



607 14th St. N.W.  
Washington, DC 20005-2006  
202-347-1000 Main  
202-661-6970 Main Fax  
www.postschell.com

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Matthew J. Agen

matthewagen@postschell.com  
202-661-6952 Direct  
202-661-6953 Direct Fax  
File #: 157102

June 9, 2014

***VIA ELECTRONIC FILING***

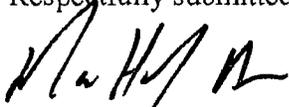
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the Reply of PPL Electric Utilities Corporation to the Exceptions of Dauphin County Industrial Development Authority 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: Certificate of Service  
Honorable Susan D. Colwell  
Honorable Joel H. Cheskis

**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).

**VIA E-MAIL AND FIRST CLASS MAIL**

Tanya J. McCloskey  
Erin L. Gannon  
Aron Beatty  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Pamela C. Polacek  
Adeolu A. Bakare  
McNees, Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

Steven C. Gray  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101

Kenneth L. Mickens  
The Sustainable Energy Fund of Central  
Eastern Pennsylvania  
316 Yorkshire Drive  
Harrisburg, PA 17111

Todd S. Stewart  
William E. Lehman  
Hawke McKeon & Sniscak LLP  
100 N. 10th Street  
PO Box 1778  
Harrisburg, PA 17101

Patrick M. Cicero  
Harry S. Geller  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Scott T. Wyland  
Salzmann Hughes PC  
354 Alexander Spring Road, Suite 1  
Carlisle, PA 17015

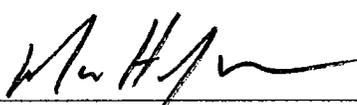
Daniel Clearfield  
Deanne M. O'Dell  
Carl Shultz  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
PO Box 1248  
Harrisburg, PA 17108

Amy M. Klodowski  
FirstEnergy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601

David P. Zambito  
Mark A. Lazaroff  
Cozen O'Connor  
305 North Front Street, Suite 400  
Harrisburg, PA 17101-1236

Isaac P. Wakefield  
Salzmann Hughes PC  
105 North Front Street, Suite 205  
Harrisburg, PA 17101

Date: June 9, 2014

  
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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 Time-of-Use : Docket No. P-2013-2389572  
Program :

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**REPLY OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE EXCEPTIONS OF  
DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**

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Paul E. Russell (Pa. Bar I.D. #21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-4254  
Fax: 610-774-6726  
E-mail: perussell@pplweb.com

David B. MacGregor (Pa. Bar I.D. #28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: dmacgregor@postschell.com

Matthew J. Agen  
Post & Schell, P.C.  
607 14th Street, N.W.  
Washington, DC 20005-2006  
Phone: 202-661-6952  
Fax: 202-661-6953  
E-mail: matthewagen@postschell.com

Michael W. Hassell (Pa. Bar I.D. #34851)  
Post & Schell, P.C.  
17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
Phone: 717-612-6029  
Fax: 717-731-1985  
E-mail: mhassell@postschell.com

Of Counsel:

Post & Schell, P.C.

Dated: June 9, 2014

Attorneys for PPL Electric Utilities Corporation

## I. INTRODUCTION AND BACKGROUND

On August 23, 2013, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed a Petition for approval of a new Pilot Time-of-Use (“TOU”) Program (“August 23, 2013 Petition”), which would replace the TOU program that has been in effect since 2011.<sup>1</sup> Under the terms of the proposed Pilot TOU Program, the Company would provide a TOU rate option to customers in its tariff, but would rely on the retail market and electric generation suppliers (“EGSs”) to provide TOU service to customers. Participating EGSs would provide TOU rates and provide the TOU service to customers in PPL Electric’s service territory. PPL Electric’s proposal would become part of the Company’s retail tariff once approved by the Pennsylvania Public Utility Commission. The Company filed a form of tariff on September 9, 2013, at Docket No. P-2012-2302074, which incorporated the as-filed Pilot TOU Program.

As pertinent here, on October 17, 2013, the Dauphin County Industrial Development Authority (“DCIDA”) filed a petition to intervene.<sup>2</sup> DCIDA is a TOU net metering customer that receives compensation for excess generation based on the current TOU rates that are well above the Price-to-Compare (“PTC”). DCIDA challenged PPL Electric’s proposal for EGSs to offer TOU rate options and provide the TOU service to customers. In its surrebuttal testimony, DCIDA argued that PPL Electric has an obligation to provide customers with both net-metered service and a TOU rate and, therefore, either: (1) EGSs must be required to maintain net-metered service with a TOU rate for DCIDA; or (2) PPL Electric must maintain net-metered service with a TOU rate option for DCIDA and similar customer generators. DCIDA St. 2, p. 2.

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<sup>1</sup> The currently effective TOU rates have been in effect since 2011. A full summary of the evolution of the current TOU rates is contained in PPL Electric’s Main Brief. As pertinent to this proceeding, the rates have not changed since 2011, and those rates, both on- and off-peak rates are *substantially higher* than the current fixed price to compare for each applicable rate class. PPL Electric MB, pp. 8-10.

<sup>2</sup> A full history of this proceeding is contained in Recommended Decision (“RD”) issued in this proceeding.

At the hearing held on February 26, 2014 in this proceeding, PPL Electric advised Administrative Law Judges Susan Colwell and Joel Cheskis (the “ALJs”) of a partial settlement in principle that resolved all issues in this proceeding, except for the net metering issue raised by DCIDA (“Partial Settlement”). On May 1, 2014, after briefing by the parties on this contested issue, the ALJs issued the RD, which adopted the Partial Settlement without modification, directed PPL Electric to file a tariff consistent with the Partial Settlement and rejected the arguments of DCIDA.

On May 29, 2014, DCIDA filed its Exceptions to the RD. Pursuant to Section 5.535 of the Commission’s regulations, 52 Pa. Code § 5.535, PPL Electric hereby submits this Reply to DCIDA’s Exceptions.

For the reasons explained below, as well as those more fully explained in the RD, PPL Electric’s Main Brief (“PPL Electric MB”), and PPL Electric’s Reply Brief (“PPL Electric RB”), the Commission should deny DCIDA’s Exceptions and adopt the findings and conclusions of the RD.

In summary, DCIDA contends that PPL Electric’s Pilot TOU Plan fails to provide a TOU rate option for net metering customers and that such failure violates the legal requirements and the public policies underlying the net metering provisions of the Alternative Energy Portfolio Standards Act (“AEPS Act”)<sup>3</sup> and the TOU rate provisions of Act 129. The RD, in a comprehensive and well-reasoned decision, rejected DCIDA’s arguments. As explained below and more fully in PPL Electric’s briefs, DCIDA’s arguments should be rejected. First, DCIDA’s entire argument is premised on the erroneous factual assertion that PPL Electric’s Pilot TOU Plan excludes net metering customers. It does not do so. Under PPL Electric’s plan, TOU

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<sup>3</sup> Act 213 became effective on February 28, 2005, and established the AEPS Act in Pennsylvania, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa. C.S. § 2814.

service will be provided by EGSs who are free to offer a TOU rate option to net metering customers. DCIDA's hypothetical concern that no EGS will offer this option is without any record support and, at best, is clearly premature. The Commission has determined that electric distribution companies ("EDCs") should offer TOU service through the retail marketplace. PPL Electric's proposal is in full compliance with this directive and should not be rejected based on a hypothetical future concern.

Second, DCIDA's legal argument that EDCs must offer both a TOU rate option and a net metering option is completely unfounded. As the RD found, PPL Electric's Pilot TOU Plan fully complies with all applicable legal requirements. Moreover, 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. In the alternative, even if DCIDA were correct, any TOU option for net metering customers should be strictly limited to purchases of power from PPL Electric. The TOU provisions of Act 129 apply exclusively and solely to "customers" of an EDC, *i.e.*, consumers of power, and not to sales of power to an EDC by a generator of electricity. The purpose of a TOU rate is to encourage "customers" of an EDC to shift their "usage," *i.e.*, shift their purchases of power from an EDC, from on-peak to off-peak periods. Nothing in Act 129 requires that an EDC purchase power from a generator at a TOU rate, and such a requirement would be completely inconsistent with the underlying purpose of a TOU rate.

Third, DCIDA contends that its proposal will help promote solar power and, therefore, is in the public interest. This argument proves too much. Any proposal that would pay solar generators more money would presumably "promote" the development of solar power. However, this argument does not and cannot support excessive payments that are

inconsistent with the underlying purpose of TOU rates and which must be paid for by all other customers on the PPL Electric system.

For these reasons, DCIDA's Exceptions should be denied.

## II. REPLIES TO EXCEPTIONS

### A. Reply to Exception No. 1 – The Recommended Decision Correctly Found that the Pilot TOU Program Satisfies All Applicable Legal and Regulatory Requirements.

In its Exceptions, DCIDA reiterates its argument that PPL Electric is required to offer both net metering service and a TOU rate to DCIDA. *See, e.g.*, DCIDA MB, pp. 1, 7, 9; DCIDA RB, pp. 1-3; DCIDA Exceptions, pp. 2-4.<sup>4</sup> This argument was fully rebutted in the Company's Main Brief and Reply Brief. *See* PPL Electric MB, pp. 24-26; PPL Electric RB, pp. 4-9. As discussed therein, DCIDA misconstrues the statutory and regulatory requirements for EDCs concerning TOU rates and net-metered service. *Id.* Section 2807(f)(5) of the Code provides that default service providers must submit one or more TOU rates for residential and commercial customers. 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 EDCs offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter, and 52 Pa. Code § 75.13(d) requires the EDC to pay the net metering customer for excess generation on an annual basis at the EDC's PTC.

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<sup>4</sup> DCIDA also asserts that the RD did not address DCIDA's argument on this point in any meaningful way. DCIDA Exceptions, pp. 3-4. This is not the case. The RD concluded that "[t]he Company has sustained its burden of proving that the TOU Plan, as presented in the JPPS, is just, reasonable, and compliant with applicable law," and "DCIDA has not sustained its burden of proving that the JPPS fails to satisfy any part of the applicable law." RD, p. 30. DCIDA's assertion that the ALJs did not fully consider its arguments is without merit. Detailed testimony on these issues was submitted by PPL Electric, the Office of Small Business Advocate ("OSBA") and DCIDA, the vast majority of the hearing held in this proceeding concerned DCIDA's issues, and these issues were extensively briefed by PPL Electric, OSBA, FirstEnergy Solutions Corp., and DCIDA.

PPL Electric's Pilot TOU Program satisfies all of these requirements. Under the Company's proposal, all customers will have a net metering option and a TOU rate option available to them. PPL Electric MB, pp. 24-25; PPL Electric RB, p. 5. No requirement for EDCs to offer net metering customers a TOU option appears in the relevant statutes or regulations. 66 Pa. C.S. § 2807(f)(5) requires the submission of a TOU rates for residential or commercial customers, and 52 Pa. Code § 75.13(a) separately requires an EDC to offer net metering to customer-generators. Also, the Commission has approved EDC TOU plans that do not permit net metering customers to participate. See *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order Entered May 9, 2013). Moreover, even if PPL Electric is required to offer net metering customers a TOU option, the Company has satisfied that 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. PPL Electric MB, p. 25; PPL Electric RB, pp. 8-9.

In support of its argument, DCIDA cites *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order Entered March 9, 2010) ("March 2010 Order"), for the proposition that "the Commission itself has, in the past, prohibited PPL from excluding net-metering customers from a proposed, optional TOU rate." DCIDA Exceptions, p. 3. However, DCIDA fails to grasp that net metering customers are not being excluded from the Company's Pilot TOU Program. PPL Electric has made it abundantly clear that its Pilot TOU Plan does not exclude net metering customers. PPL Electric MB, pp. 11-12; PPL Electric RB, p. 6. PPL Electric is offering its net metering customers a TOU rate option, but it will be provided by an EGS, just as TOU service will be provided for all eligible customers.

Moreover, as explained by PPL Electric in its briefs, 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 more recent order that strongly encourages EDCs to use EGSs to provide TOU service. *See 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, p. 115 (Order Entered January 24, 2013) (“January 24 Order”)<sup>5</sup>; PPL Electric MB, pp. 6, 11; PPL Electric RB, pp. 5-6. The use of an EGS to provide TOU service was not an issue in the March 2010 Order, and the January 24 Order is a more recent and broader interpretation of how a default service provider can satisfy its TOU requirements. As stated in the Company’s briefs, 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. *See PPL Electric MB*, p. 15; *PPL Electric RB*, p. 6. This scenario is playing out in this proceeding where EGSs will provide TOU service to net metering customers. The Commission also was aware of the requirements of 52 Pa. Code § 75.13 when it encouraged PPL Electric to use EGSs to provide TOU service.<sup>6</sup> As explained in the Company’s Reply Brief, the fact that the Commission has encouraged the use of EGSs to provide TOU service cannot be viewed in a vacuum. *PPL Electric RB*, p. 7. This development profoundly changes the March 2010 Order’s interpretation of 66 Pa. C.S. § 2807(f)(5). *Id.* It is clear that while the March 2010 Order required PPL Electric to offer net metering and TOU service, the

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<sup>5</sup> *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, *et al.*, p. 6 (Order Entered February 15, 2013) (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).

<sup>6</sup> 52 Pa. Code § 75.13 states, in relevant part, 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).

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. *Id.*

In addition, as discussed in the Company's briefs, the Commission has approved a settlement regarding PECO's TOU plan and expressly discussed the fact that only residential customers not enrolled in the company's customer assistance program ("CAP") will be eligible for TOU rates. *See Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, p. 6 (Order Entered April 15, 2011); PPL Electric MB, p. 11; PPL Electric RB, pp. 7-8. 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)." *PECO*, at p. 8. Therefore, even though PECO expressly excluded CAP customers from its TOU plan, the Commission nonetheless approved PECO's TOU plan as outlined in the settlement. Thus, the Commission's interpretation of 66 Pa. C.S. § 2807(f)(5) in the March 2010 Order should be viewed in light of the Commission's more recent approval of the settlement in *PECO*.

Further, as explained by PPL Electric in its Main Brief and Reply Brief, if there is a requirement that PPL Electric must offer net metering customers a TOU option based on a strict reading of the March 2010 Order, as argued by DCIDA, the Company has satisfied this 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. *See* PPL Electric MB, p. 25; PPL Electric RB, pp. 8-9. 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 provisions in the tariff. *See id.* 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). Thus, 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.

Finally, nothing in the AEPS Act mentions a TOU rate. Moreover, the regulations only require the EDC to pay the “full retail rate” for excess generation. 52 Pa. Code § 75.13(c). Therefore, even if DCIDA is correct on all counts, it is only entitled to a TOU rate for its consumption of power, not for its sale of power. The purpose of a TOU rate is to encourage customers to shift usage from on-peak to off-peak hours by setting on-peak rates higher than off-peak rates. *See* OCA St. 1, p. 7; *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, p. 2 (Order Entered December 2, 2010) (Commission agreed with the Company’s position that the TOU program is designed to encourage a shift in usage from on-peak to off-peak hours). Applying TOU rates to sales of power conflicts with that purpose because it would encourage DCIDA to shift sales from off-peak hours to on-peak hours to get higher sales revenues. Therefore, even if

DCIDA's argument is correct on all counts, it should only receive a TOU rate for its consumption of power and not for its sales of power to PPL Electric.

For these reasons, as well as for the reasons more fully explained in the RD and PPL Electric's Main Brief and Reply Brief, the RD correctly determined that PPL Electric's proposed Pilot TOU Program complies with the applicable legal and regulatory requirements. Therefore, DCIDA's Exceptions should be denied.

**B. Reply to Exception No. 2 – The Recommended Decision Properly Concluded that the Issue of Whether an EGS Will Offer TOU Rates Is Not Ripe for Decision.**

DCIDA's Exceptions challenge the ALJs' finding that the issue of whether an EGS will offer TOU rates is not ripe for decision. DCIDA's Exceptions, pp. 6-8. At its core, DCIDA's argument is that no EGS declared in this proceeding its intent to offer TOU rates with net metering service. No evidence in this proceeding, however, indicates that EGSs will not offer TOU rates to net metering customers. No EGS has refused to offer such a product because the Pilot TOU Program has not yet gone into effect. As explained by the ALJs in the RD:

The concern that no EGS would offer net metering services has not yet come to fruition, as there is no experience with EGS-related TOU plans in the PPL service territory. There is no reason to assume that no EGS would seek to fill this need. This lack of knowledge is consistent with the very nature of a Pilot program, which is intended to explore the viability of a proposal.

RD, p. 28.<sup>7</sup>

Moreover, DCIDA's characterization of the RD's finding on ripeness as being "akin to allowing hospitals to turn away patients because it is 'not yet proven' that the patient will be turned away by all other health care providers" is absurd. No evidence exists that DCIDA will

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<sup>7</sup> DCIDA's Exceptions (p. 6) also focus on the quoted passage's use of the word "need," but one can readily ascertain that the ALJs were only referencing DCIDA and other customers who may want TOU rates with net metering service and were not making a sweeping statement that such a product is legally required.

be unable to obtain TOU rates with net metering service from an EGS under the Pilot TOU Program. Under DCIDA's faulty analogy, there is no "patient" because no evidence indicates that DCIDA will suffer its perceived harm of being unable to have TOU rates with net metering service. Consequently, even if PPL Electric were required to offer both TOU rates and net metering service, this issue is not ripe for determination because no evidence exists that EGSs will refuse to offer TOU rates with net metering service.

In its Exceptions, DCIDA also misconstrues the opposition to requiring a participating EGS to offer net metering service. As explained in PPL Electric's Main Brief (pp. 23-24), in this proceeding, DCIDA requested that the Pilot TOU Program be revised so that EGSs are not eligible to participate unless they offer net metering to customers that includes credit and compensation rates for excess kWh of power that the customer generates, which are equal to or better than the rates PPL Electric presently offers. DCIDA St. 1, p. 9. Additionally, DCIDA asserted that participating EGSs must permit customers to elect to take net metering service together with a TOU rate option and must offer a weighted calculation for compensating a customer that so elects. PPL Electric opposed these revisions to the Pilot TOU Program, and the Commission should not require EGSs participating in the Pilot TOU Program to match or exceed the current TOU/net metering compensation level or set compensation requirements.<sup>8</sup> See PPL Electric St. 2-R, p. 18. Requiring participating EGSs to offer "above market" prices to net metering customer-generators could be a barrier to EGS participation in the Pilot TOU Program. PPL Electric St. 2-R, p. 18. The same applies to the weighted calculation compensation

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<sup>8</sup> Regarding DCIDA's proposal that EGSs must permit customers to elect to take net metering service with a TOU rate option and to offer a weighted calculation for compensating those customers, such a proposal would be a barrier to participation in the Pilot TOU Program; therefore, it should be rejected. The Company wants EGSs to have flexibility to design TOU rate options that they believe will work in the marketplace. See PPL Electric St. 2-R, p. 7. Moreover, such flexibility is one of the program's primary advantages. See OSBA St. 1, p. 7. The compensation requirement proposed by DCIDA would limit the flexibility of EGSs in the Pilot TOU Program and create a barrier to EGS participation; thus, it should be rejected.

requirement proposed by DCIDA. The Company did not propose and does not support requiring EGSs to provide net metering as a prerequisite for participating in the Pilot TOU Program, nor did it propose such compensation requirements. As OSBA succinctly explained with regard to DCIDA's proposal to require EGSs to match or exceed the current TOU/net metering compensation level, "[n]o rational EGS would participate in such a program, because no rational EGS would agree to pay for excess generation at rates far in excess of market prices." OSBA St. 1, p. 10. Requiring participating EGSs to offer "above market" prices to net metering customer-generators would hinder EGS participation in the Pilot TOU Program and possibly result in the plan's failure. Therefore, it should be rejected.

Based on the foregoing, and for the reasons more fully explained in the RD and PPL Electric's Main Brief and Reply Brief, the RD correctly determined that the issue as to whether an EGS will offer TOU rates is not ripe for decision. For these reasons, DCIDA's Exceptions should be rejected.

**C. Reply to Exception No. 3 – The Recommended Decision Correctly Found that DCIDA Bore the Burden of Proof Regarding Its Proposed Change to the Pilot TOU Program.**

DCIDA also challenges the RD's finding that DCIDA bore the burden of proof regarding its proposed change to PPL Electric's Pilot TOU Program on the ground that DCIDA was not offering a proposal of its own. DCIDA Exceptions, p. 8. However, as explained by the ALJs:

*While the burden of proof remains with the public utility throughout the rate proceeding, the Commission has stated that where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.*

RD, p. 15 (emphasis added) (citations omitted). Here, DCIDA proposed an adjustment to PPL Electric's Pilot TOU Program. As described in the RD, DCIDA argued that PPL Electric "must

offer its own [net-metered service with a TOU rate] if no EGS wishes to offer the TOU Program under the JPPS Pilot TOU Plan.” RD, p. 27. Such a requirement constitutes a proposed change to PPL Electric’s Pilot TOU Program as filed, and the ALJs correctly found that DCIDA bore the burden of proof concerning that proposal. *See* RD, pp. 32-33.

Furthermore, DCIDA argues that even if it bore the burden of proof, it met that burden because, according to DCIDA, its proposal would bring the Pilot TOU Program into compliance with the statutory and regulatory requirements. However, as discussed earlier and explained fully in PPL Electric’s briefs, PPL Electric’s proposal fully complies with all statutory and regulatory requirements. *Supra* Section A; PPL Electric MB, pp. 24-26; PPL Electric RB, p. 5. Additionally, even if PPL Electric must offer both a TOU option and net metering service, DCIDA’s proposal is overstated and in error because it misinterprets the TOU statutory requirements. As discussed earlier, 66 Pa. C.S. § 2807(f)(5) provides that default service providers must submit one or more TOU rates in which residential and commercial customers may elect to participate. The statute does not use the words “net metering customers,” just “customers,” meaning consumers of power. Even if all customers, including DCIDA, are entitled to a TOU rate as consumers of power, they are entitled to a TOU rate as buyers of power, not as sellers of power. Nothing in 66 Pa. C.S. § 2807(f)(5) entitles customers to sell power to utilities at TOU rates. Therefore, DCIDA failed to meet its burden of proof regarding its proposal.

For these reasons, as well as for the reasons more fully explained in the RD and PPL Electric’s Main Brief and Reply Brief, the RD correctly determined that DCIDA bore the burden of proof regarding its proposal and failed to meet that burden. Therefore, DCIDA’s Exceptions should be denied.

**D. Reply to Exception No. 4 – The Recommended Decision Does Not Conflict with the AEPS Act.**

DCIDA's Exceptions contend that the RD is inconsistent with the policies outlined in the AEPS Act. DCIDA Exceptions, pp. 9-11. However, the AEPS Act cannot be interpreted to require the continuation of an unreasonable and illogical subsidy paid for by other customers. Under DCIDA's theory, any TOU price for net metering customers, no matter how high, would be justified because it might promote investment in the solar power industry. Additionally, DCIDA focuses solely on the AEPS Act and completely ignores the policy underlying TOU rates.

DCIDA argues that the Pilot TOU Program, and by extension the RD, does not comport with the policy behind the AEPS Act, which, according to DCIDA, is to encourage investment in renewable resources. DCIDA Exceptions, p. 10. DCIDA asserts that the TOU proposal somehow will "reduce[] any incentive and discourage[] continued investment in alternative energy systems" and, thus, is not consistent with the AEPS Act. *Id.* As stated in the RD, this argument fails because under the Pilot TOU Program, "a net metering customer may elect to receive fixed-price default service and receive the cash payments in accordance with the tariff." RD, p. 28.

As PPL Electric explained in its Reply Brief (pp. 11-12), 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. *See also* PPL Electric St. 2-R, p. 15; Exhibit JMR-6. DCIDA was incentivized to develop its facility based on PPL Electric's fixed-price default net metering service, and that rate option remains available under the Pilot TOU Program. PPL Electric MB, pp. 19-20; PPL Electric RB, p. 11. However, according to DCIDA's Exceptions, that same rate option somehow will "reduce[] any incentive and

discourage[] continued investment in alternative energy systems.” DCIDA Exceptions, p. 10. 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.

Moreover, DCIDA’s arguments in this proceeding turn the purpose of the TOU rates on its head. In a press release announcing that a December 2, 2010 Order in Docket R-2010-2201138 approving TOU rates for PPL Electric, the Commission explained that:

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, p. 7. In the press release, the Commission agreed with the Company’s position in Docket No. R-2010-2201138.<sup>9</sup> It is clear from the record in this proceeding that the TOU rates have not encouraged DCIDA to shift its electric usage from on-peak to off-peak periods. 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 cash out) due to the differential between the PTC and the current TOU rates in the range of

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<sup>9</sup> 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, p. 2 (Order Entered December 2, 2010):

PPL submits that the objective of its 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.

\$50,000 to \$80,000 a year, at the expense of other PPL Electric distribution customers. Tr. 33:15-21. This is unreasonable and inconsistent with the purpose of the TOU rates.

Based on the foregoing, and for the reasons more fully explained in the RD, the RD does not conflict with the AEPS Act. For these reasons, DCIDA's Exceptions should be rejected.

**E. PPL Electric's Alternative Proposal.**

Even if DCIDA is right on all counts and the TOU statute applies to both consumption and sales of power, PPL Electric proposed an alternative in this proceeding to address DCIDIA's concerns and establish a special net metering TOU rate available only to customer-generators. *See* PPL Electric MB, p. 27; PPL Electric RB, pp. 9-10. As explained in PPL Electric's Main Brief (p. 27), the alternative proposal would have the following parameters:

- 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 PTC with an adder of 100%.
- The rate during the summer non-peak period will be the then current PTC with a discount of 13%.
- During the non-summer months, the rate will be the then current PTC.
- The proposed separate TOU offering for net metering customers will end on May 31, 2015.

PPL Electric St. 2-RJ, p. 3. This alternative proposal would ensure that a net metering/TOU rate is available to any net metering customer for both sales and purchases of power, 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. *See* PPL Electric MB, p. 27; PPL Electric RB, pp. 9-10. Therefore, if

the Commission does not believe that the Pilot TOU Program satisfies the relevant legal requirements, it should accept this alternative proposal.

**F. DCIDA’s Challenge to the Current Net-Metering Cash Out Tariff Provisions Is Beyond the Scope of this Proceeding.**

In its Exceptions, DCIDA also asserts that PPL Electric’s current compensation scheme for TOU customers is “suspect.” DCIDA Exceptions, p. 10 n.4. This follows DCIDA’s prior argument that there are questions concerning whether PPL Electric’s current means of calculating the PTC for net metering cash outs is valid. DCIDA MB, p. 17. To be clear, any challenge to the current net-metering cash out tariff provisions is beyond the scope of this proceeding. As fully explained by PPL Electric in its Reply Brief (pp. 16-18), DCIDA’s 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.

The net metering provisions of the Company’s tariff 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. 16:6-9.<sup>10</sup>

While the Company believes matters related to the current net metering cash out calculation methodology are not part of this proceeding, to the extent the Commission determines otherwise, PPL Electric provided a detailed response in its Reply Brief (pp. 16-18).

In summary, the relevant portion of 52 Pa. Code § 75.13(d) states:

At the end of each year, the EDC shall compensate the customer-generator for any excess kilowatt-hours generated by the customer-generator over

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<sup>10</sup> 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.

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. Tr. 15:5-7. Under TOU rates, the load in on-peak periods is priced higher than load in off-peak periods on a month-to-month basis. Tr. 15:8-11. However, the annual cash out for these customer generators is different. The cash out under PPL Electric's tariff is calculated at the 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 on a month-by-month basis. Tr. 15:13-18. Therefore, PPL Electric matches up pricing with purchase and does not buy excess generation month to month. PPL Electric's annual cash out is explained in PPL Electric's tariff (Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.4).<sup>11</sup>

This is consistent with 52 Pa. Code § 75.13(d) 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. PPL Electric uses the PTC in effect at the time of the calculation as stated in its Commission-approved tariff.

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<sup>11</sup> Supplement No. 125 to Electric Pa. P.U.C. No. 201, Fifth Revised Page 19L.4 states, in part, 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.

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 current regulations,<sup>12</sup> the Commission is acknowledging that prior to the effectiveness of the proposed regulations, it is reasonable for an EDC to base its conclusions on the current regulations, which state that an EDC need not compute compensation based on the rate in effect when the excess generation was actually delivered.

For these reasons, as well as for the reasons more fully explained in PPL Electric's Main Brief and Reply Brief, DCIDA's challenge to PPL Electric's current net-metering cash out tariff provisions is outside the scope of this proceeding. Therefore, DCIDA's Exceptions should be denied.

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<sup>12</sup> The Commission's Final Omitted Rulemaking Order entered July 2, 2008, at Docket No. L-00050174, amended the Commission's AEPS regulations to comport with Act 35 of 2007. *See Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174 (Order Entered July 2, 2008). Act 35 of 2007's changes to the AEPS Act included:

- Revising the definition of "customer-generator" to increase the capacity limit on non-residential projects from 1 to 3 megawatts generally, and from 2 to 5 megawatts for those projects that operate in parallel with the grid;
- Revising the definition of "net metering" to include a restriction on virtual meter aggregation; and,
- Revising Section 1648.5 to require that customer-generators be compensated for excess generation on an annual basis at the full retail value for energy, as opposed to the current monthly standard at the avoided cost of wholesale power.

*Id.* at p. 2. One proposed change to the Commission's regulations that was mentioned in the Final Omitted Rulemaking Order was that "[i]f the transmission or generation 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." *Id.* at pp. 20-21. However, this change was not incorporated into the final regulation. *See* 52 Pa. Code §§ 75.1, 75.12-.14.

**III. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission reject the Exceptions of the Dauphin County Industrial Development Authority and adopt the Recommended Decision of Administrative Law Judges Susan D. Colwell and Joel H. Cheskis.

Respectfully submitted,



Paul E. Russell (Pa. Bar I.D. #21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-4254  
Fax: 610-774-6726  
E-mail: perussell@pplweb.com

David B. MacGregor (Pa. Bar I.D. #28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: dmacgregor@postschell.com

Matthew J. Agen  
Post & Schell, P.C.  
607 14th Street, N.W.  
Washington, DC 20005-2006  
Phone: 202-661-6952  
Fax: 202-661-6953  
E-mail: matthewagen@postschell.com

Michael W. Hassell (Pa. Bar I.D. #34851)  
Post & Schell, P.C.  
17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
Phone: 717-612-6029  
Fax: 717-731-1985  
E-mail: mhassell@postschell.com

Of Counsel:

Post & Schell, P.C.

Dated: June 9, 2014

Attorneys for PPL Electric Utilities Corporation