

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry Moyer : Docket Nos. C-2011-2273645  
v. :  
PPL Electric Utilities Corporation :

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**NOTICE TO PLEAD**

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TO: PPL Electric Utilities Corporation

You are hereby notified that, if you do not file a written answer to the attached Motion for Certification of Interlocutory Order for Immediate Appeal within twenty (20) days from service, the Commission may rule upon the Motion without additional input.

Date: January 17, 2014

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry Moyer : Docket Nos. C-2011-2273645  
v. :  
PPL Electric Utilities Corporation :

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**MOTION FOR CERTIFICATION OF INTERLOCUTORY ORDER  
FOR IMMEDIATE APPEAL**

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Date: January 17, 2014

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Pursuant to 52 Pa. Code §§ 5.572 and 5.633, Pa. R. App. P. 1311(b), and 66 Pa. C.S. § 703, Complainant hereby moves for amendment to the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered January 9, 2014 (the “Order”)<sup>1</sup> to state that the Order involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate resolution of the matter.

## **I. INTRODUCTION**

1. The Commission’s Bureau of Consumer Services (“BCS”) decided the informal complaint in this matter on February 2, 2011, improperly concluding that non-generational load is required to qualify for net metering. In addition, BCS decided that Complainant’s two accounts did not qualify for virtual metering under the terms of the PPL Electric Utilities Corporation (“PPL”) Net Metering Tariff because there was no non-generational load.

2. By Initial Decision issued January 23, 2013, the ALJ upheld the requirement for non-generational load for virtual metering customers.<sup>2</sup> In doing so, the ALJ stated that “there should be usage or load that exists [at the host account] regardless of whether the generation equipment is in place.”<sup>3</sup>

3. The Commission’s Order declined to address the issue of eligibility for net metering or virtual meter aggregation. The Commission did require PPL to continue to permit the Complainant to utilize net metering and virtual meter aggregation, subject to future changes in applicable laws or tariffs. The Commission referred this important legal issue to the

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<sup>1</sup> *Larry Moyer v. PPL Electric Utilities Corporation*, C-2011-2273645 (Opinion and Order entered January 9, 2014) (“Opinion and Order”).

<sup>2</sup> *Larry Moyer v. PPL Electric Utilities Corporation*, C-2011-2273645 (Initial Decision issued January 23, 2013) (“Initial Decision”).

<sup>3</sup> Initial Decision at 13.

Commission’s Law Bureau to consider whether its regulations need to be clarified. However, no time frame was placed on its request.<sup>4</sup>

## II. ARGUMENT

### A. Legal Standard

4. Section 702(b) of the Judicial Code provides:

“When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.” 42 Pa. C.S. § 702(b).

5. Section 5.633 of the Commission’s Rules permits parties “to request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter.” 52 Pa. Code § 5.633. Pennsylvania Rule of Appellate Procedure 1311(b) provides: “An application for an amendment of an interlocutory order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b) shall be filed with the lower court or other government unit within 30 days after the entry of such interlocutory order.” Pa. R. App. P. 1311(b).<sup>5</sup>

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<sup>4</sup> Opinion and Order at 20.

<sup>5</sup> Section 5.633 of the Commission’s rules provides that motions for certification should be filed within 10 days and this motion is filed within the time period required by the Commission.

**B. The Order Involves Controlling Questions of Law as to Which There is Substantial Ground for Difference of Opinion**

6. The Order involves the following controlling questions of law as to which there is a substantial difference of opinion:

- a. Whether a host account can qualify for net metering or virtual meter aggregation if there is no non-generational load at the host account; and
- b. Whether prior existence of a load, meter or electric service is a prerequisite to net metering or virtual net metering eligibility.

7. These questions are controlling because they impact the Complainant's prospective eligibility for net metering or virtual meter aggregation, as well as the current and prospective eligibility of others who have installed generating facilities.

8. Substantial difference of opinion as to these questions exists, as illustrated by the Commission's Order requiring that PPL continue to permit Complainant to utilize virtual net metering, although declining to address the issue of virtual net metering eligibility for those who may have installed, or who may wish to install, generating facilities in Pennsylvania.

9. PPL's Net Metering Tariff provides that net and virtual metering is "available to installations where any portion of the electricity generated by the renewable energy generating system offsets part or all of the customer-generator's requirements for electricity."<sup>6</sup> PPL arbitrarily avers that this provision of its Tariff means that solar panels may be installed only where an existing meter and electric service already exist. This policy defies the intent of the Alternative Energy Portfolio Standards Act.<sup>7</sup>

10. If PPL's restrictions are imposed, very few locations, among the hundreds of ideal sites for net metering, could qualify or be used.

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<sup>6</sup> Order at 18.

<sup>7</sup> 73 P. S. §§ 1648.1-1648.8.

11. Complainant submits that PPL's interpretation of its Tariff is unsupported by the Tariff itself and the Alternative Energy Portfolio Standards Act. Mr. Ronald Celentano, Complainant's expert witness who testified at the hearing on August 15, 2012, emphatically affirmed that Complainant has load on his account.<sup>8</sup>

12. The Commission has sought to promote solar energy goals as evidenced by its Final Policy Statement in Support of Pennsylvania Solar Projects.<sup>9</sup> The Commission could express no better support for the advancement of solar energy than by squarely addressing: (a) the issue of non-generational load as it pertains to eligibility for net metering or virtual meter aggregation; and (b) whether prior existence of a load, meter or electric service is a prerequisite to net metering eligibility.

13. These important issues will set the future course of virtual metering in Pennsylvania. Further delay in addressing these critical questions of law will only result in missed opportunities for advancement in solar renewable energy.

**C. An Immediate Appeal From the Order May Materially Advance the Ultimate Termination of this Matter**

14. It is clear that an immediate appeal from the Order may materially advance the ultimate termination of this matter.

15. Issues surrounding non-generational load and its impact on virtual net metering eligibility are likely to increase given the number of those who may have installed, or who may wish to install, generating facilities in Pennsylvania under the provisions of virtual net metering. A definitive determination now will provide guidance to the Commission and the industry going forward.

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<sup>8</sup> Hearing Transcript approximately at 161.

<sup>9</sup> *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (Final Policy Statement Order entered September 16, 2010).

### III. CONCLUSION

For all of the foregoing reasons, Complainant respectfully requests that the Commission amend the Order to state that the Order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter.” In the alternative, Complainant requests that the Commission direct the Law Bureau to address these issues within the next six (6) months, in an effort to prevent further delay of the advancement of solar renewable energy in Pennsylvania.

Respectfully submitted,

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Date: January 17, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing Motion for Certification of Interlocutory Order for Immediate Appeal to be served upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via First Class Mail**

Christopher T. Wright, Esquire  
Post & Schell PC  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Date: January 17, 2014

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