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March 7, 2011

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Post Office Box 3265, 400 North Street
Harrisburg, PA 17105-3265

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MAR 7 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Robert Dunham v. PPL Electric Utilities Corporation
Docket No. C-~~2009-2149261~~ C-2010-2155056

Dear Ms. Chiavetta:

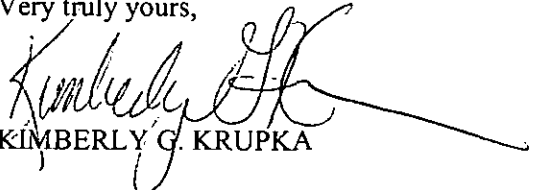
Enclosed for filing in the above-captioned matter are an original and nine (9) copies of the Exceptions of PPL Electric Utilities Corporation to Complainant's Exceptions to the Initial Decision of Administrative Law Judge Ember S. Jandebaur, issued January 26, 2011, along with the attached Certificate of Service. I am also providing the Commission's Office of Special Assistants with one copy of the Exceptions in hard copy and on CD-ROM in Word 2007 format.

Pursuant to 52 Pa. Code §1.11, the enclosed document is to be deemed filed on or before March 10, 2010.

I am also enclosing an extra copy of PPL's Exceptions. Please time-stamp this copy and return it to my office in the envelope provided.

Thank you for your cooperation in this matter.

Very truly yours,


KIMBERLY G. KRUPKA

KGK/llj
Enclosures

cc: Administrative Law Judge Ember S. Jandebaur (w/ enc); via FedEx
Commission's Office of Special Assistants (w/ enc.); via FedEx
Mr. Robert Dunham (w/ enc.)
Paul E. Russell, Esquire (w/ enc); via email only
Ms. Kimberly A. Galligani (w/ enc); via email only

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT DUNHAM,

Complainant

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET
NO. C-2010-2155056

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MAR 7 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
EMBER S. JANDEBEUR ISSUED ON FEBRUARY 15, 2011**

**KIMBERLY G. KRUPKA, ESQUIRE
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DATE: MARCH 7, 2011

I. INTRODUCTION

On February 15, 2011, the Public Utility Commission (“PUC” or the “Commission”) issued the Initial Decision of Administrative Law Judge Ember S. Jandebaur in this proceeding (“Initial Decision”). In most respects PPL Electric Utilities Corporation (“PPL”) agrees with the Initial Decision, particularly the finding that PPL must charge the rates that are approved through the ratemaking process. As clearly demonstrated in the record, all changes to Rate Schedule RTS, the rate schedule at issue here, were approved by the Commission in the ratemaking process. However, PPL respectfully submits that the Initial Decision erred in reaching Finding of Fact 19 and Conclusion of Law 9. PPL contends that the Initial Decision fails to differentiate between PPL’s decision in 1994 to “close the RTS class to new homes,” and the requirements to eliminate the differential between the Rate Schedule RS and RTS rates pursuant to the Commonwealth Court’s 2006 Decision in Lloyd v. Pa. Public Utility Commission, 904 A.2d 1010 (Pa. Cmwlth. 2006) (“Lloyd”). Accordingly, PPL files exceptions to Finding of Fact 19 and Conclusion of Law 9.

The instant case arises out of PPL’s compliance with the Commonwealth Court’s Decision in Lloyd, which directed PPL to gradually move the distribution rates of all customer classes to the system average rate of return. To comply with the Court’s directive, PPL re-examined the rates charged to all customers, including Rate Schedule RTS customers. PPL then obtained Commission approval for the current Rate Schedule RTS rates, under which the generation cost differential between the Rate Schedule RS and RTS rates has diminished over the past several years. However, the Initial Decision erroneously finds that PPL provided inadequate service in not notifying Complainant, Robert Dunham, and Complainant’s witness, Mr. McWilliams, in 1994 and 1995 of the 2010 rate change required by the 2006 Decision in Lloyd.

II. EXCEPTIONS:

1. PPL excepts to Finding of Fact 19, which provides:

“In 1995 PPL’s load picture was changing. December 31, 1994 or January 1, 1995, PPL filed a rate case with the Commission requesting that the RTS rate be discontinued. The Commission approved RTS’ discontinuance. Tr. 76”

This Finding of Fact confuses the “closing of the RTS class to new homes¹” with the “discontinuance of a rate.”

The testimony of record is uncontradicted. The RTS rate schedule was developed and filed with the Commission in February of 1981 to apply to thermal storage systems installed by customers. Tr. 70. The rate schedule and associated rates were originally designed when PPL was an integrated, regulated utility that was experiencing large growth in its morning peak usage. The RTS systems were designed to shift load from on-peak to off-peak hours. Tr. 70. However, customer lifestyles began changing and PPL’s load was moving toward an afternoon peak. Tr. 75. Therefore, around 1995, PPL elected to stop marketing the RTS rate schedule to new customers. Tr. 75-76. Accordingly, when PPL filed its rate case in January 1995, PPL proposed closing the rate schedule to any new customers (hereinafter “homes”). Tr. 76. That request was approved by the PUC (Tr. 76) and, as of December 31, 1995, the rate schedule was no longer open to new homes. However, the Rate Schedule rate was not discontinued. Existing customers’ homes remained eligible for the Rate Schedule RTS rate. Mr. Dunham testified that, in late 1994 or early 1995, he met with a PPL representative to discuss the benefits of building a home to the standards which would make it eligible for the Rate Schedule RTS rate. Tr. 14-15. The fact that Mr. Dunham’s home was one of the last homes permitted to enter the class had no

¹ The Rate Schedule RTS rate was applicable to the home, and transferrable upon sale of the home. As of December 31, 1995, no new homes were admitted to the class. However, “new customers” purchasing a home within the class were permitted to continue receiving electric under the Rate Schedule RTS rate.

effect on the rate or service he received. In fact, Mr. Dunham continues to receive the beneficial Rate Schedule RTS rate, more than fifteen (15) years after he constructed his home.

The record is devoid of evidence that, as of 1995, PPL had any intentions to make substantial changes to the Rate Schedule RTS rate. The only change contemplated at that time was that PPL would no longer market the Rate Schedule RTS rate and it would not accept new homes into the program. Existing Rate Schedule RTS customers were in no manner affected by the 1995 change, because there was no intent, at that time, to discontinue the rate schedule and associated rates.

Thereafter, as a result of the Electricity Generation Customer Choice and Competition Act (“Competition Act”) and PPL’s 1998 restructuring proceeding before the Commission, rate caps were established on PPL’s energy and capacity charges, which were effective until January 1, 2010. Rate caps in the distribution and transmission portion of the rates were effective until January 1, 2005. (Tr. 79). In 2005, the Office of the Small Business Advocate filed a petition with the Commonwealth Court requesting review of the Public Utility Commission’s Order granting an increase in PPL’s retail distribution rates. Upon review, the Commonwealth Court found that these distribution rates unlawfully discriminated against commercial customers in favor of residential customers, thereby violating the requirement that rates charged to a customer class reflect the costs of providing service to those customers. As a result of the Lloyd Decision, in 2006, the Commonwealth Court directed that PPL move all rates toward the system average rate of return. Because other customers were subsidizing the rate that Rate Schedule RTS customers received, PPL was required to revise its Rate Schedule RTS rates. Tr. 76. Accordingly, at the end of 2006, as part of its Competitive Bridge Plan, PPL proposed to bring the RTS closer to the system average rate of return. Tr. 81-82. That case marked the first time PPL began to apply the legal requirement of the Lloyd case to alter the Rate Schedule RTS rate

and began the process to comply with the Court's decision. Up until 2006, PPL had no intent to eliminate the rate differential between the Rate Schedule RS and RTS rates.

The history is undisputed and clear. PPL did not discontinue the Rate Schedule RTS rate in 1995. In fact, at that time, PPL did not have any intent of eliminating the differential between the Rate Schedule RS and RTS rates. PPL simply stopped accepting new homes into the class. That decision had no impact on customers such as Mr. Dunham and, accordingly, there was no reason to communicate the closing of the rate schedule to the customers who were taking service under that rate schedule. It was not until 2006, when the Commonwealth Court issued the Lloyd Decision, that PPL first contemplated a substantial change to the Rate Schedule RTS rate. The record simply does not contain any evidence that, in 1995, PPL should have, or could have, anticipated the Lloyd ruling.

PPL did not discontinue the Rate Schedule RTS rate in 1995, and cannot be found to have provided inadequate service for failing to notify customers of a decision that would be made by the Commonwealth Court eleven (11) years later.

2. PPL excepts to Conclusion of Law 9 which provides:

“Failure of PPL to provide accurate information regarding the future of a rate class comprising 14,000 users, and where PPL has conducted television advertisements to induce its customers to use that rate class is inadequate service within the meaning of Section 1501. 66 Pa. C.S. § 1501.”

The Initial Decision erred in confusing the 1995 “closure of the RTS rate to new homes” and the 2006 changes to the rate differential between Rate Schedules RS and RTS. Although PPL *continued to advertise the Rate Schedule RTS rate to potential customers through 1994*, such advertising was not deceptive or unfair. Those customers who responded to the advertisements and elected to construct a qualifying home were included into the Rate Schedule RTS class and received the beneficial rate. It was not until after the 2006 Lloyd Decision that

PPL began to eliminate the subsidy being provided to Rate Schedule RTS customers and move rates under that rate schedule toward the system average rate of return. The record is clear that it was not until 2006 that PPL contemplated changing the rate for Rate Schedule RTS customers. Accordingly, PPL cannot be charged with proving inadequate service for failing in 1994 to anticipate a Commonwealth Court opinion that would be issued eleven (11) years later.

III. CONCLUSION:

WHEREFORE, for all the foregoing reasons, Finding of Fact 19 and Conclusion of Law 9 in the Initial Decision should be rejected. In all other respects, the Initial Decision should be approved, and the Commission should dismiss the instant Complaint.

RESPECTFULLY SUBMITTED,

PPL ELECTRIC UTILITIES CORPORATION

BY: 

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT DUNHAM,

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vs.

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COMPLAINT DOCKET
NO. C-2010-2155056

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MAR 7 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

This is to certify that THE EXCEPTIONS of PPL ELECTRIC UTILITIES CORPORATION to INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EMBER S. JANDEBEUR ISSUED ON FEBRUARY 15, 2011 was mailed to counsel/complainant of record on behalf of Complainant by first class United States mail, postage on this the 7th day of March, 2011.

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 Company Pennsylvania Public Utility Commission
 Address Commonwealth Keystone Building
 City Harrisburg State PA ZIP 17105-3265

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