



April 11, 2014

VIA E-FILE

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Rosemary Chiavetta, Secretary  
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**Re: Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program; Docket No. P-2013-2389572; FIRSTENERGY SOLUTIONS CORP.  
REPLY BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is FirstEnergy Solutions Corp.'s Reply Brief in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito  
Counsel for *FirstEnergy Solutions Corp.*

DPZ/kmg  
Enclosure

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

**CERTIFICATE OF SERVICE**  
**(Petition of PPL Electric Utilities Corporation**  
**for Approval of a New Pilot Time-of-Use Program)**  
**Docket No. P-2013-2389572**

I hereby certify that I have this day served a true copy of FirstEnergy Solutions Corp.'s Reply Brief in this proceeding, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: April 11, 2014



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David P. Zambito Esquire  
**Counsel for *FirstEnergy Solutions Corp.***

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judges  
Susan D. Colwell and Joel H. Cheskis

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

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**REPLY BRIEF OF  
FIRSTENERGY SOLUTIONS CORP.**

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Date: April 11, 2014

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## I. INTRODUCTION

FirstEnergy Solutions Corp. (“FES”) submits this Reply Brief in response to the Main Brief of the Dauphin County Industrial Development Authority (“DCIDA”) in the above-captioned matter regarding approval of the Pilot Time-of-Use Program (“Pilot TOU Program”) of PPL Electric Utilities Corporation (“PPL”). FES is a licensed electric generation supplier (“EGS”) authorized to serve all categories of retail customers throughout the Commonwealth.<sup>1</sup> FES is concerned that the proposals set forth in DCIDA’s Main Brief will be a barrier to EGS participation in the Pilot TOU Program and, thus, will hamper energy competition in the Commonwealth and PPL’s customers’ ability to obtain competitive time-of-use (“TOU”) pricing.

DCIDA has requested, as one potential alternative to PPL’s proposal, that the Pennsylvania Public Utility Commission (“Commission”) require that, as a part of the Pilot TOU Program, EGSs participating in the Pilot TOU Program be obligated to offer net metering service with a TOU rate. DCIDA Main Brief at 15. The Commission should summarily reject this alternative proposal. There is no legal or regulatory justification for such a requirement. Moreover, if EGSs were required to offer net metering service with a TOU rate in order to participate in the Pilot TOU Program, EGSs would be unfairly burdened and the Commonwealth’s competitive electricity market would be unnecessarily encumbered.

## II. ARGUMENT

### A. The Pilot TOU Program is Simple, Straightforward and Reasonable.

Act 129 of 2008 (“Act 129”) requires Pennsylvania’s electric distribution companies (“EDCs”) with 100,000 or more customers to file plans with the Commission to implement TOU

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<sup>1</sup> Docket No. A-110078 (1998).

pricing plans. The Pennsylvania Public Utility Code (“Code”) was amended by Act 129 to require EDCs to establish TOU rates and offer them to their default service customers. 66 Pa. C.S. § 2807(f)(5).

PPL’s current TOU rates were approved by the Commission and have been in effect since 2011. However, the TOU rates have been largely unworkable and arguably excessive in comparison to standard price-to-compare (“PTC”) rates. *See OSBA Main Brief at 3.* The Commission authorized PPL to submit a revised TOU program in 2012 but the 2012 TOU program was rejected. The Pilot TOU Program will replace the current TOU program and prices, and will enable EGSs to supply TOU service on behalf of PPL. The transition to the provision of TOU service and rates by EGSs was recommended by the Commission, which advised EDCs to “contemplate contracting with an EGS in order to satisfy their TOU requirement.” *See Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered Dec. 16, 2011) at 47.

Under the Pilot TOU Program, PPL’s net metering customer-generators will be able to choose to participate in the Pilot TOU Program and receive TOU service from an EGS. PPL Petition at 12-13; PPL Main Brief at 1-2. For distribution purposes, the net metering customer-generator would be a customer of PPL. *Id.* For generation (and cash pay-out) purposes, the customer-generator would be a customer of the EGS of its choosing. *Id.* If the customer-generator chooses not to participate in the Pilot TOU Program, it will receive fixed-price default service and any associated cash pay-out from PPL. *Id.*

Additionally, in the event that the Commission does not accept PPL’s treatment of net metering customer-generators in its Pilot TOU Program, PPL has also proposed to implement a

special net metering TOU rate. The intent of this special rate is to obviate any argument to impose an obligation upon EGSs to provide a TOU rate and service with net metering in order to participate in the Pilot TOU Program. *Id.*

The Pilot TOU Program, as proposed by PPL, is simple, straightforward and reasonable and should be adopted by the Commission. It should not be rejected for the purely parochial reasons presented by DCIDA. DCIDA's interest in this proceeding is to preserve the financial benefit that it has enjoyed as a result of PPL's current TOU rates and net metering program. *See* OSBA Main Brief at 8-9. The Pilot TOU Program should not be rejected or even unnecessarily complicated for the benefit of four customers who are benefitting financially under the current PPL arrangement. *Id.*; N.T. 12:21-24. The Commission should instead choose the Pilot TOU Program because it is the option that is least-complicated, is compliant with all statutory and regulatory requirements, and promotes competitive retail markets in the Commonwealth. It represents the culmination of years of effort by PPL, the Commission, and other stakeholders and, therefore, should be approved without the self-interested modification proposed by DCIDA.

**B. DCIDA's Alternative Proposal is Inconsistent with the Public Utility Code, the Commission's Regulations and the Public Interest.**

DCIDA has requested, among other things, that EGSs participating in the Pilot TOU Program be required to offer net-metered service with the TOU rate. DCIDA St. No. 2, 2:13-15; DCIDA Main Brief at 15. FES opposes DCIDA's proposal that all EGSs participating in the Pilot TOU Program be required to offer net-metered service with their TOU rate because it is not required by any statutory or regulatory requirements, would discourage EGS participation in the Program, and is otherwise contrary to the public interest.

**1. *There is no Statutory or Regulatory Requirement that EGSs Must Offer Net Metering.***

The Alternative Energy Portfolio Standards Act (“AEPS Act”) required the Commission to adopt net metering regulations. *See* 73 P.S. §§ 1648.1 - 1648.8; 66 Pa. C.S. § 2814. The Commission adopted net metering regulations in 2008 in compliance with the AEPS Act. *See* 52 Pa. Code § 75.11 *et seq.*

The regulations, *inter alia*, require EDCs such as PPL to offer net metering to certain customer generators, file a tariff with the Commission providing for net metering, and provide a “cash out” to customer-generators that supply more electricity to the electric distribution system than they receive from the EDC. 52 Pa. Code § 75.13. However, the language in Section 75.13(a) is clear that EGSs “may,” but are not required to, offer net metering service to anyone, whether under TOU rates or otherwise.

Additionally, while the Code requires EDCs to offer TOU rates as discussed above, there is no similar requirement that EGSs offer TOU rates. Some EGSs do offer TOU or “real time pricing” rates. However, there is no legal basis to require EGSs to offer these TOU rates and service in conjunction with a net metering service.

**2. *The Retail Market Can Support the Pilot TOU Program.***

PPL must offer net metering and TOU pricing to its default service customers in order to comply with the AEPS Act and Commission regulations. However, the retail market can be utilized to provide the required TOU service. The Commission in fact encouraged PPL to explore such an option in its January 24, 2013 Order and directed PPL to convene a collaborative with interested stakeholders regarding a TOU rate option. *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 Jan. 24, 2013); see also *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered Dec. 16, 2011).

A number of EDCs already utilize EGSs to provide TOU service. The tariffs of Penn Power and West Penn Power provide that TOU service is available but shall be provided to customers by an EGS. See *Pennsylvania Power Company Schedule of Rates, Rules and Regulations for Electric Service*, Supplement No. 98 to Electric Pa. P.U.C. No. 35, Original Sheet No. 73.1 (Effective Mar. 1, 2014)(copy attached hereto at **Appendix A**); see also *West Penn Power Company Tariff, Rate Schedules and Rules and Regulations for Electric Service*, Supplement No. 228 to Electric-Pa. P.U.C. No. 39, Original Page No. 42-1 (Effective Mar. 1, 2014)(copy attached hereto as **Appendix B**). The Commission also approved PECO's TOU pilot program, which provides customers with TOU service through an EGS. See *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012).

None of these existing TOU programs require the participating EGSs to provide TOU rates and service in conjunction with net metering. DCIDA's assertion that EGSs participating in the Pilot TOU Program should be obligated to provide net metering with TOU service stands in contrast to these Commission-approved TOU programs, which allow EGSs to provide TOU service to customers through EDC TOU programs and do not require the EGSs to provide net metering to the EDCs' net metering customer-generators.

When EGSs are given the opportunity to provide TOU service, customers can be assured that they are receiving a competitive price for TOU service. Customers are clearly not receiving

truly competitive pricing in the case of PPL's current TOU rates, which are well-above market rates for electric generation. *See* OSBA Main Brief at 3.

**3. *DCIDA's Proposal Would Discourage EGS Participation.***

Under the Pilot TOU Program, EGSs would have the flexibility to design TOU rate options that they believe would work well in the competitive market place and such flexibility is one of the Program's primary advantages. PPL St. No. 2-R, 7:13; OSBA St. No. 1, 7:4. If however, as DCIDA proposes, EGSs are required to allow customers to take net metering service together with a TOU rate option and to offer a weighted calculation for compensating the customer, it is reasonable to expect EGS participation in the Pilot TOU Program to be significantly diminished. PPL St. No. 2-R, 18:1-2; *cf.* DCIDA St. No. 1, 9:1-4. EGSs certainly do not want to offer "above market" generation prices to net metering customer-generators and, therefore, would be reluctant to participate in such a program. PPL St. No. 2-R, 18:3-4; OSBA St. No. 1, 10:3-4.

**C. DCIDA has Failed to Satisfy its Burden of Production.**

The burden of proof is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000); *see Joint Petition of Metropolitan Edison and Pennsylvania Power Co. for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. R-2009-2123950 (Initial Decision of ALJ Colwell, issued Jan. 28, 2010). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the

parties during the course of a hearing. If the party with the burden of production (initially, PPL in this case) fails to introduce sufficient evidence, the opposing party is entitled to receive a favorable ruling. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to its position. The burden of production goes to the legal sufficiency of a party's case. *Id.*

In the instant proceeding, PPL has clearly satisfied its burden of proof by demonstrating that the Pilot TOU Program satisfies the requirements of the Code, the AEPS Act, Act 129, and the Commission's regulations. It has further demonstrated that the Pilot TOU Program is otherwise in the public interest by promoting competitive retail markets within the Commonwealth.

After PPL presented its *prima facie* case, the burden of production shifted to DCIDA to demonstrate that its alternative proposal (*i.e.*, a requirement that EGSs that participate in the Pilot TOU Program must offer net metering service) is in the overall public interest. DCIDA has failed to satisfy this burden. Rather than demonstrating that its alternative proposal is in the public interest, DCIDA merely demonstrated that such a requirement would be financially beneficial to a limited group of customers who are currently taking advantage of a pricing anomaly in PPL's tariff. Accordingly, DCIDA's proposal must be summarily rejected.

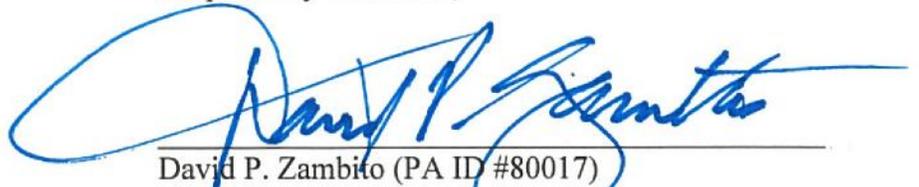
### III. CONCLUSION

The Commission has previously approved TOU programs that depend upon EGSs to provide retail customers with TOU rates and service on behalf of the default service provider. None of these programs have required EGSs to provide net metering with TOU rates and service. Further, the relevant statutes and regulations do not create any obligation on the part of EGSs to provide consumers with net metering service, whether in conjunction with TOU pricing or otherwise. Creating such an obligation in the context of the Pilot TOU Program would place an unfair burden on the Commonwealth's EGSs and likely hamper the ability of EGSs to provide retail customers with the most-competitive prices.

### IV. REQUEST FOR RELIEF

WHEREFORE, FirstEnergy Solutions Corp. respectfully requests that the Honorable Administrative Law Judges Susan D. Colwell and Joel H. Cheskis recommend rejection of, and the Commission reject, the alternative proposal of the Dauphin County Industrial Development Authority that Electric Generation Suppliers that participate in the Pilot Time of Use Program of PPL Electric Utilities Corporation be obligated to offer net metering service with a Time of Use rate.

Respectfully submitted,



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Dated April 11, 2014

# **APPENDIX A**

**TIME-OF-USE DEFAULT SERVICE RIDER**

**Availability**

Time-Of-Use ("TOU") default service ("TOU<sub>Default</sub>") is available under this Rider, upon the terms and conditions set forth herein, to Residential Customers that: (1) have had smart meters installed pursuant to the Penn Power Smart Meter Technology Procurement and Installation Plan following approval of that plan by the Commission; and (2) affirmatively elect to receive service under this Rider and comply with its enrollment procedures. Customers that apply for service under this Rider must agree, as a condition of service hereunder, to allow the Company to share their Customer information as defined in the Company's Electric Generation Supplier Coordination Tariff with the EGS(s) that provide TOU<sub>Default</sub>, subject to the requirements, restrictions and limitations, if any, of the Commission's applicable regulations dealing with the release of Customer information.

**Rates**

Summer Period of service rendered June 1 – August 31:

On-Peak Rate shall be determined as follows:

$$\text{TOU}_{\text{Default On-Peak}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate} \times 1.41$$

Off-Peak Rate shall be determined as follows:

$$\text{TOU}_{\text{Default Off-Peak}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate} \times 0.78$$

Non-Summer Period:

$$\text{TOU}_{\text{Default}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate}$$

**Time of Use Default Service Rider (Continued)**

**TOU Default**

Qualifying Customers that are enrolled to receive service under this Rider will obtain TOU default service from a Commission-certified EGS contracted to provide TOU default service pursuant to the terms and conditions of this Rider.

Each enrolled Customer must execute, and will receive service pursuant to, a Commission-approved consumer contract and disclosure statement with an EGS selected to furnish TOU default service until such time as Customer selects another option from the EGS, selects another EGS, or requests a return to Default Service consistent with existing switching rules or until the Commission orders changes to the TOU Default Service Rider. The consumer contract and disclosure statement will set forth terms of service specified by the EGS that are in addition to, but may not conflict with, the rates, terms and conditions of service set forth in this Rider.

The rates for TOU default service set forth in this Rider will be calculated at the end of each Default Service Quarter (three months ending June 30<sup>th</sup>, September 30<sup>th</sup>, December 31<sup>st</sup>, and March 31<sup>st</sup>) to be effective for the three-month period beginning on the first day of the third month following the end of the Default Service Quarter (September 1<sup>st</sup>, December 1<sup>st</sup>, March 1<sup>st</sup>, and June 1<sup>st</sup>).

**On-Peak and Off-Peak Hours**

The rates for TOU default service are different for On-Peak Hours and Off-Peak Hours during the months of June, July and August, and billed on a service rendered basis. The TOU default service rate for all other months will not reflect an On-Peak or Off-Peak differential. On-Peak Hours are all hours beginning 12:00 PM (1200 hours) Eastern Standard Time and ending 9:00 PM (2100 hours) Eastern Standard Time each day from Monday through Friday excluding Independence Day. Off-Peak Hours are all hours not identified as On-Peak Hours.

**Enrollment**

Enrollment will occur consistent with the switching rules provided in the Company's Electric Generation Supplier Coordination Tariff.

**Customer Switching**

A Customer that has enrolled in the TOU default service program remains eligible to return to standard Default Service. A Customer that has enrolled in the TOU default service program may, at any time, elect to receive another product from any EGS, including non-TOU default service from the EGS providing TOU default service to the Customer pursuant to this Rider.

**Time of Use Default Service Rider (Continued)**

**Commission's Failure to Approve an EGS Contract and Alternative Rates**

In the event the Commission does not approve a standard contract for use between the Company and participating EGSs or no EGS elects to provide TOU default service, Customers enrolled, or electing to enroll, in the TOU default service program will receive service under the terms and conditions of the Company's Price To Compare Default Service Rate Rider, and the TOU<sub>Default</sub> rates shall be the rates set forth in such Price To Compare Default Service Rate Rider (including, without limitation, "E" Factor of such rates). During the Summer Period, the PTC<sub>Default</sub> rate will be multiplied by 1.41 to establish the TOU<sub>Default On-Peak</sub> rate during On-Peak Hours and multiplied by 0.78 to establish the TOU<sub>Default Off-Peak</sub> rate during Off-Peak Hours.

**EGS Withdrawal From Providing TOU Default Service**

In the event an EGS providing service through the TOU Default Service Rider elects to withdrawal from providing such service, the Company may randomly reassign the Customers receiving TOU default service from such EGS to the remaining EGSs that are providing TOU default service on behalf of the Company.

**Annual Review and Audit**

The application of the TOU<sub>Default</sub> rates under this Rider shall be subject to annual review and audit by the Commission.

# **APPENDIX B**

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**TIME OF USE RIDER****Availability**

Time-Of-Use ("TOU") default service ("TOU<sub>Default</sub>") is available under this Rider, upon the terms and conditions set forth herein, to Residential Customers that: (1) have had smart meters installed pursuant to the West Penn Power Smart Meter Technology Procurement and Installation Plan following approval of that plan by the Commission; and (2) affirmatively elect to receive service under this Rider and comply with its enrollment procedures. Customers that apply for service under this Rider must agree, as a condition of service hereunder, to allow the Company to share their Customer information as defined in the Company's Electric Generation Supplier Coordination Tariff with the EGS(s) that provide TOU<sub>Default</sub>, subject to the requirements, restrictions and limitations, if any, of the Commission's applicable regulations dealing with the release of Customer information.

**Rates**

Summer Period of service rendered June 1 – August 31:

On-Peak Rate shall be determined as follows:

$$\text{TOU}_{\text{Default On-Peak}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate} \times 1.35$$

Off-Peak Rate shall be determined as follows:

$$\text{TOU}_{\text{Default Off-Peak}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate} \times 0.82$$

Non-Summer Period:

$$\text{TOU}_{\text{Default}} = \text{Residential Customer Class PTC}_{\text{Default}} \text{ Rate}$$

**TOU<sub>Default</sub>**

Qualifying Customers that are enrolled to receive service under this Rider will obtain TOU default service from a Commission-certified EGS contracted to provide TOU default service pursuant to the terms and conditions of this Rider.

Each enrolled Customer must execute, and will receive service pursuant to, a Commission-approved consumer contract and disclosure statement with an EGS selected to furnish TOU default service until such time as Customer selects another option from the EGS, selects another EGS, or requests a return to Default Service consistent with existing switching rules or until the Commission orders changes to the TOU Default Service Rider. The consumer contract and disclosure statement will set forth terms of service specified by the EGS that are in addition to, but may not conflict with, the rates, terms and conditions of service set forth in this Rider.

The rates for TOU default service set forth in this Rider will be calculated at the end of each Default Service Quarter (three months ending June 30<sup>th</sup>, September 30<sup>th</sup>, December 31<sup>st</sup>, and March 31<sup>st</sup>) to be effective for the three-month period beginning on the first day of the third month following the end of the Default Service Quarter (September 1<sup>st</sup>, December 1<sup>st</sup>, March 1<sup>st</sup>, and June 1<sup>st</sup>).

**On-Peak and Off-Peak Hours**

The rates for TOU default service are different for On-Peak Hours and Off-Peak Hours during the months of June, July and August, and billed on a service rendered basis. The TOU default service rate for all other months will not reflect an On-Peak or Off-Peak differential. On-Peak Hours are all hours beginning 12:00 PM (1200 hours) Eastern Standard Time and ending 9:00 PM (2100 hours) Eastern Standard Time each day from Monday through Friday excluding Independence Day. Off-Peak Hours are all hours not identified as On-Peak Hours.

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**TIME OF USE RIDER (Continued)****Enrollment**

Enrollment will occur consistent with the switching rules provided in the Company's Electric Generation Supplier Coordination Tariff.

**Customer Switching**

A Customer that has enrolled in the TOU default service program remains eligible to return to standard Default Service. A Customer that has enrolled in the TOU default service program may, at any time, elect to receive another product from any EGS, including non-TOU default service from the EGS providing TOU default service to the Customer pursuant to this Rider.

**Commission's Failure to Approve an EGS Contract and Alternative Rates**

In the event the Commission does not approve a standard contract for use between the Company and participating EGSs or no EGS elects to provide TOU default service, Customers enrolled, or electing to enroll, in the TOU default service program will receive service under the terms and conditions of the Company's Price To Compare Default Service Rate Rider, and the TOU<sub>Default</sub> rates shall be the rates set forth in such Price To Compare Default Service Rate Rider (including, without limitation, "E" Factor of such rates). During the Summer Period, the PTC<sub>Default</sub> rate will be multiplied by 1.35 to establish the TOU<sub>Default On-Peak</sub> rate during On-Peak Hours and multiplied by 0.82 to establish the TOU<sub>Default Off-Peak</sub> rate during Off-Peak Hours.

**EGS Withdrawal From Providing TOU Default Service**

In the event an EGS providing service through the TOU Default Service Rider elects to withdrawal from providing such service, the Company may randomly reassign the Customers receiving TOU default service from such EGS to the remaining EGSs that are providing TOU default service on behalf of the Company.

**Annual Review and Audit**

The application of the TOU<sub>Default</sub> rates under this Rider shall be subject to annual review and audit by the Commission.