

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

|  |   |                 |
|--|---|-----------------|
| Pennsylvania Public Utility Commission | : | R-00049255      |
| U.S. Department of Defense & Federal   | : |                 |
| Executive Agencies                     | : | R-00049255C0001 |
| PPL Industrial Customer Alliance       | : | R-00049255C0002 |
| Office of Small Business Advocate      | : | R-00049255C0003 |
| Office of Consumer Advocate            | : | R-00049255C0004 |
| Eric Joseph Epstein                    | : | R-00049255C0005 |
|  | : |                 |
| v.                                     | : |                 |
|  | : |                 |
| PPL Electric Utilities Corporation     | : |                 |

**DOCKETED**  
JUL 07 2004

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FOLDER**

PREHEARING ORDER NO. 3

HISTORY OF THE CASE

On March 29, 2004, PPL Electric Utilities Corporation (PPL) filed Supplement No. 38 to Tariff Electric-Pa.P.U.C. No. 201 to become effective June 1, 2004, proposing to increase its retail distribution rates by \$164.4 million in additional revenues, based on a future test year ending December 31, 2004. Additionally, PPL informed the Commission that transmission charges reflected in retail rates are expected to increase by approximately \$57.2 million. These charges arise under FERC-regulated PJM Open Access Transmission Tariffs. The combination will produce an overall increase of \$221.6 million, representing an increase in annual revenues of 8.1%.

According to a PUC spokesman, "Under the combined proposal, the average monthly bill for a residential customer using 900 kilowatt-hours of electricity would increase approximately \$7.62, from \$77.47 to \$85.09. This is the first base rate increase PPL has requested since 1995. The increase would affect 1.3 million customers in 29 counties." Press Release dated May 7, 2004

Between April 2 and April 12, 2004, the following entities filed formal complaints against the rate increase and were assigned docket numbers accordingly: US Department of Defense & Federal Executive Agencies (DOD), R-00049255C0001; PPL Industrial Customer Alliance (PPLICA), R-00049255C0002; Office of Small Business Advocate (OSBA), R-00049255C0003; Office of Consumer Advocate, (OCA), R-00049255C0004; and, Eric Joseph Epstein, R-00049255C0005. PPL has filed Answers to all these complaints.

Recently, two complaints have been served on PPL for Answer, and in its Answers, PPL points out that these complaints appear to be against the rate increase, and should be redocketed accordingly. The ALJ has requested that the Secretary's Bureau review and redocket these complaints.

On April 8 and April 12, 2004, Petitions to Intervene (Petitions) were filed by the International Brotherhood of Electrical Workers, Local 1600; the Commission on Economic Opportunity (CEO); and, PECO Energy Company (PECO). PPL has responded to each of these Petitions, but does not oppose the participation of any of the Petitioners. The Petitions to Intervene filed by IBEW, Local 1600; CEO; SEF; MAPSA; and PECO were granted in PHO No. 2.

On April 13, 2004, the Northeast Delegation of the House of Representatives, chaired by the Honorable Phyllis Mundy, sent a letter the Chief Administrative Law Judge requesting that a public hearing be held in a central location in Northeastern Pennsylvania on PPL's recent rate increase proposal. Every member of the Northeast Delegation signed the letter.

By April 26, 2004, rate protests had been filed by various individuals, and had been placed in the Public Comment file. Since that time, more rate protests have been filed and placed in the Public Comment file. The ALJ instructed OCA and the Company to review this file.

On May 7, 2004, the Commission instituted an inquiry and investigation to determine the fairness, reasonableness and justness of rates named in Supplement No. 38 to

Tariff Electric-Pa.P.U.C. No. 201, and ordered that the investigation shall include consideration of the lawfulness, justness and reasonableness of PPL's existing rates, rules and regulations. The Commission stated that, pursuant to 66 Pa.C.S. §1308(d), the filing will be suspended by operation of law on June 1, 2004 until January 1, 2005, and that PPL cannot increase distribution rates before the end of 2004 due to the transmission and distribution rate cap.

On May 10, 2004, the Office of Administrative Law Judge (OALJ) served a notice scheduling an Initial Prehearing Conference to be held in Harrisburg on May 19, 2004 at 2:00 p.m. The case was assigned to Administrative Law Judge Allison K. Turner (ALJ) for preliminary rulings, hearing and decision.

On May 12, 2004, the ALJ served her first Prehearing Order, establishing certain basic procedures to be followed before and during the Initial Prehearing Conference.

The Initial Prehearing Conference was convened by the ALJ, as scheduled, in Harrisburg, PA. The following parties were represented and participated: PPL; OTS; OCA; OSBA; PPLICA; USDOD; IBEW, Local 1600; Eric Epstein; Commission on Economic Opportunity (CEO); Sustainable Energy Fund (SEF); Citizen's for Pennsylvania's Future (Penn Future); MAPSA; Clean Air Council (CAC); Public Lighting User Group (PLUG); Allegheny Power; Duquesne Light Company (Duquesne); PECO; and, UGI Utilities, Inc. (UGI). Many of these same parties also filed Prehearing Memoranda.

At the Prehearing Conference, PPL did not request waiver of the rules regarding Answers and Replies, so PPL will answer Complaints and respond to Petitions to Intervene as filed.

On May 20, 2004, the ALJ served Prehearing Order No. 2 making various rulings and memorializing agreements reached at the Prehearing Conference.

Various Petitions to Intervene have been filed by: West Penn Power Company d/b/a Allegheny Power (Allegheny); the Clean Air Council (CAC); Citizens for Pennsylvania's

Future, Char Magaro and Edward M. McGovern (Penn Future Parties); the Public Lighting Users Group (PLUG); The Sustainable Development Fund (SDF); Strategic Energy, LLC (Strategic); Duquesne Light Company (Duquesne); UGI Utilities, Inc. (UGI) ; Metropolitan Edison, Pennsylvania Electric Company and American Transmission Systems, Inc.(Met Ed & Penelec). PPL has by now replied to the all Petitions to Intervene, and while denying various factual allegations, it does not object to the participation of any Petitioner.

On June 1 and June 15, 2004, OCA and OSBA notified the ALJ and the parties of additional witnesses they plan to call.

On June 17, 2004, OCA formally requested that an additional public input hearing be held in the Williamsport area because it had received customer contact, and also a request from Senator Roger Madigan. Counsel for OCA stated that she had contacted the Company, and it does not object to this addition to the schedule.

The purpose of this Order is to rule on the outstanding Petitions to Intervene, and to acknowledge other notices and requests.

### DISCUSSION

Intervention in a proceeding before the Commission is authorized by the Commission's rules. It may be initiated by another agency of the Commonwealth which is authorized by statute to participate in the proceeding, such as OCA or OSBA in this instance, or by Order of the presiding officer or the Commission. 52 Pa. Code 5.71. The criteria for eligibility to intervene are set forth in the regulations:

#### **§5.72. Eligibility to intervene.**

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth*. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

\*...\*

None of the Petitioners can claim a right conferred by a statute of the United States or the Commonwealth. Section 5.72 (a) (1). So none of these Petitions may be granted under this section.

Next we turn to examination of the pleadings to find whether the Petitioners aver an interest which may be directly affected, which is not represented by existing participants, and as to which the Petitioner may be bound by action of the Commission.

The proceeding before the Commission and assigned to me is not a generic proceeding. It is a filing specific to PPL, whereby PPL proposes to increase its rates, to change various of its tariffs, perhaps to change its universal service programs, and to put in place certain new mechanisms, such as the Distribution System Improvement Charge, or DSIC, among other things. It is the first rate filing since the restructuring proceedings, but it is not part of the restructuring proceedings, and participation in PPL's restructuring proceeding by itself is not a basis to participate in this rate increase proceeding. Utilities that fear being bound by Commission precedent will be free to argue for whatever increases and tariffs that are applicable and appropriate to them when they file for a rate increase.

It appears to me that those persons or entities who are customers of PPL, or who compete with PPL in the wholesale sale of electricity will indeed be directly impacted by the rates that are set at this docket, and by any new tariff provisions that apply to them, and that they

will be bound by the outcome of the proceeding, and therefore they have standing to intervene. Section 5.72 (2). Therefore, those Petitioners who aver that they are customers, or represent customers, or who are competitors or represent competitors, have established a direct interest and eligibility to intervene. Those entities, such as the Sustainable Energy Fund which are dependent on PPL for part of their funds also have a direct interest. Employees of PPL and those entities who represent them have a direct interest in this case.

Those entities who merely allege an interest in the formulation of the Commission's policy and precedent do not have a direct interest in this case, and will not be bound by it in the same way that PPL, its customers, competitors, funded organizations and employees will.

Based on the foregoing, I conclude that Duquesne and Met Ed and Penelec, who do not aver that they are customers of PPL, and aver only general policy interest in the issues in the case, do not have a direct interest in this proceeding, and their Petitions to Intervene will not be granted. Likewise, the SDF does not have a direct interest in this case. It does not aver that it is a PPL customer or that it represents PPL customers. It only wants to urge that the SEF gets more money so that it can participate in more joint projects with the SDF. This can only be considered an indirect interest. Its Petition to Intervene will not be granted.

These parties generally do not argue that they will raise public interest issues. They argue that is in their own interests that they participate. So their Petitions may not be granted on the basis that their participation is in the public interest. Section 5.72 (a) (3).

By contrast, PennFuture and the Clean Air Council both seek to raise public interest issues. PennFuture avers that it seeks to protect and preserve the environment of Pennsylvania, and that a substantial portion of the work of the organization concerns restructuring electricity markets to benefit the environment and economy of Pennsylvania. In addition, PennFuture avers that its members and directors are customers of PPL, and will be directly affected by the outcome of the case. One of the named intervenors, Magaro is both a residential and commercial customer of PPL. PennFuture is clearly eligible to intervene.

The Clean Air Council advocates for a level of air quality which protects human health. The Council itself is in Philadelphia, PA, and is not in PPL's service territory, although it avers that some of its members live and work in PPL's service territory and will be affected by the outcome of this case. Many of CAC's listed concerns, such as the DSIC, rate design and rate structure, and development of a competitive electricity market, indicate it will be adequately represented by existing intervenors and complainants, Protest and Petition at 5-6. PennFuture's environmental concerns may include clean air issues. The Council also avers that it participated in PPL's restructuring case and was a signatory to the settlement. To the extent that this is germane, I note that many of the other parties participated likewise, including OCA, OTS, Eric Epstein and the USDOD, so that any relevant issues can be raised there. Therefore, it seems that the Council's basis of eligibility is *de minimus*, unless it can show that it actually does have members in PPL's service territory. I will therefore direct that CAC amend its Petition to Intervene to include a member or members, affiliates or employees that live in the service territory. If it does not choose to do so, its Petition will be denied. If it does choose to do so, its Petition will be granted without further action.

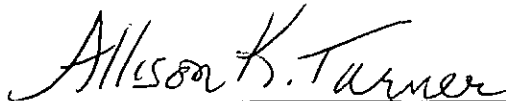
Strategic Energy, which avers that it is a competitor of PPL and serves commercial load and is actively marketing in its service territory does have a direct interest as a competitor. It is a member of MAPSA which already has intervenor status, but avers that its interests are "unique from and may not be represented by MAPSA". Section 5.72 (b). To the extent that MAPSA does represent its interests, Strategic's intervention is duplicative and unnecessary. Therefore, while Strategic's intervention will be granted, it will be limited as appropriate under 52 Pa. Code §5.76

Finally, I emphasize that admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. 52 Pa. Code §5.75(b)

PaPUC/OALJ, Room 1302, Philadelphia State Office Building, 1400 W. Spring Garden Street, Philadelphia, PA 19130. Due to problems with transmittal and down loading from Adobe transmissions, **parties who transmit documents using Adobe shall also provide a copy of pleadings and documents on disk to the ALJ.** Copies should also be provided to ALJs Colwell and Jandebeur, whose email addresses are [scolwell@state.pa.us](mailto:scolwell@state.pa.us) and [ejandebeur@state.pa.us](mailto:ejandebeur@state.pa.us).

7. Parties shall remember to comply with the instructions for briefing and use the tables attached to Prehearing Order 1.

8. The service list attached to this Order will be used by the ALJ and the Scheduling Office for this proceeding. If it contains any errors in the information for any party, please contact Maureen Govan immediately to provide her with the correct information.



Allison K. Turner  
Administrative Law Judge

Date: June 21, 2004

ORDER

THEREFORE,

IT IS ORDERED:

1. The procedural schedule will be altered to include a public input hearing in the Williamsport area sometime in the first two weeks of July, 2004.

2. In addition to those witnesses previously listed, OCA will be calling Lafayette Morgan of Exeter Associates, and OSBA will be calling Andrew M. Schwartz and Mark D. Ewen.

3. The Petitions to Intervene filed by the following parties are hereby granted: Allegheny, UGI, Strategic Energy, PLUG, and, PennFuture. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. 52 Pa. Code §5.75(b)

4. The Clean Air Council may amend its Petition to Intervene to include at least one person who is a customer of PPL, and who is affiliated with CAC, or a member, or whom they represent in this case. It should file its amendment by Wednesday, June 30, 2004. If it does so, its Petition will be granted without further action by the ALJ; if it does not, its Petition will be denied.

5. The Petitions to Intervene filed by the following entities are denied: Sustainable Development Fund; Duquesne Light Company; and, Met Ed and Penelec.

6. The parties shall file a copy of any pleading or other document directly with the ALJ as well as filing one with the Secretary of the Commission. The ALJ's email is [aktturner@state.pa.us](mailto:aktturner@state.pa.us); the ALJ's fax is 215-560-3133. The ALJ's mailing address is

Pennsylvania Public Utility Commission, U.S. Department of Defense & Federal, Executive Agencies, PPL Industrial Customer Alliance, Office of Small Business Advocate, Office of Consumer Advocate, Eric Joseph Epstein v. PPL Electric Utilities Corporation  
Docket Nos. R-00049255, R-00049255C0001-C0005

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