



COMMONWEALTH OF PENNSYLVANIA

June 9, 2014

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

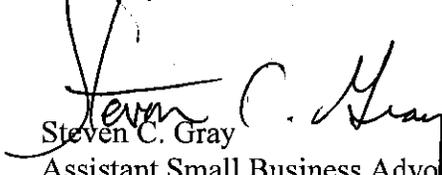
**Re: Petition of PPL Electric Utilities Corporation for Approval of a New Pilot  
Time-of-Use Program  
Docket No. P-2013-2389572**

Dear Secretary Chiavetta:

Enclosed for filing are the original of the Reply Exceptions, on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID #77538

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

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

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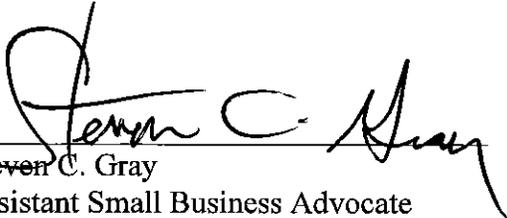
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**Dated: June 9, 2014**

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**I. Introduction**

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

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

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

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

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

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

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

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

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

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

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

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

On April 11, 2014, the OSBA submitted a Reply Brief.

On May 9, 2014, ALJ Colwell and ALJ Cheskis issued a Recommended Decision (“RD”).

On May 29, 2014, the Dauphin County Industrial Development Authority (“DCIDA”) filed Exceptions to the RD.

The OSBA submits the following Reply Exceptions in response to the Exceptions filed by DCIDA.

## II. Reply Exceptions

- A. **Reply to DCIDA Exception No. 1: There exists an alternative solution that would satisfy the legal obligations asserted by DCIDA. (DCIDA Exceptions, at 2-6)**

In its Exceptions, DCIDA stated, as follows:

PPL has a legal obligation to provide a TOU rate option to DCIDA, a net-metered PPL customer.

DCIDA Exceptions, at 2.

DCIDA continued:

As DCIDA argued before the ALJs, Pennsylvania's Alternative Energy Portfolio Standards Act ('AEPS Act'), 73 P.S. §§ 1648.1 - 1648.8, and the Commission's implementing regulations mandate, without exception, that PPL as an EDC offer net-metered service to DCIDA, a customer-generator.

*Id.*

In their RD, the ALJs recommended the adoption of the Joint Petition for Partial Settlement ("*Partial Settlement*") filed by all parties to this proceeding (except DCIDA) on April 11, 2014. Furthermore, the RD recommended adoption of the *Partial Settlement* without modification. *See* RD, Ordering Paragraph 1, at 32. DCIDA asserted that the RD was in error:

PPL proposed, and the R.D. approved, a Pilot whereby PPL divested DCIDA, a net-metered customer, of its TOU rate. The Pilot forces DCIDA either to elect to take service from an EGS if it wants to continue with a TOU rate or to take net-metered service from PPL at fixed price default rate. This is so because EGSs do not have the same obligation as EDCs to offer net-metered service with a TOU rate, nor do they have any incentive to do so. Furthermore, PPL's Pilot does nothing to ensure that PPL or a participating EGS would purchase DCIDA's excess generation if DCIDA wanted to keep a TOU rate.

*Id.*, at 3 (citations omitted).

Ultimately, DCIDA concluded:

The statutes and applicable regulations, however, are clear. Neither the mandate to offer TOU rates, nor the requirement to offer net-metered service contains any applicable exceptions. Absent action by the General Assembly, these laws on their faces require PPL to offer net-metered service with a TOU rate to DCIDA. That legal obligation, deriving directly from positive statutory law, cannot be shrugged off.

DCIDA Exceptions, at 5.

The OSBA takes no position in these Reply Exceptions regarding DCIDA's claim that PPL has an obligation to offer a TOU rate to net generation customers beyond that described in the Company's filing (allowing net metered customers to negotiate rates with electric generation suppliers who are providing the TOU service). For the purposes of these Reply Exceptions, the OSBA assumes *arguendo* that such an obligation exists.

Nevertheless, even if such a legal obligation were to exist, PPL certainly has no obligation to offer a TOU rate to net metered generation customers that is not just and reasonable. As extensively detailed in the evidence and the pleadings in this matter, the existing TOU rate under which DCIDA currently takes service is not just and not reasonable, and no party (including DCIDA) has offered any defense of that rate. Unfortunately, the ultimate result of DCIDA's request in this proceeding (that PPL Electric's proposal be rejected without any credible substitute) will require that the Commission approve the continuation of a rate that is not just and not reasonable. Because DCIDA has not offered an alternative to the existing rate option, DCIDA's position is untenable.

Moreover, in fact, during this proceeding PPL proposed a TOU rate for net metered customers. PPL witness James M. Rouland testified, as follows:

PPL Electric proposes that an alternative TOU option be offered to net metering customers, should they wish to participate in a TOU program but are unable to find a participating EGS that will offer them a TOU rate. To address this concern, the Company proposes

to implement a special net metering TOU rate, which is available only to customer-generators who otherwise qualify for net metering under the Company's tariff and PUC regulations.

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

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

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

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

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

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

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

PPL Statement No. 2-RJ, at 3.

PPL's alternative proposal was offered in the Company's rejoinder testimony.

The OSBA is cognizant that the ALJs did not recommend the adoption of PPL's alternative proposal. In fact, the ALJs questioned the need for the alternative proposal:

The Company has anticipated that there may be resistance to the Pilot TOU Plan's approach to net metering customers and has offered another approach. However, the rate offering is a summer-only rate, similar to the contingency plan which, as discussed above, is already not workable during the limited pilot time period as the implementation of the rate would start after the summer months have run and ends prior to the next summer. It is unclear why this is raised here.

RD, at 28 (citation omitted).

The ALJs correctly observed that the proposed TOU program would not likely be implemented earlier than October 2014 and will sunset on May 31, 2015. *See* RD, at 20. Thus, from the perspective of encouraging load shifting, the Company's TOU program that is "summer only" will be, for all practical purposes, inoperative. Nevertheless, the OSBA observes that DCIDA is demanding that PPL Electric comply with the letter of the law in this proceeding. PPL's alternative proposal does satisfy that criteria.

More importantly, there is an answer to the ALJ's implied question that "[i]t is unclear why this [PPL's alternative proposal] is raised here." It is true that PPL's alternative proposal will have no impact on load shifting – but ***load shifting is not DCIDA's concern in this proceeding***. DCIDA is, in reality, a merchant generator, possibly associated with a small load. As detailed in PPL Electric Statement No. 2-R and accompanying Exhibits JMR-7, JMR-8, and JMR-9, DCIDA readily admits that it has never consumed more electricity than it has produced; it has never shifted load from on-peak to off-peak periods; and it has a load which consists only of the ability to power emergency management operations if needed (a need which has not yet arisen).<sup>1</sup>

Consequently, DCIDA's only interest in this proceeding is the rate at which it will be "cashed out" for its net excess generation. Under PPL's existing tariff, and under its proposed alternative for TOU service to net metering customers, the cash out takes place once per year

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<sup>1</sup> In *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Order entered February 20, 2014), the Commission clarified its criteria for customer eligibility for net metering tariff treatment:

The first condition requires the customer-generator to have load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system. To be independent, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system. This provision makes explicit what was previously implied in the AEPS Act and the regulations.

*Implementation Order*, at 11. Thus, as the Commission currently interprets the AEPS Act, it is not at all clear that DCIDA should qualify for net metering treatment at all.

based on a weighted average of the on-peak and off-peak rates. *See* PPL Electric Tariff Page No. 19L.4, Billing Provision No. 1.

Thus, there *is* an answer to the ALJ's implied question "[i]t is unclear why this [PPL's alternative proposal] is raised here." While PPL's proposal for a summer-only TOU rate may not have any practical implications for load response, *it will have implications for the weighted average cash out price that is DCIDA's real interest in this proceeding.* PPL's proposal is relevant for meeting the legal obligations asserted by DCIDA, and it is relevant in calculating the tariff parameter which is of the greatest interest to DCIDA.

In addition, PPL recently filed a petition for a default service plan for the period of June 1, 2015, through May 31, 2017. *See PPL's April 18, 2014, Default Service Petition*, at Docket No. P-2014-2417907. That petition includes a TOU program proposal. Therefore, if the Commission concludes that DCIDA's legal arguments are sound, the Commission could order PPL to implement the Company's alternative proposal. The OSBA observes that no other party has objected to this alternative proposal. *See* Transcript, at 52, line 17. *See also*, PPL Main Brief, at 27.

Therefore, to the extent that the Commission determines that PPL Electric must offer DCIDA a TOU rate option, the OSBA respectfully submits that continuation of the existing mechanism would imply continuation of rates that are not just and not reasonable, and that adoption of the PPL alternative proposal for net metering customers would be both reasonable and relevant to the issues raised by DCIDA in this proceeding.

**B. Reply to DCIDA Exception No. 4: There is no evidence that investment in the Commonwealth will be curtailed as asserted by DCIDA. (DCIDA Exceptions, at 9-11)**

In its Main Brief, DCIDA described the history of its solar energy facility, as follows:

In 2009, DCIDA began the planning and development process to construct a solar energy farm (the 'Solar Project' or 'Solar Facility') in Dauphin County, Pennsylvania. DCIDA built the Solar Facility in two phases. In October 2011, it completed and began operating Phase I, which has approximately one megawatt ('MW') of generating capacity. It completed and began operating Phase II in October 2013.

DCIDA Main Brief, at 2 (citation omitted).

DCIDA also stated:

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

DCIDA Main Brief, at 5.

In its Exceptions, DCIDA argued, as follows:

DCIDA has elected to take part in the programs under PPL's current Commission- approved tariff that are best suited to achieve its goals. The R.D., by approving the Partial Settlement and Pilot, removed DCIDA's ability to do so by forcing it to choose either a TOU rate with an EGS or to remain a net-metered customer of PPL. This reduces any incentive and discourages continued investment in alternative energy systems where potential investors, including DCIDA, will fear that PPL and the Commission will simply divest them of their ability to obtain the best return on their investment simply because a utility is dissatisfied with its own Commission-approved tariff structure. DCIDA and similarly situated entities will hesitate to invest in renewable resources where a utility can simply obliterate their expectation of a return on investment.

DCIDA Exceptions, at 10.

DCIDA's alarmist arguments are little more than hyperbole.

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

Second, anyone familiar with public utility law can take “judicial notice” of the fact that tariffs change all the time. That DCIDA prefers PPL’s current TOU tariff because it is “best suited” to the “goals” that DCIDA wants to achieve is not evidence going to the issue of whether any future tariff is just and reasonable.

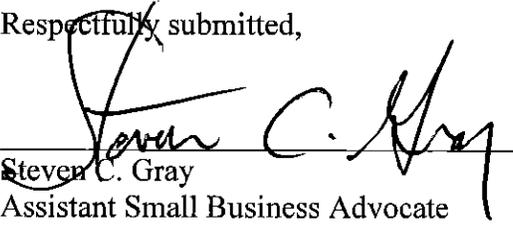
Third, DCIDA engages in pure speculation that potential investors will “fear” the actions of the Commission, or that the Commission will act like arbitrarily to “divest them of their ability to obtain the best return on their investment.” DCIDA’s scaremongering tactics are not record evidence, are mere theatrics, and have done nothing to prove that the Commission will “obliterate” investment in Pennsylvania as we now know it.

The record in this proceeding has established that DCIDA did not, in any way, rely upon the availability of a TOU rate from PPL when DCIDA decided to build, and did in fact build, its solar energy facilities. Therefore, the OSBA respectfully submits that the Commission should disregard DCIDA’s fantastical claims that investors will flee the Commonwealth if PPL’s TOU program is approved.

**III. Conclusion**

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny DCIDA Exceptions Nos. 1 and 4.

Respectfully submitted,



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