



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

December 16, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation;
Docket No. R-2012-2290597**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Comments of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being duly served with a copy of the document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the PP&L Industrial Customer Alliance

Enclosure

c: Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

David B. MacGregor, Esquire
Post & Schell PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dmacgregor@postschell.com

Michael W. Gang, Esquire
John H. Isom, Esquire
Christopher T. Wright, Esquire
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mgang@postschell.com
jisom@postschell.com
cwright@postschell.com

Paul E. Russell, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
perussell@pplweb.com

Todd S. Stewart, Esquire
William E. Lehman, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tstewart@hmslegal.com
welehman@hmslegal.com

Steven Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
sgray@pa.gov

Tanya J. McCloskey, Esquire
Candis A. Tunilo, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1921
tmccloskey@paoca.org
ctunilo@paoca.org
dlawrence@paoca.org

Regina L. Matz, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
rmatz@pa.gov

Daniel Clearfield, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
cshultz@eckertseamans.com

Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815
scott.j.rubin@gmail.com

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net

Joseph L. Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@aol.com

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
lechambon@comcast.net

Edmund "Tad" Berger
Berger Law Firm, P.C.
204 Tall Oak Drive
New Cumberland, PA 17070
tberger@bergerlawfirm.net

Mr. Frank J. Richards
Richards Energy Group, Inc.
781 South Chiques Road
Manheim, PA 17545
frichards@richardsenergy.com

VIA FIRST CLASS MAIL

Dave Kenney
577 Shane Drive
Effort, PA 18330

William Andrews
40 Gordon Avenue
Carbondale, PA 18407

John Lucas
112 Jessup Avenue
Jessup, PA 18434

Helen Schwika
1163 Lakeview Drive
White Haven, PA 18661

Roberta Kurrell
591 Little Mountain Road
Sunbury, PA 17801



Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Dated this 16th day of December, 2013, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2012-2290597
	:	
PPL Electric Utilities Corporation	:	

**COMMENTS OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

I. INTRODUCTION

On March 28, 2013, PPL Electric Utilities Corporation ("PPL" or "Company") filed Tariff Supplement No. 130 to PPL Electric Utilities Corporation Tariff – Electric Pa. P.U.C. No. 201 ("Supplement No. 130") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") proposing to establish a Storm Damage Expense Rider ("SDER").¹ PPL submitted Supplement No. 130 pursuant to the Commission's Opinion and Order entered on December 28, 2012, at the above-captioned docket ("December Order").

On April 5, 2013, the Commission issued a Secretarial Letter inviting parties to submit Comments and Reply Comments addressing PPL's proposed SDER. On April 18, 2013, the PP&L Industrial Customer Alliance ("PPLICA"), Bureau of Investigation and Enforcement ("I&E"), and Office of Consumer Advocate ("OCA") filed Comments to the proposed SDER. On May 6, 2013, PPLICA, OCA, and PPL filed Reply Comments.

On November 15, 2013, the Commission entered an Order requesting additional substantive input on PPL's proposal. To that end, the Commission set a new 30-day Comment

¹ In addition to Supplement No. 130, PPL also filed a letter outlining certain details of the proposed SDER ("SDER Letter").

period, with Reply Comments due 15 days afterwards. The Commission further identified specific questions to guide parties' Comments. Finally, the Commission informed parties that attempts to relitigate the appropriateness of allowing an alternative funding mechanism to replace the disallowed storm damage insurance will be disregarded.²

Pursuant to the November 15 Order, PPLICA hereby submits the following Comments responding to specific questions set forth in the Order. Specifically, PPLICA recommends that the Commission deny recovery of additional storm damage expenses through an automatic adjustment clause, consistent with Section 1307 of the Public Utility Code, and limit approval of an alternative funding mechanism to establishment of a storm damage reserve account.

II. COMMENTS

A. **PUC Question No. 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?**

The Commission must determine whether PPL's storm damage expenses are beyond the utility's control prior to authorizing recovery through an automatic adjustment clause. The Commonwealth Court of Pennsylvania has held that storm damage expenses must be expressly authorized by statute or easily identifiable and beyond a utility's control.³ The Public Utility Code does not expressly authorize recovery of storm damage expenses through automatic adjustment clauses and, while storm activity is obviously not within PPL's control, factors influencing costs of storm damage repairs involve considerable discretion and are substantially within PPL's control. As such, storm damage expenses do not meet the standard for cost recovery through a Section 1307(a) automatic adjustment clause.

² November 15 Order, p. 5.

³ *Popowsky v. Pennsylvania Public Utility Com'n*, 13 A.3d 583, 589 (Jan. 21, 2011) ("*Popowsky*").

The Commonwealth Court previously established a test for recovery of public utility expenses through an automatic adjustment clause.⁴ In *Popowsky* the court conducted a detailed review of its precedents interpreting Section 1307 of the Public Utility Code.⁵ Generally, the court acknowledged a preference for recovery of operational costs through a Section 1308 base rate case, but further identified the parameters for alternative cost recovery under Section 1307.⁶ First, the court referenced the statutory requirement that costs recovered under Section 1307(a) must be just and reasonable.⁷ For costs recovered pursuant to statutory directives, the Commission meets the just and reasonable standard by reviewing PPL's costs to ensure recovery complies with the authorizing statute.⁸ For costs not authorized by statute, the court found that costs may be recovered when the simple mathematical review required by Section 1307(a) is adequate to determine whether a cost is just and reasonable.⁹ The court found that cost recovery through the truncated Section 1307(a) review process is just and reasonable where costs are easily identifiable and beyond the utility's control.¹⁰ Accordingly, the Court concluded that Section 1307 authorizes recovery of costs through an automatic adjustment clause when costs are

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See Id.* "Only where the 'mathematical' review performed under Section 1307(a) of the Code is inadequate to determine whether a surcharge is 'just and reasonable', is express statutory authority required for surcharge recovery." *Id.*

¹⁰ PPL's claim that the court limited use of automatic adjustment clauses only with regard to recovery of capital expenses is an overstatement of the court's findings from a 2005 proceeding. PPL May 6 Reply Comments, p. 15 citing *Popowsky v. Pa. P.U.C.*, 869 A.2d 1144, 1160 (Pa. Cmwlth. 2005) ("*Popowsky 2005*"). In *Popowsky 2005*, the court found that recovery of capital costs through Section 1307(a) would render the specific granting of authority to recover capital costs for water distribution improvements under the former Section 1307(g) superfluous. *Popowsky 2005*, at 1160. Accordingly, the court determined that recovery of capital costs is not permitted under Section 1307(a), but certainly did not define capital costs as the sole limitation upon costs recovered through Section 1307(a). *Id.*

"expressly authorized, as in 66 Pa. C.S. § 1307(g), or for easily identifiable expenses that are beyond a utility's control, such as tax rate changes or changes in the costs of fuel."¹¹

Despite PPL's pronouncements to the contrary, storm damage costs do not meet the standard articulated by the Commonwealth Court for recovery of storm damage expenses. PPL has attempted to associate storm damage costs with other costs previously approved for recovery through automatic adjustment clauses.¹² However, the costs previously authorized for recovery through Section 1307 were either expressly authorized by statute or expenses beyond the utility's control. For example, public utilities have no influence over the costs of purchased water, electric transmission services, or state taxes.¹³ These expenses are determined by third parties. For statutorily authorized expenses such as purchased gas, electric generation supply services, universal service programs, energy efficiency and conservation programs, smart meter installation programs and distribution system improvement investments, the Commission establishes procedures to review costs incurred by the utility and recovered through the automatic adjustment clauses.¹⁴ Accordingly, all such costs are pass-through expenses controlled by either third party entities or regulators. As these costs are fixed by external forces beyond the scope of utility discretion, the cursory mathematical exercise under Section 1307(a) is sufficient to ensure that recovery of such costs is just and reasonable.

¹¹ *Id.*

¹² PPL May 6 Reply Comments, pp. 10-11.

¹³ Notably, PPL infers that the Company determines the "total revenue requirement for transmission service" but fails to clarify that it does so in strict accordance with a formula established by the Federal Energy Regulatory Commission. See PPL May 6 Reply Comments, p. 14, *cf PPL Electric Utilities Corporation Supplement No. 133 Pa. P.U.C. No. 201, Ninth Revised Page No. 19Z* (stating that transmission energy and demand charges are FERC-approved charges imposed by PJM).

¹⁴ See 66 Pa. C.S. § 1307(f) (directing recovery of purchased gas costs); 66 Pa. C.S. § 1307(e)(3.9) (directing recovery of electric generation supply costs); 66 Pa. C.S. § 2804(8) (directing recovery of universal service program costs); 66 Pa. C.S. § 2806.1(b)(1)(i)(H) (directing recovery of energy efficiency and conservation plan costs); 66 Pa. C.S. § 1307(f)(7)(ii) (directing recovery of smart meter costs); and 66 Pa. C.S. § 1357(c) (directing recovery of distribution system improvement charge costs).

Storm damage expenses are fundamentally different from other expenses currently recovered through Section 1307 in that they involve discretionary judgment on the part of PPL and would not be recovered pursuant to a statutory directive. As such, the Section 1307(a) mathematical exercise is insufficient to determine whether storm damage costs are just and reasonable. PPL argues that storm damage costs are not discretionary because the utility is obligated to respond to power outages without delay to ensure reasonably continuous service.¹⁵ The Company asserts that "PPL Electric cannot refuse to take all reasonable steps necessary to restore service promptly after an outage."¹⁶ In truth, PPL's obligation to restore service underscores the discretionary nature of storm damage costs.

Although PPL is certainly obligated to minimize the duration of power outages, the Company must exercise discretion to determine what steps are reasonable to meet its obligation.¹⁷ While PPL suggests that cost to be recovered through the SDER are narrowly defined, PPLICA submits that PPL exercises considerable discretion with regard to several cost items. For each storm damage event, the Company must decide how much overtime is necessary for employees, how many outside service providers and mutual aid providers should be retained, which transportation resources should be utilized, how and when materials and supplies should be procured for potential storm damage events, and various other cost-related matters.¹⁸ Regardless of the end result of any storm damage repair efforts, many cost-related staffing, scheduling, and operational decisions are invariably made by PPL, removing storm damage costs from the classification of costs beyond the utility's control.

¹⁵ PPL May 6 Reply Comments, p. 21

¹⁶ *Id.*

¹⁷ PPL's May 6 Reply Comments observed that parties had not shown PPL's storm restoration efforts to be inadequate. PPL May 6 Reply Comments, p. 21. As the pertinent issue concerns only PPL's necessity to exercise discretion rather than the results of its choices, PPLICA takes no position on whether PPL has adequately or inadequately responded to prior storm damage events.

¹⁸ *See* SDER, at 19Z.20 (listing various discretionary costs to be recovered through the SDER).

Because PPL's storm damage costs are influenced by the Company's discretionary judgment, the relief for PPL's disallowed storm damage insurance must come under authority other than a Section 1307 automatic adjustment clause. As noted above, the Commission has directed parties to provide substantive feedback regarding the appropriate mechanism to replace PPL's storm damage insurance.¹⁹ PPLICA acknowledges the Commission's request, but submits that the terms of Section 1307 bar recovery of storm damage expenses through an automatic adjustment clause. Accordingly, any additional relief granted to PPL to replace the disallowed storm damage insurance should be limited to other alternatives, including directing PPL to fund a reserve account or exploring potential legislative solutions.

B. PUC Question No. 6 - If the Commission approves any iteration of PPL's proposed SDER, a cap on revenues recovered through the rider is appropriate and necessary

PPLICA's April 18 Comments proposed implementation of a cap on revenues recovered through any approved SDER.²⁰ As addressed therein, many automatic adjustment clauses previously approved by the Commission incorporate upper limits on revenues recovered through the riders. Others are sufficiently contained by external factors. Consistent with past precedent and the Commission's overarching duty to ensure just and reasonable rates under Section 1301 of the Public Utility Code, any application of an SDER should be limited to recovering 1% of PPL's annual distribution revenues.²¹

¹⁹ November 15 Order, p. 5.

²⁰ PPLICA April 18 Comments, p. 10.

²¹ PPL's distribution revenues should be limited to revenue accruing from the Company's distribution system services, which includes the "wires" service, e.g. utility distribution substations, overhead lines, underground lines, and line transformers, and related services. *See Implementation of Act 11 of 2012*; Docket No. M-2012-2293611, Final Implementation Order (Aug. 2, 2012), p. 46 (distinguishing between distribution and transmission systems); *see also PPL Electric Utilities Corporation Supplement No. 125 to Electric Pa. P.U.C. No. 201*, Tariff Rule 4 (defining PPL's distribution system as "all lines energized at voltages less than the nominal 69,000 volts and excluding service extensions and lines energized at voltages of nominal 69,000 volts or higher").

As outlined in PPLICA's April 18 Comments, PPL's existing automatic adjustment clauses protect ratepayers by incorporating various revenue caps and cost containment procedures.²² The Commission has approved automatic adjustment clauses subject to percentage of revenue caps and Commission-approved budgets or procurement plans.²³ To the contrary, PPL's proposed SDER would permit recovery of incurred storm damage costs without limitation. Such a practice is plainly unjust and unreasonable under Section 1301 of the Public Utility Code and inconsistent with the Commonwealth Court's directive to utilize automatic adjustment clauses sparingly.²⁴

Although PPLICA takes the primary position that storm damage costs are not sufficiently beyond the utility's control to warrant recovery through an automatic adjustment clause, PPLICA alternatively submits that any approved SDER, or funding of a reserve account, should be subject to an annual cap equal of no more than 1% of PPL's distribution revenues. The use of a cap is consistent with recent cost restrictions established for expedited recovery of capital investments into PPL's distribution system under Act 11 of 2012.²⁵ The DSIC is already subject to a 5% cap. If the SDER is approved, the cap should be lower to limit the rate shock to ratepayers. In the event that annual storm damage costs exceed 1% of PPL's distribution revenues, the Company can elect to defer recovery the additional expenses until its next base rate case. The 1% cap would strike a reasonable balance between Company and ratepayer interests by providing relief for the continued unavailability of storm damage insurance and protecting ratepayers from exposure to unrestrained expenses.

²² *Id.* at 9-10.

²³ *Id.*

²⁴ 66 Pa. C.S. § 1301; *see also Popowsky*, at 591.

²⁵ *See* 66 Pa. C.S. § 1358(a)(1).

C. PUC Question No. 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?

Recovery of storm damage expenses through an SDER is a unique proposal and not directly supported by existing precedent. As discussed in response to Question 1, the Commission conducts annual or periodic review of certain expenses currently recovered through automatic adjustment clauses, but this exercise is reserved for expenses authorized by statute for recovery through an automatic adjustment clause.²⁶ Accordingly, review of annual or periodic rates is applied as a measure to limit expenditures under automatic adjustment clauses adopted pursuant to directives from the General Assembly.²⁷ The remaining expenses recovered through Section 1307 automatic adjustment clauses are those controlled by a third party, for which preapproval is unnecessary.²⁸

Although there does not appear to be a precedent for recovering storm damage costs through an automatic adjustment rider, PPLICA submits that any costs recovered through an approved SDER should be reviewed consistent with the Commission's procedures for review, service, comment, hearing and reporting utilized for Section 1307(f) purchased gas filings.²⁹ Through these proceedings, the Commission could review and, if necessary, revise PPL's procedures and policies for projecting storm damage costs, thereby providing some protection against unjust and unreasonable SDER rates.

²⁶ See Section II.A., *supra*.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 66 Pa. C.S. § 1307(f).

D. PUC Question No. 9 - How should storm damage rider costs be allocated among rate classes? Should the allocation factors be included in the tariff?

If the Commission approves PPL's SDER, a reserve account, or any other alternative mechanism to recover PPL's storm damage expenses, PPLICA recommends that the Commission adopt the allocation factors used in PPL's most recent base rate case. Accordingly, consistent with PPL's most recent Cost of Service Study ("COSS"), the Commission should adopt a 4.1% allocation of storm damage costs for LP-4 customers and exempt LP-5 customers from any allocation. Additionally, PPL should be compelled to disclose the SDER allocation factors in its tariff.

Allocating storm damage costs in accordance with PPL's most recent base rate case is consistent with cost causation principles. PPL has not disclosed specific allocation factors to be used in developing SDER charges, but appears to generally agree that current base rate allocators are reasonable.³⁰ Accordingly, PPL's SDER should reflect the allocation of storm damage expenses from the COSS adopted through PPL's 2012 base rate case.³¹

Additionally, because the 2012 COSS includes an immaterial 0.2% allocation of storm damage costs to PPL's transmission voltage customers, PPLICA requests that the Commission exempt LP-5 customers from the SDER, reserve account funding, or other alternative mechanism for recovery of PPL's storm damage costs. Customers on PPL's Rate Schedules LP-5, LPEP, and L5S take service directly from transmission voltage facilities at a minimum of 69 kV.³² PPL's proposed SDER will not recover costs for storm damage to transmission facilities.³³ While costs allocated to transmission voltage customers certainly should not exceed 0.2% of

³⁰ PPL May 6 Reply Comments, p. 27.

³¹ See PPL Exhibit JMK-1, p. 54.

³² PPL's transmission voltage rates include Rate Schedules LP-5 and LPEP. Supplement No. 130 further identifies a Rate Schedule L5S, which is unfamiliar to PPLICA, but appears to be a transmission voltage rate.

³³ PPL has clarified that "[t]ransmission storm damage expenses will continue to be recovered through transmission rates, and capitalized amounts will be included in rate base in future rate proceedings." See Supplement No. 130, Cover Letter to PUC Secretary, p. 2.

total SDER expenses, PPLICA submits that such a nominal and immaterial allocation justifies an exemption from the SDER or other alternative storm damage recovery mechanism.

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek (Pa. I.D. No. 78276)
Adeolu A. Bakare (Pa. I.D. No. 208541)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
abakare@mwn.com

Counsel to PP&L Industrial Customer Alliance

Dated: December 16, 2013