**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

:

v. : R-2012-2290597

:

PPL Electric Utilities Corporation :

**CERTIFICATION OF A MATERIAL QUESTION TO THE COMMISSION**

The purpose of this Order is to seek Commission authority to terminate the investigation directed by its Order of December 18, 2014, in this case after the withdrawal of the formal complaint which motivated the investigation, where no party remains which seeks to continue the investigation.

On October 31, 2014, PPL Electric Utilities Corporation (PPL Electric or Company) filed Supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201 to become effective January 1, 2015 to implement its initial Storm Damage Expense Rider (SDER) for the period January 1, 2015 through December 31, 2015.[[1]](#footnote-1)

On November 10, 2014, the PP&L Industrial Alliance (PPLICA) filed a letter in response to the tariff filing identifying concerns and proposing modifications. PPL filed its response on November 24, 2014, requesting that the PPLICA modifications be rejected.

On December 3, 2014, the Office of Consumer Advocate (OCA) filed a formal Complaint requesting hearings on the tariff filing.

On December 18, 2014, the Commission suspended the tariff filing at its public meeting pursuant to 66 Pa.C.S. § 1307 until April 20, 2015, unless permitted by Commission Order to become effective at an earlier date. By the same Order, the matter was referred to the Office of Administrative Law Judge and subsequently, assigned to me.

A prehearing conference was scheduled by notice issued December 18, 2014 and was served on the parties to the original rate case. My prehearing order was issued on December 18, 2014, with procedural directions, including a warning that failure to participate in the prehearing conference would result in the removal of the party from this portion of the proceeding.

On December 19, 2014, the Company filed a final rate calculation for the SDER that included data for the full twelve-month calculation period. On December 22, 2014, the Company filed: (1) its Supplement No. 172 to implement the final SDER for the period of January 1, 2015 through December 31, 2015; and (2) Supplement No. 173 suspending supplement Nose. 165 and 172 in compliance with the Commission's Order entered

December 18, 2014.

The Company filed its Answer to the OCA Complaint on December 29, 2014, denying wrongdoing and stating that the tariff supplement is a compliance filing pursuant to the SDER Order of April 3, 2014, and that the reportable expenses listed there are actual total storm damage expenses incurred by the Company for all reportable storms during the period of December 1, 2013 through November 30, 2014.

Accordingly, a prehearing conference was held on Friday, January 9, 2015. Prehearing memos were filed by the Commission's Bureau of Investigation and Enforcement (I&E), OCA, PPL Electric and PPLICA. Present at the prehearing conference were the following: on behalf of PPL, David B. MacGregor, Esq., Paul E. Russell, Esq., and Christopher T. Wright, Esq.; on behalf of the Commission's Bureau of Investigation & Enforcement (I&E), Scott Granger, Esq.; on behalf of PPLICA, Adeolu Bakare, Esq.; and on behalf of the OCA, Darryl Lawrence, Esq. These represent the only active parties in this portion of the litigation.

At the prehearing conference, the OCA indicated that, after discussions with the Company and further review of the matter, it would like to withdraw its formal complaint.[[2]](#footnote-2) In addition, the Commission's BI&E indicated that it had no issue with the compliance filing and that further litigation on the specific filing under review here would serve no purpose. However, the matter is assigned to the OALJ as a Commission investigation with the specific directive to issue a recommended decision on or before February 17, 2015. Accordingly, I have no authority to end this portion of the ongoing rate case without Commission approval.

The parties agreed at the prehearing conference that the expedient action would be to seek immediate relief from the Commission. Commission regulations provide:

**§ 5.305. Interlocutory review of a material question submitted by a presiding officer.**

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will be accompanied by the following:

(1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

(2) A statement as to whether a stay of the proceedings has been placed in effect.

(3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.

(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

(d) Additional briefs will not be permitted unless directed by the Commission.

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

(1) Continue, revoke or grant a stay of proceedings.

(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.

(3) Answer the certified question.

(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

52 Pa.Code § 5.301.

Therefore, Commission authority to end the investigation directed by the Commission Order of December 18, 2014, is sought under Section 5.301, and the following reasons are provided to satisfy the requirements of the regulation:

(**1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.**

The Commission suspended the Company proposed Supplement No. 165-to Tariff – Electric Pa. P.U.C. No. 201 and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained therein after the OCA filed a formal Complaint against the proposed tariff. The OCA has decided to withdraw its formal Complaint after its further review of the matter, and there is no party opposing the tariff filing. Litigation now would be the Company submitting testimony and supporting documentation followed by the preparation and issuance of a recommended decision. No meaningful scrutiny is anticipated by the other parties, and no opposition remains to the tariff filing. The parties seek to end this litigation before they are required to expend further resources. Because the investigation was instituted by Commission Order, it can only be canceled by a Commission Order.

**(2) A statement as to whether a stay of the proceedings has been placed in effect.**

No stay is in effect as I have no authority to override a direct Order of the Commission, which directs the preparation and issuance of a recommended decision on or before February 17, 2015.

**(3) An extract from the record that will assist the Commission.**

The Company, the OCA, PPLICA and I&E have each indicated that they will file an appropriate document either in support of this request or indicating non-opposition to it. The OCA has further agreed that it will submit the appropriate pleading to withdraw its formal complaint in this matter no later than Monday, January 12, 2015.

**(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission**.

The parties agreed to this action at the prehearing conference and will be served a copy of this Certification of Material Question when it is filed with the Secretary.

**(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.**

The Company, the OCA, PPLICA, and I&E have each indicated their intent to file an appropriate document either in support of this request or indicating non-opposition to it. The parties intend to waive briefing.

**(d) Additional briefs will not be permitted unless directed by the Commission.**

There is no need for additional briefing as no party seeks to pursue the investigation directed in the Commission's Order of December 18, 2014.

(**e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:**

**(1) Continue, revoke or grant a stay of proceedings.**

**(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.**

**(3) Answer the certified question.**

**(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.**

Immediate Commission action is requested, as the presiding officer has no authority to discontinue the investigation without Commission action. "Affirmance of the decision of the presiding officer" will result in the affirmation of my inability to circumvent the Order of December 18, 2015 and the ultimate issuance of a recommended decision in a case that no party seeks to litigate.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following Material Question is certified for immediate answer by the Commission:

Whether the investigation ordered by the Commission Order of December 18, 2014, at this docket to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in PPL Electric Utilities Corporation's proposed supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201 should be terminated and PPL Electric Utilities Corporation should be permitted to file a tariff supplement effective on February 1, 2015 to implement the proposed Storm Damage Expense Rider where the formal Complaint of the Office of Consumer Advocate is withdrawn and when no party remains that seeks to investigate the matter further?

Dated: January 12, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**R-2012-2290597 - PPL ELECTRIC UTILITIES CORPORATION FILING FOR APPROVAL TO IMPLEMENT STORM DAMAGE EXPENSE RIDER**

***REVISED 1/12/15***

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1. According to the Answer to OCA's formal Complaint, filed by the Company, the Commission has already decided that the SDER is an automatic adjustment mechanism that complies with the requirements of Section 1307 of the Public Utility Code, 66 Pa.C.S. § 1307. (Order entered April 3, 2014). The OCA filed a Petition for Review at Commonwealth Court Docket No 1023 CD 2014, currently pending and therefore, the question of the viability of the SDER itself is beyond the legal ability of the Commission to litigate further at this time. [↑](#footnote-ref-1)
2. A separate Initial Decision granting the petition to withdraw, filed on January 12, 2015, by the OCA, was issued on January 12, 2015. No party opposes the withdrawal of the formal Complaint. [↑](#footnote-ref-2)