



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Christopher T. Wright

cwright@postschell.com
717-612-6013 Direct
717-731-1985 Direct Fax
File #: 154640

January 7, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

**Office of Consumer Advocate v. PPL Electric Utilities Corporation
Docket No. C-2014-2456453**

Dear Secretary Chiavetta:

Enclosed for filing is the Prehearing Conference Memorandum of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/jl
Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via E-Mail & First Class Mail

Tanya J. McCloskey, Esquire
Candis A. Tunilo, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Daniel G. Asmus, Esquire
Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Harrisburg, PA 17101

Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
PO Box 3265
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265

Joseph L. Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
Commission on Economic Opportunity

Adeolu A. Bakare, Esquire
Pamela C. Polacek, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
PP&L Industrial Customer Alliance

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 N. 10th Street
PO Box 1778
Harrisburg, PA 17101
Dominion Retail, Inc.
d/b/a Dominion Energy Solutions

Scott J. Rubin, Esquire
Public Utility Consulting
333 Oak Lane
Bloomsburg, PA 17815
*International Brotherhood of Electrical
Workers, Local 1500*

Kenneth L. Mickens, Esquire
The Sustainable Energy Fund of Central Eastern
Pennsylvania
316 Yorkshire Drive
Harrisburg, PA 17111
*Sustainable Energy Fund of
Central Eastern Pennsylvania*

Daniel Clearfield, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
*Granger Energy of Honey Brook LLC &
Granger Energy of Morgantown LLC*

Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Direct Energy Services LLC

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Frank J. Richards
Richards Energy Group, Inc.
782 South Chiques Road
Manheim, PA 17545-9135
Richards Energy Group, Inc.

Via First Class Mail

John Lucas
112 Jessup Avenue
Jessup, PA 18434


Helen Schwika
1163 Lakeview Drive
White Haven, PA 18661

Dave A. Kenney
577 Shane Drive
Effort, PA 18330

William & Tracey Andrews
40 Gordon Avenue
Carbondale, PA 18407

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

Date: January 7, 2015



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2012-2290597
v.	:	C-2014-2456453
	:	
PPL Electric Utilities Corporation	:	

**PREHEARING CONFERENCE MEMORANDUM OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”), by and through its attorneys, and files this Prehearing Conference Memorandum in the above-captioned matter pursuant to the “1st Prehearing Order on the SDER Issue,” dated December 18, 2014, and states as follows:

I. PROCEDURAL HISTORY AND BACKGROUND

On December 28, 2012, the Pennsylvania Public Utility Commission (“Commission”) entered an order in PPL Electric’s 2012 base rate case at Docket No. R-2012-2290597 (the “*Base Rate Case Order*”). Therein, the Commission ordered, *inter alia*, PPL Electric to file a “rider for storm damage expense recovery” within ninety days from the date of the *Base Rate Case Order*. See *Base Rate Case Order*, pp. 37-38. In response, on March 28, 2013, PPL Electric filed Supplement No. 130 to its Tariff – Electric Pa. P.U.C. No. 201, proposing a Storm Damage Expense Rider (“SDER”) to provide recovery of operating expenses caused by storms that are reportable under the PUC’s regulations at 52 Pa. Code § 67.1(b).

A record regarding the implementation of the proposed SDER was developed through four rounds of comments filed with the PUC and made part of the public record. The PUC reviewed and considered the comments filed by each of the parties in response to the proposed SDER. On April 3, 2014, the Commission entered an order at Docket No. R-2012-2290597 (the “*SDER Order*”) approving the SDER subject to certain modifications. Therein, the Commission concluded that “the implementation of the SDER is in the public interest and that the SDER, as modified, complies with the requirements of 66 Pa.C.S. Section 1307.” *See SDER Order*, p. 31.

As approved by the Commission, the SDER will recover only actual, experienced storm damage operating and maintenance expenses. Recoverable expenses include only those incurred to remediate storm damage cause by reportable storms, excluding straight time wages and benefits, expenses reimbursed by others and capitalized costs. The SDER recognizes that base rates currently provide for recovery of \$14.7 million annually in storm damage expenses for reportable storms. The SDER will recover from customers or refund to customers, as appropriate, only applicable expenses from reportable storms that are less than or greater than \$14.7 million recovered annually through base rates. In addition, expenses from major storm events are to be recovered through the SDER over three years, with interest. The purpose of this extended recovery period is to improve the stability of rates under the SDER.

On June 20, 2014, the Office of Consumer Advocate (“OCA”) filed a Petition for Review with the Commonwealth Court of Pennsylvania at Docket No. 1023 CD 2014, seeking appellate review of the *SDER Order*. Therein, the OCA and Intervenor PPL Industrial Customer Alliance (“PPLICA”) argue that the Commission erred in approving the recovery of the storm damage expenses through an automatic adjustment rider under Section 1307(a) of the Public Utility Code, 66 Pa.C.S. § 1307(a), and that the Commission denied the parties due process of law by

failing to hold evidentiary type hearings on PPL Electric's proposals. These issues currently are pending before the Commonwealth Court.

No supersedeas or stay of the Commission's *SDER Order* has been granted. The *SDER Order* required, among other things, that the SDER tariff supplement be submitted 60 days in advance of the effective date. Consistent with the *SDER Order*, on October 31, 2014, PPL Electric submitted Supplement No. 165 to become effective January 1, 2015, together with a preliminary calculation of storm damage expenses to be recovered through the SDER. The SDER is based on actual storm damage expenses incurred over the twelve-month period from December 1 through November 30. The preliminary calculations for the SDER submitted on October 31, 2014, however, were based on only ten months of data (December 2013 through September 2014) because the actual expenses for the entire twelve-month period were not available at the time the preliminary calculations were submitted.

On November 10, 2014, PPLICA filed a letter in response to Supplement No. 165. In its letter, PPLICA recommends modifications to the design and implementation of the SDER. On November 24, 2014, PPL Electric filed a response, requesting that PPLICA's proposed modifications be rejected.

On December 3, 2014, the OCA filed a Formal Complaint at Docket No. C-2014-2456453. The OCA's Formal Complaint was served electronically by the Secretary's Bureau on December 8, 2014. On December 29, 2014, PPL Electric filed an Answer to the OCA's Formal Complaint.

At its December 18, 2014 public meeting, the Commission suspended Supplement No. 165 pursuant to 66 Pa.C.S. § 1307 until April 20, 2014, unless permitted by Commission Order

to become effective at an earlier date. By the same Order, this matter was assigned to Administrative Law Judge Susan D. Colwell (“ALJ”).

On December 19, 2014, PPL Electric filed a final rate calculation for the SDER that included data for the full twelve-month calculation period (December 2013 through November 2014). On December 22, 2014, PPL Electric filed Supplement No. 172 to implement the final SDER for the period of January 1, 2015 through December 31, 2015. Also on December 22, 2014, PPL Electric filed Supplement No. 173 suspending Supplement Nos. 165 and 172 in compliance with the Commission’s Order entered December 18, 2014.

By Hearing Notice issued December 18, 2014, a prehearing conference has been scheduled before the ALJ at 1:00 p.m. on Friday, January 9, 2015, in Hearing Room 2, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania. On December 18, 2014, the ALJ issued the 1st Prehearing Order on the SDER Issue, directing the parties to submit prehearing memorandum on or before 12:00 p.m. on January 7, 2015. Therein, the ALJ requested that the parties address the following items in their respective prehearing memoranda: (1) list of issues to be addressed and statement of the party’s position on each of the issues; and (2) identification of the witnesses the party expects to call and the subject matter of each witness’ testimony. PPL Electric herein submits this Prehearing Memorandum to, among other things, address the issues identified in the 1st Prehearing Order on the SDER Issue.

II. SERVICE OF DOCUMENTS

PPL Electric requests that all documents be served on:

Christopher T. Wright
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6013
Fax: 717-731-1985
E-mail: cwright@postschell.com

PPL Electric agrees to receive service of documents electronically in this proceeding. Further, to the extent that materials are available electronically, it is requested that copies be served upon Paul E. Russell at perussell@pplweb.com and David B. MacGregor at dmacgregor@postschell.com.

PPL Electric's attorneys are authorized to accept service on behalf of the Company in this proceeding. PPL Electric requests that the Commission and all parties of record serve copies of all discovery requests and answers, correspondence, Commission Orders, and any other documents issued in this proceeding on its attorneys in Harrisburg, Pennsylvania.

III. DISCOVERY

The Commission's regulations at 52 Pa. Code § 5.331(b) provide that participants should initiate discovery as early in the proceeding as possible. Although it filed the preliminary tariff supplement and rate calculation for the SDER on October 31, 2014, PPL Electric has not received any formal or informal discovery requests to date.

Notwithstanding the foregoing, PPL Electric recognizes that the Commission's December 18, 2014 Order set an expedited schedule before the Office of Administrative Law Judge. As a result, PPL Electric believes the timelines for discovery set forth in the Commission's regulations may need to be modified in this proceeding. PPL Electric will be prepared to discuss any such modifications at the Prehearing Conference.

PPL Electric also remains open and available to discuss the possibility of obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

IV. POSSIBILITY OF SETTLEMENT

PPL Electric remains willing to settle the Complainant's concerns in a mutually acceptable manner that is consistent with PPL Electric's Commission-approved tariff, the Commission's regulations and orders, and would not have a material adverse effect on the Company or its ratepayers. PPL Electric does not perceive any need to include specific dates for settlement conferences in the procedural schedule.

V. ISSUES

PPL Electric submits that the issue to be decided in this proceeding is whether the storm damage expenses sought to be recovered in Supplement No. 172 are just, reasonable, and in compliance with the Commission's *SDER Order* entered April 3, 2014. PPL Electric intends to demonstrate that the SDER set forth in Supplement No. 172 fully complies with all of the requirements adopted in the *SDER Order*. PPL Electric also intends to demonstrate that the storm damage expenses set forth in the final rate calculation for the SDER filed on December 19, 2014, are just, reasonable, and in compliance with the *SDER Order*.

PPL Electric also submits that the Commission has already approved the design and implementation of the SDER and those issues may not now be challenged. Indeed, the legal issue of whether the SDER is proper under the Public Utility Code and applicable ratemaking principles has already been decided by this Commission in the *SDER Order*. Therein, the Commission concluded that the SDER, as modified, is an automatic adjustment mechanism that complies with the requirements of Section 1307 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1307. Any attempt to re-litigate this issue that already has been decided is barred by the doctrine of collateral estoppel.¹

¹ Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *Fiore v. Commonwealth of Pennsylvania (Department of Environmental*

Further, the issue of whether the Commission properly found that PPL Electric's storm damage expenses may be recovered through a Section 1307(a) cost recovery mechanism currently is pending before the Commonwealth Court for disposition at Docket No. 1023 CD 2014. The Commission therefore is without jurisdiction to address the issue of whether PPL Electric's storm damage expenses may be recovered through a Section 1307(a) cost recovery mechanism while the matter is on appeal before the Commonwealth Court.²

VI. WITNESSES:

PPL Electric reserves the right to change its designation of witnesses and their areas of testimony as this proceeding develops, issues are identified, and hearing dates are scheduled. Subject to the foregoing, PPL Electric has tentatively identified the following witness to submit testimony relating to the issues identified to date:

<u>Witness</u>	<u>Issues Addressed</u>
Bethany L. Johnson Manager of Regulatory Compliance PPL Electric Utilities Corporation 2 North Ninth Street Allentown, Pennsylvania, 18101 610-774-7011	The SDER set forth in Supplement No. 172 fully complies with all of the requirements adopted in the <i>SDER Order</i> .
Stephen J. Gelatko Director - Distribution Asset Planning PPL Electric Utilities Corporation 2 North Ninth Street Allentown, Pennsylvania, 18101 610-774-4785	PPL Electric's responses to the storms reflected in the final rate calculation for the SDER filed on December 19, 2014.

Resources), 508 A.2d 371, 374 (Pa. Cmwlth. 1986). Collateral estoppel bars the re-litigation of an issue where: (1) an issue decided in a prior action is identical to one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4), the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. *Stilp v. Commonwealth*, 910 A.2d 775 (Pa. Cmwlth. 2006).

² See Pa. R. App. P. 1701 (once a party takes an appeal to an appellate court, the trial court is divested of jurisdiction over the subject matter until further order of the appellate court reinstating jurisdiction; see also *Ramsey v. Commonwealth, Pennsylvania Milk Marketing Bd.*, 572 A.2d 21 (Pa. Cmwlth. 1990), *appeal denied*, 526 Pa. 643, 584 A.2d 324 (1990) (after an appeal is taken or review of a quasi-judicial order is sought, the trial court or other government unit may no longer proceed in the matter).

VII. LITIGATION SCHEDULE

On December 18, 2014, the Commission suspended the SDER tariff filing until April 30, 2014, unless permitted by Commission Order to become effective at an earlier date. The Commission's December 18, 2014 Order also set an expedited schedule for this matter. Specifically, the Commission's December 18, 2014 Order directed the Office of Administrative Law Judge to provide the Commission with a Recommended Decision within 60 days of entry of the Order unless parties agree to an alternative deadline accepted by the Presiding Officer.


In the 1st Prehearing Order on the SDER Issue, the ALJ proposed the following schedule unless the parties agree upon and submit an alternative schedule:

Prehearing Conference	January 9, 2015
Direct Testimony of Company	January 16, 2015
Testimony of other parties	January 28, 2015
Briefs	February 4, 2015
Recommended Decision	February 17, 2015

Recognizing the expedited schedule adopted in the Commission's December 18, 2014 Order, the proposed schedule set forth in the 1st Prehearing Order is generally acceptable to PPL Electric. However, PPL Electric remains willing and ready to discuss at the Prehearing Conference an alternative schedule that may be acceptable to all parties and the ALJ.

Respectfully submitted,

Paul E. Russell (ID # 21634)
Associate General Counsel
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: perussell@pplweb.com



David B. MacGregor (ID # 28804)
Christopher T. Wright (ID # 203412)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dmacgregor@postschell.com
E-mail: cwright@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: January 7, 2015

Attorneys for PPL Electric Utilities Corporation