



COMMONWEALTH OF PENNSYLVANIA

September 12, 2014

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
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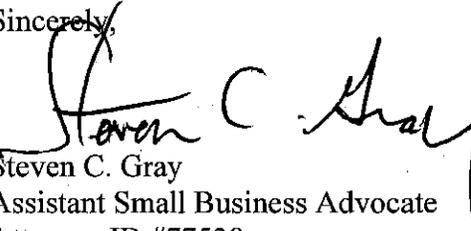
**Re: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017
Docket No. P-2014-2417907**

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief, 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 contact me.

Sincerely,


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

Enclosures

cc: Parties of Record
Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities Corporation :
for Approval of a Default Service Program and : Docket No. P-2014-2417907
Procurement Plan for the Period June 1, 2015 :
through May 31, 2017 :**

CERTIFICATE OF SERVICE

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

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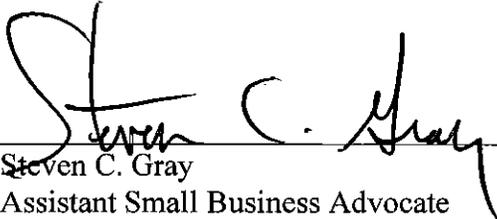
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Dated: September 12, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

PPL ELECTRIC UTILITIES, INC.

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DOCKET NO. P-2014-2417907

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
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Attorney ID# 77538**

For:

**John R. Evans
Small Business Advocate**

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Date: September 12, 2014

I. Introduction

On April 18, 2014, 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, 2015 through May 31, 2017 (“*Petition*”) with the Pennsylvania Public Utility Commission (“Commission”).

On May 5, 2014, Administrative Law Judge (“ALJ”) Susan D. Colwell issued her First Prehearing Order.

On May 28, 2014, the Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention.

On June 5, 2014, a prehearing conference was held before ALJ Colwell.

On June 6, 2014, ALJ Colwell issued her Second Prehearing Order.

On July 1, 2014, the OSBA served the Direct Testimony of Robert D. Knecht.

On July 11, 2014, the OSBA served the Supplemental Direct Testimony of Robert D. Knecht.

On July 16, 2014, ALJ Colwell issued her Third Prehearing Order.

On July 23, 2014, ALJ Colwell issued her Third Prehearing Order Revised.

On July 28, 2014, the OSBA served the Rebuttal Testimony of Robert D. Knecht.

On August 8, 2014, the OSBA served the Surrebuttal Testimony of Robert D. Knecht.

On August 19, 2014, an evidentiary hearing was held before ALJ Colwell.

The OSBA submits this Main Brief in accordance with the procedural schedule set forth in this case.

II. Summary of Argument

PPL proposes to modify its eligibility requirements for the Small Commercial and Industrial (“Small C&I”) generation default service rate class to exclude all customers with maximum demand above 100 kW. This proposal forces all default service customers with maximum loads between 100 kW and 500 kW who are currently subject to the stable “GSC-1” rate to take hourly priced “GSC-2” generation default service. The affected customers currently represent 13.7 percent of the total Small C&I generation default service load, contradicting the Company’s assertion that the impact of the proposed change is minimal.

The fact that PPL stated that it would make this proposal in a prior default service proceeding is irrelevant and carries no legal weight.

PPL’s proposal is unjust, unreasonable, and violates the Public Utility Code.

There are no Commission orders that provide any legal basis for PPL’s proposal. The Commission order cited by PPL which purportedly supports the Company’s proposal merely expresses a “wish list” for future default service programs, and explicitly acknowledges that legislative changes are necessary for the specific change proposed by PPL in this proceeding. No such legislative changes have been enacted. Without the requisite legislative authority to make those “wish list” items a reality, the Commission order relied upon by PPL carries no legal weight and must be disregarded.

III. Argument

A. Summary of the Company's Proposal

In its current tariff, PPL's price to compare ("PTC") for small and medium business customers includes both a generation supply charge ("GSC") under Rate Schedule GSC-1 or Rate Schedule GSC-2, and a transmission supply charge ("TSC") under Rate Schedule TSC. OSBA Statement No. 1, at 2. In order to apply Rate Schedules GSC-1, GSC-2 and TSC, PPL takes somewhat related customer classes and aggregates them into large groups. For example, the Company's small business customers are generally aggregated into the Small C&I rate class group.¹ Currently, PPL has a maximum demand limit of 500 kW for customers to be included in the Small C&I generation default service rate class group, which takes generation default service under the more stable rates in Rate Schedule GSC-1.² Customers whose maximum demand exceeds 500 kW currently take generation default service at hourly rates in Rate Schedule GSC-2.

However, in its *Petition*, PPL proposes to lower the size limit from 500 kW to 100 kW in order to be served under Rate Schedule GSC-1. OSBA Statement No. 1, at 2. This effectively means that all of the small business customers in the 100 kW to 500 kW range that are currently taking default service from PPL will be ejected from that service. In other words, 430 small business customers, representing 13.7 percent of the total Small C&I default service load, will be

¹ In an ongoing effort to maximize customer confusion, PPL maintains different eligibility definitions for "Small C&I" customers for GSC-1 and TSC purposes. TSC rate class eligibility is unaffected by the proposed change, because it is based on individual rate class eligibility, rather than maximum demand parameters. OSBA Statement No. 1, at 5-6.

² The OSBA is the first to admit that PPL Electric has, for much of the past three years, done a very poor job of maintaining a reasonably stable GSC-1 rate for Small C&I customers. See OSBA Statement No. 1, at 4. However, the solution for that issue is to fix the underlying problems with PPL's administration of the GSC-1 tariff, not to simply move customers out of the Small C&I rate class to minimize the effects of the Company's incompetence. The OSBA has worked actively with PPL and the Commission both formally through the complaint process and informally through consultation to address these issues.

involuntarily removed from their current electric default service, and transferred to the very different hourly priced service provided under Rate Schedule GSC-2.

The Company stated in its last default service filing that it was going to make this proposal. *See* OSBA Statement No. 4, at 1. Making a proposal just to be internally consistent with a default service filing made years ago is no basis whatsoever to approve that proposal.

The Company also indicates that the proposed change will impact only a relatively small number of customers, implying that the proposed change has a *de minimis* impact. PPL Statement No. 1-R, at 21. The Company is mistaken. Mr. Knecht's undisputed surrebuttal testimony indicates that the affected load represents 13.7 percent of total Small C&I generation default service load. OSBA Statement No. 4, at 4. The OSBA respectfully submits that a default service rule change which affects more than 10 percent of the default service load must necessarily be considered a significant change.

Furthermore, in light of the well-publicized difficulties in the winter of 2013-2014 with unexpected and volatile utility rates, it is absurd to throw 13.7 percent of the Small C&I load off of fixed rate generation default service and onto a completely unhedged hourly priced service.

B. The Requirements of Section 2807(e)

By proposing to change the eligibility status of customers with maximum loads between 100 kW and 500 kW, the Company is effectively proposing to change its default service procurement policy for those customers. Small C&I generation default service customers are supplied through full requirements load following ("FRLF") contracts. Large C&I generation default service customers are supplied through hourly spot market purchases. In evaluating the Company's proposed change in eligibility, the procurement requirements in the Public Utility Code must therefore be recognized.

Section 2807(e)(3.2) of the Public Utility Code states:

The electric power procured . . . shall include a prudent mix of the following:

- (i) Spot market purchases.
- (ii) Short-term contracts.
- (iii) Long-term purchase contracts.

66 Pa. C.S. § 2807(e)(3.2).

Furthermore, Section 2807(e)(3.4) of the Public Utility Code, states:

The prudent mix of contracts entered into pursuant to paragraphs (3.2) and (3.3) shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.

66 Pa. C.S. § 2807(e)(3.4).

The phrase “least cost to customers over time” is not a precisely defined concept. The Commission itself stated, as follows:

Initially, we must agree . . . that the term ‘least cost to customers over time’ standard is somewhat ambiguous and not susceptible to a precise ‘one size fits all’ definition. EDCs [Electric Distribution Companies], that have the primary responsibility under the Competition Act to procure generation supply requirements as well as the expertise to perform these activities, should be permitted the flexibility and latitude to accomplish the goal of achieving the ‘least cost’ standard in a manner that meets the need of their customers and service territories.

Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Order entered October 4, 2011), at 38 (“*Final Default Service Rulemaking Order*”).

Although there might not be a precise definition of the phrase “least cost to customers over time,” there is certainty as to what that phrase does *not* mean. The Retail Energy Supply Association (“RESA”) argued, as follows:

Default service rates must be market-responsive.

RESA Statement No. 1, at 9.

RESA is wrong. RESA is unwilling (or unable) to face the facts that (a) the legislature explicitly eliminated the “prevailing market prices” standard that was originally part of the legislation and replaced it with the current “prudent mix” standard, and (b) the Commission has explicitly rejected RESA’s argument that the “least cost to customers over time” standard requires that default service prices be “market-reflective.” In fact, the Commission has explicitly recognized that price stability is an important consideration when designing a default service procurement plan:

We disagree with RESA’s overall recommendations as to the proper interpretation of the ‘least cost’ standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the ‘prevailing market price’ standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Final Default Service Rulemaking Order, at 39-40.

Significantly, the Commission continued, as follows:

Finally, we disagree with RESA’s assertion that the ‘least cost’ standard mandates that a default service plan be reasonably likely to result in a ‘market-reflective and market-responsive’ service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a ‘prudent mix’ of products. We do not believe that adoption of RESA’s suggested standard is consistent with the ‘least cost’ standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy

market. *Price stability benefits are very important to some customer groups, so an interpretation of 'least cost' that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives.* This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the 'prudent mix' of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

Final Default Service Rulemaking Order, at 41 (emphasis added).

In the *Final Default Service Rulemaking Order*, the Commission explicitly recognized that meeting the needs of the Company's customers is goal of default service. *Id.*, at 38. In that same Order, the Commission recognized the importance of price stability to certain customers, and that short term pricing, such as spot market pricing, is not consistent with the statute. *Id.*, at 41.

The OSBA acknowledges that, under certain specific conditions, procuring default service through hourly spot markets may best meet the "prudent mix" standard. As the Commission is well aware, Pike County Light & Power has procured default service supplies for residential and commercial customers in hourly markets for many years. However, that situation is completely different from PPL, in that it involved a tiny utility at which the vast majority of customers were shopping and stable price products were readily available from competitive suppliers. In addition, in that circumstance, default service rates for customers change on a calendar quarter basis, not an hourly basis. *See, e.g., Petition of Pike County Light & Power Company*, Docket No. P-2008-2044561 (Order entered March 23, 2009), at 14-15.

In addition, default service procurement for large industrial customers has generally been through hourly spot markets, since stable priced procurements were unsuccessful due to extreme

shopping risk. This situation is also inapplicable to PPL medium commercial customers, as PPL has not identified any problems in its historical Small C&I FRLF procurements.

Finally, the burden for justifying the proposed change falls squarely on PPL, and PPL has not offered any evidence that the specific conditions under which hourly procurements meet the prudent mix standard apply to customers with maximum loads between 100 kW and 500 kW.

Therefore, the OSBA respectfully submits that it is unjust and unreasonable to force 13.7 percent of the Small C&I customer load off fixed rate default service merely because they fall between 100 kW and 500 kW.

C. The Commission's *End State Order*

The Company claims that its proposal to drop the Small C&I customer size limit from 500 kW to 100 kW is meant to be consistent with the Commission's Final Order at Docket No. I-2011-2237952 (Order entered February 15, 2013) ("*End State Order*"). See PPL Statement No. 1, at 30.

Consistency with the *End State Order* is not a basis upon which 13.7 percent of the Small C&I customer load should be disrupted from their current choice for stable rate default service. The *End State Order* is a statement by the Commission as to what it envisions for the future of default service – it is the Commission's "wish list." However, it is not a legal mandate to be implemented in the current round of default service proceedings. The Commission itself concedes that it is not comfortable with treating the *End State Order* as a mandate, choosing instead to seek legislative changes to obtain the authority to implement its "wish list." In particular, the Commission explicitly expressed its concern about the legality of moving medium C&I customers, like those whose maximum demand lies between 100 kW and 500 kW, from stable rate default service to hourly priced service. The Commission stated, as follows:

While the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers and an hourly LMP product for 'medium' C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act. ***To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.*** Further, as a creature of the Legislature, the Commission is well-served to ensure that the General Assembly is supportive of our overall policy direction on matters as important as the retail market for electricity.

End State Order, at 45 (emphasis added).

No such legislative changes have been enacted. The Commission's "wish list" may remain intact, but it carries no legal authority to forcibly move 13.7 percent of the Small C&I load to hourly priced default service merely because those small business customers fall within the 100 kW to 500 kW range.

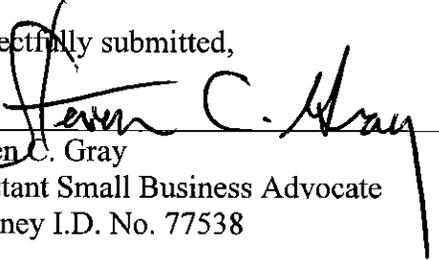
The Company provided no other justifications for making the change to the Small C&I customer class whereby small businesses above 100 kW would be denied default service. There is no authority in Pennsylvania statute for this change. There is no authority provided by a Commission order for this change. The fact that PPL promised to make this unjust, unreasonable, and unlawful proposal in a previous default service is irrelevant and of no legal significance.

The OSBA respectfully requests that the ALJ and the Commission reject PPL's proposal to change the cutoff for Small C&I generation default service from 500 kW to 100 kW.

IV. Conclusion

Wherefore, the OSBA respectfully requests that the ALJs and the Commission reject the PPL proposal to change the size limit of Small C&I customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW.

Respectfully submitted,



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Dated: September 12, 2014

APPENDIX

Proposed Findings of Fact

- 1) PPL's price to compare for small and medium business customers currently includes both a generation supply charge under Rate Schedule GSC-1 or Rate Schedule GSC-2, and a transmission supply charge under Rate Schedule TSC. OSBA Statement No. 1, at 2.
- 2) PPL's small business customers are generally aggregated into the Small Commercial & Industrial rate class group. OSBA Statement No. 1, at 2.
- 3) PPL currently has a maximum demand limit of 500 kW for customers to be included in the Small C&I generation default service rate class group, which currently takes generation default service under Rate Schedule GSC-1. OSBA Statement No. 1, at 2.
- 4) PPL customers whose maximum demand exceeds 500 kW currently take generation default service at hourly rates in Rate Schedule GSC-2. PPL Statement No. 1, at 30.
- 5) PPL proposes to lower the size limit from 500 kW to 100 kW in order to be served under Rate Schedule GSC-1. OSBA Statement No. 1, at 2.
- 6) PPL stated in its last default service filing that it was going to make this proposal. OSBA Statement No. 4, at 1.
- 7) PPL's proposal to change the size limit of Rate Schedule GSC-1 will cause 430 small business customers to be involuntarily removed from their current electric default service. OSBA Statement No. 4, at 4.

8) The 430 small business customers that PPL proposes to remove from Rate Schedule GSC-1 represent 13.7 percent of total Small Commercial & Industrial generation default service load. OSBA Statement No. 4, at 4.

Proposed Conclusions of Law

- 1) All rates charged by PPL must be just and reasonable. 66 Pa. C.S. § 1301.
- 2) Section 2807(e)(3.2) of the Public Utility Code requires that the electric power procured by PPL shall include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts. 66 Pa. C.S. § 2807(e)(3.2).
- 3) Section 2807(e)(3.4) of the Public Utility Code requires that the prudent mix of contracts entered into by PPL must be designed to ensure adequate and reliable service, and the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.4).
- 4) The phrase “least cost to customers over time” is not a precisely defined concept. *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011), at 38.
- 5) The legislature has explicitly eliminated the “prevailing market prices” standard that was originally part of the legislation and replaced it with the current “prudent mix” standard. *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011), at 39-40.
- 6) The Commission has explicitly rejected the argument that the “least cost to customers over time” standard requires that default service prices be “market-reflective.” *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011), at 39-40.
- 7) The Commission’s Final Order at Docket No. I-2011-2237952 (Order entered February 15, 2013) (“*End State Order*”) sets forth what the Commission

envisions for the future of default service. It is not a legal mandate, and carries no legal authority to permit the changes to Rate Schedule GSC-1 as proposed by PPL.

Proposed Ordering Paragraphs

IT IS RECOMMENDED:

- 1) That PPL's PPL proposal to change the size limit of Small Commercial & Industrial customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW is rejected.