**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 28, 2013 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer |  |
| Pennsylvania Public Utility Commission  Office of Consumer Advocate  Office of Small Business Advocate  PP&L Industrial Customer Alliance  William Andrews  Tracey Andrews  Eric Joseph Epstein  Dave A. Kenney  Roberta A. Kurrell  Donald Leventry  John G. Lucas  Helen Schwika | R-2012-2290597  C-2012-2300266  C-2012-2301063  C-2012-2306728  C-2012-2300402  C-2012-2328596  C-2012-2313283  C-2012-2299539  C-2012-2304870  C-2012-2304903  C-2012-2298593  C-2012-2299335 |
| v. |  |
| PPL Electric Utilities Corporation |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration or Clarification (Petition), filed by the Office of Consumer Advocate (OCA), on January 14, 2013. By this Petition, the OCA seeks reconsideration or clarification of our Opinion and Order entered December 28, 2012, (*December 2012 Order)* relative to the above-captioned proceeding. On January 24, 2013, Answers to the Petition were filed by PPL Electric Utilities Corporation (PPL or Company) and by the Commission’s Bureau of Investigation and Enforcement (I&E).

**I. History of the Proceeding[[1]](#footnote-1)**

On March 30, 2012, PPL filed Supplement No. 118 to Tariff – Electric Pa. P.U.C. No. 201, to become effective June 1, 2012, containing proposed changes in rates, rules, and regulations calculated to produce approximately $104.6 million in additional annual revenues. The filing was suspended by Commission Order entered on May 24, 2012. Following extensive discovery, evidentiary hearings and the submission of Main Briefs and Reply Briefs, the Commission issued the Recommended Decision of Administrative Law Judge (ALJ) Susan D. Colwell on October 19, 2012.

Various Parties filed Exceptions and Replies to Exceptions. After consideration of the Exceptions and Replies to Exceptions, the Commission issued the *December 2012 Order*. In the *December 2012 Order*, the Commission, *inter alia*, authorized PPL to file tariffs, tariff supplements and/or tariff revisions designed to produce an annual distribution rate revenue increase of approximately $71.065 million, effective for service rendered on or after January 1, 2013.

As noted, *supra,* the OCA filed the Petition for Reconsideration or Clarification on January 14, 2013. The Petition seeks reconsideration or clarification that the Commission’s requirement that PPL meet with the statutory advocates to develop a rider for storm damage expense recovery also include consideration of a storm damage reserve account as advanced by I&E and adopted by the ALJ. Answers to the Petition were filed by the Company and I&E on January 24, 2013.

**II. Discussion**

**A. Legal Standards**

Initially, we note, as a preliminary matter, that any issue which we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id*. at \*13.

**B. Recommended Decision**

In the Recommended Decision, the ALJ found that the I&E recommendation, that PPL may be better off with a storm damage reserve account or rider, was worth pursuing. R.D. at 37. The ALJ determined that PPL should be directed to develop a plan for the establishment of a storm damage reserve account and to submit it to the Commission for approval. The ALJ additionally recommended that the public advocates be included in the development of the program. *Id*. at 38.

**C. *December 2012 Order***

In our Order, we stated the following:

Based upon our review of the record and the Parties’ Exceptions and Replies to this issue, we agree with the ALJ’s recommendation to adopt I&E’s proposal for PPL to propose a Storm Damage Expense Rider for Commission review. R.D. at 39. The issues to be discussed between PPL and the public advocates shall include, but not be limited to, the following: (1) provisions for interest on under and over collections; (2) timing of reconciliation; (3) reporting of storm damage expenses and revenue for their recovery; (4) methods for adjusting the annual level of the expense in rates; and (5) exact categories of storm damage expense that would be subject to the reconciliation. Additionally, we approve I&E’s recommendation, and so direct, that PPL file a rider for storm damage expense recovery within ninety days of the date of entry of this Opinion and Order.

*December 2012 Order* at 37-38. The OCA seeks reconsideration or clarification of the *December 2012 Order* as it relates to the collaborative established to consider a storm damage expense rider proposal.

**D. The Petition and the Responses Thereto**

As noted, the OCA seeks reconsideration or clarification of the *December 2012 Order* as it relates to the collaborative established to consider a storm damage expense rider proposal. The OCA avers that pages 35-38 of the *December 2012 Order* appear to overlook the fact that the Recommended Decision, PPL’s Exceptions and I&E’s Replies to Exceptions all discuss the possibility of creating a storm damage reserve account or a rider for the future recovery of extraordinary storm damage, and the discussion was not limited to only the creation of a rider for this purpose. According to the OCA, the *December 2012 Order* adopts the ALJ’s recommendation to implement I&E’s proposal that PPL propose a storm damage expense rider for Commission review, within ninety days of the date of entry of the *December 2012 Order.* However, the OCA submits that any discussion of a reasonable mechanism for the recovery of storm damage expenses should include all alternatives that had been developed in the record, not just a rider. The OCA submits that the *December 2012 Order* does not reflect the full record that was developed on this issue, particularly as it concerns the use of a reserve account. Therefore, the OCA requests that the Commission clarify that both a reserve account mechanism and a rider mechanism should be the subject of discussion in the collaborative process. Petition at 3-5.

In its Answer to the OCA’s Petition, PPL notes that the OCA’s request with regard to the storm damage expense issue is curious because nowhere in its testimony, briefs, exceptions or replies to exceptions did the OCA address this issue. PPL states that while the OCA contends that its Petition meets the legal standard for reconsideration as the Commission “overlooked” language in the Recommended Decision and evidence produced by PPL and I&E regarding a storm damage expense reserve account, the Commission could not have “overlooked” any contention of the OCA on the subject because there was none. Also, PPL avers that the OCA omitted from its Petition any definition of what it means by a “reserve account.” According to PPL, this omission makes it difficult for it and the Commission to evaluate the OCA’s Petition. PPL Answer at 2.

Next, PPL states that in support of its Petition, the OCA claims that PPL supported the possibility of the creation of a storm damage reserve account or a rider for future recovery of extraordinary storm damage and was not limited to only the creation of a rider for this purpose. PPL avers that the OCA is mistaken in two respects. First, PPL explains that all references by it in its Exceptions to the means of recovery of storm damage expenses include a single “reserve/tracker mechanism” or an “automatic adjustment clause.” *Id*. PPL maintains that nowhere does it support the creation of a reserve account without tariff provisions for current recovery of storm damage expenses between rate cases. Second, PPL avers that nowhere did it suggest that the storm damage automatic adjustment clause be limited to damage from extraordinary storms. *Id.* at 2-3.

PPL submits that while it is willing to discuss the accounting treatment of storm damage expenses in conjunction with the establishment of a rider for current recovery of storm damage expenses between rate cases, the focus of discussions among the Company and the statutory Parties must be the ratemaking treatment of storm damage expenses between rate cases, including the manner in which expenses will be recovered. According to PPL, focusing the discussion on the mechanism for recovery of storm damage expenses is mandated by the Commission’s *December 2012 Order.* PPL opines that the Commission made it clear that storm damage expenses between rate cases are to be recovered on a current basis, that there should be reconciliation of storm damage expenses and revenues for recovery of such, and that rates should be adjusted based on the annual level of the expenses. According to PPL, these are all ratemaking issues that require a tariff provision such as a rider to implement. PPL avers that a reserve account, alone, cannot address these issues and would not be compliant with the Commission’s Order. *Id.* at 3-4.

PPL is uncertain of the OCA’s intention in its Petition regarding storm damage expenses. If the OCA wishes to include the accounting treatment of storm damage expenses in the discussion of ratemaking issues, then PPL does not oppose the OCA’s request. However, if the OCA is suggesting the possibility that issues related to PPL’s substantial and highly variable storm damage expenses can be resolved by mere accounting entries without current funding of recoveries, then PPL opposes the OCA’s Petition. PPL reiterates that it opposes any proposal that purports to resolve storm damage expense recovery issues solely through accounting entries and defers issues related to recovery of expenses to future litigation because such a proposal would be impractical, contrary to all the evidence in the rate case, contrary to the Recommended Decision, and contrary to the Commission’s clear directives in the *December 2012 Order. Id.* at 4.

In its Answer to the OCA’s Petition, I&E states that it supports the OCA’s request. I&E avers that from its perspective, the issue before the ALJ was whether PPL should be required to cease pursuing a storm risk management strategy of purchasing storm damage insurance from its affiliate and instead implement a storm reserve or rider. I&E states that, in both its Main and Reply Briefs, it argued that a storm reserve account or rider should be employed. I&E notes that the ALJ adopted its proposal to compel PPL to establish a reserve account for storm damage expenses. I&E argues that its recommendation focused on the prospective termination of PPL’s storm risk management strategy that comprised the purchase of insurance through an affiliate in favor of the adoption of a funding mechanism, either a reserve or rider, which was reconcilable in order to best match PPL’s ratepayers’ storm expense exposure to the actual storm damage expense that PPL actually incurred. I&E believes that the ALJ correctly recommended its position, which the Commission adopted, and that PPL should collaborate with the public advocates to develop the mechanism that would best accomplish that goal. I&E supports the OCA’s request that this collaborative should be ordered to include consideration of both a reserve and rider consistent with I&E’s position throughout this proceeding. I&E Answer at 2-6.

**c. Disposition**

We find that the OCA has satisfied the *Duick* standards in that clarification of the storm damage expense collaborative is needed for the Company to comply with our *December 2012 Order.* Moreover, we are in agreement with the OCA and I&E that this collaborative should include consideration of both a storm damage expense rider as well as a storm damage reserve account as funding mechanisms. We further agree with the OCA’s contention that any discussion of a mechanism for the recovery of storm damage expenses should include all alternatives that had been developed in the record. Accordingly, we shall grant the OCA’s request for clarification and direct that PPL include both mechanisms within the discussions held in the collaborative process.

**III. Conclusion**

For the reasons set forth in this Opinion and Order, the Commission shall hereby grant the Petition for Reconsideration or Clarification filed by the OCA; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed on January 14, 2013, by the Office of Consumer Advocate, is hereby granted.

2. That PPL Electric Utilities Corporation is directed to include both a storm damage expense rider and a storm damage reserve account as funding mechanisms within the discussions held in the collaborative process directed by our *December 2012 Order*.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 28, 2013

ORDER ENTERED: February 28, 2013

1. For more details regarding the history of this proceeding, please refer to the *December 2012 Order* at 2-4 and the Recommended Decision at 2-10. [↑](#footnote-ref-1)