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March 16, 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 Answer to Cross 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,

Carl R. Shultz

CRS/jls
Enclosure

cc: Hon. David A. Salapa (w/attachment)
Certificate of Service (w/attachment)

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, effected service of a copy of the forgoing **Answer to Cross 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:

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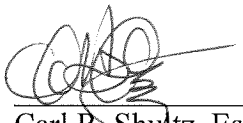

Date: March 16, 2015

Carl R. Shultz, Esquire

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	:	

DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY'S ANSWER TO CROSS MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to 52 Pa. Code § 5.102, the Dauphin County Industrial Development Authority ("DCIDA" or "Authority") submits this Answer in response to PPL Electric Utilities Corporation's ("PPL" or "Company") Cross Motion for Judgment on the Pleadings.

DCIDA maintains that PPL has not properly compensated net metering customers for the kilowatt-hours ("kWh") received by PPL from the customer in excess of the kilowatt hours delivered by PPL to the customer. PPL generally determined that 35% of the hours in the year are on-peak and 65% are off-peak. PPL then applied those "weighted average" calculations to its on-peak and off-peak TOU rates. This method of calculation resulted in a failure of PPL to provide end of year compensation for "full retail value for all energy produced"[1] during PPL's on-peak hours. PPL's calculations are unjust, unfair, unreasonable and inconsistent with the Alternative Energy Portfolio Standards Act[2] ("AEPS Act"), the Commission's regulations, and

[1] 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.").
[2] 73 P.S. § 1648.1, *et seq.*

PPL's own tariff.[3] PPL's Cross Motion for Judgment on the Pleadings must be denied as PPL has failed to demonstrate that it is entitled to judgment as a matter of law.

I. INTRODUCTION

DCIDA is a public instrumentality and body politic and corporate organized and existing under the laws of the Commonwealth of Pennsylvania, having been duly organized by Dauphin County. In 2009, DCIDA began the planning and development process to construct a solar energy farm (the "Solar Project" or "Solar Facility") within the service area of PPL in Dauphin County, Pennsylvania. DCIDA built the Solar Facility in two phases. In October 2011, it completed and began operating Phase I, which had approximately one megawatt ("MW") of generating capacity. DCIDA completed and began operating Phase II in October 2013. Phase II added approximately one MW of generating capacity to the facility, which now has slightly more than two MW of generating capacity.

At its Solar Facility, DCIDA is a Small General Service - Sec. Voltage ("GS-1") customer of PPL. Since October 2011, DCIDA has been a net metering customer of PPL and the Solar Facility has been used for net metering. In April 2013, DCIDA elected to participate in the TOU Price Option offered by PPL. For the last yearly period (June 1, 2013 to May 31, 2014),[4] DCIDA had "excess" or unused accumulated kWh. DCIDA filed a Complaint against PPL which was served on PPL on October 3, 2014. The Complaint addressed PPL's failure to properly calculate the end-of-year compensation for the DCIDA's unused accumulated kWh.

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3 *See* DCIDA's Formal Complaint and DCIDA's Motion for Judgment on the Pleadings..

4 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").

DCIDA, and not PPL, is entitled to judgment on the pleadings. DCIDA, both in its Formal Complaint and Motion for Judgment on the Pleadings, has alleged that PPL's net metering tariff, as interpreted and applied by PPL, is inconsistent with the AEPS Act, the Commission's Regulations, and the Commission's Orders. The subject Motion fails to demonstrate that PPL is entitled to judgment as a matter of law.

II. LEGAL STANDARD FOR JUDGMENT ON THE PLEADINGS

The Commission's regulations provide for the filing of a Motion for Judgment on the Pleadings after the pleadings are closed.[5] 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] A judgment on the pleadings may not be granted if there are genuine issues of material fact, or if the moving party has not demonstrated it is entitled to judgment as a matter of law.[7]

As DCIDA has consistently asserted, there are no genuine issues of material fact in this proceeding. PPL has taken contradictory positions in filings made contemporaneously. In the Answer of PPL to Motion for Judgment on the Pleadings of DCIDA, PPL implies that there are genuine issues as to material facts[8]; however, it declares in its Cross Motion for Judgment on the Pleadings that "there are no disputed issues of material fact."[9] PPL has not met its burden to prove that it is entitled to judgment as a matter of law, as explained herein and in DCIDA's

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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)(l).

8 Answer of PPL Electric Utilities Corporation to Motion for Judgment on the Pleadings of Dauphin County Industrial Development Authority at 4.

9 Cross Motion for Judgment on the Pleadings of PPL Electric Utilities Corporation at 4.

Motion for Judgment on the Pleadings. Consequently, PPL's Cross Motion for Judgment on the Pleadings must be denied.

III. ARGUMENT

A. PPL Is Not Entitled To Judgment On The Pleadings Because PPL Has Failed To Demonstrate That It Has Compensated DCIDA For Excess Generation In Accordance With The Terms Of Its Commission-Approved Tariff.

PPL is not entitled to judgment on the pleadings. For the reasons stated in DCIDA's Motion for judgment on the pleadings (which are incorporated herein by reference), the DCIDA is entitled to judgment on the pleadings.

That being said, 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 kWh generated by DCIDA over the amount of kWh delivered by PPL during the same year at PPL's price-to-compare ("PTC").[10] 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.[11]

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."

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10 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").

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

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.

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 Section.[12] 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.[13]

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.*[14]

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12 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.

13 *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.

14 "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.

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."[15] 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."[16]

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. Furthermore, as addressed in Section I(B), PPL's calculations of net excess generation in the last yearly period conflict with its own Tariff.

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. As applied by PPL, net-metering TOU customers received less than the "full retail value for all energy produced" during on-peak hours. As a result, PPL has failed to demonstrate that it has compensated DCIDA for excess generation in accordance with the terms of its Commission-approved tariff.

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

16 *Id.*

B. PPL Has Failed To Demonstrate That DCIDA Is Seeking a Retroactive Change to Commission-Made Rates

PPL incorrectly asserts that DCIDA's request to be properly compensated for its excess generation is a violation of the Commission-made rate doctrine. The Commission-made rate doctrine establishes that a rate approved by the Commission prior to its implementation triggers immunity from retroactive rate changes. That doctrine does not impact this proceeding, where a utility's calculations directly conflict with the provisions of its own Tariff.

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." 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).[17] So, as explained by PPL, said tariff provision was intended to accurately represent the value of the kWh based on the 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.

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

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17 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.

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.

PPL's tariff provision calls for 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.

As explained above, PPL's contention that DCIDA's request for proper compensation is equivalent to seeking a retroactive change to Commission-made rates must be rejected.

C. The Crux of DCIDA's Complaint is Not Prospective Changes Regarding Compensation But That PPL Has Failed to Fulfill Its Responsibility to Comply With Commission Regulations and Decisions

In August of 2013, PPL filed a Petition for Approval of a New Pilot Time-of-Use Program, proposing to utilize EGSs to fulfill its obligation to offer a TOU rate option to its default service customers.[18] The Commission entered an order approving a Joint Petition for Partial Settlement whereby PPL utilizes electric generation suppliers to offer a TOU rate option to default service customers.[19] As PPL's new TOU proposal is still being litigated, the rules for the future are uncertain at the moment.

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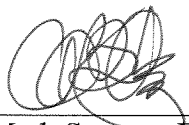
[18] *Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 filed August 23, 2013.

[19] *Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered September 11, 2014).

This proceeding does not address PPL's New Pilot Time-of-Use Program. It does, however, involve unreasonable calculations made by PPL. DCIDA seeks refunds for itself and other similarly situated customers of PPL for amounts wrongfully withheld due to calculations made in contradiction of the Commission's regulations, Orders, and PPL's own tariff. DCIDA submits that the Commission should determine and declare that PPL's failure to value "excess" or unused accumulated kWh on a monthly or actual basis violates the requirements of the AEPS Act, the Commission's Regulations, and the Commission's Orders.

IV. CONCLUSION

WHEREFORE, DCIDA respectfully requests that PPL's Cross Motion for Judgment on the Pleadings be denied and that DCIDA's Motion for Judgment on the Pleadings should be granted.



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