**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

:

v. : R-2012-2290597

:

PPL Electric Utilities Corporation :

**INITIAL DECISION**

Before

Susan D. Colwell

Administrative Law Judge

HISTORY OF THE PROCEEDING

The purpose of this Decision is to grant the withdrawal of the formal Complaint filed by the Office of Consumer Advocate (OCA) which triggered the Commission's investigation into a tariff filing. Withdrawal of the Complaint is not opposed by any party, and by separate Certification of a Material Question, the parties and the presiding officer seek Commission authority to terminate the investigation directed by Commission Order of December 18, 2014, as 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 Customer 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, 2014, 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 Nos. 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. In addition, the Commission's I&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.

The parties agreed at the prehearing conference that the expedient action would be to seek immediate relief from the Commission. The OCA's withdrawal of the formal Complaint is a crucial part of the plan to seek relief from the Commission's directive to litigate and resolve an issue that is no longer contested.

FINDINGS OF FACT

1. PPL Electric Utilities Corporation is an electric distribution company providing service to approximately 1.4 million customers in its certificated service territory over about 10,000 square miles in 29 counties of the Commonwealth.

2. OCA is a statutorily created public advocate empowered to represent the interests of consumers before the Public Utility Commission pursuant to Act 161 of the General Assembly, as amended, 71 P.S. §§ 309-1 *et seq.*

3. OSBA is authorized to represent the interests of small business customers of utility services before the Commission pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41-399.50.

4. PPLICA is an organization of industrial and commercial users. PPLICA Petition to Intervene.

5. On October 31, 2014, 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 SDER for the period January 1, 2015 through December 31, 2015.[[2]](#footnote-2)

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

7. On December 18, 2014, the Commission suspended the tariff filing at its public meeting 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, the matter was referred to the Office of Administrative Law Judge and subsequently, assigned to me.

8. 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.

9. 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 Nos. 165 and 172 in compliance with the Commission's Order entered

December 18, 2014.

10. 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.

11. A prehearing conference was held on Friday, January 9, 2015.

12. The following parties participated in the prehearing conference: I&E, OCA, PPL Electric and PPLICA. These represent the only active parties in this portion of the litigation.

13. 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.[[3]](#footnote-3)

14. I&E indicated that it had no issue with the compliance filing.

15. No party opposes the OCA's withdrawal of the instant Complaint.

DISCUSSION

The Public Utility Code provides that the proponent of a rule or order has the burden of proof except as provided in Section 315. 66 Pa.C.S. § 332(a). Section 315 provides that in a proceeding upon complaint involving any *proposed* increase in rates, the burden of showing that the rate involved is just and reasonable shall be upon the public utility. 66 Pa.C.S. § 315.

This means that PPL Electric bears the burden of proving entitlement to the rates and regulations in the tariff filing in question. Here, the OCA seeks to withdraw its Complaint, which would leave the evidentiary presentation of PPL Electric unanswered. This makes the litigation of the tariff filing virtually meaningless and would result in the expenditure of resources on the part of all parties which are better spent elsewhere.

It is logical and in the public interest to grant the withdrawal of the Complaint and avoid unnecessary expenditure of valuable resources of all parties involved.

I note that the Commission's Order of April 3, 2014 which authorized the filing of the SDER tariff is itself on appeal and not part of this stage of litigation. The OCA's withdrawal of the present Complaint does not affect the proceeding on appeal.

CONCLUSIONS OF LAW

1. The proponent of a rule or order has the burden of proof except as provided in Section 315. 66 Pa.C.S. § 332(a).

2. Section 315 provides that in a proceeding upon complaint involving any proposedincrease in rates, the burden of showing that the rate involved is just and reasonable shall be upon the public utility. 66 Pa.C.S. § 315.

3. Commission regulations permit the withdrawal of pleadings in contested proceedings. 52 Pa.Code § 5.94.

4. Commission regulations permit the withdrawal of pleadings in uncontested proceedings. 52 Pa.Code § 1.82.

5. The withdrawal of the Complaint results in a contested proceeding becoming an uncontested proceeding.

6. It is in the public interest to permit the withdrawal of a Complaint that the filing entity does not wish to prosecute.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw Complaint filed by the Office of Consumer Advocate against the filing of Supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201 in Docket No. R-2012-2290597 is granted.

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

Susan D. Colwell

Administrative Law Judge

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. 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-2)
3. A separate Certification of a Material Question to the Commission was filed on January 12, 2015, which is either supported by or not opposed by all parties. [↑](#footnote-ref-3)