

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding Initiated to Comply with Directives	:	
Arising from the Commonwealth Court Order in	:	M-2016-2578051
DCIDA v. PUC, 123 A3d 1124 (Pa.CmwltH 2015)	:	P-2013-2389572
Reversing and Remanding the Order of the	:	P-2016-2526627
Commission Entered September 22, 2014 at	:	
Docket Number P-2013-2389572 in which the	:	
Commission had Approved PPL's Time of Use	:	
Plan	:	

RECOMMENDED DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

I. INTRODUCTION

This decision recommends the Commission adopt a Joint Petition for Settlement filed by an electric distribution company, statutory advocates, and additional parties to resolve all issues among the parties regarding the company's time of use program implemented pursuant to the Electricity Generation Customer Choice and Competition Act. It is recommended that the Petition be adopted in its entirety and without modification because it is in the public interest and supported by substantial evidence.

II. HISTORY OF THE PROCEEDING

On June 1, 2017, PPL Electric Utilities Corporation (PPL Electric or PPL) filed with the Pennsylvania Public Utility Commission (Commission) a Petition for Approval of a New Time of Use Plan (Petition). The petition was filed pursuant to a Secretarial Letter issued by the Commission on April 6, 2017 in response to the decision of the Commonwealth Court in

Dauphin County Industrial Development Authority v. Pa. Pub. Util. Comm'n, 123 A.3d 1124 (Pa.Cmwlth. 2015) (DCIDA). In DCIDA, the Commonwealth Court reversed and remanded the Commission's approval of a prior petition for a time of use plan filed by PPL.

On June 21, 2017, in response to PPL's petition, answers and related documents were filed by: The Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA), the Sustainable Energy Fund (SEF), the Dauphin County Industrial Development Authority (DCIDA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

On August 23, 2017, the Commission issued a hearing notice scheduling a further prehearing conference for this matter for Friday, September 15, 2017 in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. In anticipation of the further prehearing conference, a prehearing conference order was issued on August 28, 2017 setting forth various rules that would govern the prehearing conference. In response to the prehearing conference order, prehearing memoranda were submitted by PPL, DCIDA, OCA, OSBA, CAUSE-PA, SEF and the PPL Industrial Customer Alliance (PPLICA).

The further prehearing conference convened on September 15, 2017, as scheduled. The following counsel were present: Michael Hassell, Esquire and Lindsay Berkstresser, Esquire, on behalf of PPL; Kristine Marsilio, Esquire, on behalf of the OCA; Elizabeth Marx, Esquire, on behalf of CAUSE-PA; Alessandra Hylander, Esquire, on behalf of PPLICA; Steven Gray, Esquire, on behalf of the OSBA; and Kenneth Mickens, Esquire, on behalf of SEF. The service list for this proceeding was limited to these parties, plus Karen Moury, Esquire, for DCIDA which had previously indicated its intent to participate in this proceeding.

During the further prehearing conference, various procedural matters were discussed. In particular, the Petitions to Intervene filed by CAUSE-PA and PPLICA were granted. The following procedural schedule was agreed upon:

PPL Electric Direct Testimony	November 6, 2017
Other Parties' Direct Testimony	December 12, 2017
Rebuttal Testimony	January 9, 2018
Surrebuttal Testimony	January 16, 2018
Evidentiary Hearings	January 30, 2018
Main Briefs	February 20, 2018
Reply Briefs	March 13, 2018

In addition, various modifications to the Commission's regulations regarding discovery were agreed upon and a discussion was held regarding any need for a Protective Order. The parties indicated that they would submit a joint petition for a Protective Order to govern the treatment of material alleged to be proprietary in this case. Finally, the parties were reminded that Commission policy promotes settlements and were encouraged to commence settlement discussions as early as possible. 52 Pa. Code §5.231(a).

A scheduling order dated September 18, 2017 was issued memorializing the procedural matters agreed upon in the prehearing conference.

On October 10, 2017, PPL submitted a motion for a protective order. In the motion, PPL averred that proprietary information may be presented or requested during the course of this proceeding and that some of the information may be highly confidential in nature. Such information may include past or future plans to sell electricity, projections about future energy prices, information on off-peak and on-peak purchases, or generation by specific customers. PPL argued that public release of this information may adversely affect the acquisition of future energy supplies and that unrestricted disclosure of such information is not in the public interest. PPL argued that issuance of a protective order is warranted in this case because certain information may be market sensitive or may be specific to individual customers. PPL also argued that limiting the disclosure of proprietary information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. PPL added that no party objected to the proposed protective order.

An order granting the motion for a protective order was issued on October 20, 2017. The parties were encouraged to minimize the amount of information alleged to be proprietary to increase the likelihood that the ultimate decision of the Commission in this matter provides the greatest degree of public access, consistent with the Commission's regulations.

The parties distributed pre-served written testimony pursuant to the litigation schedule agreed upon at the prehearing conference.

By email on January 26, 2018, the parties indicated that an agreement in principal had been reached to resolve all issues in the case. As a result, all witnesses were excused from appearing at the evidentiary hearing scheduled for January 30, 2018 and the parties submitted the pre-served testimony and exhibits into the record via stipulation and with verifications.

During the hearing, the following pre-served testimony was admitted into the record:

PPL

Statement 1 (Rouland Direct) and Exhibits 1 through 3
Statement 2 (Koch Direct) and Exhibit SRK-1
Statement 1-R (Rouland Rebuttal) and Exhibits JMR-1R through JMR-7R
Statement 2-R (Koch Rebuttal) and Exhibit SRK-1R

Sustainable Energy Fund

Statement 1 (Costlow Direct) and Exhibit 1
Statement 1-SR (Costlow Surrebuttal)
Cross-Examination Exhibit 1 (Response to DCIDA Set 1)
Cross-Examination Exhibit 2 (Response to SEF 1-7)

Office of Small Business Advocate

Statement 1 (Knecht Direct)
Statement 1-R (Knecht Rebuttal)
Statement 1-SR (Knecht Surrebuttal)

Dauphin County Industrial Development Authority

Statement 1 (Napikoski Direct) and Exhibits 1 through 6

Office of Consumer Advocate

Statement 1 (Estomin Direct)
Statement 1-R (Estomin Rebuttal)
Statement 1-SR (Estomin Surrebuttal)

In addition, a discussion was held during the hearing regarding the submission of the settlement agreement and all accompanying supporting documents.

On March 13, 2018, PPL, OCA, OSBA, CAUSE-PA, SEF and DCIDA (“settling parties”) submitted the joint petition for settlement.¹ Each party attached to the settlement a statement in support of the settlement. The parties requested that the settlement be approved in its entirety without modification.

For the reasons discussed below, this decision recommends that the settlement be adopted in its entirety without modification because it is in the public interest and supported by substantial evidence.

III. **DESCRIPTION OF THE PROGRAM**

As noted above, on June 1, 2017, PPL filed a Petition for Approval of a New Time of Use (TOU) Program. As PPL explained in its statement in support of the settlement, the filing was made in compliance with the Commission’s Secretarial Letter dated April 6, 2017 in Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time of Use Program, Docket Nos. P-2013-2389572 and M-2012-2578051 and 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, Docket No. P-2016-2526627. The Commission approved PPL’s prior petition requesting approval of a pilot TOU program on September 11, 2014.

¹ PPLICA was not a settling party but indicated that it does not oppose the settlement.

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).

In Dauphin County Industrial Development Authority v. Pa. Pub. Util. Comm'n, 123 A.3d 1124 (Pa. Cmwlth. 2015) (DCIDA), *alloc. denied*, 140 A.3d 14 (Pa. 2016), however, the Commonwealth Court reversed and remanded the Commission's order. As a result, the Commission issued a Secretarial Letter on December 2, 2016, seeking written comments regarding the Commission's intent to initiate a proceeding in compliance with the remand in DCIDA. The Commission issued a second Secretarial Letter on April 6, 2017 directing PPL to file a new TOU proposal on or before June 1, 2017.

PPL filed a new proposal on June 1, 2017 providing a TOU rate option in its tariff to eligible customers. Among other things, the proposal creates two distinct seasons – summer and winter. The program also establishes on-peak and off-peak hourly periods for the residential and small commercial and industrial customer groups. Approved net metering customers will be eligible to participate in the TOU program. As PPL explained, the new TOU program will be implemented at least nine months after a final Commission order in this proceeding and the implementation will be timed to correspond to the first semi-annual period following the nine-month implementation time. This time period will allow for the implementation of all technology changes needed, the establishment of the billing protocols and the resolution of potential issues with PJM Interconnection LLC. The TOU program will remain in effect through May 31, 2021.

Pursuant to the plan, PPL will hold semi-annual auctions to solicit wholesale supplier bids which will be used to create TOU rates. Implementation of the TOU rates will be timed to correspond with the semi-annual effective date of fixed default service rate changes (either June 1 or December 1). The settlement generally adopts the proposal set forth in the June 1, 2017 filing subject to terms and conditions contained in the settlement. The settlement provides for the calculation of an on-peak to off-peak multiplier using a rolling five-year historical PJM Day Ahead Spot Market Pricing data and, in the event of an auction failure or

supplier default, PPL has proposed a contingency plan which would establish an off-peak rate at a percentage discount to the applicable price to compare.

IV. FINDINGS OF FACT²

1. PPL has developed a Primary and Contingency TOU Plan. (PPL Electric St. No. 1, p. 7)
2. Implementation of the TOU rates will be timed to correspond with the semi-annual effective date of fixed default service rate changes (i.e., December 1 or June 1). (PPL Electric St. No. 1, p. 9)
3. The TOU Program will remain in effect through May 31, 2021, the termination date of PPL Electric's currently-effective Default Service Program ("DSP"). (PPL Electric St. No. 1, p. 9)
4. The TOU Program is specifically designed for Residential and Small Commercial & Industrial ("Small C&I") customers. (PPL Electric St. No. 1, p. 9)
5. The Small C&I customer class for TOU rate purposes includes customers taking service under the following tariff schedules: GS-1, GS-3 (below 100kW in peak demand), LP4 (below 100kW in peak demand), GH-2 (R), BL, SA, SM (R), SHS, SE, TS (R), SLE. (PPL Electric St. No. 1, p. 9)
6. Large C&I customers are not eligible to participate. (PPL Electric St. No. 1, p. 9)
7. The Large C&I customer class for TOU rate purposes includes customers taking service under the following tariff schedules: GS-3 (at or above 100 kW in peak demand),

² The Findings of Fact were proposed by the parties in the settlement and are adopted herein with only slight modifications.

LP-4 (at or above 100 kW in peak demand), LP-5, LPEP and L5S. Large C&I default service customers already receive hourly priced rates under Schedule GSC-2. (PPL Electric St. No. 1, p. 9)

8. Residential customers enrolled in PPL Electric's Customer Assistance Program (CAP), OnTrack, are not eligible to participate in the TOU Program. (PPL Electric St. No. 1, p. 9)

9. OnTrack customers will still be eligible to select an alternative electric generation supplier by participating in PPL Electric's CAP Standard Offer Program (CAP SOP), as approved in the Company's last Default Service Plan, or remain on the Default Service rate. (PPL Electric St. No. 1, p. 10)

10. Approved net metering customers are eligible to participate in the TOU Program, except that virtual net metering customers are not eligible to participate. (PPL Electric St. No. 1, pp. 8, 9)

11. All eligible customers participating in the TOU Program must have a smart meter. Unmetered accounts are not eligible. (PPL Electric St. No. 1, p. 9)

12. The Company is seeking to procure two types of TOU supply products – full requirements load following supply for Residential customers and full requirements load following supply for Small C&I customers. (PPL Electric St. No. 1, pp. 9-10)

13. Within each of the two customer classes, there are two seasonal periods – Summer and Winter. (PPL Electric St. No. 1, pp. 9-10)

14. Each seasonal period is further broken down into on-peak and off-peak hourly terms. The seasonal periods and hourly terms determine the payments to winning wholesale supplier(s) and the rates paid by TOU customers. (PPL Electric St. No. 1, pp. 9-10)

15. The Summer and Winter TOU terms align with the six-month Price-to-Compare (PTC) terms, running June through November and December through May, respectively. (PPL Electric St. No. 1, pp. 11)

16. The TOU Program will have different on-peak and off-peak hourly periods for the Summer and Winter seasons. (Settlement ¶ 58)

17. The on-peak and off-peak hourly periods for each season will be the same for both the Residential and Small C&I customer groups. (Settlement ¶ 58)

18. Under the Primary Plan, the Company will hold energy auctions to solicit wholesale supplier bids, which will be used to create TOU rates. (PPL Electric St. No. 1, p. 7)

19. Suppliers will bid off-peak prices, with the lowest overall bid per customer class winning the supply obligation for a six-month term. (PPL Electric St. No. 1, p. 7)

20. The on-peak prices are a function of a multiplier established by a defined formula and the supplier off-peak price. (PPL Electric St. No. 1, p. 7)

21. This method establishes both on-peak and off-peak prices, by which suppliers will be paid. (PPL Electric St. No. 1, p. 7)

22. Wholesale suppliers must submit bid applications and bid collateral to qualify to participate in the auction. (PPL Electric St. No. 1, pp. 15-16)

23. On the bid day, qualifying wholesale suppliers are directed to submit a bid. PPL Electric's Auction Manager will review all bids, ranking the prices from lowest to highest, and select the single lowest bid per customer group. (PPL Electric St. No. 1, pp. 15-16)

24. Once the commensurate contract is executed by both parties, the winning supplier per customer class has a responsibility to supply all power product obligations for the six-month duration of the contract. (PPL Electric St. No. 1, pp. 15-16)

25. PPL Electric will hold auctions twice a year, as is done with the basic DSP. This will reduce customer confusion and encourage wholesale supplier participation through ease of participation. (PPL Electric St. No. 1, pp. 16)

26. Wholesale suppliers who qualify in the preceding default service auction will automatically qualify for the TOU Program auction. (PPL Electric St. No. 1, pp. 16)

27. Although no PPL Electric affiliates currently participate in the default service procurement, PPL Electric affiliates are eligible to be a bidder in the TOU Program Request for Proposals Process. (PPL Electric St. No. 1, pp. 30)

28. The auction dates will be in May and November for the Summer and Winter TOU periods, respectively. (PPL Electric St. No. 1, pp. 16)

29. Winning TOU suppliers are required to provide energy, capacity, ancillary costs, and renewable energy credits. (PPL Electric St. No. 1, pp. 16)

30. Customers will be charged distinct on-peak and off-peak rates, based upon the winning wholesale supplier on-peak and off-peak generation prices, plus the default service administrative cost, E-factor, merchant function charge, transmission service charge, and applicable State Tax Adjustment Surcharge. (PPL Electric St. No. 1, pp. 7-8)

31. PPL Electric's third-party default service auction manager, NERA Economic Consulting, will manage the TOU Auction and all Commission reporting requirements. (PPL Electric St. No. 1, pp. 26)

32. The designated on-peak and off-peak hours reflect Summer and Winter customer consumption patterns. (PPL Electric St. No. 1, pp. 7-8)
33. PJM Day Ahead Spot Market Pricing for the PPL Residual Aggregation Zone will be used to determine the on-peak to off-peak multiplier. (PPL Electric St. No. 1, p. 15)
34. Suppliers will bid an off-peak rate as a percentage of the generation rate of the PTC. (PPL Electric St. No. 1, p. 17)
35. Directing that the off-peak rate be a percentage of the generation portion of the PTC assures that customers could save money by shifting usage. (PPL Electric St. No. 1, p. 17)
36. In the event of an auction failure or a supplier default, the Contingency Plan will be implemented for either customer group, or both, until the Company can re-bid TOU supply at a subsequent TOU auction date. (PPL Electric St. No. 1, pp. 8, 23)
37. The Contingency Plan will establish an on-peak and off-peak rate that are based upon the generation rate of the PTC in effect at that time. (PPL Electric St. No. 1, pp. 8, 23)
38. The Contingency Plan has the same seasons, on-peak hours, and off-peak hours as the Primary Plan. (PPL Electric St. No. 1, pp. 8, 23)
39. In the event the Contingency Plan is enacted, supply will be provided by wholesale suppliers under the DSP. At the next available TOU auction, the Residential and Small C&I products will be bid. (PPL Electric St. No. 1, p. 23-24)
40. The Contingency Plan will cease upon the submission and Commission approval of a winning bid. (PPL Electric St. No. 1, p. 23-24)

41. Under the Contingency Plan, Default Service wholesale suppliers will be paid their Default Service bid price for all power provided. (PPL Electric St. No. 1, p. 25)

42. Suppliers providing power under the Contingency Plan will not be paid any component of the TOU rates. (PPL Electric St. No. 1, p. 25)

43. If the Contingency Plan is implemented following a failed TOU auction, the Company's website and call center scripts will be updated to reflect the Contingency Plan rates and letters will be issued to actively participating TOU customers notifying them of the implementation of the Contingency Plan and their available options. (PPL Electric St. No. 1, p. 24)

44. The Company will maintain a log of each customer's on-peak and off-peak usage through its Meter Data Management System (MDMS) that records usage on at least an hourly basis. (PPL Electric St. No. 1, p. 20)

45. PJM does not actively recognize net metering customers and does not allow for excess generation, represented as a negative value in the market space, to be submitted during its first submission phase, called Settlement A or Backcast. (PPL Electric St. No. 1, p. 22)

46. For purposes of settling excess generation with the PJM market, any excess generation produced by net metering customers will be zeroed out and the negative load will be spread to all other active suppliers, shopping and non-shopping. Then, during the Settlement B or Reconciliation phase, 60 days later, PPL Electric will be able to submit a negative value extracting the excess generation applied to the other suppliers and recognizing a negative value on the supplier account and subsequent bill. (PPL Electric St. No. 1, p. 22)

47. In instances where net metering customers' monthly supply exceeds customer consumption, PPL Electric will not transfer complementary alternative energy credits to the wholesale supplier. (PPL Electric St. No. 1, pp. 26)

48. Eligible customers interested in participating in the TOU Program must contact PPL Electric for sign-up. Customers may enroll through PPL Electric's call center or online. (PPL Electric St. No. 1, p. 22)

49. A customer that signs up for TOU Service will remain on TOU service until the customer proactively elects to return to basic default service or to shop for supply. (PPL Electric St. No. 1, p. 27)

50. At the start of the TOU Program, the Company will utilize the PPL Electric bill insert newsletter "PPL Connect" to communicate the commencement of the program. The Company's website also will offer information to customers on the TOU Program. (PPL Electric St. No. 1, p. 29-30)

51. There are six areas of technical change that are required to implement the TOU Program: 1) update the Energy Auction website, 2) update the PPL wholesale supplier contract management system, 3) update the Default Service invoicing system, 4) update the customer web platforms including the customer portal and PPL Electric website, 5) update the PPL Electric Customer Service System (CSS), which manages customer billing and Net Metering customer excess generation tracking and compensation, and 6) update the MDMS to appropriately track and aggregate TOU data fed to CSS for customer billing and PJM for market settlements. (PPL Electric St. No. 1, p. 27)

52. PPL Electric projects an estimated cost of at least \$1,000,000 to implement the TOU Program. (PPL Electric St. No. 1, p. 30)

53. The Company will recover TOU Program costs through the E-factor as a component of the GSC-1.

54. Over/under reconciliations will be calculated in total by customer class and will be recovered from all customers in the respective class, regardless of whether the

customer has elected a TOU rate. (PPL Electric St. No. 1, p. 30; PPL Electric St. No. 2, p. 3; Settlement ¶ 62)

55. PPL Electric estimates that it will need nine months to implement the necessary information technology changes for the new TOU Program. (PPL Electric St. No. 1, p. 9)

V. DISCUSSION

A. Legal Standard

The Public Utility Code requires electric distribution companies (EDCs) to offer TOU rates and real time pricing plans to customers who have smart meter technology:

(5) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time pricing plans. The commission shall approve or modify the time-of-use rates and the provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

66 Pa.C.S. § 2807(f)(5); *see also*, 66 Pa.C.S. § 2807(g) (definition of smart meter technology). Accordingly, PPL is required to offer a TOU rate option to its default service customers.

Additionally, on February 28, 2005, the Alternative Energy Portfolio Standards Act (AEPS Act) became effective and established an alternative energy portfolio standard for Pennsylvania. 73 P.S. § 1648.1 *et seq.* Consistent with the requirements of the AEPS Act, the Commission adopted net-metering regulations in 2008. Specifically, Section 75.13 of the Commission's net-metering regulations requires EDCs, such as PPL, to offer net metering to

customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis. 52 Pa.Code § 75.13(a).

In this case, PPL's petition was submitted pursuant to these statutory directions. Subsequently, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

It is further noted that the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980) (Norfolk & Western); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

B. Terms of the Settlement

In the settlement filed in this case on March 13, 2018, the parties have agreed to the following terms (with the original paragraph numbering maintained):

A. TOU PROGRAM OVERVIEW

57. The proposals set forth in PPL Electric's June 1, 2017 Petition are acceptable and should be approved by the Commission, subject to the terms and conditions of the Settlement.

B. RATE DESIGN

58. The on-peak and off-peak hours for the Residential and Small C&I customer classes will be identical. The on-peak hours during the Summer Season will be 2 p.m. - 6 p.m., Monday through Friday, excluding weekends and PJM Interconnection LLC (PJM) holidays. The Winter Season on-peak hours will be 4 p.m. - 8 p.m., Monday through Friday, excluding weekends and PJM holidays.

59. The multipliers will be calculated with the first TOU auction, and updated annually thereafter. A rolling five years of historical PJM Day Ahead Spot Market Pricing data for the PPL Residual Aggregation Zone will be used, beginning with the month the auction opens, minus one month (January or August, respectively). An on-peak to off-peak price multiplier will be derived as follows:

(a) For each calendar month, a simple average of hourly on-peak and off-peak prices will be calculated, using the seasonal and peak period definitions specified in paragraph (58);

(b) For each calendar month, a ratio of the average on-peak price to the average off-peak price will be calculated;

(c) The average seasonal on-peak to off-peak ratio for summer will be derived as a simple average of the monthly ratios for the 30 summer months in the historical period;

(d) The average seasonal on-peak to off-peak ratio for winter will similarly be derived as a simple average of the monthly ratios for the 30 winter months in the historical period.

C. TOU CONTINGENCY PLAN

60. In the event the Contingency Plan is implemented for a customer class, the summer period generation component of the off-peak rate shall be 90% (i.e., a discount of 10%) of the generation component of the then-applicable Price-to-Compare (PTC) for the affected customer class; the winter period generation component of the off-peak rate shall be 90% (i.e., a discount of 10%).

D. NET METERING CUSTOMERS

61. The cash-out price for excess generation by a TOU net metering customer shall consist of the following components: 1) on-peak and off-peak generation rate, E-factor, Administration Charge, Merchant Function Charge (MFC), Transmission Service Charge (TSC), State Tax Adjustment Surcharge (STAS), and Gross Receipts Tax (GRT); each determined in the manner proposed by the Company using the first in – first out methodology to determine the bank. The monthly credits for excess generation shall not include customer charge or demand charge components of the distribution charges.

E. RECONCILIATION

62. The Company's proposals for over/under-collection reconciliation and for recovery of TOU implementation costs are adopted until the effective date of a subsequent TOU program. PPL agrees to collect data showing the exact amount of TOU related under and over-recoveries and the impact of those under/over-recoveries on fixed price default service customers in its next TOU or DSP filing. Nothing contained herein limits the rights of parties to propose or to oppose alternative reconciliation mechanisms in any future PPL Electric proceeding, or any other proceeding, involving TOU rates.

F. TOU PROGRAM COMMUNICATION

63. The Company agrees to maintain the communication plan proposed in its petition. This includes a one-time article in the PPL Electric bill insert newsletter (Connect) kicking off the

program, and updates to the PPL Electric external website following each TOU auction with the TOU rates to be implemented. The Company will not issue any additional notifications to customers. The Company affirms its commitment to provide parties to this proceeding the opportunity to review and provide feedback on customer communications concerning the TOU Program.

See, Settlement at 10-13.

The settlement is also conditioned upon the standard terms and conditions found in most settlements. This includes that the settlement is made without any admission against, or prejudice to, any position which any party to the settlement might adopt during subsequent litigation. Id. at 14. The parties have also reserved their right to withdraw from the settlement if it is modified by the Commission. Id. The parties have also reserved their right to fully litigate the case if the settlement is disapproved. Id. The parties agreed to waive their rights to file exceptions if the settlement is approved in its entirety without modification. Id. at 15.

C. Public Interest

a. Position of the Parties

In the settlement, the parties agreed that the settlement is in the public interest because, under the settlement, PPL will offer a TOU rate option to the company's default service customers, thereby satisfying the requirements of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* (Competition Act), and achieves this result without further litigation thereby conserving Commission resources. Id. at 13. The parties also stated that the TOU in the settlement is consistent with the Commission's guidance as set forth in its April 6, 2017 Secretarial Letter. Id.

Similarly, in its statement in support of the settlement, PPL stated that the settlement is in the public interest because it was achieved after an extensive investigation of the proposed program, including substantial discovery and multiple rounds of testimony. PPL noted

that the settlement provides that the public interest is served because the company will be able to provide a TOU rate option to eligible customers within its service territory consistent with the Competition Act. PPL also indicated in the settlement that, by establishing a TOU rate that is reflective of current market conditions, the TOU program encourages customers to elect a TOU based on their ability to shift usage. PPL added that the guidelines the Commission established in its April 6, 2017 Secretarial Letter support their position that the settlement is in the public interest. PPL then provided extensive detail regarding the TOU program, along with a recitation of the guidelines the Commission directed PPL to follow in the April 6, 2017 Secretarial Letter. The details provided pertained to the procurement and request for proposal process, rate design, the contingency plan, customer eligibility, net metering customers, TOU program promotion and implementation costs and reconciliation. PPL concluded that the terms of the settlement are in the public interest and should be approved without modification.

In its statement in support of the settlement, the OCA stated that the settlement is in the public interest because it provides a reasonable resolution of the proceeding. The OCA noted that it conducted an extensive review of PPL's filing, including retaining an expert witness to ensure that the TOU plan was reasonable, consistent with the Commonwealth Court decision in DCIDA and other applicable laws and would provide benefits to consumers. The OCA added that, upon completion of its review, it entered into settlement discussions with the parties to the proceeding and supports the settlement as a reasonable TOU option provided by PPL. The OCA then discussed each aspect of the settlement and why they are in the public interest as proposed, citing, in part, to the testimony of its expert witness. The OCA concluded that the Commission should approve the terms and conditions of the settlement without modification as being in the public interest.

Although the OSBA notes that interest in the TOU program by small business customers appears to be minimal, in its statement in support of the settlement, the OSBA stated that the settlement is in the public interest because the contingency plan will avoid situations in which on-peak and off-peak TOU prices were both higher, or both lower, than the regular default service price. The OSBA added that the settlement adopts the OSBA proposal to use the same definition of on-peak and off-peak periods for both residential and small commercial and

industrial TOU service. The OSBA noted that the settlement includes the OCA proposal for the price ratios to be regularly updated to reflect changing market conditions and retains PPL's proposal to combine the variances between regular and TOU customers within each rate class group for the purpose of developing e-factors.

In its statement in support of the settlement, CAUSE-PA stated that the settlement is in the public interest because the settlement protects PPL's vulnerable, low-income customers enrolled in the OnTrack program from potential price volatility that can be inherent in the TOU program. CAUSE-PA also noted that the settlement is in the public interest because it allows the parties to work together to ensure that marketing materials and information provided to consumers about the TOU program are appropriately targeted to eligible customers and adequately explains the risks and benefits of selecting a time varying rate. CAUSE-PA added that the settlement, as a whole, balances the interests of parties and fairly resolves a number of important issues raised by the parties.

In its statement in support of the settlement, SEF stated that the settlement is in the public interest because PPL's TOU customers will have the opportunity to reduce their energy costs by modifying their energy use profile. Specifically, SEF notes that the fact that the on-peak and off-peak hours for the residential and small commercial and industrial customer classes will be identical under the settlement is a significant improvement over the original proposal because the designated on-peak and off-peak periods are more representative of the true periods than what was offered in the original proposal. SEF also noted that the definition of the cash-out price for excess generation by a TOU net metering customer under the settlement is closer to the actual cash-out price than the definition that appeared in the original proposal. Finally, SEF notes the cost savings associated with discontinuing litigation.

In its statement in support of the settlement, DCIDA, a customer generator, stated that the settlement is in the public interest because PPL agreed to revise the pricing proposal for excess generation from TOU net metering customers to include components that reflect the same components used to calculate PPL's price to compare for other customers. DCIDA also noted that the settlement preserves DCIDA's right to propose or oppose changes to the calculation of

the annual cash out amount in a future default service or TOU proceeding. DCIDA stated that, on balance, the settlement represents a fair balancing and compromise of the issues raised in this proceeding.

As previously noted, PPLICA did not sign, but does not oppose, the settlement.

b. Disposition

As noted above, on June 1, 2017, PPL filed for approval of a TOU program. PPL has an extensive history dating back to 2010 regarding filing for approval of a TOU program. *See, Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program, Docket No. P-2013-2389572 (Opinion and Order entered September 11, 2014) (2014 Order)* at 3-5. Most recently, in the 2014 Order, the Commission adopted a partial settlement submitted by PPL, the OCA, the OSBA, CAUSE-PA, SEF and Direct Energy Services, LLC. The settlement was partial because DCIDA, a solar energy farm operator in Dauphin County seeking to benefit financially from net-metering provisions, opposed the settlement. The Commission adopted the settlement over DCIDA's opposition holding, among other things, that PPL will utilize electric generation suppliers (EGSs) to fulfill its obligations to offer a TOU rate option to its default service customers. The Commission also held that, EGSs were to define the on-peak and off-peak periods and the customer class options and be responsible to encourage customers to participate in the program. The Commission held that DCIDA's position regarding the provision of TOU rates to net-metering customers was without merit. The Commission declined to require PPL to offer TOU rates to net-metering customer generators. In general, the Commission found the partial settlement to be reasonable and in the public interest and adopted it in its entirety without modification.

DCIDA appealed the Commission's opinion and order to the Commonwealth Court. The Commonwealth Court determined that PPL's obligation to offer TOU rates to customer-generators could not be transferred to EGSs. The Commonwealth Court noted, among other things, that the Competition Act, *supra.*, plainly provides that default service providers shall offer TOU rates to all customers that have been provided with smart meter technology.

DCIDA, 123 A.3d at 1134, *citing*, 66 Pa.C.S. § 2807(f)(5). The Commonwealth Court added: “The legislature knows the difference between a default service provider and an electric generation supplier. Its decision to place the onus on default service providers was neither accidental nor arbitrary.” Id. The Commonwealth Court agreed with DCIDA and reversed and remanded the proceeding to the Commission for further hearings.

In light of this history, the settlement submitted by the parties on March 13, 2018 is in the public interest and supported by substantial evidence. Therefore, it should be adopted in its entirety without modification.

To begin, the settlement is in the public interest because it is consistent with the Commonwealth Court’s decision in DCIDA. As the Commonwealth Court noted in DICDA, the Competition Act was amended in 2008, in part to require:

the default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology. Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing.

DCIDA, 123 A.3d at 1131, *citing*, 66 Pa.C.S. §2807(f)(5).³

The Commonwealth Court also noted that the AEPS Act is focused on the electric utility’s *purchase of excess electricity* from customer-generators and that its purpose is to encourage growth and investment in renewable sources of energy. Id. (emphasis in original). The Commonwealth Court stated: “The AEPS achieves this goal by requiring that excess generation from *net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.*” Id. (emphasis in original), *citing*, 73 P.S. § 1648.5. The Commonwealth Court finally noted that, in accordance with the AEPS, the Commission promulgated Section 75.13 of its regulations that requires electric distribution companies, such as

³ The Commonwealth Court also noted that smart meter technology is defined as “metering technology and network communications technology capable of *bidirectional communication.*” DCIDA, 123 A.3d at 1131 (emphasis in original), *citing*, 66 Pa.C.S. § 2807(g).

PPL, to offer net-metering to customer-generators and to compensate customer-generators at the full retail rate. Id., *citing*, 52 Pa.Code § 75.13.

The settlement is also in the public interest because it complies with the directives in DCIDA by complying with the Competition Act and the AEPS Act. As the Commonwealth Court noted, Section 2807(f)(5) plainly provides that “the default service provider shall offer time-of-use rates to all customers that have been provided with smart meter technology.” Id., 123 A.3d at 1134. The Commonwealth Court notes specifically that:

the legislature’s unqualified use of the words ‘shall offer’ in Section 2807(f)(5) places the burden on the default service provider, in this case PPL, to offer time-of-use rates to customer generators. The legislature knows the difference between a default service provide and an electric generation supplier. It’s decision to place the onus on default service providers was neither accidental nor arbitrary. Simply put, Section 2807(f)(5) does not authorize a default service provider to pass along this obligation to an electric generation supplier.

Id. The settlement complies with this provision. The settlement is consistent with DCIDA by ensuring that PPL, not an EGS, is responsible for the TOU offering to eligible customers in its service territory.

Similarly, the settlement is in the public interest because it is consistent with the AEPS Act by complying with the requirement to encourage growth and investment in renewable sources of energy. 73 P.S. § 1648 *et seq.* The settlement will create a TOU program that is reflective of market conditions and encourages customers to elect a TOU rate option based on their ability to shift usage. The settlement ensures that PPL’s TOU customers will have the opportunity to reduce their energy costs by modifying their energy use profile. The designation of the on-peak and off-peak hours for residential and small commercial and industrial customers and the cash-out price for excess generation by a TOU net metering customer will serve to encourage customers to grow and invest in renewable sources of energy.

The settlement is also in the public interest because it complies with the Commission's recommended guidelines in its April 6, 2017 Secretarial Letter. The Letter recommended, among other things, for: PPL to hold semi-annual wholesale auctions, one for each of the winter and summer season; PPL to designate on-peak and off-peak hours that appropriately reflect summer and winter peak consumption profiles with multipliers that will appropriately motivate shifting of consumption from on-peak to off-peak periods; the TOU rate option to be available to all default service procurement class customers who are not eligible for PPL's spot-market only default service portfolio; a website to be established dedicated to the PPL TOU product, including educational material regarding the product; the TOU program to address reconciliation of costs in the event of TOU-specific under-collections or over-collections; and more. As PPL noted in its statement in support of the settlement, the settlement complies with the Commission's April 6, 2017 Secretarial Letter.

More specifically, under the settlement, TOU customers will be charged distinct on-peak and off-peak rates, based upon the winning wholesale supplier on-peak and off-peak generation prices plus various costs and charges. PPL will hold energy auctions to solicit wholesale supplier bids that will be used to create the TOU rates. The settlement articulates provision in which suppliers will be paid the on-peak and off-peak prices. The multipliers contained in the settlement resolve issues raised in the proceeding. The settlement is in the public interest because it also includes a contingency plan whereby the summer period generation component of the off-peak rate will be 90% of the generation component of the then-applicable price-to-compare for the affected customer class and the winter period generation component of the off-peak rate will be 90%. The settlement is also in the public interest because PPL will be required to track the impact of the TOU-related reconciliations on all residential customers.

The settlement is also in the public interest because it maintains the customer communication plan contained in PPL's petition, including a one-time bill insert in the PPL newsletter at the commencement of the program and updates to the PPL website following each TOU auction with the TOU rates to be implemented. As the OCA noted in its statement in support of the settlement, these requirements will help ensure that customers receive complete

and accurate information. Similarly, the settlement protects low-income customers. As CAUSE-PA noted in its statement in support of the settlement, the TOU program excludes customers enrolled in PPL's customer assistance program, OnTrack, thereby ensuring that PPL's vulnerable, low-income consumers are not exposed to the potential rate volatility inherent in TOU rates.

In general, as with most settlements, approving the settlement without modification is also in the public interest because doing so will avoid the substantial time and expense involved in further litigation. Accepting the settlement will negate the need to examine or cross-examine witnesses, prepare extensive main and reply briefs, prepare exceptions and reply exceptions, prepare a Commission Order and any possibility of appeal. Avoiding these expenses serves the interests of all parties involved and the Commission and is, therefore, in the public interest.

Finally, the settlement is also in the public interest and should be approved without modification because it is supported by substantial evidence in the form of multiple pieces of pre-served testimony that were admitted into the record via stipulation. The numerous pieces of pre-served testimony, and multiple rounds of discovery, exchanged in this proceeding demonstrate that the initial filing and responses to it have been thoroughly vetted by the parties. All the parties should be commended for such an extensive investigation which resulted in the settlement. Such an extensive investigation further supports adopting the settlement as being in the public interest.

In conclusion, each of the benefits described above are reasonable and support approving the settlement, which is supported by substantial evidence, without modification as being in the public interest. Notably, the settlement complies with the Commonwealth Court's decision in DCIDA, the Commission's April 6, 2017 Secretarial Letter and state law which promotes growth and investment in renewable sources of energy.

VI. CONCLUSION

It is recommended that the Commission adopt the Joint Petition for Settlement filed on March 13, 2018 by PPL, the OCA, the OSBA, CAUSE-PA, SEF and DCIDA. Doing so adopts the petition filed by PPL on June 1, 2017 pursuant to the Commission's Secretarial Letter dated April 6, 2017, with certain modifications as agreed to by the parties. In general, the settlement is supported by substantial evidence that was submitted into the record after an extensive investigation by the parties and the exchange of multiple rounds of pre-served testimony. Most notably, however, the settlement should be adopted in its entirety and without modification because it is in the public interest. The settlement complies with the Commonwealth Court's decision in DCIDA and the General Assembly's priorities in the Competition Act and the AEPS Act. The settlement also is in the public interest because it complies with the recommendations in the Commission's Secretarial Letter dated April 6, 2017. The settlement will encourage growth and investment in renewable sources of energy in PPL's territory and will conserve the parties' and the Commission's resources by avoiding further litigation of this matter, including the possibility of a second appeal.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 2801 *et seq.*
2. Commission policy promotes settlements. 52 Pa.Code § 5.231.
3. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
4. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters; rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103,

et al. (Opinion and Order entered July 14, 2011); Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order (entered April 1, 1996); Pa. Pub. Util. Comm'n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

5. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

6. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

7. PPL Electric's Petition for Approval of a New Time-of-Use Program, as modified by the settlement, adheres to the guidelines set forth in the Commission's Secretarial Letter dated April 6, 2017 in Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program, Docket Nos. P-2013-2389572 and M-2016-2578051, and 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, Docket No. P-2016-2526627.

8. By January 5, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. 66 Pa. C.S. § 2807(f)(5).

