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File #: 157102

September 14, 2015

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
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 filing is the Answer of PPL Electric Utilities Corporation in Opposition to the Petition for Reconsideration and/or Clarification of Dauphin County Industrial Development Authority in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/jl  
Enclosures

cc: Honorable David A. Salapa  
Certificate of Service

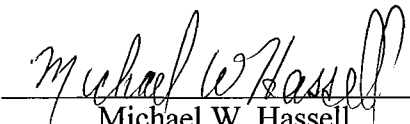
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL & FIRST CLASS MAIL**

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Date: September 14, 2015

  
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Michael W. Hassell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION IN OPPOSITION  
TO THE PETITION FOR RECONSIDERATION AND/OR CLARIFICATION  
OF DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**

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Date: September 14, 2015

Attorneys for PPL Electric Utilities Corporation

## I. INTRODUCTION

By Secretarial Letter dated October 3, 2014, PPL Electric Utilities Corporation (“PPL Electric”) was served with a Complaint filed by Dauphin County Industrial Development Authority (“DCIDA”). The issue in the Complaint concerned the compensation to be paid to DCIDA as a customer-generator with a Time of Use (“TOU”) rate option for the annual period ended May 31, 2014.<sup>1</sup> Following the filing of a Motion for Judgment on the Pleadings by DCIDA, and a Cross Motion for Judgment on the Pleadings by PPL Electric, and Answers thereto, Administrative Law Judge David A. Salapa (the “ALJ”) issued an Initial Decision denying DCIDA’s Motion, granting PPL Electric’s Cross Motion and dismissing DCIDA’s Complaint.

On April 30, 2015, DCIDA filed Exceptions to the Initial Decision and on May 11, 2015, PPL Electric filed its Reply Exceptions. By Order entered August 20, 2015, the Pennsylvania Public Utility Commission (“Commission”) denied DCIDA’s Exceptions and dismissed DCIDA’s Complaint (the “*August 20 Order*”).

On September 4, 2015, DCIDA filed a Petition for Reconsideration and/or Clarification (“Petition”) of the Commission’s *August 20 Order*. For reasons explained herein, DCIDA has failed to meet the Commission’s standards for reconsideration/clarification. DCIDA’s Petition for Reconsideration and/or Clarification should be denied.

## II. ARGUMENT

### A. **Standard For Reconsideration/Clarification**

DCIDA’s Petition fails to identify the Commission’s standards for granting a petition seeking reconsideration/clarification, and as such fails to articulate why reconsideration or

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<sup>1</sup> “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 price to compare.” 52 Pa. Code § 75.13(d).

clarification is appropriate in this case. Therefore, before responding to the specifics of DCIDA's Petition, PPL Electric will first explain the appropriate standard for review of DCIDA's Petition.

The Commission's standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Thus, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard – “by the Commission” – focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597, p. 3 (May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been but were not previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner

obtains a second opportunity to argue properly resolved matters. *Id.* As explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

The decision whether to grant a petition for clarification is similarly guided by the application of the standards set forth in *Duick*, 56 Pa. P.U.C. at 559 (1982). *Application of PPL Electric Utilities Corporation*, Docket Nos. A-2009-2082652 et al., 2010 Pa. P.U.C. LEXIS 1707, \*3 - \*4, Order entered April 23, 2010.

As explained below, DCIDA's Petition clearly fails to satisfy the applicable standards for granting reconsideration and should be denied.

**B. DCIDA Fails To Identify Any Reasons Why Reconsideration/Clarification Is Appropriate Under The *Duick* Standards**

DCIDA's Petition for Reconsideration and/or Clarification<sup>2</sup> identifies no new or novel arguments, not previously heard, or considerations that were overlooked or not addressed by the Commission. Thus, the Commission should deny the Petition.

Paragraph 1 of the Petition contends that "no reasonable justification has been presented by PPL or the Commission" for calculating the year-end compensation for excess energy supplied by DCIDA for the year ended May 31, 2014. Such contention is merely a rehashing of the issue that was presented by DCIDA to the Commission originally. In the *August 20 Order*, the Commission clearly and unambiguously determined that the compensation paid by PPL Electric to DCIDA was justified because the compensation was determined in accordance with PPL Electric's tariff. As the Commission stated:

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<sup>2</sup> DCIDA's Petition identifies nothing in the Commission's *August 20 Order* that is vague or unclear and in need of "clarification." For this reason alone, the request for clarification should be dismissed.

We concur with the ALJ that the language in PPL's tariff, *supra*,<sup>3</sup> is unambiguous. The tariff clearly states that the PTC for customer-generators electing the TOU rate provision will be derived from *a weighted average of the on-peak and off-peak hours*. Therefore, we find that PPL's utilization of a weighted average based on the ratio of the total on-peak hours (3,024) and off-peak hours (5,736) during a twelve-month period (e.g. thirty-five percent / sixty-five percent) for customers in the GS-1 Rate Schedule is an appropriate application of PPL's approved tariff.

We also concur with PPL that the tariff clearly provides that it is to use a weighted average of on-peak and off-peak hours to derive a *single* TOU PTC option for each rate schedule and not on an individual-customer hour-by-hour basis. Therefore, we shall reject DCIDA's request that the compensation for its excess generation be based on the unique times that its facility supplied energy into PPL's distribution system.

(August 20 Order at pp. 18-19, footnote added).

The Commission's *August 20 Order* clearly provides a reasonable, and correct, basis for denying DCIDA's complaint. DCIDA's assertion that there is "no reasonable justification" for the Commission's decision present no new argument, or argument not previously considered by the Commission, and offers no basis for reconsideration.

Paragraphs 2 and 3 of the Petition assert that the Commission failed to recognize that DCIDA is a TOU net-metered customer-generator. DCIDA argues that PPL Electric's TOU rates use hourly pricing for sales of energy by PPL Electric to TOU net metering customers, and that it would not be unreasonably burdensome for PPL Electric to apply the same hourly computations for purchases of energy by PPL Electric from TOU net metering customers.

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<sup>3</sup> PPL Electric's tariff states:

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*. PPL Supplement No. 125 to Electric PA. P.U.C. No. 201, Fifth Revised Page No. 19L.3 (emphasis added).

These arguments by DCIDA were directly addressed by the Commission in the *August 20 Order*, and thus fail to satisfy the *Duick* standards for reconsideration. Specifically, the Commission stated as follows:

Although not expressly stated by DCIDA, it appears that DCIDA is seeking payment as a utility generator, not as a customer-generator. A utility generator is compensated in the wholesale market for each megawatt-hour of electricity it delivers to the grid at the locational marginal price in effect during each hour the utility generator delivers its power. This is purely a one-way street, where the utility generator sends power to the grid in compliance with the wholesale energy market rules established by PJM Interconnection LLC.

We find that such hour-by-hour computation sought by DCIDA to be onerous, unreasonable and not in accordance with our net metering Regulations. Customer-generators receive net metering, which, in accordance with our Regulation, is “[t]he means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator....” 52 Pa. Code § 75.12 (definition of net metering). This involves a two-way street, where the customer-generator receives power as a customer of the electric utility, PPL in this case, and can send power to the grid from a qualifying alternative energy source when the customer is using less power than that source is producing.

\* \* \*

Thus, as directed by our Regulations, net metering involves a monthly netting of electricity usage and production, not hourly netting, as DCIDA seeks.

(*August 20 Order*, pp. 19-20, footnote omitted). The Commission *August 20 Order* properly rejected DCIDA’s contentions that it should receive compensation computed on an hourly basis. DCIDA has presented no new arguments not previously considered in its Petition for Reconsideration and/or Clarification concerning hourly compensation.

DCIDA further asserts that the Commission’s *August 20 Order* is “internally inconsistent.” DCIDA claims that the *August 20 Order* states that the end of year payment for

excess generation is to be based upon “the PTC in place for each (monthly) billing period,” but that the Commission did not require PPL Electric to compute compensation in this manner. (DCIDA Petition, ¶ 4). DCIDA further claims that the Commission’s *August 20 Order* ignores the provisions of the Commission’s *Final Omitted Rulemaking Order* at Docket No. L-00050174 (Order entered July 2, 2008) (“*Final Omitted Rulemaking Order*”) related to end of year compensation for excess generation. (DCIDA Petition, ¶ 5). DCIDA’s assertions misstate the Commission’s *August 20 Order*, and raise no argument not previously considered by the Commission.

The Commission’s *August 20 Order* specifically addressed the terms of the *Final Omitted Rulemaking Order* and the proper calculation of the end of year payment pursuant to PPL Electric’s Commission-approved tariff. The Commission explained:

As explained, *supra*, the end-of-year payment for excess generation is to be based on the PTC in place for each monthly excess generation that is not offset by subsequent energy delivered to the customer-generator. This appropriately accounts for the quarterly changes to the PTC during a year.<sup>7</sup> This is what we directed PECO to do in *Jensen*, nothing more and nothing less.

In addition, this explanation in the *Final Omitted Rulemaking Order*, *supra*, does not specifically state that such weighting is to be an actual, hour-by-hour, accounting of the energy delivered. It simply states that the weighted average must reflect all the rates in effect during any given billing period, consistent with our net metering Regulations.

We note that there are multiple types of TOU rates, such as critical peak pricing, hourly pricing, and weekday versus weekend pricing. The resolution implied by DCIDA does not necessarily work for all these TOU rates, or, as discussed, *infra*, for all the alternative energy resources employed by customer-generators. As such, we reject DCIDA’s implied interpretation of this direction in our *Final Omitted Rulemaking Order*.

We also note that this TOU rate weighting must apply to all Tier I and Tier II alternative energy resources, which includes qualifying resources such as wind, solar, geothermal energy, biologically

derived methane gas, fuel cells, biomass energy, combined heat and power (CHP) units, and the utilization of by-products of the pulping process and wood manufacturing process. Such varied resources operate during various times of a day, week, season or year. For example, wind power typically provides most of its generation during the night, while solar photovoltaic sources generate only during daylight hours, whereas CHP units can operate for weeks at a time without interruption. As a result, wind power typically produces more power during the winter season, whereas solar photovoltaic typically produces less power in the winter due to short daylight hours and increased cloud cover. Therefore, we find that PPL's application of its tariff appropriately reflects the TOU rates for the diversity of customer-generators in effect over time that accounts for the monthly and seasonal variability and that is applicable to all Tier I and Tier II resources.

In consideration of the foregoing, we conclude PPL's tariff appropriately weights the on-peak and off-peak rates based on the hours in a year that each rate applies. We find that this weighting appropriately reflects the rates in effect when the diversity of customer-generator on the TOU rate offered by PPL delivers its generation.<sup>8</sup>

<sup>7</sup> In its Replies to Exceptions, PPL explains that its TOU rates were constant during the entire period from June 1, 2013, through May 31, 2014, because its TOU PTCs were frozen by the Commission. PPL R. Exc. at 1. As PPL contends, this fact distinguishes our decision in *Jensen*, in which the compensation had to be recalculated to account for the different quarterly PTC rates in effect.

<sup>8</sup> As noted, *supra*, PPL's TOU PTCs were frozen by the Commission and PPL's TOU rates remained constant for the entire period between June 1, 2013, and May 31, 2014. Therefore, it was not necessary for PPL to weight the rate paid for DCIDA's excess generation to reflect quarterly changes in the PTC.

(*August 20 Order*, pp. 21-22).

Thus, contrary to DCIDA's assertions, there is no "internal inconsistency" in the Commission's *August 20 Order*, and the Commission specifically did address why PPL Electric's tariff is consistent with the Commission's current TOU regulations.<sup>4</sup> DCIDA has raised no new contention, not previously considered by the Commission, regarding the

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<sup>4</sup> DCIDA refers to the Commission's pending Advance Notice of Proposed Rulemaking, which proposes changes to the Commission's TOU regulations. (DCIDA Petition, ¶ 5). However, the Commission properly gave no weight to a pending rulemaking in determining whether PPL Electric paid compensation to DCIDA in accordance with its Commission-approved tariff.

calculation of compensation for excess generation. DCIDA's claims provide no basis for reconsideration of the *August 20 Order*.

### III. CONCLUSION

Wherefore, for all the foregoing reasons, Dauphin County Industrial Development Authority's Petition for Reconsideration and/or Clarification should be denied.

Respectfully submitted,



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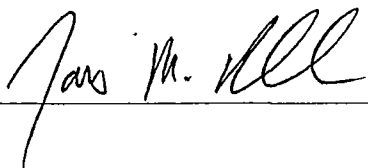
Date: September 14, 2015

Attorneys for PPL Electric Utilities Corporation

Verification

COMMONWEALTH OF PENNSYLVANIA )  
: SS  
COUNT OF LEHIGH )

I, James M. Rouland, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C. S. 4904 (relating to the unsworn falsification to authorities).

  
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Date: 9/11/2015