



COMMONWEALTH OF PENNSYLVANIA

January 30, 2015

E-File

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

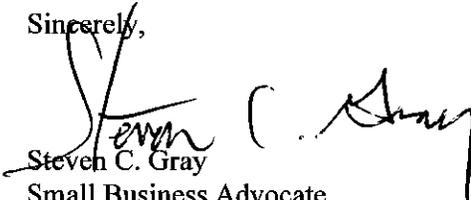
**Re: Petition of PPL Electric Utilities Corporation for Approval of a
Default Service Program and Procurement Plan for the Period June 1, 2015
through May 31, 2017
Docket No. P-2014-2417907**

Dear Secretary Chiavetta:

I am delivering for filing today the original plus three copies of the Petition for Reconsideration, on behalf of the Office of Small Business Advocate, in the above-captioned matter.

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,


Steven C. Gray
Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Parties of Record

Hon. Susan D. Colwell
Pennsylvania Public Utility Commission

Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities Corporation :
for Approval of a Default Service Program and : Docket No. P-2014-2417907
Procurement Plan for the Period June 1, 2015 :
through May 31, 2017 :**

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Petition for Reconsideration, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-1191
(717) 787-0481 (fax)
scolwell@pa.gov
(E-mail and Hand Delivery)

Michael W. Hassell, Esquire
Christopher T. Wright, Esquire
Post & Schell
17 North Second Street - 12th Floor
Harrisburg, PA 17101-1601
(717) 612-6029
(717) 731-1985 (fax)
mhassell@postschell.com
cwright@postschell.com

Aron J. Beatty, Esquire
Amy Hirkakis, Esquire
Hobart J. Webster, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
abeatty@paoca.org
ahirakis@paoca.org
hwebster@paoca.org
(E-mail and Hand Delivery)

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17101
(717) 237-6000
(717) 237-6019 (fax)
dclearfield@eckertseamans.com
dodell@eckertseamans.com
sstoner@eckertseamans.com

Divesh Gupta, Esquire
Constellation Energy Group, Inc.
100 Constellation Way - #500-C
Baltimore, MD 21202
(First-class Mail Only)

Todd S. Stewart, Esquire
Thomas J. Sniscak, Esquire
Judith D. Cassel, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com
tjsniscak@hmslegal.com
jdcassel@hmslegal.com

Charles E. Thomas III, Esquire
Thomas Long Niesen & Kennard
P. O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7611
(717) 236-8278 (fax)
cet3@thomaslonglaw.com

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Carrie B. Wright, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-4886
(717) 772-2677 (fax)
carwright@pa.gov
(E-mail and Hand Delivery)

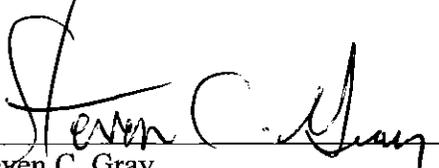
Pamela C. Polacek, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
ppolacek@mwn.com
abakare@mwn.com

Harry S. Geller, Esquire
Patrick M. Cicero, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 236-9486
(717) 233-4088 (fax)
pulp@palegalaid.net

Kenneth L. Mickens, Esquire
Sustainable Energy Fund of Central PA
316 Yorkshire Drive
Harrisburg, PA 17111
(717) 343-3338
(717) 657-0938 (fax)
kmickens11@verizon.net

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street - 4th Floor
Harrisburg, PA 17101
dzambito@cozen.com

Heather Langeland, Esquire
PennFuture
200 First Street - #200
Pittsburgh, PA 15222
(412) 456-2901
(412) 258-6685 (fax)
langeland@pennfuture.org


Steven C. Gray
Assistant Small Business Advocate
Attorney ID # 77538

Dated: January 30, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities Corporation :
for Approval of a Default Service Program and : Docket No. P-2014-2417907
Procurement Plan for the Period June 1, 2015 :
Through May 31, 2017 :**

**PETITION FOR RECONSIDERATION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 66 Pa. C.S. § 703 and 52 Pa. Code § 5.572, the Office of Small Business Advocate (“OSBA”) files this Petition for Reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on January 15, 2015.

I. Introduction

1. On April 18, 2014, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed a Petition for the Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017 (“*Petition*”) with the Commission.

2. On May 28, 2014, the Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention.

4. On June 5, 2014, a prehearing conference was held before Administrative Law Judge (“ALJ”) Susan D. Colwell.

5. On July 1, 2014, the OSBA served the Direct Testimony of Robert D. Knecht. On July 11, 2014, the OSBA served the Supplemental Direct Testimony of Mr. Knecht. On July 28, 2014, the OSBA served the Rebuttal Testimony of Mr. Knecht. On August 8, 2014, the OSBA served the Surrebuttal Testimony of Mr. Knecht.

6. On August 19, 2014, an evidentiary hearing was held before ALJ Colwell.
7. On September 12, 2014, the *Joint Petition for Approval of Partial Settlement* was filed by parties to this proceeding, including the OSBA. Two issues were not addressed by the *Joint Petition* and were reserved for litigation.
8. On September 12, 2014, the OSBA submitted its Main Brief. The OSBA argued against the PPL proposal to modify the Company's eligibility requirements for the Small Commercial and Industrial ("Small C&I") generation default service rate class to exclude all customers with maximum demand above 100 kW. The Company's proposal would force all Small C&I default service customers with maximum loads between 100 kW and 500 kW who are currently subject to the stable "GSC-1" rate to take hourly priced "GSC-2" generation default service.
9. On September 26, 2014, the OSBA submitted its Reply Brief.
10. On October 30, 2014, ALJ Colwell issued her Recommended Decision ("RD"). ALJ Colwell recommended approval of the *Joint Petition*, and recommended denial of the PPL "proposal to reduce the size limit of Small Commercial & Industrial customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW." RD, at 55.
11. On January 15, 2015, the Commission entered an Order rejecting the ALJ's recommendation and approving the Company's proposal to lower the size limit from 500 kW to 100 kW in order to be served under Rate Schedule GSC-1. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2417907 (Order entered January 15, 2015) ("*January Order*"), at 67, Ordering Paragraph 5.

II. The Legal Requirements to Grant a Petition for Reconsideration

12. In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Duick, 1982 Pa. PUC LEXIS 4, at *11-*13.

13. In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

Jackson Sewer, 2001 Pa. PUC LEXIS 44, at *6.

14. This Petition for Reconsideration satisfies both *Duick* and *Jackson Sewer*, as this Petition for Reconsideration raises issues “which appear to have been overlooked or not addressed by the Commission” and “alleges errors of law.”

III. Argument

15. The OSBA seeks reconsideration of the Commission decision to adopt the PPL proposal to change the size limit of Small C&I customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW.

16. By adopting the PPL proposal all small business customers in the 100 kW to 500 kW range that are currently taking default service from PPL will be forcibly removed from that service. 430 of PPL’s small business customers, representing 13.7 percent of the total Small

C&I default service load, will be involuntarily removed from their current fixed price electric default service and forced into the hourly priced service provided under Rate Schedule GSC-2. The Commission justified this decision because it promotes a “competitive marketplace for electricity.” *January Order*, at 42-43.

17. The Commission overlooked the fact that there already exists a fully competitive marketplace for PPL’s Small C&I customers. As the OSBA stated in its Reply Brief, shopping for the Small C&I customer class has been as high as 55.2% on a customer basis and 90% on a load basis in 2014. OSBA Reply Brief, at 6, footnote 1. The Commission even quoted PPL for the notion that “88% of these customers are currently shopping.” *January Order*, at 43. Thus, there is no competitive marketplace that requires “promoting” – it already exists and is functioning smoothly.

18. The Commission claimed that the fixed-price products that Small C&I customers “desire” can “be adequately addressed though the competitive offerings of EGSs.” *January Order*, at 43. The Commission overlooked that fact that the current competitive marketplace for PPL’s Small C&I customers affords them the choice whether they want service from an EGS or the Company. The legislature never intended the Competition Act to be a requirement that customers shop even when they choose not to in a fully functioning and competitive marketplace.

19. The Commission argued that the Commonwealth Court in *Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal denied*, 83 A.3d 416 (2013):

[U]pheld the Commission’s approval of a default service plan for Pike County that included only spot market purchases, finding that the Commission properly determined that a ‘prudent mix’ of products may include only one of the sources enumerated in 66 Pa. C.S. 2807(e)(3.2) when this is the most prudent course and is likely to incur the least cost over time.

January Order, at 44.

20. The OSBA will not argue the merits of the *Popowsky* decision in this Petition for Reconsideration. Nevertheless, ALJ Colwell brilliantly sets forth the inconsistencies of the Commission's policy on what *is* a "prudent mix" for Small C&I customers. *See* RD, at 42-45.

21. ALJ Colwell observed that the Commission has issued a policy statement at 52 Pa. Code Section 69.1805(2) which provides for a Small C&I customer "prudent mix" that is entirely different from hourly service "prudent mix" approved by the Commission in its *January Order*. RD, at 42-43 ("As is evident, the policy statement promotes the 'prudent mix' standard taken from the statute for serving the customers in the Small C&I Class.").

22. The ALJ then observed that the Commission promotes an entirely different standard in the final order in *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) ("*End State Order*"). The ALJ stated: "The *End State Order*, however, prefers the LMP [Locational Marginal Price] approach." RD, at 44.

23. The ALJ correctly pointed out that in regards to the policy statement and the *End State Order*, "[n]either document is a regulation nor is either an adjudication." RD, at 43.

24. The ALJ continued, as follows:

For the Commission to adopt a standard other than the 'prudent mix' standard as a general rule (as opposed to the specific exception presented by the Pike County situation), thus expanding the standard provided in the statute, the Commission would be well advised to do so in a formal rulemaking proceeding. While the *End State Order* most likely does not reach the level of exceeding the Commission's administrative authority, neither is it, as an implementation order, standing alone, enforceable law

RD, at 44 (footnote omitted).

25. The ALJ concluded:

The result is that the Commission has one policy statement published in the Pennsylvania Code, where anyone unfamiliar with the law in Pennsylvania would, nonetheless, be likely to search for and find it, and one order which amounts to a policy statement that has not been published in a service such as the Pennsylvania Code. Reliance upon the latter is antithetical to the Commission's usual practice of transparency. The result is that neither is legally binding and each acts as advisory to both the parties to a default service case and to the Commission itself.

RD, at 44.

26. The Commission, in its *January Order*, made no attempt to address the legal defects demonstrated by the ALJ in her RD.

27. The Commission, in its *End State Order*, stated:

While the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers and an hourly LMP product for 'medium' C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act. ***To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.*** Further, as a creature of the Legislature, the Commission is well-served to ensure that the General Assembly is supportive of our overall policy direction on matters as important as the retail market for electricity.

End State Order, at 45 (emphasis added). No such legislative changes have been enacted.

28. The admitted lack of authority to force Small C&I customers into the spot market is fatal to the Commission's decision to approve such a plan for PPL. In response to the OSBA's argument on this issue, the Commission responded:

While we expressed a preference for legislative amendments that would provide the authority to approve default service plans

containing more market-based products, we also stated our belief that 'the Commission appears *currently* to have authority to establish shorter-term default service products that are more reflective of market conditions than existing products.' *End State Order* at 45-46 (emphasis added).

January Order, at 45 (emphasis in original).

29. On the one hand, the Commission expresses concern that it does not have the necessary legal authority to approve default service plans, such as PPL's proposal, that would move Small C&I customers to the spot market and hourly pricing. Simply put, the only rational reading of the above-cited paragraph in the *End State Order* is that the Commission has acknowledged that it **does not** have the authority to approve such plans, and that it must, "as a creature of the Legislature," obtain that specific authority from the General Assembly.

30. On the other hand, the Commission "believes" that it "appears" that it "currently" has such authority. The above-cited paragraph in the *End State Order* totally belies that misplaced "belief."

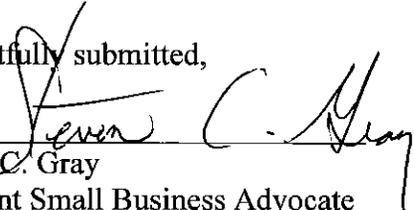
31. Furthermore, the Commission is advocating an entirely new, novel, and quite broad legal standard for administrative agencies to adopt across the Commonwealth. According to the Commission, as long as that agency "believes" that it "appears" that it "currently" has the authority to perform an act, then it can perform that act **even if** that administrative agency has recently expressed concern that such an act was outside of the authority granted to it by the legislature.

IV. Conclusion

The competitive marketplace is fully functional and operating smoothly in PPL's service territory. The Commission does not have to force 13.7 percent of the Small C&I customer load onto the hourly spot market in order to make it "more" fully functional. Furthermore, as the ALJ has amply demonstrated, the Commission has been inconsistent on its pronouncements regarding what constitutes a "prudent mix" for Small C&I customers. Finally, and fatal to the Commission's decision, the Commission does not have the current legal authority to approve PPL's proposal to change the size limit of Small C&I customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW.

Wherefore, the OSBA respectfully requests that the Commission reserve its decision in the *January Order* and reject the PPL proposal to change the size limit of Small C&I customers to be served under Rate Schedule GSC-1 from 500 kW to 100 kW.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

For:
John R. Evans
Small Business Advocate

Office of Small Business Advocate
Suite 202, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831

Dated: January 30, 2015