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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held January 15, 2015 | | |
| Commissioners Present: | |  | | |
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| Robert F. Powelson, Chairman | |  | | |
| John F. Coleman, Jr., Vice Chairman | |  | | |
| James H. Cawley | |  | | |
| Pamela A. Witmer | |  | | |
| Gladys M. Brown | |  | | |
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| Pennsylvania Public Utility Commission  v.  PPL Electric Utilities Corporation | |  | R-2012-2290597 | |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Order, “Certification of a Material Question to the Commission” (*Certification Order*), issued by Administrative Law Judge (ALJ) Susan D. Colwell on January 12, 2015, in the above-captioned proceeding. The purpose of the *Certification Order* is to seek Commission authority to terminate the investigation at Docket No. R-2012-2290597 into PPL Electric Utilities Corporation’s proposed Supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201 implementing an initial Storm Damage Expense Rider (SDER) for the period January 1, 2015 through December 31, 2015. This investigation was initiated by Order of December 18, 2014 (*December 2014 Order*). Authority to terminate the investigation is sought based on the withdrawal of a Formal Complaint filed on December 3, 2014, by the Office of Consumer Advocate (OCA).

In a separate Initial Decision, issued January 12, 2015, ALJ Colwell has granted the OCA’s Petition for Leave to Withdraw Complaint. *See* 52 Pa. Code   
§ 5.94(a). The issues asserted in the OCA’s Formal Complaint formed the essential basis for the investigation.

A prehearing conference was convened in this matter on January 9, 2015. On receipt of information from all of the active participants to this phase of proceedings, ALJ Colwell is advised that no Party remains which seeks to continue the investigation. The active participants are: PPL Electric Utilities Corporation (PPL or Company), the OCA, the Commission’s Bureau of Investigation and Enforcement (I&E), and the PP&L Industrial Customer Alliance (PPLICA).

Based on the foregoing, ALJ Colwell, pursuant to 52 Pa. Code § 5.305, certified the following question for Commission review and answer:

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?

On consideration of the *Certification Order* and the positions and submittals of the Parties, we shall consider the certified question. We, hereby, answer the certified question in the affirmative. *See* 52 Pa. Code § 5.305(e)(3). Our answer of the certified question in the affirmative will result in the termination of the investigation, consistent with the discussion contained in this Opinion and Order.

**Background**

The PPL SDER has its origins in PPL’s 2012 base rate case. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597 (Order entered December 28, 2012)*.*  The purpose of the SDER is to recover PPL’s storm damage expenses pursuant to an automatic rate recovery mechanism (rider) as authorized by Section 1307(a), and 1307(e), of the Public Utility Code (Code), 66 Pa. C.S. §§ 1307(a), (e), between PPL base rate proceedings that are filed under Section 1308 of the Code, 66 Pa. C.S. § 1308. Only “reportable” storms, consistent with the Commission’s Regulations at 52 Pa. Code § 67.1(b), are included for purposes of the SDER. *See* *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597 (Order entered April 3, 2014) (*April 3 Order*). The SDER would reconcile, on an annual basis, PPL’s actual storm damage expenses from reportable storms against the amount of $14.7 million for such expenses that is presently included in PPL base rates. *Id*.

The SDER has created substantial controversy as between the Company, the statutory advocates, and PPLICA.[[1]](#footnote-1) *See April 3 Order*. The statutory advocates generally opposed use of the SDER based, *inter alia*, on legal and policy grounds that such an expense is more appropriately recovered through use of reserve accounting – not through a tariff rider funding, and that identification of storm damage expense for such recovery violated the principles of “single issue” ratemaking. *Id*.[[2]](#footnote-2)

In our *April 3 Order* we considered and discussed, at length, the legal and policy issues surrounding adoption of the SDER. We approved PPL’s use of the SDER with modifications set forth in the *April 3 Order*. *See* *April 3 Order* at 23-27.

On a request for reconsideration and/or clarification, we affirmed our determination to permit the implementation of the SDER, with those modifications set forth in the *April 3 Order*. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597 (Order entered May 22, 2014).

It is against the foregoing background that PPL has filed Supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201.

**History of the Proceedings**

We provide the history of this proceeding, as adopted from the *Certification Order*.

On October 31, 2014, PPL filed Supplement No. 165 to Tariff – Electric Pa. P.U.C. No. 201 to become effective January 1, 2015, to implement its SDER for the period January 1, 2015 through December 31, 2015.

On November 10, 2014, 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 OCA filed a Formal Complaint requesting hearings on the tariff filing.

On December 18, 2014, we entered an Order pursuant to 66 Pa. C.S.   
§ 1307, suspending the tariff filing 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 for such proceedings as necessary and the issuance of a Recommended Decision within sixty days. The matter was, thereafter, assigned to ALJ Colwell.

A prehearing conference was scheduled by notice issued December 18, 2014 and served on the parties to the original rate case. Also on December 18, 2014, a prehearing order was issued with procedural directions, including a notice 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 December 18, 2014 Order.

PPL filed its Answer to the OCA Formal Complaint on December 29, 2014, taking the position 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 memoranda were filed by I&E, the OCA, PPL, and PPLICA. The following representatives of the active participants were present at the January 9, 2015 prehearing conference: 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 represented the only active parties in this portion of the litigation.

At the January 9, 2015 prehearing conference, the OCA indicated that, after discussions with the Company and further review of the matter, it proposed to withdraw its formal complaint. On January 12, 2015, the OCA filed its Petition for Leave to Withdraw Complaint. No party opposed the withdrawal of the OCA Formal Complaint. The Commission’s I&E indicated that it had no issue with the PPL compliance filing and that further litigation on the specific filing under review would serve no purpose. ALJ Colwell issued a separate Initial Decision granting the OCA’s petition. The active parties have filed correspondence indicating that they will not file Exceptions to this decision.

Based on the foregoing, the Parties agreed at the prehearing conference that the expedient action would be to seek immediate relief from the Commission providing ALJ Colwell with authority to terminate the investigation. On January 12, 2015, ALJ Colwell issued her order certifying a material question to the Commission, pursuant to 52 Pa. Code § 5.305. Our Regulation permits parties to file a brief on the certified question, within seven days of the date the question is certified. 52 Pa. Code § 5.305(c). In this case, all of the Parties have filed correspondence indicating their support of the certified question.

**Discussion**

The pertinent consideration for our grant of interlocutory review is whether such review is necessary in order to prevent prejudice or expedite the conduct of the proceeding. *See* 52 Pa. Code § 5.305(a)(1). We conclude that certification, under the circumstances that exist in this matter was proper and that the question should be answered in the affirmative.

**ALJ’s Recommendation**

The pertinent Commission Regulation, 52 Pa. Code 5. 305, states, in pertinent part:

**§ 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.

\* \* \*

(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.

ALJ Colwell has addressed each consideration set forth in 52 Pa. Code   
§ 5.305 at pages 3-7 of the *Certification Order*. ALJ Colwell has articulated those compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding as follows:

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.

*Certification Order* at 5.

**Disposition**

On application of the principles for interlocutory review to the *Certification Order*, we shall consider the question and answer the question in the affirmative, consistent with the discussion herein. Our answer to the question raised by the *Certification Order* in the affirmative will expedite the conduct of this proceeding by terminating an investigation in which all active Parties have expressed their intent to discontinue and withdraw opposition to the SDER filing and not oppose implementation of the initial PPL SDER. Moreover, it will eliminate the need for the ALJ to hold a hearing and issue a Recommended Decision, as required by the *December 2014 Order*. Based on the concurrence of all active Parties to the investigation, we are persuaded to find compelling reasons to answer the certified question and terminate this investigation. We conclude that conservation of administrative resources will be promoted by terminating this investigation as there remain no outstanding issues or considerations in the public interest that have not, heretofore, been substantively addressed in our *April 3 Order* and *May 22 Order on Reconsideration*.

**Conclusion**

Based on our review of the record and the applicable law, we will answer certified question in the affirmative, consistent with the foregoing discussion; **THEREFORE,**

**IT IS ORDERED:**

1. That pursuant to 52 Pa. Code §5.305, the Commission hereby answers the following question certified to the Commission at the above-captioned docket in the affirmative:

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?

2. That PPL Electric Utilities Corporation shall be permitted to file a compliance tariff supplement, on one day’s notice, effective on February 1, 2015, to implement the proposed Storm Damage Expense Rider.

3. That the investigation on Commission motion instituted pursuant to the Order of December 18, 2014, 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 is, hereby, terminated and the Secretary shall mark this matter “closed.”



**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 15, 2015

ORDER ENTERED: January 15, 2015

1. ALJ Colwell advises that the OCA filed a Petition for Review at Commonwealth Court Docket No 1023 CD 2014 regarding, *inter alia*, the SDER*.* *See* Certification Order, n. 2. [↑](#footnote-ref-1)
2. The Office of Small Business Advocate (OSBA) generally supported the opposition to the SDER argued by the OCA and I&E. *April 3 Order* at 12. [↑](#footnote-ref-2)