

*Please reply to Harrisburg Office

April 11, 2014

VIA ELECTRONIC FILING

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

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

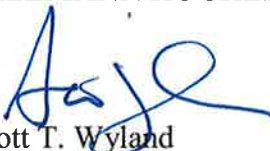
Dear Secretary Chiavetta:

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

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

Very Truly Yours,

SALZMANN HUGHES, P.C.



Scott T. Wyland

STW/lgk
Enclosures

cc: Certificate of Service

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

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

The foregoing document was filed electronically on the Public Utility Commission's electronic filing system. I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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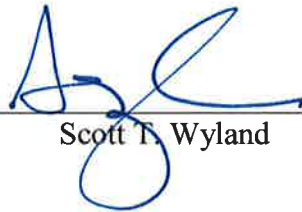
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

TO ADMINISTRATIVE LAW JUDGES SUSAN COLWELL & JOEL CHESKIS

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Dated: April 11, 2014

ARGUMENT

PPL Electric Utilities Corporation (“PPL” or the “Company”) and certain other parties to this proceeding have expressed frustration over PPL’s present time-of-use (“TOU”) rate structure. Dissatisfaction, however, is not a valid excuse for PPL’s failure to comply with legal mandates. Through its Petition for Approval of a New Pilot Time-of-Use Program (the “Pilot Program” or “Pilot”), PPL asks the Public Utility Commission (the “Commission”) to ignore the Company’s obligation to offer a TOU rate to DCIDA, a net-metered customer. PPL cannot offer a solution that circumvents the law’s requirements. PPL has the burden of offering a functional and legally-compliant service and rate structure. It is not, of course, DCIDA’s burden to do this job for PPL. Here, PPL has not offered a legally-compliant program and, accordingly, the Commission should disregard PPL’s arguments and deny its Petition.

I. The law requires PPL to provide a TOU rate to its net-metered customers.

PPL contends that “there is no requirement that net metering customers have a TOU option” PPL Main Brief at 24. PPL ignores the plain language and the fundamental intent behind applicable law. As DCIDA’s Main Brief explained, the Alternative Energy Portfolio Standards Act (“AEPS Act”) and the Commission’s implementing regulations require EDCs to offer net-metered service to customer-generators. *See* 73 P.S. §§ 1648.2, 1648.5; 52 Pa.Code § 75.13. No express exception to this requirement exists in the AEPS Act or regulations.

Additionally, Act 129 of 2008 requires EDCs, without exception, to offer TOU rates to default service customers provided with smart meter technology. *See* 66 Pa.C.S. 2807(f)(5). PPL, therefore, must offer a TOU rate option to its customers including net-metered customer-

generators.¹ The Commission itself has read these statutes and regulations together and held that PPL could not exclude net-metered customers from a TOU rate. *See Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 at 21-22 (Order Entered March 9, 2010). Accordingly, the legal frameworks behind net-metering and TOU rates impose obligations that must be read together with respect to PPL's service and rate offerings to DCIDA. As noted in DCIDA's Main Brief, PPL's and OSBA's complaints are better targeted at the Legislature, which enacted a statutory scheme that requires PPL to offer the TOU rate to its net-metered customers. This mandate exists regardless of any particular Commission-approved rates.

PPL's Pilot would exclude DCIDA, a net-metered customer, from a TOU rate because the only TOU rate available would be an EGS's offering, where the EGS has no legal obligation or economic incentive to offer net-metered service together with its TOU offering. The applicable statutes and regulations require, on their faces, that PPL not exclude net-metered customers from the TOU rate. In light of these requirements, the Commission should disregard PPL's arguments that net-metering and TOU should be viewed as separate requirements.

Furthermore, the Commission should note that PPL's reliance on PECO's Dynamic Pricing Plan to support its argument that net-metering and TOU service requirements can be viewed separately is misplaced. *See* PPL Main Brief at 25. The PECO matter does not control here. Whereas the Commission has directly discussed and rejected the possibility of excluding net-metered customers from TOU service in *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order Entered March 9, 2010), it seems that the Commission did not address the issue in the PECO case. The Commission did not comment on the impact on net-

¹ Although it objects to the rates themselves in this case, the Office of Small Business Advocate ("OSBA") seems to acknowledge PPL's obligation by stating that "OSBA recognizes that PPL has a legal obligation to offer TOU rates to its customers . . ." OSBA Main Brief at 5. Moreover, despite its objection to the current tariff prices, OSBA "accept[ed] DCIDA's right to take advantage" of the current charges. OSBA Main Brief at 7.

metered customers or how an EDC might fail to comply with the law by bidding out the TOU offering. Indeed, there is no indication that the impact of PECO's proposal on net-metered customers was ever questioned or that any incumbent net-metered customer, such as DCIDA, opposed PECO's plan.²

II. PPL's proposed Pilot cannot be construed as satisfying its obligation to offer a TOU rate to net-metered customers.

PPL also contends that even if there is a requirement that net-metered customers be permitted to take a TOU rate, which there is, its Pilot program satisfies that requirement. PPL maintains that it is satisfying its obligation "because net metering customers who take TOU service from an EGS under the Pilot TOU Program will still be net metering customers for *distribution* purposes," subject to PPL's tariff's shopping provisions. PPL Main Brief at 24 (emphasis added). PPL cannot satisfy its legal obligation by incorrectly describing it as more narrow than it is.

The AEPS Act and the Commission's regulations require EDCs to offer net-metered service to *customer-generators*, i.e., operators of net-metered distributed *generation* systems operating in parallel with the grid. *See* 73 P.S. §§ 1648.5, 1648.2. The AEPS Act requires, "Excess *generation* from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." 73 P.S. § 1648.5 (emphasis added). The Commission's implementing regulations mandate that EDCs "offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter" 52 Pa.Code § 75.13(a).

² This observation is supported by the fact that PPL's reference to the PECO matter cites no substantive argument, decision, or order from the proceeding discussing the point. Instead, PPL relies on a single line in a PECO Frequently Asked Questions page appended to OCA Stat. 2, Exhibit OCA-BA-2. *See* PPL Main Brief at 25. Moreover, the same conclusion applies to the *Joint Petition of Met. Ed. Co., Penn. Elect. Co., et al. for Approval of Their Default Service Programs*, Docket No. 2011-2273650 (Order entered February 15, 2013), which PPL cites in footnote 2 of its Main Brief. In that order, the Commission did not address the issue of net-metered customers where EGSs offer TOU rates.

EDCs must credit a customer-generator at the full retail rate for the kWh of power produced on the customer-generator's side of the meter up to the total amount of electricity used by that customer during the billing period and annually cash out kWh of accumulated excess generation. *See* 52 Pa.Code §§ 75.13(c) – 75.13(d).

The focus of the AEPS Act and the Commission's regulations, therefore, is not on providing a customer-generator with a *distribution* credit. Rather, net-metering service is purposed to ensure that a customer-generator receives retail value for its excess power *generation*. PPL seems to propose that it continue receiving DCIDA's excess generation into the grid, without the attendant obligation to compensate DCIDA for that power. Under PPL's theory, as it notes, any cash-out for excess generation would be determined by the EGS, together with all components of the TOU rate. *See* PPL Main Brief at 15, 29; Exhibit No. JMR-5. This is not what the law requires.

PPL has offered no authority to support its proposition that it may break up the elements of net-metered service and still satisfy the requirement to offer that service. A scheme of that kind would negate net-metering's very purpose. PPL is effectively asserting that it is *fully* satisfying its legal requirements by providing *half* of a service and would reap a windfall from DCIDA's excess generation. Furthermore, it is unrealistic to contend that an EGS will agree to a cash out for DCIDA's excess generation where the EGS has no obligation or incentive to do so. PPL has acknowledged this point by contending that a requirement that EGSs offer net-metering and TOU would keep EGSs from participating in the Pilot. *See* PPL Stat. No. 2-R, p. 16; PPL Petition; PPL Main Brief at 23. The Legislature enacted a policy that requires PPL to compensate DCIDA for the excess power that it generates at full retail value, presumably to

encourage projects like DCIDA's solar farm. PPL cannot avoid that obligation and, respectfully, the Commission should not accept PPL's invitation to rewrite the statute.

III. PPL never included its special alternative TOU proposal for DCIDA in its Petition and the alternative does not satisfy DCIDA's concerns.

PPL also contends that it has offered a special alternative TOU proposal for net metering customers only, which should satisfy DCIDA's concerns. The Company proposes a summer-only program, ending May 31, 2015 (i.e., the program would operate only in the summer of 2014). PPL proposes that in June, July, and August, the on-peak period will be 2 p.m. through 6 p.m., Monday through Friday, excluding PJM holidays. All other hours during the summer will be off-peak. The rate for on-peak hours would be the then-current Price-to-Compare with a 100% adder and the off-peak rate would be the then-current Price-to-Compare with a 13% discount. *See* PPL Main Brief at 26-28; PPL Electric Stat. No. 2-RJ at 3-4.

PPL never formally amended its Petition to include this proposal, but offered it in the rejoinder testimony of James Rouland. Accordingly, DCIDA did not address it before the Commission. DCIDA believes, however, that this proposal, like PPL's Pilot generally, disregards the Company's legal obligations and contravenes the general policy behind the applicable statutes and regulations. First, PPL's "alternative" is a summer-only TOU program that will be in place only through May of 2015. It seems that PPL would thereafter not offer a TOU rate and would likely use the EGS approach that is the subject of this case. In accordance with the above-stated legal requirements, there is no qualifying statutory or regulatory language permitting a temporal limitation on a TOU rate offering to net-metered customers. Until such time as the legislature might amend the relevant law, PPL's obligation to provide its TOU rate to net-metered customers exists all year, every year.

Additionally, as noted in Section IV.C of its Main Brief, DCIDA already has concerns regarding the manner in which PPL calculates the Price-to-Compare for annually cashing out DCIDA's excess power generation. Specifically, PPL applies a weighted average to the on-peak and off-peak rate to calculate the Price-to-Compare for cashing out net-metered customer-generators with a TOU rate. *See* DCIDA Exhibit 3; PPL Electric Stat. No. 2-R at 13-14; Exhibit JMR-5. The weighted calculation is solely based on the percentage of on-peak and off-peak hours in a given year. *See* DCIDA Exhibit 3.

Accordingly, PPL's cash-out calculation does not really have a TOU component, i.e., it fails to account for the fact that DCIDA's solar facility generates almost all of its power during on-peak daylight hours. PPL's methodology, therefore, contravenes prior Commission reasoning that "[i]f the . . . rate designs incorporate time of use rates, the weighted average rates should reflect *the rates in effect during the time that the customer-generator delivered its generation to the EDC.*" Implementation of Act 35 of 2007; Net Metering an Interconnection, L-00050174, Final Omitted Rulemaking Order at p. 21 (Order Entered July 2, 2008) (emphasis added).³

Assuming PPL would continue using the same methodology for cashing out DCIDA under its alternative proposal, the company would exacerbate the flaws in the calculation. By further artificially limiting the number of on-peak hours in a given year under its alternative proposal to approximately 256 hours per year (i.e., the approximate number of on-peak hours in the summer months), PPL would further contort the weighted average applied to on-peak and off-peak rates, which is solely based on the percentages of on-peak and off-peak hours. It is

³ In the Commission's Final Omitted Rulemaking Order, the Commission acknowledged that an EDC's retail generation and transmission rates fluctuate during a given year and that the compensation should be calculated by using a "weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC." Implementation of Act 35 of 2007; Net Metering an Interconnection, L-00050174, Final Omitted Rulemaking Order, at p. 20.

possible that DCIDA could be compensated at or below PPL's Price-to-Compare under PPL's proposal. At the very least, DCIDA would receive compensation at a level that fails to facilitate the AEPS Act's mandate that PPL compensate DCIDA at "full retail value" and undermines the statute's purpose of encouraging investment in renewable resources. Accordingly, DCIDA requests that the Commission deny PPL's petition and refuse to adopt its substitute alternative proposal.

IV. Difficulty in garnering EGS participation is not a valid reason for PPL to refuse to include safeguards in the Pilot for DCIDA, an incumbent net-metered customer generator with a TOU rate.

If, despite the Pilot's apparent illegality, the Commission somehow finds PPL's proposal to use EGSs acceptable, the Commission should require PPL to include safeguards in the Pilot that ensure that DCIDA can continue to take net-metered service with a TOU rate. Such protections are vital because PPL is outsourcing the TOU rate to a group of entities that have no obligation or incentive to offer net-metered service with a TOU. In its Main Brief and throughout this proceeding, PPL has asserted, in agreement with OSBA and the Sustainable Energy Fund, that to require EGSs to offer both net-metering and TOU service operates as a barrier to EGSs electing to join in the Pilot. Regardless of any alleged difficulty that PPL may encounter in obtaining EGS participation, PPL must include protections in the Pilot to remain compliant with applicable law.

While PPL is legally required to offer TOU rates to net-metered customer-generators, EGSs have no obligation or economic incentive to provide net-metered service. PPL has expressly refused to support any eligibility criteria for EGS participation in the Pilot that would require the EGS to offer net-metering together with a TOU rate, agreeing with the Sustainable Energy Fund's assertion that "requiring EGSs to provide net metering in order to participate in

the Pilot . . . could create a barrier to participation that would jeopardize the program.” PPL Stat. No. 2-R at 16. *See also* PPL Petition; PPL Main Brief at 23.

PPL seeks to draw the Commission’s attention away from its legal obligation by contending that the current rates are “above market” and that no EGS would agree to a requirement to offer such rates. *See* PPL Main Brief at 23. PPL’s obligation to ensure that DCIDA has access to a TOU rate with its net-metered service exists regardless of whatever the current Commission-approved rates may be. Under PPL’s Pilot, an EGS must offer both net-metering and TOU, with a cash-out rate for excess generation that complies with Act 129’s full-retail value requirement, reflecting the time that DCIDA actually produces its excess generation.

PPL goes further, however, to claim that even an eligibility requirement that an EGS offer net-metered service with a TOU rate and cash-out pursuant to statute, regardless of the applicable rate, would itself bar EGS participation in the Pilot. The fact that it may be difficult to find EGSs to participate in the Pilot is no justification for PPL to avoid its obligation to provide a TOU rate to DCIDA. If DCIDA can only receive a TOU rate from an EGS going forward, PPL, as the EDC, is the entity with the duty to ensure that DCIDA has both net-metering and TOU available to it, whether through PPL or a participating EGS.

Incredibly, despite insisting that EGSs will not participate in the Pilot if they are required to offer net-metered service with a TOU rate, PPL simultaneously and inconsistently argues that DCIDA’s fears regarding EGSs not offering net-metered service with a TOU rate are premature. *See* PPL Main Brief at 26. PPL seems to suggest that an EGS may in fact offer such a program. This suggestion is unrealistic because EGSs have no legal duty or financial incentive to offer net-metered service, much less with a TOU rate. Indeed, by taking such incompatible positions, PPL justifies DCIDA’s concerns. PPL would not refuse to include DCIDA’s suggested safeguards

unless DCIDA's concerns about EGSs' incentive to offer net-metering service with a TOU rate are valid. Moreover, PPL contends that the issue of availability is not ripe for resolution, demonstrating that PPL views hurriedly implementing its Pilot and worrying about the problems later as somehow better than implementing a legally compliant program from the start. The Commission, therefore, should disregard PPL's contention that DCIDA's concerns with respect to rate offerings are premature and should refuse to grant PPL's Petition.

V. The Commission should disregard PPL's and OSBA's rhetorical misrepresentation regarding other customers subsidizing DCIDA's rate.

Finally, PPL continues to lament the fact that it finds its TOU rates inconvenient and that the rates allegedly permit DCIDA to "receive[] a large subsidy from the other customers." PPL Main Brief at 18. *See also* PPL Stat. 2-R at 18. OSBA, for its part, asserts that other Small C&I customers are "on the hook to pay for the net metering customer's [(e.g., DCIDA's)] windfall profits." OSBA Main Brief at 7. OSBA posits that PPL's other Small C&I customers "are truly paying a steep price for the Company's current TOU program" and "are paying to provide . . . DCIDA with windfall profits" OSBA Main Brief at 7-8. *See also* OSBA Stat. 1 at 9; N.T. 33.

Neither OSBA nor PPL has quantified the impact DCIDA's cash-out has on the bottom line of other Small C&I customers. In reality, the impact is so miniscule as to be practically immeasurable. *See* N.T. 32-34. Accordingly, invoking the "plight" of other Small C&I customers amounts to no more than inflammatory rhetoric calculated to exhort the Commission to act against DCIDA. DCIDA objects to OSBA's characterization of its cash-out compensation as "windfall profits," where the revenue DCIDA receives is a required element of a statutory scheme designed to encourage investment in renewable energy systems and is used to advance

DCIDA's public purpose. The Commission should ignore PPL's and OSBA's continued attempts to impugn DCIDA's economically prudent decision to accept the rate structure allowing it to derive the most revenue to support its public mission.

VI. Conclusion

No matter how inconvenient or flawed PPL finds the current TOU rates or the provisions of its Commission-approved tariff, it cannot remedy its predicament by proposing an unlawful fix. PPL's Pilot operates to exclude DCIDA, a net-metered customer, from a TOU rate in direct contravention of the law and the Commission's own prior decision. The Pilot would force DCIDA to negotiate the terms of a TOU rate contract with an EGS if it wanted to remain a TOU customer. The Pilot would cause DCIDA to give up net-metered service or to keep PPL's fixed price net-metered service and surrender TOU. PPL seeks to circumvent the law's mandates solely because it finds its own TOU rate dissatisfying or economically unfavorable, a burden the Legislature, not DCIDA, placed on PPL. DCIDA, therefore, respectfully requests that the Administrative Law Judges issue a decision recommending that the Commission deny PPL's Petition for approval of the Pilot program.

Respectfully Submitted,

SALZMANN HUGHES, P.C.

Date: 4-11-14

By: _____


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