COMMONWEALTH OF PENNSYLVANIA

July 13, 2018

E-FILED

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

Re: Application of PPL Electric Utilities Corporation for Approval of Intercompany Restructuring / Docket No. A-2017-2629534

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

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

Enclosures
cc: Mr. Robert D. Knecht
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities	**:**	
Corporation for Approval of Intercompany	**:**	**Docket No. A-2017-2629534**
Restructuring	**:**	

REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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For: John R. Evans
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Office of Small Business Advocate
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Date: July 13, 2018

I. Introduction

On October 16, 2017, PPL Electric Utilities Corporation ("PPL Electric," "PPL EU" or the "Company") filed an Application of PPL Electric Utilities Corporation for Approval of Intercompany Restructuring ("*Application*") with the Pennsylvania Public Utility Commission ("Commission").

On October 28, 2017, notice of the Application was published in the Pennsylvania Bulletin in accordance with 52 Pa. Code Section 5.14.

On November 21, 2017, the Office of Small Business Advocate ("OSBA") filed a Protest and Notice of Intervention in opposition to the Application.

On January 22, 2018, a prehearing conference was held before Administrative Law Judges ("ALJs") Benjamin A. Myers and Joel H. Cheskis.

On January 24, 2018, the ALJs issued their Scheduling Order.

On March 23, 2018, PPL Electric served the Direct Testimony of Alexander J. Torok.

On April 23, 2018, the OSBA served the Direct Testimony of Robert D. Knecht.

On May 9, 2018, PPL Electric served the Rebuttal Testimony of Mr. Torok.

On May 29, 2018, Counsel for PPL Electric informed the ALJs that the parties had agreed to waive cross examination of all witnesses and to admit evidence into the record by written stipulation.

On May 29, 2018, the ALJs granted the Company's request and canceled the evidentiary hearing via email message sent at 8:49 am EDT.

On June 13, 2018, the Company filed a Stipulation for the Admission of Evidence. The Stipulation requested the admission into the record of: PPL Electric Direct Testimony; PPL

Electric Rebuttal Testimony; OSBA Direct Testimony; OSBA Exhibits IEc-1 and IEc-2; the *Application*; and PPL Electric Exhibit No. 1-A.

On June 29, 2018, PPL Electric and the OSBA submitted a Main Brief.

The OSBA submits this Reply Brief in response to the Company's Main Brief and in accordance with the ALJs' January 24th Scheduling Order.

II. Summary of Argument

PPL Electric filed the *Application* with the Commission proposing an intercompany restructuring.

The Commission's streamlined approach to applications that involve a change from a business corporation to a limited liability company is inapplicable to this proceeding.

There is no Commission standard of review that only considers the resulting ultimate corporate control when reviewing a proposed intercompany restructuring.

The *Application* results in a change of control of PPL Electric. 52 Pa. Code Section 69.901.

The *Application* is therefore jurisdictional under 66 Pa. C.S. Section 1102(a)(3) and requires the Commission to issue a certificate of public convenience.

In accordance with 66 Pa. C.S. Section 1103(a), the Commission may issue a certificate of public convenience only upon a finding or determination that the granting of such certificate is "necessary or proper for the service, accommodation, convenience, or safety of the public."

In *City of York*, the Pennsylvania Supreme Court decided that a public utility could only meet the Section 1103(a) standard if the proposed transaction produced affirmative public benefits.

The *Application* produces no affirmative public benefits. Only PPL Corporation and its shareholders are benefited by the proposed intercompany restructuring. There is no record evidence that PPL Electric or its customers will benefit in any way from the proposed intercompany restructuring.

The ALJs and the Commission should reject the *Application* in its entirety.

III. Argument

A. Legal Standard

In its Main Brief, the Company partially cited 52 Pa. Code § 69.901, specifically Sections 69.901(b)(1) and (2). *PPL Electric Main Brief*, at 2-3. The Company omitted Section 69.901(a):

> **(a) Background.**
>
> (1) Commission jurisdiction over the acquisition or transfer of public utility property is governed by 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate). ***The ambiguous language in 66 Pa.C.S. § 1102(a)(3) has historically caused considerable uncertainty among the Commission, its staff and the industry regarding what type of transaction requires Commission approval.*** This uncertainty has been particularly apparent regarding stock transfers which may equate to the transfer of utility property.
>
> (2) Recently, the Commission has examined 66 Pa.C.S. § 1102(a)(3) and determined that the transfer of stock or other voting interest of a utility's parent is jurisdictional regardless of the remoteness of the transaction if the effect of the transaction is to change the control of a utility. *Joint Application of Commonwealth Telephone Company, et al.*, A-310800, F.0006, (October 22, 1993). ***Furthermore, the Commission has held that a transaction resulting in a change of the de facto controlling interest in a utility or its parent, regardless of the tier in the corporate organization, constitutes a change of control of the utility and is jurisdictional under 66 Pa.C.S. § 1102(a)(3).*** *Joint Application of Paging Network of Pittsburgh, Inc. et al.*, A-330013, F.0005. In view of these Commission holdings, it is necessary to further define and establish clear standards regarding what transfer of voting interest constitutes a change in de facto control and thereby constitutes the transfer or acquisition of utility property within the intendment of 66 Pa.C.S. § 1102(a)(3).

52 Pa. Code Section 69.901(a) (emphasis added). Section 69.901(b)(1) states:

> **(b) Policy.**
>
> (1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent,

> ***regardless of the tier***. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, ***regardless of the tier***.

52 Pa. Code § 69.901(b)(1) (emphasis added).

The OSBA respectfully submits that the Sections of 69.901, set forth above, are dispositive of the legal standard to be applied in this case. Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3), applies to PPL Electric's proposed intercompany restructuring.

By way of review, PPL described the proposed intercompany restructuring, as follows:

> PPL Corp. formed two new Delaware holding companies, PPL Subsidiary Holdings, LLC ('Newco 1') and PPL Energy Holdings, LLC ('Newco 2').
>
> Newco 1 is owned directly by PPL Corp. and Newco 2 is owned directly by Newco 1.
>
> PPL Corp. plans to contribute ***all of the interests*** it holds in certain of its direct, wholly owned subsidiaries, including its shares in PPL EU and PPL EF, to Newco 1.
>
> Newco 1 will then contribute all of the shares received of these companies from PPL Corp. to Newco 2.
>
> Under the proposed corporate structure, PPL EU will be a direct subsidiary of Newco 2 and an indirect subsidiary of Newco 1 and PPL Corp.

PPL EU Statement No. 1, at 4 (formatting added for clarity) (emphasis added).

PPL Electric continued, as follows:

> PPL Corp. will be positioned as a ***pure holding company***. Intercompany financing, ***including managing the capital structures of the regulated utilities to comply with regulatory requirements***, will be facilitated through the lower tier holding companies rather than PPL Corp.

PPL EU Statement No. 1, at 4 (emphasis added). *See also, Application*, at Paragraph 18.

PPL Corporation will become a pure holding company after it transfers all of its interests in PPL Electric to Newco1. Then Newco2 receives all of the shares of PPL Electric from Newco1. Then, Newco1 or Newco2 will handle the regulatory compliance of PPL Electric. Thus, the tiered control of PPL Electric transfers from the parent, PPL Corporation, down to subsidiaries Newco1 and Newco2, including the handling of regulatory matters. The OSBA respectfully submits that the proposed intercompany restructuring is a clear case of "change of de facto control" of PPL Electric addressed by 52 Pa. Code Section 69.901(b)(1).

Therefore, as set forth in the OSBA's Main Brief, PPL Electric carries the burden of proving that the proposed intercompany restructuring will provide affirmative public benefits. The *Application* must satisfy the *City of York* legal standard. *OSBA Main Brief*, at 6-8.

B. PPL Electric's Proposed Standard of Review

In its Main Brief, the Company proposes a different standard of review for PPL Electric's proposed intercompany restructuring:

> The Commission has adopted a ***practical approach*** to reviewing internal reorganizations that do not result in an ultimate change in control of the utility or its management and operations.

PPL Main Brief, at 5 (emphasis added).

In support of its "practical approach," PPL cited two Commission decisions. First, the Company cited *Joint Application of Frontier Communications of Breezewood, Inc., et al. for Approval of Restructurings from Corporation to Limited Liability Companies*, Docket No. A-310400F004, 2003 Pa. PUC LEXIS 323 (Order entered October 17, 2003) ("*Frontier*"). *PPL Main Brief*, at 5.

The OSBA observes that in *Frontier*, the five Frontier incumbent local exchange carriers ("ILECs"), in total, served just over 40,000 customers in 2003. This compares to PPL Electric serving about 1.4 million customers in 29 counties, according to the Company's website.

Beyond this disparity between the Frontier ILECs and PPL Electric, the Commission observed the level of simplicity of the transactions involved in the *Frontier* proceeding: the ILECs were seeking approval to restructure "from business corporations to limited liability companies (LLCs)." 2003 Pa. PUC LEXIS 323, at 3. The Commission continued, as follows:

> If a new business entity will indeed be the successor to a utility in good standing, succeeding to all rights and responsibilities of the incumbent utility, and if all the resources--technical, managerial and financial--of the incumbent utility will be at the disposal of the new business entity, then we can grant the appropriate authority forthwith, and the existing utility code will apply to the successor utility. It will not be necessary for the successor utility to demonstrate fitness to provide service, ***as for all practical purposes the entities are one and the same.***

2003 Pa. PUC LEXIS 323, at 5 (emphasis added).

All that resulted from the *Frontier* proceeding was that, for example, Frontier Communications of Breezewood, Inc. became Frontier Communications of Breezewood, LLC. *Id.*, at 6. This is clearly distinguishable from the Company's proposed intercompany restructuring, in which: (a) PPL Corporation divests all its interests in PPL Electric and becomes a pure holding company; (b) Newco2 obtains all shares of PPL Electric; and (c) Newco2 and/or Newco1 handle the regulatory compliance of PPL Electric.

Second, the Company also cited *Application of Duquesne Light Company to Convert to a Limited Liability Company*, Docket No. A-2017-2599375 (Order entered August 31, 2017). *PPL Main Brief*, at 5. The *Duquesne Light* proceeding also involved the change of a public utility from a business corporation to an LLC.

Significantly, the Commission in *Duquesne Light* discusses both the *Frontier* case from 2003 set forth above, and a similar Qwest Communications case in 2008:

> Duquesne notes that the Commission has previously ruled on the approval requirements associated with a ***corporate conversion***. In Joint Application of Frontier Communications, *et al*, Order at 3, entered October 16, 2003, at Docket No. A-310400F004, the Commission approved the conversion of the Frontier Utilities from Pennsylvania business corporations to Pennsylvania LLCs.

Duquesne Light, at 4 (emphasis added) (footnote omitted).

The Commission continued with a citation to the Qwest case, set forth below:

> As was the case when the five Frontier Communication ILECs ***changed from business corporations to limited liability companies, the Commission will take a streamlined approach*** and not require formal entry into public service by the current business corporation to a limited liability company. Since management control of the Applicant will not be changing, and the newly created entity will continue to provide the same services pursuant to the same tariffs, the Commission will not require the existing utility code to change, but will continue its use by the successor utility.

Duquesne Light, at 5, citing *Application of Qwest Communications Corporation for Approval of the Conversion to an LLC*, Docket No. A-2008-2072842 (Order entered Dec. 9, 2008), 2008 Pa. PUC LEXIS 998, at 3-4 (emphasis added).

Thus, the streamlined approach (or as the Company terms it, the practical approach) has been used by the Commission when a public utility undergoes a corporate conversion, changing from a business corporation to a limited liability company. PPL Electric's proposed intercompany restructuring is not, in any way, a corporate conversion. Therefore, the OSBA respectfully submits that PPL Electric's practical approach is inapplicable to the proposed intercompany restructuring and should be disregarded by the ALJ and the Commission.

The Company also argued that the resulting "ultimate control" of PPL Electric is dispositive:

> The Commission has adopted a practical approach to reviewing internal reorganizations that do not result in an ***ultimate change in control*** of the utility or its management and operations.

PPL Main Brief, at 5 (emphasis added).[1]

The Company continued, as follows:

> PPL Electric's proposed restructuring is merely a technical change in control because PPL Corporation will no longer hold PPL Electric's stock directly. Instead, two holding companies will be inserted between PPL Corporation and PPL Electric. However, this change in structure will not negatively affect the day-to-day management or operations of the utility in any way.

PPL Main Brief, at 5.[2]

The Company, deeming the proposed intercompany restructuring to be merely a technical change in control, concluded that there is no requirement to demonstrate affirmative public benefits, no requirement to obtain a certificate of public convenience, and thus the proposed intercompany restructuring should simply be approved. *PPL Main Brief*, at 5.

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[1] In its Main Brief, the Company cites to a Commission *Policy Statement*, 1994 Pa. PUC LEXIS 56, at *11. *PPL Main Brief*, at 5. Nowhere in that Policy Statement does the term "ultimate" appear. Furthermore, the plain language of the *Policy Statement* appears to contradict PPL Electric's ultimate control argument:

> ***Internal transactions usually involve corporate reorganizations which can have fundamental effect on the management and operations of a utility***. Accordingly, we believe that the legislature intended that these transactions be subject to regulatory review under Section 1102(a)(3) to the extent they constitute a transfer of de facto control as defined by the policy statement heretofore issued.

*Policy Statement, at *11* (emphasis added). As set forth in this Reply Brief, and in the OSBA's Main Brief, the de facto control of PPL Electric will change as the result of the proposed intercompany restructuring.

[2] Apparently under the Company's "ultimate corporate control" standard of review, one thousand Newco's could be inserted between PPL Corporation and PPL Electric and merely a "technical change of control" would result.

First, the Company's own testimony contradicts the PPL Main Brief. The proposed intercompany restructuring is not "merely a technical change of control," it is the divesting of PPL Corporation of all of its interests in PPL Electric to Newco1 and Newco2. PPL EU Statement No. 1, at 4. PPL Corporation will then become a "pure holding company." *Id.*

Second, Newco1 and Newco2 are not just "inserted between PPL Corporation and PPL Electric." Newco2 will receive all of the shares of PPL Electric. *Id.* In addition, Newco1 or Newco2 will handle the regulatory compliance of PPL Electric. *Id.* Thus, the proposed intercompany restructuring goes far beyond a mere technical change of control – it is not simply the insertion of two subsidiaries between PPL Electric and PPL Corporation.

Third, the Commonwealth of Pennsylvania is not a "do no harm" jurisdiction. The Company's assertion that the proposed intercompany restructuring "will not negatively affect the day-to-day management or operations of the utility" is not only debatable, it is irrelevant. The *City of York* affirmative public benefits standard is the legal standard that the Company must satisfy.

Fourth, neither the *Frontier Order* nor the *Duquesne Light* Order, both cited by PPL Electric in support of the Company's proposed standard of review, contain the term "ultimate." The ultimate corporate control standard appears to have been created by PPL Electric out of whole cloth.

Fifth, the Company's argument that the resulting ultimate corporate control is dispositive is further undermined by the fact that the *Duquesne Light* case was adjudicated under the Pennsylvania Entity Transactions Law ("ETL"), 15 Pa. C.S. §§ 311, *et seq.* The Commission explained, as follows:

> As the ETL provides that a conversion does not constitute a transfer of property, there is no requirement to meet the standards

> under Chapter 11 of the Public Utility Code. Since Chapter 11 considerations do not exist, it will be unnecessary to demonstrate an affirmative public benefit or promise thereof pursuant to *City of York.*

Duquesne Light, at 6. The OSBA respectfully submits that *Duquesne Light* is completely inapposite to the dubious ultimate corporate control argument that the Company is proposing.

The *Application* does not propose a corporate conversion. The *Application* does not propose a public utility changing from a business corporation to a limited liability corporation. The Company's cited cases are inapplicable to this proceeding and should be disregarded by the ALJ and the Commission.

Furthermore, there exists no standard of review that only considers whether a proposed transaction maintains the "ultimate corporate control" of a Commonwealth public utility.

Therefore, the OSBA respectfully requests that the ALJ and the Commission reject the arguments propounded by the Company that the *City of York* legal standard (that Section 1103(a) requires affirmative public benefits) does not apply to the adjudication of the *Application.*

C. Affirmative Public Benefits

In its Main Brief, PPL Electric argues that the proposed intercompany restructuring does, in fact, provide affirmative public benefits. *PPL Main Brief*, at 8-10. The PPL Main Brief claims the proposed intercompany restructuring will improve the ability of the Company to manage internal cash flow without negative tax consequences, and will allow the company to raise equity at more favorable rates. *Id.*

The *Application* stated that the proposed restructuring will help both with the "mobilizing" of cash, and with the avoidance of State and Federal Taxes. *Application*, at Paragraph 17. In testimony, PPL Electric stated that the proposed intercompany restructuring would allow PPL Corporation to avoid "unnecessary Pennsylvania state tax liability. . . thereby

allowing PPL Corp. and its shareholders more efficient, lower cost access to cash distributions." PPL EU Statement No. 1, at 5.

In effect, the Company's argument can be summarized as: If we just give PPL Corporation shareholders more money, the PPL Electric ratepayers will be better off.

In its Main Brief, the Company claims that the avoidance of State and Federal Taxes "will benefit PPL Electric's customers." *PPL Main Brief*, at 9. PPL Electric concluded:

> Mitigating ***potential*** future fax payments mean that more cash is ***potentially*** available to PPL Corporation, and in turn, PPL Electric.

Id., at 9. The Pennsylvania Supreme Court in *Popowsky* allowed for predictive affirmative public benefits, but not speculative and unsubstantiated ones like the ones described by PPL Electric.

Furthermore, a Company interrogatory response contradicts the PPL Main Brief. In that response, PPL Electric assumes (but does not affirm) that any tax savings resulting from the restructuring would stay with PPL Corporation. *See* PPL Electric Exhibit 1-A, Company Response to OSBA-II-2. The Company has offered no proof or guarantees that any benefits of the proposed transaction will improve the financial health of PPL Corporation, and not be dissipated through dividend payments or alternative investments. In fact, the Company indicates that one of the reasons for the transaction is to facilitate future acquisitions. *Application*, at Paragraph 18. Consequently, there is good reason to believe that the tax advantages resulting from the transaction may go to more speculative investments, and not to improving PPL Corporation financing. Thus, any net financial benefit of the proposed transaction is speculative at best.

In addition, the OSBA respectfully submits that giving PPL shareholders more money is not necessarily a public benefit, in that the public benefit very much depends on *who is giving*

PPL shareholders the extra funds. For example, obviously it would not be a public benefit for the Commission to grant PPL a return on equity well in excess of the cost of capital in exchange for some nebulous future benefits associated with "greater PPL financial health." In the proposed intercompany restructuring, the only specific benefit to the financial health of PPL Corporation that the Company identifies is a reduction in taxes, and specifically a reduction in Pennsylvania income taxes. *PPL Main Brief*, at 9-10. Thus, PPL Electric's claim of an affirmative public benefit is based on the idea of taking money from taxpayers (and Pennsylvania taxpayers at that) and giving it to PPL shareholders. The OSBA respectfully submits that, even if the proposed transaction has a positive impact on PPL Corporation's finances, taking money from Pennsylvania taxpayers and giving it to PPL shareholders does not result in a net affirmative *public* benefit.

Moreover, the Company's response to OSBA-II-2(b) generally confirms that PPL Electric's method for deriving the cost of equity capital in base rates proceedings is not dependent on the tax costs incurred by PPL Corporation. *See* PPL Electric Exhibit 1-A, Company Response to OSBA-II-2(b).

Simply put, any tax savings will provide an affirmative benefit to PPL Corporation and its shareholders, but will not necessarily benefit PPL Electric customers without substantially more guarantees than those offered by PPL in this proceeding.

Furthermore, there is there no record evidence to support the Company's claim that the proposed intercompany restructuring will improve PPL Electric's financial condition. *PPL Main Brief*, at 9-10. In fact, PPL's Main Brief contradicts the written testimony of its witness. OSBA witness Mr. Knecht explained, as follows:

> Neither the *Application* nor the testimony indicates how such benefits would accrue to PPL ratepayers, nor is any estimate provided regarding the magnitude of such benefits.
>
> Moreover, at page 5 [of his Direct Testimony], Mr. Torok indicates that ***the proposed transaction will not result in any change to the financing of PPL Electric***.
>
> In addition, the Company's response to OSBA-I-1 indicates that no cash distributions related to PPL Electric are contemplated.

OSBA Statement No. 1, at 6-7 (formatting added) (emphasis added).

As described in the OSBA Main Brief, the OSBA invited PPL to explain specifically how capital costs for PPL Electric would be lowered as a result of the merger in OSBA-II-2. The Company's response to OSBA-II-2(a) suggested that making PPL Corporation more financially sound would be a benefit to PPL Electric, but offers no specific mechanism by which capital costs would be reduced. *See* PPL Electric Exhibit 1-A, Company Response to OSBA-II-2.

The Company has failed to identify any affirmative public benefit, in the form of reduced financial costs for PPL Electric ratepayers, that will result from the proposed intercompany restructuring. Moreover, the PPL Main Brief's argument that the proposed intercompany restructuring would provide the benefits of more favorable financing is contradicted by PPL Electric's own witness testimony.

Finally, as set forth in the OSBA's Main Brief, the OSBA respectfully submits that the *Application's* claim that the proposed intercompany restructuring will facilitate mergers and acquisitions is not an affirmative public benefit. *See* OSBA Main Brief, at 14-16.

To buttress that conclusion, the PPL Electric omits any mention of this argument in its Main Brief.

IV. Conclusion

Wherefore, as set forth above and in the OSBA's Main Brief, the *City of York* legal standard, requiring a showing of affirmative public benefits, is the legal standard by which the *Application* should be adjudicated. PPL Electric's proposed legal standard should be rejected by the ALJ and the Commission.

Furthermore, as set forth above and in the OSBA Main Brief, the *Application* is devoid of any affirmative public benefits. PPL Electric has failed to meet its burden of proving, by a preponderance of the evidence, that the proposed corporate restructuring provides any, even predictive, affirmative benefits.

Therefore, the OSBA respectfully requests that the ALJs and the Commission reject the *Application* in its entirety.

Respectfully submitted,

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Attorney ID No. 77538

For: John R. Evans
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Dated: July 13, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities	:	
Corporation for Approval of Intercompany	:	**Docket No. A-2017-2629534**
Restructuring	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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