

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

November 12, 2010

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

RE: PPL Electric Utilities Corporation Energy
Efficiency and Conservation Plan
Docket No. M-2009-2093216

Dear Secretary Chiavetta:

Enclosed for filing is the Response of the Office of Consumer Advocate to PPL Electric's Answer in Opposition to the Petition to Intervene of the Pennsylvania Communities Organization for Change, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Honorable Dennis J. Buckley
Honorable Elizabeth H. Barnes

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PPL Electric Utilities Corporation : Docket No. M-2009-2093216
Energy Efficiency and Conservation Plan :

RESPONSE OF THE OFFICE OF CONSUMER ADVOCATE
TO PPL ELECTRIC'S ANSWER IN OPPOSITION TO THE
PETITION TO INTERVENE OF
THE PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE

The Pennsylvania Office of Consumer Advocate (OCA) submits this Response to PPL Electric Utilities Corporation's (PPL or PPL Electric) Answer in Opposition to the Petition to Intervene of the Pennsylvania Communities Organizing for Change (PCOC). The OCA urges the ALJs to reject PPL's position and to grant the PCOC Petition to Intervene.

I. INTRODUCTION

1. On September 15, 2010, PPL Electric filed a black-lined copy of its revised Energy Efficiency and Conservation Plan (EE&C Plan or Plan) with the Pennsylvania Public Utility Commission (Commission).

2. On October 18, 2010, the Pennsylvania Communities Organizing for Change (PCOC) through its counsel the Public Utility Law Project (PULP) filed a Petition to Intervene (Petition) and Comments to the Company's Plan.

3. On November 4, 2010, PPL Electric filed an Answer objecting to PCOC's intervention.

4. In its Answer, PPL Electric argues that the Commission should deny PCOC's Petition because, among other reasons, "the Pennsylvania Office of Consumer Advocate (OCA) intervened and has been active in the proceeding advocating on behalf of PPL Electric's residential customers, including low-income residential customers." Answer, ¶¶ 6, 8.

5. PPL Electric's assertion that the OCA's participation in this proceeding diminishes PCOC's right to intervene in any way is in plain legal error. The Commission and Courts have rejected this argument in prior cases and the OCA submits that the Commission must reject it here as well.

II. RESPONSE

A. The OCA's Participation in this Proceeding Cannot Serve as a Bar to the Participation of Other Interested Parties.

6. The OCA submits that the Company's reliance on the Consumer Advocate's participation in this proceeding as a reason for the Commission to deny PCOC's Petition is in legal error. Specifically, Section 309-6 of the Consumer Advocate's authorizing legislation specifies that: "Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court." 71 P.S. §309-6; see also Barasch v. Pa. P.U.C., 546 A.2d 1296 (Pa. Commw. 1988), modified on denial of reargument by, 550 A.2d 257 (Pa. Commw. 1989) (notice to the Office of Consumer Advocate does not constitute notice to the customers of a utility).

7. In South River Power Partners, L.P., v. Pennsylvania Public Utility Commission, 673 A.2d 422, 426 (Pa. Commw. 1996), the Court stated that:

we must reject South River's contention that the active participation in this case by the Office of the Consumer Advocate and various other interested parties eliminates the need for notice to be provided to West Penn's customers.

The Court continued:

While the majority of West Penn's customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that West Penn's customers be notified of the PUC hearing and be afforded an opportunity to participate in that proceeding if they so choose.

South River at 427. It is settled law that parties may not be excluded from a proceeding for the reasons that PPL Electric advances here – namely that the OCA is participating in that same proceeding. The Company is in error on this point, and the Commission should reject the Company's argument on this point.

8. In addition, PPL Electric provides no factual basis for its conclusions. The Company provides no indication how PCOC and the OCA would provide duplicative efforts. PPL Electric only offers its conclusion that the OCA advocates for residential customers, including low-income customers. The OCA submits that this is entirely inadequate – the Commission should not exclude an interested party based on the type of unsupported argument that PPL Electric advances here.

9. The OCA submits that the interests represented by the OCA and by PCOC are not identical. The OCA represents the interests of all PPL Electric customers, both those who are low income and those who are not. It would be incorrect to assume that the OCA's broad-based presence will adequately accommodate the specific concerns that PCOC may seek to address in this proceeding.

10. In addition to this, the OCA and PCOC do not have access to the same base of experience on which to shape their participation in this proceeding. Therefore, it is highly unlikely that the participation of PCOC and the OCA would be duplicative.

11. While the OCA acknowledges that its interest and that of PCOC may overlap to some degree in this matter, as much can be said of numerous other parties to this proceeding. Likewise, the OCA and PCOC may have very different notions of how and if the Company's filing and its individual components comport with the requirements of Act 129. PPL Electric's implication that the OCA somehow covers the full array of positions is over-simplistic and unjustified.

B. The Public Utility Commission's Rules on Standing Are Broad Enough to Allow PCOC's Participation in this Proceeding.

12. The OCA submits that Commission rules allow for PCOC's participation in this proceeding. Section 5.72(a) of the Pennsylvania Code provides:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa.Code §5.72(a).

13. The OCA submits that, in addition to the interests asserted by PCOC in its Petition For Intervention, provision (a)(3) provides for PCOC's participation in this proceeding. PCOC's participation is in the public interest because no other party will duplicate the vantage point from which PCOC will participate as PCOC solely represents the interest of low-income customers. The unique nature of PCOC's position—compared to the other parties—warrants its participation in this case.

14. Furthermore, the OCA submits that the Commission's Rules of Administrative Practice and Procedure are broad and are to be liberally construed. 52 Pa. Code § 1.2. The Commission has wide latitude to allow parties to participate in proceedings before it. Therefore, under Section 5.72 of the Pennsylvania Code, supra, and Section 701 of the Public Utility Code, supra, PCOC should be able to participate in this proceeding particularly in light of the Commission's broad discretion in this area.

15. The OCA submits that standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co., 75 Pa.P.U.C. 598 at 603. As the court stated in Pennsylvania Natural Gas Association:

Unlike standing to appeal, which is determined by the application of guidelines pronounced by the appellate courts, standing before an administrative agency is primarily within the discretion of the agency. Whether parties should be permitted to intervene in a commission proceeding is within the discretion of the commission to be exercised within each individual case. See, W.J. Dillner Transfer Co. v. Pa. P.U.C., 107 A.2d 159 (Pa. Sup. Ct. 1954); Arsenal Board of Trade v. Pa.P.U.C., 72 A.2d 612 (Pa. Sup. Ct. 1950); and City of Pittsburgh v. Pa.P.U.C., 33 A.2d 641 (Pa. Sup. Ct. 1943).

Id. citing Re L&H Trucking Co., Inc., 55 Pa.P.U.C. 469 (1982).

16. Additionally, the OCA submits that the quasi-judicial nature of the Commission allows for standing determinations that are less strict than those imposed by the Courts. Appalachian Gas Sales, Inc. v. Philadelphia Electric Co., 67 Pa.P.U.C. 246 at 250, quoting, Re Radio Broadcasting Co., 57 Pa.P.U.C. 399.

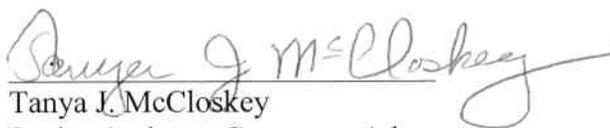
17. PPL Electric's narrow reading of the Commission's regulations disregards the flexibility and discretion afforded to the Commission in determining who has standing before it. Considering the decisions in the Pennsylvania Natural Gas Association and Appalachian Gas

Sales cases and the test for standing that requires a prospective party to show a direct, immediate and substantial interest in the matter, it is clear that the Commission has the discretion to allow PCOC to participate in this proceeding.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that PPL Electric's Answer should be rejected with respect to the arguments in opposition to any aspect of the intervention of the PCOC and that PCOC's Petition to Intervene should be granted at this time.

Respectfully Submitted,



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Dated: November 12, 2010
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CERTIFICATE OF SERVICE

PPL Electric Utilities Corporation : Docket No. M-2009-2093216
Energy Efficiency and Conservation Plan :

I hereby certify that I have this day served a true copy of the foregoing document, Response of the Office of Consumer Advocate to PPL Electric's Answer in Opposition to the Petition to Intervene of the Pennsylvania Communities Organization for Change, 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 12th day of November 2010.

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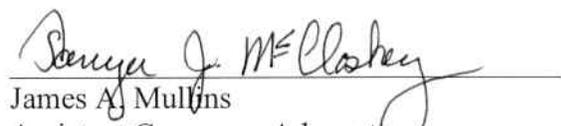
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