the summer of 2013. Tr. 41:17-21. It was at that point that DCIDA (and its consultant) realized the differential between the TOU rate and the PTC. *Id.* However, the TOU rate was not material to DCIDA's decision to expand the facility because as its own witness stated, it was "going to build the project anyway." Tr. 42:1. Therefore, the current TOU rates were not included in DCIDA's cost-benefit analysis when determining whether to install capacity. Consequently, changing the current TOU rates will not restrict DCIDA from realizing the full benefit of its investment.

Moreover, the fact that DCIDA is required to service debt incurred to install the solar farm does not warrant maintaining the current TOU rates. DCIDA states that it has earned \$150,000 in compensation from PPL Electric as a net metering customer and has used this money to service its debt. DCIDA St. 1 at 7:3-7. However, the amount mentioned appears to be from the time when DCIDA was on the fixed-price default service. *See* OSBA St. 1 at 9, n.8. Therefore, even on this fixed-price rate, DCIDA is able to service its debt. All that DCIDA seeks in this proceeding is additional funds. For the reasons stated above, it would be inappropriate and inequitable for DCIDA to continue to receive its cash out at the current TOU rates when Small C&I default service customers are the ones paying for the energy.

3. During this proceeding DCIDA revised its position on two issues

First, in direct testimony, DCIDA stated that it wanted the "current TOU/net-metering arrangement" maintained. DCIDA St. 1 at 9:8. Contrary to DCIDA's direct testimony, PPL Electric has no special "net metering arrangement" with DCIDA that must be maintained in perpetuity. DCIDA, like all other customers, takes service under PPL Electric's Commission-approved tariff, which is subject to change from time to time. Any special arrangement for a non-tariff rate would be void as against public policy. *See* 66 Pa. C.S. § 1303 ("No public utility

shall . . . demand or receive . . . a greater or less rate for any service rendered . . . by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part”); 66 Pa. C.S. § 1304 (stating that a utility cannot unreasonably discriminate for or against a particular customer by establishing a special rate for them). In surrebuttal testimony, ultimately DCIDA acknowledged that it has no special arrangement⁸ with the Company and that it takes service subject to a Commission approved tariff. DCIDA St. 2 at 3:1-2 and 8-10.

Second, DCIDA also has revised its position on the continuation of the above the market rates. While in direct testimony DCIDA states that either EGSs should adopt the current PPL Electric TOU net metering compensation structure or PPL Electric should be required to maintain its current TOU rates, in surrebuttal testimony, DCIDA substantially revised its proposal. *Compare* DCIDA St. 1 at 9:4-8, *with* DCIDA St. 2, at 2:13-15. In surrebuttal testimony DCIDA states that:

EGSs must be required to offer net-metered service with a TOU rate or PPL must maintain net-metered service with a TOU rate for the DCIDA and similar incumbent customer-generators.

DCIDA St. 2, at 2:13-15. The above quote indicates that DCIDA has revised its stance regarding continuing the above the market rates and now only requests that either an EGS offer a net-metered service with a TOU rate or PPL Electric offer a net-metered service with a TOU rate. As discussed, in Sections II.D.1. and II.F.7, a TOU rate for net metering customers may be available under the Pilot TOU Program, and PPL Electric is continuing to provide net metering service to customers in the Pilot TOU Program for distribution service.

⁸ Importantly there can be no lawful rate except the last tariff published as provided by law. *See Bell Tel. Co. of Pa. v. Pa. P.U.C.*, 417 A.2d 827, 828 (Pa. Cmwlth Ct. 1980).

4. DCIDA has been on notice that the current TOU rates would be replaced

DCIDA has been on notice that the current TOU rates would be replaced by a new TOU program. Tariffed rates and service are always subject to change by the Commission. No rate or service adopted by a public utility remains the same for perpetuity. Indeed, there can be no lawful rate except the last tariff published as provided by law, which supersedes all prior rates relating to the service called for.⁹ The provisions of PPL Electric's Tariff are subject to change, and in a January 24 Order, the Commission instructed PPL Electric to schedule a collaborative to discuss issues regarding the development and implementation of a TOU rate option. Further, PPL Electric was directed to file a new TOU rate proposal following the conclusion of the collaborative. In the May 23 Order, the Commission permitted the then currently effective TOU rate option to continue until the Commission approves a successor TOU program. While PPL Electric's current TOU program with frozen rates currently remains in effect, public proceedings, such as the most recent default service proceeding and this proceeding, have provided notice that the current TOU rates are subject to change and may be replaced by a new program, subject to the terms of the Commission-approved Tariff. Notably, DCIDA became a TOU customer in June 2013, after the Commission, in its January 24 Order and May 23 Order, directed PPL Electric to file a new TOU plan. Therefore, per the Commission's instructions, the Company was required to file a new TOU proposal, providing further notice that the current TOU program would not remain in effect. Moreover, the planning for the multiples phases of the DCIDA facility occurred in 2009 and since that time PPL Electric has filed multiple proposals to revise its TOU offering, further indicating that the current TOU rates are subject to change.

⁹ *The Bell Tel. Co. of Pa. v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980).

5. Requiring EGSs to provide net metering in order to participate in the Pilot TOU Program could create a barrier to participation

The request by DCIDA that the Pilot TOU Program be revised so that EGSs are not eligible to participate unless they offer net metering to customers that includes credit and compensation rates for excess kWh of power that the customer generates, which are equal to or better than the rates PPL Electric presently offers, should be rejected. DCIDA St. 1 at 9:1-4. Additionally, DCIDA's request that participating EGSs must permit customers to elect to take net metering service together with a TOU rate option and must offer a weighted calculation for compensating a customer that so elects should also be rejected. The Commission should not require EGSs participating in the Pilot TOU Program to match or exceed the current TOU/net metering compensation level or set compensation requirements. *See* PPL Electric St. 2-R at 18:1-2. Requiring participating EGSs to offer "above market" prices to net metering customer-generators could be a barrier to EGS participation in the Pilot TOU Program. PPL Electric St. 2-R at 18:3-4. The same applies to the weighted calculation compensation requirement proposed by DCIDA. The Company did not propose and does not support requiring EGSs to provide net metering as a prerequisite for participating in the Pilot TOU Program, nor did it propose compensation requirements. As OSBA succinctly explained with regard to DCIDA's proposal to require EGSs to match or exceed the current TOU/net metering compensation level, "[n]o rational EGS would participate in such a program, because no rational EGS would agree to pay for excess generation at rates far in excess of market prices." OSBA St. 1 at 10:3-4. Requiring participating EGSs to offer "above market" prices to net metering customer-generators would hinder EGS participation in the Pilot TOU Program and possibly result in the plan's failure; therefore, such a poison pill must be rejected.

Regarding DCIDA's proposal that EGSs must permit customers to elect to take net metering service together with a TOU rate option and offer a weighted calculation for compensating said customer, such a proposal would be a separate barrier to participation in the Pilot TOU Program; therefore, it should be rejected. The Company wants EGSs to have flexibility to design TOU rate options that they believe will work in the market place. *See* PPL Electric St. 2-R at 7:13. Moreover, such flexibility is one of the program's primary advantages. *See* OSBA St. 1 at 7:4. The compensation requirement proposed by DCIDA would limit the flexibility of EGSs in the Pilot TOU Program and create a barrier to EGS participation; thus, it should be rejected.

6. DCIDA's contention that there is an obligation to provide both net metering and TOU services to customer-generators should be rejected

In surrebuttal testimony, DCIDA maintains that because TOU service is a default service, PPL Electric, as the default service provider, has "an obligation to provide customers with both net-metered service and a TOU rate." DCIDA St. 2 at 2:11-12. DCIDA's argument should be rejected for two reasons. First, there is no requirement that net metering customers have a TOU option. Second, even if there is such a requirement, PPL Electric has satisfied the requirement because net metering customers who take TOU service from an EGS under the Pilot TOU Program will still be net metering customers for distribution purposes.

As discussed above, 66 Pa. C.S. § 2807(f)(5) of the Code provides that default service providers must submit one or more TOU rates that residential or commercial customers may elect to participate in. Additionally, 52 Pa. Code § 75.13(a) requires that EDCs offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter. The Pilot TOU Program satisfies all necessary legal and regulatory requirements. Specifically, under the Company's proposal, all customers will have a net metering option and a

TOU rate option available to them. Nevertheless, DCIDA argues that PPL Electric must offer net metering customers a TOU option. No such requirement appears in the relevant statutes. 66 Pa. C.S. § 2807(f)(5) requires the submission of a TOU rates for residential or commercial customers, and 52 Pa. Code § 75.13(a) separately requires a EDC to offer net metering to customer-generators. Notably, the Commission has approved EDC TOU plans that do not permit net metering customer participation, which supports the premise that the net metering and TOU service requirements can be viewed separately. For example, PECO's Smart Time Pricing program, which uses an EGS to supply TOU service, does not permit net metering customers to participate. OCA St. 1, Exhibit OCA-BA-2 (summarizing the participation requirements of the PECO plan); *see Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order Entered May 9, 2013) (the most recent order approving revisions to the PECO TOU plan). The approval and implementation of an EDC TOU plan that does not permit net metering customer participation indicates that TOU rates and net metering services are separate requirements.

Furthermore, even if there is a requirement that PPL Electric must offer net metering customers a TOU option, the Company has satisfied said requirement because net metering customers that take TOU service under the Pilot TOU Program from an EGS will still be net metering customers of PPL Electric for *distribution* purposes. Under the Pilot TOU Program, while a net metering participant will receive TOU generation related services from an EGS (and any related cash outs for excess generation), the customer generator would still be a net metering customer of PPL Electric for *distribution* purposes and would be subject to the net metering shopping provisions quoted above. Therefore, its distribution bill may still be off-set by any

distribution related credits. The generation component of the TOU service (and any related cash out) would be provided by an EGS, consistent with the regulations.

Therefore, the regulatory requirements have been satisfied because a customer would still be receiving a net metering service from the EDC; however the TOU generation service would be supplied by an EGS.

7. Concern that a net metering TOU option may not be available from an EGS participating in the Pilot TOU Program is premature

DCIDA stated that it is concerned that a net metering - TOU option may not be available from an EGS participating in the Pilot TOU Program. DCIDA St. 1 at 7:22. Its concern is premature. At this time, without implementing the Pilot TOU Program, it is not known whether or not a TOU option for net metering customers will be available. Such offerings could be available under the Pilot TOU Program. Moreover, it is possible that a net metering TOU option may be available in the competitive market as well. Therefore, since a TOU rate for net metering customers may be available under the Pilot TOU Program, DCIDA's arguments on the lack of available of a TOU rate are premature and are not ripe for resolution.

8. In the event that the Commission does not accept PPL Electric's position regarding the treatment of net metering customer-generators and the relevant net metering and TOU requirements under the Pilot TOU Program, PPL Electric offers an alternative proposal

As discussed above, the proposed Pilot TOU Program satisfies all necessary legal and regulatory requirements; however, in the event that the Commission does not accept PPL Electric's position regarding the treatment of net metering customer-generators, PPL Electric offers the following alternative proposal. Specifically, 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 the Commission's regulations.

PPL Electric St. 2-RJ at 3:2-5. The proposed rate would have following parameters:

- 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 PTC with an adder of 100%.
- The rate during the summer non-peak period will be the then current PTC with a discount of 13%.
- During the non-summer months, the rate will be the then current PTC.
- The proposed separate TOU offering for net metering customers will end on May 31, 2015.

PPL Electric St. 2-RJ at 3:6-16.

If the Commission does not accept PPL Electric's position that the primary Pilot TOU Program satisfies the requirements of the 52 Pa. Code § 75.13 and 66 Pa. C.S. § 2807 as applicable to net metering, the alternative net metering customer-only TOU rate is intended to ensure that a net metering/TOU rate is available to any net metering customer, whether or not a net metering customer is able to find an EGS participating in the Pilot TOU Program willing to offer net metering service. PPL Electric St. 2-RJ at 4:8-10. Furthermore, the alternative proposal sets an on-peak adder and discount that incentivizes a customer to shift its usage from peak hours to off-peak hours. PPL Electric St. 2-RJ at 4:13-15. The alternative TOU rates are based on the PTC, with an adder and discount that result in revenue neutrality for those customers that do not shift their load. PPL Electric St. 2-RJ at 4:15-17.

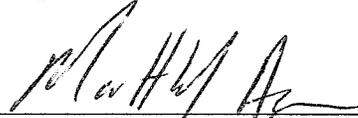
In the proceeding, no party presented testimony in opposition to the alternative proposal. No party cross-examined the PPL Electric witness that presented the alternative proposal in testimony. No party objected to the testimony describing the alternative proposal being entered into the record in this proceeding. Tr. 59:16. Therefore, PPL Electric has met the burden of proof regarding the proposed alternative TOU rate option for customer-generators and has

satisfied DCIDA's concern that PPL Electric offer both net-metered service and a TOU rate to customer-generators, in the event that the Commission does not believe that Pilot TOU Program satisfies the relevant requirements.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons discussed herein, PPL Electric Utilities Corporation's proposal regarding the participation of net metering customers in the proposed Pilot TOU Program and the alternative net metering TOU rate should be approved. Moreover, DCIDA's proposed revisions to the Pilot TOU Program should be rejected.

Respectfully submitted,



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Dated: March 21, 2014

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APPENDICES

APPENDIX A

**Petition of PPL Electric Utilities Corporation
for Approval of a New Pilot Time-of-Use Program**

Docket No. P-2013-2389572

**Appendix A
Proposed Findings of Fact**

PPL Electric Utility Company (“PPL Electric” or the “Company”) proposes the following findings of fact:

1. The currently effective Time-of-Use (“TOU”) rates have been in effect since 2011.
2. The current TOU rates (on- and off-peak) are higher than the current price-to-compare (“PTC”) for each applicable rate class. PPL Electric St. 2-R at 14:34-35; see Exhibit No. RGY-2.
3. On August 23, 2013, PPL Electric filed its petition for approval of a new Pilot TOU Program (“August 23, 2013 Petition”), which will replace the currently effective TOU rates.
4. Under the terms of the proposed Pilot TOU Program, the Company would provide a TOU rate option to customers in its tariff, but would rely on the retail market and electric generation suppliers (“EGSs”) to provide TOU service to customers. Retail EGSs that would choose to participate in the Pilot TOU Program would offer TOU rate options and provide the TOU service to customers in PPL Electric’s service territory. PPL Electric’s proposal would become part of the Company’s retail tariff once approved by the Commission.
5. The Company filed a form of tariff on September 9, 2013 at Docket No. P-2012-2302074 that incorporated the as-filed Pilot TOU Program.

6. The new Pilot TOU Program would become effective, and available to customers, when the Commission has approved the Company's new Pilot TOU Program and the applicable tariff provisions become effective.

7. As required by the Commission's net metering regulations, PPL Electric adopted net metering tariff provisions. PPL Electric's current net metering program is contained in PPL Electric's Tariff, NET METERING FOR RENEWABLE CUSTOMER-GENERATORS, Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.2 to Second Revised Page 19L.4A).

8. Regarding billing and as applicable to non-shopping customer-generators in conjunction with service under Rate Schedules RS, GS-1, GS-3, or LP-4, the Tariff provides, in part, that:

- 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.

Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.4).

9. As applicable to shopping net metering customers, the tariff provides as follows:

- 1. Customer-generators may take net metering services from EGSs that offer such services.
- 2. If a net-metering customer takes service from an EGS, the Company will credit the customer for the distribution charge for each kilowatt hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of kilowatt-hours delivered to the customer by the Company during the billing period. If a customer-generator supplies more electricity to the electric distribution system than the EDC 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 Company's distribution rates. Any excess kilowatt hours at the end of the PJM planning period will not carry over to the next year for distribution purposes. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
- 3. If the Company delivers 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 applicable rate schedule shall be applied to the net kilowatt-hours of electricity that the Company delivered. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.
- 4. Pursuant to Commission regulations, the credit or compensation terms for excess electricity produced by customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.
- 5. If a customer-generator switches electricity suppliers, the Company shall treat the end of the service period as if it were the end of the year.

Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Second Revised Page 19L.4A).

10. For non-shopping customers, the Company compensates the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by the Company at the Company's price-to-compare ("PTC") consistent with Commission regulations. PPL Electric St. 2-R at 14:27-28. For eligible customer-generators who also have selected PPL Electric's current TOU rate option, a weighted average of the on-peak and off-peak hours is used to derive the Company's PTC for the applicable Rate Schedule. PPL Electric St. 2-R at 14:30-32.

11. For shopping customers, the Company credits the customer for the distribution charge up to the total amount of kilowatt-hours delivered to the customer by the Company during the billing period.

12. The current TOU rates (on- and off-peak) are substantially higher than the current PTC for each applicable rate class. PPL Electric St. 2-R at 14:34-35. Therefore, customer-generators that have elected TOU service receive compensation, derived using the weighted average of the on-peak and off-peak hours, at a level substantially above the current PTC for the applicable rate class. PPL Electric St. 2-R at 14:35 – 15:3.

13. PPL Electric's proposed Pilot TOU Program, as it pertains to net metering customers, contains the following components:

- PPL Electric will treat net metering customer-generators that choose to participate in PPL Electric's proposed Pilot TOU Program as shopping customers. PPL Electric St. 1 at 11:17-19; PPL Electric St. 2-R at 15:6-15.
- Where a net metering customer chooses to participate in PPL Electric's proposed Pilot TOU Program and receives service from an EGS, PPL Electric will apply the appropriate Net Metering for Renewable Customer-Generators provisions of the current Tariff. PPL Electric St. 2-R at 15:6-7. In this instance, the customer-

generator would be a net metering customer of PPL Electric for distribution purposes; however, the generation component of the service would be provided by an EGS.

- If a PPL Electric net metering customer-generator chooses to participate in the Pilot TOU Program, the specifics of its excess generation compensation are dependent upon the contract between the customer and the participating EGS. PPL Electric St. 2-R at 15:13-15; *see* Exhibit No. JMR-5 (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Second Revised Page 19L.4A) (“[T]he credit or compensation terms for excess electricity produced by the customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.”).
- Other tariff provisions applicable to shopping net metering customers also would apply.
- If a net-metering customer does not choose to participate in the Pilot TOU Program, the customer-generator may choose receive fixed-price default service from PPL Electric and would receive cash out payments from PPL Electric, in accordance with its tariff based on the PTC. *See* PPL Electric St. 2-R at 15:19.

14. DCIDA operates a solar farm that receives net metering service from PPL Electric, and DCIDA is currently a TOU customer. DCIDA St. 1 at 3:5. DCIDA also maintains an onsite facility at the solar farm that contains computers and systems enabling DCIDA to power the operations of Dauphin County’s emergency management functions. Exhibit No. JMR-10. According to DCIDA, the facility does consume electricity, but DCIDA could not quantify the facility’s maximum power consumption. *See* Exhibit No. JMR-10.

15. Freezing the current TOU rates until the Commission approves a successor program was a temporary measure, and the Company was directed to develop a new proposal, which it has presented in this proceeding. *See* Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015, Docket Nos. P-2012-2302074, et al. (Order Entered May 23, 2013) (“May 23 Order”). There was never any expectation that these old frozen rates would be permanent. On the contrary, it was always assumed that they would change as soon as a new program was approved.

16. The fact that the current TOU rates (on- and off-peak) are higher than the PTC creates a situation where DCIDA receives a large subsidy from the other customers, which is unfair and inequitable. PPL Electric St. 2-R at 18:10-13. The excess revenue that DCIDA realizes (at cash out) due to the differential between the PTC and the current TOU rates is in the range of \$50,000 to \$80,000 a year. Tr. 33:15-21. This differential results in DCIDA receiving a large subsidy from the other customers because the result of the cash out is ultimately born by other Small C&I customers. OSBA St. 1 at 9:6-7.

17. Generally, in the net metering context, a customer-generator uses its generation to offset its electric consumption and to pay only the net amount.

18. DCIDA has never net consumed electricity in any billing cycle, i.e., it has never consumed more electricity that it has produced, nor has DCIDA reduced usage during peak times since becoming a TOU customer. PPL Electric St. 2-R at 19:3-5, 19:12-14; Exhibit No. JMR-7; Exhibit No. JMR-8. The only time that DCIDA could net consume power is if the emergency facility was put into operations and mobile vehicles were relocated to the site. Tr. 40:24 – 41:5; Exhibit Nos. JMR-9 and JMR-10.

19. PPL Electric has no special “net metering arrangement” with DCIDA that must be maintained in perpetuity.

20. DCIDA, like all other customers, takes service under PPL Electric’s Commission-approved tariff, which is subject to change from time to time.

21. No basis exists for the position that DCIDA will not realize the full benefit of its investment. See DCIDA St. 1 at 8:11-12.

22. DCIDA initiated service as a PPL Electric net metering customer in October 2011. PPL Electric St. 2-R at 18:19-20. At the time DCIDA became a PPL Electric net

metering customer, it was receiving fixed-price service through the PTC. PPL Electric St. 2-R at 18:20-21. The DCIDA net metering site began taking service as a TOU customer in June 2013. PPL Electric St. 2-RJ at 4:23. This also coincided with an expansion at the DCIDA facility.

23. The TOU rate was not material to DCIDA's decision to expand the facility because as its own witness stated, it was "going to build the project anyway." Tr. 42:1.

24. The fact that DCIDA is required to service debt incurred to install the solar farm does not warrant maintaining the current TOU rates. DCIDA states that it has earned \$150,000 in compensation from PPL Electric as a net metering customer and has used this money to service its debt. DCIDA St. 1 at 7:3-7. However, the amount mentioned appears to be from the time when DCIDA was on the fixed-price default service. See OSBA St. 1 at 9, n.8. Therefore, even on this fixed-price rate, DCIDA is able to service its debt.

25. DCIDA has been on notice that the current TOU rates would be replaced by a new TOU program.

26. While PPL Electric's current TOU program with frozen rates currently remains in effect, public proceedings, such as the most recent default service proceeding and this proceeding, have provided notice that the current TOU rates are subject to change and may be replaced by a new program, subject to the terms of the Commission-approved Tariff.

27. DCIDA became a TOU customer in June 2013, after the Commission, in Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015, Docket No. P-2012-2302074 (Order Entered January 24, 2013) ("January 24 Order") and its May 23 Order, directed PPL Electric to file a new TOU plan.

28. The planning for the multiples phases of the DCIDA facility occurred in 2009. Since that time, PPL Electric has filed multiple proposals to revise its TOU offering.

29. Requiring participating EGSs to offer “above market” prices to net metering customer-generators could be a barrier to EGS participation in the Pilot TOU Program. PPL Electric St. 2-R at 18:3-4.

30. The weighted calculation compensation requirement proposed by DCIDA could be a barrier to EGS participation in the Pilot TOU Program.

31. At this time, without implementing the Pilot TOU Program, it is not known whether or not a TOU option for net metering customers will be available and there could be offerings available under the Pilot TOU Program. Moreover, it is possible that a net metering TOU option may be available in the general shopping market as well.

32. The Company also offers an alternative proposal: 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 the Commission’s regulations. PPL Electric St. 2-RJ at 3:2-5.

The proposed rate would have following parameters:

- 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 PTC with an adder of 100%.
- The rate during the summer non-peak period will be the then current PTC with a discount of 13%.
- During the non-summer months, the rate will be the then current PTC.
- The proposed separate TOU offering for net metering customers will end on May 31, 2015.

PPL Electric St. 2-RJ at 3:6-16.

33. The alternative net metering customer-only TOU rate is intended to ensure that a net metering/ TOU rate is available to any net metering customer, whether or not a net metering customer is able to find an EGS participating in the Pilot TOU Program willing to offer net metering service. PPL Electric St. 2-RJ at 4:8-10. Furthermore, the alternative proposal sets an on-peak adder and discount that incentivizes a customer to shift its usage from peak hours to off-peak hours. PPL Electric St. 2-RJ at 4:13-15. The alternative TOU rates are based on the PTC, with an adder and discount that results in revenue neutrality for those customers that do not shift their load. PPL Electric St. 2-RJ at 4:15-17.

34. No party presented testimony in opposition to the alternative proposal. No party cross-examined the PPL Electric witness that presented the alternative proposal in testimony. No party objected to the testimony describing the alternative proposal being entered into the record in this proceeding. Tr. 59:16.

APPENDIX B

**Petition of PPL Electric Utilities Corporation
for Approval of a New Pilot Time-of-Use Program**

Docket No. P-2013-2389572

**Appendix B
Proposed Conclusions of Law**

PPL Electric Utility Company (“PPL Electric” or the “Company”) proposes the following conclusions of law:

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 501, *et seq.*

2. PPL Electric filed its Petition pursuant to 52 Pa. Code § 5.41 and in compliance with the Commission’s Order in *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket Nos. P-2012-2302074, *et al.* (Order Entered May 23, 2013) (“May 23 Order”), which required the Company to file a new TOU rate proposal on or before August 23, 2013.

3. PPL Electric, as the Petitioner, has the burden of proof with respect to its proposals in this proceeding. 66 Pa. C.S. § 332(a).

4. The burden of proof means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

5. If the Applicants and opposing parties present evidence that is found to be of precisely equal weight, then the Applicants will not have carried their burden of proof. Otherwise, the side that presented evidence found to be more persuasive, even by the slightest

amount, will prevail. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

6. A party that makes a proposal that is not included in a public utility's case bears the burden of proof as to its proposal. *See, e.g., Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. R-00061931, 2007 Pa. P.U.C. LEXIS 45 at *165-68 (Sept. 28, 2007); *Pa. P.U.C. v. Metropolitan Edison Company*, Docket No. R-00061366, 2007 Pa. P.U.C. LEXIS 5 at *111-12 (Jan. 11, 2007).

7. As a Default Service Provider ("DSP"), PPL Electric's default service obligations are set forth in Act 129 of 2008, Oct. 15, P.L. 1592, No. 129 ("Act 129"), codified in Chapter 28 of the Public Utility Code, 66 Pa. C.S. Ch. 28. Section 2807(f) of the Public Utility Code provides, among other things, that:

- The Default Service provider shall offer a time-of-use rate plan to all customers that have been provided smart meter technology. *See* 66 Pa. C.S. § 2807(f)(5).

8. Act 213 became effective on February 28, 2005, and established the Alternative Energy Portfolio Standards Act ("AEPS Act") in Pennsylvania, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa. C.S. § 2814.

9. Consistent with the requirements of the AEPS Act, the Commission adopted net metering regulations in 2008. *See* 52 Pa. Code § 75.11, *et seq.* Section 75.13 of the Commission's regulations, 52 Pa. Code § 75.13, provides, in pertinent part:

- (a) EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis...
- (b) An EDC shall file a tariff with the Commission that provides for net metering consistent with this chapter....

- (c) The EDC shall credit a customer-generator at the full retail rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. If a customer generator supplies more electricity to the electric distribution system than the EDC 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 shall continue to accumulate until the end of the year....
- (d) At the end of each year, the EDC shall compensate the customer-generator for any excess kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the same year at the EDC's price to compare.

10. Pursuant to 66 Pa. C.S. § 2807(f)(5), as the default service provider, PPL Electric is required by Act 129 to offer a time of use rate option to its default service customers.

11. The TOU program is a form of default service. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771 at 23, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012).

12. Any special arrangement for a non-tariff rate is void as against public policy. *See* 66 Pa. C.S. § 1303 (“No public utility shall . . . demand or receive . . . a greater or less rate for any service rendered . . . by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part.”); 66 Pa. C.S. § 1304 (stating that a utility cannot unreasonably discriminate for or against a particular customer by establishing a special rate for them).

13. Tariffed rates and service are always subject to change by the Commission. No rate or service adopted by a public utility remains the same for perpetuity. There is no lawful rate except the last tariff published as provided by law, which supersedes all prior rates relating

to the service called for. *The Bell Tel. Co. of Pa. v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980).

14. No requirement exists in the Pennsylvania Public Utility Code or the Commission's regulations that an EDC must offer net metering customers a TOU option.

15. The requirement for an EDC to submit a TOU rate for residential or commercial customers under 66 Pa. C.S. § 2807(f)(5) is separate from the requirement for an EDC to offer net metering to customer-generators under 52 Pa. Code § 75.13(a).

16. Since a TOU rate for net metering customers may be available under the Pilot TOU Program, DCIDA's arguments on the lack of an available TOU rate are premature and are not ripe for resolution.

17. PPL Electric has met its burden of proof in this matter with respect to its proposed TOU proposal as applicable to net metering customers.

18. DCIDA has not met its burden of proof as to its requested modification to the Company's TOU proposal.

19. Despite meeting the relevant requirements, PPL Electric also has met its burden of proof regarding the proposed alternative TOU rate option for customer-generators and has satisfied DCIDA's concern that PPL Electric offer both net-metered service and a TOU rate to customer-generators.