

PENNSYLVANIA UTILITY LAW PROJECT

**118 LOCUST STREET
HARRISBURG, PA 17101-1414**

**HARRY S. GELLER, ESQ.
HGELLERULP@PALEGALAID.NET**

**PHONE: (717) 232-2719
FAX: (717) 233-4088**

December 30, 2010

VIA ELECTRONIC FILING (E-FILING)

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

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

Dear Secretary Chiavetta:

Enclosed please find the Exceptions filed on behalf of Pennsylvania Communities Organizing for Change ("PCOC") d/b/a Action United associated with the above-captioned proceeding. A Certificate of Service is attached.

Please contact me with any questions.

Very truly yours,



Harry S. Geller, Esq.
Counsel for PCOC

Enclosures

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PPL Electric Utilities Corporation Universal
Service and Energy Conservation Plan for 2011
through 2013

Docket No. M-2010-2179796

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

ALJ Susan D. Colwell PA Public Utility Commission Commonwealth Keystone Building 400 North Street, Fl. 2 West POB 3265 Harrisburg, PA, 17105	Aron J. Beatty, Esq. Office of Consumer Advocate 5th Floor, Forum Place 555 Walnut Street Harrisburg, PA 17101-1923
Craig R. Burgraff, Esq. Hawke, McKeon, & Sniscak LLP 100 N. 10th Street P.O. Box 1778 Harrisburg, PA 17101	Paul E. Russell, Esq. Associate General Counsel PPL Services Corp. 2 North 9th Street Allentown, PA 18101
William R. Lloyd, Jr. Esq. Steven C. Gray Office of Small Business Advocate Commerce Building, Suite 1102 300 North Second Street Harrisburg, PA 17101	Richard A. Kanaskie, Esq. PA PUC Office of Trial Staff PO Box 3265 Harrisburg, PA 17101
Pamela C. Polacek, Esq. Shelby A. Linton-Keddie, Esq. McNees Wallace & Nurick LLC 100 Pine Street P.O. Box 1166 Harrisburg, PA 17108	David B. MacGregor, Esq. Post & Schell, P.C. Four Penn Center 1600 John F. Kennedy Boulevard Philadelphia, PA 19103

Anthony D. Kanagy, Esq. Post & Schell, P.C. 17 North Second Street, 12 th Floor Harrisburg, PA 17101	Eric J. Epstein 4100 Hillsdale Road Harrisburg, PA 17112
Lorrie Koons 1168 Mulberry St. Harrisburg, PA 17104-1043	



Harry S. Geller, Esq.
Julie George, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
(717) 236-9486
pulp@palegalaid.net

Dated: December 30, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE
D/B/A ACTION UNITED (“PCOC”)**

Harry S. Geller, Esq.
Julie George, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
(717) 236-9486
pulp@palegalaid.net

**Attorneys for Pennsylvania Communities
Organizing for Change d/b/a Action
United (“PCOC”)**

Dated: December 30, 2010

TABLE OF CONTENTS

I. INTRODUCTION..... 3

II. EXCEPTIONS..... 4

**A. EXCEPTION 1. The I.D. Conclusion Of Law Number 5 That
PCOC, As An Entity Independent Of Its Representational Capacity,
Must Itself Have Standing To Intervene In A Proceeding Is
Incorrect And Contrary To The Weight Of The Law. 4**

**B. EXCEPTION 2. The Conclusion of Law Number 9 That
Pennsylvania Communities Organizing For Change D/B/A Action
United Has Not Sustained Its Burden Of Showing That Its Interest
Is Direct, Substantial And immediate So As To Justify Intervention
Is In Error. 7**

**C. EXCEPTION 3. The ALJ Erred By Failing To Determine That
PCOC Participation In This Matter Is In The Public Interest Pursuant To
52 Pa. Code §5.72(a) And That Intervention Should Be Granted To Further
The Public Interest. 9**

III. CONCLUSION 13

I. INTRODUCTION

Pennsylvania Communities Organizing for Change d/b/a Action United (“PCOC”), through counsel, the Pennsylvania Utility Law Project, hereby files Exceptions to the Initial Decision (“I.D.”) issued by Administrative Law Judge (ALJ) Susan D. Colwell on December 10, 2010 denying its Petition to Intervene and participate in the above captioned matter on the basis of its corporate status and lack of standing.

On June 1, 2010, pursuant to 52 Pa. Code §62.4(1), PPL Electric Utilities Corporation filed for approval of its Universal Service and Energy Conservation Plan 2011-2013 (“Plan”) at Docket Number M-2010-2179796. The Plan outlines how the Company will administer its Universal Service and Energy Conservation programs during the three-year period of 2011-2013, including its OnTrack Customer Assistance Program (“CAP” or “OnTrack”), its Low Income Usage Reduction Program (“LIURP”) known as the Winter Relief Assistance Program (“WRAP”), its Customer Assistance, Referral and Evaluation Service (“CARES”) and hardship fund, Operation HELP. The Plan also discusses the Company’s administration of the federal Low Income Home Energy Assistance Program (“LIHEAP”).

PCOC filed its initial Petition to Intervene, an Amended Petition and an Amendment and Supplemental Matter in Response to the Answer of PPL Electric Utilities to the Amended Petition to Intervene of Pennsylvania Communities Organizing for Change d/b/a Action United (PCOC), on October 24, 2010, November 5, 2010 and December 2, 2010 respectively.

The Petitioner, PCOC, is a not-for-profit advocacy and membership organization incorporated in Pennsylvania. Its application for 501(c)(4) status is pending. One aspect of PCOC's mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to and affordability of utility service.

Although PCOC does not have an office within PPL Electric's service territory, many PCOC members reside within PPL's service territory and are customers of the company; they rely on the company for their electricity, including heating and cooling needs, and will be directly, substantially and immediately affected by the issues presented and the outcome of this proceeding.

In these exceptions, PCOC maintains that error occurred as a result of the ALJ's narrow interpretation of standing based upon PCOC's corporate status and as a result of the ALJ's failure to permit an intervention by PCOC in furtherance of the public interest.

II. EXCEPTIONS

Exception 1. The I.D. Conclusion Of Law Number 5 That PCOC, As An Entity Independent Of Its Representational Capacity, Must Itself Have Standing To Intervene In A Proceeding Is Incorrect And Contrary To The Weight Of The Law. I.D. at 11.

The emphasis within the I.D. that the status of Petitioner PCOC as a nonprofit corporation precludes it from intervening in its representational capacity is in error.. The ALJ recognizes

that a trade association has standing but makes a specific distinction between a trade organization and a nonprofit corporation.. PCOC asserts that representational standing depends not on the form in which an entity chooses to be organized for tax, business, or other purposes, but rather on the interests of those members it seeks to represent. An association or a trade organization may exist for the purpose of furthering the interests of its members or other stakeholders. It may choose to do so as an incorporated or unincorporated entity. PCOC exists for the purpose of furthering the interests of its members. That it has chosen to do so as an incorporated entity rather than as an unincorporated one is immaterial to the issue of its representational standing. The I.D. narrowly and incorrectly limits the types of organizations which have been afforded representational standing by the Commission. For example, *Tripps Park Civic Ass'n. v. Pa. PUC*, 415 A.2d 967, 970 (Pa. Cmwlth. Ct. 1980) is cited by the ALJ in support of the conclusion that “Representational standing by trade organizations has long been recognized in Commission proceedings.” However, in *Tripps*, the Commonwealth Court relied directly on its ruling and reasoning in *Concerned Taxpayers v. Commonwealth*, 33 Pa Cmwlth. 518, 524-25, 382 A.2d 490, 493 (1978), a case involving a nonprofit corporation seeking representational standing on behalf of its members. The Court in *Tripps Park* stated;

First, as to *Tripps Park*'s standing as an association, we follow our own recent pronouncement in *Concerned Taxpayers v. Commonwealth*, 33 Pa Cmwlth. 518, 524-25, 382 A.2d 490, 493 (1978), wherein the late President Judge Bowman, in ruling on the Commonwealth's preliminary objection that a nonprofit corporation of “concerned taxpayers” had no right to bring a taxpayer's suit in its own behalf, concluded that even in the absence of injury to itself, an [52 Pa.Cmwlth.321] association may have standing solely as the representatives of its members. Thus, we recognize that *Tripps Park* has representational standing to assert the rights of its individual members. [At 970.]

In *Concerned Taxpayers*, the Commonwealth Court specifically stated that an association or a nonprofit corporation may assert the interests of its members. [At 493.]

The other case cited in the I.D. to distinguish the representational capacity of trade associations from that of nonprofit corporations, *Pa. Natural Gas Ass'n v. TW Phillips Gas & Oil Co.*, 1991 WL 474870, 75 Pa. P.U.R. 598 (Pa. PUC 1991), itself cites Choice Bonacci et al. v. Bell Telephone, 55 Pa. PUC 166 (1981), where derivative standing was granted to a nonprofit corporation on behalf of the customers it represented.

The Commission has permitted representational status in its proceedings without regard to the specific structure of the representative entity; specifically, it has recognized representational standing in cases where advocacy organizations, trade associations, and other entities are, in fact, incorporated. For example, the Pennsylvania Telephone Association, one of the organizations which the I.D. attempts to distinguish from PCOC, is incorporated in Pennsylvania. In *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania et al.*, Rulemaking Proceeding R-00049783C0001-C0007, Order entered November 4, 2005, The Commission stated:

NEM contends in its Exceptions that it is an advocacy group that, under its Internal Revenue Service 501 (c) (3) non-profit status, functions in a representative capacity. NEM opines that many of its members could not afford to participate in proceedings of this nature due to prohibitive legal costs without NEM. The Commission finds that it is virtually impossible to separate NEM's interest from that of its membership. We further find that since NEM's primary corporate function is to serve as an advocacy group, and since NEM's members are at potential risk of loss by Columbia's request in this matter, there is a direct, substantial and immediate risk of harm if NEM is denied party status....[At 24.]

Further, the Commission has held that representational standing does not require the organization asserting that standing to be a customer. *Pennsylvania Natural Gas Association v.*

T.W. Phillips, 75 Pa. PUC 598 (1991). Exceptions of the Independent Oil and Gas Association (IOGA) ¹to the ALJ's decision that it lacked standing were granted and remanded for hearing. In light of the judicial leaning toward a broad standard with respect to representational standing and in recognition of our duty to protect and promote the public interest, we do not believe that a party asserting representational standing should be denied such status solely because the party itself does not have an interest as a customer, competitor, consumer, etc. 75 Pa. PUC at 604.

Furthermore, the ALJ's conclusion that PCOC did not represent its members because corporations have shareholders and an independent existence (I.D. at 11) is clearly inappropriate for the reasons stated above and particularly in reference to PCOC, which is a member-based, non-stock nonprofit corporation without shareholders.

Exception 2. The Conclusion of Law Number 9 That Pennsylvania Communities Organizing For Change D/B/A Action United Has Not Sustained Its Burden Of Showing That Its Interest Is Direct, Substantial And immediate So As To Justify Intervention Is In Error. I.D. at 12.

PCOC is a nonprofit membership based advocacy organization among whose members are PPL customers. These members rely on the Company for their electricity, including heating and cooling needs, and will be affected by the issues presented in this proceeding. Some PCOC members participate in or are potentially eligible to participate in and receive the benefits of PPL's Universal Service and Energy Conservation programs. The ability to afford and maintain basic electric service is critical to the health, welfare and safety of these households. The interests of these members will be immediately, substantially and directly affected by the issues

¹ Independent Oil and Gas Association of Pennsylvania, formerly Pennsylvania Oil and Gas Association (incorporated in 1983, entity # 765558, per PA Dept of State; www.iogapa.org/files/PIOGA_Bylaws.pdf will link you to the pending bylaws of the newly consolidated corporation.)

addressed in this proceeding. The Universal Service programs' design, eligibility requirements, benefit levels, default values and allocated budget are among some of the items which are addressed by the Plan. The ultimate determination regarding these issues will immediately, substantially and directly affect the monthly electric payments and health and welfare of each of these customers. For these customers, the determination of whether or not they may be eligible for CAP program participation and at what levels their monthly payments or arrearage reductions are set may make a difference in whether or not they are able to maintain electric utility service under affordable terms; the determination of how many households will receive LIURP WRAP treatment will make a difference in how many customers are able to weatherize their homes, leading to reduced energy usage, lower, more affordable bills, and a healthier, safer home. Other members of PCOC, although not enrolled in or participating in PPL's Universal Service and Energy Conservation programs, are customers of PPL Electric and will be affected directly, immediately and substantially by the issues addressed in this proceeding and the costs of the programs. They have an interest in assuring that the programs are sufficiently available and appropriately funded; that their neighbors are receiving safe electric service and not resorting to unsafe heating or lighting measures; and that the homes in their neighborhoods are not abandoned or vacated due to lack of electric service. The Commission has indicated that participation by ratepayers, both low income and those who are not, should be accommodated within the proceedings regarding individual Universal Service Plan Filings. PCOC membership includes both. The Commission has stated:

Almost all of the commenting parties agree that the interests of paying customers who are not beneficiaries of CAP programs should be considered when the Commission makes decisions on funding levels. We believe the Commission must ensure that ratepayer interests are considered by listing this as an additional factor in the CAP policy statement. Further steps to ensure that the interests of

paying customers are considered in decisions regarding CAP programs are described below.

Because we will continue to determine appropriate funding and enrollment levels on a case-by-case basis, we will give due consideration to the effects of CAP program costs on both non-CAP residential customers – particularly low-income customers who are not eligible for CAP - and nonresidential customers as part of our deliberation.²

The Commission cited its Final Investigatory Order in its Proposed Revision to Policy

Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267:

- (1) CAP funding decisions should include the consideration of the interests of all customers, including those not enrolled in CAP programs, and previous CAP funding decisions regarding other similar utilities³;

Exception 3. The ALJ Erred By Failing To Determine That PCOC Participation In This Matter Is In The Public Interest Pursuant To 52 Pa. Code §5.72(a) And That Intervention Should Be Granted To Further The Public Interest.

The regulations which delineate the eligibility factors for participation in proceedings before the Commission were noted by the ALJ. I.D. at 9. Section 5.72(a) of the Pennsylvania Code provides:

- (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

² Final Investigatory Order, Customer Assistance Programs and Cost Recovery Levels, Docket No. M-00051923, (Order entered December 18, 2006.)

³ Docket No. M-00072036, Order entered, September 5, 2007.

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.⁴

PCOC has stated that its mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to and affordability of utility service. I.D. at 6.

PCOC's purpose for intervention in this matter is to represent the interests of low income customers. No other party to this proceeding has indicated a similar intent.⁵ Permitting an organization intending to bring a low income perspective into this proceeding serves the public interest. This is particularly so in the case at hand in which the main subject is review of the Company's Universal Service and Conservation programs intended to serve low income consumers.

Approval by the Commission of the company's proposed 2011-2013 Universal Service Plan is subject to the Plan meeting the requirements set forth in the Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"), 66 Pa. C.S. § 2801 *et seq.* which became effective on January 1, 1997; the *Universal Service and Energy Conservation Reporting Requirements* (USEC Reporting Requirements) at 52 Pa. Code §§ 54.1-54.9; the LIURP regulations at 52 Pa. Code §§ 58.1-58.18; the directives articulated by the Commission in the CAP Policy Statement at 52 Pa. Code §§ 69.261-69.267; the Final Investigatory Order entered

⁴ 52 Pa. Code §5.72(a).

⁵ In its Answer opposing PCOC intervention the Company cited the participation of the Pennsylvania Office of Consumer Advocate in the proceeding and argued that OCA represented the interests "of all PPL Electric's residential customers, including low income residential customers." Answer, ¶ 9. The OCA responded in support of PCOC intervention and indicated that the OCA broad based representation was distinct from the specific low income interest representation advanced by PCOC and that the public interest would be served by incorporating the unique base of experience PCOC brought into the proceeding.

December 18, 2006 to Docket No.M-00051923 and in other relevant Secretarial letters, Commission rules, policies and Orders.

The universal service provisions of the Competition Act tie the affordability of electric service to a customer's ability to pay for that service and place the responsibility to ensure that such service is appropriately funded and available in each electric distribution territory upon the Commission. 66 Pa. C.S. § 2804(9). The statutory goals of universal service are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low income customers maintain their electric service. Universal service includes customer assistance programs, usage reduction programs, service termination protections and consumer education. 66 Pa. C.S. § 2803.

The Universal Service and Energy Conservation Reporting Requirements at 52 Pa. Code §§ 54.1-54.9 require an electric distribution company (EDC) to submit an updated Universal Service and Energy Conservation plan every three years to the Commission for approval. 52 Pa. Code § 74(a)(1). The regulations place the responsibility upon the Commission to determine if the EDC's plan meets the goals of universal service. 52 Pa. Code § 54.73. The Commission may approve, reject or modify the plan. 52 Pa. Code 54.74(a)(5).

The 52 Pa. Code §§ 54.1-54.9 triennial submission and review provides the Commission and the public an opportunity to analyze the Universal Service program in its entirety. This complete program review is undertaken in order to ensure that the Company's Universal Service program adheres to all legal and policy requirements; is structured and administered in a manner which achieves universal service goals; is appropriately funded and available; and provides an

affordable payment structure which enables low income customers to maintain essential utility service. It is during the triennial review when the entire Universal Service program is reviewed and approved as an integrated whole. It is, therefore, in the public interest to permit, during the triennial review proceeding, full and complete participation of the public, including most particularly an organization attempting to participate on behalf of the low income.

The Commission's Rules of Administrative Practice and Procedure are broad and are to be liberally construed. 52 Pa. Code §1.2. PCOC members have a direct, immediate, and substantial interest in this proceeding. The subject matter of the proceeding directly addresses low income programs, PCOC possesses a unique perspective regarding issues affecting the low income and no other party to the proceeding is asserting a similar intent to represent the low income interest. The Commission should exercise its broad discretion and permit PCOC participation in this proceeding for the purpose of advancing the public interest pursuant to Section 5.72 (a) of the Pennsylvania Code.

III. CONCLUSION

For all the foregoing reasons, PCOC submits that its participation is consistent with Commission rules and procedures and is in the public interest. PCOC respectfully requests that the Commission grant PCOC Exceptions 1-3, reverse the ALJ's Initial Decision and grant PCOC Intervenor status.

Respectfully Submitted,



Harry S. Geller, Esq.

Julie George, Esq.

Attorneys for PCOC
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17102
Telephone: 717-236-9486
Facsimile: 717-233-4088
E-mail: pulp@palegalaid.net

December 30, 2010