**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

:

Eric Joseph Epstein : C-2012-2313283

:

Dave A. Kenney : C-2012-2299539

:

Roberta A. Kurrell : C-2012-2304870

:

John G. Lucas : C-2012-2298593

:

Helen Schwika : C-2012-2299335

:

v.. : :

PPL Electric Utilities Corporation :

**ORDER GRANTING THE LATE-FILED PETITION OF RICHARDS**

**ENERGY GROUP, INC. TO INTERVENE**

HISTORY OF THE PROCEEDING

The purpose of this Order is to grant the Petition of Richards Energy Group, Inc., to Intervene Out-of-Time, as it meets the requirements for late-filed interventions and is not opposed.

On March 30, 2012, PPL Electric Utilities Corporation (PPL Electric or Company) 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 workpapers, 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.

The litigation schedule adopted is as follows:

Direct testimony of other parties June 22, 2012

Rebuttal testimony July 16, 2012

Surrebuttal testimony August 1, 2012

Evidentiary hearings August 6, 7, 9, 10, 2012

Close of record August 10, 2012

Main briefs August 29, 2012

Reply briefs September 14, 2012

On June 11, 2012, the Company filed a Motion for a Protective Order, which was granted as unopposed by Order issued July 3, 2012.

On June 18, 20, and 21, the public input hearings were held as scheduled.

On July 13, 2012, Richards Energy Group, Inc. (REG), filed a Petition to Intervene Out-of-Time, and by email, asked for an extension to file direct testimony. Also by email, the parties were given until July 20, 2012, to file a response to the petition to intervene. REG elected to not file direct testimony. No responsive pleading has been filed to the petition to intervene.

DISCUSSION

The Company filed the tariff supplement which resulted in this case on March 30, 2012, setting by default the deadline for timely filing of intervention for May 30, 2012. 52 Pa. Code § 5.72. REG's Petition is late-filed, and as such, must meet the legal standard for the grant of late-filed intervention.

First, the prospective intervenor must meet the requirements for intervention. 52 Pa. Code, § 5.72. I note that REG is a regular intervenor in PPL litigation before the Commission, and no in-depth analysis of this preliminary matter is necessary.

A late-filed intervention which does not set forth "due cause" as to why it is untimely filed is properly dismissed. *Re Mercer Gas Company,* 71 Pa. PUC 19 (1989). The analysis for the grant of a pre-evidentiary hearing late-filed petition has four prongs:

1. The petitioner must have a reasonable excuse for missing the due date;

2. The proceeding must be contested at the time of the filing of the petition;

3. The grant of intervention will not delay the orderly progress of the case; and

4. The grant of intervention will not broaden significantly the issues, or shift the burden of proof.

*Re S.T.S. Motor Freight, Inc.,* 54 Pa. PUC 343, 344 (1980); *Scheffer v. Columbia Gas of PA, Inc.,* Docket No. C-2010-2153353 (Order Entered November 1, 2012), 2011 Pa. PUC LEXIS 341.

All four prongs must be met before late intervention will be permitted. *Re Milton Transportation, Inc.,* 56 Pa. PUC 623 (1982); *Application of Touch of Class Limo, Inc.*, 1995 PA PUC LEXIS 62, *Application of Douglasville Water Company, 1990 PA PUC LEXIS 58.*

REG avers that it has a reasonable excuse for missing the due date, as it had been represented by counsel who had become seriously ill and was unable to complete the preparation of the petition to intervene in time to meet the deadline. In fact, REG's usual counsel is a sole practitioner who would not have partners or associates available to offer seamless service in case of a catastrophic illness, and this is a reasonable excuse.

The proceeding is unquestionably contested at the time of the filing of the petition.

The grant of intervention will not delay the orderly progress of the case and has agreed to comply with the existing schedule.

The grant of intervention will not broaden significantly the issues, or shift the burden of proof. As REG has decided against offering direct testimony, it has no opportunity to inject additional issues, and thus appears to meet this prong. The burden of proof will not shift based on REG's intervention.

No party has filed a responsive pleading to the Petition. As it meets the requirements for late-filed intervention, it is granted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition of Richards Energy Group, Inc., to Intervene Out-of-Time is granted.

Date: July 26, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**R-2012-2290597 - PA PUBLIC UTILITY COMMISSION v. PPL ELECTRIC UTILITIES*REVISED 7/26/12***

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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)