COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

December 31, 2013

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

Re: Pa. Public Utility Commission
v.
PPL Electric Utilities
Docket No. R-2012-2290597

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Comments in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

Candis A Tunilo

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures
cc: Honorable Susan D. Colwell
Certificate of Service
155413.DOC

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of December 2013.

SERVICE E-MAIL & INTER-OFFICE MAIL

Regina L. Matz, Esquire
Bureau of Investigation & Enforcement
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17101

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Paul E. Russell, Esquire
PPL Electric Utilities Corporation
2 North Ninth Street
Allentown, PA 18101

John H. Isom, Esq.
Christopher T. Wright, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Fl.
Harrisburg, PA 17101-1601

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808

Steven Gray, Esquire
Office of Small Business Advocate
300 North Second St.
Suite 1102
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111

Todd S. Stewart, Esquire
William E. Lehman, Esquire
Hawke, McKeon & Sniscak, LLP
100 North 10th Street
Harrisburg, PA 17101

Pamela C. Polacek, Esq.
Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Joseph L. Vullo, Esq.
1460 Wyoming Avenue
Forty Fort, PA 18704

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036

Daniel Clearfield, Esq.
Carl R. Shultz, Esq.
Deanne O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101

Robert D. Knecht
Industrial Economics Inc.
2067 Massachusetts Avenue
Cambridge, MA 02140

Eric J. Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

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

Richard Baudino
J. Kennedy & Associates, Inc.
1347 Frye Road
Westfield, NC 27053

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Dave Kenney
577 Shane Drive
Effort, PA 18330

John Lucas
112 Jessup Avenue
Jessup, PA 18434

Helen Schwika
1163 Lakeview Drive
White Haven, PA 18661

William Andrews
40 Gordon Avenue
Carbondale, PA 18407

Roberta A. Kurrell
591 Little Mnt. Road
Sunbury, PA 17801

Donald Leventry
1154 River Road
Holtwood, PA 17532

Candis A Tunilo

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org
Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
155399

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

Candis A. Tunilo
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org
Assistant Consumer Advocate

Darryl Lawrence
PA Attorney I.D. # 93682
E-mail: DLawrence@paoca.org
Assistant Consumer Advocate

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Facsimile: (717) 783-7152

DATED: December 31, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes

Regulations

Miscellaneous

I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Reply Comments to the Comments submitted by PPL Electric Utilities Corporation (PPL or Company), the Bureau of Investigation and Enforcement (I&E), and the PP&L Industrial Customer Alliance (PPLICA) to the Public Utility Commission's (Commission) Order entered November 15, 2013. In its Order entered November 15, 2013, the Commission sought additional Comments and Reply Comments to PPL's proposed Storm Damage Expense Rider (SDER), and the Commission posed nine questions identified in Appendix A to the Order.

As the OCA discussed in its Comments submitted on December 16, 2013, PPL's proposed implementation of a reconcilable rider for collection of storm damage expenses is not necessary and contrary to sound ratemaking principles and public policy. Since the Commission set a level of storm damage expense for PPL in its December 28, 2012 Order[1] that includes damages for all types of storms, with the exception of future extraordinary storm damage which PPL may petition to defer to its next base rate case should any such damage occur, there is no need to implement PPL's proposed SDER or any type of special recovery mechanism. Of note, PPL stated in its last base rate case that it will file its next base rate case in March 2014, which is only three months away. See e.g. December 28, 2012 Order at 46-48. As such, there is no reason to implement a new mechanism at this time. Instead, the Commission, if it determines that something must be done now, should direct PPL to use a reserve account mechanism to track the Company's storm damage expense until its next base rate case. In PPL's next base rate case, the Company, interested parties and the Commission can review the reserve account and determine if changes should be made at that time.

---

[1] Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, Order (Dec. 28, 2012) (December 28, 2012 Order).

As the OCA further discussed in its Comments, should the Commission determine that a mechanism must be implemented at this time, a storm damage reserve account mechanism should be implemented. An appropriate reserve account mechanism would work as follows: the utility's revenue requirement includes a base amount of storm damage expense, and the company records its actual expenses on an annual basis. The company then summarizes its storm damage restoration reserve revenues and storm restoration expenses in its next base rate case. The company's base rates are then adjusted to resolve any under/over recovery in the reserve account mechanism to more closely align revenue recovery with expected expenses going forward. Further, if the amount of imbedded storm damage expense exceeds the actual expense incurred, ratepayers would receive the benefit of the overpayment in determining base rates.

II. REPLY COMMENTS

The key points of PPL's proposed SDER, submitted to the Commission on March 28, 2013, included:

- All qualifying expenses for "reportable storms," as defined in 52 Pa. Code § 67.1, will be included in the SDER;
- The annual expenses included in the SDER will be offset by the $14.7 million included in PPL's base rates for reportable storm damage expenses;
- The SDER proposes to recover not only the costs of all "reportable storms" that do not rise to the level of a major or extraordinary storm events, but also costs of "major storms," as defined in 52 Pa. Code § 57.192, and extraordinary storms in that category;
- Cost recovery for all major storm events, including those categorized as extraordinary storms, will be amortized over three years;

- Cost recovery for major storm events will include carrying charges for the period of amortization in the form of interest;
- The SDER charges will go into effect without prior Commission review for reasonableness and prudence;
- Interested parties will have no opportunity to review SDER charges for reasonableness and prudence; and
- There is no cap on the amount of expenses that PPL can include for automatic recovery through the SDER.

In its Comments submitted on December 16, 2013, PPL proposes the following modifications to its proposed SDER:

- The SDER recovery period will be from January 1 through December 31 based on the reconciliation of storm damage expenses from January 1 through November 30 of the prior year. The SDER will recover only actual storm damage expenses; no expenses will be projected or estimated; and
- All reportable storm damage expenses will be recovered over a 12-month period;
- PPL may make interim changes to the SDER with ten days' notice, unless otherwise ordered by the Commission.

The OCA submits that these proposed modifications do not cure the fatal flaws in PPL's proposed SDER, and the SDER must be rejected. Additionally, the OCA submits that these proposed modifications, submitted nearly nine months after PPL's original SDER proposal, are not appropriate and should not be considered.

A. Question 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?

As the OCA discussed in its Comments, the proper test to determine whether a particular expense could be recovered through a Section 1307 automatic adjustment mechanism includes a finding that the expense in question is "substantial, variable and beyond the utility's control." See OCA Comments at 11-16. In its Comments, PPL agreed with this statement. PPL Comments at 6. PPL then went on to discuss why its proposed SDER meets this test and thus, should be authorized as a Section 1307 automatic adjustment mechanism. PPL Comments at 6-7.

The OCA disagrees with PPL that the storm damage expenses in question meet this test, as discussed further below. Initially, the OCA submits that PPL has only set out and discussed *part* of the legal requirements that must be met for storm damage expenses to be recovered through an automatic adjustment mechanism. A complete review of the applicable legal standard, as provided by I&E, PPLICA and the OCA in their Comments shows that PPL's SDER proposal does not meet the full legal standard and therefore, must be rejected. See I&E Comments at 8-13; PPLICA Comments at 2-6; OCA Comments at 11-16. The additional legal requirements that must be met for a Section 1307 automatic adjustment mechanism to be authorized, were succinctly set out by PPLICA, as follows:

> 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. 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. 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. Accordingly, the Court concluded that Section 1307 authorizes recovery of costs through an automatic adjustment clause when costs are "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."

PPLICA Comments at 3-4. (Footnotes omitted).

Storm damage expenses are not expressly authorized for recovery by statute. See OCA Comments at 12-15. As such, these expenses must not only be "substantial, variable, and beyond the utility's control," but also must be "easily identifiable" and subject to a simple mathematical review to qualify for potential recovery through a Section 1307 automatic adjusting mechanism. The OCA submits that PPL's SDER proposal fails to meet many of these requirements and accordingly, must be rejected.

First, not all storm damage expense is substantial. PPL acknowledges this in its Comments by providing that expenses incurred from "non-reportable" storms cannot be classified as "substantial" as to PPL. PPL Comments at 9. In addition, as discussed by I&E, expenses created by an individual storm event, even if it is a "reportable" storm, may not be substantial. At times, only when these expenses are aggregated together do the expenses collectively reach the level of substantial. See I&E Comments at 11-12.

Second, storm damage expenses are not "easily identifiable" as that term is explained by the Commonwealth Court. As the Court explained, where an expense item is not specifically set out for recovery by statute, the expense item must be able to be found as "just and reasonable" based on a purely "mathematical review." Popowsky v. Pa. PUC, 13 A.3d 583, at 591 (Pa. Cmwlth. 2011) (Newtown). Storm damage expenses do not meet this standard as PPL has discretion as to how storm response initiatives are handled; the amount of resources deployed to a particular storm event; and the level of "hardening" activities that the Company chose to pursue in order to mitigate the level of damage that storms could potentially cause to its infrastructure. As PPLICA accurately points out, pass-through costs, those that are fixed by an

outside entity, beyond the utility's control, are the type of costs that could meet the cursory "mathematical review" to ensure that such costs are "just and reasonable." PPLICA Comments at 4.

Lastly, the level of storm damage and the associated level of expense is not an item that is completely "beyond the utility's control." In its Comments, PPL refers to a publication titled "Before and After the Storm."[2] The OCA notes that this electric industry publication devotes the entire first chapter of this report to measures the utility can take "before" the storm to mitigate the level of storm damage and thus, the amount of restoration expense incurred. The introductory paragraph to the first chapter provides, in relevant part:

> The recent increase in storm activity and extreme weather events has highlighted the need for reinforcing and upgrading the aging electric distribution infrastructure. EEI looked into the main solutions to combating and mitigating storm damage and outages – system hardening and resiliency measures. **System hardening**, for purposes of this report, is defined as physical changes to the utility's infrastructure to make it less susceptible to storm damage, such as high winds, flooding, or flying debris. Hardening improves the durability and stability of transmission and distribution infrastructure allowing the system to withstand the impacts of severe weather events with minimal damage. **Resiliency** refers to the ability of utilities to recover quickly from damage to any of its facilities' components or to any of the external systems on which they depend. Resiliency measures do not prevent damage; rather they enable electric facilities to continue operating despite damage and/or promote a rapid return to normal operations when damages and outages do occur.

EEI Storm Report at 1, (emphasis in original).

PPL has no control over when and where storms strike, or the intensity of such events. PPL does, however, have discretion and control over how it prepares its infrastructure for storms and how it conducts restoration activities. As such, unlike pass-through costs that are imposed

---

[2] See PPL Comments at 18, fn 12; *Before and After the Storm*, Edison Electric Institute (Jan. 2013) (*EEI Storm Report*), available at: http://www.eei.org/issuesandpolicy/electricreliability/mutualassistance/Documents/Before%20and%20After%20the%20Storm.pdf

on the utility from an outside entity, storm damage expenses are not "beyond the utility's control." Accordingly, the OCA submits that PPL's SDER proposal does not fit within the narrow parameters established by the General Assembly and the Courts for automatic recovery of operational expenses through a Section 1307 mechanism.

B. Question 2: Does Section 1307 authorize "one-way" reconciliation provisions? Is BIE's storm damage reserve proposal contrary to statutory requirements?

PPL alleged that I&E's proposed "Reserve Rider" might not be permissible under the Public Utility Code because automatic adjustment clauses generally provide for two-way reconciliations. PPL went on to postulate that Section 1307 could be interpreted to allow such a one-way mechanism, but that proposition is legally uncertain. PPL further concluded that I&E's Reserve Rider proposal was also inconsistent with the public interest, as during times when storm damage expenses are light the Company would be accumulating ratepayer funds, with no interest being accrued and such accumulation of funds could continue for years with no present need for these funds. As such, PPL advocated for I&E's proposal to be rejected and its SDER to be approved. See PPL Comments at 9-13.

As discussed in the OCA's Comments and herein, I&E's proposed Reserve Rider suffers from the same legal infirmities as PPL's proposed SDER. OCA Comments at 16-17. The OCA submits that if the Commission determines that a mechanism must be implemented now, the Commission should direct PPL to establish a reserve account for storm damage expenses, as described in the OCA's Comments and further discussed herein.

C. Question 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?

In its Comments, PPL stated that it did not propose to amortize reportable storm damage expenses in the Company's original SDER filing, but PPL did propose to amortize expenses from all major storms over three years. PPL Comments at 13, 14. In its Comments, PPL, however, proposed to modify its proposed SDER to recover all reportable storm damage expenses over one year. Id. at 15-16. Based on this new proposal, PPL asserted that this question is now moot. Id. at 13.

As the OCA discussed in its Comments, there is no single appropriate period to amortize every storm damage expense claim from a major storm. See OCA Comments at 17-18. I&E similarly stated that "[s]ince not all major storms are of the same level of gravity and expense, it is probably best that no one amortization period be predetermined in advance." I&E Comments at 15. I&E also asserted that a sliding scale of amortization periods relative to aggregate reportable storm costs could be appropriate. Id. at 15-16. I&E, however, went on to state that this issue would be better evaluated in PPL's next base rate case and should therefore, be deferred. Id. at 17.[3] The OCA agrees with I&E that these types of issues would be better evaluated in PPL's next base rate case.

The OCA submits that PPL's proposed SDER modification to recover all reportable storm damage expense over one year does not render this question from the Commission moot. As the OCA discussed in its Comments, no utility in Pennsylvania amortizes storm damage expense from *all* major storm events; only extraordinary storm damage is accorded such treatment. See OCA Comments at 17-18. Yet, PPL's modified proposal seeks to recover all

[3] PPLICA did not submit Comments to this question from the Commission in its November 15, 2013 Order.

storm damage expenses, even expenses from extraordinary storms, over one year. The OCA submits that PPL's proposed modification is contrary to the well-established procedure of petitioning to defer recovery of extraordinary storm damage expense, and if the petition to defer is approved and recovery is approved in the utility's next base rate case, amortizing recovery of such expenses over several years. See e.g. December 28, 2012 Order at 38 (The Commission directed amortization of PPL's claims for recovery of extraordinary storm damage expenses from Hurricane Irene in 2011 and the October Snowstorm in 2011 over five years); Petition of West Penn Power Company for Authority to Defer for Regulatory Accounting and Reporting Purposes Certain Losses from Extraordinary Storm Damage, Docket No. P-2010-2216111, Order (Apr. 1, 2011) (West Penn Deferral Order); reconsideration denied by Order entered July 18, 2011 (The Commission directed West Penn to amortize extraordinary storm damage expenses incurred in February 2010 over ten years).

PPL asserted that even amortizing storm damage expenses from a storm such as Superstorm Sandy, from which PPL asserted it incurred nearly $60 million in expense, over one year would increase the distribution rates of a residential customer using 500 kWh per month by 4.38% or $1.29 per month. PPL Comments at 15. The OCA submits that this amount is not insignificant. This is nearly the same percentage increase to rates on a total bill basis that residential customers using 1,000 kWh per month experienced after the Company's 2012 base rate case. See Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, Suspension Order at 2 (May 24, 2012) (The Commission notes that as proposed by PPL, the bill for a residential customer using 1,000 kWh per month would increase from $111.60 to $118.59, a difference of $6.99 or 6.3%). Cf PPL Tariff Electric Pa. P.U.C. No. 201 (As permitted by the December 28, 2012 Order, the bill for a residential customer using 1,000 kWh per month

increased from $111.60 to $116.37, a difference of $4.77 or 4.3%). The OCA submits that PPL's proposal is even more troublesome because customers could be paying such an increase while experiencing storm-related outages. As such, PPL's proposed SDER modification should be rejected.

D. Question 4: For purposes of the SDER, should the Commission establish a different definition for "major storm" to comply with "extraordinary, non-recurring, and unanticipated" criteria?

As the OCA discussed in its Comments, the Commission should not establish a different definition for major storms because major storms are storms that are not necessarily extraordinary but are recurring and are anticipated. The definition of major storms cannot be altered to comply with the "extraordinary, non-recurring and unanticipated" criteria because these criteria refer specifically to extraordinary storms, which cause damage beyond that which could have been anticipated by a utility. See OCA Comments at 18-20. In its Comments, I&E stated that there is no need to establish a different definition for "major storm" if the Commission adopted I&E's storm reserve recommendation because all reportable events would be covered by the reserve mechanism. I&E Comments at 17. In its Comments, PPL stated that this question from the Commission would also be moot if the Company's proposed SDER modification to collect all reportable storm damage over one year is adopted. PPL Comments at 16. PPL went on to state that if the Commission does not adopt its proposed SDER modification, the Commission should not establish a definition for "major storm" that complies with a "extraordinary, non-recurring, and unanticipated" standard because this standard applies to recovery of expenses from extraordinary storms. Id. at 16-17. PPL noted that in this scenario, the Commission's existing definition for "major storm" provided a reasonable definition for classification of storms in PPL's SDER. Id. at 17.

Although for different reasons, the parties agree that the Commission should not alter the definition of "major storm."[4] The OCA reiterates, however, that storm damage expense for all non-reportable and reportable storms, except for reportable storms that rise to the level of extraordinary storms, is a normal operating expense for utilities. See e.g. 52 Pa. Code § 53.53(d). The Commission adopted PPL's storm damage expense claim in the 2012 base rate case. See December 28, 2012 Order at 38. As such, there can be no viable argument that PPL is not fully collecting its claimed operating expense for all storm damage in a timely manner. PPL's proposed SDER should, therefore, be rejected.

E. Question 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?

In response to this question, PPL provided that "there is no clear authority or precedent in Pennsylvania for 'replenishing' a storm reserve fund to levels in excess of expenses actually incurred." PPL Comments at 17. The OCA agrees with PPL on this point, and as discussed in its Comments, the lack of statutory authorization and the lack of conformance with legal precedent in Pennsylvania requires disapproval of both PPL's SDER proposal and I&E's Reserve Rider approach. OCA Comments at 16-17.

PPL went on to provide a review of a number of other jurisdictions where storm reserve accounts of some type have been used. PPL Comments at 18-21. The OCA submits that this additional information is useful and should be considered by the Commission as it reaches its ultimate decision in this matter. The OCA will, however, provide a response to some of the conclusions that PPL drew from these practices in other states.

[4] PPLICA did not submit Comments to this question from the Commission in its November 15, 2013 Order.

In several places, PPL attempted to distinguish and clarify that at least some of the reserve accounting practices used in other states would not be permissible in Pennsylvania. Specifically, PPL provided that "it [reserve mechanism] would not be permitted under Pennsylvania law because, absent specific statutory authority, capitalized expenditures may not be recovered through an automatic adjustment clause." See e.g. PPL Comments at 18. As the OCA provided in its Comments, reserve accounting is not a foreign concept to Pennsylvania ratemaking and does not include an automatic adjustment mechanism. OCA Comments at 10-11. Further, the recovery of capitalized expenditures through the use of a storm reserve account should not be a concern. As the Company provided:

> straight time wages and benefits incurred to repair storm damage and capital expenditures will not be recovered through the SDER, and, instead, will continue to be recovered through base rates.

PPL Comments at 9. There is no reason why a storm reserve account could not be constructed to operate in exactly the same manner as PPL has described here, and thus the concern over recovery of capital expenditures would be eliminated.

PPL next responded to the question of whether excess earnings should be used as a means to provide some level of funding for a reserve account. In its Comments, the OCA submitted that the Commission should consider excess earnings as a possible source of storm reserve account funding. OCA Comments at 24. In its Comments, PPL provides that the Commission cannot implement such a mechanism at the present time, because to do so would violate the Commission-made rate doctrine as PPL's base rates have already been approved in this proceeding. PPL Comments at 21.

As an initial matter, the OCA notes that this base rate proceeding is actually still on-going. The current matter pertaining to the establishment of a rider or reserve account is

proceeding under the same docket number as the base rate case from which this issue arose. To that end, this base rate matter has yet to reach a "conclusion."

Further, the Commission could order PPL to establish a storm reserve account at the present time, and then defer the issue as to the excess earnings question until PPL's next rate case filing when all issues of proper sizing of the reserve and funding levels could be fully vetted on the record.[5] As a secondary position, PPL alleged that "[t]he Commonwealth Court has held on several occasions that return is not to be reflected in automatic adjustment clauses except where there is express statutory authority for doing so, such as Section 1357(c) of the Public Utility Code." PPL Comments at 22.

The OCA submits that PPL's assertions here are misplaced. The question posed by the Commission here deals with a "storm reserve fund." The specific issue under review here has nothing to do with "riders" or PPL's proposed SDER, contrary to the Company's pronouncements. The OCA submits that a fair reading of Question 5 is that the Commission is seeking to solicit responses as to whether excess earnings should be considered as a possible source of funding for a "storm reserve account." As such, PPL's assertions as to what the Public Utility Code provides regarding "automatic adjustment clauses" is not relevant to the funding of reserve accounts.

The OCA submits that all of the information supplied by I&E, PPL and the OCA[6] as to how reserve accounting operates in other jurisdictions should be reviewed and considered by the Commission as it reaches its decision in this matter.

---

[5] To be clear, the OCA submits that, unlike the reserve account issues just discussed, the primary question of whether or not an automatic adjustment mechanism for the recovery of storm damage expenses is consistent with the Public Utility Code and case law in Pennsylvania is ripe for decision and thus, should not be deferred to a later time.

[6] PPLICA did not submit Comments to this question from the Commission in its November 15, 2013 Order.

F. Question 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?

In its Comments, PPL asserted that no cap on amounts recoverable through its proposed SDER should be adopted because the Public Utility Code does not permit limiting recovery of automatic adjustment mechanisms. PPL Comments at 22. PPL also asserted that the Company would have no method available to recover a shortfall if the cap were reached. Id. at 23. I&E asserted that a cap on the size of a reserve would be appropriate and would be reviewed as part of PPL's base rate cases, but a cap on costs recoverable through a rider or reserve account would not be appropriate. I&E Comments at 27. I&E went on to assert that a more appropriate size for a current reserve account (either a regulatory asset or regulatory liability balance) for PPL would be approximately $50 million, while PPL would continue to collect $14.7 million annually in base rates. Id. at 28. In its Comments, PPLICA asserted that if an automatic adjustment mechanism were adopted, which PPLICA opposes, or a reserve mechanism were implemented, an annual cap of 1% of PPL's distribution revenues should also be implemented. PPLICA Comments at 6-7.

The OCA submits that while there may be merit in a cap in mitigating harm to consumers, capping costs recoverable through an automatic reconcilable rider will not ensure that PPL's rates remain just and reasonable. See OCA Comments at 24-25. As discussed in the OCA's Comments, a cap is not a viable substitute for a utility meeting its burden of proof that its claimed expenses are reasonable and prudent as required by Sections 315(a) and 1301 of the Public Utility Code.

Additionally, the OCA would note that I&E's assertion that a reserve mechanism should be adopted and sized at $50 million, with PPL continuing to collect $14.7 million annually in

base rates, should not be adopted here. A base rate case is a more appropriate time for consideration of the proper size of a reserve. Furthermore, as already discussed herein and in the OCA's Comments, the Commission adopted PPL's *entire* storm damage expense claim in the 2012 base rate case. See December 28, 2012 Order at 38. As such, there can be no viable argument that PPL is not fully collecting its claimed operating expense for all storm damage in a timely manner.

G. Question 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?

In its Comments, PPL asserted that this question is moot because PPL is no longer proposing to amortize any storm damage expenses except those relating to Superstorm Sandy. PPL Comments at 23. PPL's proposed SDER, however, would impose two-way interest on over and under-recoveries of storm damage expense incurred for the twelve months ending November 30th of each year, as such interest is common for automatic adjustment clauses. Id. at 24. For the reasons stated in the OCA's Comments at pages 11- 16 and above in response to Question 1, storm-related expenses do not meet the standard for the implementation of a Section 1307 automatic adjustment mechanism. As such, PPL's assertions here must be rejected because they presume the implementation of a Section 1307 mechanism.

As discussed in the OCA's Comments, it is well established that no interest is charged on amortizations and deferred expenses, especially storm damage expense deferrals. See OCA Comments at 25. I&E agreed that it is inappropriate to charge interest on amortized storm expenses. I&E Comments at 28-29. PPL also agreed that interest is not normally applied to expenses recovered through base rates, such as extraordinary storm damage expenses. PPL

Comments at 24. It appears that the parties[7] agree that no interest should be permitted on amortized expenses.

H. Question 8: 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?

In its Comments, PPL took the position that no prior review or approval should be required before rates would take effect under PPL's SDER proposal. PPL Comments at 25. PPL went on to cite a pair of court decisions as support for its position. PPL Comments at 25-27. The OCA submits, that the cases cited by PPL are instructive to the matter at hand, but not for the reasons that PPL discusses.

PPL cited the 1982 Commonwealth Court case of Alleghany Ludlum Steel Corporation. Alleghany Ludlum Steel Corp. v. Pa. PUC, 447 A.2d 675 (Comm. Ct. 1982) (Alleghany Ludlum).[8] The key point here is that Alleghany Ludlum is centered on a due process challenge to an Energy Cost Rate (ECR) adjustment that is *statutorily authorized* by the General Assembly and embodied in the Public Utility Code in Section 1307(c). Alleghany Ludlum at 676. Unlike PPL's SDER proposal, the ECR is based on a statutory directive, created by the General Assembly and specifically set out in Section 1307(c) for automatic expense recovery.

In dismissing the due process challenge, the Court provided that "the PUC is given limited discretion in determining ECR increases because Section 1307(c) explicitly describes the factors the PUC is to consider to an ECR application." Alleghany Ludlum at 682. In Alleghany, due process was granted but after the rate went into effect, subject to refund. Id. Contrary to

---

[7] PPLICA did not submit Comments to this question from the Commission in its November 15, 2013 Order.

[8] PPL also cites to the appeal of Alleghany Ludlum to the Pennsylvania Supreme Court, where the Commonwealth Court's decision was upheld. See Alleghany Ludlum Steel Corp. v. Pa. PUC, 459 A.2d 1218 (Pa. 1983).

PPL's assertions, the automatic adjustment mechanism at issue in Alleghany Ludlum and PPL's proposed SDER are not similar in kind or operation as one (the ECR) is specifically authorized by statute with explicit directions from the General Assembly as to its operation and the other (PPL's SDER) is not.

As discussed above in response to Question 1 and in the OCA's Comments on pages 11-16, storm damage expense is not among the limited items that are specifically set out by statute for automatic recovery. Consistent with that discussion, and the like conclusions of I&E and PPLICA, PPL's SDER does not qualify for automatic cost recovery through a Section 1307 mechanism. Accordingly, the Alleghany Ludlum cases provide no support for PPL's SDER proposal.

I. Question 9: How should storm damage rider costs be allocated among rate classes? Should the allocation factors be included in the tariff?

PPL advocated for allocating storm damage expenses in the same manner as its cost of service study (COSS) provided for in allocating the revenue increase in the 2012 base rate case. PPL Comments at 28. Nothing in PPL's Comments have caused the OCA to reconsider or change the allocation procedure stated in the OCA's Comments. OCA Comments at 28-29. The OCA maintains that a fair and reasonable allocation process would be for all distribution customers to pay a flat per kWh charge.

III. CONCLUSION

The Office of Consumer Advocate submits the foregoing information, as well as the information contained in the OCA's Comments submitted on December 16, 2013, for the Commission's consideration pursuant to its Order entered November 15, 2013.

Respectfully Submitted,

Candis A. Tunilo

Candis A. Tunilo (PA Atty. I.D. #89891)
Assistant Consumer Advocate
E-Mail: CTunilo@paoca.org

Darryl A. Lawrence (PA Atty. I.D. #93682)
Assistant Consumer Advocate
E-Mail: DLawrence@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048

Dated: December 31, 2013
178141