



COMMONWEALTH OF PENNSYLVANIA

December 1, 2014

E-FILED

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

Re: Petition of PPL Electric Utilities Corporation for Approval of a 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 are the Reply Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please 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 Reply Exceptions, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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Dated: December 1, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Dated: December 1, 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.

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

On September 26, 2014, the OSBA submitted its Reply Brief.

On October 30, 2014, ALJ Colwell issued her Recommended Decision (“RD”).

On November 19, 2014, PPL and the Retail Energy Supply Association (“RESA”) submitted Exceptions to the RD.

The OSBA submits these Reply Exceptions in response to the Exceptions submitted by PPL and RESA.

II. Reply Exceptions

A. Reply to PPL Exception No. 1: The ALJ correctly concluded that the Company's DSP II Plan and the Commission's *End State Order* provide no support for PPL's proposal. (PPL Exceptions, at 4-8)

In its Exceptions, PPL summarized its proposal for the Company's small commercial and industrial ("Small C&I") customers, as follows:

In this proceeding, PPL Electric is proposing to reduce the demand level for the Small C&I Customer Class from 500 kW to 100 kW. Under this proposal, customers with a demand level of 100 kW and above would be classified as Large C&I customers and would receive hourly price default service, and those with a demand below 100 kW are classified as Small C&I customers and would receive fixed price default service.

PPL Exceptions, at 4.

The ALJ rejected PPL's proposal. After citing to 66 Pa. C.S. Sections 2807(e)(3.1) and (3.2), the ALJ stated:

The question is whether the Company has carried its burden of proving that its proposal to move commercial customers with maximum load of 100 kW to 500 kW to hourly pricing is consistent with the statute.

RD, at 45. The ALJ continued, as follows:

While PPL Electric has set forth a plan to comply with the End State Order, it has provided no evidence to support a finding that its proposal to move these small commercial customers to hourly pricing is consistent with the goal of the statute to establish a default plan which provides the least cost over time by using a prudent mix of products.

RD, at 46.

In its Exceptions, PPL pointed to "prior Commission decisions approving default service plans without requiring a mix of default service products for each customer class." PPL

Exceptions, at 5. Specifically, PPL cited to the Pike County Light & Power Company case as an example where the Commission's authority to move customers to the hourly spot market was upheld by the Commonwealth Court. *Id.* As the OSBA observed in its Reply Brief, PPL's use of the Pike County Light & Power Company case is nothing but 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. However, the Company has offered no evidence that the circumstances affecting Pike are even remotely relevant to PPL'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. The Company makes no attempt of explaining the relevance of the Pike situation to

that of PPL, and it is readily apparent that none of the conditions affecting Pike apply to PPL's Small C&I default service customers.¹

In its Exceptions, PPL also stated, as follows:

PPL Electric also submits that the Commission's expectation in the *End State Order* that EDCs implement a 100 kW demand split for commercial and industrial customers is consistent with the Commission's policy statement at 52 Pa. Code § 69.1805.

PPL Exceptions, at 6.

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*"). PPL Exceptions, at 6.

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. See OSBA Main Brief, at 3-4. The *End State Order* is a statement by the Commission as to what it envisions for the future of default service. However, it is not a legal mandate to be implemented in the current round of default service proceedings. The Commission itself admits 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 "vision for the future." In fact, 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:

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

¹ The ALJ observed that the "Pike County Situation" is a "specific exception" to the prudent mix standard. RD, at 44.

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 "vision" 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.

In addition, PPL's citation to 52 Pa. Code § 69.1805 does nothing to bolster the Company's proposal or the legal authority of the *End State Order*. PPL Exceptions, at 6. PPL emphasized the following passage of Section 69.1805:

In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

Id. PPL, however, failed to provide a shred of evidence that its proposed to change the upper demand bound from 500 kW to 100 kW of Small C&I customers will "ensure least cost to customers." The ALJ agreed. *See* RD, at 46.

Therefore, the OSBA respectfully requests that the Commission uphold the recommendation of the ALJ and reject PPL's proposal to reduce the demand level for the Small C&I customer class from 500 kW to 100 kW.

B. Reply to RESA Exception No. 1: The ALJ correctly rejected the Company's proposal to provide only hourly priced default service to PPL's Small C&I customers with peak demand at or above 100 kW. (RESA Exceptions, at 4-9)

In its Exceptions, 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. RESA Exceptions, at 9.

RESA found fault with the ALJ's legal analysis:

The ALJ correctly begins her legal analysis regarding the requirements of the Competition Act by noting that the default service provider is required to acquire electric energy through a 'prudent mix' of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements. The ALJ, however, then inexplicably stops her analysis of the Competition Act even though the Competition Act contains other important and directly relevant sections that need to be considered.

RESA Exceptions, at 4-5 (footnote omitted).

RESA continued, as follows:

Therefore, in addition to satisfying the specific requirements of Section 2807(e)(3.1) regarding procurement plan design, the Commission is legally required to ensure that the approved default service plan is reasonably calculated to promote the development of a workably competitive retail generation market.

RESA Exceptions, at 5.

RESA also asserted:

Nowhere in the ALJ's analysis does she discuss how the clearly expressed goals of competition and direct access to the competitive market set forth in the Competition Act would be accomplished by denying C&I default service customers hourly priced default service (*which is reasonably calculated to lead to a robust competitive market* where there are a significant number of competitive alternatives available).

RESA Exceptions, at 5-6 (emphasis added).

First, RESA carefully ignores the fact that the 430 Small C&I customers who would be affected by PPL's 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 advocates) does not give them some new access to that marketplace – they already have that.

Second, RESA also 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 no 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.

Therefore, the ALJ's legal analysis missed nothing. There is a fully "robust competitive market" in PPL's service territory today.

Nevertheless, RESA attempted to buttress its argument with a discredited economic theory:

[H]ourly default service 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 Exceptions, at 6. RESA continued, as follows:

Hourly pricing also benefits customers and achieves broader public policy goals by providing more accurate price signals that can better encourage energy conservation and demand response.

RESA Exceptions, at 6-7.

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 provide “more accurate price signals”

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).

Simply put, “more accurate price signals” is RESA’s way of saying that it wants “market reflective” pricing. Unfortunately for RESA, “market reflective” pricing is not the current legal standard by which default service rates are to be judged. The Commission has made that 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 “more accurate price signals” standard is of no legal significance.

Finally, RESA argued in support of the Commission’s *End State Order*, as follows:

[T]he End State Order is the third and most recent guidance provided by the Commission to the EDCs making clear that it expected — effective June 1, 2015 — the EDCs would ‘offer only

hourly LMP to medium and large C&I customers with interval meters.’

RESA Exceptions, at 8-9 (footnote omitted).

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.

Thus, RESA’s assertion that the ALJ “disregarded” the End State Order is disingenuous and factually incorrect. The ALJ simply recognized that the End State Order does not carry the weight of a regulation or a statute:

Further, the *End Use Order* recognizes that the Commission position would be better grounded if there were legislative recognition that hourly pricing without the hedging of short and long term contracts is sufficient to meet the price stabilization requirement of Act 129.

RD, at 45.

Therefore, once again, the OSBA respectfully requests that the Commission uphold the recommendation of the ALJ and reject PPL’s proposal to reduce the demand level for the Small C&I customer class from 500 kW to 100 kW and RESA’s arguments in support thereof.

III. Conclusion

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny PPL Exception No. 1 and RESA Exception No. 1.

Respectfully submitted,



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