



June 9, 2014

VIA E-FILE

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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; FIRSTENERGY SOLUTIONS CORP. REPLIES TO EXCEPTIONS OF DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is FirstEnergy Solutions Corp.'s Replies to the Exceptions of Dauphin County Industrial Development Authority. A copy of this document has been served in accordance with the attached Certificate of Service. Also, a copy has been e-mailed to the Commission's Office of Special Assistants.

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
Office of Special Assistants at ra-OSA@pa.gov (including MS Word Version)
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 Replies to Exceptions of Dauphin County Industrial Development Authority 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: June 9, 2014



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES OF FIRSTENERGY SOLUTIONS CORP.
TO THE EXCEPTIONS OF THE
DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**

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Dated: June 9, 2014

Counsel for *FirstEnergy Solutions Corp.*

I. INTRODUCTION

On May 1, 2014, the Pennsylvania Public Utility Commission (“Commission”) issued the Recommended Decision (“Recommended Decision” or “R.D.”) of the Honorable Administrative Law Judges Susan D. Colwell and Joel H. Cheskis (collectively the “Presiding Officers”) in the above-captioned proceeding. The Recommended Decision recommends approval without modification of the Joint Petition for Partial Settlement (the “JPPS”), filed on April 11, 2014 as an attempt to settle fully all issues in this proceeding with the exception of one issue raised by the Dauphin County Industrial Development Authority (“DCIDA”). DCIDA opposes the time of use (“TOU”) program (the “Pilot Program”) as presented in the JPPS. Approval of the JPPS would enable PPL Electric Utilities Corporation (“PPL”) to implement the Pilot Program.

DCIDA filed timely Exceptions contesting the approval of the JPPS, arguing, *inter alia*, that EGSs that participate in the Pilot Program should be required to provide net metering service in connection with the program. DCIDA Exceptions at pp. 7-8. DCIDA’s assertions are baseless. For the reasons which follow, EGSs cannot legally be required to provide net metering service in connection with TOU service and DCIDA failed to offer any credible evidence to the contrary. DCIDA’s Exceptions on this point must be denied.

II. REPLIES TO DCIDA’S EXCEPTIONS

The Exceptions set forth by DCIDA are simply restatements of the arguments presented in its Initial Brief and Reply Brief. While DCIDA may attempt to reframe or rehash these arguments in an attempt to delay or prevent the implementation of the Pilot Program so that it may continue to enjoy financial gains at the expense of other ratepayers, these arguments were duly considered by the Presiding Officers and soundly rejected in the Recommended Decision.

A. The Recommended Decision Correctly Concludes that the Pilot Plan Is Compliant with Applicable Law (Reply to DCIDA Exception No. 2)

In its second Exception, DCIDA argues that “the R.D. should have required PPL to include as eligibility criteria for EGS participation in the Pilot Program, that the EGS offer net-metered service with a TOU rate, regardless of the difficulty in garnering EGS participation in the pilot. Second, EGSs must offer net-metering in order for the proposed program to comply with the applicable law.” DCIDA Exceptions at pp. 7-8. The Exception asserts that failing to include this criterion for EGS eligibility to participate in the Pilot Program “will approve a program that fails to comply with relevant legal mandates and, therefore, is itself a violation of law.” *Id.* at p. 8. This issue was briefed by the parties, *see, e.g.*, FES Reply Brief at pp. 3-7, and evaluated by the Presiding Officers. The Recommended Decision correctly determined that DCIDA failed to sustain its burden of proving that the JPPS does not satisfy any part of the applicable law. *See* R.D. at pp. 25, 27-30. Accordingly, the Presiding Officers recommended approval of the JPPS without modification.

As FES explained in its Reply Brief, 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); *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). 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). FES R.B. at p. 5.

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 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. *Id.*

EGSs must be afforded the flexibility to design TOU rate options that will offer competitive and attractive pricing to consumers. DCIDA and other net metering customers of PPL will continue to be net metering customers of PPL for distribution purposes and will be able to take advantage of the net metering provisions in PPL's tariff to off-set their bill with distribution-related credits. R.D. at pp. 27-28. Accordingly, DCIDA's second Exception should be denied.

B. The Recommended Decision Correctly Concludes that DCIDA has Failed to Satisfy its Burden of Persuasion (Reply to DCIDA Exception No. 3)

In its third Exception, DCIDA argues that “[t]he Recommended Decision erroneously seeks to assign a burden of proof to DCIDA, despite the fact that DCIDA made no proposal before the Commission.” However, it is well-established that after a utility establishes a *prima facie* case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the *prima facie* case. *See Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. R-00061931 (Commission Opinion and Order entered Sept. 28, 2007).

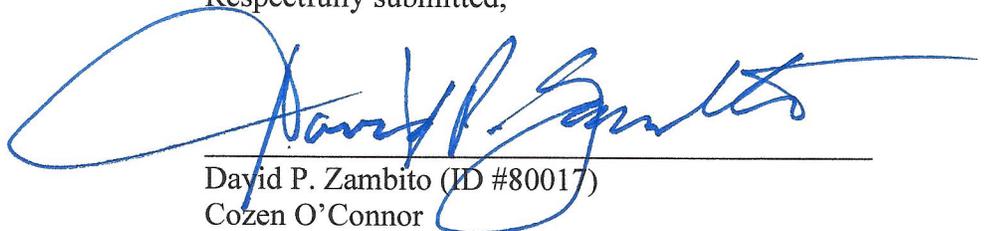
In this proceeding, PPL had the initial burden of production and was required to show that its proposed TOU filing was just and reasonable. The Presiding Officers correctly held that PPL sustained this burden. R.D. at p. 30. When the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, as the Recommended Decision determined PPL did, the burden shifts to the opposing party. *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).

DCIDA incorrectly states that because it did not frame its objections to the Pilot Program in the framework of an alternative “proposal,” it never should have been assigned a burden of proof. However, once PPL established a satisfactory *prima facie* case, the burden shifted to any parties, including DCIDA, seeking to challenge it. DCIDA offers no legal support to contradict this conclusion. In fact, DCIDA acknowledges that EGSs have no legal obligation to offer net metering service. DCIDA Exceptions at p. 7. Accordingly, DCIDA’s third Exception should be denied.

III. CONCLUSION

The substantial, credible evidence of record and the relevant law clearly do not support the adoption of a requirement that EGSs be required to offer net metering service in connection with the provision of TOU service. The arguments raised in DCIDA's Exceptions were thoroughly considered by the two Presiding Officers in this case and rejected. The Commission should do the same.

Respectfully submitted,



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