



September 13, 2010

KENNETH L. MICKENS, ESQUIRE LLC
LEGAL CONSULTING

RECEIVED

2010 SEP 13 AM 9:32

PA PUC
SECRETARY'S BUREAU

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 Reply 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,

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

KLM/bls

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility :
Commission : Docket No. R-2010-2161694
v. :
PPL Electric Utilities Corporation :

REPLY BRIEF
OF THE
SUSTAINABLE ENERGY FUND

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

Dated: September 13, 2010

RECEIVED
2010 SEP 13 AM 9:32
PA PUC
SECRETARY'S BUREAU

TABLE OF CONTENTS

I. BACKGROUND AND HISTORY OF THE PROCEEDING 1

II. PARTIAL SETTLEMENT 5

III. SUMMARY OF ARGUMENT 6

IV. ARGUMENT 7

 A. Burden of Proof..... 7

 1. PPL Electric has Failed to Meet Its Burden of Proving the Reasonableness Of the Proposed Net Metering for Renewable Customer-Generators Rider. 7

 B. Net Metering for Renewable Customer-Generators Rider 8

 1. SEF’s Proposed Changes to the Net Metering for Renewable Customer-Generators Rider Should be Adopted. 8

 2. The Monthly Credit Provided to Net Metering Customer-Generators who Provide More Generation than they Consume from PPL Electric, should be based upon the Full Retail Rate. 9

 3. PPL Electric’s Net Metering Tariff Should Employ Plain Language that can be Easily Understood by Customer-Generators. 13

V. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

<i>Berner v. Pennsylvania Public Utility Commission</i> , 382 Pa. 622, 631, 116 A.2d 738, 744 (1955)	7
<i>Burleson v. Pennsylvania Public Utility Commission</i> , 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983).....	7
<i>Commission</i> , 382 Pa. 622, 631, 116 A.2d 738, 744 (1955); <i>Pennsylvania Public Utility Commission v. Equitable Gas Company</i> , 57 Pa. P.U.C. 423, 444 (fn 37) (1983).	7
<i>Dutchland Tours, Inc., v. Pennsylvania Public Utility Commission</i> , 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975 as quoted in <i>Norfolk & Western Railway Company v. Pennsylvania Public Utility Commission</i> , 489 Pa. 109, 128 (1980)	7
<i>Pennsylvania Public Utility Commission v. Equitable Gas Company</i> , 57 Pa. P.U.C. 423, 444 (fn 37) (1983) 7	

Commission Orders

<i>Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.</i> , Docket No. R-00973954, Final Order (entered August 13, 1998). 3	
<i>Final Omitted Rulemaking Order</i> , Docket No. L-00050174 (entered July 2, 2008),	8
<i>Joint Petition for Full Settlement of PP&L, Inc.’s Restructuring Plan and Related Court Proceedings</i> , filed August 12, 1998 at Docket No. R-00973954.	3

Statutes

52 Pa. Code Section 75.12	13
52 Pa. Code Section 75.13 (c)	9
52 Pa. Code Sections 13 (c) and (d).....	10
66 Pa. C.S. Section 315(a).....	7
66 Pa. C.S. Section 332(a).....	7

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.

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.

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

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.

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

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.

On September 2, 2010, SEF filed its Main Brief⁵ in this proceeding, setting forth the evidence and the law in support of its recommendation to modify the Company's proposed Net Metering Renewable for Customer-Generators Rider. This Reply Brief is supplemental to the SEF Main Brief and is limited to matters addressed by PPL Electric in its Initial Brief and matters previously addressed by SEF which require additional discussion as a result of statements made by PPL Electric in its Initial Brief.

⁵ Main Briefs were also filed by PPL Electric, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), PP&L Industrial Customer Alliance ("PPLICA"), the Commission on Economic Opportunity ("CEO"), Richards Energy Group, Inc. ("REG"), the Office of Trial Staff ("OTS") and the Retail Energy Supply Association ("RESA").

II. PARTIAL SETTLEMENT

PPL Electric, OCA, OTS and REG⁶ have agreed to a partial settlement of this proceeding. The details of the Partial Settlement are discussed at pp. 4-5 of the SEF Main Brief. 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.

⁶ SEF is not a party to the Partial Settlement but has indicated that it is not opposed to it.

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 and the discussion in the SEF and PPL Electric Main Briefs reflect the fact that PPL Electric has failed to meet its burden of proof because SEF has identified significant weaknesses in the Company's proposed Net Metering tariff and offered a modification of the Company's language that more accurately represents Commission precedent on the issue and reflects the intent of the AEPS Act to support the development of alternative energy systems.

IV. ARGUMENT

A. Burden of Proof

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

As discussed in the SEF Main Brief, the Public Utility Code at 66 Pa. C.S. Section 315(a) and 66 Pa. C.S. Section 332(a) and related case law clearly indicate that PPL Electric has the burden of proof in this proceeding and that such burden is met only by the proffer of substantial evidence.⁷ 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.

⁷ SEF Main Brief, pp. 7-8. *See, Burlison v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983); *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); *Berner v. Pennsylvania Public Utility Commission*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955); *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 Rider

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.⁸ SEF witness John M. Costlow has testified that PPL Electric's proposed modifications to the Rider should be rejected because its terms are inconsistent with a recent Commission Final Omitted Rulemaking Order ("*Rulemaking Order*") on the subject.⁹ Specifically, SEF witness John M. Costlow has testified that the calculation of compensation for kWh generation in excess of kWh use under PPL Electric's proposed Net Metering Rider fails to properly credit Net Metering customers for distribution

⁸ SEF identifies the affected tariff provisions at pp. 9-10 of the SEF Main Brief.

⁹ *Final Omitted Rulemaking Order*, Docket No. L-00050174 (entered July 2, 2008), Order at pp. 20-21. This *Rulemaking Order* was adopted by the Commission in order to amend the net metering regulations required by Section 1648.5 of the Alternative Energy Portfolio Standards Act, 73 P.S. Section 1648.1 *et. seq.* ("*AEPS Act*") to be consistent with Act 35 of 2007. On July 17, 2007, Governor Edward Rendell signed Act 35 of 2007 into law. Act 35 became effective immediately. Act 35, Section 4. This law amends several sections of the AEPS Act, including those sections relating to the definition of customer-generators, the reconciliation mechanism for surplus energy supplied through net metering and the price to be paid for surplus energy. *Rulemaking Order* at pp. 1-2. See, SEF Main Brief, pp. 10-14.

charges¹⁰ since it does not credit *customer* and *demand* charges that these customers incur.¹¹ Moreover, Mr. Costlow asserts that the Commission's Regulations at 52 Pa. Code Section 75.13 (c)¹² requires PPL Electric to credit customer-generators for both generation and distribution charges and that the credit for distribution charges should apply to all distribution charges, including customer and demand charges.¹³ Consequently, as discussed in SEF's Main Brief at p. 12, SEF witness Mr. Costlow has proposed a modification to the net metering tariff which more accurately reflects the requirements of the Commission's Regulations.

2. The Monthly Credit Provided to Net Metering Customer-Generators who Provide More Generation than they Consume from PPL Electric, should be based upon the Full Retail Rate.

¹⁰ PPL Electric's distribution charges for rate schedule RS include a customer charge, energy charge and demand charge. PPL Electric has proposed to collect *all* distribution charges for rate schedule GS-1 and GS-3 customers through customer and demand charges. PPL Electric St. 6, p. 29.

¹¹ SEF St. 1-S, pp. 14- 15.

¹² 52 Pa. Code Section 75.13 (c) states "[t]he EDC *shall* credit a customer-generator at the full retail rate, which *shall include generation, transmission and distribution charges....*" (Emphasis added).

¹³ SEF St. 1-S, p. 15.

In its Initial Brief, PPL Electric first argues that the credit for distribution charges should only apply to energy charges and not to customer or demand charges because the *plain language* of 52 Pa. Code Sections 13 (c) and (d) provide that “an EDC is obligated to credit or compensate customer generators only for the excess energy or kilowatt-hour of electric usage, not the customer or demand component of a customer’s bill.”¹⁴

However, PPL Electric fails to acknowledge the full implication of the language of 52 Pa. Code Section 13 (c) which requires EDCs to “credit a customer-generator at the *full retail rate, which shall include generation, transmission and distribution....*” (Emphasis added). In fact, the Commission in its *Rulemaking Order* verified this very fact. The Commission states:

The clear intent of the Act 35 amendment was to facilitate the research, development and deployment of small alternative energy resources by providing monthly credits consistent with the *full retail value* for the kilowatt-hours generated by the renewable resource. *As such, this Commission believes that for energy produced from a renewable resource up to the level of monthly energy usage by a customer-generator should*

¹⁴ PPL Electric Initial Brief, p. 65.

*include the fully bundled charges for generation, transmission and distribution service.*¹⁵

Moreover, the Commission later states that it “has added language to Section 13 (c) that clarifies that the phrase “full retail rate” shall include generation, transmission and distribution charges.”¹⁶ In fact, PPL Electric witness Oliver G. Kasper has admitted under cross examination that the term *full retail rate* in Section 13 (c) refers to generation, transmission and distribution charges.¹⁷ In addition, the term *full retail rate* would mean little if it does not include minimum bill charges, the customer charge and any demand registered on the meter because, as PPL Electric witnesses have admitted, these charges are used to recover costs that otherwise would be included in usage charges.¹⁸

Although the Commission’s Regulations require that customers be credited at full retail value, PPL Electric admits in its Initial Brief that it *only provides full retail value if kilowatt-hour charges exist in the rate schedule.*¹⁹ Thus, not even all

¹⁵ *Rulemaking Order* at p. 14. (Emphasis added).

¹⁶ *Rulemaking Order* at p. 15.

¹⁷ Tr. p. 413.

¹⁸ See, testimony of PPL Electric witness Mr. Kasper at Tr. pp. 407-408.

¹⁹ See, PPL Electric Initial Brief, p. 65.

applicable distribution charges are properly credited.²⁰ Moreover, the Company acknowledges that “customers are responsible for the customer charge, the minimum bill, and any demand that may have been registered on the meter, even if customer generation was equal to or exceeded customer usage.”²¹ These conditions are clearly inconsistent with the Commission’s stated position and its Regulations.

PPL Electric claims its treatment of these charges is necessary because net metering customers place certain demands on the system.²² However, any demands that net metering customers place on PPL Electric’s system by receiving service are compensated for when these same customers provide energy for PPL Electric’s system in excess of their usage. Moreover, PPL Electric’s interpretation would discourage rather than promote the research, development and

²⁰ In this regard, PPL Electric witness Douglas A. Krall has testified that although the Company’s distribution costs are primarily a function of the number of customers and the demand that they place on the system, the Company does not charge a demand component to residential customers. Tr. pp. 430-431.

²¹ PPL Electric St. 8-RJ, p. 8; PPL Electric Ex. OGK-1, p. 19L.3.

²² PPL Electric Initial Brief, p. 66.

deployment of distributed alternative energy systems as required by the AEPS

Act.²³

3. PPL Electric's Net Metering Tariff Should Employ Plain Language that can be Easily Understood by Customer-Generators.

SEF witness Mr. Costlow has testified that in order to make PPL Electric's Net Metering tariff easier to understand, the tariff should be revised to replace the terms "PJM" and "PJM Planning period" with the term "within 15 days of May 31 of each year."²⁴ PPL Electric argues in its Initial Brief that these changes are unnecessary because: (1) the suggested addition of the term "within 15 days of May 31 of each year" is not included in the Commission's Regulations; (2) the term "PJM Planning period" is included in the Commission's Regulations at 52 Pa. Code Section 75.12; (3) the tariff language complies with the Commission regulation and the term "PJM Planning period ending May 31 of each year" is

²³ In this regard, the Commission states the following in its *Rulemaking Order*: The Commission must disagree with EAP, IECPA, OSBA and PECO that full retail value should be interpreted to mean only the generation component of a retail rate. *This Commission believes that such an interpretation would unreasonably frustrate the clear intent of the AEPS Act, which is to promote the research, development and deployment of distributed alternative energy systems.* *Rulemaking Order* at p. 19. (Emphasis added).

²⁴ SEF St. 1, p. 11.

already included in the Billing Provision Section 1 of the proposed Net Metering Rider; and, (4) the language at issue has been previously approved by Commission Secretarial letter.²⁵

However, as SEF explains in its Main Brief at pp. 12-14, the Company's argument that customers can plow through other detailed sections of the net metering tariff in order to find out what the language in another section means does not adequately respond to Mr. Costlow's call for simplicity. In addition, the Company's claim that such simplicity is not required under the Commission's Regulations implies that the regulations are designed to restrict public utilities from providing additional accurate, clarifying information. SEF asserts that the Commission's Regulations do not prohibit such language. Finally, since net metering customers have expressed confusion concerning the interpretation of the net metering tariff²⁶, SEF asserts that an effort should be made to simplify the language.

²⁵ PPL Electric Initial Brief, p. 66-67.

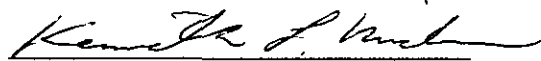
²⁶ PPL Electric has alleged that it has not received any complaints from customers about the language in the Net Metering tariff. PPL Electric Initial Brief, p. 67. However, the record reflects the fact that Vera Cole of the Mid Atlantic Renewable Energy Association expressed confusion about how excess payments are calculated for Net Metering customer-generators at the June 21, 2010 Public Input Hearing in Allentown. Tr. pp. 279-283.

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 and SEF's interpretation of the composition of the monthly credit should be approved and the Company's proposal should be rejected.

V. CONCLUSION

For the reasons set forth herein and in SEF's Main Brief, SEF respectfully requests that the Administrative Law Judge and the Commission approve SEF's modification to the proposed tariff for Net Metering for Renewable Customer-Generators Rider (including its interpretation of the composition of the monthly credit) and that PPL Electric's proposed modifications be denied.

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 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing SEF Reply 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

RECEIVED
2010 SEP 13 AM 9:33
PA PUC
SECRETARY'S BUREAU

Gerard Martin
26 Brentwood Road
Camp Hill, PA 17011

George R. Snyder
110 Homestead Drive
Stevens, PA 17567

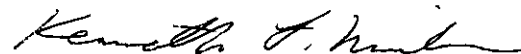
Peter Grieger
1810 Ridge Road
Elizabethtown, PA 17022

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 13, 2010

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