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April 11, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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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 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 :

**REPLY BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGES SUSAN D. COLWELL & JOEL CHESKIS

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Table of Contents

	Page
I. INTRODUCTION	1
A. SUMMARY AND STATEMENT OF POSITION	1
B. BACKGROUND INFORMATION AND PROCEDURAL HISTORY	4
II. ARGUMENT	4
A. RESPONSE TO DCIDA	4
1. The Pilot TOU Program Satisfies All Necessary Legal and Regulatory Requirements	4
2. It Is Undisputed That PPL Electric’s Alternative Proposal Fully Satisfies the Legal Requirements of 52 Pa. Code § 75.13 and 66 Pa. C.S. § 2807	9
3. Any Argument that the Pilot TOU Program Conflicts with the AEPS Act or Does Not Incentivize Development Is Contradicted by the Record in this Proceeding	10
4. The Contingency Plan Proposed by PPL Electric Is Reasonable	13
5. DCIDA’s Challenge to the Current Net-Metering Cash Out Tariff Provisions Is Beyond the Scope of the Proceeding.	16
B. Response to OSBA	18
1. OSBA’s Request to Terminate the Current Small C&I TOU Rates on the Day an Order Is Entered in this Proceeding Should Be Rejected	18
a. PPL Electric has an obligation to offer a TOU rate to Small C&I customers	19
b. OSBA does not provide sufficient information regarding the treatment of current Small C&I TOU customers or how OSBA’s proposal will affect the Pilot TOU Program’s implementation	20
c. The Commission has continually permitted the current rates to remain in effect pending the approval of a subsequent TOU plan	23
III. CONCLUSION	25

TABLE OF AUTHORITIES

PAGE

Pennsylvania Court Decisions

Pa. P.U.C. v. PPL Electric Utilities Corporation, Docket No. R-2011-2264771, *et al.*, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012) 23

Pennsylvania Administrative Agency Decisions

Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. L-2014-2404361, (Proposed Rulemaking Order Entered February 20, 2014) 18

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650 (Order Entered February 15, 2013)..... 6

Office of Small Business Advocate v. PPL Electric Utilities Corporation, Docket Nos. R-2009-2122718, *et al.*, (Opinion and Order Entered March 9, 2010)..... 5

Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan, Docket No. M-2009-2123944 (Order Entered April 15, 2011)..... 7

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)..... 24

Petition of PPL Electric Utilities Corporation 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)..... 6

Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123945 (Order Entered June 24, 2010) 23, 25

PPL Electric Utilities Corporation 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) 13, 24, 25

Pennsylvania Statutes

66 Pa. C.S. § 2807..... 9, 10
66 Pa. C.S. § 2807(f)..... 24
66 Pa. C.S. § 2807(f)(5) 3, 4, 5, 6, 7, 8, 13, 18, 19, 20

Regulations

52 Pa. Code § 75.13 6, 9, 10, 19
52 Pa. Code § 75.13(a)..... 5, 6, 7, 9
52 Pa. Code § 75.13(e)..... 18, 19

I. INTRODUCTION

A. SUMMARY AND STATEMENT OF POSITION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Reply Brief in response to the Main Briefs (“M.B.”) of the Dauphin County Industrial Development Authority (“DCIDA”) and Office of Small Business Advocate (“OSBA”) filed on March 21, 2014 in the above captioned proceeding. PPL Electric has anticipated and responded to most of the arguments raised by the parties, and, therefore, the Company will endeavor to avoid repeating its responses in this Reply Brief.¹

DCIDA requests that the Commission reject the Pilot Time-of-Use (“TOU”) Program and PPL Electric’s proposed contingency plan. DCIDA M.B. at pp. 9, 19. DCIDA makes several arguments to support its position. Each of these arguments is without merit and should be rejected. As explained below, PPL Electric’s Pilot TOU Program fully satisfies the applicable legal requirements by offering a net metering option to all qualifying customers and by offering a TOU rate option to all qualifying customers. DCIDA speculates that participating retail electric generation suppliers (“EGSs”) may not offer a TOU rate option, but this argument is unsupported by any record evidence and is premature, at best. Moreover, even if participating EGSs do not offer a TOU rate option, there is nothing in the applicable statutes and regulations requiring that all qualifying customers must have both a net metering option and TOU rate option at the same time and in the manner proposed by DCIDA. Alternatively, if the Administrative Law Judges (“ALJs”) and the Commission were to determine that DCIDA’s position is correct, PPL Electric has proposed an alternative net metering TOU proposal that fully satisfies DCIDA’s interpretation of the relevant statutes.

¹ In this Reply Brief, PPL Electric provides cross references to its Main Brief where it has addressed the arguments raised by DCIDA and OSBA, as applicable.

DCIDA also contends that the Pilot TOU Program conflicts with the policy embodied in the Alternative Energy Portfolio Standards Act (“AEPS Act”) in Pennsylvania, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa. C.S. § 2814. These arguments are without merit for several reasons. First, they are largely irrelevant to the legal issues presented in this proceeding. Second, they are factually in error. DCIDA argues at length regarding its reliance on the TOU rate option in its decision to construct its solar facilities. As discussed in detail below, DCIDA did not rely on the current TOU rates when it planned or expanded its facilities.

Third, DCIDA’s policy arguments are largely a “smokescreen” to mask its goal to maintain the existing frozen TOU rates in place for as long as possible. There is no rational basis for this position. The currently effective TOU rates have been in effect since 2011, and both the on- and off-peak TOU rates are substantially higher than the current Price-to-Compare (“PTC”) for each applicable rate class. PPL Electric St. 2-R at 14:34-35. The current TOU rates are neither market based or cost based and cannot be allowed to continue. These excessive TOU rates provide windfall revenue to DCIDA (paid for by non-net metering customers), but serve no other useful purpose and should be terminated as soon as practicable.

Finally, DCIDA’s policy argument is clearly one-sided and does not reflect a number of countervailing policy arguments. A further continuation of the existing TOU rates would be unreasonable because the current rates are not just and reasonable and have not been for quite some time. OSBA St. 1 at p. 5:9-12; Tr. 37:11-13. Moreover, 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. DCIDA’s position also is contrary to the purpose of TOU rates. The purpose of a TOU rate is provide a rate design that encourages customers to shift usage from higher cost on-peak periods to lower cost off-peak periods. In the net metering context, however, the opposite occurs. Net metering TOU

customers sell power to PPL Electric and are compensated based on the on- and off peak TOU rates for any generation in excess of the customer's electric consumption. The current high on- and off-peak TOU rates in combination with the net metering program does not encourage net metering TOU customers to shift usage because during both on- and off-peak periods they will receive a higher payment for excess generation. This is particularly true for net metering TOU customers, such as DCIDA, who generate much more electricity than they consume and has never been a net consumer of electricity. The purpose of a TOU rate is to encourage customers to shift usage from on-peak to off-peak periods. The net metering proposal of DCIDA does exactly the opposite and should not be adopted.

Notably, OSBA, the party representing all Small Commercial and Industrial ("C&I") customers, has presented testimony and filed a brief seeking a termination of the existing TOU rates. OSBA's position is based on the fact that, as noted above, a continuation of the current rates means that DCIDA would receive a large subsidy from the other customers because the result of the cash out is ultimately borne by other Small C&I customers. OSBA St. 1 at 9:6-7. It is inequitable for this subsidy to be maintained.

Regarding the issues raised in OSBA's Main Brief, OSBA requests that the Commission terminate the current Small C&I TOU rate on the date that an order is entered in this proceeding. PPL Electric objects to OSBA's request because the timing of the termination may place the Company out of compliance with 66 Pa. C.S. § 2807(f)(5), which requires PPL Electric to offer a TOU rate. Moreover, OSBA's request would complicate the transition to the new Pilot TOU Program. PPL Electric has proposed a detailed transition plan that provides notice to current TOU customers that the existing rates will no longer be available and includes a timeline for the customers to transition to a new TOU rate, fixed-price default service or a retail EGS's offering. The conflict between OSBA and PPL Electric is not that the current rates should remain in place,

because PPL Electric agrees that the rate should terminate. Instead, the difference in positions is a matter of timing. The Company wants to provide customers adequate notice of the termination of the existing rates and permit customers sufficient time to choose a new rate option.

B. BACKGROUND INFORMATION AND PROCEDURAL HISTORY

A full procedural history of this proceeding is contained in PPL Electric’s Main Brief (at pp. 2-4). In summary, PPL Electric filed a Petition requesting Commission approval of a new Pilot TOU Program on August 23, 2013. Multiple parties filed motions to intervene and answers to the August 23, 2013 Petition. The parties filed direct, rebuttal, surrebuttal, and rejoinder testimony, as applicable, in accordance with the established litigation schedule established by ALJs. A hearing was held on February 26, 2014, at which 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.² A separate petition requesting approval of the partial settlement was submitted concurrently with this Reply Brief.

On March 21, 2014, DCIDA, OSBA and the Company filed main briefs, and in accordance with the established litigation schedule, PPL Electric submits this Reply Brief in response to the main briefs filed by DCIDA and OSBA.

II. ARGUMENT

A. RESPONSE TO DCIDA

1. The Pilot TOU Program Satisfies All Necessary Legal and Regulatory Requirements

The primary argument of DCIDA’s Main Brief is that PPL Electric is required to offer both net metering service and a TOU rate to DCIDA. *See, e.g.*, DCIDA M.B. at p. 1, 7, 9. This argument was fully rebutted by PPL Electric in its Main Brief (at pp. 24-26). In summary,

² Subsequent to the hearing and in its Main Brief, OSBA raised its request regarding termination of the current Small C&I TOU rates.

Section 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. 66 Pa. C.S. § 2807(f)(5). Section 2807(f)(5) also states that a default service provider shall offer TOU rates to all customers that have been provided with smart meter technology. *Id.* Additionally, 52 Pa. Code § 75.13(a) requires that electric distribution companies (“EDCs”) offer net metering to customer-generators that generate electricity on the customer-generator’s side of the meter. As fully explained in PPL Electric’s Main Brief, the Pilot TOU Program satisfies all necessary legal and regulatory requirements. PPL Electric M.B. at pp. 24-26. Specifically, under the Company’s proposal, all customers will have a net metering option and a TOU rate option available to them. DCIDA simply does not prefer the options proposed and in its Main Brief does not offer any alternatives; rather, it seeks to have the Commission reject the Company’s proposal.

To support its position that the Company is required to offer both net metering service and a TOU rate to DCIDA, it cites *Office of Small Business Advocate v. PPL Electric Utilities Corporation*, Docket Nos. R-2009-2122718, *et al.*, at p. 22 (Opinion and Order Entered March 9, 2010) (“March 2010 Order”) where the Commission stated:

It is contrary to the statute at 66 Pa. C.S. § 2807(f)(5) for PPL to exclude Net Metering, Renewable Energy and On-Track customers from the TOU program. The statute at 66 Pa. C.S. § 2807(f)(5) states that a default service provider shall offer TOU rates to all customers that have been provided with smart meters. The use of the word “shall” in the statute makes this requirement mandatory, not discretionary. The statute contains no exceptions to this mandatory requirement. We also support the rationale of the SEF’s position that the Net Metering, Renewable Energy and On-Track customers should have the option to select the TOU program.

DCIDA strictly interprets the above determination as requiring PPL Electric to provide net metering service and a TOU rate to DCIDA; however, DCIDA is misconstruing the

regulatory requirements, the Commission's determinations and the Pilot TOU Program. First, PPL Electric is offering its net metering customers a TOU rate option; however, that TOU rate will be provided by an EGS. PPL Electric M.B. at p. 15. PPL Electric is not proposing to exclude net metering customers from the Pilot TOU program. Second, the above quote from the March 2010 Order and its interpretation of 66 Pa. C.S. § 2807(f)(5) must be read in the context of the Commission's recent encouragement that default service providers use EGSs to provide TOU service to satisfy the default service providers' TOU rate requirements. *Petition of PPL Electric Utilities Corporation 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) at p. 115 ("January 24 Order").³ The use of an EGS for TOU service was not an issue in the March 2010 Order, which is a more recent and broader interpretation of how a default service provider can satisfy its TOU requirements. When encouraging a default service provider to use an EGS to provide TOU service, the Commission accepted that some elements of service might change as a result of a customer becoming a TOU customer of an EGS. This scenario is playing out in this proceeding whereby EGSs will provide TOU service to net metering customers. By encouraging PPL Electric to use EGSs to provide TOU service, the Commission was aware of the requirements of 52 Pa. Code § 75.13, which provides that "EDCs *shall* offer net metering to customer-generators," but that "EGSs *may* offer net metering to customer-generators ... under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs." 52 Pa. Code § 75.13(a) (emphasis added).

³ See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650 (Order Entered February 15, 2013), p. 6 (permitting West Penn Power Company ("West Penn") and Pennsylvania Power Company ("Penn Power"), 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).

The fact that the Commission has encouraged the use of EGSs to provide TOU service cannot be viewed in a vacuum. This development profoundly changes the March 2010 Order's interpretation of 66 Pa. C.S. § 2807(f)(5). It is clear that while the March 2010 Order required PPL Electric to offer net metering and TOU service, the use of an EGS changes how said requirement would be implemented, and by permitting EGSs to provide TOU service for EDCs, the Commission was aware that EGSs have the option to offer net metering to customer-generators.

Moreover, while the Commission decided in the March 2010 Order, *inter alia*, that PPL Electric, as the EDC, must offer TOU service to net metering and OnTrack customers *under* 66 Pa. C.S. § 2807(f)(5),⁴ it clearly changed its interpretation because PECO's Smart Time Pricing program, which uses an EGS to supply TOU service, does not permit net metering customers or customers on PECO's Customer Assistance Program ("CAP") Rate, a discounted residential rate for low-income customers, to participate. OCA St. 1, Exhibit OCA-BA-2 (summarizing the participation requirements of the PECO plan).

In *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order Entered April 15, 2011), at p. 6, the Commission approved a settlement regarding PECO's TOU plan and expressly discussed the fact that only residential customers not enrolled in the company's CAP will be eligible for TOU rates. Moreover, despite this restriction, the Commission found that "[s]ince all customers with a smart meter may participate in the CPP and TOU rate options proposed by the instant Petition and since PECO will offer TOU rates and real-time price plans for all customers with smart meters concurrent with the system-wide deployment of smart meters, we find that the Petition complies with the availability requirement of 66 Pa. C.S. § 2807(f)(5)." Therefore, even

⁴ Company's low income customer assistance program ("CAP"), known as "OnTrack."

though PECO expressly excluded CAP customers from its TOU plan, the Commission, nonetheless held that PECO was in compliance with the requirements of 66 Pa. C.S. § 2807(f)(5). This illustrates a shift from the Commission's holding in the March 2010 Order, which required the inclusion of CAP customers in PPL Electric's then proposed TOU program. Therefore, the Commission's interpretation of 66 Pa. C.S. § 2807(f)(5) in the March 2010 Order must also be viewed in light of the Commission's more recent precedent, which permits the possible exclusion of customers from the TOU Program while maintaining compliance with 66 Pa. C.S. § 2807(f)(5). PPL Electric interprets the Commission's more recent analysis of 66 Pa. C.S. § 2807(f)(5) and the fact that PECO's Commission-approved TOU plan excludes the participation of net metering customers and CAP customers to be controlling with regard to the scope of Section 2807(f)(5). While the Commission rendered a strict reading of 66 Pa. C.S. § 2807(f)(5) in the March 2010 Order, its more recent findings have taken a more nuanced approach, permitting default service providers to exclude, if they so choose, certain customer groups from TOU programs. Therefore, while PPL Electric is not proposing to exclude net metering customers from the Pilot TOU Program, if the Commission believed that, by its terms, the Pilot TOU Program was effectively excluding net metering customers, such a determination would not matter. Based on the foregoing, the Commission now interprets 66 Pa. C.S. § 2807(f)(5), in contrast to the March 2010 Order, as permitting EDCs to exclude certain customers from the TOU offerings. As such, even if DCIDA is correct in its assertion that PPL Electric was excluding net metering customers from the TOU rate, PPL Electric would be permitted to do so under the precedent established by the Commission regarding the PECO TOU plan.

Notably, as explained by PPL Electric in its Main Brief (at p. 24), if there is a requirement that PPL Electric must offer net metering customers a TOU option, as argued by DCIDA based on a strict reading of the March 2010 Order, 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 in the tariff. PPL Electric M.B. at p. 25. Therefore, the distribution bill of a net metering customer that participates in the Pilot TOU Program 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. *See* 52 Pa. Code § 75.13(a). Under the Pilot TOU Program, 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.

2. It Is Undisputed That PPL Electric's Alternative Proposal Fully Satisfies the Legal Requirements of 52 Pa. Code § 75.13 and 66 Pa. C.S. § 2807

PPL Electric, as discussed above, believes that the proposed Pilot TOU Program satisfies all necessary legal and regulatory requirements of 52 Pa. Code § 75.13 and 66 Pa. C.S. § 2807. However, in the event that the Commission does not accept PPL Electric's position, PPL Electric has offered an alternative proposal, a special net metering TOU rate, which is available only to customer-generators. PPL Electric St. 2-RJ at 3:6-16; PPL Electric M.B. at p. 26.

As explained in PPL Electric's Main Brief (at p. 27), if the Commission does not accept PPL Electric's position that the primary Pilot TOU Program satisfies the requirements of 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.

No party presented testimony in opposition to the alternative proposal, no party cross-examined the witness that presented the alternative proposal and no party objected to the testimony describing the alternative proposal being entered into the record. Tr. 59:16. In its Main Brief, DCIDA did not address or object to the PPL Electric's alternative proposal.⁵ OSBA, in its Main Brief, explained that it does not oppose the alternative TOU proposal for net metering customers. OSBA M.B. at p. 12. PPL Electric has met the burden of proof regarding the proposed alternative TOU rate option and no party has opposed the alternative proposal. Therefore, it should be accepted, if the Commission does not believe that the Pilot TOU Program satisfies the relevant requirements.

3. Any Argument that the Pilot TOU Program Conflicts with the AEPS Act or Does Not Incentivize Development Is Contradicted by the Record in this Proceeding

DCIDA misleadingly argues that the Pilot TOU Program conflicts with the policy embodied in the AEPS Act. DCIDA M.B. at p. 16. Under the Pilot TOU Program, 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

⁵ DCIDA does challenge the contingency plan initially proposed by PPL Electric; however, it does not specifically address the alternative presented in PPL Electric St. 2-RJ at 3:19 - 4:17. To the extent that DCIDA's challenges to the contingency plan are also applicable to the alternative net metering/TOU proposal, the Company's response below regarding the contingency plan is also germane to the alternative proposal.

from PPL Electric in accordance with its tariff. PPL Electric St. 2-R at 15:19-20; Exhibit No. JMR-6.

DCIDA maintains that these options do not align with the AEPS Act because the Pilot TOU Program “deprives DCIDA of its presently best-suited means to achieve its public goals.” DCIDA M.B. at p. 16. However, the record in this proceeding and the evidence presented by DCIDA rebuts the argument that the Pilot TOU Program somehow deprives DCIDA of anything or is a disincentive to development in contravention of the AEPS Act. As discussed by PPL Electric in its Main Brief (pp. 19-20), DCIDA initiated service as a PPL Electric net metering customer in October 2011 and at that time, it was receiving fixed-price service through the PTC. PPL Electric St. 2-R at 18:20-21. DCIDA did not begin taking service as a TOU customer until June 2013. PPL Electric St. 2-RJ at 4:23. This initiation of TOU service coincided with an expansion at the DCIDA facility, which was completed in summer of 2013. Tr. 41:17-21. DCIDA has explained that the TOU rate was not material to DCIDA’s decision to expand the facility because it was “going to build the project anyway.” Tr. 42:1. In other words, the fixed-price default net metering service sufficiently incentivized DCIDA to build and expand its facility, and the excessive compensation under the current TOU rates is clearly a windfall provided by other customers.

Under PPL Electric’s Pilot TOU Program the fixed-price default net metering service will still be available to customers. 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. In short, DCIDA was incentivized to develop its facility based on PPL Electric’s fixed-price default net metering service, and that rate option is available under the Pilot TOU Program. However, according to DCIDA’s Main Brief, that same rate option somehow “reduces the incentive and

discourages continued investment in alternative energy systems.” DCIDA M.B. at p. 16. DCIDA’s argument should be rejected because the actions of DCIDA illustrate that an option available under the Pilot TOU Program (fixed-price default net metering service) encouraged DCIDA to install and expand its facilities, consistent with the intent of the AEPS Act.

DCIDA’s arguments turn the purpose of the TOU rates on their head. On December 2, 2010, the Commission issued an order in Docket R-2010-2201138 approving TOU rates for PPL Electric. The Commission also issued a press release announcing that decision, in which it stated the following:

The underlying objective of the TOU rates is to encourage customers to shift their electric usage from on-peak periods when wholesale demand and prices are high to off-peak periods when wholesale demand and prices are lower. The goal is to reduce peak demand on generation resources, contribute to reducing wholesale electricity power during the hours of highest demand and provide customers with an opportunity to reduce their monthly electric bills.

See OCA St. 1 at 7:13-23. In the press release, the Commission was agreeing with the Company’s position in Docket No. R-2010-2201138.⁶ It is clear from the record in this proceeding that the TOU rates have not encouraged DCIDA to shift its electric usage. In fact, the exact opposite is true, i.e., the TOU rates encourage DCIDA to increase its on-peak generation in order to receive higher revenue from PPL Electric and a greater subsidy from other customers. The sole reason DCIDA wants a TOU rate is so that it can receive excess revenue (at

⁶ PPL Electric Utilities Corporation Supplement No. 94 to Tariff Electric – Pa. P.U.C. No. 201 – Time-of-Use Rates, Docket No. R-2010-2201138, at p. 2 (Order Entered December 2, 2010):

PPL submits that the objective of its’ [sic] proposed TOU program is to provide optional pricing for electric generation service applicable to residential and small C&I customers that encourages these customers to shift their electricity usage from on-peak periods when wholesale electricity demands and prices are higher, to off-peak periods when demands and prices are lower. The Company asserts that this shifting of use from on-peak to off-peak periods will reduce peak demands on generation resources, contribute to reducing wholesale electricity prices during the hours of highest demand, and provide customers with an opportunity to reduce their monthly electric bills.

cash out) due to the differential between the PTC and the current TOU rates in the range of \$50,000 to \$80,000 a year. Tr. 33:15-21. This is unreasonable and inconsistent with the purpose of the TOU rates.

DCIDA also argues that under the Pilot TOU Program, an EGS may not offer TOU rates that incentivize development. DCIDA M.B. at p 17. Any concern that a desirable net metering TOU option may not be available from an EGS participating in the Pilot TOU Program is premature. At this time, without implementing the Pilot TOU Program, it is not known what options will be available for net metering customers. Therefore, since a TOU rate for net metering customers that could satisfy DCIDA's requirements may be available under the Pilot TOU Program, DCIDA's conclusions that such offering would not encourage or possibly discourage growth are premature.

4. The Contingency Plan Proposed by PPL Electric Is Reasonable

Pursuant to Section 2807(f)(5) of the Code, PPL Electric must offer a TOU rate option to its customers. *See* 66 Pa. C.S. § 2807(f)(5). Therefore, the Company proposed a contingency plan in the event that no EGSs are participating in the Pilot TOU Program for a particular customer class. PPL Electric St. 2 at 3:18-21. PPL Electric proposes to implement the contingency TOU rate option under only very limited circumstances. PPL Electric St. 2 at 4:5-12. Under the contingency TOU rate option for Residential customers, on-peak hours for the TOU rate option will be set from noon to 7 p.m. Monday through Friday, excluding Saturday, Sunday and PJM holidays. The on-peak rate for Residential customers will be determined by adding a 15% adder to the then current PPL Electric Fixed Price Generation Supply Charge-1 ("GSC-1") Charge (less the E Factor), and the off-peak rate will be determined by subtracting a 4% discount from the then current Fixed Price GSC-1 Charge (less the E Factor). PPL Electric St. 2 at 4:16-22. For Small C&I customers, on-peak hours for the TOU rate option will be from

7 a.m. to 7 p.m. Monday through Friday, excluding Saturday, Sunday and PJM holidays. The on-peak rate for the Small C&I customers will be determined by adding a 15% adder to the then current PPL Electric Fixed Price GSC-1 Charge (less the E Factor), and the off-peak rate will be determined by subtracting an 8% discount from the then current Fixed Price GSC-1 Charge (less the E Factor). PPL Electric St. 2 at 4:22 - 5-22.

DCIDA opposes the contingency plan. DCIDA M.B. at p. 17. DCIDA states that while it believes that the contingency plan complies with the law, DCIDA opposes the contingency plan because it is possible that “DCIDA would be paid less than the Price-to-Compare for its excess generation.” DCIDA M.B. at p. 17. DCIDA asserts that this is a “nonsensical result” and, therefore, the contingency plan should be rejected. DCIDA M.B. at p. 17.

DCIDA did not present testimony on this issue and cites the testimony of OSBA to support its assertion regarding what DCIDA’s cash out might be under the contingency plan; however, DCIDA does not accurately represent OSBA’s statements. OSBA stated that its calculations suggest that the TOU weighted average would be less than 1% lower than the regular default service rate under PPL Electric’s proposed on-peak and off-peak factors. OSBA St. 1 at 10:18, fn. 9. However, OSBA expressly concluded that because the contingency TOU rates are set around the fixed default service rate, “the revenue DCIDA would receive as a TOU customer would actually be *virtually identical* to what it would receive as a fixed default service customer.” OSBA St. 1 at 10:16-18 (emphasis added).

DCIDA’s assertions regarding the contingency plan should be rejected because DCIDA’s criticism of the plan is that it would not receive revenue in excess of the fixed-default service rate, *i.e.*, DCIDA desires more money. PPL Electric believes that the contingency plan is reasonable and it should be approved. The on- and off-peak periods

proposed for the TOU Residential and Small C&I customers are appropriate, and as pertinent here, the on- and off-peak periods for the Small C&I customer class are the same as those currently in effect and previously approved by the Commission. PPL Electric St. 2 at 5:13-15. The Company believes that these periods in conjunction with the adder and deductions are reasonable and appropriate to incentivize a customer to shift load from on-peak to off-peak periods. PPL Electric St. 2 at 5:21-23.

Importantly and consistent with OSBA's calculations, the on- and off-peak adders and deductions were created to ensure revenue neutrality for the average Residential and Small C&I customers participating in the TOU contingency plan, but where the customers do not change their usage habits while on the plan. PPL Electric St. 2 at 6:9-11. As such, if customers do not change usage habits, the resulting rate will approximately match the then in effect PTC. PPL Electric St. 2 at 6:11-14, Exhibit No. JMR-1. DCIDA, without providing evidence to the contrary, asserts this result, *i.e.*, matching the then in effect PTC, is "nonsensical." DCIDA M.B. at p. 17. Such an argument is without merit because PPL Electric has presented sufficient evidence, as cited above, that illustrates that the contingency plan is reasonable and should be accepted.

PPL Electric believes that it is "nonsensical" that the current TOU rates, both on- and off-peak, are above the PTC and have been that way for years. It would be "nonsensical" for the Commission to require the Company to continue to maintain its current TOU rates that are higher than the PTC and continue the unfair and inequitable situation whereby DCIDA receives a large subsidy from the other customers. PPL Electric St. 2-R at 18:10-13; OSBA St. 1 at 9:6-7. It is "nonsensical" for the Commission to require other customers to subsidize DCIDA's excess revenue (at cash out) due to the differential between the PTC and the current TOU rates in the range of \$50,000 to \$80,000 a year. Tr. 33:15-21.

5. DCIDA's Challenge to the Current Net-Metering Cash Out Tariff Provisions Is Beyond the Scope of the Proceeding

In its Main Brief, DCIDA asserts that there are questions concerning whether PPL Electric's current means of calculating the PTC for net metering cash outs is valid. DCIDA M.B. at p. 17. While DCIDA states that it may file a complaint against PPL Electric, it argues that the Commission should evaluate PPL Electric's current calculation framework in light of the contingency plan. DCIDA M.B. at p. 17, fn.2.⁷ This argument is without merit, and the Commission-approved method used by PPL Electric to determine the cash out received by net metering customers is not at issue in this proceeding.⁸

The net metering provisions of the Company's tariff (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.2 to Second Revised Page 19L.4A) were most recently accepted by the Commission at Docket Nos. R-2012-2290597, *et al.*, and filed on December 31, 2012, as part of a compliance filing. PPL Electric is not requesting that the Commission approve tariff changes related to how the Company calculates its net metering cash out as part of this proceeding. Tr. 16. If DCIDA has an issue with a currently effective tariff provisions, it can file a complaint with the Commission.⁹ It is not appropriate for DCIDA to attempt to bootstrap issues that are not properly before the ALJs in this proceeding. While the Company believes that DCIDA's challenge to the current net metering cash out calculation

⁷ DCIDA summarized the Company's net metering tariff provisions in its testimony; however, it did not challenge the calculation methodology. DCIDA St. 1, at 6:18-19. By stating that it is considering a separate complaint, DCIDA is acknowledging that issues related to the net metering cash out calculations are not part of this proceeding.

⁸ The Company acknowledges that its TOU proposal may affect net metering customers; however, it is not seeking to revise its separate net metering tariff provisions (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) as part of this proceeding.

⁹ Moreover, OSBA has explained that issues related to Company's tariff provisions applicable to net metering cash out would be more properly addressed in another proceeding. Tr. 29:24 – 30:9.

methodology is not part of this proceeding, to the extent that the ALJs and the Commission determines otherwise, PPL Electric provides the following response.

DCIDA argues that where rate designs incorporate TOU rates, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation and that PPL Electric's tariff does not comply with this requirement. DCIDA M.B. at p. 17. (citing *Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174 (July 2, 2008)). However, the relevant portion of 52 Pa. Code § 75.13(e) states that:

[a]t 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.

PPL Electric currently allows customer generators to take default service under its TOU rates, which means that on a month to month basis, load in on-peak periods is priced higher than load for off-peak periods. Tr. 15:5-11. However, the annual cash out for these customers is different. The cash out under PPL Electric's tariff is calculated at the very end of the year (in May) based upon an hourly weighting of on-peak hours to off-peak hours and based on the PTC at the time of cash out, as compared to looking at a month by month basis of when excess generation was created and entered into the system and, thus, priced at the on-peak or off-peak price. Tr. 15:13-18. Therefore, for cash out purposes, a rate is not necessarily directly applied, meaning if a facility generated 90% of its excess generation in on-peak hours, it would not simply receive the higher on-peak rate because of the weighting mechanism in the tariff. This is explained in PPL Electric's tariff (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.4), which provides that:

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.

This is consistent with 52 Pa. Code § 75.13(e) because, as required, at the end of each year (consistent with the PJM planning period), the Company, as the EDC, compensates 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 PTC. The Company performs the applicable calculation by using (1) the weighted average of the on-peak and off-peak hours for the entire year and (2) the then in effect PTC. The regulations do not state which PTC should be used for the year; therefore, PPL Electric uses the PTC in effect at the time of the calculation (not the PTCs during the earlier period). Recently, in *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361, Annex A at p. 7 (Proposed Rulemaking Order Entered February 20, 2014), the Commission proposed to revise 52 Pa. Code § 75.13 to specifically mention that when computing compensation, the default service provider shall use a weighted average of the PTC rate, with the weighting based on the rate in effect when the excess generation was actually delivered by the customer-generator. By proposing to revise the regulations, the Commission is acknowledging that prior to the effectiveness of the proposed regulations, it is reasonable for an EDC to conclude that based on the text of the current regulations, it need not compute compensation based on the rate in effect when the excess generation was actually delivered.

B. RESPONSE TO OSBA

1. OSBA's Request to Terminate the Current Small C&I TOU Rates on the Day an Order Is Entered in this Proceeding Should Be Rejected

OSBA requests that the Commission terminate the current Small C&I TOU rates on the date that an order is entered in this proceeding. OSBA M.B. at p. 6. This request should be

rejected.¹⁰ First, PPL Electric is obligated under 66 Pa.C.S. § 2807(f)(5) and related Commission precedent to offer a TOU rate. Second, the Company has proposed a detailed implementation plan for the Pilot TOU program that includes ending the current TOU rates and permits customers to transition to either fixed-price default service or EGS service after sufficient notice. The immediate termination of the current TOU rates would interrupt and complicate the transition process, and force customers without notice onto a rate the customers have not elected. Third, the Commission has had several opportunities to terminate the current TOU rates, and at each step, the Commission has continued the effectiveness of the current rates.

To be clear, it is PPL Electric's intention that the current TOU rates terminate when the Pilot TOU Program is implemented as proposed by the Company. The difference between OSBA and PPL Electric regarding ending the current TOU rates concerns timing. While OSBA seeks a hard stop of the current TOU rates without any effective TOU option that could be offered to Small C&I customers, PPL Electric proposes to terminate the current rates when the Pilot TOU program is implemented to ensure that customers will have a TOU rate option available.

a. PPL Electric has an obligation to offer a TOU rate to Small C&I customers

As fully explained in PPL Electric's Main Brief (at p. 6), 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). Moreover, Section 2807(f)(5) also provides that default service providers shall offer the TOU

¹⁰ The petition requesting approval of the partial settlement, filed concurrently with this Reply Brief, includes a detailed transition plan based on the Company's as-filed proposal with certain agreed to modifications. This section of the Reply Brief only addresses OSBA's request that the Commission terminate the current Small C&I TOU rates on the date that an order is entered in this proceeding, which is not consistent with the settlement. The Company supports the settlement, which contains a detailed transition plan and does not include a termination of the current Small C&I TOU rates on the date an order is entered.

rates to all customers that have been provided with smart meter technology and that residential or commercial customers may elect to participate in TOU rates. *Id.* Accordingly, PPL Electric is required to offer a TOU rate option to its default service customers, including Small C&I customers. January 24 Order at p. 92.

OSBA recommends that the Commission terminate the current Small C&I TOU rates when an order is entered in this proceeding. OSBA M.B. at pp. 6, 13. This request should be rejected because if approved, it may render PPL Electric in violation Section 2807(f)(5). Once the current TOU rates are terminated, PPL Electric would not be offering TOU rates to its Small C&I customers and may no longer meet the requirement that it offer TOU rates to its Small C&I customers. While PPL Electric, as part of the Pilot TOU Program and discussed below, proposed a detailed implementation plan for the new program, it cannot be implemented on the same day that the Commission issues an order in this proceeding. Therefore, there would be a gap between the issuance of an order terminating the current Small C&I TOU rates, as proposed by OSBA, and the implementation of the Pilot TOU Program. OSBA does not discuss in its brief how PPL Electric will be in compliance with Section 2807(f)(5) once the current Small C&I TOU rates are terminated. If OSBA's proposal is accepted and PPL Electric is required to terminate the current TOU rates without implementing a rate offering to replace the terminated rates, the Company may not be in compliance with Section 2807(f)(5) because it would not be offering TOU rates to Small C&I customers.

- b. OSBA does not provide sufficient information regarding the treatment of current Small C&I TOU customers or how OSBA's proposal will affect the Pilot TOU Program's implementation**

OSBA's proposal to terminate the existing TOU rates for Small C&I customers on the day the Commission order is entered is essentially a "hard stop" of the current TOU rates.

OSBA, however, does not discuss, in any way, what will happen to the current Small C&I TOU customers once the rates are terminated. OSBA does not propose that Small C&I customers will receive notice of the termination of the current rates. OSBA does not state whether current Small C&I TOU customers would be moved directly to fixed-price default service once the rates are terminated or whether customers will be assigned to an EGS to receive service.

In contrast to OSBA's proposal, which lacks any specificity, PPL Electric has proposed a detailed implementation plan that accounts for providing notice to the current TOU customers and provides for a transition to fixed-price default service, the Pilot TOU Program or some other form of service from an EGS. The proposed transition also provides for the lead time required to implement the Pilot TOU Program.

Under the Company's implementation plan,¹¹ customers currently receiving service under PPL Electric's existing TOU rate option may move directly to the Pilot TOU Program if the customer chooses to participate. PPL Electric St. 1 at 15:12. However, if a current TOU customer does not choose to participate in the Pilot TOU Program and does not choose to participate in an EGS's TOU rate option within a specified time frame, the customer will be returned to PPL Electric's fixed-price default service. PPL Electric St. 1 at 15:14-15. PPL Electric proposes that prior to returning current TOU customers to fixed-price default service, the Company will send the existing TOU customers a letter 45 days prior to the start of the Pilot TOU Program notifying them that the current TOU rate will terminate. PPL Electric St. 1 at 15:17-18. The letter also will explain that if the customer does not choose to participate in an EGS's TOU rate option by a certain date, they will be transferred to PPL Electric's fixed-price default service. PPL Electric St. 1 at 15:19-20. The letter also will notify the current TOU

¹¹ The transition processes, described herein, is consistent with the concurrently filed petition requesting approval of the partial settlement. As noted above the Company supports the settlement.

customers about the Pilot TOU Program and inform the customers how to participate. PPL Electric St. 1 at 15:22.

PPL Electric proposes to maintain the current TOU rates in effect only until each existing customer's first meter read date after the implementation of the Pilot TOU Program to provide adequate time for the current TOU customers to switch seamlessly to the new program without returning to fixed-price default service. PPL Electric St. 1 at 16:1-3. However, after this grace period expires and the Pilot TOU Program is implemented, current TOU customers that have not elected to receive service from an EGS will be returned to fixed-price default service. PPL Electric St. 1 at 16:5-7.

Compared to the above-detailed transition proposal for current TOU customers offered by PPL Electric, OSBA simply states that the rates should end when the Commission issues its order. OSBA does not propose to provide notice to customers of the termination or even explain what rate or service customers will receive after termination. PPL Electric's proposal, by comparison, provides notice to customers and permits customers to elect the type of service he or she would like to receive after the current TOU rates expire.

To the extent that OSBA anticipates that the Pilot TOU Program will be implemented on the same day it proposes that the current TOU rates expire, which is the day that the Commission issues an order, such a proposal should be rejected.¹² Lead time is required to implement the new Pilot TOU Program once it is approved. PPL Electric St. 2 at 3:4. As proposed by PPL Electric, time will be required to obtain executed Participation Forms from EGSs, send letters to the current TOU customers and ensure that the EGSs and PPL Electric build the required

¹² While OSBA does not directly comment on the implementation date of the Pilot TOU Program, to the extent that PPL Electric is required to always offer a TOU rate to customers under Section 2807(f)(5), a TOU rate, *i.e.*, the Pilot TOU Program, would need to be available when the current rates terminate.

webpages. PPL Electric St. 2 at 3:6-8. Therefore, implementing the Pilot TOU Program on the date that the Commission issues an order in this proceeding is not feasible.

c. The Commission has continually permitted the current rates to remain in effect pending the approval of a subsequent TOU plan

Section 2807(f)(5) of the Public Utility Code was added by Act 129 of 2008 (“Act 129”),¹³ and since the requirement that default service providers offer a TOU rate option to its default service customers was implemented, PPL Electric has endeavored to comply with the requirement.¹⁴

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.¹⁵ 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 No. M-2011-2258733, the Commission froze the TOU rates in effect at the time¹⁶ and directed the Company to submit a new TOU program. On September 26, 2011, the Company proposed a

¹³ Codified in relevant part in 66 Pa. C.S. § 2807(f).

¹⁴ See, e.g., *Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945 (Order Entered June 24, 2010) (approving various pilot programs); *PPL Electric Utilities Corporation Supplement No. 94 to Tariff Electric – Pa. P.U.C. No. 201-Time of Use Rates*, Docket No. R-2010-2201138 (Order Entered December 2, 2010).

¹⁵ *PPL Electric Utilities Corporation 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).

¹⁶ The rates maintained as part of Docket No. M-2011-2258733 are the same rates in effect today.

new 2012 TOU program; however, on August 30, 2012, the Commission affirmed an ALJ's Recommended Decision and rejected PPL Electric's 2012 TOU Program. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2011-2264771, *et al.*, 2012 Pa. P.U.C. LEXIS 1383 (August 30, 2012). Therefore, the frozen rates remained in effect. On May 1, 2012, PPL Electric submitted a TOU proposal as part of its DSP 2013-2015¹⁷ 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 Commission's May 23, 2013 Order¹⁸ approved PPL Electric's request and permitted the then in effect TOU rate option to continue until the Commission approves a successor program.

As illustrated above, PPL Electric has endeavored to implement a new TOU program to replace the existing rates over the past several years. Unfortunately, these attempts have not been successful for various reasons. One constant, however, is that the Commission has permitted the current TOU rates to remain in effect. While the Commission could have terminated the TOU rates, it decided not to do so. Instead, the Commission has permitted the current TOU rates to remain in effect until a new TOU program can be implemented. Therefore,

¹⁷ Default Service Program and Procurement Plan for the period June 1, 2013 through May 31, 2015 ("DSP 2013-2015").

¹⁸ *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).

PPL Electric seeks, consistent with the Commission's prior determinations, to terminate the TOU rate when the new TOU plan is implemented.

III. CONCLUSION

WHEREFORE, for all the reasons discussed herein, and in the Company's Main Brief, 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.

Respectfully submitted,

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