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December 30, 2010

Rosemary Chiavetta
Secretary
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Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: PPL Electric Utilities Corporation
Universal Service and Energy
Conservation Plan for 2011-2013
Docket No. M-2010-2179796

Dear Secretary Chiavetta:

Enclosed for filing are the Exceptions of the Office of Consumer Advocate to Administrative Law Judge Susan D. Colwell's Initial Decision Denying the Petition to Intervene of Pennsylvania Communities Organizing for Change, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. Beatty', with a long horizontal line extending to the right.

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosures

cc: Honorable Susan D. Colwell

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PPL Electric Utilities Corporation :
Universal Service and Energy : Docket No. M-2010-2179796
Conservation Plan for 2011-2013 :

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 30, 2010

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I. INTRODUCTION

On December 10, 2010, the Commission issued the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Susan D. Colwell in the PPL Electric Utilities Corporation's (PPL or Company) "Universal Service and Energy Conservation Plan" proceeding. In her I.D., the ALJ denies the Petition for Intervention of the Pennsylvania Communities Organizing for Change (PCOC). PCOC's Petition to Intervene was challenged by the Company. The Office of Consumer Advocate (OCA) filed a Response to PPL's Answer to PCOC's Petition to Intervene in which the OCA supported PCOC's Intervention. PCOC is a not-for-profit membership-based advocacy group incorporated in Pennsylvania. PCOC's stated mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to and affordability of utility service. See, I.D. at 6. In this proceeding, PCOC specifically named four members who were residential customers of PPL. I.D. at 6.

In its Response, the OCA supported PCOC's intervention as being in the public interest in accordance with Section 5.72(a)(3) of the Commission's regulations governing intervention. 52 Pa. Code §5.72(a)(3). The OCA also argued that the Company's assertion that the OCA's participation in this proceeding diminishes PCOC's right to intervene in any way was plain legal error. The OCA noted that Commission and Courts have rejected this argument in prior cases and that the Commission must reject it in this case as well.¹

¹ In its Answer, the Company argued that the Commission should deny PCOC's Petition because, among other reasons, "The Pennsylvania Office of Consumer Advocate intervened and has been active in this proceeding advocating on behalf of all PPL Electric's residential customers, including low income residential customers." Answer, ¶ 9. The OCA argued below that the interests represented by the OCA and by PCOC are not identical. The OCA represents the interests of all of the Company's customers, both those who are low income and those who are not. The OCA argued that it would be incorrect to assume that the OCA's broad-based presence would adequately accommodate the specific concerns that PCOC may seek to address in this proceeding. The OCA further argued that the OCA and PCOC do not have access to the same base of experience on which to shape their participation in this proceeding. As a result, it was highly unlikely that the participation of PCOC and the OCA would be duplicative.

In her I.D., ALJ Colwell rejected PCOC's Petition for Intervention. The ALJ based her rejection of PCOC's Intervention on her conclusion that PCOC lacked standing as a corporate entity with a direct corporate interest in the service provided by PPL. The ALJ also concluded that PCOC did not "represent" its members and so must have standing as a separate corporation to be granted intervention. I.D. at 8-10.

In rejecting the PCOC Petition to Intervene, the ALJ did not reach the issues addressed by the OCA. I.D. at 10. Specifically, the ALJ did not address the OCA's argument that PCOC's intervention is in the public interest in accordance with Section 5.72(a)(3) and should be permitted to go forward consistent with the Commission's regulations concerning eligibility to intervene. The ALJ also found the OCA's argument regarding the impact of OCA participation on PCOC's Petition to Intervene to be moot as she had denied intervention on other grounds.

The OCA respectfully submits that the ALJ incorrectly denied PCOC's Intervention in this case and submits these Exceptions in support of PCOC's intervention and participation in this proceeding.

II. EXCEPTIONS

OCA Exception 1: The ALJ Erred By Concluding That PCOC's Eligibility To Intervene Was Restricted Because Its Corporate Ties To The PPL Electric Service Territory Do Not Justify A Finding Of "Standing" (I.D. at 10).

In her I.D., the ALJ denied PCOC's Petition to Intervene based on PCOC's status as a corporation and a finding that the corporate entity did not have sufficient links to the PPL service territory to establish "standing" to participate. The ALJ also based her decision on her conclusion that PCOC did not represent its members and thus did not have representational standing. I.D. at 8-9. In reaching her conclusion, the ALJ stated:

In fact, PCOC can either be a representational “membership-based organization,” i.e., *an association*, or it can be a corporation, which is a separate and distinct legal entity separate from its shareholder(s), in its own right. It has chosen to be a corporation – a distinct legal entity with its own rights, responsibilities, and restrictions. Therefore, PCOC must itself, as a corporation, have standing to intervene.

* * *

In other words, the standing of a shareholder, or member, to participate in a particular proceeding will not translate into standing of the corporation itself.

I.D. at 8-9 (footnote omitted)(emphasis in original).

The OCA respectfully submits that the ALJ erred in her decision by determining that a finding of “standing” as a corporate entity, or representational standing, is required for participation as an intervenor in the proceeding below. While the concept of “standing” is an element of proceedings before the courts, it is not the only standard by which a party is permitted to participate in an administrative proceeding before the Pennsylvania Public Utility Commission. The Commission’s regulations at 52 Pa. Code §5.72(a)(3) provide that intervention may be granted if there is an interest of such nature that participation of the intervenor is in the public interest. The OCA submits that PCOC’s interest is of such nature that it will further the public interest. Additionally, the ALJ’s decision that attempts to separate the not-for-profit corporation from its members and its mission must fail. As such, PCOC’s intervention should be granted.

The Commission’s regulations detail the eligibility requirements for participation in proceedings before the Commission. The ALJ identified the Commission’s criteria for participation in such proceedings. I.D. at 9. The Commission’s regulations are as follows:

§ 5.72. Eligibility to intervene.

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa. Code §5.72(a)(underlining emphasis added).

The OCA submits that the PCOC intervention falls squarely within the Commission's regulations at Section 5.72(a)(3) and meets the specific requirements for intervention in this proceeding. Indeed, the Commission frequently permits participation of a wide variety of non-profit corporate entities that do not have direct links to utility service territories (apart from their mission and membership) as the participation of these entities in these proceedings furthers the public interest. Many of these entities are member-based, not for profit corporations structured like PCOC. By way of example, the Retail Energy Supply Association (RESA)² and Citizens for Pennsylvania's Future (PennFuture)³ are member-based, not for profit corporations that actively participate in numerous proceedings before the Commission based on their mission statement and members' interest in the service territory. Other member-based, not for profit corporations that participate in Commission proceedings

² See, <http://www.resausa.org/>.

³ See, http://www.pennfuture.org/aboutus_fi.aspx.

include the Sierra Club⁴, AARP⁵, Pennsylvania Independent Oil & Gas Association (PIOGA)⁶, and the Energy Conservation Council (ECC).⁷ Under the reasoning of the ALJ's decision in this case, none of these parties would have the ability to intervene in Commission proceedings unless their corporate headquarters or offices were located in the service territory of the utility that is the subject of the Commission proceeding.

From a practical perspective, the OCA submits that the meaningful participation of low-income customers in the present proceeding, which the ALJ notes as a Commission objective, can best be served through the participation of public interest organizations dedicated to advancing low-income interests. PCOC is just such an organization. The OCA submits that it would be counter-productive to encourage low-income participation, while then denying the participation of organizations best able to serve those interests. Low-income customers themselves are, by their very nature, often lacking the resources to participate effectively before the Commission.

The OCA submits that Section 5.72(a)(3) provides for PCOC's participation in this proceeding. PCOC's participation is in the public interest because no other party will duplicate the vantage point from which PCOC will participate as PCOC represents the interest of low-income customers. The unique nature of PCOC's position—compared to the other parties—warrants its participation in this case.

The ALJ summarized her legal determination for denying participation to PCOC as follows:

⁴ See, <http://www.sierraclub.org/foundation/downloads/2009-annual-report.pdf>.

⁵ See, <http://www.resausa.org/>; <http://www.aarp.org/about-aarp/2009-annual-reports/>.

⁶ See, http://iogapa.org/files/PIOGA_Bylaws.pdf.

⁷ See, <http://www.energyconservationcouncil.org/about.html>.

The pleadings filed by PCOC indicate that its purpose is to represent the interests of low-income customers of utilities, and while the Commission encourages the participation of low-income customers, PCOC is not a low-income customer but is an independent legal entity with no ties to the PPL Electric service territory to justify a finding of standing. PCOC has failed to sustain its burden of proving its entitlement to standing to participate in this Commission proceeding.

I.D. at 10 (footnotes omitted).

The ALJ's finding acknowledges the public interest is served by the participation of low-income customers, but denies PCOC's intervention because it is not a low-income customer itself, and it does not possess standing to intervene as an independent legal entity. The OCA submits that it is through the participation of organizations such as PCOC that low income customers are able to participate in a meaningful way, as the Commission encourages such participation of low-income customers. Such participation is within the Commission's regulations, specifically Section 5.72(a)(3), which allows for parties to become active if they represent "Another interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code §5.72(a)(3).⁸

Furthermore, the OCA submits that the Commission's Rules of Administrative Practice and Procedure are broad and are to be liberally construed. 52 Pa. Code §1.2. The Commission has wide latitude to allow parties to participate in proceedings before it. Under Section 5.72 of the Pennsylvania Code, supra, PCOC should be able to participate in this proceeding particularly in light of the Commission's broad discretion in this area.

⁸ While the ALJ concluded that PCOC does not represent its members and thus does not have standing, this conclusion may also be in error. The Commonwealth Court has held that as long as one member has a direct, immediate and substantial interest, the organization has standing. Energy Conservation Council v. Pa. PUC, 995 A.2d 465, 477 (Pa. Cmwlth. Ct. 2010). See also, Concerned Taxpayers v. Commonwealth, 382 A.2d 490 (Pa. Cmwlth. Ct. 1978)(a non-profit corporation of concerned taxpayers had standing to appeal); Tripps Park Civic Association v. Pa. PUC, 415 A.2d 967 (Pa. Cmwlth. Ct. 1980)(Tripps Park had representational standing in appeal to assert the rights of individual members); Parents United for Better Schools v. School District of Pennsylvania, 646 A.2d 689, 692 (Pa. Cmwlth. Ct. 1994)(parent group incorporated to challenge school policies had standing to appeal since at least one member is aggrieved).

The OCA submits that the right to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co., 75 Pa.P.U.C. 598, 603 (1991). As the court stated in Pennsylvania Natural Gas Association:

Unlike standing to appeal, which is determined by the application of guidelines pronounced by the appellate courts, standing before an administrative agency is primarily within the discretion of the agency. Whether parties should be permitted to intervene in a commission proceeding is within the discretion of the commission to be exercised within each individual case. See, W.J. Dillner Transfer Co. v. Pa. P.U.C., 107 A.2d 159 (Pa. Sup. Ct. 1954); Arsenal Board of Trade v. Pa.P.U.C., 72 A.2d 612 (Pa. Sup. Ct. 1950); and City of Pittsburgh v. Pa.P.U.C., 33 A.2d 641 (Pa. Sup. Ct. 1943).

Id. citing Re L&H Trucking Co., Inc., 55 Pa.P.U.C. 469 (1982). Additionally, the OCA submits that the quasi-judicial nature of the Commission allows for intervention determinations that are less strict than those imposed by the Courts. Appalachian Gas Sales, Inc. v. Philadelphia Electric Co., 67 Pa.P.U.C. 246, 250 (1988), quoting, Re Radio Broadcasting Co., 57 Pa.P.U.C. 399 (1983).

The narrow reading of the Commission's regulations in the ALJ's decision fails to recognize the flexibility and discretion afforded to the Commission in determining who can intervene in and participate in proceedings before it. Considering the decisions in the Pennsylvania Natural Gas Association and Appalachian Gas Sales cases, it is clear that the Commission has the discretion to allow PCOC to participate in this proceeding. PCOC will advance the public interest by addressing issues from the specific vantage point of the low-income community. As such, PCOC's participation will bring a broader understanding of the universal service issues at play in this proceeding and PCOC's participation will enhance the

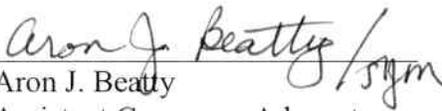
record upon which the Commission can make its ultimate determinations and findings. The public interest will therefore be served by a more fully developed record in this proceeding.

The OCA respectfully submits that the ALJ erred in denying PCOC's Intervention in this proceeding. As discussed above, PCOC's participation is in the public interest because PCOC is dedicated to forwarding the interests of low-income customers, the very issue at the heart of this proceeding. As such, PCOC brings with it a unique perspective that will enhance the record upon which the Commission will base its determinations in this matter. The OCA submits that PCOC's Intervention is within the requirements of the Commission's regulations governing intervention in this matter. As such, the OCA submits that the ALJ's Initial Decision denying PCOC's participation should be reversed and PCOC should be granted the status of Intervenor in the below proceeding.

III. CONCLUSION

For the reasons detailed above, the OCA submits that the Commission should grant PCOC the status of Intervenor in the below proceeding. PCOC's Intervention is consistent with Commission regulations and in the public interest. The OCA respectfully submits that the ALJ's Initial Decision in this matter should be reversed.

Respectfully Submitted,


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Dated: December 30, 2010

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CERTIFICATE OF SERVICE

PPL Electric Utilities Corporation :
Universal Service and Energy : Docket No. M-2010-2179796
Conservation Plan for 2011-2013 :

I hereby certify that I have this day served a true copy of the foregoing document, the Exceptions of the Office of Consumer Advocate to Administrative Law Judge Susan D. Colwell's Initial Decision Denying the Petition to Intervene of Pennsylvania Communities Organizing for Change, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of December 2010.

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