



COMMONWEALTH OF PENNSYLVANIA

April 11, 2014

**E-FILED**

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
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 Reply Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Steven C. Gray".

Steven C. Gray  
Assistant Small Business Advocate  
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Enclosures

cc: Parties of Record  
Robert D. Knecht

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**Dated:   April 11, 2014**

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**I. Introduction**

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

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

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

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

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

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

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

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

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

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

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

On March 21, 2014, the OSBA submitted a Main Brief.

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

## **II. Summary of Argument**

PPL has offered an alternative TOU program for net metered customers that fully addresses any legal obligation that it may have to offer such a rate.

DCIDA did not, in any fashion, rely upon PPL's TOU rates for the Company's Small Commercial and Industrial ("Small C&I") customers when DCIDA was designing or building its solar energy facilities.

PPL's current TOU rates for the Company's Small C&I customers continue to be excessively high, are not just and reasonable, and should be eliminated. The elimination of these current TOU rates will not impede DCIDA from generating net metering income from its solar energy facilities.

DCIDA has not advanced any specific proposal for Small C&I TOU rates that is just and reasonable.

PPL's current TOU rates for the Company's Small C&I customers should be terminated on the day that the Commission enters an Order in this proceeding.

**II. Argument**

**A. PPL's Time of Use Offering for Net Metered Customers**

In its Main Brief, the Dauphin County Industrial Development Authority ("DCIDA") argues repeatedly that PPL must provide a TOU program for net metering customers. DCIDA stated, as follows:

PPL must offer both net-metered service and a TOU rate to DCIDA pursuant to statutory and regulatory mandates, consistent with the Commission's own prior holding that PPL may not exclude net-metered users from its TOU rate option.

DCIDA Main Brief, at 7-8.

Ultimately, DCIDA concluded:

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.

*Id.*, at 19.

In fact, PPL has proposed a TOU rate for net metered customers. Therefore, it is unnecessary to evaluate DCIDA's legal arguments regarding PPL's alleged obligations. As PPL witness James M. Rouland testified:

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

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

In addition, Mr. Rouland set forth the Company's TOU-specific proposal for net metering customers, as follows:

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

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

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

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

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

PPL Statement No. 2-RJ, at 3.

This proposal was offered in Rejoinder testimony by the Company. Although that is late in the proceeding, no party objected to the testimony or to the proposal. Transcript, at 52, line 17. *See also*, PPL Main Brief, at 27. Moreover, DCIDA's Main Brief fails to even acknowledge that PPL made this proposal.

Consequently, the OSBA respectfully submits that DCIDA's objections to the lack of a TOU rate for net metered customers have been fully addressed and resolved in this proceeding.

**B. DCIDA Did Not Rely Upon a TOU Rate When Building Its Solar Project**

In its Main Brief, DCIDA set forth the history of its solar energy facility:

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. DCIDA built the Solar Facility in two phases. In October 2011, it completed and began operating Phase I, which has approximately one megawatt

(‘MW’) of generating capacity. It completed and began operating Phase II in October 2013.

DCIDA Main Brief, at 2 (citation omitted).

DCIDA also stated, as follows:

The ability to recover costs and derive revenue for its public projects significantly incentivized DCIDA’s investment in the Solar Project.

DCIDA Main Brief, at 5.

DCIDA continued:

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 customer would and elected to take the TOU rate. 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.

*Id.* (citation omitted).

DCIDA planned its solar energy facility in 2009. DCIDA completed its Phase I facility in October 2011. DCIDA “elected” to take PPL’s TOU rate in April 2013. DCIDA Main Brief, at 3. DCIDA witness August Memmi stated, under cross examination, that DCIDA would have built Phase II (which was completed in October 2013) regardless of the availability of a TOU rate from PPL. Transcript, at 42, line 1.

Therefore, the OSBA respectfully submits that it is undisputed that DCIDA did not, in any way, rely upon the availability of a TOU rate from PPL when DCIDA decided to build, and did in fact build, its solar energy facilities. Consequently, DCIDA cannot use the dubious argument that it relied upon a tariff rate in deciding to invest its resources in solar generation facilities, and that this reliance requires PPL to continue to offer that rate.

**C. Small C&I Customers Should Not Be Burdened By DCIDA's Windfall**

As set forth in the OSBA's Main Brief, PPL Electric is obligated to purchase any excess generation above DCIDA's consumption at the Company's full default service price to compare. Furthermore, the costs incurred by PPL Electric for purchasing DCIDA's net generation are charged to default service customers. *See* OSBA Main Brief, at 6-7.

Because DCIDA is taking TOU service from PPL, DCIDA is reimbursed at highly inflated rates. It bears repeating how extreme those TOU rates are. OSBA witness Robert D. Knecht summarized the Company's TOU rate for Small C&I customers, as follows:

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

OSBA Statement No. 1, at 4 (emphasis in original).

Nevertheless, PPL is required to purchase DCIDA's excess generation at those over-priced TOU rates, providing a windfall to DCIDA.<sup>1</sup> Furthermore, the Small C&I default service customers have to reimburse PPL for that net kWh generation purchase from DCIDA. Consequently, PPL's Small C&I default service customers are forced to pay for DCIDA's windfall profits.

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<sup>1</sup> DCIDA makes much the purported high value of the net generation that it provides to PPL, in defense of its assertion that it is entitled to continue to be paid above market prices. *See, e.g.*, DCIDA Main Brief, at 5-6. Of course, if this generation really were so valuable, DCIDA would presumably have no difficulty in arranging a contract for TOU rates with an EGS which would be happy to have such a high value product. In reality, of course, as Mr. Knecht indicated, no rational EGS would offer the kind of above market payment plan inherent in the Company's current tariff.

DCIDA dismissed the fact that it is profiteering on the backs of PPL's Small C&I default service customers:

OSBA bemoans the lots of its small business constituents, arguing that they suffer increased rates because PPL must compensate DCIDA for excess generation.

DCIDA Main Brief, at 13. DCIDA suggests that the OSBA take its complaint to the legislature. *Id.* With all due respect to DCIDA, the OSBA observes that it is the Pennsylvania Public Utility Commission which has an obligation to establish just and reasonable rates, not the legislature.

PPL and the OSBA are in complete agreement that the current TOU rates for Small C&I customers are unjust and unreasonable. Transcript, at 37, lines 11-13. Furthermore, the OSBA recognizes that DCIDA was fully within its rights to take advantage to these TOU rates to increase funding of its solar energy facilities. DCIDA Main Brief, at 3. However, there is no basis whatsoever to allow DCIDA to continue to take advantage of PPL's inequitable TOU rates. Even worse, as documented in the OSBA's Main Brief, more net metering customers are discovering the financial benefits of taking service under PPL's current TOU rates. *See* OSBA Main Brief, at 8-9.

Furthermore, DCIDA will continue to be able to recoup its investment as a net metered customers, regardless of what rate DCIDA takes from PPL. In its Main Brief, PPL stated, as follows:

In the case of DCIDA, the excess cash out is also influenced by the fact that DCIDA has never 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 Main Brief, at 18.

Thus, DCIDA will continue to generate positive cash flow as a net metering customer for the foreseeable future. This is borne out by the fact that DCIDA has already earned “in excess of \$150,000” as of its May 31, 2013, cash out. DCIDA Main Brief, at 4, footnote 1. DCIDA’s May 31, 2014, should be even more profitable, since it will be done at primarily the inflated TOU rates.

Consequently, the OSBA respectfully submits 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 Statement No. 1, at 10. PPL agrees. *See* PPL Main Brief, at 18.

**D. DCIDA Has Not Offered a Just and Reasonable TOU Rate**

DCIDA complains that the Company’s existing TOU rate does not, in fact, have a TOU component to it with respect to net generation purposes. DCIDA Main Brief, at 4-5. This fact is undisputed. However, DCIDA has not offered any alternative TOU rate that would address this concern.

DCIDA also makes various complaints regarding the Company’s initial proposal for net metering TOU service, namely that the generator would negotiate an arrangement with the EGS for the net generation. *See* DCIDA Main Brief, at 11-15. However, not only does DCIDA simply ignore the Company’s alternative proposal, it offers no proposal of its own for addressing the alleged issues.

The basic issue is that DCIDA has not offered any alternative at all, except to complain that the Company's initial proposal is unacceptable. As the current TOU rate is manifestly unreasonable, DCIDA effectively argues that there are no options for the Commission.<sup>2</sup>

The OSBA would have no objection to DCIDA bringing forward a reasonable proposal, but DCIDA has opted not to do so in this proceeding. The OSBA respectfully suggests that, after having failed to offer a just and reasonable rate option in this proceeding, DCIDA retains its ability to raise the issue in PPL's next default service rate proceeding.

**E. Terminating PPL's Current TOU Rates for Small C&I Customers**

The OSBA has argued for terminating the current TOU Rates for Small C&I customers as soon as is practicable. *See* OSBA Statement No. 1, at 5. *See also* OSBA Main Brief, at 5-6.

The OSBA is aware of PPL's concern that the Company must offer TOU rates. 66 Pa. C.S. Section 2807(f)(5) ("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)."). However, it is a fundamental precept of public utility law that all rates must be just and reasonable. 66 Pa. C.S. Section 1307 ("Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.").

Both of these statutory requirements must be obeyed. It cannot be that the legislature intended for a TOU rate to go into effect if that rate was to be unjust and unreasonable. 1 Pa. C.S. Section 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions.).

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<sup>2</sup> It is worth noting that DCIDA itself acknowledges that the existing TOU rate is not reasonable. DCIDA stated that "[n]ot 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." DCIDA Main Brief, at 17 (footnote omitted). The OSBA fully agrees that the current tariff is not just and not reasonable, and should be eliminated at the earliest opportunity.

Furthermore, the partial settlement in this proceeding requires PPL to enact the Company's new TOU rates within 90 days of the entry of the Commission's Order.

Consequently, the OSBA respectfully requests that PPL terminate the existing TOU rates for PPL's Small C&I customers on the day that the Commission's Order is entered in this proceeding. That will provide immediate relief from unjust and unreasonable rates to those Small C&I customer still taking service under PPL's current TOU program. It will also do no harm to any Small C&I customer wishing to take service under PPL's new TOU program to have to wait 90 days for the new TOU program to be in place.

**IV. Conclusion**

Wherefore, for the reasons set forth in the OSBA's Main Brief, and in this Reply Brief, the OSBA respectfully requests that the ALJs and the Commission:

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

Respectfully submitted,



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