**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2012-2290597

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Office of Consumer Advocate : C-2012-2300266

:

Office of Small Business Advocate : C-2012-2301063

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PP&L Industrial Customer Alliance : C-2012-2306728

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William Andrews : C-2012-2300402

:

Dave A. Kenney : C-2012-2299539

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Roberta A. Kurrell :

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John G. Lucas : C-2012-2298593

:

Helen Schwika : C-2012-2299335

:

v.. : :

PPL Electric Utilities Corporation :

**ORDER GRANTING MOTION FOR PROTECTIVE ORDER**

The purpose of this Order is to grant the Motion filed by PPL Electric Utilities Corporation (PPL Electric or Company) for a protective order on June 11, 2012. The response period has run, and no party has filed a response. Therefore, the Motion is granted as unopposed.

On March 30, 2012, PPL Electric filed Supplement No. 118 to Tariff Electric – Pa. PUC No. 201, containing proposed changes in rates, rules, and regulations calculated to produce approximately $104.6 million in additional annual revenues. This proposed rate change represents an average increase in the Company's distribution rates of approximately 13%, which equates to an average increase in total rates (distribution, transmission, and generation charges) of approximately 2.9%. Supplement No. 118 was proposed to take effect on June 1, 2012. The filing was suspended by Commission Order entered May 24, 2012.

Formal complaints against this proposed tariff have been filed by: the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PP&L Industrial Customer Alliance (PPLICA), William Andrews, Eric Joseph Epstein, Dave A. Kenney, Roberta Kurrell, Donald Leventry[[1]](#footnote-1), John G. Lucas, and Helen Schwika. Petitions to intervene were filed by the Commission on Economic Opportunity (CEO), Direct Energy Services LLC (Direct Energy), Dominion Retail, Inc. d/b/a Dominion Energy Solutions (DR), Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC (collectively Granger or Granger Energy), the International Brotherhood of Electrical Workers, Local 1600 (IBEW), and the Sustainable Energy Fund (SEF). The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On May 17, 2012, a Notice was issued which scheduled the prehearing conference for Thursday, May 31, 2012. A prehearing conference order (First Prehearing Order) was also issued on May 17, 2012, which directed the litigating parties to file and serve their prehearing memos on or before Friday, May 25, 2012. Prehearing memos were filed by the following: PPL Electric, OCA, OSBA, I&E, PPLICA, CEO, SEF, IBEW, DR, Granger, Direct Energy, and Mr. Epstein.

The prehearing conference was held as scheduled on May 31, 2012. The following attended: John H. Isom, Jr., Esq., Paul E. Russell, Esq., and Christopher T. Wright, Esq., for PPL Electric; Darryl Lawrence, Esq., and Candis Tunilo, Esq., for OCA; Regina L. Matz, Esq., for I&E; Steven C. Gray, Esq., for OSBA; William E. Lehman, Esq., for DR; Joseph Vullo, Esq., for CEO; Adeolu Bakare, Esq., for PPLICA; Kenneth L. Mickens, Esq., for SEF; Scott J. Rubin, Esq., for IBEW; Carl Shultz, Esq., for Granger Energy and Direct Energy; and Mr. Epstein appeared pro se.

On June 1, 2012, a scheduling order was issued which adopted the schedule that the parties agreed to at the prehearing conference, with the addition of one more public input hearing held at the request of Representative Phyllis Mundy, 120th District. In recognition of the fact that the Company's service territory spans twenty-two counties in the Commonwealth, five public input hearings were scheduled and held to hear testimony of those persons who wish to provide evidence.

A few modifications were made to the Commission's discovery regulations according to the unopposed requests of the OCA and I&E. Of note, the OCA had requested that this Order direct that parties providing prepared testimony either include the electronic work papers, cited studies and other documents relied on or provide them within two business days of the testimony due date to all parties of record. The OCA reasons that the other parties routinely ask for these documents following the testimony's service through normal discovery channels, and that this method will streamline the process. No party objected, and the request was granted.

On June 11, 2012, the Company filed a Motion for a Protective Order.

The Motion states that during the extensive discovery, parties may seek information which should not be disclosed to the public; that issuance of such order is permitted under 52 Pa. Code § 5.362(a)(7); and that limiting the disclosure of this information will not prejudice the rights of the participants, nor frustrate the resolution of the proceeding. No opposition was filed to this Motion, and it is granted.

THEREFORE,

IT IS ORDERED:

1. That the Motion for Protective Order filed by PPL Electric Utilities Corporation on June 11, 2012, is granted with respect to all materials and information identified in Ordering Paragraphs 2 and 3, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That the materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies, and other materials furnished in this proceeding, which are believed by a party to be of a proprietary or confidential nature and which are so designated by being stamped "CONFIDENTIAL." Such materials will be referred to below as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. The parties may designate as "CONFIDENTIAL" those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.

4. Proprietary Information produced in this proceeding shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross-examination or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information only to a party's expert(s), subject to the conditions set forth in this Protective Order. However, said expert(s) may not be a "Restricted Person."

5. Proprietary Information shall not be made available to a "Restricted Person."

(a) For the purpose of this Protective Order, "Restricted Person" shall mean:

(i) an officer, director, stockholder, partner, owner, or employee of any competitor of PPL Electric Utilities Corporation;

(ii) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of PPL Electric Utilities Corporation (including any association of competitors of PPL Electric Utilities Corporation);

(iii) an officer, director, stockholder, owner, or employee of a competitor of a customer of PPL Electric Utilities Corporation if the Proprietary Information concerns a specific, identifiable customer of PPL Electric Utilities Corporation; and

(iv) an officer, director, stockholder, owner, or employee of an affiliate of a competitor of a customer of PPL Electric Utilities Corporation if the Proprietary Information concerns a specific, identifiable customer of PPL Electric Utilities Corporation; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership, or other ownership interests valued at more than $10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for the party, another member of the expert's firm, or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must:

(i) identify each Restricted Person and each expert or consultant;

(ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and

(iii if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of PPL Electric Utilities Corporation or its customers. PPL Electric Utilities Corporation shall have the right to challenge the adequacy of the written assurances that it or its customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Administrative Law Judge.

6. That prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, counsel shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as "Appendix A." A party's expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until an executed a Non-disclosure Certificate has been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

7. That a producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served upon the nonproducing party hereto only in an envelope separate from nonproprietary materials, and the envelope shall be conspicuously marked "CONFIDENTIAL."

8. That for purposes of filing, to the extent that Proprietary Information is placed in the Commission's formal case file, such information shall be handled in accordance with routine Commission procedures regarding filings which are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's official record, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

9. That the parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February `14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be a public record.

10. That any public reference to Proprietary Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

11. That part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross-examination, argument and responses to discovery shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released form the restrictions of this Protective Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

12. That the parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information, the party claiming that the information is Proprietary Information retains the burden of demonstrating that the designation is necessary and appropriate.

13. That unresolved challenges arising under Paragraph 12 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.432(a).

14. That within thirty (30) days from completion of this proceeding, including any administrative or judicial review, upon request of the producing party, all copies of all documents and other materials, including notes, which contain any Proprietary Information shall be either immediately returned to the party furnishing such Proprietary Information or destroyed. Further, all electronic communications containing information marked as "CONFIDENTIAL" shall immediately be deleted by all recipients. Parties shall provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been returned or destroyed and that all electronic communications containing Proprietary Information have been deleted.

Dated: July 3, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**APPENDIX A**

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2012-2290597

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Dave A. Kenney : C-2012-2299539

Roberta A. Kurrell :

John G. Lucas : C-2012-2298593

Helen Schwika : C-2012-2299335

:

v. : :

PPL Electric Utilities Corporation :

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the retaining party).

The undersigned has read and understands the Protective Order issued in the above-captioned proceedings, which Order deals with the treatment of information designated as "PROPRIETARY INFORMATION" or "CONFIDENTIAL INFORMATION." The undersigned agrees that any Proprietary or Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE

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PRINT NAME

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ADDRESS

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EMPLOYER

**R-2012-2290597 - PA PUBLIC UTILITY COMMISSION v. PPL ELECTRIC UTILITIES*REVISED 6/4/12***

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1. By letter received June 19, 2012, Mr. Leventry indicated that he did not want to be involved in the litigation and asked that he be removed from the service list. [↑](#footnote-ref-1)