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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held October 31, 2013 | | |
| Commissioners Present: | |  | | |
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| Robert F. Powelson, Chairman | |  | | |
| John F. Coleman, Jr., Vice Chairman | |  | | |
| James H. Cawley | |  | | |
| Pamela A. Witmer | |  | | |
| Gladys M. Brown | |  | | |
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| Pennsylvania Public Utility Commission  v.  PPL Electric Utilities Corporation | |  | Docket No.  R-2012-2290597 | |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

On March 28, 2013, PPL Electric Utilities Corporation (PPL) filed Supplement No. 130 to Tariff Electric – Pa. P.U.C. No. 201 to become effective January 1, 2013.

Supplement No. 130 was filed in compliance with the Commission’s Opinion and Order in *Pa. P.U.C. v. PPL Electric Utilities Corporation*, at the above docket, and entered December 28, 2012 (December 2012 Order).

The Commission directed PPL to file a rider for storm damage expense recovery within 90 days of the date of entry of the December 2012 Order. In addition, the Commission directed PPL to meet with the statutory advocates to discuss the following details of the rider:

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

On January 14, 2013, the Office of Consumer Advocate (OCA) filed a Petition for Reconsideration or Clarification (Petition) of our December 2012 Order. The Petition sought 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 the Bureau of Investigation and Enforcement (BIE) and adopted by the Administrative Law Judge (ALJ). Answers to the Petition were filed by PPL and BIE on January 24, 2013.

The OCA averred that pages 35-38 of the December 2012 Order appeared to overlook the fact that the Recommended Decision, PPL’s Exceptions and BIE’s Replies to Exceptions all discussed 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 adopted the ALJ’s recommendation to implement BIE’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 submitted 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, including the use of a reserve account, not just a rider. Therefore, the OCA requested 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 Petition, PPL claimed that the OCA did not address the storm damage expense issue in its testimony, briefs, exceptions or replies to exceptions. Since the OCA offered no contention on the subject, PPL questioned whether the Petition met the legal standard for reconsideration on the basis that the Commission “overlooked” language in the Recommended Decision and evidence produced by PPL and BIE regarding a storm damage expense reserve account. PPL Answer at 2.

PPL also averred that the OCA was mistaken in claiming that PPL supported the possibility of the creation of a storm damage reserve account for future recovery of extraordinary storm damage. PPL claimed that nowhere had it supported the creation of a reserve account without tariff provisions for current recovery of storm damage expenses between rate cases, nor did it suggest limitation to damage from extraordinary storms. PPL Answer at 2-3.

PPL continued to aver that a tariff provision such as a rider would be necessary to recover storm damage expenses on a current basis between rate cases, to reconcile storm damage expenses and revenues for recovery of such, and for the adjustment of rates based on the annual level of expenses, in compliance with the December 2012 Order. PPL Answer at 3-4.

In its Answer to the Petition, BIE supported the OCA’s request that the collaborative should include consideration of both a reserve and rider. BIE Answer at 2‑6.

By Order entered February 28, 2013, the Commission granted the OCA’s Petition and ordered PPL 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 (February 2013 Order).

PPL conducted a collaborative with the OCA, the Office of Small Business Advocate (OSBA), and BIE, but consensus regarding the rider was not achieved. Therefore, PPL filed its own proposed Storm Damage Expense Rider (SDER) within the time provided for in the December 2012 Order as Supplement No. 130. PPL suggested the Commission allow a 20‑day comment period and 15-day reply comment period on the SDER, followed by Commission ruling.

The Commission granted the comment and reply comment periods suggested by PPL by Secretarial Letter dated April 5, 2013. The OCA filed comments on April 18, 2013, urging rejection of the proposed SDER. BIE filed comments on April 18, 2013, requesting approval of a modified SDER. Also on April 18, 2013, PP&L Industrial Customer Alliance (PPLICA) filed comments urging rejection of PPL’s request to establish an SDER.

On May 6, 2013, the OCA and PPLICA both filed reply comments urging rejection of the SDER and BIE’s proposed modifications. The OCA further requested full evidentiary hearings on the matter should the Commission wish to entertain any form of ratemaking treatment for PPL’s normal, ongoing storm damage expenses prior to PPL’s next base rate case. OCA Reply Comments at 5. PPL also filed reply comments on May 6, 2013 requesting approval of the SDER as proposed. Consensus regarding the details of the SDER could not be reached.

All parties shall be afforded due process when property interests such as those at issue here are implicated; however, the required level of due process must be determined. As the Commonwealth Court has held, “when there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing.”[[1]](#footnote-1) Rather, in such cases a “paper hearing” is sufficient to protect the due process rights of the participants.[[2]](#footnote-2)

In reviewing the parties’ various Comments and Replies to Comments, the Commission has determined that the issues to be resolved are purely questions of law and policy that, as set forth above, do not require an evidentiary hearing. Further, the procedural history set forth above shows that the parties have already been given an opportunity to be heard, both before an ALJ, and through the allowance of the filing of Comments and Reply Comments.

In the interest of ensuring the parties’ due process rights, the Commission has determined it prudent to allow interested parties to file additional Comments to PPL’s proposed SDER within 30 days of entry of an Opinion and Order in this matter, with Replies to Comments being due 15 days thereafter. The Commission has determined that taking additional Comments and Replies to Comments will afford the Commission the benefit of receiving substantive input on PPL’s proposal, as well as counter proposals. Specific questions that should be addressed in the parties’ filings to help facilitate the Commission’s decision are attached to this Opinion and Order as Appendix A; however, additional questions may be addressed. Any attempts to relitigate the appropriateness of allowing an alternative funding mechanism to replace the disallowed storm damage insurance will be disregarded.

PPL is proposing charges of zero dollars under the SDER for the period January 1, 2013 through December 31, 2013; however, we conclude that the retroactive effective date of January 1, 2013 in Supplement No. 130 is not in compliance with our rules and regulations. Pursuant to 66 Pa. C.S. §1308(a), tariff supplements proposing changes in rates require 60 days-notice. By filing on March 28, 2013, the earliest effective date for the proposed SDER is May 28, 2013.

Therefore, pursuant to 66 Pa. C.S. §1308(b), the filing will be suspended by operation of law on October 31, 2013, until February 28, 2014, unless permitted by Commission Order to become effective at an earlier date.

Investigation and analysis of this proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That interested parties shall file Comments to PPL Electric Utilities Corporation’s proposed Storm Damage Expense Rider within 30 days of entry of this Opinion and Order, with Replies to Comments filed within 15 days thereafter.

2. That PPL Electric Utilities Corporation’s proposed Supplement No. 130 to Tariff Electric – Pa. P.U.C. No. 201 will be suspended by operation of law until February 28, 2014, unless otherwise directed by Order of the Commission.

3. That pursuant to 52 Pa. Code §53.71, a tariff supplement shall be filed with the Commission and posted at the office of the Company to announce that Supplement No. 130 to Tariff Electric – Pa. P.U.C. No. 201 is suspended until the date stated in this Order. Such tariff supplement shall be substantially identical in form to the sample tariff supplement sheet attached to this Order as Appendix B, and shall be filed with the Commission within ten days following entry of this Opinion and Order.

4. That a copy of this Opinion and Order shall be served upon PPL Electric Utilities Corporation, the Bureau of Investigation & Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and PP&L Industrial Customer Alliance.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 31, 2013

ORDER ENTERED: November 15, 2013

APPENDIX A

1. Does the proper test for an automatic adjustment clause include expenses that are “substantial, variable, and beyond the utility’s control?” If so, do all storm related operating expenses meet this standard?
2. Does Section 1307 authorize “one-way” reconciliation provisions? Is BIE’s storm damage reserve proposal contrary to statutory requirements?
3. Under a SDER or similar mechanism, what is the appropriate period to amortize a “major storm?” Provide statistical data or other relevant factors that the Commission should consider to support the appropriate amortization period. Should the Commission establish one amortization period that applies to all “major storms” or a sliding scale of amortization periods based on the expense levels or other factors?
4. For purposes of the SDER, should the Commission establish a different definition for “major storm” to comply with “extraordinary, non-reoccurring, and unanticipated” criteria?
5. What regulatory precedent, both in PA and in other states, exists for a “replenishing” storm reserve fund? How do other jurisdictions provide for recovery in excess of the reserve funding amounts? Should other over-recovery amounts, such as above authorized actual returns, be included in such cost recovery reserve funds?
6. Should there be a cap on the amount of costs recoverable under a storm rider or reserve account in order to ensure rates are “just and reasonable?” If so, what should the amount of the cap be?
7. Why is it appropriate to charge interest on any amortized expenses? Provide pertinent case histories on where the Commission has permitted collection of interest on similar expenses. Under PPL’s proposal, does interest accrue to customers on the $14.7M reserve as it is collected in rates?
8. SDER rate filings: Should the Commission require review and approval of the annual rates before taking effect? What precedents exist for review of similar expenses? What service requirements, comment opportunity and reporting requirements should be required in such rate filings? Should only actual or estimated expenses be included?
9. How should storm damage rider costs be allocated among rate classes? Should the allocation factors be included in the tariff?

APPENDIX B

Supplement No. \_\_\_\_\_\_ to

Pa. P.U.C. No. \_\_\_\_\_

(COMPANY’S NAME)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(TERRITORY SERVED BY COMPANY)

The application of rates proposed in Supplement No. \_\_\_\_\_ to Tariff \_\_\_\_\_\_\_\_\_\_\_\_\_ Pa. P.U.C. No. \_\_\_\_ filed to become effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is hereby suspended until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at Docket No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Presently effective rates contained in Tariff \_\_\_\_\_\_\_\_\_\_\_\_ Pa. P.U.C. No. \_\_\_\_\_\_\_ and supplements thereto, will continue in effect until otherwise amended.

Issued: Issued in compliance with

Title 66 PA C.S.

1. *Dee Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593, 598 (Pa. Commw. 1995). *See also, Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n*, 563 A.2d 548, 556 (Pa. Commw. 1989)(“[i]t is a fundamental proposition of law that a hearing or trial procedure is necessary only to resolve disputed questions of fact and is not required to decide questions of law, policy or discretion.”).  [↑](#footnote-ref-1)
2. *Diamond Energy, Inc. v. Pa. Pub. Util. Comm’n*, 653 A.2d 1360, 1367 (Pa. Commw. 1995)(“based on the absence … of disputed facts, [a] paper hearing … [is] not violative of due process.”). [↑](#footnote-ref-2)