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April 30, 2015

VIA ELECTRONIC FILING

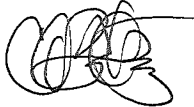
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Exceptions, 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 **Exceptions** 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: April 30, 2015



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**

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I. INTRODUCTION

The Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) has consistently held (since 2008) that compensation under the Alternative Energy Portfolio Standards Act¹ (“AEPS Act”) and Section 75.13 of its regulations² must be calculated in a manner that accurately represents the value of the excess generation at the time the excess generation is delivered by the customer-generator to the electric distribution company (“EDC”)/default service provider (“DSP”), such as PPL Electric Utilities Corporation (“PPL”).

Specifically, 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 kilowatt-hours (“kWh”) be calculated using a weighted average of the price-to-compare (“PTC”) rates that were in effect when the monthly excess generation was delivered to the EDC/DSP.³ That holding was based on the logic, reasoning and interpretations in the Commission’s *Final Omitted Rulemaking Order*,⁴ which was entered in 2008.

Under such logic, reasoning and interpretations, PPL is required to compensate Dauphin County Industrial Development Authority (“DCIDA” or “Authority”) for any “excess” or unused

¹ 73 P.S. § 1648.1, *et seq.*

² 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”).

³ “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. See *Larry Moyer v. PPL Electric Utilities Corp.*, PUC Docket No. C-2011-2273645, Opinion and Order entered January 9, 2014.

⁴ Final Omitted Rulemaking Order, PUC Docket No. L-00050174, Order entered July 2, 2008

accumulated kWh generated by DCIDA over the amount of kWh delivered by PPL during the same year at PPL's PTC in effect when the excess generation was actually delivered by DCIDA to PPL

But, PPL has interpretation and applied a tariff provision in a way that does not comport with said logic reasoning and interpretations. When the subject tariff provision was adopted PPL explained that it would use a “weighted average” tariff provision would “ensure that compensation for excess generation by time of use (“TOU”) customer-generators more closely reflects their actual on-peak and off-peak usage and generation.” (emphasis added).⁵ However, **that tariff provision, as applied by PPL, bears no relationship to actual time when the monthly excess generation is delivered by a TOU customer to PPL.** PPL merely calculated and applied a simple average of the TOU prices for each hour in a yearly period. This means that the same price is paid for every excess kWh. **It follows that said tariff provision as interpreted and applied by PPL does not (a) reflect the rates in effect during the time that the customer-generator delivered its generation to the PPL or (b) compensate TOU customers at the “full retail price,” as required by the AEPS Act, the Commission’s regulations,⁶ and Commission precedent.⁷**

The proposed resolution of the Complaint filed in this proceeding, as recommended by ALJ David A. Salapa in his Initial Decision dated March 24, 2015, implicitly adopts PPL's interpretation and application of its tariff – even though that interpretation and application

⁵ 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.

⁶ *Id.*

⁷ See the cases cited in footnote 4, *supra* and the rulemakings cited in footnote 4, *supra*, and footnote 16, *infra*.

directly contradicts the Commission's well-established precedent on compensation calculations. In doing so, the Initial Decision fails to provide any legal analysis to support that conclusion. And, there is no record or extrinsic evidence to support PPL's newly developed interpretation. Accordingly, adoption of the conclusions in the Initial Decision will contradict well-established precedent and result in wrongful withholding of compensation by PPL to the DCIDA and other similarly situated customers for "excess" or unused accumulated kWh generated.

II. BACKGROUND

DCIDA owns solar facilities. DCIDA has been a net metering customer of PPL and elected to participate in PPL's TOU price option. On October 3, 2014, the DCIDA filed a complaint against PPL. The Complaint alleges that PPL failed to properly compensate TOU net metering customer-generators, such as the DCIDA, for the 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). PPL filed an answer with new matter on November 18, 2014. DCIDA filed a reply to PPL's new matter on December 8, 2014.

On February 3, 2015, DCIDA filed a motion for judgment on the pleadings. DCIDA's Motion alleges that PPL's calculation of the amount that PPL paid to DCIDA for excess kWh conflicts with the AEPS Act, the Commission's regulations and orders as well as PPL's own tariff. DCIDA's motion requests that the Commission sustain its Complaint. PPL filed both an answer to DCIDA's motion for judgment on the pleadings and a cross motion for judgment on the pleadings on February 23, 2015. On March 16, 2015, DCIDA filed an answer to PPL's cross motion for judgment on the pleadings.

III. EXCEPTIONS BY DCIDA

A. EXCEPTION 1: THE INITIAL DECISION IMPROPERLY CONCLUDES THAT PPL PROPERLY COMPENSATED THE DCIDA IN ACCORDANCE WITH ITS TARIFF. INITIAL DECISION, P. 1, 3, 4, 7, 8; FF 15.

DCIDA respectfully takes Exception to the ALJ's finding that PPL compensated DCIDA in accordance with its tariff. ID at 1. 3. 4. 7. 8.; FF 15. PPL has improperly compensated TOU net metering customers, including (but not limited to) the DCIDA, for the kWh received by PPL from the customer in excess of the kilowatt hours delivered by PPL to the customer. The relevant portion of PPL's net metering tariff states the following:

The customer-generator will receive a credit for each kilowatt-hour received by the Company up to the total amount of electricity delivered to the Customer by the Company during the billing period at the full retail rate consistent with Commission regulations. If a customer generator supplies more electricity to the Company than the Company delivers to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator's usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours will continue to accumulate until the end of the PJM planning period ending May 31 of each year. On an annual basis consistent with the PJM planning period, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by Company to the customer-generator during the preceding year at the Company's Rate Schedule Price To Compare consistent with Commission regulations. 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 Price To Compare for that Rate Schedule. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule. (emphasis added).

Facts related to the creation of this Tariff provision include PPL's intention to have payments for excess generation more closely reflect the TOU customers actual on-peak and off-peak usage and generation. Specifically, 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).⁸ So, as originally explained and interpreted by PPL, said tariff provision was intended to accurately represent the value of the kWh based at the actual time that electric energy is delivered by a TOU customer-generator to PPL.

DCIDA alleged that PPL changed its explanation and interpretation of the subject tariff provision after it was approved by the Commission. Specifically, DCIDA alleged the following changed facts and circumstances: First, PPL abandoned its original intention and prior interpretation of the “weighted average” provision. For the subject time period (June 1, 2013 to May 31, 2014), PPL applied its tariff provision in a way that bears no relationship to the actual usage or generation of a TOU customer. Simply put, this newly developed interpretation directly conflicts with PPL’s prior interpretation because its newly developed interpretation bears no relationship to the actual time that electric energy is used or generated by a TOU customer-generator. Second, PPL abandoned the “weighted average” approach. In place of a weighted average, PPL merely calculated a simple average of the TOU prices for each hour in a yearly period. So, by definition, the price resulting from the “simple average” does not reflect the rates in effect during the time that the customer-generator delivered its generation to PPL. For the subject time period, PPL uniformly applied that simple average price to any excess kWh – regardless of whether that kWh was generated on-peak or off-peak and regardless of when that kWh was actually delivered by DCIDA to PPL.

DCIDA further alleged both that PPL’s newly developed interpretation (i.e., simple average) and its application to DCIDA (and others) conflicts with the AEPS Act, the Commission’s Regulations and Commission precedent. PPL’s “simple average” calculation

⁸ See footnote 5, *supra*.

for the last yearly period conflicts with Section 1648.5 of the AEPS Act, 73 P.S. § 1648.5,⁹ and Section 75.13(d) of the Commission’s regulations. Pursuant to these Sections, 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 delivered to the EDC/DSP.¹⁰ However, it is clear that the use of a simple average does not compensate TOU customers (a) based on the rates in effect during the time that the customer-generator delivered its generation to the PPL or (b) at the “full retail price,” all of which are required by the AEPS Act and the Commission’s regulations.

The conflict between PPL’s “simple average” calculation and the Section 75.13(d) is made clear by Commission precedent. A recent Commission decision clearly resolved the same calculation issue presented by this case. In *Mari Jo Jensen v. PECO Energy Company*,¹¹ the Commission concluded that Section 75.13(d) requires that 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:

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

⁹ Section 1648.5 provides that: “Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.”

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. See *Larry Moyer v. PPL Electric Utilities Corp.*, PUC Docket No. C-2011-2273645, Opinion and Order entered January 9, 2014.

¹¹ “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.

when calculating compensation to net metering customers. Accordingly, we shall modify the Initial Decision on this issue and direct that PECO recalculate the compensation due to the Complainant using the methodology set forth in our *Final Omitted Rulemaking Order*. Further, we shall direct that PECO perform this recomputation and refund any monies due to the Complainant within thirty days of the date of entry of this Opinion and Order.¹²

The holding in *Mari Jo Jensen*, as noted above, was based on the reasoning and interpretations in the Commission's *Final Omitted Rulemaking Order*¹³ wherein the Commission - in 2008 - 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."¹⁴ 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."¹⁵

The logic, reasoning interpretation of *Mari Jo Jensen* and the *Final Omitted Rulemaking Order* remains valid and effective. In fact, as of the *Advance Notice Of Final Rulemaking Order* entered on April 23, 2015.¹⁶ In that proceeding the Commission proposed, and continues to propose, the codification of the interpretation presented in the *Final Omitted Rulemaking Order*

¹² *Mari Jo Jensen*, p. 8 (footnote omitted).

¹³ "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.

¹⁴ *Final Omitted Rulemaking Order*, PUC Docket No. L-00050174, Order entered July 2, 2008, at 20.

¹⁵ *Id.*

¹⁶ *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-2014-2404361, *Advance Notice Of Final Rulemaking Order* entered on April 23, 2015.

and the *Mari Jo Jensen v. PECO Energy Company*. Namely, that: “In computing the compensation, the DSP shall use a weighted average of the price to compare rate with the weighting based on the rate in effect when the excess generation was actually delivered by the customer-generator to the DSP.” (emphasis added).¹⁷ The Commission has explained that said language is intended “to compensate the customer-generator in a manner that more accurately represents the value of the excess generation.”¹⁸ It was further explained that this language is not changing how net metering has been implemented; it is simply providing clarity so the regulation accurately reflects the Commission’s intent.¹⁹

To be clear, the DCIDA is not requesting the application of proposed regulation to this pending case. The reference to the pending regulation merely shows that the Commission (a) has consistently applied the same logic, reasoning and interpretations to compensation calculations since 2008, and (c) seeks to continue that same logic, reasoning and interpretations in the future.

Notwithstanding the foregoing, the subject Initial Decision makes the same mistakes that were contained in the Initial Decision in the *Mari Jo Jensen* case. That case, as well as references to the AEPS Act, Section 75.13(d) and the *Final Omitted Rulemaking Order*, were provided to the ALJ. But, none of that legal authority was discussed or even referenced in the Initial Decision.

DCIDA requests that this Commission follow its precedent on the compensation calculation issue. The calculation issue was decided in 2008, and the Commission merely needs to follow its long-standing precedent. Specifically, based on the foregoing, and for the

¹⁷ *Id.*, at Annex A (Proposed § 75.13(e)).

¹⁸ *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-2014-2404361, Proposed Rulemaking Order, entered on February 20, 2014, p. 15 (Proposed § 75.13(e)).

¹⁹ *Id.*

reasons stated in DCIDA’s Motion for Judgment on the Pleadings and DCIDA’s Answer to PPL’s Cross-Motion for Judgment on the Pleadings,²⁰ the PPL “weighted average” tariff provision in PPL’s tariff must be interpreted as requiring compensation based off of a “weighted average of the on-peak and off-peak hours” that closely reflects its actual rate in effect when the excess generation was actually delivered by DCIDA to PPL. That interpretation is consistent with PPL’s original intent and interpretation of the tariff language, as is based soundly on the AEPS Act and the Commission’s own precedent and regulations.

The Commission is empowered to direct PPL to interpret and apply its tariff provision in a manner consistent with the PPL’s original intention and interpretation, the AEPS Act, the Commission’s regulations the Commission’s precedent. It is not in the public interest to permit a deviation from such well-established legal authority. No justification for deviation was presented by PPL or the Initial Decision, and deviation from such legal authority will result in unfair and unjust treatment of TOU customer-generators.

B. EXCEPTION 2: THE INITIAL DECISION WRONGLY CONCLUDES THAT THE DCIDA DID NOT PRESENT CHANGED FACTS OR CIRCUMSTANCES SINCE THE ADOPTION OF THE SUBJECT TARIFF PROVISION. INITIAL DECISION, P. 11, 12

The Initial Decision wrongly concludes that the DCIDA failed to allege any facts or circumstances that have changed since the Commission’s approval of the “weighted average” provision in PPL’s tariff. Initial Decision, p. 11, 12. Showing changed circumstances should not required - because PPL’s “simple average” calculation directly conflicts with Commission precedent, such as *Mari Jo Jensen* and the *Final Omitted Rulemaking Order*.

²⁰ DCIDA’s Motion for Judgment on the Pleadings and DCIDA’s Answer to PPL’s Cross-Motion for Judgment on the Pleadings are both incorporated herein by reference.

That being said, as explained in Exception 1 above, PPL departed from the original intention and interpretation of subject tariff language. These changes are drastic and result not only in violations of the AEPS Act, the Commission's regulation and Commission precedent, but also in unfair and unjust treatment of TOU customer-generators. Notably, the Initial Decision lacks any discussion related to (a) the original intention and interpretation of subject tariff provision and (b) the facts and circumstances that changed since the tariff provision was adopted. All of which are explained in Exception 1 (above). The Initial Decision, as explained in Exceptions 1 and 3, also lacks any discussion of the standards in the AEPS Act and the Commission's Regulations and the precedent established by *Mari Jo Jensen* and the *Final Omitted Rulemaking Order*.

To be clear, PPL's original intention and interpretation of the subject tariff provision are a matter of record.²¹ Believing that PPL would continue to interpret and apply the subject tariff provision in a manner consistent with PPL's original intention and interpretation, there was no reason to challenge the subject tariff provision at that time. Now that PPL has adopted and actually applied a different interpretation that tariff provision, it is proper to challenge PPL's newly-developed interpretation (simple average) and its application to the DCIDA (and others). The Initial Decision missed that basic premise, and implicitly – and blindly – accepts that subject tariff provision (a) was interpreted and applied consistent with the its original intention and application and (b) is consistent with Commission standards and precedent on compensation calculations. But, as explained herein, that conclusion/acceptance contradicts the record and the long-standing precedent of the Commission.

²¹ The Commission approved PPL's net metering proposal by order following a fully litigated proceeding at PUC v. PPL Electric Utilities Corp., Docket No. R-2012-2290597 (Order entered December 28, 2012). By Secretarial Letter dated January 11, 2013, the Commission approved PPL's tariff filing implementing the subject tariff provision.

C. EXCEPTION 3: THE INITIAL DECISION FAILED TO PROPERLY INTERPRET PPL’S TARIFF. THE AEPS ACT, THE COMMISSION’S REGULATIONS, AND COMMISSION PRECEDENT. INITIAL DECISION, P. 7-13.

This proceeding raises legal issues related to the interpretation of PPL’s Tariff, the AEPS Act, the Commission’s regulations, and precedent from the Commission. However, the Initial Decision further lacks any discussion on whether PPL’s newly-developed interpretation (i.e., simple average) and application of said tariff provision is consistent with the APES Act, the Commission’s regulations, and Commission precedent. All of which are explained in Exception 1 (above).

Simply put, the Initial Decision failed to address the central legal allegation of the DCIDA’s Complaint; namely that the simple average used by PPL to calculate payments for excess generation (from the subject time period) does not (a) reflect the rates in effect during the time that the customer-generator delivered its generation to PPL or (b) compensate TOU customers at the “full retail price,” all of which are required by the AEPS Act, the Commission’s regulations, and Commission precedent. The Commission must render consistent opinions.²² DCIDA submits that if PPL’s newly-developed interpretation (i.e., the simple average) is properly compared to the standards in the AEPS Act, the Commission’s regulations and the Commission’s precedent, it cannot be sustained.

²² See *Bell Atlantic -- Pennsylvania, Inc. v. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. 1995) (PUC is not bound by the rule of *stare decisis*, but it must render consistent opinions and should either follow, distinguish, or overrule its precedent).

D. EXCEPTION 4: THE INITIAL DECISION IMPROPERLY RELIES ON PPL'S STATEMENT THAT ITS CALCULATIONS ARE ACCURATE. INITIAL DECISION, P. 1, 3, 4, 7, 8; FF 15

There is no record or extrinsic evidence to support the conclusion that PPL's calculations for the subject time period are accurate. Initial Decision, p. 1, 3,4, 7, 8; FF 15. The ALJ cannot rely on the "facts" averred by PPL related to PPL's calculations. No such "fact" was admitted by DCIDA, and in ruling on a motion for judgment on the pleadings, the ALJ can consider against the DCIDA only those facts that the DCIDA specifically admitted.

IV. CONCLUSION

For the reasons set forth above, DCIDA respectfully requests that the Commission grant its Exceptions and issue a consistent decision which appropriately modifies the ALJ's March 24, 2015 Initial Decision.

Respectfully submitted,



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