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January 10, 2011

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

Dear Secretary Chiavetta:

Enclosed please find the Reply of PPL Electric Utilities Corporation to Exceptions of Other Parties for the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,

David B. MacGregor

DBM/skr

Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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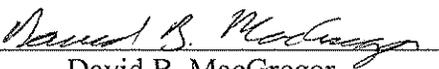
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY OF PPL ELECTRIC UTILITIES CORPORATION
TO EXCEPTIONS OF OTHER PARTIES**

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I. INTRODUCTION AND BACKGROUND

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files this Reply to the Exceptions of the Office of Consumer Advocate (“OCA”) and the Pennsylvania Communities Organizing for Change d/b/a Action United (“PCOC”) pursuant to 52 Pa. Code § 5.535 and the Secretarial Letter dated December 10, 2010. The Initial Decision (“I.D.”) of Administrative Law Judge Susan D. Colwell (“ALJ”) was issued by Secretarial Letter dated December 10, 2010. The I.D. denied PCOC’s Amended Petition to Intervene on the basis that PCOC lacked standing to participate in this proceeding before the Pennsylvania Public Utility Commission (“Commission”). On December 30, 2010, Exceptions were filed by OCA and PCOC. PPL Electric did not file Exceptions to the I.D.

This proceeding began on June 1, 2010, when PPL Electric filed with the Commission at Docket No. M-2010-2179796, its Universal Service and Energy Conservation Plan pursuant to 52 Pa. Code §§ 54.71-54.78 (hereinafter the “USP”). On July 29, 2010, the OCA filed a Notice of Intervention, which was granted by the ALJ’s order entered September 24, 2010.¹ On October 24, 2010, PCOC filed a Petition to Intervene, which was challenged by PPL Electric for failure to include necessary information, including: a description of the type of the organization; whether or not the PCOC is a customer; whether PCOC’s members are customers; identification of PCOC’s members; and whether the verification was signed by an authorized representative of PCOC.

On October 29, 2010, the ALJ issued a Second Prehearing Order directing PCOC to submit the necessary information on or before November 5, 2010. The Second Prehearing Order

¹Petitions to intervene were also filed by and granted for Eric Joseph Epstein, the Sustainable Energy Fund of Central Pennsylvania, the Commission on Economic Opportunity, and the PP&L Industrial Customer Alliance.

further directed that all parties of record, other than PCOC, file any response to the additional information submitted by PCOC on or before November 12, 2010.

On November 5, 2010, PCOC filed an Amended Petition to Intervene (“PCOC Amended Petition”). Pursuant to the Second Prehearing Order, PPL Electric filed an Answer to PCOC’s Amended Petition to Intervene (“PPL Electric Answer”). Therein, PPL Electric objected to PCOC’s intervention in this proceeding because it failed to comply with the Commission’s regulations regarding petitions to intervene, failed to allege sufficient facts to support its standing to participate in this proceeding, and failed to comply with the requirements of the ALJ’s Second Prehearing Order.

The I.D. was issued by Secretarial Letter dated December 10, 2010. The I.D. denied PCOC’s Amended Petition to Intervene on the basis that it lacked standing to participate in this proceeding before Commission, concluding that PCOC was not an association with representational standing. The I.D. therefore concluded that, as an entity independent of its representational capacity, PCOC must itself have standing to intervene in this proceeding. The I.D. found that PCOC failed to meet its burden to establish that, independent of its members, it has a substantial, immediate, and direct interest in this proceeding. The I.D. therefore denied PCOC’s Amended Petition to Intervene.

The OCA and PCOC take exception to the denial of PCOC’s intervention in this proceeding. For the reasons explained below, PPL Electric respectfully requests that the Commission deny the Exceptions of the OCA and PCOC.

II. PPL ELECTRIC'S REPLY TO EXCEPTIONS

A. **PCOC Lacks Representational Standing In This Matter.**

The OCA and PCOC assert that the ALJ erred in concluding that PCOC lacks representational standing. Both OCA and PCOC argue that an organization, regardless of corporate form, has standing to participate in a proceeding before the Commission as long as one or more of its members has a direct, immediate, and substantial interest in the proceeding. The OCA and PCOC also argue that PCOC has representational standing because other nonprofit corporations and trade associations have previously participated in Commission proceedings. However, OCA and PCOC disregard the difference between members of a nonprofit organization and donors that lack the ability to direct and control the management and operations of the organization. For the reasons that follow, the ALJ's denial of PCOC's intervention in this proceeding should be affirmed.

The general rule provides that an aggrieved party has standing in a case if they have a substantial, direct, and immediate interest that may be adversely affected. *Pittsburgh Palisades Park, LLC v. Commonwealth*, 585 Pa. 196, 204, 888 A.2d 655, 660 (2005). Ordinarily, one may not claim standing to vindicate the rights of a third party. *Concerned Taxpayers of Allegheny County v. Commonwealth*, 382 A.2d 490, 493-494 (Pa. Cmwlth. 1978) (citing *Barrows v. Jackson*, 346 U.S. 249, 255 (1953)). However, an association or nonprofit corporation may have standing solely as the representative of its members, provided that the organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action. *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)); *see also Energy Conservation Council of Pa. v. PUC*, 995 A.2d 465, 476-477 (Pa. Cmwlth. 2010). Thus,

an association or nonprofit corporation may have standing to represent the direct, immediate, and substantial interests of its members that may be affected by the outcome of a proceeding.

A “member” of a nonprofit corporation is defined in Pennsylvania’s Non-Profit Corporation Law² as one having membership rights in a corporation in accordance with the provisions of its bylaws. 15 Pa.C.S. § 5103. In nonprofit corporations, members generally play a role similar to shareholders in for-profit corporations, and typically manage and control the nonprofit corporation. *Cinicola v. Scharffenberger*, 248 F.3d 110, 117 n.4 (3d Cir. Pa. 2001). Unless the articles of incorporation provide that the corporation will have no members, or the bylaws provide that the members are not entitled to vote on a matter, the general rule is that members of a nonprofit corporation are provided with voting and other rights in the corporation.³ 15 Pa.C.S. § 5751. Indeed, Pennsylvania law requires a quorum of all of the members of a nonprofit corporation to be present at a meeting to transact business. 15 Pa.C.S. § 5756. Further, a member of a nonprofit corporation has a right to inspect records from any proceeding of the members, directors, and such other body for any proper purpose. 15 Pa.C.S. § 5508. A member of a nonprofit corporation also has statutory standing to enforce a right of the nonprofit corporation, *i.e.*, bring a derivative suit to enforce or defend a legal right or claim on behalf of the corporation. 15 Pa.C.S. § 5782.

Unless otherwise provided in the articles of incorporation or bylaws, a “member” of a nonprofit corporation has certain rights in the management and control of the corporation.

² 15 Pa.C.S. §§ 5101 – 6162.

³ The articles of incorporation of a nonprofit corporation may provide that the corporation will have no members, in which case the statutory provisions requiring action or voting by the members apply, instead, to the board of directors or other body. 15 Pa.C.S. § 5751(b). If a nonprofit corporation has members, their rights and obligations must be set forth in the bylaws. In the absence of a bylaw provision limiting or denying members the right to vote, each member is entitled to one vote. *See* 15 Pa.C.S. §§ 5751, 5754.

Conversely, an individual or entity that merely donates to a nonprofit corporation and does not otherwise have any rights in the corporation is not a “member” of the nonprofit organization under the Pennsylvania Nonprofit Corporation Law. Rather, they are merely donors, without any management or voting rights in the corporation, that make or have made charitable contributions to the cause and operations of the nonprofit corporation. Notably, unlike members that can enforce their respective rights in the corporation if they are dissatisfied with the management and operations of the organization, whether by vote or by derivative suit, donors generally have no ability to directly voice their opinion in the day-to-day management, operations, and goals of the nonprofit corporation. This lack of ability to participate in the nonprofit corporation becomes particularly important when the corporation is supposedly representing a donor’s interest in a litigated proceeding through representational standing.

Based on the foregoing, a nonprofit corporation may establish representational standing if it can demonstrate that one or more of its members, has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action. Here, PCOC asserted in its Amended Petition that its status as a nonprofit corporation is currently pending before the Pennsylvania Department of State. PCOC also alleged that it is a not-for-profit, membership-based organization that advocates on behalf of low and lower income persons. (PCOC Amended Petition, ¶ 7.) However, it does not appear that PCOC’s alleged “members” are actually members of PCOC as the term is defined under Pennsylvania law. (PPL Electric Answer, ¶ 6, Appx. B.) Indeed, it appears that any person or entity, regardless of income, may become a so-called “member” of PCOC by simply making a donation through PCOC’s membership enrollment/donation website. (PPL Electric Answer, ¶¶ 6-7, Appx. B.) However, there is no indication of what rights, if any, a person obtains in PCOC by making such a donation.

Based on the facts alleged in the Amended Petition, PCOC failed to meet its burden to demonstrate that its so-called “members” are anything more than merely donors that lack member rights in the corporation. There is nothing in PCOC’s Amended Petition to suggest that an individual that makes a nominal donation through PCOC’s website has the right to vote in the corporation, the right to inspect records from any proceeding for any proper purpose, has standing to individually enforce a right on behalf of PCOC, or any other rights in the corporation. *See* 15 Pa.C.S. §§ 5508, 5751, 5782. Accordingly, PCOC failed to allege facts sufficient to support a finding that its donors are actual members for purposes of Pennsylvania’s Nonprofit Corporation Law and, therefore, PCOC failed to meet its burden to demonstrate that it has representational standing.

To hold that a nonprofit corporation has representational standing to represent donors that lack any rights in a nonprofit corporation ignores the meaning of “member” for purposes of Pennsylvania’s Nonprofit Corporation Law and, moreover, could lead to nonsensical results. Under such a theory, a non-Pennsylvania nonprofit corporation could participate in a proceeding before the Commission to represent the interests of a single utility customer whose only involvement in the foreign nonprofit corporation was to make a charitable donation. A nonprofit corporation should not be permitted to use a donor that lacks any rights or control in the corporation to bootstrap standing and insert the corporation’s own interests in a Commission proceeding. Unlike a member, the donor has no real ability to direct the corporation to ensure that the donor’s actual interests are properly and accurately represented before the Commission.⁴

⁴ Representational standing for individuals that have no control could also have serious attorney-client implications. Under the Commission’s regulations, a corporation must be represented by legal counsel in proceedings before the Commission. 52 Pa. Code § 1.21. Importantly, the attorney-client relationship is with the corporation and, as a result, the attorney represents the interest of the corporation rather than the individual. *See* Pa. Rules of Prof. Conduct, Rule 1.13. (Continued on next page...)

The OCA and PCOC both contend that several nonprofit associations and organizations have participated in proceedings before the Commission in a representational capacity on behalf of their respective members. OCA's and PCOC's reliance on these other nonprofit associations and organizations is misplaced. Importantly, OCA and PCOC both disregard that standing is waivable and, therefore, if the issue of a parties standing to participate in a proceeding is not raised in a timely manner it is waived. OCA and PCOC both also disregard that many of these nonprofit associations and organizations have members as defined under Pennsylvania law. Indeed, pursuant to their respective articles of incorporation and bylaws, many of these organizations have voting and non-voting members, as well as donee members. For example, the Sierra Club has both voting and nonvoting members.⁵ Similarly, the Pennsylvania Independent Oil & Gas Association has both voting and nonvoting members.⁶

PPL Electric concedes that many of the nonprofit associations and organizations relied upon by OCA and PCOC have participated in proceedings before the Commission, both with and without objection by other parties. However, when the issue of a party's standing has been raised, the party claiming standing bears the burden to demonstrate it has the requisite standing to participate in the proceeding. The fact that these other nonprofit organizations or corporations have participated in separate and unrelated Commission proceedings, whether opposed or unopposed, does not somehow relieve a nonprofit corporation from its burden to establish that it

(...continued from previous page.)

Consequently, unlike members and shareholders that have rights in a corporation, an individual without the real ability to direct and participate in a corporation could be without any means to direct the course of the litigation to ensure the individual's actual interest is adequately represented.

⁵ See <http://www.sierraclub.org/policy/downloads/bylaws.pdf>, at pp. 11, 14 (last visited Jan. 6, 2011) (explaining that nonvoting members are not members as defined in the Corporation Law).

⁶ See http://iogapa.org/files/PIOGA_Bylaws.pdf, at pp. 2-4 (last visited Jan. 6, 2011).

has standing to participate in a representational capacity on behalf of its members when challenged. Here, PPL Electric challenged PCOC's standing on the basis of, among other things, whether the individuals or entities that donate to PCOC are actually members of PCOC. (PPL Electric Answer, ¶¶ 6-7.) As explained above, PCOC's Amended Petition failed to alleged facts sufficient to establish representational standing on behalf of the "members" of the nonprofit corporation.

In summary, PCOC conceded that it did not have standing on its own to participate in this proceeding before the Commission and, instead, alleged that it had representational standing. PPL Electric challenged PCOC's standing to participate in this proceeding. As a result, PCOC bore the burden to establish that the individuals or entities that donate to PCOC are actually members of PCOC, and that those individuals had a direct, immediate, and substantial interest in the proceeding. For the reasons explained above, PCOC failed to meet its burden to demonstrate that its donors are actual members of PCOC under Pennsylvania law and, therefore, the ALJ properly concluded that PCOC lacked representational standing in this proceeding.

B. PCOC Failed To Establish That Its Members Have A Direct, Immediate, And Substantial Interest In This Matter.

PCOC asserts that the ALJ erred in denying its Amended Petition for Intervention because PCOC's donors have a direct, immediate, and substantial interest that justifies PCOC's intervention in this matter. PCOC asserts that some of its donors are customers of PPL Electric that participate in or are potentially eligible to participate in and receive the benefits of PPL Electric's USP. PCOC therefore concludes that the determination of issues related to the USP in this proceeding will immediately, substantially, and directly affect the monthly electric payments and health and welfare of PCOC's donors. For the reasons that follow, PCOC's exception is without merit and should be rejected.

PCOC's argument is based on the presumption that it has authority to represent its so-called members in this proceeding. As explained above, PCOC failed to establish that its donors are members of the nonprofit corporation as defined under Pennsylvania law. As a result, PCOC lacks representational standing. Notwithstanding, and without waiver of objection thereto, PCOC's so-called members lack the requisite interest to participate in this matter.

The purpose of the requirement of standing is to protect against improper parties. In order to meet that requirement, a party must allege and prove an interest in the outcome of the action that surpasses the common interest of all citizens in procuring obedience to the law. To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate. *Application of Biester*, 487 Pa. 438, 442-443, 409 A.2d 848, 851 (1979) (citing *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975)). Pursuant to the Commission's regulations, a petition to intervene must set out clearly and concisely, *inter alia*, the facts from which the alleged intervention right or interest can be determined, and the grounds of the proposed intervention. See 52 Pa. Code § 5.73(a). Here, PCOC failed to allege sufficient facts to establish that its donors have an interest in this proceeding that surpass the common interest of all residential customers.

In its Amended Petition, PCOC alleges that it is a statewide organization that does not have an office in PPL Electric's service territory. Contrary to the ALJ's Second Prehearing Order, which specifically ordered PCOC to provide supplemental information regarding its membership and whether its members are customers of PPL Electric, PCOC generally averred in its Amended Petition that many of its donors are customers of PPL Electric and then identified four such customers in a footnote. (PCOC Amended Petition, ¶ 8.) However, PCOC failed to allege that any of the identified donors are low-income customers of PPL Electric, which could

potentially be affected by the outcome of this proceeding. Importantly, it appears that any individual or entity can join PCOC regardless of income. (*See* PPL Electric Answer, ¶ 7, Appx. B.)

Further, the Amended Petition fails to comply with the Commission's regulations regarding representational standing. Section 5.73(b) of the Commission's regulations provide that:

When circumstances warrant, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group.

52 Pa. Code § 5.73(b). Although PCOC has inserted a footnote into the Amended Petition indicating that four of its donors are customers of PPL Electric, PCOC has failed to provide a list of its members as required by the Commission's regulations.⁷ Therefore, consistent with 52 Pa. Code § 5.73(b), to the extent that PCOC claims to represent more than one person it should be required to list those persons and entities comprising the represented group, confirm whether the members are members of PCOC/Action United as defined by Pennsylvania law, confirm whether its members are low income individuals and/or actually participate in the USP at issue in this proceeding, and confirm that it is authorized to represent the interests of those individuals in this proceedings. Despite the second chance offered by the ALJ's Second Prehearing Order, PCOC failed to meet any of these requirements.

⁷ PPL Electric acknowledges that the four individuals referenced in footnote 2 of the Amended Petition are customers of PPL Electric, and that one of those four individuals is a Universal Service customer. However, footnote 2 of the Amended Petition failed to satisfy the requirement that PCOC provide a list of its members and identify whether these members have a substantial, direct, and immediate interest that may be affected by this proceeding, or whether these members have authorized PCOC to represent any interests they may have in this proceeding.

Based on the foregoing, PCOC failed to comply with the Commission's regulations, as well as the ALJ's Second Prehearing Order. For the reasons explained above, PCOC failed to establish that it represents members as defined under Pennsylvania law, or that its members have a direct, immediate, and substantial interest in this proceeding. Accordingly, the ALJ properly concluded that PCOC lacked representational standing in this proceeding.

C. PCOC Failed To Establish That Its Participation In This Matter Is In The Public Interest.

The OCA and PCOC argue that the ALJ erred in denying PCOC's intervention in this matter because, according to OCA and PCOC, PCOC's participation in this matter is in the public interest. In support, OCA and PCOC assert that PCOC's participation is in the public interest because it represents the interest of low-income customers. OCA and PCOC therefore contend that PCOC should be permitted to intervene under Section 5.72(a)(3) of the Commission's regulations. For the reasons explained below, this argument is without merit and should be rejected.

Section 5.72(a)(3) of the Commission's regulations provide that a petition to intervene may be filed by a person or entity claiming an "interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.72(a)(3). The OCA and PCOC both assert that PCOC's intervention is in the public interest because it represents low income customers. This argument is flawed for several reasons.

As explained above, it is entirely unclear whether PCOC does in fact have members as defined under Pennsylvania law and whether its so-called members have actually authorized PCOC to represent their interests in this proceeding. Further, it does not appear that PCOC represents exclusively the interests of low income customers. Indeed, PCOC's mission statement provides that "Action United is a membership organization of low and moderate income

Pennsylvanians working to build power through organizing communities to win changes on the issues that are important to them.” (PPL Electric Answer, ¶ 7, Appx. C.) Further, it appears from the membership enrollment/donation website that any individual or entity may join PCOC/Action United regardless of their economic status. (PPL Electric Answer, ¶ 7, Appx. B.) Finally, as explained above, it is unknown whether PCOC/Action United represents more than one customer that participates in PPL Electric’s USP.

An association may have standing solely as a representative of its members. *Tripps Park v. Pa. PUC*, 415 A2d 967 (Pa. Cmwlth. 1980). However, to have representational standing before the Commission, the association must not only demonstrate an immediate direct and substantial interest or injury, it must also demonstrate either: (a) the representative will fairly and adequately represent those who have a sufficient interest, and that those entitled to complain are unable to adequately pursue their interests; or (b) there is a showing that the allowance of the representative’s participation will aid the Commission in the development of facts necessary for a proper disposition of the proceedings. *Manufacturers Association of Erie v. The City of Erie-Bureau of Water*, Docket No. 20518, 50 Pa. PUC 43, 1976 Pa. PUC LEXIS 79 (1976). On the facts alleged, PCOC does not have representational standing to represent the interests of low income customers in PPL Electric’s service territory. As explained above, it appears that anyone can join PCOC regardless of income, and that PCOC does not exclusively represent the interests of low income citizens.

Further, the Amended Petition failed to allege how PCOC’s participation will aid the Commission in the development of the facts necessary in this proceeding. The Commission’s regulations require that a petition to intervene set out clearly and concisely the following:

- (1) The facts from which the alleged intervention right or interest of the petitioner can be determined.

- (2) The grounds of the proposed intervention.
- (3) The petitioner's position regarding the issues in the proceeding.

52 Pa. Code § 5.73(a). As noted above, the Amended Petition failed to clearly and concisely allege the intervention right of its purported members or their grounds for intervention. Further, the Amended Petition failed to provide any indication of the position of PCOC's so-called members regarding PPL Electric's USP. PCOC's bare assertions of general concern fail to meet the "clear and concise" standard set forth in Section 5.73(a) of the Commission's regulations.

Although the Commission's regulations are to be liberally construed, 52 Pa. Code § 1.2, OCA's and PCOC's expansive interpretation of Section 5.73(a)(3) swallows the rule and effectively renders the prerequisite of standing meaningless in a proceeding before the Commission. The purpose of the requirement for standing is to protect against improper parties. *Marx v. Lake Lehman School District*, 817 A.2d 1242, 1249 (Pa. Cmwlth. 2003). Standing prevents persons or entities that will not be affected by the proceeding from improperly interfering with the interests of those parties that will be directly, immediately, and substantially affected by the outcome of a proceeding. In this case, PCOC's alleged interest is too remote to support a finding that its participation in this proceeding as a representative of low-income customers of PPL Electric is in the public interest.

Based on the foregoing, it does not appear that PCOC represents exclusively the interests of low income customers, and it is unknown whether PCOC represents more than one customer that participates in PPL Electric's USP. PCOC failed to provide any indication of the position of its so-called members in this proceeding. Under these circumstances, PCOC failed to demonstrate that its participation is in the public interest.

Accordingly, the ALJ properly concluded that PCOC lacked representational standing in this proceeding.

III. CONCLUSION

WHEREFORE, for the reasons explained above, as well as those set forth in the Initial Decision, the Commission should deny the Exceptions filed by the Office of Consumer Advocate and the Pennsylvania Communities Organizing for Change d/b/a Action United, and affirm the Initial Decision denying the Amended Petition to Intervene of Pennsylvania Communities Organizing for Change d/b/a Action United.

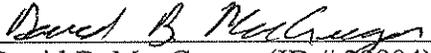
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