



November 4, 2010

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

Dear Secretary Chiavetta:

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

Respectfully submitted,
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ID #31255
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Energy Fund

KLM/bls

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS
OF THE
SUSTAINABLE ENERGY FUND

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Dated: November 4, 2010

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTIONS 5

 1. The ALJ Erred In Determining that the Monthly Credit Provided to Net Metering Customer-Generators Who Provide More Generation than they Consume From PPL Electric During the Month, Should be Based Upon the “Price To Compare.” 5

 2. PPL Electric’s Net Metering Tariff Should Employ Plain Language that can be Easily Understood by Customer-Generators. 14

III. CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases

| | |
|---|---|
| <i>Berner v. Pennsylvania Public Utility Commission</i> , 382 Pa. 622, 631, 116 A.2d 738, 744 (1955) | 6 |
| <i>Burleson v. Pennsylvania Public Utility Commission</i> , 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983)..... | 6 |
| <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) | 6 |
| <i>Pennsylvania Public Utility Commission v. Equitable Gas Company</i> , 57 Pa. P.U.C. 423, 444 (fn 37) (1983) 6 | |

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), | 6 |
| <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 |

Regulations / Statutes

| | |
|--|----|
| 52 Pa. Code § 54.182 | 8 |
| 52 Pa. Code § 75.12 | 6 |
| 52 Pa. Code § 75.13(d)..... | 12 |
| 52 Pa. Code Section 75.12 | 14 |
| 52 Pa. Code Section 75.13 (c) | 7 |
| 52 Pa. Code Sections 13 (c) and (d)..... | 9 |
| 66 Pa. C.S. Section 315(a)..... | 5 |
| 66 Pa. C.S. Section 332(a)..... | 5 |

I. INTRODUCTION

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 ("ALJ").

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 Settlement⁵ 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.

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

On September 2, 2010, SEF filed its Main Brief⁶ 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.⁷ On September 13, 2010, SEF filed its Reply Brief⁸ in this proceeding. On October 15, 2010, the Administrative Law Judge issued her Recommended Decision. SEF files the instant Exceptions to the Recommended Decision.

Settlement are discussed at pp. 4-5 of the SEF Main Brief. SEF has not opposed the Partial Settlement. After reviewing the terms of the Partial Settlement, SEF has determined that it will only pursue issues relating to PPL Electric's proposal to modify the language of its Net Metering for Renewable Customer-Generators Rider.

⁶ Main Briefs were also filed by PPL Electric, OCA, the Office of Small Business Advocate ("OSBA"), PP&L Industrial Customer Alliance ("PPLICA"), the Commission on Economic Opportunity ("CEO"), REG and the Retail Energy Supply Association ("RESA").

⁸ Reply Briefs were also filed by PPL Electric, OCA, OSBA, PPLICA, CEO, REG and RESA.

II. EXCEPTIONS

1. The ALJ Erred In Determining that the Monthly Credit Provided to Net Metering Customer-Generators Who Provide More Generation than they Consume From PPL Electric During the Month, Should be Based Upon the “Price To Compare.”

SEF Reply Brief, pp. 8-13.

Recommended Decision, pp. 62-65.

After a cursory review of the positions of the parties, the ALJ recommended the adoption of PPL Electric’s proposed amendments to its Net Metering Customer-Generators Rider.⁹ SEF asserts that this determination is in error for the reasons discussed below.

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.¹⁰ Consequently, since PPL

⁹ Recommended Decision, pp. 62-65.

¹⁰ SEF Main Brief, pp. 7-8. *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983). Incidentally, in regard to *Burleson*, PPL Electric alleged in its Reply Brief that SEF misquoted this case in its Main Brief. PPL Electric Reply Brief, p. 3 (fn 1). PPL Electric is mistaken. SEF has merely cited *Burleson* for the proposition that even if a litigant establishes a prima facie case, it still has the ultimate burden of persuasion, which must be proven by substantial evidence. 461 A.2d at 1236. See, SEF Main Brief, p. 7. PPL Electric’s attempt to distinguish the case on the basis that it

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.

PPL Electric has proposed to make several changes to the Net Metering¹¹ for Renewable Customer-Generators Rider.¹² Evidence that PPL Electric has failed to meet its burden of proof in connection with this proposal is abundant. First, 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.¹³

involved a customer complaint is without merit because that fact has no relevance to the legal determination by the Court in *Burleson* as cited by SEF in its Main Brief ; *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).

¹¹ The Commission Regulations define *net metering* as follows: *Net Metering* – The means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when any portion of the electricity generated by an alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity. 52 Pa. Code § 75.12.

¹² SEF identifies the affected tariff provisions at pp. 9-10 of the SEF Main Brief.

¹³ *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

Specifically, SEF witness John M. Costlow has testified that the calculation of compensation for monthly kWh generation in excess of kWh use under PPL Electric's proposed Net Metering Rider fails to properly credit Net Metering customers for distribution charges¹⁴ since it does not credit *customer* and *demand* charges that these customers incur.¹⁵ Moreover, Mr. Costlow asserts that the Commission's Regulations at 52 Pa. Code Section 75.13 (c)¹⁶ 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.¹⁷ Consequently, SEF witness Mr.

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.*

¹⁴ PPL Electric's distribution charges for rate schedule RS include a customer charge, energy charge and demand charge. However, 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.

¹⁵ SEF St. 1-S, pp. 14- 15.

¹⁶ 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).

¹⁷ SEF St. 1-S, p. 15.

Costlow has proposed a modification to the net metering tariff which more accurately reflects the requirements of the Commission's Regulations.¹⁸

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

In reciting the SEF position on this issue, the ALJ states at p. 62 of the Recommended Decision that "SEF argues that the PPL price to compare¹⁹ is not the correct measure of compensation for excess generation *annually* because it does not credit customer and demand charges that these customers incur." (Emphasis added). In fact, SEF has challenged PPL Electric's proposed calculation of the *monthly credit* provided to Net Metering Customer-Generators who

¹⁸ SEF witness Mr. Costlow has recommended that PPL Electric 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 option, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation to the EDC.* SEF St. 1, p. 11. (Emphasis added).

¹⁹ The Commission's Regulations define the "Price-to-Compare" as "[a] line item that appears on a retail customer's monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service." 52 Pa. Code § 54.182.

provide more generation than they consume from PPL Electric during the monthly billing period.²⁰ In this regard, PPL Electric has argued 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.”²¹

However, PPL Electric and the ALJ fail to acknowledge the full implication of the language of 52 Pa. Code Section 13 (c) as it applies to the *monthly billing credit*. In this regard, Section 13 (c) 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

²⁰ See, SEF Reply Brief, pp. 9-13. The *monthly* and *annual* billing Net Metering for excess generation calculations are credited differently under the Commission’s Regulations. See, 52 Pa. Code § 75.13(c).

²¹ PPL Electric Initial Brief, p. 65.

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 include the fully bundled charges for generation, transmission and distribution service.*²²

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.”²³ 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.²⁴ 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.²⁵

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*

²² *Rulemaking Order* at p. 14. (Emphasis added).

²³ *Rulemaking Order* at p. 15.

²⁴ Tr. p. 413.

²⁵ See, testimony of PPL Electric witness Mr. Kasper at Tr. pp. 407-408.

*retail value if kilowatt-hour charges exist in the rate schedule.*²⁶ Thus, not even all applicable distribution charges are properly credited.²⁷ 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.”²⁸ 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.²⁹ 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

²⁶ See, PPL Electric Initial Brief, p. 65.

²⁷ 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.

²⁸ PPL Electric St. 8-RJ, p. 8; PPL Electric Ex. OGK-1, p. 19L.3.

²⁹ PPL Electric Initial Brief, p. 66.

deployment of distributed alternative energy systems as required by the AEPS Act.³⁰

In rejecting SEF's position, the ALJ is clearly solely focused upon the *annual* credit to be provided to Net Metering customer-generators who provide excess generation because she refers to the Commission's Regulations at 52 Pa. Code § 75.13(d) in her summary analysis, which only applies to the *annual* excess generation calculation.³¹ The ALJ's error is compounded when she concludes that "the regulation and Commission intent as reflected in its implementation order are that distribution charges are to be included in the credit to customer-generators *until those customer-generators generate more power than they consume.*"³² In fact, since the Commission's intent is that the *monthly* net

³⁰ 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).

³¹ See, Recommended Decision, p. 65. In this regard, 52 Pa. Code § 75.13(d) provides in part "[a]t the end of each year, the EDC shall compensate the customer-generator for any excess kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the same year at the EDC's price to compare." (Emphasis added).

³² Id. (Emphasis in original).

metering credit for excess generation should be based upon the *full retail rate*, there is no implication, as the ALJ avers, that distribution charges are to be included in the credit to customer-generators *only* until those customers generate more power than they consume.

In summary, the record clearly reflects the fact that PPL Electric has failed to meet its burden to demonstrate that its proposed modifications to the Net Metering for Renewable Customer-Generators Rider are reasonable. Instead, SEF has demonstrated that the monthly credits should be based upon the *full retail value* of the generation and SEF's interpretation of the composition of the monthly credit should be approved, while PPL Electric's proposal should be rejected.

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

SEF Main Brief, pp. 12-14.

SEF Reply Brief, pp. 13-15.

Recommended Decision, p. 66.

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."³³ PPL Electric has argued 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 already included in the Billing Provision Section 1 of the proposed Net Metering Rider; and, (4) the

³³ SEF St. 1, p. 11.

language at issue has been previously approved by Commission Secretarial letter.³⁴

In her Recommended Decision, the ALJ determined that “[f]or consistency, using common terminology is preferred and that is what PPL Electric proposes to do. Consequently, there is no overriding reason to change it.”³⁵ First, in response to the ALJ, SEF asserts that consistency, alone, is insufficient to support the continuation of a process that is flawed. If the language in the tariff can be improved, SEF believes that consistency should not stand in the way. Moreover, 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

³⁴ PPL Electric Initial Brief, p. 66-67.

³⁵ Recommended Decision, p. 66.

metering customers have expressed confusion concerning the interpretation of the net metering tariff³⁶, SEF asserts that an effort should be made to simplify the language.

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 SEF's proposed modification to the Net Metering for Renewable Customer-Generators Rider should be approved and the Company's proposal should be rejected.

³⁶ 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.

III. CONCLUSION

For the reasons set forth herein, SEF respectfully requests that the Commission adopt SEF's Exceptions and approve SEF's modifications to the proposed tariff for Net Metering for Renewable Customer-Generators Rider and that PPL Electric's proposed modifications be denied.

Respectfully submitted,



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Dated: November 4, 2010

CERTIFICATE OF SERVICE

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

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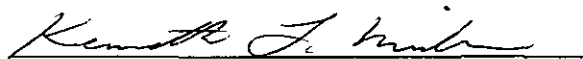
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Dated: November 4, 2010