COMMONWEALTH OF PENNSYLVANIA

September 26, 2014

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Reply 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 Procurement Plan for the Period June 1, 2015 through May 31, 2017	: : : :	**Docket No. P-2014-2417907**

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, 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:

Hon. Susan D. Colwell
Administrative Law Judge
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-1191
(717) 787-0481 (fax)
scolwell@pa.gov
(E-mail and Hand Delivery)

Aron J. Beatty, Esquire
Amy Hirakis, Esquire
Hobart J. Webster, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
abeatty@paoca.org
ahirakis@paoca.org
hwebster@paoca.org
(E-mail and Hand Delivery)

Divesh Gupta, Esquire
Constellation Energy Group, Inc.
100 Constellation Way - #500-C
Baltimore, MD 21202
(First-class Mail Only)

Michael W. Hassell, Esquire
Christopher T. Wright, Esquire
Post & Schell
17 North Second Street - 12th Floor
Harrisburg, PA 17101-1601
(717) 612-6029
(717) 731-1985 (fax)
mhassell@postschell.com
cwright@postschell.com

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17101
(717) 237-6000
(717) 237-6019 (fax)
dclearfield@eckertseamans.com
dodell@eckertseamans.com
sstoner@eckertseamans.com

Todd S. Stewart, Esquire
Thomas J. Sniscak, Esquire
Judith D. Cassel, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com
tjsniscak@hmslegal.com
jdcassel@hmslegal.com

Charles E. Thomas III, Esquire
Thomas Long Niesen & Kennard
P. O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7611
(717) 236-8278 (fax)
cet3@thomaslonglaw.com

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Carrie B. Wright, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-4886
(717) 772-2677 (fax)
carwright@pa.gov
(E-mail and Hand Delivery)

Pamela C. Polacek, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
ppolacek@mwn.com
abakare@mwn.com

Harry S. Geller, Esquire
Patrick M. Cicero, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 236-9486
(717) 233-4088 (fax)
pulp@palegalaid.net

Kenneth L. Mickens, Esquire
Sustainable Energy Fund of Central PA
316 Yorkshire Drive
Harrrisburg, PA 17111
(717) 343-3338
(717) 657-0938 (fax)
kmickens11@verizon.net

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street - 4th Floor
Harrisburg, PA 17101
dzambito@cozen.com

Heather Langeland, Esquire
PennFuture
200 First Street - #200
Pittsburgh, PA 15222
(412) 456-2901
(412) 258-6685 (fax)
langeland@pennfuture.org

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

Dated: September 26, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**DOCKET NO. P-2014-2417907**
PPL ELECTRIC UTILITIES CORPORATION	:	

REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Date: September 26, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

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.

On September 12, 2014, the OSBA submitted its Main Brief.

The OSBA submits this Reply 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.

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.

The customers affected by PPL's proposal currently represent 13.7 percent of the total Small C&I generation default service load. This belies the Company's claim that the impact of the proposed change is "very small."

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

The Retail Energy Supply Association ("RESA") failed to recognize that the Small C&I customers affected by the PPL proposal have full access to the competitive marketplace today. Forcing those Small C&I customers onto hourly spot market pricing does not give them a competitive advantage.

RESA relied upon a "market reflective" legal standard for default service plans that has been explicitly rejected by the Commission.

RESA has grossly misrepresented a partial settlement in the current PECO default service case. The referenced settlement provides no support for RESA's position whatsoever.

RESA's reference to default service procurement policies at Pike County Light & Power are irrelevant, as RESA did not and cannot explain why the circumstances at that utility are remotely similar to the PPL matter.

III. Argument

A. The PPL Initial Brief

PPL's current tariff has a maximum demand limit of 500 kW for customers to be included in the Small C&I generation default service rate class group. The Small C&I customers in that group take generation default service under Rate Schedule GSC-1. In its *Petition*, PPL proposes to lower the maximum peak demand size limit for Small C&I customers from 500 kW to 100 kW in order to be served under Rate Schedule GSC-1.

As set forth in the OSBA Main Brief, the OSBA opposes this proposal.

PPL provided three reasons for making this proposal.

First, PPL cited to the Commission's Final Order at Docket No. I-2011-2237952 (Order entered February 15, 2013) ("*End State Order*"), claiming that the Commission "expected" the Company to make this change. PPL Initial Brief, at 13.

Second, PPL pointed out that it promised to propose this change in its previous default service proceeding. *Id.*

Third, PPL argued that the impact upon the Small C&I customer class will be "very small" in that "only 0.4% of all Default Service commercial and industrial customers" will be affected. *Id.*, at 14.

The OSBA addressed all three points in its Main Brief. For clarity, the OSBA will summarize its arguments to the three reasons presented by PPL.

First, the *End State Order* provides no legal authority for approving PPL's proposal. The *End State Order* is the Commission's "wish list" for the future of default service. More importantly, the Commission itself admits that it is not comfortable with treating the *End State*

Order as a mandate. Instead, the Commission concedes that it must seek legislative changes to obtain the authority to implement its "wish list."

However, no such legislative changes have been enacted. The Commission's "wish list" remains just that -- a vision for the future. The *End State Order* does not provide a legal basis for PPL to make a change to its maximum peak demand limit for Small C&I customers. *See* OSBA Main Brief, at 8-9.

Second, the fact that PPL promised to make this maximum peak demand limit proposal in a previous proceeding is irrelevant. To be clear, the OSBA does not object to PPL making this proposal. Furthermore, the OSBA acknowledges that the Company stated in its last default service filing that it was going to make this proposal in its next default service filing. *See* OSBA Statement No. 4, at 1. However, simply making a proposal based upon a prior commitment to do so is not a basis (legal or otherwise) for the Commission to approve that proposal.

Third, the OSBA respectfully disagrees with the Company that the proposed change will only impact a "very small" number of customers. The truth is that those 430 Small C&I customers represent 13.7 percent of total Small C&I generation default service load. OSBA Statement No. 4, at 4. As suggested in the OSBA's Main Brief, a good rule of thumb would be that any default service change that affects more than 10 percent of the default service load is a significant change. OSBA Main Brief, at 4.

In its Initial Brief, PPL fully acknowledged that it carries the burden of proof on this issue. PPL Initial Brief, at 7. The OSBA respectfully submits that PPL has not met that burden of proof. The *End State Order* is the Commission's wish list that carries no legal authority. The fact that PPL followed through on a commitment to make this proposal is commendable, but again, no basis for approving that proposal. Finally, the impact of the Company's proposal is

major change that impacts a large percentage of the Small C&I default service load. Simply calling that impact "very small" does not provide a basis for making that change.

Therefore, the OSBA respectfully requests that the ALJ and the Commission reject PPL's proposal to reduce the maximum peak demand cutoff for Small C&I generation default service from 500 kW to 100 kW.

B. The RESA Initial Brief

In its Initial Brief, RESA expressed support for PPL's proposal to reduce the maximum peak demand cutoff for Small C&I generation default service from 500 kW to 100 kW. *See* RESA Initial Brief, at 5-8.

RESA claimed that the OSBA's opposition to the PPL proposal somehow "fails [to] recognize that a competitive market that offers many different products and services will better meet the individual needs and desires of customers." *Id.*, at 5. However, the 430 Small C&I customers who would be affected by this proposal have complete access to the competitive marketplace today, and they all decided that taking the default service option offered under Rates GSC-1 and TSC is superior to the competitive options. Moving those customers to hourly pricing (which RESA explicitly supports) does not give them some new access to that marketplace – they already have that.[1] Instead, it forcibly removes them from a default service product that they have chosen.

RESA also advocated a standard that has been rejected by the Commission. RESA stated that in this proceeding, the ultimate outcome is that "the Commission approves a default service

[1] RESA ignores the fact that shopping in the Small C&I rate class is already robust, and thus the existing procurement and pricing mechanism for Small C&I customers is clearly not imposing any unreasonable bar to competition. Shopping for the Small C&I customer class has been as high as 55.2% on a customer basis and 90% on a load basis in 2014. *See* OSBA Statement No. 1, at 3-5. While shopping rates for Small C&I customers declined slightly over the past 12 months, this decline is obviously unrelated to any change in default service procurement methods (as there were not changes in this period), and are much more likely the result of the well-documented problematic pricing behavior of some EGSs during the past winter. *See* OSBA Statement No. 2, at Exhibit IEc-SD2 and OSBA Statement No. 1, at 5.

plan that is reasonably calculated to produce a market reflective default service rate." RESA Initial Brief, at 5. As the OSBA argued in its Main Brief, "market reflective" is not the standard. OSBA Main Brief, at 5-7.

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. Furthermore, the Commission has unambiguously rejected RESA's argument that the "least cost to customers over time" standard requires that default service prices be "market-reflective." The Commission stated, 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).

Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Order entered October 4, 2011), at 41 ("*Final Default Service Rulemaking Order*") (emphasis added).

In its Initial Brief, RESA expanded its "market reflective" analysis to include an economic "boom or bust" component:

> Hourly pricing is a more sustainable default service design because it avoids the 'boom' or 'bust' business cycle that can result in periods of time where retail competition is stifled because longer term fixed price, utility-provided default service fails to reflect current market conditions.

RESA Initial Brief, at 6.

Once again, it is irrelevant that there may (or may not) exist boom or bust economic cycles that cause PPL's default service rate to fail "to reflect current market conditions." RESA is asserting a legal standard that does not exist:

> ***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 (emphasis added).

RESA clings to its legal standard of "market reflective" pricing. Unfortunately for RESA, "market reflective" pricing is simply not the current legal standard by which default service rates are to be judged. The Commission has made that very clear. Therefore, the fact that RESA argued in support of PPL's proposal to change the maximum peak demand size from 500 kW to 100 kW for Small C&I customers because the proposal meets RESA's "market reflective" standard is of no legal significance whatsoever.

Furthermore, RESA, in its Initial Brief, stated:

> Finally, OSBA's argument that the movement of C&I customers to hourly priced service is not consistent with other EDCs ignores the fact that these differences are the result of technical interval meter deployment issues and not any specific policy or other objection to the Commission's stated desires.
>
> * * *
>
> Similarly, PECO is in the process of widespread interval meter deployment and has committed to transitioning these customers to hourly priced default service as soon as reasonably possible and in no event later than June 1, 2016.

RESA Initial Brief, at 7. RESA cited as support for this assertion the *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362, *Joint Petition for Partial Settlement* (dated August 28, 2014), at Paragraph 26.

RESA has misrepresented the partial settlement in the PECO default service case.

Paragraph 18 of the PECO partial settlement states:

> The Medium Commercial Class includes customers with annual peak demand equal to greater than 100 kW, but less than or equal to 500 kW on schedules GS, PD and HT.

PECO Joint Petition for Partial Settlement, at Paragraph 18. Therefore, the same issue involving Small C&I customers in the 100 to 500 kW peak demand range is at issue in the PECO case as it is in the *instant* proceeding.

What RESA failed to point out is Paragraph 25 of the PECO partial settlement:

> The issue of procurement of Medium Commercial default service supply, including but not limited to whether Medium Commercial default service should be priced on an hourly basis, ***is reserved for litigation***. Nothing in this Joint Petition shall prejudice the parties with respect to their litigation position in opposition to or support of hourly pricing for Medium Commercial customers, provided, however, that PECO shall support the implementation of hourly

> priced default service for Medium Commercial customers in such litigation in accordance with the following paragraphs.

PECO Joint Petition for Partial Settlement, at Paragraph 18 (emphasis added).

In addition, RESA also carefully failed to mention that Medium Commercial customer implementation details set forth in Paragraph 26 of the PECO partial settlement will only be implemented if the Commission agrees with RESA's position in the PECO litigation:

> Should the Commission determine that default service for Medium Commercial customers should be priced on an hourly basis, the parties agree to PECO's implementation of the Hourly Pricing Transition as described in Paragraph 26.

PECO Joint Petition for Partial Settlement, at Paragraph 27.

Thus, PECO's assertion that the issue of the Small C&I maximum peak demand cutoff dropping from 500 kW to 100 kW has been settled in the PECO default service case (and that, by implication, the OSBA has agreed with that result as a signatory to the PECO partial settlement) is absolutely wrong.

Finally, RESA argued that the *End State Order* provides the necessary legal authority for the Commission to approve the change in PPL's maximum peak demand size. RESA Initial Brief, at 7. In direct contradiction to RESA's argument, the Commission has stated:

> 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 amendments have been adopted.

Furthermore, 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.

Nevertheless, RESA pointed to the default service case involving Pike County Power & Light as an example where the Commission's authority to move customers to the hourly spot market was upheld by the Commonwealth Court. *Id.* RESA's use of the Pike County case is a red herring.

Under certain specific, narrow conditions, procuring default service through hourly spot markets may best meet the "prudent mix" standard. Pike County Light & Power ("Pike") has procured default service supplies for residential and commercial customers in hourly markets for many years. RESA offered no evidence that the circumstances affecting Pike are even remotely relevant to PPL Electric's Small C&I customers with loads ranging from 100 to 500 kW.

First, while Pike *procures* its default supplies on an hourly basis, it does not set prices on an hourly basis. In contrast to PPL's proposed approach for the 100 to 500 kW customers, Pike sets its default service prices on a quarterly basis.

Second, as the Commission is well aware, when hourly default service pricing was implemented, Pike was a tiny utility where the majority of its customers were shopping under a Commission-sponsored aggregation plan. Also, stable price products were readily available

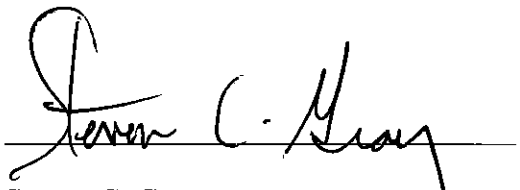
from competitive suppliers, and Pike's ability to contract for stable priced supplies in the wholesale market for its tiny default service load was constrained. *See, e.g., Petition of Pike County Light & Power Company*, Docket No. P-2008-2044561 (Order entered March 23, 2009), at 14-15. RESA makes no pretense of explaining the relevance of the Pike situation to PPL, and it is apparent to any participant in this proceeding that none of these conditions apply to PPL's Small C&I default service customers.

RESA's "market reflective" legal standard for default service is not the law in Pennsylvania. The Commission has acknowledged that it does not have the authority to implement the *End State Order* in this respect. The fact that the Pike is an outlier with a fact pattern completely different from the PPL case does not, as RESA argued, bolster the Commission's authority under the *End State Order*. Therefore, the OSBA respectfully requests that the ALJ and the Commission reject RESA's arguments in support of the Company's proposal to change the maximum peak demand 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,



Steven C. Gray
Assistant Small Business Advocate
Attorney I.D. No. 77538

For:
John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831

Dated: September 26, 2014