



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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August 26, 2010

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
PPL Electric Utilities Corporation

Docket No. R-2010-2161694

Dear Secretary Chiavetta:

I am sending the enclosed copy of the **Statement in Support of Joint Petition for Partial Settlement**. Should you have any questions or need additional information, please contact me at (717) 783-6184.

Sincerely,

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409

Enclosure
RAK/edc
cc: Parties of Record

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
	:	Docket No. R-2010-2161694
v.	:	
	:	
PPL Electric Utilities Corporation	:	

**OFFICE OF TRIAL STAFF
STATEMENT IN SUPPORT OF
JOINT PETITION FOR PARTIAL SETTLEMENT
OF RATE INVESTIGATION**

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TO ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutors, Lawrence F. Barth and Richard A. Kanaskie, hereby respectfully submits that the terms and conditions of the foregoing *Joint Petition For Partial Settlement Of Rate Investigation* (“Joint Petition” or “Settlement Agreement”) are in the public interest and represent a fair, just, reasonable and equitable balance of the interests of PPL Electric Utilities Corporation, (“PPL” or “Company”) and its customers. The parties to this Settlement Agreement have conducted extensive Discovery culminating in the submission of Expert Testimony. In addition, numerous Settlement Conferences have been held and, as a result, OTS, PPL and the other signatories to this

document (“Joint Petitioners”) have agreed upon the terms embodied in the foregoing Settlement Agreement. The request for approval of the Joint Petition is based on the OTS conclusion that the Settlement Agreement meets the legal standard for approval. The Settlement Agreement, with the exception of the impact of the issues reserved for litigation, satisfies the legal standard for approval thereby supporting its adoption. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”¹ The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”² The Settlement Agreement in the instant proceeding protects the public interest in that a review of the testimony submitted by the parties shows that compromises are evident throughout the Joint Petition. The Settlement Agreement also delineates the remaining issues to be resolved in this proceeding. The terms and conditions of the Settlement Agreement begin on page five (5) and the record evidence includes substantial evidence that supports the adoption of each provision.

The terms and conditions of the Joint Petition are in the public interest as supported by the following factors:

1 *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

2 *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

I. BACKGROUND

1. On March 31, 2010, the Company filed Supplement No. 83 to Tariff Electric - Pa. P.U.C. No. 201 ("Supplement No. 83"). Supplement No. 83 contained proposed changes in rates, rules and regulations designed to produce approximately an additional \$114.7 million in additional annual base rate revenue. The Company's requested increase is based on the level of operations reflected in the future test year ending December 31, 2010. The requested revenue equated to an increase of 16.5% over existing distribution base rates.

2. By Order Entered on May 20, 2010, the Commission suspended the base rate filing and instituted an investigation to determine the lawfulness, justness and reasonableness of the proposed rates, rules and regulations contained in the Company's filing. The Order indicated that the filing would be suspended by operation of law until January 1, 2011 unless permitted by subsequent Commission Order to become effective at an earlier date. The filing was assigned to the Office of Administrative Law Judge ("OALJ") for the purpose of conducting Evidentiary Hearings and the preparation and issuance of a Recommended Decision. The OALJ subsequently assigned Administrative Law Judge ("ALJ") Susan D. Colwell as the presiding officer.

3. Consistent with its duty to represent the public interest in matters before the Commission that have an impact on rates, OTS filed its Notice of Appearance indicating its participation in this proceeding. The Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") filed Formal complaints against the

proposed increase. In addition to the Formal Complaints of the public advocates, the PPL Industrial Customer Alliance (“PPLICA”), Eric Epstein, Whitehall Township and eleven individual customers filed Complaints.

4. In addition to the OTS Notice of Appearance and the Formal Complaints listed above, Petitions to Intervene were filed by Richards Energy Group (“REG”), Sustainable Energy Fund (“SEF”), Commission on Economic Opportunity (“CEO”), Citizens for Pennsylvania’s Future (“PennFuture”), International Brotherhood of Electrical Workers, Local 1600 (“IBEW”), Dominion Retail, Inc. (“Dominion”), Retail Energy Supply Association (“RESA”) and Washington Gas Energy Services, Inc. (“WGES”).

5. A Prehearing Conference was held on May 26, 2010, at which time a procedural schedule was developed. The procedural schedule included filing dates for Testimony, Main Briefs and Reply Briefs as well as dates for Evidentiary Hearings. The Prehearing Conference also resulted in the modification of the Commission’s Discovery Rules.

6. On May 27, 2010, ALJ Colwell issued a Second Prehearing Order memorializing the agreements and determinations made at the Prehearing Conference. The determinations from the Prehearing Conference included granting the Petitions to Intervene of CEO, REG, IBEW, SEF, Dominion, RESA and PennFuture. In an Initial Decision dated August 5, 2010, ALJ Colwell denied the Petition to Intervene of WGES.

7. Five Public Input Hearings were held throughout the Company's service territory. The Public Input Hearings included Scranton and Wilkes Barre on June 14, 2010, Bethlehem and Allentown on June 21, 2010 and Harrisburg on June 23, 2010.

8. Evidentiary Hearings were scheduled to begin in Harrisburg on August 9, 2010. Prior to the commencement of the Evidentiary Hearings, the Joint Petitioners requested the cancellation of the first two scheduled days. Negotiations and settlement discussions continued culminating in the resolution of the issues contained in the Joint Petition. As a result, the scheduled Evidentiary Hearings were reduced to Wednesday, August 11, 2010 wherein testimony was presented into the record and issues reserved for litigation were argued. In addition, the oral testimony of a Formal Complainant was received telephonically at the Evidentiary Hearing.

9. In anticipation of litigation, OTS had preliminarily identified and served the testimony of its expert witnesses. The OTS testimony submitted in this proceeding includes the following Direct Testimony and accompanying Exhibit; OTS Statement Number 1 and Exhibit No. 1, OTS Statement Number 2 and Exhibit No. 2 and OTS Statement No. 3 and Exhibit No. 3. In addition, OTS submitted Rebuttal Testimony identified as OTS Statement No. 2. OTS also submitted Surrebuttal Testimony and Exhibits identified as OTS Statement Number 1-SR with Exhibit No. 1-SR, and OTS Statement Number 2-SR with OTS Exhibit No. 2-SR.

II. DISCUSSION

10. In accordance with the Commission's policy at 52 Pa. Code § 5.231 encouraging settlements over costly and time consuming litigation, OTS, PPL and the other signatories were successful in achieving a Settlement Agreement of the enclosed issues using through comprehensive Discovery and extensive settlement discussions.

11. The Settlement Agreement provides for an increase of \$77.5 million to the Company's annual base rate revenue. OTS has calculated this allowance as an increase of approximately 11.15% over existing annual base rate revenue.

12. The additional base rate revenue has been agreed to in the context of a "Black Box" settlement with a few, limited, exceptions. A "Black Box" agreement does not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. "Black Box" settlements benefit ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses. OTS is of the opinion that an agreement as to the resolution of each and every disputed issue in this proceeding would not have been possible without judicial intervention. The involvement of the ALJ would have added time and expense to an already cumbersome proceeding. Avoiding this necessity will benefit ratepayers by keeping the expenses associated with this filing at a reasonable level.

This increased level of “Black Box” revenue adequately balances the interests of ratepayers, shareholders and the Company. The Company will receive sufficient operating funds in order to provide safe and adequate service while earning an acceptable return on its investment for its shareholders. Ratepayers are protected as the resulting increase minimizes the impact of the Company’s initial proposal. The negotiated compromise represents approximately 67.6% of the Company’s filed request. Mitigation of the level of the rate increase benefits ratepayers and results in rates that are just and reasonable. As such, this element supports the standard for approval of a settlement as they are just and reasonable and in accordance with the Public Utility Code and all pertinent case law.

Utility regulation in Pennsylvania allows for the recovery of prudently incurred expenses as well as allowing the utility the opportunity to earn a reasonable return on the value of the assets used and useful in serving the public. The increase agreed to by the parties in this proceeding respects this principle by providing adequate income to the Company to satisfy its operational and investment needs. At the same time, the limitation on the increase protects ratepayers by ensuring that their rates are just and reasonable and that no excess revenue is included in the tariff rates being charged.

13. The agreement with respect to the allocation of the rate increase for Rate Schedule RTS strikes a fair balance between the Company and the ratepayers impacted by the increase. The mitigated level of increase to this classification allows for the proper movement of rates toward the actual cost of providing service while protecting impacted

ratepayers from an exorbitant increase. The allocation of the rate increase for this classification in this proceeding is based on negotiated compromises and is in accordance with sound regulatory principles and, therefore, should be approved without modification.

14. The Settlement Agreement provides that the Customer Charge for residential ratepayers served under Rate Schedule RS will be \$8.75 per month. This is a dramatic reduction from the Company's requested Rate Schedule RS Customer Charge of \$15.38. In addition, the Settlement Agreement provides that costs associated with the Company's Universal Service Rider will be removed from base rates and recovered through a KWH charge. It is important to allow the utility to recover the fixed portion of providing service in this mechanism while protecting ratepayers by ensuring that any improper costs have been eliminated. Maintaining a lower Customer Charge benefits ratepayers by shifting the additional costs of delivering the product to the associated volumetric, or commodity charge. The volumetric portion of a ratepayer's bill is controllable and maintaining the proper balance with the fixed Customer Charge sends the proper price signals to customers assisting in conservation efforts. Proper price signals are essential to allowing customers greater control over their usage thereby impacting their bills. Any measures that provide the proper signals to assist in conservation can be beneficial to ratepayers as they will assist customers in controlling their consumption thus allowing them to make better decisions with respect to energy usage.

15. The Settlement Agreement also explicitly identifies the cost rate of common equity and capital structure to be employed by PPL in order to meet the Commission's requirements resulting from the *Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*.³ Although limited in purpose to this proceeding, the determination of these elements satisfies the Commission requirements and represents a reasonable solution. Litigating this determination would have increased costs that ultimately would be borne by ratepayers. A reasonable compromise that provides cost saving measures is in the public interest and should be approved. In addition, the compromise reflected in a lower cost of common equity will benefit ratepayers by reducing the level of surcharge associated with this issue. As such, it is in the public interest and should be approved.

16. The provisions addressing the Company's Universal Service Programs provide clarity and stability to the programs and are supported by the record. The agreement to continue to use Community Based Organizations ("CBOs) to implement its universal service programs remains beneficial to the Company and its ratepayers. The incumbent CBO has extensive experience administering the Company's programs and remains an efficient and cost-effective service.

In addition, the Settlement Agreement adopts a proposed methodology addressing the recent Department of Public Welfare ("DPW") ruling impacting LIHEAP grants. Clarification of this issue will avoid any disruption of benefits to impacted ratepayers.

3 Docket No. M-2009-2123945. Order Entered June 24, 2010.

17. The remaining issues raised in the OTS testimony have been satisfactorily resolved through Discovery and discussions with the Company and are incorporated into the “Black Box” resolution as well as the various provisions identified in the Settlement Agreement. The very nature of a settlement agreement incorporates compromise on the part of all parties. This particular Settlement Agreement exemplifies this principle. The balance of the issues raised in OTS testimony has been extensively and carefully discussed in the negotiations resulting in this agreement. Line by line identification of the ultimate resolution of disputed issues is not necessary as OTS represents that the Settlement Agreement maintains the proper balance of the interests of all parties impacted by the provisions contained therein. In fact, the very nature of a “Black Box” settlement makes the specific identification of the resolution of disputed issues impossible. Each signatory acknowledges the ultimate revenue allowance but makes no representation as to how this addition to base rate revenue was achieved. Because of the characteristics of “Black Box” settlements, no representation of the resolution of any issue not specifically identified is possible in future proceedings. This is especially true in the resolution of this proceeding through a “Black Box” agreement. No party can identify, with any specificity, the resolution of the disputed issues that are not expressly discussed in this Settlement Agreement.

III. CONCLUSION

18. Based on OTS' analysis of the base rate revenue increase requested by PPL Electric Utilities Corporation, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding. Pursuing litigation through to its conclusion would have driven expenses even higher which may have impacted the agreed upon increase in revenue. As litigation of this rate case is a recoverable expense, curtailment of these charges is in the public interest.

19. OTS further submits that acceptance of the foregoing Settlement Agreement will negate the need to prepare Main Briefs, Reply Briefs, Exceptions and Reply Exceptions, and the filing of possible appeals pertaining to these issues. The avoidance of further rate case expense by settlement of these provisions in this Base Rate Investigation proceeding best serves the interests of PPL, the active parties and PPL's customers.

20. The Settlement Agreement is conditioned upon the Commission's approval of all terms and conditions contained therein and should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by OTS, PPL or any signatory as provided therein. Although not all parties

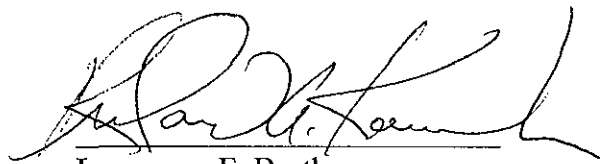
are signatories to the Settlement Agreement, OTS is not aware of any party opposing the resolution of the issues contained herein.

21. OTS agrees to settle the disputed issue as to the proper level of additional base rate revenues through a “Black Box” agreement with limited exception. OTS’ agreement to settle this case is made without any admission or prejudice to any position that OTS might adopt during subsequent litigation or the continuation of this litigation in the event the Settlement is rejected by the Commission or otherwise properly withdrawn by any of the Joint Petitioners.

22. If the ALJ recommends that the Commission adopt the Settlement Agreement as proposed, OTS has agreed to waive the filing of Exceptions. However, OTS has not waived its rights to file Exceptions with respect to any modifications to the terms and conditions of the Settlement Agreement, or any additional matters, that may be proposed by the ALJ in her Recommended Decision. OTS also reserves the right to file Reply Exceptions to any Exceptions that may be filed by PPL or any active party.

WHEREFORE, the Commission's Office of Trial Staff represents that it supports the Settlement Agreement as being in the public interest and respectfully requests that Administrative Law Judge Susan D. Colwell recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence F. Barth", written over a horizontal line.

Lawrence F. Barth
Prosecutor
Attorney ID #52446

Richard A. Kanaskie
Prosecutor
Attorney ID #80409

Pennsylvania Public Utility Commission
Office of Trial Staff
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 787-1976

Dated: August 26, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
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v. :
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PPL Electric Utilities Corporation :

Docket No. R-2010-2161694

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Statement in Support of Joint Petition for Partial Settlement** dated August 26, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

David B. MacGregor, Esquire
Post & Schell PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103

Paul E. Russell
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101-1179

Eric Joseph Epstein, Esquire
4100 Hillsdale Road
Harrisburg, PA 17112

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Aron J. Beatty, Esquire
Tanya J. McCloskey, Esquire
Jennedy S. Johnson, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815

Joseph L. Vullo, Esquire
1460 Wyoming Avenue
Forty Fort, PA 18704

Gary A. Jeffries, Esquire
Dominion Retail, Inc.
501 Martindale Street
Suite 400
Pittsburgh, PA 15212-5817

Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Pamela C. Polacek, Esquire
Shelby Linton-Keddie, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

John K. Baillie, Esquire
Citizens for Pennsylvania's Future
425 Sixth Avenue
Suite 2770
Pittsburgh, PA 15219

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott LLC
213 Market Street
8th Floor
P.O. Box 1248
Harrisburg, PA 17108-1248


Craig A. Doll, Esquire
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036

Frank Richards, Esquire
Richards Energy Group, Inc.
781 S. Chiques Road
Manheim, PA 17545

Elaine & Clayton Andrews, Jr.
2014 Evergreen Drive
Tamaqua, PA 18252

Elaine B. Santarelli
521 Second Avenue
Jessup, PA 18434

Ashley A. Buck
156 Johnson Drive
S. Williamsport, PA 17702



Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409