

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

January 31, 2017

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities
Corporation For Approval of a New Pilot
Time-of-Use Program
Docket Nos. P-2013-2389572; M-2016-
2578051; P-2016-2526627

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Comments in the above-referenced proceeding.

If you have any questions, please feel free to contact me.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kristine E. Marsilio".

Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479

Enclosure

cc: James A. Mullins/Law Bureau
Certificate of Service

229229

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation	:	
for Approval of a New Pilot Time-of-Use	:	Docket Nos. P-2013-2389572
Program	:	M-2016-2578051
	:	P-2016-2526627

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On December 2, 2016, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter in the above-captioned proceedings requesting Comments and subsequent Reply Comments concerning future Time of Use (TOU) rate offerings in Pennsylvania. The Secretarial Letter is the result of the reversal and remand by the Commonwealth Court of the Commission's Order in the PPL Electric Utilities Corporation (PPL) Petition proceeding at Docket No. P-2013-2389572. See Dauphin County Industrial Development Authority v. Pa. PUC, 123 A.3d 1124 (Pa. Cmwlth. 2015) (DCIDA Order). Specifically, in the DCIDA Order, the Court reversed and remanded the Commission's approval of a Settlement that delegated PPL's TOU obligation under Act 129, 66 Pa.C.S. § 2807(f)(5), to electric generation suppliers (EGSs). The Court held as follows:

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 provider and an Electric Generation Supplier. Its decision to place the onus on default service providers was neither

accidental nor arbitrary. Simply, Section 2807(f)(5) does not authorize a default service provider to pass along this obligation to an Electric Generation Supplier.

DCIDA Order at 1134.

With the purpose of complying with the directives of the Commonwealth Court, the Commission issued its Secretarial Letter, requesting Comments and subsequent Reply Comments from participants in PPL's underlying TOU proceeding, as well as other interested parties, on a draft TOU Design. Secretarial Letter at 3. In accordance with the Secretarial Letter, on January 9, 2017, the OCA, PPL, the Retail Energy Supply Association (RESA), the Office of Small Business Advocate (OSBA), the Sustainable Energy Fund, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Duquesne Light Company (Duquesne Light), PECO Energy Company, and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy) filed Comments to the Commission's Secretarial Letter.

In its Comments, the OCA stated that it fully supports the implementation of cost-effective, innovative, and voluntary TOU offerings. OCA Comments at 2. Regarding the Commission's Draft TOU Design, however, the OCA, expressed concern that an EGS based model falls short of the directives contained in the DCIDA Order. OCA Comments at 5. The OCA suggested that a better approach would be to utilize wholesale energy suppliers as the TOU vendor, rather than attempt to establish an EGS TOU product or service. OCA Comments at 6. The OCA also expressed concern with the Commission's proposed contingency plan that any cost savings that participating customers would receive would not result in a reduction of underlying default service supply costs. OCA Comments at 7-8. Additionally, the OCA identified a number of appropriate goals for a TOU program and several consumer protections

that would establish reasonable parameters for TOU service and help to ensure that TOU customers receive full information about the service. See OCA Comments at 10-15.

In accordance with the Commission's Secretarial Letter, the OCA submits these Reply Comments to address certain Comments raised by other parties.

II. REPLY COMMENTS

A. The OCA Supports PPL's and CAUSE-PA's Comments Regarding the Lawfulness of the Commission's Proposed TOU Design.

In its Comments, PPL addressed the lawfulness of the Commission's proposed TOU Design. See PPL Comments at 4-5. Specifically, PPL questioned whether the Commission's proposed draft TOU Design complies with the DCIDA Order. PPL Comments at 4. PPL stated:

In the *DCIDA Order*, the Commonwealth Court determined that the plain language of Section 2807(f)(5) of the Public Utility Code, 66 Pa.C.S. § 2807(f)(5), requires the default service provider to offer TOU rates to customers, and that the default service provider cannot satisfy this obligation by transferring it to EGSs. Thus, according to the Commonwealth Court, default service providers are not permitted to use EGSs to provide TOU rates to customers.

PPL Comments at 5. PPL further submitted that "the proposal appears to place the responsibility for providing TOU service and rates upon an EGS" and that it appears that "the [Electric Distribution Company] will not be offering TOU rates to customers but, instead, will contract with an EGS to provide TOU rates to customers." PPL Comments at 5. Thus, PPL concluded that the draft TOU Design may be contrary to the DCIDA Order. PPL suggested that the legality issue could be avoided if the vendor were to contract with the EDC to provide supply for the EDC to serve TOU customers. PPL Comments at 6.

Similarly, CAUSE-PA expressed concerns that the Commission's proposed TOU Design does not comply with the DCIDA Order in that the TOU Design is a "shopping product"

which would require participating consumers to become shopping customers, rather than remain with their default service provider. See CAUSE-PA Comments at 4-5. CAUSE-PA suggested that the Commission could satisfy the DCIDA Opinion standard if the EGS and EDC entered into a supply-service contract wherein the EDC enrolled participants in the TOU program, and the participating customers remained default service customers the entire time. CAUSE-PA Comments at 4.

The OCA agrees in full with PPL's and CAUSE-PA's Comments and concerns regarding the lawfulness of the Commission's proposed TOU Design. As noted by the OCA in its Comments, the Commission's proposal implies that customers taking service under the Commission's proposed TOU Design would automatically become EGS customers. See OCA Comments at 6. The OCA submits that this situation may result in a TOU program that does not comply with Act 129 and the DCIDA Order. As suggested by PPL and CAUSE-PA and noted by the OCA in its Comments, a better approach would be to utilize wholesale energy suppliers as the TOU vendor, rather than attempt to establish an EGS TOU product or service. OCA Comments at 6.

In their Comments, RESA and Duquesne Light argued that the DCIDA Order is limited and only requires Electric Distribution Companies (EDCs) to offer a TOU rate to customer-generators. RESA Comments at 8-9; Duquesne Light Comments at 3-4. RESA further asserted that the DCIDA Order should not be interpreted to mean that EGSs cannot fulfill an EDC's statutory requirement to offer TOU rates. RESA Comments at 9.

RESA'S and Duquesne Light's interpretations of the DCIDA ORDER are misplaced. In the DCIDA Order, the Commonwealth Court did not interpret Act 129 as imposing separate requirements on an EDC when offering TOU rates to customer-generators as

opposed to service-customers. Rather, the Court interpreted EDCs' obligations under Act 129 as it applies to all customers, including customer-generators. Specifically, in the DCIDA Order, the Court addressed the issue of whether PPL's TOU pilot program complies "with the mandate of Section 2807(f)(5) of the Public Utility Code, 66 Pa. C. S. §2807(f), which requires PPL to offer Time-of-Use rates to all customers, regardless of whether those customers generate electricity." See DCIDA Order at 1130 (emphasis added). The Court held:

[T]here is no ambiguity in the Competition Act's mandate. It provides plainly, that "[t]he default service provider shall offer the time-of-use rates ... to all customers that have been provided with smart meter technology."

[...]

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. Simply, Section 2807(f)(5) does not authorize a default service provider to pass along this obligation to an Electric Generation Supplier.

DCIDA Order at 1134 (internal citation omitted). While the settlement provision that was at issue in the DCIDA Order applied to customer-generators, the Court's holding and interpretation of Act 129 is applicable when TOU rates are offered to all customers. The OCA submits that there is no support for RESA's and Duquesne Light's position that an EDC has a different obligation under Act 129 when offering a TOU rate to customer-generators as opposed to service-customers.

For the reasons discussed above, the OCA supports PPL's and CAUSE-PA's Comments regarding the legality of the Commission's proposed TOU Design. The OCA submits that the Commission's TOU design may not comply with the DCIDA Order, as it appears that EGSs, rather than EDCs, will provide TOU products or services to participating consumers.

B. While the OCA Generally Supports PPL's Alternative TOU Design Recommendations, the OCA is Concerned with the Impact of PPL's Proposal Regarding the Procurement of Both the Fixed-Price and TOU Customer Load through the Same Wholesale Products.

In its Comments, PPL proposed an alternative TOU design. PPL Comments at 17-20. Specifically, PPL proposed that the TOU design consist of a summer period from June 1 through September 30 each year and a non-summer period the remainder of the year. PPL Comments at 18. During the non-summer period, there would be no on-peak or off-peak hours, and customers would be charged the applicable Price to Compare (PTC). PPL Comments at 18. PPL suggested that during the summer period, the on-peak hours for residential customers would be from 3-8 p.m., Monday through Friday, excluding weekends and PJM-designated holidays. PPL Comments at 18. All other summer hours would be off-peak. PPL Comments at 18. The summer on-peak and off-peak rates would be updated each year based upon the PTC in effect at that time. PPL Comments at 18. Under PPL's proposal, default service providers would procure supply to serve TOU customers. PPL Comments at 19. Wholesale suppliers would be required to supply load for both the fixed-price and TOU customer loads. PPL Comments at 19.

The OCA generally supports PPL's alternative TOU design recommendations. First, the OCA submits that PPL's alternative TOU design meets the DCIDA Order requirements, in that default service providers would provide the TOU products and services to participating customers. Additionally, the OCA supports PPL's summer and non-summer period differential and its proposed on-peak and off-peak hours. The OCA submits that this design should provide an incentive for participating customers to shift their usage from high load hours to lower load hours. In addition, as noted by the OCA in its Comments, by tying the TOU pricing to the PTC, participating TOU customers could be assured that if they take actions to

shift energy usage from on-peak to off-peak periods, they could lower their bill as compared to standard default service.

The OCA is concerned, however, with PPL's proposal regarding the procurement of both the fixed-price and TOU customer loads through the same wholesale products (in PPL's case, these products are fixed price, full-requirements contracts). Specifically, PPL's proposal raises the same concerns expressed by the OCA in its Comments related to the Commission's proposed contingency plan that cost savings that participating customers achieve would not result in a reduction of underlying default service supply costs. See OCA Comments at 7-10. The OCA submits that PPL's proposal would likely result in a revenue shortfall to any default service provider utilizing the approach. As noted by the OCA in its Comments, the magnitude of such shortfall and the potential impact of recovering those costs from non-TOU customers are unknown. The Commission rejected this sort of reconciliation in the first PPL TOU proceeding. See PA PUC v. PPL, Docket No. R-2009-2122718, Order at 18 (March 9, 2010) (PPL 2009 TOU Order). Specifically, the Commission held:

We also agree with the OCA, that PPL's overlaying of the proposed TOU rates onto default service may have no benefit for customers and will shift costs from one group of customers to another.

PPL 2009 TOU Order at 18. As such, the OCA submits that the Commission should not utilize the underlying wholesale procurement approach suggested by PPL regarding the procurement of both the fixed-price and TOU customer loads through the same wholesale products.

III. CONCLUSION

The OCA supports Act 129 TOU rate offerings that meet the goals of the Act, while ensuring consumer protections remain in place for this voluntary service. The OCA respectfully requests that the Commission consider these Reply Comments in its development of TOU program rules.

Respectfully Submitted

Kristine E Marsilio

Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-mail: KMarsilio@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Date: January 31, 2017

229149

CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation :
for Approval of a New Pilot Time-of-Use : Docket Nos. P-2013-2389572
Program : M-2016-2578051
: P-2016-2526627

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of January 2017.

SERVICE BY E-MAIL ONLY

Richard Kanaskie, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Michael W. Hassell, Esq.
Post & Schell, PC
17 North Second Street, 12th Fl.
Harrisburg, PA 17101-1601

David B. MacGregor, Esq.
Post & Schell, PC
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808

Todd S. Stewart, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101

Kimberly A. Klock
PPL Electric Utilities Corp.
2 North Ninth Street
Allentown, PA 18101

Charles E. Thomas III, Esq.
Thomas, Niesen & Thomas
212 Locust Street, Suite 600
P.O. Box 9500
Harrisburg, PA 17101

Daniel Clearfield, Esq.
Deanne O'Dell, Esq.
Carl Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101

Pamela C. Polacek, Esq.
Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Divesh Gupta, Esq.
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second St., Suite 500
Harrisburg, PA 17101-1357

Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Patrick M. Cicero, Esq.
Harry S. Geller, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Melanie J. Elatieh, Esq.
UGI Corp.
460 North Gulph Rd.
King of Prussia, PA 19406

Amy M. Klodowski
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601

Stephen L. Huntoon, Esq.
Nextera Energy Inc.
801 Pennsylvania Ave. NW
Suite 220
Washington, DC 20004

Shelby A. Linton-Keddie, Esq.
Duquesne Light Company
800 North third Street, Suite 203
Harrisburg, PA 17102

/s/ Kristine E. Marsilio
Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: KMarsilio@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
228693

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048