



September 2, 2010

KENNETH L. MICKENS, ESQUIRE LLC
LEGAL CONSULTING

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-2010-2161694**

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Main Brief of the Sustainable Energy Fund for filing in the above-cited proceeding. Copies have also been provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth L. Mickens".

Kenneth L. Mickens, Esquire
ID #31255
Attorney for the Sustainable
Energy Fund

KLM/bls

cc: Honorable Susan Colwell, Administrative Law Judge
Certificate of Service

RECEIVED
SECRETARY'S BUREAU
010 SEP -2 AM 9:26
OFFICE (717) 343-3338
FAX (717) 657-0938
kmickens11@verizon.net

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. R-2010-2161694

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MAIN BRIEF
OF THE
SUSTAINABLE ENERGY FUND

Kenneth L. Mickens, Esquire
PA Attorney ID #31255
316 Yorkshire Drive
Harrisburg, PA 17111

Dated: September 2, 2010

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I. BACKGROUND AND HISTORY OF THE PROCEEDING

On March 31, 2010, PPL Electric Utilities Corporation (“PPL Electric” or “the Company”)¹ filed Supplement No. 83 to Tariff Electric-Pa. P.U.C. No. 201, containing proposed changes in rates, rules and regulations calculated to produce approximately \$114.7 million in additional annual distribution service revenues. The originally proposed rate change represents an average increase in distribution rates of approximately 16.5%, which equates to an average increase in total rates (distribution, transmission, generation and transition charges) of approximately 2.4%. PPL Electric’s originally proposed general rate increase request is based on a future test year ending December 31, 2010 and is designed to allow the Company an opportunity to earn an overall rate of return of 9.11%, including an 11.75% return on common equity. Supplement No. 83 has a proposed effective date of June 1, 2010.

Under PPL Electric’s originally proposed rate increase and revenue allocation, the majority of the Company’s residential customers (under Rate

¹ PPL Electric engages in the transmission and distribution of electricity to retail customers in eastern and central Pennsylvania. The Company also supplies electricity to retail customers. As of December 31, 2008, the Company provided electric service to approximately 1.4 million customers in 29 counties in eastern and central Pennsylvania.

Schedule RS) will receive an average increase of 5.77% on a total billed revenue basis and approximately 27% on a distribution revenue basis. That increase will be primarily experienced in the monthly customer charge, which will rise from \$8.44 to \$15.38, an increase of approximately 82%. The total average monthly bill for a residential customer using 1,000 kWh per month would increase by \$7.39. Residential customers who take service under Rate Schedule RTS relating to Thermal Storage service² will receive an average increase of 6.10% on a total billed revenue basis and approximately 57% on a distribution revenue basis.

By Order entered May 20, 2010 ("*Suspension Order*"), the Commission suspended proposed Supplement No. 83 to Tariff Electric-Pa.P.U.C. No. 201 by operation of law until January 1, 2011, unless otherwise directed by Order of the Commission. The matter was assigned to Administrative Law Judge Susan Colwell.

On April 16, 2010, the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") filed a Petition to Intervene in this proceeding. SEF is a

² Rate Schedule RTS is a time-of-day rate applicable to customers with load management capabilities involving the use of thermal storage space heating systems. No new applications for this rate schedule are being accepted as of December 3, 1995.

Pennsylvania corporation established at the conclusion of PPL Electric's Restructuring proceeding³ and pursuant to the terms of the Joint Settlement⁴ filed in that proceeding. SEF's mission is to promote and invest in energy efficiency, renewable energy and energy conservation in order to provide opportunities and benefits for PPL Electric ratepayers.

A Prehearing Conference was held in Harrisburg on May 26, 2010, at which time a litigation schedule was set. Public Input Hearings were held on June 14, 2010 in Scranton and Wilkes Barre, on June 21, 2010 in Bethlehem and Allentown and on June 23, 2010 in Harrisburg. An evidentiary hearing was held in Harrisburg on August 11, 2010, at which time the parties informed the Administrative Law Judge that a Partial Settlement had been agreed to by certain parties and testimony was received concerning matters not covered by the Partial Settlement.

³ *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket No. R-00973954, Final Order (entered August 13, 1998).

⁴ *Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings*, filed August 12, 1998 at Docket No. R-00973954.

II. PARTIAL SETTLEMENT

PPL Electric, the Office of Consumer Advocate (“OCA”), the Office of Trial Staff (“OTS”) and Richards Energy Group, Inc. (“REG”)⁵ have agreed to a partial settlement of this proceeding.

Among the terms agreed to by the parties to the Partial Settlement are that: (1) PPL Electric will be permitted to submit a revised supplement to PPL Electric’s Tariff-Electric Pa.P.U.C. No. 201 designed to produce an annual distribution rate revenue increase of approximately \$77.5 million, to become effective for service rendered on and after January 1, 2011. This increase in annual operating revenue is in lieu of the requested increase of approximately \$114.7 million originally requested; (2) The RS customer charge will be set at \$8.75 per month, the Universal Service Rider will be removed from the customer charge and recovered through energy charges and there will be a flat energy rate; (3) The present RTS customer charge will remain in effect and the revenue increase to Rate Schedule RTS will be limited to 150 percent of the percentage

⁵ SEF is not a party to the Partial Settlement but has indicated that it is not opposed to it.

increase to the entire Residential class; and, (4) Any revenue shortfall resulting from application of the RTS provision will be recovered from customers served under Rate Schedule RS.

After reviewing the terms of the Partial Settlement, SEF has determined that it will only brief issues relating to PPL Electric's proposal to modify the language of its Net Metering for Renewable Customer-Generators Rider.

III. SUMMARY OF ARGUMENT

In accordance with applicable law, PPL Electric has the burden of proving in this proceeding that its proposed Net Metering tariff is reasonable and supported by substantial evidence. The record evidence clearly reflects the fact that PPL Electric has failed to meet its burden because SEF has identified significant weaknesses in its Net Metering proposed tariff and offered a modification of the Company's language that more accurately represents Commission precedent on the issue.

IV. ARGUMENT

A. Burden of Proof

1. PPL Electric has the Burden of Proving the Reasonableness Of the Proposed Net Metering for Renewable Customer-Generators Rider.

The Public Utility Code at 66 Pa. C.S. Section 315(a) and 66 Pa. C.S. Section 332(a) clearly indicate that PPL Electric has the burden of proof in this proceeding. When a party bears the burden of proof, in addition to establishing a prima facie case, the party must also establish that “the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.”⁶ Substantial evidence has been defined as “that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”⁷

⁶ *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983).

⁷ *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975), as quoted in *Norfolk & Western Railway Company v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 128 (1980).

Moreover, the courts have held that the burden of proof does not shift to the party challenging a utility's proposal.⁸ Thus, while the burden of going forward may shift, the burden of finally and convincingly establishing the reasonableness and legality of the proposal always remains with PPL Electric. The intervening parties have no such burden. In this regard, the Commission has stated "[t]here is no presumption of reasonableness which attaches to a utility's claim, at least none which survives the raising of credible issues regarding a utility's claims. A utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims."⁹

Consequently, since PPL Electric has proposed to modify the terms of its Net Metering language, it must demonstrate, by substantial evidence, that such proposal is legal and reasonable.

⁸ *Berner v. Pennsylvania Public Utility Commission*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955).

⁹ *Pennsylvania Public Utility Commission v. Equitable Gas Company*, 57 Pa. P.U.C. 423, 444 (fn. 37) (1983).

B. Net Metering for Renewable Customer-Generators Rider¹⁰

1. SEF's Proposed Changes to the Net Metering for Renewable Customer-Generators Rider Should be Adopted.

PPL Electric has proposed to make several changes to the Net Metering for Renewable Customer-Generators Rider.¹¹ Company witness Oliver G. Kasper has proposed: (1) to change the excess customer generation value from "full retail

¹⁰ The Commission identified this issue as an "Area of Concern" (# 11) in the *Suspension Order* in this proceeding. In this regard, the Commission states "PPL's proposal to modify the language of its Net Metering for Renewable Customer-Generators Rider to reflect changes in the AEPS Act and to clarify the net metering provisions for shopping customers must be reviewed to determine whether or not such changes are just and reasonable, and whether or not they accurately address the changes and conditions they are meant to reflect." *Suspension Order*, Appendix A, p. 2 (# 11).

¹¹ The proposed tariff billing provisions provide, in part, as follows: The following billing provisions apply to customer-generators in conjunction with service under applicable Rate Schedules RS, GS-1, GS-3, or LP-4. 1. The customer-generator will receive a credit for each kilowatt-hour received by the Company up to the total amount of electricity delivered to the Customer by the Company during the billing period and at the full retail rate consistent with Commission regulations. If a customer-generator supplies more electricity to the Company than the Company delivers to the customer-generator in a given billing period, the excess kilowatt-hours shall be carried forward and credited against the customer-generator's usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours will continue to accumulate until the end of the *PJM planning period ending May 31 of each year*. On an annual basis consistent with the *PJM planning period*, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt-hours delivered by the Company to the customer-generator during the preceding year at the Company's *Price to Compare* consistent with Commission regulations. The customer generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.

2. If the Company supplies more kilowatt-hours of electricity than the customer-generator facility feeds back to the Company's system during the billing period, all charges of the appropriate rate schedule shall be applied in the net kilowatt-hours of electricity that the Company supplied. The

value” to “Company’s Price to Compare”; (2) the inclusion of yearly excess payments; and, (3) the establishment of net metering provisions for shopping customers.¹² On an annual basis, consistent with the PJM planning period, the Company proposes to compensate the customer-generator for kilowatt-hours received from the customer-generator during the preceding year at the Company’s Price to Compare.¹³

customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule. PPL Electric Ex. 1-OGK, pp. 19L.3-19L.4. (Emphasis added).

¹² The proposed tariff billing provisions for shopping customers provide, in part, as follows:

1. Customer-generators may take net metering services from EGSs that offer such services. 2. If a net-metering customer takes service from an EGS, the Company will credit the customer for distribution and CTC charges for each kilowatt hour produced by a Tier I or Tier I resource installed on the customer-generator’s side of the electric revenue meter, up to the total amount of kilowatt-hours delivered to the customer by the Company during the billing period. If a customer-generator supplies more electricity to the electric distribution system than the EDC delivers to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator’s usage in subsequent billing periods at the Company’s distribution rates. Any excess kilowatt at the end of the *PJM planning period* will not carry over to the next year for distribution and CTC charge purposes. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule. 3. If the Company delivers more kilowatt-hours of electricity than the customer-generator facility feeds back to the Company’s system during the billing period, all charges of the applicable rate schedule shall be applied to the net kilowatt-hours of electricity that the Company delivered. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule. PPL Electric Ex. 1-OGK, p. 19L.3-19L.4 (Emphasis added).

¹³ PPL Electric Ex. 1-OGK, p. 19L.3.

SEF witness John M. Costlow has testified that the Company proposed language should be modified because it is inconsistent with a recent Commission *Final Omitted Rulemaking Order (“Rulemaking Order”)* on the subject.¹⁴ The Order provides as follows:

Since the EDC’s retail generation and transmission rates may fluctuate during the year, such compensation shall be calculated by using the weighted average generation and transmission rates, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC. If the transmission or generation rate designs incorporate time of use rates, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation to the EDC.¹⁵

SEF witness Mr. Costlow has further testified that since the tariff is being written for the average utility customer, it should be written in “Plain English” (omitting terms such as “PJM” and “PJM Planning Period”) so that these

¹⁴ SEF St. 1, pp. 10-11.

¹⁵ *Final Omitted Rulemaking Order*, Docket No. L-00050174 (entered July 2, 2008), Order at pp. 20-21.

customers can better understand its terms.¹⁶ Accordingly, Mr. Costlow has recommended that the Company use actual dates and modify the rule as follows:

On an annual basis, within 15 days of May 31 of each year, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator between June 1 and May 31 at the Company's "Price to Compare." Compensation shall be calculated by using the weighted average generation and transmission rates, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to PPL Electric. If the customer-generator participates in the Time of Use default service option¹⁷, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation to the EDC.¹⁸

Mr. Costlow's proposed language is consistent with the Commission's *Rulemaking Order* (quoted earlier) and the Commission's Regulations.¹⁹ However, the Company has objected to the modification proposed by Mr. Costlow. Mr. Kasper argues that the terms "PJM" and "PJM Planning Period" are defined in the

¹⁶ SEF St. 1, p. 11. In fact, Vera Cole of the Mid Atlantic Renewable Energy Association expressed confusion about how excess payments are calculated for Net Metering customer-generators at the June 21, 2010 Public Input Hearing in Allentown. Tr. pp. 279-283.

¹⁷ PPL Electric's proposed Time of Use service option is presented at PPL Electric Ex. 1-OGK, pp. 19Z.3E – 19Z.3F.

¹⁸ SEF St. 1, p. 11.

¹⁹ The Commission's Regulations at 52 Pa. Code Section 75.13(d) state: "[a]t the end of each year, the EDC shall compensate the customer-generator over the amount of kilowatt hours delivered by the EDC during the same year at the EDC's Price to Compare."

Commission's Regulations at 52 Pa. Code Section 75.12 and the "PJM planning period ending May 31 of each year" is already included in the Billing Provisions Section 1 of the proposed Net Metering tariff on page 19L.3.²⁰ In addition, Mr. Kasper states that inclusion of the term "within 15 days of May 31 of each year" is unnecessary because it is not required by the Commission's Regulations and the Company "already targets calculation and credit or payment of the annual compensation amount within one billing cycle at the conclusion of the annual planning period."²¹

In fact, PPL Electric witness Mr. Kasper makes SEF's point in his response to Mr. Costlow's proposed modification. He first opines that the customer-generator could look in another section of a long, detailed tariff with difficult language to find out that the PJM Planning Period ends on May 31 each year. Why not make it simple for the customer-generator and include this clarification in the target section of the tariff? In addition, his claim that billing cycle payment information is provided at the conclusion of the annual planning cycle, also "begs

²⁰ PPL St. 8-R, p. 19.

²¹ PPL Electric St. 8-R, p. 20.

the question” - Why not provide this information up front in the tariff? Finally, Mr. Kasper states that such additional information is not required under the Commission’s Regulations. However, the Commission’s Regulations are clearly not intended to restrict public utilities from providing additional accurate, clarifying information to electric service consumers in the EDCs’ tariffs.

In regard to SEF witness Mr. Costlow’s inclusion of the “Time of Use” language identified in the Commission’s *Rulemaking Order*, PPL Electric witness Mr. Kasper acknowledges that SEF has accurately referred to the Commission’s *Rulemaking Order* as it relates to consideration of Time of Use rates but that the Company has chosen not to incorporate that language in its proposed tariff.²²

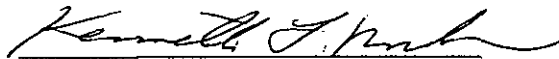
Consequently, the record clearly reflects the fact that SEF witness Mr. Costlow’s proposed Net Metering language more accurately reflects Commission precedent on the issue, is composed of clear and concise terms and is inherently more reasonable. Accordingly, SEF asserts that Mr. Costlow’s proposed modification to the Net Metering for Renewable Customer-Generators Rider should be approved and the Company’s proposal should be rejected.

²² PPL Electric St. 8-R, pp. 18-19.

V. CONCLUSION

For the reasons set forth herein, SEF respectfully requests that the Administrative Law Judge and the Commission approve Mr. Costlow's modification to the proposed tariff for Net Metering for Renewable Customer-Generators Rider.

Respectfully submitted,



Kenneth L. Mickens, Esquire
PA Attorney ID #31255
Attorney for the Sustainable
Energy Fund

316 Yorkshire Drive
Harrisburg, PA 17111
(717) 343-3338

Dated: September 2, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing SEF Main Brief in accordance with the requirements of 52 Pa. Code §1.54 et.seq. (relating to service by a participant) upon the parties listed below.

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

David B. MacGregor, Esq.
John H. Isom, Esq.
Post & Schell PC
Four Penn Center
1600 JFK Boulevard
Philadelphia, PA 19103

Aron J. Beatty, Esq.
Tanya McCloskey, Esq.
Office of Consumer Advocate
555 Walnut St. 5th Floor, Forum Place
Harrisburg, PA 17101-1923

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

Richard Kanaskie, Esq.
Lawrence Barth, Esq.
PA PUC Office of Trial Staff
PO Box 3265
Harrisburg, PA 17105-3265

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105

Robert D. Knecht
Industrial Economics, Inc.
2067 Massachusetts Avenue
Cambridge, MA 02140

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

Joseph L. Vullo, Esq.
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704

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

Donald L. Foreman
305 Hillside Road
Elizabethtown, PA 17022-1206

Eric J. Epstein
4100 Hillside Road
Harrisburg, PA 17112

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

Elaine B. Santarelli
521 Second Avenue
Jessup, PA 18434

Elaine & Clayton Andrews, Jr.
2015 Evergreen Drive
Tamaqua, PA 18252

Linda M. Johnson
62 Stones Throw
East Stroudsburg, PA 18301

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Gerard Martin
26 Brentwood Road
Camp Hill, PA 17011

George R. Snyder
110 Homestead Drive
Stevens, PA 17567


Peter Grieger
1810 Ridge Road
Elizabethtown, PA 17022

John K. Baillie, Esq.
Citizens for Pennsylvania's Future
425 Sixth Avenue, Ste 2770
Pittsburgh, PA 15219-1853

Deanne O'Dell, Esq.
Eckert Seamans
213 Market Street, 8th Flr
Harrisburg, PA 17101

Craig Doll, Esq.
25 West Second Street
PO Box 403
Hummelstown, PA 17036-0403

Thomas Catlin
Lafayette Morgan
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, MD 20144



Kenneth L. Mickens, Esq.
316 Yorkshire Drive
Harrisburg, PA 17111-6933
Telephone: (717) 343-3338
Fax: (717) 657-0938

Dated: September 2, 2010

Honorable Susan Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265