

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

November 30, 2011

HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: William R. Lloyd, Jr., Small Business Advocate v. PPL Electric Utilities Corporation
Docket No. C-2011-2245906**

**PPL Electric Utilities Corporation Calculation of Generation Supply Charge-1
Docket No. M-2011-2243137**

Dear Secretary Chiavetta:

I am delivering for filing today the original plus four (4) copies of the Response to PPL Electric Utilities Corporation's Motion to Strike and Petition to Reopen the Record, on behalf of the Office of Small Business Advocate, in the above-captioned proceedings.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: Parties of Record
Robert D. Knecht

(717) 783-2525
(717) 783-2831 (FAX)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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William R. Lloyd, Jr., Small Business Advocate	:	
v.	:	DOCKET NO. C-2011-2245906
PPL Electric Utilities Corporation	:	
PPL Electric Utilities Corporation	:	
Calculation of Generation Supply Charge-1	:	DOCKET NO. M-2011-2243137

**RESPONSE OF THE OFFICE OF SMALL BUSINESS ADVOCATE
TO PPL ELECTRIC UTILITIES CORPORATION'S
MOTION TO STRIKE AND PETITION TO REOPEN THE RECORD**

The Office of Small Business Advocate (“OSBA”) hereby submits this response to the Motion to Strike and Petition to Reopen the Record filed by PPL Electric Utilities Corporation (“PPL”) on November 18, 2011. In support of this response, the OSBA states as follows:

I. BACKGROUND

1. On May 20, 2011, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed its calculation of the proposed GSC-1 rates for the period of June 1, 2011, through August 31, 2011, at Docket No. M-2011-2243137 (“June GSC-1”).

2. On May 31, 2011, the OSBA filed a Complaint against the proposed June GSC-1. The Company filed its Answer to the OSBA’s Complaint on June 29, 2011. The Office of Administrative Law Judge assigned this proceeding to Administrative Law Judge (“ALJ”) Susan D. Colwell.

3. The Office of Trial Staff, now part of the Bureau of Investigation and Enforcement (“BI&E”), filed a notice of appearance on June 22, 2011. The Office of Consumer Advocate (“OCA”) filed a Notice of Intervention on July 12, 2011.

4. The OSBA submitted OSBA Statement No. 1 (the Direct Testimony and Exhibits of Robert D. Knecht) and OSBA Statement No. 2 (the Surrebuttal Testimony of Robert D. Knecht) on July 29, 2011, and August 25, 2011, respectively. PPL submitted Direct Testimony, Rebuttal Testimony, and Rejoinder Testimony. Neither the OCA nor the BI&E filed testimony.

5. The hearing originally scheduled for August 29, 2011, was continued. It was subsequently held on October 5, 2011, at which time OSBA Statement No. 1 and OSBA Statement No. 2 were entered into the record, along with OSBA Exhibits A, B, C, D, and E.

6. Pursuant to 52 Pa. Code §5.431(a), the record was closed at the conclusion of the hearing on October 5, 2011.

7. PPL and the OSBA submitted Main Briefs on October 26, 2011, and Reply Briefs on November 9, 2011. Neither the OCA nor the BI&E filed Main Briefs or Reply Briefs.

8. On November 18, 2011, PPL moved to strike a portion of the OSBA's Reply Brief on the grounds that it relied on evidence not in the record in this proceeding. In the alternative, PPL requested that the record be reopened to admit an Affidavit in response to such evidence.

9. The portion of the OSBA's Reply Brief that PPL seeks to strike is in response to an issue raised by PPL for the first time in its Main Brief after the record was closed, namely the potential effect of the outcome of this proceeding on other Pennsylvania utility companies. If portions of the OSBA's Reply Brief are stricken, then due process requires that PPL's argument to which the OSBA was responding must also be stricken.

10. PPL's alternative request to reopen the record to admit the Affidavit attached to its Motion is inappropriate for several reasons, the most troubling one being that the Affidavit is

undeniably hearsay within hearsay. Neither Mr. Kleha nor his unidentified “counterparts” at Metropolitan Edison Company and PECO Energy are able to be cross-examined by the OSBA.

11. The record should only be reopened for the sole purpose of admitting a late-filed Exhibit, pre-marked as OSBA Exhibit H and attached hereto, which is the evidence relied upon by the OSBA in its response to the argument raised by PPL for the first time in PPL’s Main Brief. OSBA Exhibit H is an excerpt from the direct testimony of OSBA witness Mr. Knecht and accompanying Exhibit IEC-2, which are part of the record in *Pa. P.U.C. v. West Penn Power Company d/b/a Allegheny Power*, Docket No. P-00072342 (“West Penn Default Service Case”).

II. ARGUMENT

12. Ironically, PPL is guilty of the same thing it has accused the OSBA, namely that “the purpose of a brief is not to introduce new additional evidence or to offer rejoinder testimony.”¹

13. In its Main Brief, PPL asserted for the first time that the change to PPL’s accounting reconciliation method proposed by the OSBA in this proceeding would affect a large number of utilities and therefore requires a generic proceeding. Specifically, PPL stated:

OSBA is requesting a significant policy change with regard to how costs and revenue are calculated in the reconciliation of a Section 1307(e) cost recovery mechanism. This obviously will affect a large number of utilities in the Commonwealth... Due to the potential broad impact, PPL Electric does not believe that any changes should be made on a single utility basis, but should only be made in a generic proceeding where all utilities have the opportunity to comment.²

¹ PPL Motion to Strike at 4.

² PPL Main Brief at 30.

14. Notably, in making this broad assertion, PPL did not cite to any testimony or documents in the record where it had previously argued that the OSBA's proposal "obviously will affect a large number of utilities in the Commonwealth."³ This is because PPL has never offered any evidence regarding the impact upon other utilities that would result as a consequence of this proceeding.

15. Apparently, as support for the continued use of its flawed reconciliation accounting method, PPL did assert in testimony that such method was consistent with the practice of other jurisdictional utilities, albeit unsubstantiated by any evidence.⁴ However, only in one sentence in PPL witness Mr. Kleha's rejoinder testimony was the concept of a statewide change to reconciliation accounting methods even mentioned.⁵ Specifically, Mr. Kleha stated that "If the Commission were to consider changing its long-standing Section 1307(e) reconciliation procedures, it should do so only on a prospective and statewide basis..."⁶ Mr. Kleha did not offer any rationale for this assertion. Most importantly, he did not testify that the outcome of the instant proceeding would have any effect on other utilities in the Commonwealth or require them to make any changes to their current reconciliation mechanisms.

16. Moreover, the OSBA has never advocated for a sweeping change in Commission practice and precedent with regard to Section 1307(e) reconciliation mechanisms. Rather, the OSBA has argued that for this particular utility, at this particular time (as rate caps expired), when the result is dramatically unreasonable and unstable default service rates for small

³ *Id.*

⁴ PPL Statement No. 1-R at 2 and 5; Hearing Transcript at 52, lines 2-5.

⁵ PPL Statement No. 1-RJ at 5.

⁶ PPL Statement No. 1-RJ at 5.

commercial and industrial (“Small C&I”) customers, PPL should have used an alternative accounting method that is at least as, if not more, consistent with its tariff, Commission orders regarding its GSC and GSC-1, and the fundamental accounting principal of matching costs and revenues.

17. Instead of moving to strike that portion of PPL’s Main Brief regarding the effect of this proceeding on other utilities, the OSBA responded to PPL’s new argument by pointing out that at least one other utility already uses the reconciliation accounting method proposed by the OSBA. As support for this, the OSBA cited to Mr. Knecht’s testimony in the West Penn Default Service Case. Exhibit IEC-2 to that on-the-record testimony is an interrogatory response from West Penn, which the OSBA quoted in its Reply Brief.⁷

18. The OSBA had no opportunity to introduce this evidence on the record because the record was already closed when PPL first made this argument. Thus, the only party whose due process rights are in jeopardy of being violated here are the OSBA’s.

19. PPL opened the door by presenting this new argument in its Main Brief. The Company should not have its misdeeds rewarded by being allowed to re-open the record and submit an affidavit.

20. In fact, the record should be reopened, but only to admit a late-filed exhibit, OSBA Exhibit H. 52 Pa. Code §5.431(b) states that after the record is closed additional evidence may be relied upon for good cause shown. 52 Pa. Code §5.571 provides that, “[a]t any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.”

⁷ OSBA Reply Brief at 11.

21. In this case, there is good cause to re-open the record and admit the OSBA's late-filed exhibit. The exhibit is a narrowly-tailored response to an argument raised for the first time in PPL's Main Brief after the record was closed. Moreover, admission of the exhibit will render PPL's Motion moot.

22. The Affidavit attached to PPL's Motion should not be made a part of the record. The Affidavit is hearsay within hearsay and clearly violates the OSBA's due process rights. It is Mr. Kleha's account of what two unidentified persons said to him. Those unidentified persons are not available for cross examination by the OSBA and neither is Mr. Kleha. The OSBA has had no opportunity to inquire into the time period used by these other EDCs for amortizing the differentials between revenues and costs created by the accounting mismatch. Furthermore, Mr. Kleha's Affidavit gives no indication of whether these other EDCs imposed reconciliation charges that exceeded 4 cents per kWh with little or no warning, as PPL did to its Small C&I ratepayers. Had Mr. Kleha timely offered this evidence in rebuttal testimony, these matters would have been pursued.

23. At this stage of these proceedings, it would be inappropriate for the ALJ or the Commission to rely on the Affidavit in its findings of fact or conclusions of law.

III. CONCLUSION

For the reasons cited above, the OSBA respectfully requests that the presiding officer issue an Order:

- i. Admitting into the record OSBA Exhibit H, an excerpt from OSBA Statement No. 1, the Direct Testimony of Robert D. Knecht and accompanying Exhibit IEc-2 in the West Penn Default Service Case, thereby rendering PPL's Motion moot; or
- ii. Alternatively, striking both the portions of PPL's Main Brief and the OSBA's Reply Brief with respect to PPL's allegations regarding this proceeding's impact on other utilities and the necessity of a generic proceeding.

Respectfully submitted,



Elizabeth Rose Triscari
Attorney ID No. 306921
Assistant Small Business Advocate

For:

Steven C. Gray
Acting Small Business Advocate
Attorney I.D. No. 77538

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Dated: November 30, 2011

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OSBA Exhibit H

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**WEST PENN POWER COMPANY
d/b/a ALLEGHENY POWER**

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Docket No. P-00072342

Direct Testimony and Exhibits of

ROBERT D. KNECHT

On Behalf of the

Pennsylvania Office of Small Business Advocate

Date Served: February 12, 2007

Date Submitted for the Record: _____

Table IEc-2 IEc Proposed Procurement Schedule for Service Type 30 Number of Slice-of-ST 30 Tranches						
RfP Procurement Dates						
Supply Periods	Jun-09	Oct-09	Jan-10	Jun-10	Oct-10	Total
Jan-11 to May-12	1	1	2	2	1	7

1 **4. Interest on Reconciliation**

2 **Q. Please summarize West Penn's proposal with respect to interest on default service**
3 **over- and under-collections.**

4 A. West Penn proposes that it implement an Energy Cost Adjustment ("ECA") rate to
5 reconcile the difference between the costs that it incurs on behalf of default service
6 ratepayers and the revenues paid by default service ratepayers. In general, West Penn
7 proposes to calculate these variances on a quarterly basis, and to recover the costs on a
8 quarterly basis, with a lag of one full quarter. For example, the variance between costs
9 incurred and revenues earned in the January to March 2011 quarter will be reflected in
10 rates for the July to September 2011 quarter.²⁴ However, if the variance between
11 revenues and costs exceeds four percent of revenues, West Penn will change the ECA in
12 the next monthly billing period rather than waiting until the beginning of the next quarter.

13 The use of a reconciliation mechanism is permitted (but not required) under the
14 Commission's regulations at Section 54.187(f). However, that section also specifies that
15 interest on over-collections be paid to ratepayers at the legal rate of interest plus two
16 percent, and that the DSP may recover interest on under-collections at the legal rate of
17 interest.

18 West Penn requests a waiver of the requirement that it pay interest on over-collections,
19 and it proposes that it not collect any interest on under-collections. Its arguments in
20 support of the proposed waiver are as follows:

- 21 • The asymmetrical interest charges will not allow it to fully recover all reasonable
22 costs;

²⁴ See OSBA-I-19.

West Penn's Response to OSBA Interrogatory Set I, No. 19

Sponsor: Raymond Valdes

Response Date: December 5, 2007

**IN RE: PETITION OF WEST PENN POWER COMPANY d/b/a ALLEGHENY POWER
PaPUC Docket No. P-00072342**

OFFICE OF SMALL BUSINESS ADVOCATE Set I, No. 19:

OSBA-I-19: Reference Petition at 13 to 15; reconciliation/ECA

- a. Please provide a representative numerical example showing how the ECA will be derived, for Service Type 20 and Service Type 30, with the specific timing for costs being incurred and recovered.
- b. In the first quarter of 2011, will Allegheny follow the practice of other Pennsylvania EDCs (e.g., Penn Power) and include the variance between billed kWh (approximately 2.5 months of consumption) and purchased kWh (3 months of consumption) in the first quarter ECA variance? Please explain your response. If your answer is affirmative, please comment on whether it will be appropriate to recover that variance over a relatively short period, such as a calendar quarter.

RESPONSE:

- a. Please see the attached OSBA-I-19-A.
- b. Allegheny plans to include unbilled revenues in the calculation so that the comparison between billed amounts and purchased amounts will both be on a three-month basis.

Service Type
 Illustrative Energy Cost Adjustment (ECA) Calculation

	Generation				Delta			
	<u>Purchase</u>	<u>w/GRT²</u>	<u>Billed¹</u> <u>w/out GRT²</u>	<u>Supply Manage</u> <u>& Admin Costs</u>	<u>Alt Energy</u> <u>Costs</u>	<u>per month</u>	<u>Cumulative</u>	
Month 1	\$ 100,000.00	\$ 103,000.00	\$ 96,923.00	\$ 100.00	\$ 100.00	\$ (3,277.00)	\$ (3,277.00)	
Month 2	\$ 100,000.00	\$ 108,000.00	\$ 101,628.00	\$ 100.00	\$ 100.00	\$ 1,428.00	\$ (1,849.00)	
Month 3	\$ 100,000.00	\$ 107,000.00	\$ 100,687.00	\$ 100.00	\$ 100.00	\$ 487.00	\$ (1,362.00)	

Forecast default service billing determinants, months 7-9 = 12,000,000 kWh

ECA months 7-9, without GRT = \$ 0.00011 /kWh

ECA months 7-9, with GRT² = \$ 0.00012 /kWh

¹Includes unbilled
²Assumed gross receipts tax of 5.90%

OSBA Exhibit H

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William R. Lloyd, Jr., Small Business Advocate	:	
v.	:	DOCKET NO. C-2011-2245906
PPL Electric Utilities Corporation	:	
PPL Electric Utilities Corporation Calculation of Generation Supply Charge-1	:	DOCKET NO. M-2011-2243137

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Response to PPL Electric Utilities Corporation's Motion to Strike and Petition to Reopen the Record, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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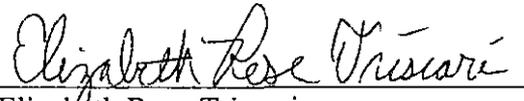
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Date: November 30, 2011



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