

**ECKERT
SEAMANS**
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Mark S. Stewart
717.237.7191
mstewart@eckertseamans.com

February 3, 2015

VIA ELECTRONIC FILING

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

RE: Dauphin County Industrial Development Authority v. PPL Electric Utilities Corporation; Docket No. C-2014-2450483

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Dauphin County Industrial Development Authority's Motion for Judgment on the Pleadings, in the above referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Mark S. Stewart

MSS/jls
Enclosure

cc: Certificate of Service (w/attachment)

CERTIFICATE OF SERVICE


I hereby certify that I have, this day, effected service of a copy of the forgoing **Notice to Plead and Motion for Judgment on the Pleadings** upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code Section 1.54, as follows:

Via Email and/or First Class Mail:

Paul E. Russell
Associate General Counsel
PPL Service Corporation
Two North Ninth St.
Allentown, PA 18101
PERussell@pplweb.com

Michael W. Hassell, Esq.
David MacGregor, Esq.
Post & Schell
17 North Second St., 12th Fl.
Harrisburg, PA 17101-1601
mhassell@postschell.com
dmacgregor@postschell.com

Date: February 3, 2015



Mark Stewart, Esquire

Attorney for
Dauphin County Industrial Development Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAUPHIN COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY,

v.

PPL ELECTRIC UTILITIES
CORPORATION

:
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Docket No. C-2014-2450483

NOTICE TO PLEAD

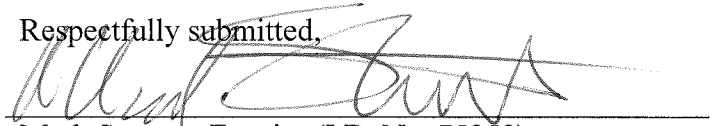
To:

Paul E. Russell
Associate General Counsel
PPL Service Corporation
Two North Ninth St.
Allentown, PA 18101

Michael W. Hassell, Esq.
David MacGregor, Esq.
Post & Schell
17 North Second St., 12th Fl.
Harrisburg, PA 17101-1601

Pursuant to 52 Pa. Code § 5.102(a) you are hereby notified that an answer or other responsive pleading regarding the enclosed Motion for Judgment on the Pleadings shall be filed within twenty (20) days of service of the Motion with a copy sent to the undersigned counsel.

Respectfully submitted,



Mark Stewart, Esquire (I.D. No. 75958)
mstewart@eckertseamans.com
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Telephone: 717-237-6000

Date: February 3, 2015

Attorney for
Dauphin County Industrial Development Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAUPHIN COUNTY INDUSTRIAL	:	
DEVELOPMENT AUTHORITY,	:	
	:	Docket No. C-2014-2450483
v.	:	
	:	
PPL ELECTRIC UTILITIES	:	
CORPORATION	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS OF
DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT
AUTHORITY**

Pursuant to 52 Pa. Code § 5.102, the Dauphin County Industrial Development Authority (“DCIDA” or Authority) hereby respectfully moves for judgment on the pleadings against PPL Electric Utilities Corporation (“PPL” or “Company”). In support of this Motion, the Authority states as follows:

INTRODUCTION

1. PPL has failed to properly compensate time-of-use (“TOU”) net metering customer-generators, such as the Authority, for the kilowatt-hours (“kWh”) received by PPL from said customer-generators in excess of the kWh delivered by PPL to said customers for the last yearly period (June 1, 2013 to May 31, 2014).

2. This Commission interprets Section 75.13 of its regulations as requiring that compensation be calculated in a manner that accurately represents the value of such excess

generation at the time delivered by the customer-generator. *Mari Jo Jensen v. PECO Energy Company*, PUC Docket No. F-2011-2270675, Opinion and Order entered December 20, 2012, as modified by the Reconsideration Opinion and Order entered May 23, 2013.¹

3. For the last yearly period, PPL valued each hour of excess generation at the same price.² That price was based primarily on a simple average of the TOU price for each hour of a year: 35% of the hours in the yearly period are on-peak (at \$0.15389 per kWh) and 65% of the hours in the yearly period are off-peak (at \$0.11588 per kWh).³

4. PPL's calculations are unjust, unfair, unreasonable and inconsistent with the Alternative Energy Portfolio Standards Act⁴ ("AEPS Act"), the Commission's regulations, and PPL's own tariff. PPL's simple average of the TOU price for each hour in a yearly period does not accurately represent the value of excess generation at the time delivered by the Authority to PPL – because the Authority's solar facility is generating excess electricity primarily during on-peak hours.

BACKGROUND

5. The pleadings are closed.
6. A hearing date has not been scheduled.
7. The pleadings raise issues of law and of legal interpretation.
8. There are no genuine issues of material fact.

¹ See Paragraph 17 and footnotes 10 and 11, *infra*.

² See Paragraph 15, *infra*.

³ Answer and New Matter of PPL Electric Utilities Corporation at par. 18.

⁴ 73 P.S. § 1648.1, *et seq.*

LEGAL STANDARD

9. The Commission's regulations provide for the filing of a Motion for Judgment on the Pleadings after the pleadings are closed.⁵

10. In ruling on a motion for judgment on the pleadings, the Commission must accept as true all well-pleaded facts that appear in the pleadings of the non-moving party and must examine all facts of record in a light most favorable to the non-moving party.⁶

11. Judgment on the pleadings must be granted if the pleadings and documents properly attached thereto show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.⁷

ARGUMENT

12. The Authority is entitled to judgment as a matter of law. If all of the material facts set forth in PPL's Answer and New Matter are taken as true, they simply demonstrate that PPL owes certain compensation to the Authority and that PPL has not to date paid such compensation.

13. The Commission has already decided the legal issues presented in this matter, and did so in DCIDA's favor.

14. It is well-settled that under the AEPS Act and Commission's regulations, for each yearly period, PPL is required to compensate DCIDA for any "excess" or unused accumulated

⁵ 52 Pa. Code § 5.102(a).

⁶ *Rybas v. Wapner*, 457 A.2d 108 (Pa. Super. 1983).

⁷ 52 Pa. Code § 5.102(d)(1).

kWh generated by DCIDA over the amount of kWh delivered by PPL during the same year at PPL's price-to-compare ("PTC").⁸

15. For the last yearly period, PPL valued each hour of excess generation at the same price: \$0.13736 per kWh. That total price was based on a simple average of the TOU price for each hour of said yearly period: \$0.12918 per kWh. To that simple average, PPL added the Transmission Service Charge ("TSC") of \$0.00817 per kWh and the State Tax Adjustment Surcharge ("STAS") of \$0.00001 per kWh.⁹

16. **PPL's calculation for the last yearly period conflicts with Section 1648.5 of the AEPS Act, 73 P.S. § 1648.5.** That Section provides that: "Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." PPL's use of a simple average of TOU prices for each hour in a yearly period conflicts with that standard. The simple average of all hours in said yearly period (\$0.12918 per kWh plus TSC plus STAS) does not accurately represent the full retail rate charged by PPL for on-peak hours (\$0.15398 per kWh plus TSC plus STAS). TOU customer-generators, such as DCIDA, who produce excess generation in on-peak hours are, therefore, receiving less than the "full retail value for all energy produced" during those on-peak hours.

17. **PPL's calculations for the last yearly period directly conflicts with Section 75.13(d) of the Commission's regulations and the Commission's Order interpreting said**

⁸ 73 P.S. § 1648.5 (" Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis"); 52 Pa Code § 75.13(c) (Any excess kilowatt hours shall continue to accumulate until the end of the year), 75.13(d) (At the end of each year, the EDC shall compensate 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). See also 52 Pa. Code § 75.12 (definition of "year" and "yearly").

⁹ Answer and New Matter of PPL Electric Utilities Corporation at par. 18.

Section.¹⁰ The Commission requires that compensation under Section 75.13 be calculated in a manner that accurately represents the value of the excess generation at the time the excess generation is produced.¹¹

- (a) In *Mari Jo Jensen v. PECO Energy Company*, the Commission concluded that Section 75.13(d) requires that the end of the year compensation to customer-generators for unused accumulated kWh be calculated using a weighted average of the PTC rates that were in effect when the monthly excess generation was delivered to the EDC. That holding was based on the reasoning and interpretations in the Commission’s *Final Omitted Rulemaking Order*.¹²
- (b) In the Commission’s *Final Omitted Rulemaking Order*, the Commission explained that “compensation shall be calculated by using the weighted average generation and transmission rates, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC.”¹³

¹⁰ Final Omitted Rulemaking Order, PUC Docket No. L-00050174, Order entered July 2, 2008; *Mari Jo Jensen v. PECO Energy Company*, PUC Docket No. F-2011-2270675, Opinion and Order entered December 20, 2012, as modified by the Reconsideration Opinion and Order entered May 23, 2013.

¹¹ *Id.* In 2014, the Commission proposed the codification of the interpretation presented in the *Final Omitted Rulemaking Order* and the *Mari Jo Jensen v. PECO Energy Company* proceeding in a pending rulemaking related to its net metering regulations. See *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-2014-2404361, Rulemaking Order entered on February 20, 2014, at p. 15 and Annex A at p. 8 (regarding Section 75.13(e)). See *Larry Moyer v. PPL Electric Utilities Corp.*, PUC Docket No. C-2011-2273645, Opinion and Order entered January 9, 2014.

¹² “It is clear, based upon the language in our Final Omitted Rulemaking Order, that the proper interpretation of Section 75.13(d) is to use the weighted average PTC, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC when calculating compensation to net metering customers.” *Mari Jo Jensen v. PECO Energy Company*, Opinion and Order at 8.

¹³ *Final Omitted Rulemaking Order*, PUC Docket No. L-00050174, Order entered July 2, 2008, at 20.

- (c) That *Final Omitted Rulemaking Order* further provided that: “If 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.”¹⁴
- (d) PPL’s use of a simple average of the TOU price for each hour in a yearly period conflicts with said standards. No weight or significance is assigned to the time that the TOU customer-generator actually delivered its generation to the EDC.

18. PPL’s calculations for the last yearly period conflict with PPL’s own Tariff.

PPL’s Tariff states in the relevant part that: “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 [PTC] for that Rate Schedule.”¹⁵

- (a) PPL did not follow its prior interpretation of its own Tariff. In seeking approval of said tariff provision, PPL represented to the parties and the Commission that its net metering proposal “helps to ensure that compensation for excess generation by TOU customer-generators more closely reflects their actual on-peak and off-peak usage and generation.” (emphasis added).¹⁶ So, as explained by PPL, said tariff provision was intended to accurately represent the value of the kWh based on the

¹⁴ *Id.*

¹⁵ This provision was approved by the Commission in December 2012 (at the same meeting where the Commission decided the *Mari Jo Jensen v. PECO Energy Company* proceeding), and became effective as of January 1, 2013. *PUC v. PPL Electric Utilities Corporation*, PUC Docket No. R-2012-2290597, *et al.*, Opinion and Order entered December 28, 2012, as modified by the Reconsideration Opinion and Order entered February 28, 2013.

¹⁶ PPL Initial Brief, p. 182 in *PUC v. PPL Electric Utilities Corporation*, PUC Docket No. R-2012-2290597, *et al.*, Opinion and Order entered December 28, 2012, as modified by the Reconsideration Opinion and Order entered February 28, 2013.

actual time that electric energy is used or generated by a TOU customer-generator. This was not done by PPL: PPL's calculations for the last yearly period did not use a weighted average of the TOU rates in effect when DCIDA's monthly excess-generation was actually delivered to PPL. Nothing in PPL's calculations provides any weight to or reflects DCIDA's actual on-peak and off-peak usage and excess generation.

- (b) Simply put, PPL's yearly and universal price for on-peak to off-peak hours does not accurately reflect actual conditions at the DCIDA's Solar Facility. The Solar Facility is not designed to, and does not, generate electricity at night. It is, therefore, unjust, unfair and unreasonable to deem that 65% of the unused accumulated electricity from the Solar Facility was attributable to "off-peak" hours, which do not (by definition) include the majority of the hours when the Solar Facility is actually generating electric energy.¹⁷
- (c) PPL's tariff provision calls for a the use of a weighted average. However, only a simple average (mean) of the TOU price for each hour in said yearly period was used by PPL. In short, in the last yearly period, no hour of excess generation was assigned any more weight or significance than any other hour. This is unjust, unfair, and unreasonable because when electricity is provided by PPL to a TOU customer, PPL assigns different values to kWh used in on-peak hours as compared to kWh used in off-peak hours.

¹⁷ PPL Electric Tariff, Pa. PUC No. 201, Fifth Revised Page No. 19Z.5B and Twelfth Revised Page No. 19Z.5C.

- (d) It is unjust, unfair and unreasonable for PPL to place weight or significance on the hour in which energy is consumed by a TOU customer-generator,¹⁸ and to not place any weight or significance on the hour in which excess generation is produced by a TOU customer-generator. If energy is consumed in an on-peak hour, a TOU customer-generator will be required to pay the full retail price (\$0.15398 per kWh plus TSC plus STAS). But, as applied by PPL, that same TOU-customer generation will be a price (\$0.12918 per kWh plus TSC plus STAS) that is \$0.0248 less than said full retail price.

19. **The public interest is being violated by unjust, unfair and unreasonable application of said tariff provision.** The Commission believes that it is essential to capture the intent of the AEPS Act by providing a reasonable value to customer-generators to encourage and facilitate the deployment of renewable distributed resources.¹⁹ It is in the interest of the Commonwealth, PPL, and its other customers, not just the Complainant, to permit net-metering TOU customers to capture the “full retail value for all energy produced” during on-peak hours – so as to enable the Commonwealth to attract developers to the state for this purpose. However, the tariff provision fails to do this. As explained above, as applied by PPL, net-metering TOU customers will always receive less than the “full retail value for all energy produced” during on-peak hours.

¹⁸ *Id.*

¹⁹ *Final Omitted Rulemaking Order*, PUC Docket No. L-00050174, Order entered July 2, 2008, at 21.

CONCLUSION

20. Even after accepting the material factual allegations of PPL's Answer and New Matter as true, a motion for judgment on the pleadings in favor of the Authority should be rendered.

21. The Commission has the power to order a utility to issue refunds, reparations and other remedies based on conduct that violates the requirements of the AEPS Act, the Commission's Regulations, and the Commission's Orders interpreting its Regulations. For example, the Commission directed PECO Energy Company to issue refunds to customer-generators upon finding that PECO failed to abide by the requirements of a Commission Order and improperly calculated end-of-year compensation. *See Mari Jo Jensen v. PECO Energy Company, supra; See Larry Moyer v. PPL Electric Utilities Corp., supra.*

22. Indeed, on a virtually identical claim, the Commission ordered PECO Energy Company to: (1) recalculate the amount due to the complainant; (2) issue an appropriate refund to the complainant; and, (3) apply appropriate refunds to the extent it is applicable to all other similarly situated customers.²⁰

Wherefore, the Authority prays this Commission to enter an Opinion and Order:

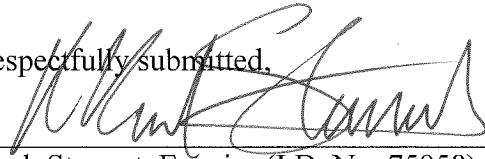
- (1) granting judgment on the pleadings in favor of the Authority;
- (2) stating and directing:
 - a. That DCIDA's Complaint against PPL is sustained;

²⁰ *Mari Jo Jensen v. PECO Energy Company*, Opinion and Order at 9.

- b. That PPL shall recalculate the amount due to DCIDA pursuant to its Final Omitted Rulemaking Order at Docket No. L-00050174, which was entered on July 2, 2008;
 - c. That PPL shall issue an appropriate refund to DCIDA within thirty (30) days of the date of entry of the Opinion and Order;
 - d. That within thirty (30) days from the date of entry of the Opinion and Order, PPL shall apply appropriate refunds to the extent it is applicable to all other similarly situated customer-generators²¹ pursuant to our Final Omitted Rulemaking Order at Docket No. L-00050174, which was entered on July 2, 2008;
 - e. That the provision added to PPL's net metering rider in 2012, as applied by PPL, is inoperative and superseded because it is inconsistent with the provisions of the AEPS Act, the Commission's Regulations or its Orders;
 - f. That PPL shall revise its tariff within thirty (30) days from the date of the entry of the Opinion and Order to bring the tariff provision(s) that are inconsistent with the provisions of the AEPS Act, the Commission's Regulations or its Orders into compliance with the same;
 - g. That PPL shall cease and desist from calculating compensation in a manner inconsistent with the calculation established in Section 75.13 of the Commission's Regulations, the AEPS Act and the above-described Orders of the Commission; and
- (3) granting such further relief in favor of the Authority and other similarly-affected customer-generators as may be just, reasonable and appropriate under the circumstances.

²¹ In its decision in *Mari Jo Jensen v. PECO Energy Company*, supra, the Commission required PECO to recalculate the compensation due to the complainant and all similarly situated customer-generators.

Respectfully submitted.



Mark Stewart, Esquire (I.D. No. 75958)
mstewart@eckertseamans.com

Carl R. Shultz, Esquire (I.D. No. 70328)
cshultz@eckertseamans.com

Sarah C. Stoner, Esquire (I.D. No. 313793)
sstoner@eckertseamans.com

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Telephone: 717-237-6000

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Attorneys for
Dauphin County Industrial Development Authority