McNees
Wallace & Nurick LLC

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 31, 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 ("Commission") the Reply Comments of the PP&L Industrial Customer Alliance ("PPLICA") to the Commission Order entered on November 15, 2013, 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

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
tsstewart@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 31st 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	:	

REPLY 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 (individually "PPL Apr. 18 Comments," "I&E Apr. 18 Comments," and "OCA Apr. 18 Comments"). On May 6, 2013, PPLICA, OCA, and PPL filed Reply Comments (individually

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

"PPL May 6 Reply Comments," "OCA May 6 Reply Comments," and "PPL May 6 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 period, with Reply Comments due 15 days afterwards.

Pursuant to the November 15 Order, PPLICA filed Comments with the Commission on December 16, 2013, responding to specific questions set forth in the Order ("PPLICA Dec. 16 Comments"). On the same date, PPLICA received Comments from PPL, I&E, and OCA (individually "PPL Dec. 16 Comments," "I&E Dec. 16 Comments," and "OCA Dec. 16 Comments").

PPLICA hereby submits the following Replies to issues raised in parties' December 16 Comments.

II. REPLY COMMENTS

A. Additional Relief is Not Necessary to Provide PPL With Reasonable Recovery of Storm Damage Expenses.

OCA's Dec. 16 Comments reiterate that no party to this proceeding contests PPL's right to ultimately recover any prudently incurred storm damage expenses.[2] As such, OCA correctly reminds all parties and the Commission that PPL can fully recover its storm damage expenses without resorting to alternative ratemaking mechanisms.[3] PPLICA agrees with OCA's observation and recommends that the Commission consider the traditional expense deferral process that would remain available for recovering uninsured storm damage costs absent approval of the proposed SDER or other alternatives.

[2] See OCA Dec. 16 Comments, pp. 9-10.
[3] Id.

As stated by OCA and acknowledged by PPL, the Company currently recovers $14.7 million dollars in annual base rates to repair damage from all types of storms.[4] While this revenue allocation may not be sufficient to recover extraordinary storm damage expenses, the Company can request authority to defer any storm damage expenses in excess of $14.7 million for recovery through its next base rate case. Notably, the standard for deferring expenses for recovery through a base rate case requires only that the expense fit the scope of allowed rate case expenses.[5] As storm damage costs will generally meet this standard, expense deferral would remain a readily available tool for recovering extraordinary storm damage expenses. Therefore, even without storm damage insurance, PPL does not require alternative relief to fully recover its storm damage expenses.

B. Present Circumstances Warrant Deferring All Issues Regarding PPL's SDER to the Company's Next Base Rate Case.

In the event that the Commission deems alternative cost recovery to be necessary for PPL's storm damage expenses, PPLICA further concurs with the OCA and I&E recommendations to defer any consideration of a rider or other alternatives for review through the Company's next base rate case. As averred by I&E and OCA, the proposed SDER was not reviewed on the record during PPL's 2012 base rate case.[6] Because PPL has indicated its intention to file a base rate case in March 2014, both I&E and OCA recommend that the Commission address the proposed SDER within the rate proceeding. In light of the issues raised by parties in this proceeding, PPLICA concurs with the recommendation to review the proposed SDER and any other alternative solutions for recovery of PPL's storm damage expenses in the context of the Company's base rate case.

---

[4] Id. at 10; PPL Dec. 16 Comments, p. 3.
[5] OCA Dec. 16 Comments, p. 10.
[6] I&E Dec. 16 Comments, p. 5; OCA Dec. 16 Comments, p. 4.

Although PPLICA's primary concern remains the legality of recovering storm damage expenses through a Section 1307(a) rider, PPLICA agrees that any approval of the proposed SDER should occur only after parties have an opportunity to fully consider and analyze the rider within the context of PPL's overall rates. As previously observed by PPLICA and clarified through I&E's detailed review of the 2012 rate proceeding, the proposed SDER was not subject to evidentiary proceedings in PPL's 2012 rate case.[7] The confusion and divergent interpretations of the record from the 2012 rate proceeding reflected in parties' Comments to the SDER underscore the lack of record evidence supporting the operation and scope of the rider.[8]

If the Commission remains committed to implementing some form of alternative recovery for PPL's storm damage expenses, any alternative mechanism should be adopted only after thorough evidentiary review. With a PPL rate case expected in March 2014, the Company will be afforded an opportunity to develop an evidentiary record to facilitate its review of the proposed SDER and any other alternative for recovery of PPL's storm damage expenses.[9] Accordingly, PPLICA concurs with OCA and I&E that consideration of the SDER or other alternatives for recovering PPL's storm damage expenses must be deferred to PPL's next base rate case.

C. Storm Damage Costs Are Not Beyond PPL's Control.

In its Dec. 16 Comments, PPL continues asserting that storm damage expenses are beyond the utility's control and recoverable through a Section 1307(a) automatic adjustment rider.[10] This erroneous claim rests on the Company's refusal to: (1) acknowledge the distinct requirements for recovery of storm damage expenses compelled by statute versus those

---

[7] PPLICA Apr. 18 Comments, pp. 3-4; I&E Dec. 16 Comments, pp. 3-7.
[8] See PPL May 6 Reply Comments, p. 8; cf. PPLICA Apr. 18 Comments, pp. 3-4; OCA Dec. 16 Comments, p. 4; I&E Dec. 16 Comments, p. 5
[9] OCA Dec. 16 Comments, p. 11, see also I&E Dec. 16 Comments, p. 7.
[10] PPL Dec. 16 Comments, p. 6.

independently authorized by the Commission; or (2) distinguish between the occurrence of storms and the expenses incurred in responding to each individual storm event. As exhaustively discussed in PPLICA's Dec. 16 Comments and further addressed in I&E and OCA's Dec. 16 Comments, the Commission approves expenses for recovery through Section 1307(a) when the expenses are authorized by statute or outside of the utility's control.[11] Storm damage expenses, while at some level compelled by uncontrollable storm events, are also significantly determined by PPL's discretionary decisions and therefore easily distinguished from pass-through expenses previously approved for Section 1307(a) recovery absent a statutory directive.

PPL's claims that all storm damage expenses are properly recoverable through a Section 1307(a) automatic adjustment clause are contrary to the precedents cited by PPLICA, I&E, and OCA. In an attempt to support its proposed SDER, PPL broadly cites to a litany of Commission precedents approving automatic adjustment clauses.[12] However, PPLICA, I&E, and OCA more thoroughly analyzed a recent Commonwealth Court proceeding addressing Section 1307(a). Each of the non-Company parties reached the same conclusion, finding that the Commonwealth Court, in Popowsky v. Pa. P.U.C., 13 A.3d 583 (Pa. Cmwlth 2011) ("Newtown"), authorized the implementation of Section 1307(a) automatic adjustment clauses where the costs are explicitly authorized by statute or approved at the Commission's discretion.[13] However, the Commonwealth Court observed that the Commission's discretion to approve recovery of costs not explicitly authorized by statute is limited to costs that are beyond the utility's control.[14] While each of the precedents cited by PPL falls into one of the two categories established for

[11] PPLICA Dec. 16 Comments, pp. 4-6; I&E Dec. 16 Comments, p. 9; OCA Dec. 16 Comments, p. 13.
[12] PPL Dec. 16 Comments, p. 8.
[13] PPLICA Dec. 16 Comments, pp. 4-6; I&E Dec. 16 Comments, p. 9; OCA Dec. 16 Comments, p. 13.
[14] Id.

Section 1307(a) cost recovery, storm damage expenses are not authorized by statute or beyond the control of the utility.

PPL concedes that storm damage costs are not explicitly authorized by statute, but asserts that such costs are beyond the utility's control because the Company cannot control storm events, and has a statutory obligation to repair the ensuing storm damage to its distribution system.[15] The Comments filed by PPLICA, I&E, and OCA comprehensively explained that the storm events are beyond PPL's control, but that costs incurred to repair the resulting damage remain significantly within PPL's control.[16] To the contrary, prior automatic adjustment clauses approved by the Commission absent explicit statutory authority recovered costs entirely within the control of a third party or government entity.[17] As storm damage costs remain within the purview of PPL's discretionary authority, such costs are not eligible for Section 1307(a) cost recovery unless explicitly designated by statute.

D. Section 1307 Does Not Prohibit a Cap on Storm Damage Costs.

In the event that the Commission finds storm damage costs to be eligible for recovery through Section 1307(a), the Commission must disregard PPL's unfounded assertion that the Commission lacks authority to cap expenses recovered through a Section 1307(a) rider.[18] The plain language of the statute and prior caselaw clearly establish the Commission's authority to approve automatic adjustment clauses subject to revenue caps.

PPL alleges that the Commission lacks authority to cap a Section 1307(a) automatic adjustment clause based on the plain language of the statute. The Company claims that Section 1307(a) requires the Company to report the "total amount of that expenses or class of expenses

[15] PPL Dec. 16 Comments, p. 7.
[16] PPLICA Dec. 16 Comments, p. 5, OCA Dec. 16 Comments, pp. 15-16. I&E Dec. 16 Comments, p. 11.
[17] PPLICA Dec. 16 Comments, p. 4.
[18] PPL Dec. 16 Comments, p. 23.

incurred which is the basis of the automatic adjustment clause" to be reconciled against the total revenues received through the clause, with no provision for further limitation.[19] This statement is in error. Section 1307(a) directs the Commission to approve costs for recovery through an automatic adjustment clause "as shall provide a just and reasonable return on the rate base of such public utility."[20] This authority includes discretion to establish revenue caps as necessary to avoid unjust and unreasonable cost recovery.

Importantly, the Commission has exercised such authority and capped revenue recovered through previous automatic adjustment clauses approved absent explicit statutory authority. Most recently, the Commission approved a Purchased Water Adjustment Clause for Newtown Artesian Water Company, but capped revenue recovered through the clause to 3% of base rates.[21] Similarly, the Commission previously approved a 5% cap on Distribution System Improvement Charges ("DSIC") granted to water companies prior to codification of a DSIC cap in 2011.[22] Therefore, PPL's assertion that the Commission lacks authority to cap the proposed SDER must be denied.

E. I&E and PPL's Support For Excessive Revenue Recovery Through the SDER Must Be Rejected to Preserve Review of PPL's Storm Damage Costs Through Base Rates.

I&E and PPL both support recovery of unreasonable costs through the SDER, with I&E suggesting that capping revenues recovered through a reserve account or rider may not be appropriate and PPL alleging that recovery of an annual amount up to $60 million through an SDER would be reasonable.[23] To the contrary, the Commonwealth Court has recognized that Section 1307(a) automatic adjustment clauses should be used sparingly, with base rates

[19] Id. at 22.
[20] 66 Pa. C.S. § 1307(a).
[21] Pa. P.U.C. v. Newtown Artesian Water Co., Docket Nos. R-2009-2117550, et al., 2010 Pa. PUC LEXIS 757 (Apr. 15, 2010).
[22] Re Philadelphia Suburban Water Company, Docket No.R-00963797, 1996 WL 862756 (Pa.P.U.C.), 1.
[23] I&E Dec. 16 Comments, p. 27; PPL Dec. 16 Comments, p. 15.

remaining the primary and preferred method of cost recovery.[24] Accordingly, any expenses recovered through the SDER or other alternatives must be limited to ensure that the majority of PPL's storm damage expenses remain subject to stringent review through base rate proceedings.

Both I&E and PPL ignore the Commonwealth Court's pronouncement that Section 1307(a) automatic adjustment clauses are intended to provide limited relief without obfuscating the necessity for base rate proceedings. I&E argues that a cap on SDER recoveries may not be appropriate, while PPL projects that recovery of up to $60 million dollars through an annual SDER would not generate exorbitant bill impacts.[25] Such positions were anticipated by the Commonwealth Court in Popowsky 2005, where the court cautioned against use of Section 1307(a) to disassemble the ratemaking process by replacing review of standard utility expenses with less stringent review through automatic adjustment clauses.[26] The same principles were more recently reinforced in Newtown, where the court approved an automatic adjustment clause for purchased water expenses, but limited the cost impact to customers by capping rider revenues at 3% and directing the utility to file a base rate case for any additional recoveries.[27]

In assessing PPL's proposed SDER, the Commission should demonstrate the same concern for unreasonable rate impacts to customers. To that end, the Commission should disregard I&E's reticence to apply a cap on revenues recovered through an SDER or other alternative, finding instead that rider revenues must be limited to properly incentivize base rate

---

[24] See OCA Comments, p. 12 citing Popowsky v. Pa. P.U.C., 869 A.2d 1144, 1160 (Pa. Cmwlth. 2005), appeal denied, 895 A.2d 552 (Pa. 2006) ("Popowsky 2005").

[25] I&E Dec. 16 Comments, p. 27; PPL Dec. 16 Comments, p. 15. Notably, I&E's Dec. 16 Comments support implementation of a $50 million cap on the amount accumulated in a reserve account, but oppose approval of a rider mechanism at this time. I&E Dec. 16 Comments, pp. 28, 30. Without approval of a rider accompanying the reserve account, PPL would fund the reserve account solely by accumulating budgeted base rate storm damage expenses. See I&E Dec. 16 Comments, p. 5. However, to the extent the Commission considers approval of a rider, PPLICA avers that a cap is necessary to mitigate adverse rate impacts to customers and preserve review of PPL's storm damage costs through base rates.

[26] Popowsky 2005, at 1160.

[27] Newtown, at 591.

proceedings. To that end, the Commission should also reject PPL's focus on the incremental impact of SDER rates upon individual customers and consider the collective rate impacts of the ever-increasing slate of riders applied to PPL customers. Contrary to PPL's impression that automatic adjustment clause "procedures have been followed without controversy of difficulty for years," the increasing use of automatic adjustment clauses has generated extensive adverse rate effects and controversies, particularly for PPL's Large Commercial and Industrial ("C&I") customers.[28] As such, consistent with the Commonwealth Court's warning against overuse of automatic adjustment clauses, the Commission must limit any SDER expenses as necessary to ensure that the base rate proceedings remain the primary forum for reviewing storm damage costs.

F. OCA's Proposal to Allocate Storm Damage Expenses on a Flat Per-kWh Basis Must Be Denied.

OCA's proposal to allocate storm damage expense costs on a flat per-kWh basis is arbitrary and must be denied. Parties participating in PPL's most recent base rate case, including OCA, fully litigated the issue of allocating PPL's distribution expenses, including storm damage costs. As recounted by PPL, the Company currently recovers $14.7 million for storm damage expenses through base rates, of which the per-class expenses are allocated consistent with the Cost of Service Study ("COSS") approved in the Company's 2012 base rate case.[29] There is no evidentiary foundation or rational basis for allocating additional storm damage expenses on a vastly divergent flat per-kWh basis where the Commission has previously determined that the fully litigated COSS provides a just and reasonable per-class allocation of storm damage costs.

---

[28] See PPL Electric Utilities Corp. Proposed Transmission Service Charge (TSC) Reconciliation for the 12 Months Ended November 30, 2010, Docket Nos. M-2010-2213754 et. al, (Order entered Aug. 15, 2013) (directing PPL to issue refunds for certain 2010 TSC reconciliation errors); see also PP&L Industrial Customer Alliance v. PPL Electric Utilities Corporation; Docket Nos. C-2013-2398440 and C-2013-2398442 (Complaints filed Dec. 23, 2013) (alleging unreasonable allocation of Act 129 Government Nonprofit and Institutional program costs to Large C&I customers through the PPL's Act 129 Compliance Riders).

[29] PPL Dec. 16 Comments, p. 3.

There is no record evidence to support such a discriminatory rate allocation and rate design for the SDER. All Commission action must be supported by "substantial record evidence," which the Commission has defined as "evidence that is sufficient to convince a reasonable mind to a fair degree of certainty."[30] As OCA has not offered any evidence to support allocating SDER costs on a flat per-kWh basis, the proposal should not be considered by the Commission.

Additionally, OCA's proposal contrasts with established ratemaking principles. Adopting the OCA's proposal would be contrary to cost of service ratemaking, in violation of Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010 (Pa. Cmwlth. 2006). Allocating class costs on an interclass flat per-kWh basis would also result in unjust, unreasonable, and discriminatory rates in violation of Sections 1301 and 1304 of the Public Utility Code.[31] To ensure that any SDER remain just and reasonable under the Public Utility Code, the Commission must deny OCA's unwarranted proposal to allocate SDER expenses on a per-kWh basis.

[30] See Pa. P.U.C. v. Wilbar Realty Co., 88 Pa. P.U.C. 1(1998). See also Pa. P.U.C. v. Peoples Natural Gas Co., 69 Pa. P.U.C. (1989); Pa. P.U.C. v. Pa. Gas and Water Co., 79 Pa.P.U.C. 349 (1993); Pa. P.U.C. v. Metropolitan Edison Co., 60 Pa.P.U.C. 349 (1985).

[31] 66 Pa. C.S. § 1301, 1304.

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 31, 2013