

December 22, 2016

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Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
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Re: Proceeding regarding the directives of the Commonwealth Court reversing and remanding the Order of Commission entered at Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2013 through May 31, 2015 [P-2013-2389572]
Docket No. M-2016-2578051

Dear Secretary Chiavetta:

The Dauphin County Industrial Development Authority (“DCIDA” or “Authority”) respectfully requests that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) take action, as discussed in greater detail herein, to immediately restore the prior time-of-use (“TOU”) price option¹ in the service area of PPL Electric Utilities (“PPL”).

DCIDA submits that, to comply with the Commonwealth Court’s *DCIDA* Order,² the Commission must take immediate action to restore the prior TOU price option, as it existed prior to the effective date of the “new”³ TOU Option which was rejected by the Court. In *DCIDA*, the

¹ The TOU rate is an alternative to receiving a fixed-price rate for default service. Under the TOU rate option, the electric generation price a customer pays varies by time of day, and can vary by season. Prices are lower during "off-peak" hours, such as during nighttime, early morning and weekends, and higher during "on-peak" hours when electric demand is greatest.

² *Petition of PPL Electric Utilities Corporation*, PUC Docket No. P-2013-2389572, PUC Opinion and Order entered September 11, 2014, reversed, *Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A.3d 1124 (Pa.Cmwlth 2015) (Commonwealth Court Docket No. 1814 C.D. 2014, Order entered September 9, 2015), appeal denied, 140 A.3d 14 (Pa. 2016).

³ The Commission approved a “new” TOU Program on September 11, 2014. *See Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, PUC Docket No. P-2013-2389572, Opinion and Order entered September 11, 2014. Under that Program, PPL would provide a TOU rate option to customers in its tariff; however, it will utilize the retail market and electric generation suppliers (EGSs) to satisfy its statutory obligation to offer TOU service to its default service customers. Supplement No. 167 to Tariff - Electric Pa. P.U.C. No. 201 was filed on December 1, 2014 with an effective date of December 10, 2014. That approval lasted through May 31, 2015, which was the end of the then-applicable default service procurement (DSP) plan period (DSP II). The “new” program was continued by the Commission. *See 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*, PUC Docket No. P-2014-2417907, PUC Opinion and Order entered January 15, 2015,

Commonwealth Court held that PPL has a statutory duty to offer TOU rates to all customers, including customer-generators.⁴ That Opinion further directed the Commission to conduct “further proceedings.”⁵ The recent Secretarial Letter⁶ does nothing to address the continued violation of the duty to offer TOU rates to all customers, including customer-generators. To comply with the Commonwealth Court’s directives, the Commission is required to reinstate the status quo: It must act to protect the statutory rights of PPL’s customers, and cannot permit the continuance by PPL of an unlawful price option.⁷

The prior TOU price option is the last actual, peaceable and lawful, non-contested status that preceded the controversy on the new TOU Option. The prior TOU rate option existed until it was replaced by the new TOU Option on December 10, 2014.⁸ The immediate restoration of the prior TOU price option, retroactively to December 10, 2014, would (a) return to the status quo, (b) protect the statutory rights of the customers, and (c) reinstate rates and terms that were approved by the Commission and are consistent with PPL’s statutory duty. By returning to the status quo, the Commission will be addressing the problems at hand: The immediate protection of the customer’s statutory rights, the need for a remand proceeding, and PPL’s continuing failure to comply with its statutory duty.⁹ Such restoration of the prior TOU rate option would be similar to a situation in which the Pennsylvania Courts would reverse a rate increase approved by the Commission and the utility’s prior rate would go into effect pending additional proceedings. As the prior TOU rate option was found by the Commission to be just and reasonable, that presumption continues and supports its restoration.

reconsideration denied by Opinion and Order entered February 26, 2015, which continued the “new” TOU program (from DSP II) for the duration of DSP III (from June 1, 2015 to May 31, 2017).

⁴ The Competition Act requires PPL to offer Time-of-Use rates to its customer-generators. 66 Pa.C.S. §2807(f)(5). DCIDA, 123 A.3d at 1136.

⁵ DCIDA, 123 A.3d at 1136 (“... we reverse the Commission's order and remand for proceedings consistent with this opinion.”).

⁶ Secretarial Letter dated December 2, 2016 regarding compliance with the Commonwealth Court’s DCIDA opinion filed at M-2016-2578051 regarding the Docket No. P-2013-2389572 (which relates to the Commonwealth Court’s DCIDA Order) and Docket No. P-2016-2526627 (which relates to PPL’s DSP IV plan for the period June 1, 2017 through May 31, 2021). In DSP IV, the Commission found it appropriate to defer the development of the TOU plan for DSP IV pending the outcome of the remand proceeding. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, PUC Docket No. P-2016-2526627, Opinion and Order entered October 27, 2016 at p. 20-21. In doing so the Commission suggested that the remand proceeding would not be completed before June 1, 2017. *Id.*

⁷ The Pennsylvania Courts determined that the new TOU option was unlawful. Since that option is unlawful, the Commission must set a TOU price option that would be applicable to the complaining customer (DCIDA) and other customers similarly situated. *See, e.g., Pennsylvania Elec. Co. v. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995).

⁸ *See* footnote 3 *supra*. The new TOU Option disrupted the status quo. It changed the relationship between PPL and its customers as it existed prior to the effective date of the new TOU Option.

⁹ The status quo would be maintained until such time as the Commission enters an order (based upon substantial evidence) that rescinds or amends that status quo. *See* 66 Pa.C.S. § 703(g).

Customers are being harmed by the delay in restoring the status quo. No justification exists for continued delay or for the continuation of a price program declared unlawful by the Commonwealth Court. Delay is not in the public interest. The delay in restoring the prior TOU price option is denying customers their statutory rights to have a TOU rate option. Delay is also preventing customers from using rate schedules that are more advantageous to the customer. For example, during the litigation of the new option, DCIDA and others similarly situated have been, and are being, denied their statutory right and the benefits of participating in the TOU price option for (1) part of PJM Delivery Year 2015 (i.e., from December 10, 2014 through May 31, 2015), (2) all of PJM Delivery Year 2016 (i.e., from June 1, 2015 to May 31, 2016), and (3) part of PJM Delivery Year 2017 (i.e., from June 1, 2016 to present).

Further, waiting for PPL to file a new proposed TOU program following the entry of a Commission order in the DSP IV Program (see footnote 6 above) will mean that customers are denied access to such a program for the entire PJM Delivery Year 2017.

Should the Commission fail to take action to protect said statutory right by February 9, 2017, DCIDA will be forced to file a petition with the Commonwealth Court seeking to compel the Commission to comply with the Commonwealth Court's Order.

Thank you for your time and attention to this important issue.

Very truly yours,



Mark S. Stewart

cc: Certificate of Service
Bohdan R. Pankiw, Chief Counsel
James A. Mullins
Joel H. Cheskis, Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing letter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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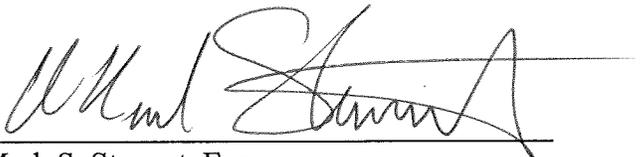
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Dated: December 22, 2016



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